EXHIBIT 3

MIAMIBEACH

Development Agreement

2020-____-___

FOR THE DEVELOPMENT OF

THE MARINA PARK PROJECT

DEVELOPMENT AGREEMENT
between
Marina Park Residential, LLC and Marina Park Commercial, LLC

and
CITY OF MIAMI BEACH, a
Florida municipal corporation

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is executed on the ____ day of _____, 2020, by and between the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation (the "City"), and MARINA PARK RESIDENTIAL, LLC, a Delaware limited liability company ("Residential Developer") and MARINA PARK COMMERCIAL, LLC, a Delaware limited liability company ("Commercial Retail Developer" and together with Residential Developer, collectively, jointly and severally, the "Developer").

RECITALS:

A. The City has a material interest in maximizing the performance of the Miami Beach Marina (as hereinafter defined in Section 1.3), enhancing the neighborhood by encouraging neighborhood-oriented commercial and retail spaces, improving the resiliency of such uses and providing substantial public green space in the City. To further those goals, the City desires to facilitate the development of the Marina Park Project (as hereinafter defined in Section 1.3) on real property owned by the City and described more fully in **Exhibit "B-1"** (the "Land"), and a portion of the Land with a maximum of 0.3 acres and a parcel of air located above the Land to be owned by the Residential Developer and described more fully on **Exhibit "B-2"** (collectively, the "Residential Parcel" and together with the Land, collectively, the "Development Site").[1]

B. The City is a Florida municipal corporation with powers and authority conferred under the Florida Constitution, the Municipal Home Rule Powers Act set forth in Chapter 166 of the Florida Statutes, and the Miami Beach City Charter and Code of Ordinances (the "City Code"). The City has all governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal and governmental functions, and render municipal services, including the authority to adopt, implement and enforce (together with any other required Governmental Approvals) comprehensive plans, zoning ordinances, redevelopment plans, and other police power and legislative measures necessary to assure the health, safety and general welfare of the City and its inhabitants.

C. This Agreement is intended to and shall constitute a development agreement between the parties pursuant to Sections 163.3220-163.3243, Florida Statutes, the "Florida Local Government Development Agreement Act" (the "Act") and Section 118-4 of the City's Code.

D. The City has fully considered this Agreement at two duly noticed public hearings in compliance with Section 163.3225 of the Act; having determined that the Project (as hereinafter defined in Section 1.3) and this Agreement are in compliance with the City's Comprehensive Plan and Land Development Regulations (as each are hereinafter defined in Section 1.3) as of [_____], [___], 2020;

E. The City has further determined that it is in the City's best interest to address the issues covered by this Agreement in a comprehensive manner, in compliance with all applicable laws, ordinances, plans, rules and regulations of the City, and therefore the City has agreed to enter into this Agreement with Developer, subject to the terms and conditions herein.[2]

[1] City to add revised and/or additional recitals based on City resolutions.

[2] Subject to update if amendments to Comprehensive Plan and LDRs not adopted prior to execution.

F. On [_____] [___], 2020, the Mayor and City Commission, by Resolution No. 2020-[_____], approved the execution of this Agreement.

NOW THEREFORE, for and in consideration of the foregoing, and of the mutual covenants and agreements contained herein, the parties agree as follows:

ARTICLE I
VOTER REFERENDUM, EFFECTIVE DATE AND DEFINITIONS

Section 1.1 **Voter Referendum Requirement.** The parties acknowledge and agree that, pursuant to Section 1.03(b)(1) of the City Code, the Marina Lease and the Purchase and Sale Agreement for the Residential Parcel, each as hereinafter defined, forms of which are attached to this Agreement, and the rights and obligations therein, are subject to and contingent upon the approval of the Marina Lease and the sale of the Residential Parcel by vote of a majority of the voters voting thereon in a City-wide referendum on November 3, 2020 (the "2020 Referendum") or such later date in 2021 as further described in this Section (each, a "2021 Referendum" and together with the 2020 Referendum, each, a "Referendum"). In the event that the 2020 Referendum is not successful, or if the ballot question is removed or election results are invalidated by a court of competent jurisdiction, then Developer may, within 90 days after the date on which it is determined that the 2020 Referendum was not successful, request that the City Commission consider adopting a resolution calling for a special election for approval of the Agreement in a 2021 Referendum. If (a) the City Commission declines to adopt a resolution calling for approval of the Agreement in a 2021 Referendum or (b) within such ninety (90) day period, Developer either fails to so notify the City or notifies the City that it wishes to terminate this Agreement, then in any such event, this Agreement shall be deemed null and void and the parties shall have no obligations or liabilities of any kind or nature whatsoever hereunder. In the event that, following Developer's request, the City Commission adopts a resolution calling for a 2021 Referendum and the 2021 Referendum is not successful, or if the ballot question is removed or election results are invalidated by a court of competent jurisdiction, in each case following the last date on which a 2021 Referendum occurred, this Agreement shall be deemed null and void and the parties shall have no obligations or liabilities of any kind or nature whatsoever hereunder.

Section 1.2 **Effective Date.** If a Referendum is successful and all requirements of the City Code and applicable law are satisfied, this Agreement shall be effective upon the City Commission's adoption of a resolution accepting the certification of the official results of the applicable election with respect to the applicable Referendum ("Effective Date").

Section 1.3 **Defined Terms.** As used herein the term:

"Acceptable Owner" has the meaning ascribed to it in **Exhibit "A"**.

"Act" has the meaning ascribed to it in the recitals hereto.

"Affiliate" means, regarding any Person, any other Person directly or indirectly Controlling, Controlled by or under common Control with such Person. When used in reference to Developer, for so long as Developer (or any of its Affiliates) holds an interest, directly or indirectly, in Developer, "Affiliate" shall include any Person Controlling, Controlled by, or under common Control with the Developer.

"Agreement" or "Development Agreement" means, collectively, this Development Agreement and all exhibits and attachments hereto, as any of the same may hereafter be supplemented, amended, restated,

severed, consolidated, extended, revised and otherwise modified, from time to time, either in accordance with the terms of this Agreement or by mutual agreement of the parties.

"Alternate Easement Agreement" means an easement agreement in form and substance reasonably acceptable to Developer, Marina Lessee and the City that provides for the granting of the ARF Easements and the other limited, non-exclusive easements described in Section 4.1(d) by Residential Developer for the benefit of the Commercial Retail Premises.

"Approval, Approve or Approved" means the written approval or consent of a Party, which unless otherwise specified herein by reference to "sole discretion" or words of similar effect, shall be commercially reasonable and made in good faith and with due diligence.

"Approved DRB Plans" shall have the meaning ascribed to it in Section 2.2(a).

"Approved DRB Submittal Plans" shall have the meaning ascribed to it in Section 2.2(a).

"Approved Plans" shall have the meaning ascribed to it in Section 2.2(b).

"Arbitrator" shall have the meaning ascribed to it in Section 7.10(a).

"Architect" means Cube 3 Studio, LLC, a Florida limited liability company, or such other duly qualified, insured and reputable architect selected by Developer as the architect for the Project and licensed to operate as an architect in the State of Florida.

"ARF Easements" has the meaning ascribed to it in Section 4.1(d).

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as amended.

"Baseline Commercial Building" means the basic building of the Commercial Retail Improvements, the shell and core of which is described on **Exhibit "Q"** attached hereto, together with enhancements thereto, having a total aggregate cost for design, construction, permitting and fees of not less than $17,500,000, of which not less than $5,000,000 shall be expended for upgrades to the Commercial Retail Improvements, such as higher ceilings, better quality finishes and more architectural features.

"Baseline Environmental Levels" means the highest level of Hazardous Substances found to exist within the Development Site, excluding areas beneath the Existing Improvements, as are reflected on "Phase II" testings to be conducted by or on behalf of Developer prior to Commencement of Construction.

"Baseline Park" means basic park improvements consisting of a concrete walkway, landscaping required by applicable Governmental Requirements, irrigation system and art required by AIPP.

"Baywalk" means that certain baywalk extending from MacArthur Causeway to the north and the southern property line of the Murano Grande At Portofino Condominium to the south, as more particularly described in the Baywalk Easements.

"Baywalk Easements" means, collectively, that certain Amended and Restated Grant of Baywalk Easement recorded on July 27, 1999 in Official Records Book 18713, Page 133 and that certain Grant of Easements for SSDI South Drop-Off Parking and Access Easement Agreement recorded on May 27, 1999 in Official Records Book 18626, Page 4514, each of the public records of Miami-Dade County, Florida.

"Budgeted Improvement Costs" means the estimated Improvement Costs as of the estimated date of Commencement of Construction through the date of Completion of Construction.

"Building Permit" means the building permit for construction of the Project, which may be a phased building permit to the extent permitted by and in accordance with applicable Governmental Requirements.

"Building Permit Liquidated Damages" has the meaning ascribed to it in Section 7.2(a)(iv).

"Building Permit Outside Date" means the date which is six (6) years after the Effective Date, subject to reasonable extension (a) for Unavoidable Delays, (b) for City Delays, and (c) during the pendency of any Lawsuit or Marina Lawsuit, if applicable, and each in accordance with this Agreement.

"Business Day" means a day other than a Saturday, a Sunday or a day on which the offices of the City, or national banks in Miami-Dade County, Florida are closed for business.

"Certificate of Occupancy" means, collectively, the Certificate of Occupancy – Commercial, Certificate of Occupancy – Park, and Certificate of Occupancy – Residential, or either or any thereof as the context contemplates. A Certificate of Occupancy may be issued separately for each of the Commercial Retail Premises, the Park Project and the Residential Parcel. Nothing herein shall be deemed to modify the authority of the agency(ies) having jurisdiction to determine whether to issue any Certificate of Occupancy. In no event shall the Certificate of Occupancy – Residential be issued prior to the Certificate of Occupancy – Commercial or the Certificate of Occupancy – Park, nor shall any Certificate of Occupancy (or if separate, the Certificate of Occupancy – Commercial, Certificate of Occupancy – Park or the Certificate of Occupancy – Residential) be issued until Developer has paid the City in full in cash for any and all Liquidated Damages due hereunder.

"Certificate of Occupancy – Commercial" means a certificate of occupancy or certificate of completion, as applicable, for the portion of the building constituting the Commercial Retail Improvements, which shall be limited to the Baseline Commercial Building, to the extent permitted by the agency(ies) having jurisdiction, and shall include any such certificate designated as "Temporary" in nature.

"Certificate of Occupancy – Park" means a certificate of occupancy or certificate of completion, as applicable, for the Park Project and shall include any such certificate designated as "Partial" or "Temporary" in nature, which allows for occupancy of the Park Project by the public.

"Certificate of Occupancy – Residential" means a certificate of occupancy or certificate of completion, as applicable, for the portion of the building constituting the Residential Improvements, and shall include any such certificate designated as "Temporary" in nature.

"City" shall mean the City of Miami Beach, a Florida municipal corporation, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida 33139. In all respects hereunder, City's obligations and performance is pursuant to City's position as the owner of the Development Site acting in its proprietary capacity. In the event City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances (including through the exercise of the City's building, fire, code enforcement, police department or otherwise) shall be deemed to have occurred pursuant to City's regulatory authority as a governmental body and shall not be attributable in any manner to City as a party to this Agreement or in any way be deemed in conflict with, or a default under, the City's obligations hereunder.

"City Code" has the meaning ascribed to it in the recitals hereto.

"City Commission" shall mean the governing and legislative body of the City.

"City Delays" shall mean the number of days in which the City performs any obligation under Section 2.17 hereof in excess of the number of days set forth for such performance therein.

"City Manager" shall mean the Chief Administrative Officer of the City. The City Manager shall be construed to include any duly authorized representatives designated in writing with respect to any specific matter(s) concerning this Agreement (exclusive of those authorizations reserved to the City Commission or regulatory or administrative bodies having jurisdiction over any matter(s) related to this Agreement).

"City Mortgage" shall mean that certain mortgage which is a first lien on Residential Developer's fee interest in the Residential Parcel and all improvements thereon delivered by Residential Developer in favor of the City to secure the Residential Developer's obligations under the City Note, which City Mortgage is delivered to the City at the Closing in accordance with this Agreement and the Purchase and Sale Agreement.

"City Note" means that certain promissory note in the amount of $50,000,000.00 delivered by Residential Developer to the City at the Closing, which City Note shall be due and payable on the City Note Maturity Date.

"City Note Maturity Date" means the date on which all of the Construction Commencement Conditions have been satisfied.

"City Parties" means the officers, employees and agents of the City, each acting in their official capacities, and instrumentalities of the City.

"City's Representative" has the meaning ascribed to it in Section 2.13(b).

"City ROW Area" means the parcel of property described on **Exhibit "D"** attached hereto.

"City Title Policy" means that certain loan title policy, in form and substance reasonably acceptable to City, issued by First American Title Insurance Company (or other reputable national title insurance company reasonably acceptable to the City) in favor of the City in the amount of the City Note insuring the first lien priority of the City Mortgage, which City Title Policy shall be issued to the City at Residential Developer's sole cost and expense.

"Claims" means all claims, demands, actions, suits, causes of actions, proceedings, charges, complaints, orders, liabilities, actual damages, losses, fees, reasonable, out-of-pocket costs and expenses of every kind and nature (including any reasonable attorneys' fees and costs of litigation).

"Closing" means the closing of the purchase and sale of the Residential Parcel in accordance with the Purchase and Sale Agreement.

"Commence Construction" or "Commencement of Construction" means the commencement of any work, other than any Early Work, for construction of the Project in accordance with the Approved Plans.

"Commercial Release Date" means the date on which all of the following conditions have been satisfied: (i) Completion of Construction of the Commercial Retail Project, including the Park Project; and (ii) payment in full in cash to the City of any and all Completion Liquidated Damages due hereunder. For the avoidance of doubt, the Commercial Release Date shall not occur or be deemed to occur prior to the satisfaction of all conditions to the Vesting Date as set forth in the definition thereof.

"Commercial Retail Developer" means Marina Park Commercial, LLC, a Delaware limited liability company, as the developer of the Commercial Retail Project, including the Park Project. Commercial Retail Developer is the sublessee of the Commercial Retail Premises as approved by the City pursuant to the Marina Lease.

"Commercial Retail Improvements" means any and all permanent buildings, structures, machinery, equipment and fixtures, which are to be erected or located on the Commercial Retail Premises, and as further described in Section 4.1(a) hereof.

"Commercial Retail Premises" means the parcel of real property described on **Exhibit "L"** attached hereto, subject to adjustment in accordance with Section 2.20.

"Commercial Retail Project" means the development, design, construction and purchase of the Commercial Retail Improvements, Baseline Park and their subsequent use and the completion of the Work relating to the Commercial Retail Improvements and Baseline Park substantially in accordance with the Approved Plans, including (1) all associated infrastructure (including on-site parking and all supporting facilities and amenities) and (2) the installation of other improvements and appurtenances of every kind and description (including any and all landscaping, planting and other improvements of any type) now located or hereafter erected, constructed or placed upon the Commercial Retail Premises and includes the Park Project.

"Complete Construction" or "Completion of Construction" means the date Developer has completed the Project substantially in accordance with the requirements of the Approved Plans for the Project and all conditions of permits and regulatory agencies to obtain a Certificate of Occupancy for the Project have been satisfied, all applicable Governmental Authorities have issued a Certificate of Occupancy for the Project.

"Completion Liquidated Damages" has the meaning ascribed to it in Section 7.2(a)(v).

"Comprehensive Plan" means the comprehensive plan which the City Commission has adopted and implemented for the redevelopment and continuing development of the City pursuant to Chapter 163 Part II, of the Florida Statutes.

"Concurrency Requirements" shall have the meaning ascribed to it in Section 3.3.

"Construction Agreement(s)" means, collectively, the General Construction Contract and any general contractor's agreement entered into by the Developer with respect to the construction of the Project, as the same may be amended or otherwise modified from time to time.

"Construction Completion Date" means the date that is fifty-four (54) months from demolition of the Existing Improvements (which demolition shall not occur prior to satisfaction of all Construction Commencement Conditions), *less* the number of days in the Construction Commencement Slide Period,

subject to reasonable extension for (i) Unavoidable Delays and/or (ii) City Delays, if applicable, and each in accordance with this Agreement.

"Construction Commencement Conditions" has the meaning ascribed to it in Section 2.11.

"Construction Commencement Date" means the date which is eight (8) years after the Effective Date, subject to reasonable extension (a) for Unavoidable Delays, (b) for City Delays, and/or (c) during the pendency of any Lawsuit or Marina Lawsuit, if applicable, and each in accordance with this Agreement.

"Construction Commencement Slide Period" means the period of time commencing on the date which is ninety (90) months after the Effective Date, subject to reasonable extension (a) for Unavoidable Delays, (b) for City Delays, and/or (c) during the pendency of any Lawsuit or Marina Lawsuit, if applicable, and each in accordance with this Agreement, and ending on the date of satisfaction of all Construction Commencement Conditions. By way of example, if Developer satisfies all Construction Commencement Conditions ninety-six (96) months after the Effective Date, the Construction Slide Period shall be six months, and accordingly, the Construction Completion Date of fifty-four (54) months after demolition of the Existing Improvements shall be reduced by six (6) months, to forty-eight (48) months after such demolition.

"Construction Lender" means the Institutional Lender selected by Developer to provide the Construction Loan in accordance with Article VI.

"Construction Loan" means the loan to be provided by the Construction Lender to Developer for development and construction of the Project in accordance with Article VI.

"Construction Loan Commitment" means a financing commitment, term sheet or similar agreement by the Construction Lender that has been executed and delivered by and between Developer and the Construction Lender that confirms availability (subject to satisfaction of the terms and conditions contained therein) of the Construction Loan to fund the construction of the Project in accordance with the requirements of this Agreement.

"Control," "Controlling" or "Controlled" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, by Governmental Requirements or otherwise, or the power to elect in excess of fifty percent (50%) of the directors, managers, general partners or other Persons exercising similar authority with respect to such Person (it being acknowledged that a Person shall not be deemed to lack Control of another Person even though certain decisions may be subject to "major decision" consent or approval rights of limited partners, shareholders or members, as applicable). For avoidance of doubt, if a Person (for purposes of this definition, "Person A") cannot elect in excess of fifty percent (50%) of the directors, managers, general partners or other Persons exercising similar authority with respect to a Person (for purposes of this definition, "Person B") without the consent or approval of another Person or Persons, then Person A shall not be deemed to Control Person B.

"Court of Appeal" shall mean, with respect to any Marina Lawsuit filed in Florida state court, the applicable District Court of Appeal of the State of Florida, and with respect to any Marina Lawsuit filed in or removed to federal court, the applicable the United States Court of Appeals.

"Covenant in Lieu of Unity of Title" shall mean the covenant in lieu of unity of title covering the Development Site, substantially in the form attached as **Exhibit "H."**

"Default Rate" means an interest rate equal to five percent (5%) per annum above the highest annual prime rate (or base rate) published from time-to-time in The Wall Street Journal under the heading "Money Rates" or any successor heading as being the rate in effect for corporate loans at large U.S. money center commercial banks (whether or not such rate has actually been charged by any such bank) or if such rate is no longer published, then the highest annual rate charged from time-to-time at a large U.S. money center commercial bank, selected by the City, on short term, unsecured loans to its most creditworthy large corporate borrowers.

"Deposits" all deposits paid or payable to Residential Developer (or escrow agent) pursuant to a contract or contracts for the sale by Residential Developer of one or more condominium units within the Residential Improvements and permitted to be used by Residential Developer for purposes of construction of the Residential Project pursuant to Chapter 718, Florida Statutes, provided that all applicable rescission periods set forth in such contract(s) have fully and unconditionally expired.

"Design Architect" means B.I.G. Architecture DPC D.P.C., or such other duly qualified, insured and reputable architect selected by Developer as the design architect for the Project and licensed to operate as an architect in the State of Florida.

"Developer" means, jointly, severally and collectively, Residential Developer and Commercial Retail Developer and the successors, assigns or transferees thereof expressly Approved or permitted by the terms and provisions of this Agreement. A certified copy of the articles of organization of the Residential Developer are attached hereto as **Exhibit "E-1"** and a certified copy of the articles of organization of the Commercial Retail Developer are attached hereto as **Exhibit "E-2"**.

"Development Arbitrator" shall have the meaning ascribed to it in Section 7.9(b).

"Development Dispute" means any dispute between Developer and City (acting in its proprietary capacity) arising prior to the Completion of Construction with respect to (i) whether the plans and specifications to be submitted to the Design Review Board shall conform in all material respects to the Project Concept Plan and include all Mandatory Project Elements (in each case, except to the extent the City Commission otherwise approves); provided, however, for avoidance of doubt, to the extent the plans and specifications reflect revisions to the Project Concept Plan, but the plans and specifications include all Mandatory Project Elements and do not include any Prohibited Project Changes, then such revisions shall not be deemed to render the plans and specifications noncompliant with the Project Concept Plan; (ii) whether the Plans and Specifications are consistent with the Approved DRB Plans, include all Mandatory Project Elements and do not include any Prohibited Project Changes; (iii) whether a modification to the Project is a substantial deviation from the Approved Plans or a Prohibited Project Change requiring City's Approval pursuant to Section 2.2 or Section 2.3; (iv) any contention that City has unreasonably failed to Approve any plans and specifications, including Approved DRB Submittal Plans and the Plans and Specifications or any modifications to the Approved Plans in accordance with this Agreement; (v) any contention that City has unreasonably failed to Approve a General Contractor for the Project in accordance with Section 2.9(b); (vi) any disagreement as to permitted delays in the Building Permit Outside Date, the Construction Commencement Date or the Construction Completion Date; or (vii) after Commencement of Construction, any disagreement as to whether the Developer is diligently prosecuting completion of the Work in good-faith.

"Development Order" means any order granting, denying, or granting with conditions an application for a Development Permit.

"Development Permit" shall have the meaning set forth in Section 163.3221(5), Florida Statutes.

"Development Site" means, collectively, the Land and the Residential Parcel and the City ROW Area.

"Early Work" means, collectively, (i) design and permitting of the Project, including all design, architectural, landscaping, civil engineering, engineering and other professional services; (ii) physical inspections, site visits and surveying; (iii) tests, studies, samplings, and analyses (including soil borings and invasive environmental testing); (iv) preliminary site work, including utility work; (v) environmental remediation; and (v) ancillary demolition (but for avoidance of doubt, not including any demolition of the Existing Improvements).

"Effective Date" has the meaning ascribed to in Section 1.2.

"Environmental Delays" means each of the following: (i) if, despite diligent good faith efforts, Developer is unable to obtain final approval from the applicable Governmental Authorities, including Miami-Dade County Department of Environmental Resources Management, of protocols for remediation of any Hazardous Substances in, or, under or within the vicinity of, the Development Site, including a remedial action plan, within twelve (12) months of submittal by Developer to the applicable Governmental Authorities of an initial plan for remediation; (ii) if Hazardous Substances are discovered under the Existing Improvements at levels that are at least fifty percent (50%) greater than the Baseline Environmental Levels; and (iii) the discovery of any Hazardous Substance not discovered in the Baseline Environmental Levels or an increase in levels from those discovered in the Baseline Environmental Levels that requires, for the first time, remediation or an increased level of remediation than that needed to address the Baseline Environmental Levels.

"Equity Commitment" means the commitment of Developer to contribute an amount in cash to pay Improvement Costs as may be necessary, at the time of determination, when combined with the proceeds available under the Construction Loan and Mezzanine Loan, if any, to demonstrate that the Project is In Balance as of the date of Commencement of Construction.

"Event of Default" has the meaning ascribed to it in Section 7.1.

"Existing Improvements" means the existing buildings, structures, machinery, equipment and fixtures which are existing on the Land as of the date hereof.

"Existing Marina Lease" means that certain Marina Lease by and between the City, as lessor, and Existing Marina Lessee, as lessee, dated as of June 24, 1983, as subsequently amended through April 15, 1998.

"Existing Marina Lessee" means Miami Beach Marina Associates, Ltd., a Florida limited partnership.

"First Mortgage" means collectively, each Mortgage securing a Construction Loan, constituting a first lien on Residential Developer's fee interest in the Residential Parcel and/or constituting a first lien on the Commercial Retail Developer's subleasehold interest in the Commercial Retail Premises.

"First Mortgagee" means the Institutional Lender(s) that is(are) the holder(s) of a First Mortgage, which shall be evidenced by, and the City shall be able to absolutely rely on, a title report current as of the time of any determination and prepared by a generally recognized title insurance company doing business in Miami-Dade County, Florida or upon a certificate of Developer, signed and verified by a Responsible Officer of Developer.

"Force Majeure Event" means any acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies, whether actual or threatened; orders of any civil or military authority; insurrections; riots; acts of terrorism; epidemics; pandemics; landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts and other natural disasters; inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, or failure or unavailability of transportation generally; or other similar extraordinary causes beyond the commercially reasonable control of the Party claiming such inability. In no event shall "Force Majeure Event" include economic hardship or financial inability to perform specific to the Party.

"Foreign Instrumentality" means a foreign (non-U.S.) government or agency thereof or a Person Controlled thereby.

"GAAP" means generally accepted accounting principles, as in effect from time to time, as promulgated by the Financial Accounting Standards Board, consistently applied or a system generally recognized in the United States as having replaced GAAP.

"General Construction Contract" means the construction contract between Developer and the General Contractor for the construction of the Project in accordance with the Approved Plans for the Project, within the contract time specified therein for completion of the Work, for a guaranteed maximum price that as of the date of Commencement of Construction will not exceed the sum allocated for construction of the Work as reflected in the Budgeted Improvement Costs, and that includes provisions requiring a Performance Bond and Payment Bond and all other terms or conditions required under this Agreement; provided, however, Developer may enter into a phased General Construction Contract with the same General Contractor in order to construct the Project in phases and may enter into a separate General Construction Contract with a separate General Contractor for the Park Project.

"General Contractor" means the duly licensed general contractor engaged by Developer for the construction of the Project and completion of the Work; provided that Developer may enter into a separate General Construction Contract with a separate General Contractor for the Park Project.

"Governmental Approvals" means all permits, approvals, certificates of occupancy, notifications, certifications, registrations, authorizations and other rights and privileges that are required by any Governmental Authority. Notwithstanding anything to the contrary in this Agreement, Developer retains its rights in accordance with applicable Governmental Requirements to challenge or appeal any denial of Governmental Approvals.

"Governmental Authority" means any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency, or any instrumentality of any of them, with jurisdiction over the Development Site, the Improvements, or the Work.

"Governmental Requirements" means any law, enactment, statute, code, order, ordinance, rule, regulation, judgment, decree, writ, injunction, franchise, permit, certificate, license, or other similar requirement of any Governmental Authority, now existing or hereafter enacted, adopted, promulgated, entered, or issued, affecting the Development Site or the construction and operation of the Improvements. Notwithstanding anything to the contrary in this Agreement, Developer retains its right to challenge Governmental Requirements in accordance with all other applicable Governmental Requirements, including based on a constitutional objection that a Governmental Requirement violates Developer's constitutional rights regarding contracts.

"Green Space" means approximately one and one-half acres of publicly accessible open green space within the Development Site, which shall include the Park Project and landscaping and hardscape improvements, resurfacing, drainage, sidewalks, lighting, irrigation, outdoor seating and other outdoor furniture (if requested by the City), baywalk improvements, upgraded City-approved wayfinding and signage such as directional signage with respect to the Park Project, access signage and similar signs (excluding private signage) and other accessory facilities and incorporating all applicable Public Benefit Improvements (provided, however, in no event shall Developer be obligated to expend more than $5,000,000 in the aggregate in connection with the Public Benefit Improvements, including hard and soft costs in connection with the development, construction and completion thereof).

"Hazardous Substances" has the meaning ascribed to it in Section 8.4(a)(vii).

"Hearing" has the meaning set forth in Section 7.9(c).

"Hearing Date" has the meaning set forth in Section 7.9(c).

"Improvement Costs" means all costs, fees and expenses incurred or to be incurred in connection with the design, permitting, development and construction of the Project;

"Improvements" means, collectively, the Residential Improvements and the Commercial Retail Improvements.

"In Balance" means, as of the date of Commencement of Construction, that the sum of (a) the then unfunded amount of the Construction Loan available to Developer for payment of Improvement Costs to achieve Completion of Construction of the Project, plus (b) the then unfunded amount of the Mezzanine Loan, if any, available to Developer for the payment of Improvement Costs to achieve Completion of Construction of the Project, plus (c) the then remaining balance to be funded under the Equity Commitment, plus (d) any unused Deposits, if any, plus (e) any additional cash amounts deposited with the First Mortgagee or any Mezzanine Lender by Developer in order to fund the difference, if any, between the sum of (a), (b), (c) and (d) above and the then remaining Improvement Costs is adequate to pay all of the then remaining Improvements Costs that are reasonably likely to be incurred through Completion of Construction.

"Initial Purchase Price" means, an aggregate of $15,000,000 of the Purchase Price consisting of $5,000,000 paid to the City at the Closing, $5,000,000 paid to the City on or before January 1, 2022 and $5,000,000 paid to the City on or before September 1, 2022.

"Institutional Lender" means, any of the following entities that as of the date of closing of the financing (i) is not a Prohibited Person, (ii) with respect to those entities in clause (g), (h), (i), (j) and (k) below is not a Foreign Instrumentality (other than any of the member countries of the European Union, each as existing as of the Effective Date, United Kingdom, Norway, Switzerland, Canada and Mexico and Persons Controlled by any of the foregoing countries) and (iii) (A) with respect to those entities in clauses (a) through (e) and (i) below providing loans to be secured by Mortgages, has a net worth in excess of One Hundred Million Dollars ($100,000,000) (as adjusted by inflation over the Term pursuant to Section 11.19 hereof), (B) with respect to those entities in clauses (a) through (e) and (i) and (k) below providing Mezzanine Loans, has a net worth in excess of Fifty Million Dollars ($50,000,000) (as adjusted by inflation over the Term pursuant to Section 11.19 hereof) and (C) with respect to those entities in clauses (h) and (j) below has total assets (in name or under management) in excess of $500,000,000 (as adjusted by inflation over the Term pursuant to Section 11.19 hereof) for (h) and (j):

(a) any federal or state chartered commercial bank or national bank or any of its subsidiaries;

(b) any federal or state chartered savings and loan association, savings bank or trust company;

(c) any pension, retirement or welfare trust or fund, whose loans on real estate are regulated by state or federal laws;

(d) any public limited partnerships, public real estate investment trust or other public entity investing in commercial mortgage loans whose loans on real estate are regulated by state or federal laws;

(e) any licensed life insurance company in the business of making commercial mortgage loans or a subsidiary or affiliate of any such institution, in each case, whose loans on real estate are regulated by state or federal laws;

(f) any agent, designee, or nominee of an Institutional Lender that is an Affiliate of any Institutional Lender or any other Person that is a subsidiary or an Affiliate of an Institutional Lender;

(g) a governmental agency;

(h) an investment bank;

(i) a securitization trust that is rated by S&P, Fitch or Moody's (or any like-extant national rating agency);

(j) a hedge fund, opportunity fund, private debt fund, or like entity;

(k) KS Real Estate Group, LLC, a Florida limited liability company, or any Affiliate thereof ("KS"), provided however, that at the closing of financing provided by KS, KS affirms that KS, together with its Affiliates, in the aggregate, satisfies the minimum net worth requirement of $50,000,000 and that neither KS nor any of its principals and/or members are a Prohibited Person or Foreign Instrumentality;

(l) any other source of funding, public or private, which is otherwise Approved by the City Manager.

In the event of a syndicated loan, if fifty-one percent (51%) or more of the syndicate of lenders are Institutional Lenders, then the syndicated loan shall be deemed to be made by an Institutional Lender. Without limiting the foregoing, for reference purposes, in the case of any syndicated loan obtained by Developer, references herein to "Institutional Lender" shall include the administrative agent or collateral agent for the syndicate of lenders. City Manager's failure to notify Developer of any disapproval of any proposed lender under (l) above within twenty (20) days from its receipt of a notice by Developer shall be deemed to constitute the City Manager's conclusive Approval of any such proposed lender.

"Land Development Regulations" shall have the meaning set forth in Section 163.3221(8), Florida Statutes and shall also include the definition of "land development regulations" in Section 114-1 of the City Code.

"Land" has the meaning ascribed to it in the recitals hereto.

"Lawsuit" means any lawsuit, action, proceeding, appeal or petition for writ of certiorari challenging the validity, legal propriety, issuance or execution, as applicable, of the sale of the Residential Parcel, the Purchase and Sale Agreement, the Project Approvals, the Project Amendments, the vacation of the City ROW Area or this Agreement or any such challenge relating to any approval required under the City Code and/or the City Charter.

"LEED Status" means a certification by the U.S. Green Building Counsel's ("USGBC") Leadership in Energy and Environmental Design ("LEED") that the Project has satisfied all of the requirements associated with the then current USGBC Gold LEED certification.

"Liquid Assets" means (a) cash on hand or on deposit in any federal or state chartered commercial bank or national bank or any of its subsidiaries, (b) readily marketable securities, (c) readily marketable commercial paper rated A-1 by Standard & Poor's Corporation (or a similar rating by any similar organization that rates commercial paper), (d) certificates of deposit issued by commercial banks operating in the United States with maturities of one year or less, (e) money market mutual funds, (f) the uncommitted amount of any available line(s) of credit.

"Liquidated Damages" means, collectively, all Building Permit Liquidated Damages and all Completion Liquidated Damages.

"Mandatory Project Elements" means the components or other elements of the Project to be developed by Developer as further described on **Exhibit "F"**.

"Marina Lawsuit" means any lawsuit, action or proceeding challenging the termination or expiration of the Existing Marina Lease, the termination or expiration of any sublease thereunder and/or the validity, execution or effectiveness of the Marina Lease, the Master Sublease, the Recognition Agreement, and to the extent challenged in connection with the foregoing agreements, the Reciprocal Easement Agreement and the Alternate Easement Agreement, or any tort or other Claim related to any of the foregoing.

"Marina Lease" means that certain Miami Beach Marina Lease by and between the City, as lessor, and Marina Lessee, as lessee, to be executed as of March 15, 2021, pursuant to which Marina Lessee has agreed to lease the Commercial Retail Premises from the City for a term commencing on January 1, 2022 and continuing for ninety (99) years and otherwise on the terms and conditions specified therein, in the form attached hereto as **Exhibit "G"**.

"Marina Lessee" means MB Marina Park, LLC, a Delaware limited liability company, an affiliate of Suntex Marina Investors, LLC.

"Master Sublease" means that certain Sublease Agreement to be entered into between Marina Lessee, as sublessor, and Commercial Retail Developer, as sublessee, pursuant to which Marina Lessee shall sublease a portion of the Commercial Retail Premises to the Commercial Retail Developer for the purpose of constructing the Project.

"Material Event of Default" shall have the meaning ascribed to it in Section 7.2(i).

"Mezzanine Borrower" means the borrower(s) under any Mezzanine Loan.

"Mezzanine Lender" means the Institutional Lender selected by Developer to provide the Mezzanine Loan and which is receiving a pledge of all or any portion of the direct and/or indirect equity interests in Developer.

"Mezzanine Loan" means each loan to be made by a Mezzanine Lender to a Mezzanine Borrower to provide financing for the Project in accordance with Article VI, subordinate to the First Mortgage, which may be secured by a lien on all or any portion of the direct and/or indirect ownership interests in Developer.

"Mezzanine Loan Commitment" means a mezzanine financing commitment, term sheet or similar agreement by the Mezzanine Lender that has been executed and delivered by and between Developer and/or Mezzanine Borrower and the Mezzanine Lender that confirms the availability (subject to satisfaction of the terms and conditions contained therein) of the Mezzanine Loan.

"Miami Beach Marina" means, prior to the effectiveness of the Marina Lease, the marina operated by the Existing Marina Lessee pursuant to the Existing Marina Lease, and after the effectiveness of the Marina Lease, the marina operated by Marina Lessee pursuant to the Marina Lease.

"Mortgage" means a mortgage, including an assignment of rents, issues and profits from the Project, in favor of a Mortgagee, which constitutes a lien on the Project and secures the Construction Loan.

"Mortgagee" means an Institutional Lender that is the owner and holder of a Mortgage.

"Neutral" has the meaning ascribed to it in Section 7.11(a)

"Notice of Dispute" has the meaning ascribed to it in Section 7.11(a).

"Ownership and Control Requirement" has the meaning ascribed to it in Section 5.2.

"Park Project" means the ground level public Baseline Park located within the Development Site and south of the Podium and Tower, being not less than one contiguous acre, together with the applicable Public Benefit Improvements set forth on **Exhibit "H"** attached hereto.

"Park Project Completion Date" means the date which the earlier of (i) nine (9) months after the date the Certificate of Occupancy - Commercial is issued or (ii) the date a Certificate of Occupancy – Residential is issued, subject to reasonable extension (a) for Unavoidable Delays and (b) for City Delays, if applicable, each in accordance with this Agreement.

"Parties" means City and Developer, and "Party" is a reference to either City or Developer, as the context may indicate or require.

"Performance Bond and Payment Bond" means a performance bond and a payment bond with regard to the General Construction Contract in the full amount of the guaranteed maximum price thereof, with a good and sufficient surety, in compliance with all applicable Governmental Requirements, in compliance with Florida Statutes Section 713.23 and otherwise in form and content Approved by the City Manager, or such other security as is reasonably acceptable to the City Manager, after consultation with the City Attorney. City Manager hereby Approves the form substantially as attached hereto as **Exhibit "T**,**"** which approval is for the City's own benefit in its proprietary capacity as the owner of the Land and shall not be

deemed to mean, and the City, in such proprietary capacity, makes no representation that, such bond complies with Florida Statutes Section 713.23.

"Permitted Transfers" has the meaning ascribed to it in Section 5.3.

"Person" means any corporation, unincorporated association or business, limited liability company; business trust, real estate investment trust, common law trust, or other trust, general partnership, limited partnership, limited liability limited partnership, limited liability partnership, joint venture, or two or more persons having a joint or common economic interest, nominee, or other entity, or any individual (or estate of such individual); and shall include any Governmental Authority.

"Plans and Specifications" means the plans and specifications for the design, development and construction of the Project at the final design completion stage, which shall include fully detailed drawings showing the location, character, dimensions and details of the Work to be done, and specifications relating to the Project, comprising all of the written directions, provisions and requirements for the Project and describing the Work required to be performed, including customary specifications as the context requires for the applicable permit or approval being sought, prepared by the Architect, in each case, which shall be consistent with the Approved DRB Plans and include the Mandatory Project Elements in accordance with Article II.

"Podium" means those Commercial Retail Improvements and that portion of the Residential Improvements located up to an elevation of not lower than 24' NGVD.

"Prohibited Person" shall mean any of the following Persons: (A) any Person (whose operations are directed or controlled by an individual) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to United States laws concerning organized crime; or (B) any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder to the extent the same are then effective: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the date hereof, North Korea, Cuba and Venezuela); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the date hereof, Iran, Sudan and Syria); or (C) any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or (D) any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or (E) any Affiliate of any of the Persons described in paragraphs (A) through (D) above.

"Prohibited Project Changes" means any changes to the plans and specifications for the Project, including the Approved DRB Submittal Plans, the Approved DRB Plans and/or Approved Plans that result in any of the following except to the extent previously Approved in a writing executed by the City Manager and

expressly providing that the City Manager is thereby Approving a Prohibited Project Change (which Approval may be granted or withheld by City Manager in his sole and absolute discretion), or which are required because of Governmental Requirements: (i) a failure of the Project to contain any of the Mandatory Project Elements; (ii) any increase in the maximum ground floor footprint of the Podium set forth in Article IV hereof; (iii) any increase in the maximum width of the Tower set forth in Article IV hereof; or (iv) any change in the location of the Park Project from its location south of the Podium.

"Project" or "Marina Park Project" means, collectively, the Residential Project and the Commercial Retail Project, including the Park Project, having an aggregate maximum floor area of 319,802 square feet.

"Project Amendments" means, collectively, those certain amendments to the Comprehensive Plan and Land Development Regulations to (a) amend the Resilient Land Use and Development Element, Goal RLU1, objective RLU1.1, Policy RLU1.1.17, entitled "Public Facility: Governmental Uses (PF)" to permit public-private marina redevelopment and related uses on public property; and (b) amend the City's Land Development Regulations by creating Section 142-708, entitled, "Additional Regulations for Public-Private Marina Mixed-Use Redevelopments".

"Project Approvals" has the meaning ascribed to it in Section 3.2.

"Project Approvals Delays" means any revisions required by the Design Review Board and/or Planning Board to the Approved DRB Submittal Plans that would require revisions to the Mandatory Project Elements or the inclusion of any Prohibited Project Changes.

"Project Concept Plan" means the design of the Project prepared by the Design Architect, which Project Concept Plan has been approved by the City Commission in the form attached as hereto as **Exhibit "I"**.

"Proposed Major Transferee" means any transferee of the entire Project, the entire Commercial Project, the entire Residential Project and/or or of a direct or indirect Controlling ownership interest in Developer.

"Prosecution Dispute" has the meaning ascribed to it in Section 7.11(a)

"Public Benefit Improvements" mean the improvements to the Park Project in excess of the Baseline Park, including resiliency improvements, enhancements to the Baywalk and Alton Road and art within the Park Project and the Commercial Retail Project in excess of the requirements of AIPP, as described on **Exhibit "H"** attached hereto, having an aggregate cost for design, construction, permitting and fees of not less than $5,000,000 (provided, however, in no event shall Developer be obligated to expend more than $5,000,000 in the aggregate in connection with the Public Benefit Improvements, including hard and soft costs in connection with the development, construction and completion thereof).

"Purchase and Sale Agreement" means that certain Purchase and Sale Agreement by and between the City and Residential Developer dated as of the Effective Date pursuant to which the City agrees to sell and the Residential Developer agrees to purchase the Residential Parcel, the form of which is attached hereto as **Exhibit "J"**.

"Purchase Price" means $55,000,000 to be paid by Residential Developer to the City for the purchase of the Residential Parcel pursuant to the Purchase and Sale Agreement and the City Note.

"Reciprocal Easement Agreement" means that certain reciprocal easement and operating agreement to be executed as of March 15, 2021 by and among the City, Marina Lessee, Commercial Retail Developer

and the Residential Developer substantially in the form attached to the Purchase and Sale Agreement and to be recorded in the Public Records of Miami-Dade County, Florida promptly after Closing.

"Recognition Agreement" means that certain recognition agreement to be entered into between the City and Master Sublease substantially in the form attached to the Purchase and Sale Agreement.

"Residential Developer" means Marina Park Residential, LLC, a Delaware limited liability company, as the developer of the Residential Project.

"Residential Improvements" means any and all permanent buildings, structures, machinery, equipment and fixtures, which are to be erected or located on the Residential Parcel, and as further described in Section 4.1(b) hereof.

"Residential Parcel" has the meaning ascribed to it in the recitals hereto, subject to adjustment in accordance with Section 2.20.

"Residential Project" means the development, design, construction and purchase of the Residential Improvements and the completion of the Work relating to the Residential Improvements substantially in accordance with the Approved Plans, including (1) all associated infrastructure (including on-site parking, if any, and all supporting facilities and amenities) and (2) the installation of other improvements and appurtenances of every kind and description now located or hereafter erected, constructed or placed upon the Residential Parcel.

"Responsible Officer" means any executive officer or manager of Developer responsible for the administration of the obligations of Developer in respect of this Agreement.

"Section," "Subsection," "Paragraph," "Subparagraph," "Clause," or "Subclause" followed by a number or letter means the section, subsection, paragraph, subparagraph, clause or subclause of this Agreement so designated.

"Stay" has the meaning ascribed to it in Section 7.2(h).

"Target Dates" means the following dates that have been targeted by Developer to achieve the following activities or events:

(a) The "Target Approval Date" means the date targeted for obtaining the Project Approvals, which is two years after the Effective Date, as such Target Approval Date shall be reasonably extended for (i) an Unavoidable Delay; (ii) City Delays; and/or (iii) during the pendency of any Lawsuit and/or Marina Lawsuit, if applicable, each, in accordance with this Agreement.

(b) "Target Commencement Date" means the date targeted for Commencement of Construction, which is four (4) years after the Effective Date, as such Target Commencement Date shall be reasonably extended for (i) an Unavoidable Delay; (ii) City Delays; and/or (iii) during the pendency of any Lawsuit and/or Marina Lawsuit, if applicable, each, in accordance with this Agreement.

"Term" has the meaning ascribed to it in Section 3.11.

"Tower" means those Commercial Retail Improvements and the tower structure of the Residential Improvements to be constructed above the Podium.

"Transfer" means any sale, assignment or conveyance (including any sublease of the entire Commercial Retail Premises, provided that a Master Sublease in form Approved by the City Manager (or his/her designee) to Commercial Retail Developer shall not be deemed a "Transfer") or any other transaction or series of transactions in the nature of a sale, assignment or conveyance (including any sublease of the entire Commercial Retail Premises, other than as set forth in this definition) of:

(a) the Project or any part thereof;

(b) Any legal or beneficial interest in the Project, or any part thereof

(c) any direct or indirect legal or beneficial interest in Developer (including the syndication of tax benefits); or

any series of such Transfers that have the cumulative effect of a sale, transfer or conveyance (including any sublease of the entire Commercial Retail Premises) of any of the foregoing (a), (b) or (c).

Notwithstanding the foregoing, pledges of profits and rights to receive distributions and unreturned capital shall not be deemed Transfers provided that financings in conjunction therewith are not secured by a Mortgage or pledge of any direct or indirect interest in Developer, and no lender under such financings shall be deemed a First Mortgagee or a Mezzanine Lender (and therefore would not have any rights or remedies under this Agreement, including, without limitation, Article VI hereof).

"Unavoidable Delay" means a delay that (a) if occurring after Commencement of Construction, directly impacts the progress of the Work, (b) is beyond the reasonable control of such Party incurring the delay, and (c) is not due to a negligent or intentional act, error or omission of such Party. Subject to the foregoing criteria, "Unavoidable Delay" includes each of the following: (i) any Force Majeure Event; (ii) Project Approvals Delays; and (iii) Environmental Delays, in each case, which prevents or actually delays performance. "Unavoidable Delay" shall not include technological impossibility, failure of equipment supplied by Developer or Contractor, receipt of and incorporation of defective materials into the Work, shortage of funds, failure of suppliers to deliver equipment and materials except where such failure is itself the result of an Unavoidable Delay, or failure of Developer or Contractor to secure the required permits for prosecution of the Work. If two or more separate events of Unavoidable Delay are concurrent with each other, Developer shall only be entitled to an extension of time for each day of such concurrent critical path delay, and Developer shall not be entitled to double recovery thereon. For illustration purposes only, if two events of Unavoidable Delay are concurrent for two days, Developer shall only receive an extension of time, if at all, of a total of two days, and not four days. In no event shall (i) any Party's financial condition constitute an "Unavoidable Delay" with respect to such Party, (ii) nor shall any delay arising from a Party's default under this Agreement, the General Construction Contract or any other construction agreements, constitute an "Unavoidable Delay" with respect to such Party's obligations hereunder.

"Vesting Date" means the date on which all of the following conditions have been satisfied: (i) all Project Approvals have been issued and are final (after all appeal periods have expired without an appeal being filed, or if filed, resolved favorably for Developer); (ii) all Construction Commencement Conditions have been satisfied; (iii) the City has received full and final payment in cash of the Purchase Price; (iv) the Building Permit for the Project has been issued; (v) Developer has paid to the City any and all Building Permit Liquidated Damages due hereunder; and (vi) to the extent requested by Marina Lessee or the City, Commercial Retail Developer and Residential Developer each shall have executed and delivered to Marina Lessee and the City Commercial Retail Developer's and Residential Developer's counterparts of the

Alternate Easement Agreement. If applicable, Commercial Retail Developer and Residential Developer shall cause the Reciprocal Easement Agreement to be recorded in the Public Records of Miami-Dade County, Florida, upon receipt of originally executed counterparts from each of the other parties thereto, but, for avoidance of doubt, neither the execution of the Alternate Easement Agreement by the other parties thereto, nor recordation of the Alternate Easement Agreement shall be conditions to the Vesting Date.

"Work" means the design, permitting, development and construction of the Project in accordance with the Approved Plans, including all design, architectural, engineering and other professional services, demolition and construction services, supervision, administration and coordination services and the provision of all drawings, specifications, labor, materials, equipment, supplies, tools, machinery, utilities, fabrication, transportation, storage, insurance, bonds, permits and conditions thereof, zoning approvals, changes required to comply with building codes and Governmental Approvals, licenses, tests, inspections, surveys, studies, and other items, work and services that are necessary or appropriate for the demolition of existing structures and other preparatory or remediation work on the Residential Parcel and Commercial Retail Premises, as applicable; utility relocations, installations, hook-ups or other infrastructure as may be required in connection with the Project and to obtain Certificate(s) of Occupancy; total design, construction, installation, and functioning of the Residential Improvements and the Commercial Retail Improvements to the extent necessary to obtain Certificates of Occupancy, and together with all additional, collateral and incidental items, work and services required for Completion of Construction.

Section 1.4 Exhibits. If any exhibit to this Agreement conflicts with the body of this Agreement, the body of this Agreement shall govern.

Section 1.5 Interpretation. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as appropriate. The words "herein," "hereof," "hereunder," "hereinafter," and words of similar import refer to this Agreement as a whole and not to any particular Article, Section or Subsection hereof. The terms "include" and "including" and words of similar import shall each be construed as if followed by the phrase "without limitation". This Agreement will be interpreted without interpreting any provision in favor of or against either party by reason of the drafting of such provision.

Section 1.6 Recitals. The recitals set forth above are true and correct and are incorporated herein by this reference.

ARTICLE II
DEVELOPMENT OF THE PROJECT

Section 2.1 Development and Conformity of Plans.

(a) Developer shall be responsible for preparing all Plans and Specifications for the Project. The Plans and Specifications shall conform in all material respects to the Approved DRB Plans , contain all Mandatory Project Elements and not include any Prohibited Project Changes, in each case, except to the extent Approved by the City Commission and/or City Manager, each in its sole discretion, in accordance with this Article II.

(b) Notwithstanding any other provision or term of this Agreement or any Exhibit hereto, the Approved Plans and all work by Developer regarding the Project shall conform to the City Code, the Florida

Building Code and all other Governmental Requirements and, to the extent consistent with the above, the provisions of this Agreement.

Section 2.2 Plans and Specifications.

(a) Developer shall prepare sufficiently detailed plans and specifications for the Project for submission to the Design Review Board. Such plans and specifications must conform in all material respects to the Project Concept Plan, must include all Mandatory Project Elements and not include any Prohibited Project Changes (in each case, except to the extent the City Commission otherwise approves, in its sole discretion). Prior to submission of such plans and specifications to the Design Review Board, Developer shall submit same to the City Manager solely to confirm that such plans and specifications conform in all material respects to the Project Concept Plan and include all Mandatory Project Elements and not include any Prohibited Project Changes (in each case, except to the extent the City Commission otherwise approves in its sole discretion). The City Manager shall review and either confirm or reject such plans and specifications within fifteen (15) Business Days after receipt of the same. If the City Manager fails to confirm or reject such plans and specifications within such fifteen (15) Business Day period, then such plans and specifications shall be deemed confirmed by the City Manager as conforming in all material respects to the Project Concept Plan and including all Mandatory Project Elements (in each case, except to the extent the City Commission otherwise approves, in its sole discretion). However, if the City Manager timely rejects such plans and specifications, it shall give the specific and detailed reasons for such rejection; in which event, the Developer shall, at its election, either (x) submit the City Manager's rejection to expedited arbitration pursuant to Section 7.9 of this Agreement, or (y) within sixty (60) days after such rejection by the City Manager, submit revised proposed modifications to such plans and specifications so that they conform in all material respects to the Project Concept Plan and include all Mandatory Project Elements and not include any Prohibited Project Changes (in each case, except to the extent the City Commission otherwise approves in its sole discretion) and then re-submit them to the City Manager pursuant to the foregoing process until such plans and specifications have been or are deemed to have been so confirmed by the City Manager (such plans and specifications, once Approved or deemed Approved by the City Manager, are referred to in this Agreement as the "Approved DRB Submittal Plans"). Notwithstanding anything to the contrary contained in this Agreement and for avoidance of doubt, to the extent the plans and specifications reflect revisions to the Project Concept Plan, but the plans and specifications include all Mandatory Project Elements and do not include any Prohibited Project Changes, then such revisions shall not be deemed to render the plans and specifications noncompliant with the Project Concept Plan. Developer shall promptly submit the Approved DRB Submittal Plans to the Design Review Board for approval. The City acknowledges and agrees that the Design Review Board and/or Planning Board and/or any other applicable Governmental Authority may require revisions to the Approved DRB Submittal Plans as a condition to the issuance of the Project Approvals; provided, however, that any revisions to the Mandatory Project Elements or the inclusion of any Prohibited Project Changes shall be subject to Approval by the City Manager in its sole discretion, and Developer shall submit same to the City Manager for such confirmation pursuant to the foregoing process until such Approved DRB Submittal Plans have been so confirmed or are deemed to have been confirmed by the City Manager. The Approved DRB Submittal Plans, as revised to conform to conditions to the issuance of the Project Approvals and, if applicable, as any such revisions to the Mandatory Project Elements and/or Prohibited Project Changes have been Approved by the City Manager, as set forth herein, are referred to in this Agreement as the "Approved DRB Plans."

(b) Promptly following issuance of the Project Approvals, and the expiration of all appeal periods to such issuance with no appeals to such issuance having been filed (or, in the event an appeal is

filed, the same has been resolved (by judgement, settlement or otherwise) on terms and conditions acceptable to the Developer in its sole and absolute discretion), Developer shall prepare the Plans and Specifications. The Plans and Specifications must be consistent with the Approved DRB Plans, include all Mandatory Project Elements and not include any Prohibited Project Changes, except to the extent otherwise approved by the City Manager or City Commission, as applicable, in accordance with clause (a) above. Prior to submitting the Plans and Specifications to the applicable Governmental Authorities for the issuance of Building Permit, Developer shall submit the Plans and Specifications to the City Manager. The City Manager shall review the Plans and Specifications solely to confirm that the Plans and Specifications are consistent with the Approved DRB Plans, include all Mandatory Project Elements and do not include any Prohibited Project Changes, except to the extent otherwise approved by the City Manager or City Commission in accordance with clause (a) above. The City Manager shall review and either confirm or reject such Plans and Specifications within fifteen (15) Business Days after receipt of the same. If the City Manager fails to confirm or reject such Plans and Specifications within such fifteen (15) Business Day period, then such Plans and Specifications shall be deemed confirmed by the City Manager as being consistent with the Approved DRB Plans, including all Mandatory Project Elements and not including any Prohibited Project Changes, except to the extent otherwise approved by the City Manager or City Commission in accordance with clause (a) above. However, if the City Manager timely rejects such Plans and Specifications, it shall give the specific and detailed reasons for such rejection; in which event, the Developer shall, at its election, either (x) submit the City Manager's rejection to expedited arbitration pursuant to Section 7.9 of this Agreement, or (y) within sixty (60) days after such rejection by the City Manager, submit revised proposed modifications to such Plans and Specifications so that they are consistent with the Approved DRB Plans, include all Mandatory Project Elements and do not include any Prohibited Project Changes, except to the extent otherwise approved by the City Manager or City Commission and then re-submit them to the City Manager pursuant to the foregoing process until such Plans and Specifications have been or are deemed to have been confirmed by the City Manager. Such Plans and Specifications, once confirmed or deemed confirmed by the City Manager, are referred to in this Agreement as the "**Approved Plans**." The City, in its governmental capacity, agrees to expedite its review of the Plans and Specifications to the extent the City deems reasonable.

Section 2.3 **Approved Plans**. The City shall have the right to Approve, in its sole discretion, (x) any substantial deviation of the Project from the Approved Plans therefor and (y) any Prohibited Project Changes. Notwithstanding any confirmation or Approval provided pursuant to Section 2.2 or this Section 2.3, Developer shall be solely responsible for obtaining all required final, non-appealable Governmental Approvals as more fully set forth in this Article II and in Article III of this Agreement. Any Approval of the Approved Plans or any component thereof by the City shall be for its own benefit in its proprietary capacity as the owner of the Land and shall not be deemed to mean, and the City, in such proprietary capacity, makes no representation, that such Approved Plans comply with all applicable Governmental Approvals and Governmental Requirements.

(a) Developer shall submit to the City Manager, prior to Commencement of Construction, any proposed modification to the Approved Plans for the City Manager's determination of whether such modifications include any substantial deviation of the Project from the Approved Plans therefor or Prohibited Project Changes. Modifications to the Approved Plans shall be indicated by "ballooning," highlighting, blacklining or describing such modifications in writing in reasonable detail in an accompanying memorandum. The City shall not be responsible for, and shall not be deemed to have Approved, any modification to the Approved Plans that is not indicated as required by this Section 2.3; provided, however, if, within sixty (60) days after providing its Approval, the City does not raise any objection as a result of Developer's failure to include indications as required by this Section 2.3, then the

City will be deemed to have waived its right to object to such modifications for failure to include such indications.

(b) Within twenty-one (21) days of receipt of any proposed modifications to the Approved Plans, the City Manager shall notify Developer, in writing, that he Approves such modifications, or the basis for any disapproval of any substantial deviation of the Project from the Approved Plans therefor or Prohibited Project Change; provided, however, that the City shall not disapprove any material modification necessitated by Governmental Requirements. City's failure to notify Developer of any disapproval within such twenty-one (21) day period shall be deemed to constitute the City's conclusive Approval of the proposed modifications to the Approved Plans. The Approved Plans, as amended by such Approved modifications, shall thereafter be the Approved Plans referred to herein.

(c) If the City disapproves of any modification pursuant to this Section 2.3, then Developer shall, at its election, either (x) submit City's disapproval to expedited arbitration pursuant to Section 7.9 of this Agreement, or (y) within thirty (30) days after receiving the City's disapproval notice, submit revised proposed modifications to the Approved Plans for City's review and Approval as provided in this Section 2.3, provided that the time period for approval or disapproval shall be fifteen (15) days.

(d) At any time during the design development phase of the Project, Developer may (but shall not be required to) submit to the City Manager any proposed modifications to the Approved Plans for City's review and Approval pursuant to this Section 2.3, so as to mitigate or avoid any potential delays to the progress of the Work as a result of disputes regarding the final proposed Approved Plans.

Section 2.4 Developer's Project Obligations. Subject to the terms hereof, Developer is obligated to and shall (i) design, permit, and construct, in a good and workmanlike manner, and at its sole cost and expense, the Project in all material respects in accordance with and subject to all of the terms and provisions of this Agreement and to Complete Construction thereof by the Construction Completion Date, (ii) obtain a certificate of the LEED Status in accordance with Section 133-6 of the City Code and provide reasonable evidence of such certification to City within a reasonable period following the Construction Completion Date and (iii) to maintain, and, if applicable, prior to Completion of Construction, repair and reconstruct, as applicable, at its sole cost and expense during the Term, the Project in accordance with and subject to all of the terms and provisions of this Agreement.

Section 2.5 Payment of Project Costs.

(a) As between Developer and the City, Developer shall bear and be solely responsible for all costs and expenses related to the design, permitting and construction of the Work, the Project and its subsequent use, including the following:

(i) Developer's land use approvals, development fees, and permit fees for the design, construction, and subsequent use of the Project;

(ii) Developer's design and construction of the Project;

(iii) Developer's financing, construction bonding and insurance, building permits, utility installations and/or hook-ups or other infrastructure, as may be required to make the Development Site suitable for the Project;

(iv) Developer's consultants, accountants, financing charges, legal fees, furnishings, equipment, and other personal property of the Developer; and

(v) all other Developer direct or indirect costs associated with the approvals, design, construction, and financing of the Improvements, and their subsequent use.

(b) Developer acknowledges that the City shall have no maintenance responsibility for any of the Development Site and Improvements, and utilities and infrastructure to be constructed by Developer except as set forth in Sections 4.1(e) and 4.1(f) of this Agreement.

(c) Developer shall be exclusively responsible for all matters relating to underground utility lines and facilities, including locating, relocating and/or removal, as necessary in connection with the Project. Under no circumstances shall City be responsible for paying the cost of, or otherwise reimbursing Developer for, relocation, removal, or payment of charges to utility companies for, any utility lines or facilities lying on, under, or around the Development Site. City shall provide reasonable cooperation and assistance to Developer in the resolution of issues associated with existing underground utilities. Developer shall not remove, disturb, or relocate any existing utilities on the Development Site without the City Manager's prior written Approval, except to the extent required by any applicable Governmental Authorities.

Section 2.6 Financing Matters.

(a) Developer shall pay for all Improvement Costs from funds required to be provided under the Equity Commitment, the Construction Loan and the Mezzanine Loan, if any, and funds, if any, available from Deposits; provided that if the proceeds of the foregoing sources are not available or are inadequate for any reason, Developer shall be responsible to provide funds from such other sources as Developer may identify to pay all costs and expenses necessary to Complete Construction of the Project and cause the Construction Completion Date to occur in accordance herewith.

(b) Developer shall be solely responsible for obtaining the Construction Loan and the Mezzanine Loan, if any, for any and all completion guaranties required in connection with the Construction Loan and the Mezzanine Loan, if any, and for providing all collateral and other security, and otherwise satisfying all conditions thereof and covenants, agreements and obligations of the borrower thereunder. In no event shall City have any responsibility, obligation or liability with respect to the Construction Loan or the Mezzanine Loan, if any, and Developer shall reimburse City for all of City's third party costs and expenses (including attorneys' fees) reasonably incurred in connection with any requirements or requests of the Construction Lender in connection with the Construction Loan or the Mezzanine Lender in connection with the Mezzanine Loan, if any, or any requests of Developer in connection with the Construction Loan, the Mezzanine Loan or any permitted refinancing of the Construction Loan or Mezzanine Loan in accordance with Article VI.

Section 2.7 Intentionally Deleted.

Section 2.8 Prosecution of the Work. From and after Commencement of Construction Developer shall prosecute completion of the Work substantially in accordance with the Approved Plans (with only such changes hereto that do not constitute Prohibited Project Changes, except as otherwise permitted or Approved pursuant to this Agreement), with all commercially reasonable diligence and in good-faith, in good and workmanlike manner. The Construction Completion Date shall not be tolled for any Lawsuit. If the Parties disagree with respect to whether Developer is diligently prosecuting completion of the Work

in good faith, or with respect to any permitted delays in the Building Permit Outside Date, Construction Commencement Date or Construction Completion Date, such disagreement shall be resolved in accordance with Section 7.9 hereof.

(a) Developer shall endeavor, through the use of diligent, good-faith efforts, to cause the prosecution of the Work in accordance with the Building Permit Outside Date, the Target Dates, the Construction Commencement Date and Construction Completion Date, but failure to meet any Target Date shall not be a default under this Agreement.

(b) Developer shall obtain the Building Permit by the Building Permit Outside Date.

(c) Developer shall commence construction by the Construction Commencement Date.

(d) Developer shall Complete Construction by the Construction Completion Date.

Section 2.9 Construction Obligations.

(a) Bonds. By no later than Commencement of Construction, (i) Developer shall provide a Performance Bond and Payment Bond, with all premiums paid and in favor of Developer with an obligee rider in favor of the City and the First Mortgagee and (ii) Developer shall also provide City with a demolition bond or other form of financial instrument reasonably acceptable to City to assure the availability of funds for demolition or removal of any uncompleted facility in the event Developer, after receipt of a written demand from City after a termination of this Agreement, fails to demolish and remove any uncompleted Improvements following Developer's failure to substantially complete the Project as required herein.

(b) Approval of General Contractor. Developer's selection of the General Contractor shall be subject to the advance Approval of the City Manager, after consultation with the City Attorney, as to the qualifications and responsibility of the proposed General Contractor to perform the contract, based on the contractor's licensure, bonding capacity, financial capacity, history of compliance with laws, and satisfactory past performance on similar projects. Provided that the General Contractor proposed by Developer does not have a significant history of material non-compliance with the law, City agrees to Approve any General Contractor proposed by Developer that satisfies each of the following:

(i) Has a State of Florida Building and Business License;

(ii) Has completed at least one high-rise residential and retail mixed use project of at least twenty (20) stories in the past ten years; and

(iii) Has total bonding capacity in excess of $500,000,000.00.

(c) Construction Agreement Required Clauses. All Construction Agreements shall include the provisions set forth on **Exhibit "S"** (or language substantially similar thereto which is Approved in advance by the City Manager); provided all references to "Contractor" on **Exhibit "S"** shall refer to any contractor party to a Construction Agreement.

Section 2.10 Pre-Construction Period.

(a) Purchase and Sale Agreement. As of the Effective Date, the City and Residential Developer shall enter into the Purchase and Sale Agreement and the Closing shall occur on or before

March 15, 2021, with time being of the essence, subject to tolling and extension as expressly set forth in the Purchase and Sale Agreement. At the Closing, Residential Developer shall deliver to the City, in cash, $5,000,0000 of the Initial Purchase Price, the City Note, the City Mortgage and the City Title Policy, and shall record the City Mortgage in the public records of Miami-Dade County, Florida at Developer's sole cost and expense, including payment of all recording fees, documentary stamp taxes and intangible taxes. Upon payment of the $5,000,000 Initial Purchase Price, such payment shall be non-refundable and shall be retained by the City. In the event the Existing Marina Lease is in effect, the City may provide a credit to Existing Marina Lessee to the extent set forth in Section 2.10(b) hereof. In the event the event the Marina Lease is in effect, the City shall have no obligation to return or credit such payment under the Marina Lease.

(b) Marina Lease.

(i) As of March 15, 2021, the City and Marina Lessee shall enter into the Marina Lease, the term of which is intended to commence on January 1, 2022.

(ii) If the Marina Lease is successfully challenged in any Marina Lawsuit, Developer, Existing Marina Lessee and/or Marina Lessee has diligently pursued and exhausted all appeals thereof in good faith through the applicable Court of Appeal, and the Marina Lease is terminated, voided or otherwise does not become effective as a result thereof, then this Agreement shall terminate and the parties shall be released from their respective obligations hereunder, and Existing Marina Lessee conclusively shall be deemed to have exercised its option to renew the Existing Marina Lease as of March 31, 2021 and the first renewal term of the Existing Marina Lease conclusively shall be deemed to have commenced as of January 1, 2022. Provided that Developer, Existing Marina Lessee and/or Marina Lessee has diligently pursued and exhausted all appeals of any Marina Lawsuit in accordance herewith prior to such termination, voiding or ineffectiveness of the Marina Lease, and Closing has not occurred, then upon such successful challenge, the Purchase and Sale Agreement shall automatically and conclusively be terminated, the deposits thereunder shall be disbursed to Residential Developer, and the City and the Residential Developer shall be released from their respective obligations thereunder and this Agreement shall be terminated and the Parties shall be released from their respective obligations hereunder. Provided that Developer, Existing Marina Lessee and/or Marina Lessee has diligently pursued and exhausted all appeals of any Marina Lawsuit in accordance herewith prior to such termination, voiding or ineffectiveness of the Marina Lease, and Closing has occurred, then upon such successful challenge, the City shall retain that portion of the Initial Purchase Price paid to the City, the Residential Developer will re-convey the Residential Parcel to the City, and upon such re-conveyance, the City Note and City Mortgage shall automatically terminate, extinguish and be of no further force or effect, and the City shall satisfy the City Mortgage of record at Residential Developer's sole cost and expense, and the City shall provide Existing Marina Lessee with a rent credit under the Existing Marina Lease in an amount equal to that portion of the Initial Purchase Price paid to and retained by the City, which rent credit shall commence immediately but shall be amortized in equal monthly amounts over a period of ten (10) years; provided, however, if the amount to be amortized exceeds $10,000,000, then the annual credit to Existing Marina Lessee shall not exceed $1,000,000 per year until fully credited. The City shall enter into an amendment to the Existing Marina Lease with the Existing Marina Lessee promptly following such termination, voiding or ineffectiveness to memorialize such rent credit. In the event Developer, Existing Marina Lessee and/or Marina Lessee has not diligently pursued and exhausted all appeals in accordance herewith prior to such termination, voiding or ineffectiveness of the Marina Lease, and (x) if Closing has not occurred, the City shall be entitled to receive the First Deposit (as defined in the Purchase Agreement), plus, if applicable, the Additional At Risk Deposit (as defined in the Purchase Agreement) as set forth in Section 9.2 of the

Purchase Agreement and no portion thereof shall be credited to any rent or other obligations of Existing Marina Lessee or Marina Lessee or (b) if Closing has occurred, the City shall be entitled to retain not less than $3,000,000 of the Initial Purchase Price and no portion thereof shall be credited to any rent or other obligations of Existing Marina Lessee or Marina Lessee and the balance of the Initial Purchase Price, if any, above $3,000,000 shall be disbursed to Residential Developer. Any dispute as to whether Developer, Existing Marina Lessee and/or Marina Lessee has diligently pursued and exhausted all appeals of any Marina Lawsuit in good faith through the applicable Court of Appeal shall be determined in accordance with Section 7.11 hereof. This clause (ii) shall survive any termination of this Agreement.

(iii) In the event of any Marina Lawsuit, Developer, Marina Lessee and Existing Marina Lessee shall defend any such Marina Lawsuit at their sole cost and expense using legal counsel reasonably acceptable to the City. Developer, Marina Lessee and Existing Marina Lessee, jointly and severally, shall further indemnify and hold the City and the City Parties harmless from and against all Claims of any and every kind arising out of, relating to or resulting from any Marina Lawsuit. The terms of this paragraph shall be expressly incorporated into the Marina Lease and survive the expiration or any earlier termination of the Existing Marina Lease, the Marina Lease and this Agreement.

(iv) If there is no successful challenge to the Marina Lease and the Closing occurs but Residential Developer does not obtain the Project Approvals in accordance herewith and the Vesting Date does not occur, then this Agreement may be terminated by either party in accordance herewith, in which case, (A) the Marina Lease shall remain in effect, (B) the City shall retain that portion of the Initial Purchase Price paid to the City, and if applicable, will credit a portion thereof to Marina Lessee's obligations under the Marina Lease, as further described therein, (C) the Residential Developer will re-convey the Residential Parcel to the City, (D) the City will cancel the City Note and satisfy the City Mortgage of record at Residential Developer's sole cost and expense, and (F) the City and Marina Lessee will amend the Marina Lease to include all areas of the Residential Parcel up to a height of fifty (50) feet NGVD.

(v) If there is no successful challenge to the Marina Lease and Closing occurs but the Vesting Date has not occurred, and the City terminates this Agreement as a result of a Material Event of Default, then (A) the Marina Lease shall remain in effect, (B) the City shall retain that portion of the Initial Purchase Price paid to the City, and if applicable, will credit a portion thereof to Marina Lessee's obligations under the Marina Lease, as further described therein, (C) the Residential Developer will re-convey the Residential Parcel to the City, (D) the City will cancel the City Note and satisfy the City Mortgage of record at Residential Developer's sole cost and expense, and (F) the City and Marina Lessee will amend the Marina Lease to include the portion of the Residential Parcel up to a height of fifty (50) feet NGVD.

(vi) If there is no successful challenge to the Marina Lease, the Closing occurs and the Vesting Date occurs, but the City terminates this Agreement as a result of a Material Event of Default, (A) the Marina Lease shall remain in effect, (B) the City shall retain the entire Initial Purchase Price and will credit a portion thereof to Marina Lessee's obligations under the Marina Lease, as further described therein and (C) Marina Lessee will construct the "Alternate Replacement Facilities" (as defined in the Marina Lease) in accordance with the Marina Lease and pursuant to the ARF Easements granted by Residential Developer pursuant to the Reciprocal Easement Agreement or the Alternate Easement Agreement, as applicable. Residential Developer acknowledges and agrees that the ARF Easements granted by Residential Developer are broad in scope and materially (if not entirely) restrict and impair Residential Developer's ability to construct a project on the Residential Parcel and Residential Developer hereby releases the City and Marina Lessee from any and all Claims of Residential Developer or any successors and/or assigns of Residential Developer in connection with any of the foregoing. The foregoing

acknowledgement and release shall be expressly incorporated into the Reciprocal Easement Agreement and Alternate Easement Agreement, as applicable.

(vii) Marina Lessee and Existing Marina Lessee each hereby joins in and consents to this Agreement for purposes of acknowledging and confirming its agreement to the terms of this Section 2.10(b) and to evidence its agreement to enter in the amendments to the Existing Marina Lease and the Marina Lease, as applicable, contemplated by this Section 2.10(b). Existing Marina Lessee and Marina Lessee each is a third beneficiary of this Section 2.10(b).

(viii) The provisions of this Section 2.10(b) shall survive the termination of this Agreement.

(c) Vacation. Prior to Commencement of Construction, the City shall adopt a resolution certifying that the conditions of the Vacation Resolution set forth in Resolution No. 2020-[_____] have been satisfied and evidencing the conclusive vacation of the City's easement interest in the City ROW Area. The City and Developer shall execute the Covenant in Lieu of Unity of Title after the Project Approvals are issued, but not later than ten (10) days following the City Commission's adoption of the Resolution formally vacating the City ROW Area to provide for the Land, Residential Parcel and the City ROW Area to be developed as a unified development site, and permit the Developer to utilize the 63,750 square feet of available floor area associated with the City ROW Area for the development of the Project.

Section 2.11 Conditions Precedent to Commencement of Construction. Prior to Commencement of Construction, the following conditions precedent shall have been satisfied (collectively, the "Construction Commencement Conditions"):

(a) Developer shall have delivered to the City, and received the City Manager's confirmation or Approval (as applicable), or deemed confirmation or Approval (as applicable), of the Approved Plans in accordance with Article II.

(b) Developer shall have entered into, and delivered to the City a duly executed copy of, the General Construction Contract (and all then existing change orders thereto) with a General Contractor Approved by the City Manager pursuant to Section 2.9(b) and reflecting a guaranteed maximum price for completion of the Improvements that does not exceed the Budgeted Improvement Costs;

(c) Developer shall have delivered to the City a budget reflecting the Budgeted Improvement Costs;

(d) Developer shall have delivered to City written evidence reasonably satisfactory to the City of the existence and availability of (A) Liquid Assets to fund the Equity Commitment, (B) the Mezzanine Loan Commitment, if any, (C) the Construction Loan Commitment, and (D) Deposits, all of which together demonstrate that the Project is In Balance;

(e) Developer shall have obtained, and shall have delivered to City a copy of, all Governmental Approvals, including the Building Permit and Project Approvals, necessary for the Commencement of Construction and for the demolition of all Existing Improvements;

(f) Developer shall have presented evidence reasonably acceptable to the City that all insurance coverages required under this Agreement are in place;

(g) Developer shall have provided to the City reasonable evidence that the closing of the Construction Loan has occurred;

(h) the representations and warranties made by the Developer in this Agreement pursuant to Sections 4.2(a) and 5.2 remain true and correct in all material respects on and as of the date of Commencement of Construction;

(i) Developer shall have obtained any and all required Governmental Approvals with respect to maintenance of traffic for the staging of the Work during the construction period;

(j) Developer shall have obtained any and all required Governmental Approvals with respect to a parking and transportation plan for the off-site parking and transportation.

(k) Developer shall have delivered to the City reasonably satisfactory evidence of the (a) termination or expiration of all subleases of the Existing Improvements and unconditional releases of the City from any and all Claims of all sublessees arising from or in connection with any such subleases that are terminated prior to their expiration date, or (b) amendment to all unterminated or unexpired subleases evidencing the applicable sublessees' agreement to vacate the Existing Improvements prior to Commencement of Construction through Completion of Construction of the Project; provided, however, in the event any sublease of the Existing Improvements has not expired or been so terminated or amended or unconditional releases are not obtained on or before Commencement of Construction, then Developer may nonetheless Commence Construction in accordance with and subject to the terms of this Agreement provided that, in such event, Developer, and by its joinder hereto, Existing Marina Lessee and Marina Lessee, hereby do and shall indemnify, defend and hold the City and the City Parties harmless from and against any and all Claims arising from or in connection with any such unexpired, unterminated or unamended sublease, and promptly following the early termination of any such sublease, Developer shall deliver to the City reasonably satisfactory evidence of such termination and Developer shall use good faith efforts to obtain an unconditional release of the City from any and all Claims of such sublessee at the time that Developer, Marina Lessee and/or Existing Marina Lessee receives a release of such Person from such Claims (for avoidance of doubt, the failure of Developer to obtain such unconditional release of the City shall not be a default under this Agreement). Marina Lessee and Existing Marina Lessee each hereby joins in and consents to this Agreement for purposes of acknowledging and confirming its agreement to the terms of this Section 2.11(k).

(l) No Lawsuit or Marina Lawsuit shall be pending and the Marina Lease shall not have been terminated, voided or otherwise made ineffective after the effectiveness or commencement thereof.

(m) Commercial Retail Developer shall have delivered to Marina Lessee Commercial Retail Developer's counterpart of the Master Sublease and Commercial Retail Developer and Residential Developer each shall have delivered to Marina Lessee and the City Commercial Retail Developer's and Residential Developer's counterparts of the Alternate Easement Agreement.

(n) Residential Developer and the City shall have closed on the purchase and sale of the Residential Parcel in accordance with the Purchase and Sale Agreement and Residential Developer shall have delivered to the City the unpaid balance of the Purchase Price and the City Note shall have been paid in full in cash. Subject to payment in full in cash of the City Note, the City will deliver a satisfaction of the City Mortgage, which Residential Developer will record in the public records of Miami-Dade County, Florida at its sole cost and expense.

(o) Developer shall have paid the City in full in cash for any and all Building Permit Liquidated Damages due hereunder.

(p) Developer shall have delivered written notice to the City certifying that all Construction Commencement Conditions have been satisfied.

Section 2.12 **Construction Obligations**. Prior to the Completion of Construction, Developer shall, or shall cause its General Contractor to:

(a) Select the means and methods of construction. Only adequate and safe procedures, methods, structures and equipment shall be used;

(b) Furnish, erect, maintain and remove such construction plant and such temporary work as may be required; and be responsible for the safety, efficiency and adequacy of the plant, appliance and methods used and any damage which may result from failure, improper construction, maintenance or operation of such plant, appliances and methods;

(c) Provide all architectural and engineering services, scaffolding, hoists, or any temporary structures, light, heat, power, toilets and temporary connections, as well as all equipment, tools and materials and whatever else may be required for the proper performance of the Work;

(d) Order and have delivered all materials required for the Work and shall be responsible for all materials so delivered to remain in good condition;

(e) Maintain the Development Site in a clean and orderly manner at all times, and remove all paper, cartons and other debris from the Development Site;

(f) Protect all Work prior to its completion and acceptance;

(g) Restore and repair any properties adjacent and leading to the Development Site damaged as a result of construction of the Project, whether such properties are publicly or privately owned;

(h) Implement, and maintain in place at all times, a comprehensive hurricane and flood plan for the Development Site and the Work, and provide a copy of same to the City;

(i) Upon the issuance of a Certificate of Occupancy for the Project, deliver to the City, a copy of such Certificate of Occupancy, provided that if the Developer receives more than one Certificate of Occupancy for the Project and receives a Certificate of Occupancy- Commercial prior to receipt of a Certificate of Occupancy- Park or Certificate of Occupancy-Residential, Developer shall deliver to the City a copy of such Certificate of Occupancy- Commercial promptly after receipt thereof and thereafter, promptly upon the issuance of a Certificate of Occupancy- Park and Certificate of Occupancy – Residential, Developer shall deliver a copy thereof to the City; provided, however, Developer acknowledges and agrees that in no event shall any Certificate of Occupancy be issued for the Project or any portion thereof prior to the payment in full in cash to the City of any and all Building Permit Liquidated Damages;

(j) Promptly after Completion of Construction, deliver to the City as built drawings and plans and specifications of the Commercial Retail Project;

(k) Upon Completion of Construction, deliver to the City a certification of the Architect (certified to the City on the standard AIA certification form), that it has examined the Approved Plans and that, in its professional judgment, after diligent inquiry, Construction of the Project has been substantially completed in accordance with the Approved Plans applicable thereto, and as constructed, the Improvements comply with all applicable Governmental Requirements;

(l) Upon Completion of Construction, ensure that the Commercial Retail Improvements and Park Project are free of all liens and encumbrances for all work performed or materials supplied in connection with construction of the Project (excluding any tenant improvements performed by or on behalf of Marina Lessee);

(m) Upon Completion of Construction, deliver to the City a final accounting of all costs for design, construction, permitting and fees for the Baseline Commercial Building expended by Developer;

(n) Notwithstanding any provision hereof to the contrary (x) at no time during construction of the Project may Developer make any Prohibited Project Changes without the express, prior written Approval of City (which Approval may be granted or withheld by City in City's sole and absolute discretion in accordance with Section 2.2 and Section 2.3) and (y) subject to clause (p) below, Developer shall perform and complete the Work in a manner that does not materially interfere with or affect ingress, egress or access to, or operations of, as applicable, Alton Road, the Miami Beach Marina, the parking garages used by guests of the Miami Beach Marina, the Baywalk or any neighboring properties. Subject to clause (p) below, Developer shall perform and complete the Work in a manner so that it does not cause the Baywalk to close or to be unsafe for use by the public throughout construction of the Project;

(o) Developer shall carry on any construction, maintenance or repair activity with diligence and dispatch and shall use diligent, good-faith efforts to complete the same in accordance with this Agreement. Developer shall not, except if an emergency exists (then only to the extent that the City can grant such an exception), carry on any construction, maintenance or repair activity in any easement area, including the Baywalk easement area, that interferes in any material manner with the safety, use or enjoyment of the property encumbered by such easement, but subject to clause (p) below; and

(p) Notwithstanding the provisions of clauses (n) and (o) above, Developer may (with prior Approval from the City Manager) close access to Alton Road and/or the Baywalk easement area and/or other easement areas for temporary periods as reasonably necessary in connection with construction of the Project, provided that Developer shall minimize the area and duration of such closure and provide temporary re-routing at all times during the period of such closure to the extent required by and in accordance with Governmental Requirements and any conditions of any regulatory agency have jurisdiction. If re-routing is not reasonably feasible within the Development Site, then the City shall make the nearest public right-of-way available for re-routing, and to the extent the re-routed areas do not provide the public a reasonably equivalent enjoyment experience as that of the areas of the Baywalk closed, then the period of closure of such portion shall not exceed ninety (90) days unless an alternate area of re-routing is provided that does provide such reasonably equivalent enjoyment experience.

Section 2.13 Progress of Construction/City's Representative.

(a) Developer shall keep the City apprised of Developer's progress regarding the Work, including Developer's progress towards meeting the Building Permit Issuance Date, the Target Dates, Construction Commencement Date and Construction Completion Date. After Commencement of

Construction, Developer shall keep the City reasonably apprised, not less frequently than monthly, of the progress of construction;

(b) During the performance of the Work, Developer shall provide the City with an annual accounting of the costs for design, construction, permitting and fees for the Baseline Commercial Building expended by Developer in each twelve (12) month period following Commencement of Construction, which accounting shall be delivered to the City within thirty (30) days after the end of each twelve month period and shall be accompanied by proof of payment and other supporting documentation reasonably requested by the City, and a final accounting of the costs for design, construction, permitting and fees for the Baseline Commercial Building expended by Developer shall be delivered to the City promptly but not later than 45 days after Completion of Construction of the Project;

(c) Prior to the Commercial Release Date, the City may, from time-to-time, designate one or more employees or agents to be the City's representative ("City's Representative"), who may, during normal business hours, in a commercially reasonable manner, visit, inspect and monitor the Project, the materials to be used thereon or therein, contracts, records, plans, specifications and shop drawings relating thereto, whether kept at Developer's offices or at the Development Site or elsewhere (which shall be kept at the address specified in Section 11.5) as often as may be reasonably requested. Further, City's Representative shall be advised of, and entitled to attend, meetings among Developer, Developer's representative and the General Contractor or any subset of this group. Developer will cooperate with the City to enable City's Representative to conduct such visits, inspections and appraisals. Developer shall make available to City's Representative for inspection, with commercially reasonable notice, daily log sheets covering the period since the immediately preceding inspection showing the date, weather, subcontractors on the job, number of workers and status of construction. To the fullest extent permitted by law, City shall protect from disclosure any records that are confidential and exempt from disclosure under Florida law, provided, however, that nothing herein shall preclude the City or its employees from complying with the disclosure requirements of the Public Records Act, and any such compliance shall not be deemed an event of default by the City under this Agreement. City shall use its good-faith, diligent efforts to provide timely written notice to Developer of any public records request seeking any records of Developer that may be within the City's custody, possession or control, to permit Developer the opportunity to seek to protect such information from disclosure. Nothing contained herein shall or is deemed to limit the City's inspection rights in its governmental and/or regulatory capacity.

Section 2.14 Intentionally Deleted.

Section 2.15 Connection of Buildings to Utilities.

(a) Developer, at its sole cost and expense for the Development Site and in compliance with all Governmental Approvals and Governmental Requirements, shall install or cause to be installed all necessary connections between the Improvements, and the water, sanitary and storm drain mains and mechanical and electrical conduits whether or not owned by the City.

(b) Developer shall pay for the cost, if any, of locating, grounding and installing within the Development Site, as applicable, new facilities for sewer, water, electrical, and other utilities as needed to service the Project, and, at its sole cost and expense, will install or cause to be installed inside the property line of the Development Site, any and all necessary utility lines, with adequate capacity and the sizing of utility lines for the Project, as contemplated on the Approved Plans.

Section 2.16 **Permits and Approvals.** Developer shall secure and pay for all Governmental Approvals for the Work and shall pay any and all fees and charges due to and collected by the City or any other Governmental Authority connected with issuing such Governmental Approvals, if any.

Section 2.17 **City and Developer to Join in Certain Actions**. After receiving a written request from Developer that is consistent with all Governmental Requirements and in accordance with this Agreement, the City, at Developer's sole cost and expense (including City's reasonable attorneys' fees in reviewing any agreements), shall join Developer when required by law in any and all applications and agreements for Governmental Approvals as may be commercially reasonably necessary for developing and constructing the Project, which applications and agreements are necessary because City is the fee owner of the Land and/or the properties surrounding the Land, and which applications and agreements may include applications for subdivision approval, covenants in lieu of unity of title, easement agreements, and demolition permits and applications for Design Review Board approval for buildings located on the Development Site and all matters set forth in Section 8.4(e), which joinder shall be delivered by the City within fifteen (15) days with respect to all such applications for Governmental Approvals and within five (5) days following the parties' agreement with respect to any covenants, easements or other agreements required in connection with such Governmental Approvals. Developer shall pay all fees and charges for all such applications. Failure of the City to perform as requested within such fifteen (15) or five (5) day period, as applicable, shall be deemed a City Delay for the number of days of delay beyond such fifteen (15) or five (5) day period, as applicable.

Section 2.18 **Compliance with Laws.** Developer will comply with any Governmental Requirements in constructing and operating the Project.

Section 2.19 **Art in Public Places**. Developer shall comply with the City's Art In Public Places (AIPP) program requirements under Section 82-536 through 82-612 of the City Code, as applicable, with respect to the Commercial Retail Project, including the Park Project. The City acknowledges and agrees that AIPP does not apply to the Residential Project. Developer shall contribute to the City's Art in Public Places fund the total of 2% of the "construction cost," as such term is defined in Section 82-537 of the City Code, of the Commercial Retail Project, including the Park Project no later than date of execution of the applicable General Contract by Developer and the applicable General Contractor, as required by the City Code. Subject to approval by the City Commission, in its sole discretion, Developer may request that its AIPP contribution be allocated for an AIPP project or commission to be incorporated within the Park Project or other public areas of the Project, with Developer to be responsible for all amounts in excess of the required AIPP contribution.

Section 2.20 **Adjustment to Legal Descriptions**. Developer and the City acknowledge that the final legal descriptions for the Commercial Retail Premises and Residential Parcel are subject to revision based upon the Project Approvals and upon the final, as-built structures. Developer and the City shall reasonably cooperate with one another from time to time after Closing, upon either party's request and at Developer's expense, to correct the legal descriptions to conform to Project Approvals and to conform to the final, as-built structures. Such cooperation shall include, without limitation, execution and delivery by each party to the other of amendments to this Agreement to accurately reflect the legal descriptions and special warranty deeds as required to correct the legal descriptions to conform to the Project Approvals and to the final, as-built structures.

Section 2.21 **Sales Trailer**. Notwithstanding anything in this Agreement to the contrary, at all times during the Term the Developer shall have the right to permit, develop, construct, install and operate

construction trailers, leasing trailers and sales trailers, and improvements related thereto, on the Development Site. Developer shall indemnify the City and City Parties for any and all Claims arising out of, relating to or resulting from any of the foregoing except to the extent caused by the gross negligence or willful misconduct of the City or the City Parties.

Section 2.22 Public Benefit Improvements.

(a) Developer shall submit plans and specifications for the Public Benefit Improvements to the City Manager for Approval prior to commencement of any performance of the Public Benefit Improvements. All plans and specifications for the Public Benefit Improvements shall be prepared by Developer, at Developer's sole cost and expense, in accordance with all Governmental Requirements. The City Manager shall review and either Approve or reject such plans and specifications within fifteen (15) Business Days after receipt of the same. If the City Manager fails to confirm or reject such plans and specifications within such fifteen (15) Business Day period, then such plans and specifications shall be deemed Approved by the City Manager. However, if the City Manager timely rejects such plans and specifications, it shall give the specific and detailed reasons for such rejection; in which event, the Developer shall, within sixty (60) days after receiving the City Manager's disapproval notice, Developer shall submit revised proposed modifications to the City Manager for its Approval pursuant to the foregoing process until such plans and specifications have been or are deemed to have been Approved by the City Manager. Promptly following City Manager's Approval of plans and specifications for any component of the Public Benefit Improvements, Developer shall submit same to all applicable Governmental Authorities for approval and shall pursue all such approvals with due diligence and in good faith. To the extent Developer reasonably deems it practicable, Developer shall include the plans and specifications for the Public Benefit Improvements within the plans and specifications described in Section 2.2 and Section 2.3 above; provided that the City's Approval rights with respect the plans and specifications for Public Benefit Improvements shall be in accordance with this Section 2.22. Following the issuance of all applicable Governmental Approvals, Developer shall diligently prosecute completion of each component of the Public Benefit Improvements in good faith, in a good and workmanlike manner, and in accordance with the plans and specifications Approved by the City Manager. Any Approval of the plans and specifications for the Public Benefit Improvements or any component thereof by the City shall be for its own benefit in its proprietary capacity as the owner of the Land and shall not be deemed to mean, and the City, in such proprietary capacity, makes no representation, that such plans and specifications comply with all applicable Governmental Approvals and Governmental Requirements.

(b) To the extent Developer reasonably deems it practicable, Developer shall coordinate the completion of the Public Benefit Improvements with the Completion of Construction of the Commercial Retail Project, including the Park Project, and shall use diligent, good faith efforts to complete the Public Benefit Improvements contemporaneously with Completion of Construction and prior to the expiration of the Term; provided that Developer shall complete those portions of the Public Benefit Improvements constituting improvements to the Park Project above the Baseline Park at time of Completion of Construction of the Park Project. During the performance of the Public Benefit Improvements, Developer shall provide the City with an annual accounting of all costs for design, construction, permitting and fees for the Public Benefit Improvements expended by Developer in each twelve (12) month period following commencement of performance of the Public Benefit Improvements. Such accounting shall be delivered to the City within thirty (30) days after the end of each twelve month period and shall be accompanied by proof of payment and other supporting documentation reasonably requested by the City. Developer shall provide the City with a final accounting of all costs for design, construction, permitting and fees expended by Developer for the Public Benefit Improvements for the Park Project not later than 45 days after

completion of the Park Project and shall deliver a final accounting for all such costs expended by Developer for the remaining Public Benefit Improvements within 45 days after completion thereof.

(c) In the event the Public Benefit Improvements are not complete on or prior to the expiration of the Term, then provided that Developer is using diligent, good faith efforts to complete the Public Benefit Improvements in accordance with a schedule of performance submitted to and Approved by the City Manager not later than six months prior to the expiration of the Term, Developer may escrow with the City, as escrow agent, the remaining balance of the Public Benefits Investment to the extent not yet paid, which balance shall be disbursed by the City to Developer towards the costs of completion of the Public Benefit Improvements upon receipt by the City of a disbursement request from Developer setting forth the Public Benefit Improvements to be performed and the costs thereof and such other supporting documentation reasonably requested by the City.

(d) Notwithstanding anything to the contrary contained in this Agreement, in no event shall Developer be obligated to expend more than $5,000,000 in the aggregate in connection with the Public Benefit Improvements, including hard and soft costs in connection with the development, construction and completion thereof.

Section 2.23. **Early Work**. Developer agrees that with respect to any Early Work consisting of site work, utility work, environmental remediation or ancillary demolition, (a) any such work must be consistent with the Project Concept Plan and Mandatory Project Elements and must be performed in accordance with the requirements of the City Code and any other applicable laws, (b) Developer shall have obtained, and shall have delivered to City a copy of, all Governmental Approvals necessary for the commencement and performance of such work, (c) Developer shall have entered into, and delivered to the City a duly executed copy of, the construction contract or construction contracts between Developer and duly licensed general contractor(s) for such work, (d) Developer shall have presented evidence reasonably acceptable to the City that all insurance coverages required under this Agreement are in place and (e) Developer shall have executed a site access agreement with the Marina Lessee and/or Existing Marina Lessee permitting access to the portions of the Development Site leased to the Marina Lessee and/or Existing Marina Lessee as necessary.

ARTICLE III
LAND USES AND DEVELOPMENT OBLIGATIONS

Section 3.1 **Covenant Regarding Land Uses**. Developer agrees and covenants to devote the Project only to the uses specified in this Agreement and to be bound by and comply in all material respects with all of the provisions and conditions of this Agreement. In addition, and except as hereinafter set forth, Developer shall not have the right to seek or obtain different uses or a change in such uses either by requesting a zoning change or by court or administrative action without first obtaining the City's Approval, which Approval may be granted or denied in the City's sole discretion.

Section 3.2 **Applications for Development Approvals and Development Permits**. Developer acknowledges that development of the Project will require design review approval by the City's Design Review Board and conditional use approval by the City's Planning Board (collectively, the "Project Approvals"). Within six (6) months after the Effective Date, Developer, at Developer's sole cost, shall prepare and file with the City complete applications requesting the Project Approvals and pay all applicable application fees and expenses. Developer shall diligently pursue the Project Approvals in good faith. Promptly following Design Review Board Approval of Developer's plans and specifications,

Developer will initiate and diligently pursue in good faith, any other applications for Development Orders and Development Permits that may be required in connection with the Project. Developer shall be solely responsible for obtaining all final, non-appealable Project Approvals, Development Orders and Development Permits for the Project. No extension of any time period herein shall be deemed to be an extension of any time periods contained within the Project Approvals, Development Permits or Development Orders.

Section 3.3 **Concurrency**. Developer shall be solely responsible for obtaining all land use permits, including all permits and approvals required pursuant to Section 163.3180, Florida Statutes, and Chapter 122, City Code, with respect to mobility fees and concurrency requirements for sanitary sewer, solid waste, drainage, potable water, recreation and open space, and public schools (the "Concurrency Requirements"). Prior to applying for the Building Permit for the Project, Developer shall apply for preliminary concurrency determinations for the Project with the applicable review departments, as defined in Section 122-4 of the City Code. Developer shall diligently and in good faith comply with the all of the requirements of Section 122-6 of the City Code to obtain an estimate of concurrency mitigation and mobility fees, and if the applicable review department determines that the required public facilities are or will be available to serve the proposed development, the applicable review department shall issue a concurrency determination impact of no less than 36 months from the date of issuance of the determination, which shall be specified on the face of the concurrency determination. In the event the issuance of a concurrency determination is based on an approved mitigation program, such determination shall be expressly conditioned upon compliance with such program. Provided that (i) a concurrency determination impact certificate is issued, (ii) the Design Review Board approves a Development Order or Development Orders for the Project and such order(s) becomes final (after all appeal periods have expired without an appeal being filed, or if filed, resolved favorably for Developer), and (iii) Developer pays applicable mitigation fees (including impact fees, concurrency fees, and/or mobility fees that may be due) or provides for applicable mitigation prior to Building Permit, then in that event, a final reservation certificate shall be issued and the available capacity for public facilities will be reduced by the projected demand for the Project until the reservation of the capacity expires or becomes permanent. Notwithstanding the foregoing and in accordance with Section 122-3(b) of the City Code, no Development Order shall be issued unless the Developer has proof of payment for all applicable concurrency mitigation and mobility fees, as may be due to all agencies having jurisdiction over the Project.][3]

Section 3.4 **Compliance with Local Regulations Regarding Development Permits**. This Agreement is not and shall not be construed as a Development Permit, approval or authorization to commence any development, fill, or other land modification. Developer and the City agree that the failure of this Agreement to address a particular permit, approval, procedure, condition, fee, term or restriction in effect on the Effective Date shall not relieve Developer of the necessity of complying with the regulation governing said permitting requirements, conditions, fees, terms or restrictions, subject to the terms of this Agreement.

Section 3.5 **Consistency with the City's Comprehensive Plan**. The City has adopted and implemented the Comprehensive Plan. The City hereby finds and declares that the provisions of this Agreement dealing

[3] Planning Department to confirm.

with the Development Site and the Project are consistent with the City's Comprehensive Plan and Land Development Regulations (subject to all applicable requirements, permits and approvals).[4]

Section 3.6 **Presently Permitted Development**. The development that is presently permitted on the Development Site, including population densities, and building intensities and height, which are subject to this Agreement, is more specifically set forth in **Exhibit "M"** hereto.

Section 3.7 **Public Facilities to Serve the Development Site**. A description of the public facilities that will service the Project subject to this Agreement, including who shall provide such facilities; the date any new facilities, if needed, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of the development is included as **Exhibit "O"** hereto.

Section 3.8 **Public Reservations, Dedications**. A description of the reservations and/or dedications of land for public purposes that are proposed under the terms of this Agreement is included as **Exhibit "P"** hereto.

Section 3.9 **Required Development Permits**. Attached and made a part hereof as **Exhibit "N"** is a listing and description of certain local development permits approved or needed to be approved for the development of the Projects, provided that City makes no representation or warranty that the information set forth on **Exhibit "N"** is correct or complete. Developer releases City from any liability with respect to such information and Developer acknowledges and Developer agrees that Developer is solely responsible for confirming the correctness and completeness of such information and obtaining all applicable Governmental Approvals whether or not set forth on **Exhibit "N"**.

Section 3.10 **Laws Governing this Agreement**. For the entire Term of this Agreement, the City hereby agrees that the City's Land Development Regulations and Comprehensive Plan goals, objectives and policies governing the development of the Development Site as they exist as of the Effective Date of this Agreement[5] shall govern the development of the Development Site and the Project. Notwithstanding the foregoing, the City may apply subsequently adopted laws or policies to the Development Site and the Project (particularly as they may relate to quality of life issues such as, but not limited to noise, litter, and hours of operation) as permitted or required by the Act, including, without limitation, Section 163.3233(2), Florida Statutes, as same may be amended from time to time; provided, however, that this provision shall not be deemed to apply to regulations governing height, floor area ratio (FAR), density, parking requirements or permitted uses.

Section 3.11 **Duration of Development Rights**. This Agreement shall run for an initial term of twelve (12) years from the Effective Date, as reasonably extended for (i) City Delays; and/or (ii) Unavoidable Delays, if applicable and each in accordance with this Agreement (the "Term"), and may be extended by mutual consent of the City and Developer subject to a public hearing(s) pursuant to Section 163.3225, Florida Statutes. Consent to any extension of the development rights granted herein is within the sole discretion of each Party. No notice of termination shall be required by either Party upon the expiration of this Agreement, and after the expiration of this Agreement the Parties shall have no further obligations under this Agreement except for those obligations that expressly survive the expiration of this Agreement.

[4] Subject to update if amendments to Comprehensive Plan and LDRs not adopted prior to execution.

[5] Subject to approval of Project Amendments on July 29 prior to execution of this Agreement.

ARTICLE IV
PROJECT IMPROVEMENTS AND USES

Section 4.1 **Project Improvements and Uses**.

(a) Commercial Retail Improvements and Commercial Retail Project.

(i) The Commercial Retail Improvements shall have (y) approximately 45,000 square feet of neighborhood-oriented retail uses, cafes and/or restaurants and office and marina uses and (z) any outdoor seating created in connection with such uses; provided, however, the Commercial Retail Improvements shall not include any free-standing outdoor bars or entertainment (unless otherwise permitted by the City Code) or other uses prohibited by the Marina Lease.

(ii) The Commercial Retail Improvements shall include approximately 100 parking spaces for use by the marina and Commercial Retail Premises [to replace the parking spaces within the Existing Improvements] [OPEN] and drop off area for valet to serve the Commercial Retail Improvements and other [operational amenities of the marina including short term loading/unlading/delivery for marina tenants, office/retail tenants, and an area (with adequate turn ratios) to handle fuel tractor trailer, box trucks and vessel provisioning vehicles located on the north side of the Podium and Tower.] [OPEN]

(iii) The Commercial Retail Improvements shall include a publicly accessible restroom facility, which, at Developer's election, may be located within the Park Project.

(iv) The Commercial Retail Improvements shall include the Green Space and the Park Project; provided however, and notwithstanding anything to the contrary contained in this Agreement, those areas of the Green Space that do not constitute the Park Project are not required to be completed until Completion of Construction of the entire Project. The Certificate of Occupancy – Park shall be issued no later than the Park Project Completion Date.

(v) The ground floor footprint of the Podium shall not exceed 45,000 gross square feet (exterior wall to exterior wall).

(vi) The provisions of this Section 4.1(a) will be expressly incorporated into the Marina Lease.

(b) Residential Improvements and Residential Project.

(i) The Residential Parcel shall include a maximum of 0.3 acres on the surface of the Land to consist of the to-be-designed lobby and ancillary areas of the Residential Improvements, as described on **Exhibit "B-2"**.

(ii) The Residential Improvements shall include up to 60 residential units constructed within approximately 275,000 gross square feet of residential building development and associated infrastructure; provided, however, that the total floor area of the Residential Improvements, the Commercial Retail Improvements and the Park Project shall not exceed 319,802 square feet.

(iii) The Tower shall not exceed 120 feet by 120 feet in width from 66' NGVD and shall not exceed 385 feet in height (as measured from Base Flood Elevation plus maximum Freeboard (BFE + 5 feet), and further, as provided in the City's Land Development Regulations, including Section 142-1161 of

the City Code), and any architectural projections thereof will comply with the terms of this Agreement and other applicable provisions of the City's Land Development Regulations.

(iv) The Podium shall taper [with increasing setbacks from the ground floor until it is less than the width of the Tower] [OPEN].

(v) Developer acknowledges and agrees that, as part of the consideration to the City for the vacation of the City Right-of-Way Area and for entering into this Agreement, any agreements for the rental, lease, sublease, use or occupancy of residential units within the Residential Improvements for periods of less than six (6) months and one (1) day shall be expressly prohibited with respect to ninety percent (90%) of the residential units owned by the Residential Developer or its Affiliates; provided, however, any agreements for the rental, lease, sublease, use or occupancy with respect to the remaining ten percent (10%) of residential units owned by the Residential Developer or its Affiliates for periods of less than thirty (30) days shall be expressly prohibited. If any of the residential units within the Residential Improvements are developed and sold as a condominium, then the Declaration of Condominium to which such residential units are subjected shall include provisions prohibiting any agreements for the rental, lease, sublease, use or occupancy of residential units owned by person or entities other than the Residential Developer or its Affiliates for periods of less than six (6) months and one (1) day. If requested by the City, the Developer shall make available to the City Manager (or the City Manager's designee) for inspection such other documentation reasonably sufficient to permit the City to verify compliance with the rental restrictions set forth in this Section 4.1(b).

(vi) The provisions of this Section 4.1(b) shall be expressly incorporated into the Reciprocal Easement Agreement and Alternate Easement Agreement, as applicable, and the declaration of condominium to which the residential units are subjected, and the provisions of Sections 4.1(a)(v) and 4.1(b) shall be expressly incorporated into deed of conveyance from the City to Residential Developer of the Residential Parcel; provided, however, with respect to the restrictions set forth in such deed, the City (and not any successor owner of the Commercial Retail Premises) shall have the sole right to modify such restrictions, which right may be granted or withheld in the City's sole discretion.

(c) Reciprocal Easement Agreement. Upon Closing, the City, Marina Lessee and Developer shall enter into and record the Reciprocal Easement Agreement, which shall grant reciprocal easements between the Commercial Retail Premises and the Residential Parcel; shall impose rights, obligations and covenants addressing the respective needs of the City, Marina Lessee and the Developer; and, unless an Alternate Easement Agreement is entered into, shall grant the ARF Easements in accordance with Section 4.1(d) below. The Reciprocal Easement Agreement and Alternate Easement Agreement, as applicable, also shall include the restrictions and limitations imposed upon the development of the Residential Parcel pursuant hereto and in the Project Approvals.

(d) Alternate Easement Agreement. The Alternate Easement Agreement (or if none, the Reciprocal Easement Agreement) shall provide, at a minimum, for perpetual easements granted by the Developer to the City and Marina Lessee at no charge to the City or Marina Lessee for the exclusive right to use, access, operate, maintain, demolish, install and construct improvements (including utility or other infrastructure improvements) on, across, in and over the portion of the Residential Parcel up to a height of fifty (50) feet NGVD for the purposes of complying with all of the terms and conditions of the Marina Lease including the Marina Lessee's obligation to construct the Alternate Replacement Facilities in accordance with the Marina Lease (and, with respect to the City, for purposes of developing similar alternate replacement facilities by the City or any future lessee of the Commercial Retail Premises in the

event the Marina Lease is not in effect) (collectively, the "ARF Easements"), provided however that until the City has delivered to Marina Lessee a written notice to proceed with construction of the Alternate Replacement Facilities in accordance with the Marina Lease (or to any future lessee of the Commercial Retail Premises in the event the Marina Lease is not in effect), the ARF Easements set forth in the Reciprocal Easement Agreement and Alternate Easement Agreement, as applicable, shall be non-exclusive in favor of the Marina Lessee and the City and only permit the right to use, access, operate, sublease, manage and maintain the portion of the Residential Parcel up to a height of fifty (50) feet NGVD. For avoidance of doubt, the ARF Easements shall not be effective during the period of time commencing on the Commencement of Construction and ending the earliest of (i) the date on which the City has delivered to Marina Lessee a written notice to proceed with construction of the Alternate Replacement Facilities in accordance with the Marina Lease, (ii) Completion of Construction (in which event the REA shall provide all required easement rights) or (iii) termination of this Agreement (other in connection with a termination in connection with Completion of Construction).

(e) Park Project. Upon Completion of Construction of the Project in accordance with the Approved Plans therefor, together with the Park Project, the City and Marina Lessee shall enter into an amendment to the Marina Lease to remove the land comprising the Park Project from the premises leased pursuant to the Marina Lease. Notwithstanding anything to the contrary contained in this Agreement, the Park shall not be open to the public until Completion of Construction of the Project and amendment to the Marina Lease to remove the land comprising the Park Project from the premises leased pursuant to the Marina Lease, and thereupon the City shall be solely responsible for Park operations, maintenance, repair, reconstruction and security. The terms of this Section 4.1(e) shall be expressly incorporated into the Marina Lease.

(f) Stormwater Management. The City shall be solely responsible for the operation, maintenance, repair and reconstruction of those elements of the Public Benefit Improvements that constitute stormwater management facilities for water quality upon Developer's completion of such Public Benefit Improvements.

(g) Joinder and Consent. Existing Marina Lessee and Marina Lessee each hereby joins in and consents to this Agreement for purposes of acknowledging and confirming its agreement to the terms of this Section 4.1.

Section 4.2 Representations.

(a) **Developer's Representation**. Developer represents to the City that its principals and Affiliates are experienced in the development, construction, leasing, sales and operation of properties similar to the Project generally, and that Developer has independently determined the merits and risks of electing to proceed with the development of the Project, and that Developer is not and, will not be relying upon any information that may have been or hereafter be provided to Developer with respect to or relating to the financial results derived from, financial merits of investing in, or other economic or other benefits that may be realized from the development, construction, leasing, sales and operation, as applicable, of the Project or sale or transfer of Developer's interests in this Agreement.

(b) **No Representation or Warranties By City**. Developer acknowledges and agrees that it has been given the opportunity to perform all inspections and investigations concerning the Development Site, and (i) except as specifically provided in this Agreement, the City is not making and has not made any representations or warranties, express or implied, of any kind whatsoever with respect to the

Development Site, including any representation or warranty of any kind with respect to title, survey, physical condition, suitability or fitness for any particular purpose, the financial performance or financial prospects of the Project, its value, or any other economic benefit that can be realized or expected therefrom, the presence or absence of Hazardous Substances, the tenants and occupants thereof, the zoning or other Governmental Requirements applicable thereto, taxes, the use that may be made of the Development Site, or any other matters with respect to this transaction or Agreement); (ii) Developer has relied on no such representations, statements or warranties, and (iii) City will in no event whatsoever be liable for any latent or patent defects in the Development Site (including any subsurface conditions).

(c) **"AS IS" Condition of Development Site**. Developer acknowledges it has relied solely on Developer's own inspections, tests, evaluations and investigations of and related to this Agreement and the Development Site in its determination of whether to proceed with this Agreement and the Project. As a material part of the consideration of this Agreement, Developer agrees to accept the Development Site in its "AS IS" and "WHERE IS" condition "WITH ALL FAULTS" and latent or patent defects, and without representations and warranties of any kind, express or implied, or arising by operation of law.

(d) **Survival**. The provisions of this Section 4.2 shall survive the termination of this Agreement.

ARTICLE V
ASSIGNMENT

Section 5.1 Purpose of Restrictions on Transfer. This Agreement is granted to Developer solely to develop the Project and its subsequent use according to the terms hereof, and not for speculation in landholding. Developer recognizes that, in view of the importance of developing the Project to the general welfare of the City and the general community, the Developer's qualifications and identity are of particular concern to the community and the City. Accordingly, Developer acknowledges that it is because of such qualifications and identity that the City is entering into this Agreement with Developer, and, in so doing, the City is further willing to accept and rely on the Developer's obligations for faithfully performing all its undertakings and covenants.

Section 5.2 Transfers. Developer represents and warrants that Developer has not made, created or suffered any Transfers as of the date of this Agreement and that the Persons that have an ownership interest in Developer on the date of this Agreement are listed, together with their percentage and character of ownership, on **Exhibit "R"**. Except for Permitted Transfers, no Transfer may or shall be made, suffered or created by Developer, its successors, assigns or transferees without complying with the terms of this Article V. Any Transfer that violates this Agreement shall be null and void and of no force and effect.

Section 5.3 Permitted Transfers.

(a) Other than Permitted Transfers, no Transfer will be permitted prior to Completion of Construction of the Project without the written Approval of the City Manager.

(b) Each of the following Transfers shall be permitted hereunder without the City's Approval ("Permitted Transfers"):

(i) a Transfer prior to the Completion of Construction of a direct or indirect interest in Developer, provided that (i) there is no change of Control of the Developer as it exists on the Effective

Date as a result of such Transfer, (ii) David P. Martin (a) holds, directly or indirectly, not less than ten percent (10%) of the ownership interests of Developer, (b) serves, directly or indirectly, as a manager of the Developer, and (c) exercises, directly or indirectly, day-to-day operational control over the Developer (clause (ii)(a), (ii)(b) and (ii)(c), collectively, the "Ownership and Control Requirement") (iii) such transferee satisfies the "Acceptable Owner Criteria" set forth on **Exhibit "A"** attached hereto, if such transferee is a Proposed Major Transferee (iv) the City is given written notice thereof together with true and correct copies of the applicable information required under **Exhibit "A"** attached hereto and in accordance with the time frames set forth on **Exhibit "A"** attached hereto in order for City Manager to confirm that the transferee is an Acceptable Owner, if such transferee is a Proposed Major Transferee; (v) no Event of Default has occurred and is continuing and (vi) all of the conditions precedent to the effectiveness of such Transfer as set forth in Section 5.5 hereof are satisfied;

(ii) a one-time Transfer constituting an assignment by Residential Developer of its interest in this Agreement and/or by Commercial Developer of its interests in this Agreement, each to a new special purpose entity having the same legal and beneficial ownership as Residential Developer or Commercial Developer, as applicable, immediately prior to such Transfer (subject only to Permitted Transfers in accordance with clause (i) above and at all times subject to the Ownership and Control Requirement), to the extent required by a Construction Lender or Mezzanine Lender as a condition to such financing and provided that such Transfer shall occur only once during the Term by each of Residential Developer and Commercial Developer;

(iii) Any Transfer, if in accordance with the terms and conditions of Article VI, by the First Mortgagee, to an agent, designee or nominee of the First Mortgagee that is wholly owned or Controlled by such First Mortgagee, and any Transfer, if in accordance with the terms and conditions of Article VI, by the Mezzanine Lender, to an agent, designee or nominee of the Mezzanine Lender that is wholly owned or Controlled by such Mezzanine Lender;

(iv) Any Transfer directly resulting from the foreclosure of a First Mortgage or the granting of a deed in lieu of foreclosure of a First Mortgage or any Transfer made to the purchaser at foreclosure of a First Mortgage or to the grantee of a deed in lieu of foreclosure of a First Mortgage (if such purchaser or grantee is a nominee in interest of the First Mortgagee), and provided further that such Transfer, purchase or grant is in accordance with the terms and conditions of Article VI;

(v) Any Transfer directly resulting from a conveyance to a First Mortgagee of Developer's interest provided it is in accordance with the terms and conditions of Article VI and any Transfer directly resulting from a conveyance to a Mezzanine Lender of direct and/or indirect interests in Developer provided it is in accordance with the terms and conditions of Article VI;

(vi) Any Transfer directly resulting from the foreclosure by the Mezzanine Lender of a pledge of direct and/or indirect ownership interests of Developer or any Transfer made to the purchaser at a foreclosure of such pledge of direct and/or indirect ownership interests of Developer (if such purchaser is a nominee in interest of the Mezzanine Lender), or any assignment in lieu of such foreclosure, provided that such Transfer is in accordance with the terms and conditions of Article VI;

(vii) Any Transfer that occurs by inheritance, devise, bequest or by operation of law upon the death of a natural person who is the owner of a direct or indirect ownership interest in Developer, provided that, in each case, at all times after such Transfer, the transferor, or in the case of death, the Person who inherits transferor's interest, retains Control of the transferred interest;

(viii) Any Transfer to a trust, partnership or other entity for family estate planning purposes, provided that, in each case, at all times after such Transfer, the transferor retains Control of the transferred interest; or

(ix) After any Transfer to a First Mortgagee or Mezzanine Lender or agent, designee or nominee thereof (but not after a Transfer to any other Person pursuant to a foreclosure of a First Mortgage or Mezzanine Loan) under Sections 5.3(b)(iii) – (vi), a Transfer by such First Mortgagee, Mezzanine Lender or agent, designee or nominee thereof (A) to an Affiliate of the transferor or (B) among direct or indirect owners of such transferor, provided that, in each case, there is no change in Control of the Developer as a result of such Transfer and at all times after such Transfer, such transferee is an Acceptable Owner; or

(x) After an initial Transfer to any entity that is listed on any national securities exchange (which shall be limited to the Permitted Transfers or other Approval provisions herein, as applicable), any Transfer of direct or indirect interests in Developer through an entity that is listed on any national securities exchange.

Notwithstanding anything in this Article V or in this Agreement to the contrary: (y) the restrictions, limitations and prohibitions contained in this Article V shall automatically terminate, extinguish and be of no further force or effect with respect to the Commercial Retail Project, the Park Project and the direct and indirect interests in Commercial Retail Developer upon the triggering of the Commercial Release Date and following the Commercial Release Date, Transfers of the Commercial Retail Project shall be governed by the terms and conditions of the Master Sublease (provided that such terms and conditions conform in all material respects to this Article V and/or corresponding provisions of the Marina Lease), until the Master Sublease terminates or expires, and thereafter, the Marina Lease; and (z) the restrictions, limitations and prohibitions contained in this Article V shall automatically fully terminate, extinguish and be of no further force or effect immediately upon Completion of Construction of the Project.

Section 5.4 Transfer Requiring City's Approval. Regarding any Permitted Transfer pursuant to Section 5.3(b)(i) – (ix) or any other Transfer that is not a Permitted Transfer, Developer shall give or cause to be given to the City written notice of a Transfer (in the case of a Permitted Transfer), or written notice requesting Approval of any other Transfer that is not a Permitted Transfer, and submitting all information reasonably necessary for the City Manager (or the City Commission, with respect to Transfers to certain Foreign Instrumentalities as specified herein) to evaluate the proposed transferees and the Transfer and to obtain the City's Approval of same, when such Approval is required under the terms of this Agreement. If a Permitted Transfer under Sections 5.3(b)(i) or (ii), said information shall demonstrate that there is no change of Control of Developer as a result of such Transfer, the transferee is an Acceptable Owner as set forth on **Exhibit "A"** attached hereto, if applicable, and the Ownership and Control Requirement is satisfied; if a Permitted Transfer under Sections 5.3(b)(vii) or (viii) said information shall demonstrate that the transferor, or in the case of death, the Person who inherits transferor's interest, retains Control of the transferred interest; if a Permitted Transfer under Section 5.3(b)(ix), said information shall demonstrate that there is no change in Control and that the transferee is an Acceptable Owner as set forth on **Exhibit "A"** attached hereto. If not a Permitted Transfer, Developer shall provide to the City the information described in Paragraph C of **Exhibit "A"** and the provisions described in Paragraph D of **Exhibit "A"** shall apply. The City's confirmation or Approval process shall proceed as set forth on **Exhibit "A"** attached hereto. Any Approval of a Transfer to a Foreign Instrumentality (other than to any of the member countries of the European Union, each as existing as of the Effective Date, United Kingdom, Norway, Canada and Mexico, or Persons Controlled by any of the foregoing countries) shall be subject to the prior

written approval of the City Commission, which approval may be granted, conditioned or withheld by the City Commission in its sole discretion. Any Approval of a Transfer shall not waive any of the City's rights to Approve or disapprove of any subsequent Transfer. Developer shall from time to time throughout the Term, as the City shall reasonably request, furnish the City with a complete statement, subscribed and sworn to by a Responsible Officer of Developer, setting forth the full names and address of holders of the ownership interests in Developer who hold, directly or indirectly, at least a ten percent (10%) interest in Developer as well as to confirm the percentage ownership interest, if any, of such Responsible Officer.

Section 5.5 **Effectiveness of Transfers.** No Transfer, except for Transfers under Sections 5.3(b)(iii) through (vii) and 5.3(b)(x), shall be effective unless and until executed copies of the documents that convey title to the transferred interest are delivered to the City within thirty (30) days after the occurrence of such Transfer.

Section 5.6 **Reservation of Rights**. Nothing in this Article V is deemed to modify or amend the restrictions on transfers expressly set forth in the Marina Lease and/or Master Sublease.

ARTICLE VI
CONSTRUCTION FINANCING; RIGHTS OF MORTGAGEE, MEZZANINE LENDER AND DEVELOPER

Section 6.1 **Conditions of Construction Financing, First Mortgage and Mezzanine Loan**.

(a) (x) Developer shall have the right to secure a Mezzanine Loan to finance the Project and, in conjunction with and to secure that financing, may enter into a pledge of all or any portion of its direct and/or indirect ownership interests in favor of a Mezzanine Lender, and (y) not earlier than satisfaction of the Construction Commencement Conditions, Developer shall have the right to secure a Construction Loan to finance the Project and, in conjunction with and to secure that financing, may enter into a First Mortgage in favor of a First Mortgagee, in each case, provided that:

(i) any such secured financing of the Project exclusively secures debt of the Developer or the Mezzanine Borrower directly related to the Project;

(ii) no First Mortgage or other encumbrance executed by the Developer in connection with such First Mortgage or Mezzanine Loan or otherwise will extend to or be a lien or encumbrance upon City's interest in any part of the Land or in any right appurtenant to that interest;

(iii) the First Mortgage and any other encumbrance executed by the Developer in connection with such First Mortgage or otherwise shall at all times, without the necessity for the execution of any further documents, be subject and subordinate to any interest of the City in the Land subject to this Article VI; provided that (A) the First Mortgagee agrees from time to time upon request and without charge to execute, acknowledge and deliver any instruments reasonably requested by the City under this Agreement to evidence the foregoing subordination and (B) the City agrees from time to time upon reasonable request and without charge to execute, acknowledge and deliver any instruments reasonably requested by such First Mortgagee or Mezzanine Lender to evidence the City's non-disturbance and recognition of the rights granted to such First Mortgagee or Mezzanine Lender pursuant to this Section 6.1;

(iv) the rights of the City, the Marina Lessee or Existing Marina Lessee in the Land and arising out of the Existing Marina Lease, the Marina Lease and this Agreement shall not be affected by the First Mortgage, First Mortgagee, Mezzanine Loan or Mezzanine Lender, nor shall the City, Marina Lessee

or Existing Marina Lessee be deprived in any other way of its rights in the Land or under the Existing Marina Lease, the Marina Lease and this Agreement, except to the extent provided in this Article VI or in any subordination, non-disturbance and recognition agreement between the City (and Marina Lessee and/or Existing Marina Lessee if applicable) and such First Mortgagee or Mezzanine Lender that is consistent with the terms of this Agreement;

(v) Developer shall at all times remain liable hereunder for the performance of all covenants and conditions as provided in this Agreement;

(vi) Following a foreclosure sale, any purchaser at such foreclosure sale acquiring any right, title or interest in or to this Agreement, shall enter into in a written instrument reasonably satisfactory to the City, to assume and agree to perform all of the terms, covenants and conditions of Developer hereunder arising after the date of such Transfer but, with respect to a First Mortgagee (or its designee or nominee taking title), only during its period ownership of the Project, (provided that City does not waive or relinquish its right, and shall have the right, to enforce its remedies with respect to any Event of Default existing as of the date of such Transfer), that no additional mortgage or assignment of this Agreement or pledge of ownership interests of Developer will be made except in accordance with the provisions contained in this Article VI, and that a duplicate original of such written instrument, duly executed and acknowledged by such purchaser and in recordable form, is delivered to the City immediately after the consummation of such sale, or, in any event, prior to taking possession of the Development Site.

(b) At the request of the First Mortgagee or the Mezzanine Lender, if any, the First Mortgagee or Mezzanine Lender, as applicable, Developer and the City (by and through the City Manager) shall enter into a non-disturbance, recognition and attornment agreement containing the provisions set forth in Section 6.1(d) below and such other terms and conditions as are reasonably acceptable to the First Mortgagee or Mezzanine Lender, as applicable, and the City Manager, after consultation with the City's Chief Financial Officer and City Attorney.

(c) Developer shall deliver to the City, promptly after execution by Developer or Mezzanine Borrower, (i) with respect to First Mortgagees, a true and verified recorded copy of the First Mortgage and any amendment, modification or extension thereof, together with the name and address of the First Mortgagee and (ii) with respect to any Mezzanine Lenders, a true and correct copy of any Mezzanine Loan agreement and any amendment, modification or extension thereof, together with the name and address of the Mezzanine Lender.

(d) For so long as any First Mortgage encumbers the Development Site, or, as applicable, a Mezzanine Lender holds a pledge of Developer's direct and/or indirect ownership interest, and provided the conditions of Section 6.1(a) through (c) above have been satisfied:

(i) in any event where the City gives Developer notice of an Event of Default, the City shall deliver a copy of such notice to the First Mortgagee and Mezzanine Lender, at the name and address designated in writing by the First Mortgagee and Mezzanine Lender to the City from time to time (the City shall be deemed to have fulfilled its notice obligation by providing the required notice to the address delivered to the City in accordance with Section 6.1(c) or such other address so designated by the First Mortgagee or Mezzanine Lender to the City in writing and shall not be responsible for any liability in the event such address is not current);

(ii) notwithstanding the time allowed for Developer to cure an Event of Default, the First Mortgagee and the Mezzanine Lender shall have the right, but not the obligation, up to fifteen (15) days following the City's notice thereof to cure a monetary default, and up to thirty (30) days following the City's notice thereof to cure a non-monetary Event of Default (except an Event of Default under Section 7.1(d) hereof, for which the First Mortgagee and Mezzanine Lender will not be given any additional time to remedy), but if such non-monetary Event of Default cannot be cured within such thirty (30) day period, then the First Mortgagee and Mezzanine Lender shall (except as provided in clauses (iii) and (iv) below) have up to ninety (90) days to cure, provided that it has started to do so within the initial thirty (30) day period and thereafter continues to diligently pursue the cure. The City will accept performance by the First Mortgagee and Mezzanine Lender of any covenant, condition or agreement on Developer's part to be performed hereunder with the same force and effect as though performed by Developer; and

(iii) notwithstanding the provisions of this Agreement to the contrary, including Article VII hereof, no Event of Default by Developer will be deemed to exist as to the First Mortgagee, and the City shall not be permitted to exercise any right to terminate this Agreement due to an Event of Default of Developer, as long as the First Mortgagee, in good faith, either (A) commences to cure such Event of Default and prosecute the same to completion in accordance with clause (ii) above, or (B) if the nature of any non-monetary Event of Default (except an Event of Default under Section 7.1(d) hereof, for which the First Mortgagee will not be given any additional time to remedy) is such that possession of or title to the Project is reasonably necessary to cure the Event of Default or if the Event of Default is of the type that cannot commercially reasonably be cured by the First Mortgagee (e.g., Developer bankruptcy) (and which will be waived as to the First Mortgagee if the First Mortgagee commences to cure all other Events of Default and prosecutes same to completion in accordance with this clause (iii) or clause (ii) above), files a complaint for foreclosure and thereafter prosecutes the foreclosure action in good faith and with due diligence and continuity (subject to any stays, moratoria or injunctions applicable thereto) and obtains possession or title, to the extent a cure cannot be effected without possession or title, directly or through a receiver, and as promptly as practicable after obtaining such possession or title, to the extent a cure cannot be effected without possession or title, commences promptly to cure such Event of Default and to prosecute the same to completion in good faith and with due diligence and continuity; provided, however, that the First Mortgagee has delivered to the City, in writing within twenty (20) days following receipt of City's notice of default, its agreement to take the action described in clause (A) or (B) of this clause (iii), and that during the period in which such action is being taken (and any foreclosure proceedings are pending), all of the other obligations of Developer under this Agreement, to the extent they are susceptible of being performed by the First Mortgagee (e.g., the payment of any amounts due to the City hereunder, including liquidated damages), are being duly performed. However, at any time after the delivery of the aforementioned agreement, the First Mortgagee may notify the City, in writing, that it has relinquished possession of the Development Site, or that it will not institute foreclosure proceedings or, if such proceedings have been commenced, that it has discontinued them, and in such event, the First Mortgagee will have no further liability under such agreement from and after the date which is 30 days after it delivers such notice to the City (except for any obligations accruing prior to 30 days after the date it delivers such notice), and, thereupon, subject to the rights of the Mezzanine Lender set forth in clause (iv) below, the City will have the unrestricted right to terminate this Agreement if the Event of Default is a Material Event of Default, and to take any other action it deems appropriate by reason of any Event of Default, and upon any such termination, the provisions of Section 6.1(h) hereof will apply;

(iv) notwithstanding the provisions of this Agreement to the contrary, including Article VII hereof, no Event of Default by Developer will be deemed to exist as to the Mezzanine Lender, and the City shall not be permitted to exercise any right to terminate this Agreement due to an Event of

Default of Developer, as long as the Mezzanine Lender and/or First Mortgagee, in good faith, either (A) commences to cure such Event of Default and prosecute the same to completion in accordance with clause (ii) or (iii) above, or (B) if the nature of any non-monetary Event of Default (except an Event of Default under Section 7.1(d) hereof, for which the Mezzanine Lender will not be given any additional time to remedy) is such that title to the direct and/or indirect ownership interests of Developer is reasonably necessary to cure the Event of Default or if the Event of Default is of the type that cannot commercially reasonably be cured by the Mezzanine Lender (e.g., Developer bankruptcy) (and which will be waived as to the Mezzanine Lender if the Mezzanine Lender and/or First Mortgagee commences to cure all other Events of Default and prosecutes same to completion in accordance with clause (ii) or (iii) above), has taken all commercially reasonable steps necessary to foreclose the pledge of the Developer's direct and/or indirect ownership interests, and prosecutes such action in good faith and with due diligence and continuity (subject to any customary and reasonable restrictions imposed under any intercreditor agreement or similar agreement between any First Mortgagee and Mezzanine Lender and/or any stays, moratoria or injunctions applicable thereto) and obtains title to the direct and/or indirect ownership interests of the Developer, and as promptly as practicable after obtaining such title, commences promptly to cure such Event of Default and to prosecute the same to completion in good faith and with due diligence and continuity; provided, however, that the Mezzanine Lender has delivered to the City, in writing within twenty (20) days following receipt of City's notice of default, its agreement to take the action described in clause (A) or (B) of this clause (iv), and that during the period in which such action is being taken, all of the other obligations of Developer under this Agreement, to the extent they are susceptible of being performed by the Mezzanine Lender (e.g., the payment of any amounts due to the City hereunder, including the balance of the Purchase Price or liquidated damages), are being duly performed. However, at any time after the delivery of the aforementioned agreement, the Mezzanine Lender may notify the City, in writing, that it has relinquished title to the direct and/or indirect ownership interests of the Developer or that it will not seek to foreclose the pledge of Developer's direct and/or indirect ownership interests or, if such foreclosure has commenced, that it has been discontinued, and in such event, the Mezzanine Lender will have no further liability under such agreement from and after the date which is 30 days after it delivers such notice to the City (except for any obligations accruing prior to 30 days after the date it delivers such notice), and, thereupon, subject to the rights of the First Mortgagee set forth in clause (iii) above, the City will have the unrestricted right to terminate this Agreement if the Event of Default is a Material Event of Default, and to take any other action it deems appropriate by reason of any Event of Default, and upon any such termination, the provisions of Section 6.1(h) hereof will apply.

(e) From and after the date upon which the City receives the notice described in Section 6.1(c) hereof, the City will not (i) consent to a cancellation or surrender of this Agreement (except upon the expiration of the Term), or any amendment or modification hereof or (ii) terminate this Agreement other than as provided in this Article VI (except upon the expiration of the Term) without the prior written consent of the First Mortgagee and Mezzanine Lender, which consent shall not be unreasonably delayed, conditioned or withheld. For avoidance of doubt, the City shall not have the right to terminate this Agreement due to an Event of Default unless such Event of Default is a Material Event of Default.

(f) Notwithstanding anything in this Agreement to the contrary, foreclosure of a First Mortgage or any sale thereunder, whether by judicial proceedings or by any power of sale contained in the First Mortgage or applicable law, or any conveyance of the Project from Developer to the First Mortgagee or its designee or nominee in lieu of the foreclosure or other appropriate proceedings in the nature thereof, or any foreclosure of a Mezzanine Loan, or conveyance of the Developer's direct and/or indirect ownership interest in lieu thereof, shall not:

(i) require the City's consent; or

(ii) provided the First Mortgagee or the Mezzanine Lender has complied with the provisions of this Article VI, constitute a breach of any provision of or a default under this Agreement.

(g) If the First Mortgagee or any other foreclosure sale purchaser subsequently assigns or transfers its interest under this Agreement after acquiring the same by foreclosure or by an acceptance of a deed in lieu of foreclosure or subsequently assigns or transfers its interest under any new agreement entered into pursuant to Section 6.1(h) below, and in connection with any such assignment or transfer, the First Mortgagee or any other foreclosure sale purchaser takes back a First Mortgage to secure a portion of the purchase price, the holder of such First Mortgage shall be a First Mortgagee entitled to receive the benefit of this Article VI and all other provisions of this Agreement intended for the benefit of a First Mortgagee. Similarly, if a Mezzanine Lender or a purchaser under a UCC sale obtains title to the direct and/or indirect ownership interests in Developer and subsequently assigns or transfers its interests in such ownership interests, or subsequently assigns or transfers its interest under any new agreement entered into pursuant to Section 6.1(h) below, and in connection with any such assignment or transfer, the Mezzanine Lender or any other UCC sale purchaser takes back a pledge of the direct and/or indirect ownership interests of the Developer to secure a portion of the purchase price, the holder of such pledge shall be a Mezzanine Lender entitled to receive the benefit of this Article VI and all other provisions of this Agreement intended for the benefit of a Mezzanine Lender.

(h) Should the Developer or any First Mortgagee or Mezzanine Lender not cure the alleged Event of Default as provided in this Section 6.1, the City has the right to terminate this Agreement by reason of any uncured Event of Default if such Event of Default is a Material Event of Default as provided in this Agreement. If this Agreement is terminated by the City in accordance with the foregoing or is terminated as a result of the bankruptcy of the Developer, the City shall give written notification of such termination to the First Mortgagee and Mezzanine Lender, and the City shall, upon written request of the First Mortgagee to the City received within thirty (30) days after such notice of termination, enter into a new development agreement for the Development Site with such First Mortgagee or Developer (as owned by Mezzanine Lender), as developer, for the remainder of the Term with the same covenants, conditions and agreements (except for any requirements which have been fully satisfied by Developer or City prior to termination or which pertain to the direct and/or indirect ownership of Developer) as are contained herein.

(i) The City's delivery of the Development Site to the First Mortgagee or Developer (as owned by Mezzanine Lender), as applicable, as developer, pursuant to a new development agreement shall be:

(i) made without representation or warranty of any kind or nature whatsoever either express or implied;

(ii) First Mortgagee or Developer (as owned by Mezzanine Lender), as developer, shall take such Development Site "as-is" in its then current condition; and

(iii) upon execution and delivery of such new development agreement, First Mortgagee or Developer (as owned by Mezzanine Lender), as developer, at its sole cost and expense shall be responsible for taking such action as shall be necessary to cancel and discharge this Agreement and to remove Developer named herein and any other occupant (other than as allowed by the First Mortgagee or Developer (as owned by Mezzanine Lender), as applicable, as developer, or the City) from the Project.

(j) The City's obligation to enter into such new development agreement for the Development Site with the First Mortgagee or Developer (as owned by the Mezzanine Lender) shall be conditioned upon, on the date the new development agreement is executed:

(i) the City receiving payment of the Initial Purchase Price and the First Mortgagee's or Developer's (as owned by the Mezzanine Lender), as applicable, assumption of the City Note and the City Mortgage;

(ii) all monetary defaults hereunder having been cured;

(iii) all non-monetary defaults susceptible to cure having been remedied and cured (or First Mortgagee or Developer (as owned by Mezzanine Lender), as applicable, as developer, having commenced such cure and continuing to diligently complete the cure in accordance with clauses (iii) or (iv) of paragraph (d) above, as applicable); and

(iv) the City receiving payment of all expenses, including reasonable attorneys' fees and disbursements and court costs, incurred by the City in connection with such Event of Default, the termination of this Agreement and the preparation of the new development agreement, together with interest thereon at the lesser of the Default Rate or the highest rate permitted by law, from the due date or the date expended by the City, as the case may be, to the date of actual payment from First Mortgagee or Mezzanine Lender, as applicable.

Section 6.2 **No Waiver of Developer's Obligations or City's Rights.** Nothing contained herein or in any Mortgage shall be deemed or construed to relieve Developer from the full and faithful observance and performance of its covenants, conditions and agreements contained herein, or from any liability for the non-observance or non-performance thereof, or to require, allow or provide for the subordination to the lien of such Mortgage or to any Mortgagee of any estate, right, title or interest of the City, Marina Lessee or Existing Marina Lessee in or to the Land, buildings and structures on the Commercial Retail Premises, or the Existing Marina Lease, the Marina Lease and this Agreement, nor shall the City, Marina Lessee or Existing Marina Lessee be required to join in such mortgage financing or be liable for same in any way. City's, Marina Lessee's or Existing Marina Lessee's interest in the Land, the Existing Marina Lease, the Marina Lease and this Agreement, as the same may be modified, amended or renewed, will not at any time be subject or subordinate to (a) any Mortgage now or hereafter placed upon Developer's interest in the Development Site, or (b) any other liens or encumbrances hereafter affecting Developer's interest in the Development Site or this Agreement. City represents and warrants to Developer that no mortgages currently exist against its fee interest in the Land, and acknowledges that this Agreement shall not be subordinate to any future mortgage against the fee interest in the Land. Notwithstanding anything to the contrary contained in this Agreement, if all or any portion of the interest of City in the Land or this Agreement shall be acquired by reason of foreclosure of any mortgage, security agreement, lien or other encumbrance or other proceedings brought to enforce the rights of the holder(s) thereof, by deed in lieu of foreclosure or by any other method, and as a result any Person succeeds to such interests of City, this Agreement and the rights of Developer hereunder shall continue in full force and effect and shall not be terminated or disturbed except as otherwise expressly permitted by the terms of this Agreement.

Section 6.3 **Insurance Proceeds.** For avoidance of doubt, the First Mortgagee shall have a first-priority right and option to retain, apply and disburse the proceeds of any insurance in accordance with the requirements of its First Mortgage. Developer shall use diligent, good faith efforts to satisfy all conditions of the First Mortgagee to permit release and disbursement of such proceeds towards the costs of

restoration of the Project. Notwithstanding anything to the contrary set forth in this Agreement, Developer shall have the absolute obligation to timely commence and complete restoration of any damaged or destroyed Improvements without regard to the availability of insurance proceeds or the sufficiency thereof.

Section 6.4 Third Party Beneficiary. The provisions of this Article VI shall survive any termination of this Agreement. The First Mortgagee and Mezzanine Lender shall be deemed to be third party beneficiaries of this Article VI.

Section 6.5 Completion of Construction of the Commercial Retail Project and Park Project. Notwithstanding anything to the contrary contained in this Agreement, from and after the Commercial Release Date and satisfaction of any conditions thereto expressly set forth in this Agreement: (a) the terms, conditions, restrictions, limitations and prohibitions contained in this Article VI shall automatically terminate, extinguish and be of no further force or effect with respect to the Commercial Retail Developer, the Commercial Retail Project and the Park Project, and the terms, conditions, restrictions, limitations and prohibitions set forth in the Master Sublease (provided that such terms and conditions conform in all material respects to this Article VI and/or corresponding provisions of the Marina Lease) shall govern until the Master Sublease terminates or expires, and thereafter the Marina Lease shall govern; (b) the references to "Developer" in this Article VI shall be deemed to refer solely to the Residential Developer with respect to all financings under which neither the Commercial Retail Developer nor its direct or indirect owners is a borrower (or the Commercial Retail Developer and its direct and indirect owners, as applicable, have been released); and (c) the references to the "Project" and to the "Development Site" in this Article VI shall be deemed to refer solely to the Residential Project and the Residential Parcel provided that such financings are not secured by Mortgages on the Commercial Retail Project or the Park Project (or the Commercial Retail Project and Park Project have been partially released from such Mortgages).

ARTICLE VII
REMEDIES; EVENTS OF DEFAULT

Section 7.1 Default by Developer. Each of the following occurrences shall constitute an "Event of Default" of Developer that shall entitle City to exercise its remedies as set forth in Section 7.2:

(a) if Residential Developer defaults under the Purchase and Sale Agreement prior to Closing, and as a result thereof, the City terminates the Purchase and Sale Agreement;

(b) if Residential Developer defaults under the City Note and City Mortgage, and as a result thereof, the City accelerates the payment of the City Note;

(c) if, at any time prior to the Commercial Release Date, Commercial Retail Developer defaults under the Master Sublease and, as a result thereof, the City terminates the Master Sublease and the Recognition Agreement, as expressly permitted under the terms of the Recognition Agreement;

(d) if Developer fails to satisfy all of the Construction Commencement Conditions prior to Commencement of Construction and such failure continues for a period of thirty (30) days after written notice thereof by the City to Developer, following which the City has the right to institute a "stop work" order for all construction on the Development Site until such time as all Construction Commencement Conditions are satisfied;

(e) If Developer fails to obtain the Building Permit on or before the Building Permit Outside Date;

(f) if Developer fails to Commence Construction on or before the Construction Commencement Date;

(g) if Developer fails, after Commencement of Construction, to cause the Completion of Construction to occur by the Construction Completion Date, provided that no Event of Default will be deemed to exist as long as (i) Developer has Completed Construction of the Commercial Retail Project (excluding the Park Project) in accordance herewith by the Construction Completion Date, (ii) Developer has Completed Construction of the Park Project in accordance herewith by the Park Project Completion Date, (iii) Developer is diligently prosecuting the completion of the Work for the Residential Project in good faith and (iv) Completion of Construction occurs not later than eight (8) years after satisfaction of the Construction Commencement Conditions; provided further, for the avoidance of doubt, in no event shall Developer Complete Construction of the Residential Project prior to Completion of Construction of the Commercial Retail Project, including the Park Project;

(h) if Developer or any Person with a Controlling ownership interest in Developer violates the Acceptable Owner Criteria specified in subparagraph A.3 of **Exhibit "A"** of this Agreement (other than any such violation by any Persons that have ownership interests in Agreement through any entity that is listed on any national securities exchange), or is a Prohibited Person (other than Persons that have ownership interests in Developer through any entity that is listed on any national securities exchange); provided, however, in the case of any such violation by any Person with an ownership interest in Developer, Developer shall have six (6) months to cure such violation after Developer first becomes aware of such violation;

(i) if Developer fails to maintain or provide evidence of all insurance in compliance in all material respects with Article IX hereof (any lapse in required coverage shall be deemed a failure to comply with Article IX hereof) and such failure continues for a period of ten (10) Business Days from the date of written notice thereof from City;

(j) if Developer fails to observe or perform one or more of the other terms, conditions, covenants or agreements of this Agreement not otherwise addressed in this Section 7.1 and such failure continues for a period of 45 days after written notice thereof by City to Developer specifying such failure, unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature reasonably be performed, done or removed, as the case may be, within such 45 day period, in which case no Default will be deemed to exist as long as Developer (i) commences curing the same within such 45 day period, (ii) advises the City of the steps being taken by Developer to remedy such failure (which steps shall be reasonably designed to effectuate the cure of such failure in a professional manner) and thereafter, from time to time, upon the City's request, updates the City as to the status of such cure, and (iii) diligently prosecutes such cure to completion;

(k) if Developer admits, in writing, that it is generally unable to pay its debts as such debts become due;

(l) if Developer makes an assignment for the benefit of creditors;

(m) if Developer files a voluntary petition under the Bankruptcy Code or if such petition is filed against Developer and an order for relief is entered, or if Developer files any petition or answer seeking,

consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code or any other present or future applicable federal, state or other statute or law, or seeks or consent to or acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Developer, or of all or any substantial part of its properties or of the Development Site or any interest of Developer therein;

(n) if within 90 days after the commencement of any proceeding against Developer seeking to have an order for relief entered against it as debtor or to adjudicate it a bankrupt or insolvent, or seeking any reorganization, arrangement, composition, readjustment or adjustment, winding-up, liquidation, dissolution or similar relief under the Bankruptcy Code or any other present or future applicable federal, state or other statute or law of any jurisdiction, domestic or foreign, such proceeding has not been dismissed, or if, within 90 days after the appointment, without the consent or acquiescence of Developer, of any trustee, receiver, custodian, assignee, sequestrator or liquidator of Developer, or of all or any substantial part of its properties or of the Development Site or any interest of Developer therein, such appointment has not been vacated or stayed on appeal or otherwise, or if, within 30 days after the expiration of any such stay, such appointment has not been vacated;

(o) if any case, proceeding or other action is commenced or instituted against Developer seeking the issuance of a warrant of attachment, execution or similar process against all or any substantial part of its property, which case, proceeding or other action results in the entry of an order for any such relief which has not been vacated, discharged, stayed or bonded pending Developer's appeal therefrom within 30 days from the entry thereof;

(p) if Developer fails to diligently prosecute completion of the Work in good faith, subject to City Delays and Unavoidable Delays, if applicable, and each in accordance herewith, and such failure continues for a period of thirty (30) days after written notice thereof by the City to Developer specifying such failure;

(q) if this Agreement or Developer's interest herein is assigned, transferred, mortgaged, pledged or encumbered in any manner without compliance with the provisions of this Agreement, or if Developer attempts to consummate any Transfer (by entering into an agreement to sell or assign its interest in this Agreement, Developer or the Project which is not conditioned on satisfying the Transfer provisions of this Agreement, or by agreeing to a Transfer without complying with the provisions governing same in this Agreement), except as expressly permitted herein, and fails to correct such Transfer or such other default under this clause (q) within thirty (30) days after receiving notice from City;

(r) if a levy under execution or attachment is made against Developer or its property and such execution or attachment has not been vacated or removed by court order, bonding or otherwise within a period of 30 days after such execution of attachment;

(s) failure to comply with any of Developer's indemnification obligations under this Agreement and such failure is not cured within 30 days after written notice thereof by the City to Developer specifying such failure, unless such failure cannot be cured by the payment of money and requires additional action to be performed by Developer which cannot by its nature reasonably be performed within such initial 30 day period, in which case no Event of Default will be deemed to exist as long as Developer (i) commences curing the same within the initial 30 day period, (ii) advises the City of the steps being taken by Developer to remedy such failure (which steps shall be reasonably designed to effectuate the cure of such failure in a professional manner) and thereafter, upon the City's request,

updates the City as to the status of such cure, and (iii) diligently and continuously prosecutes such cure to completion in good faith within a reasonable period and, with respect to Developer's indemnification obligations for any Lawsuit or Marina Lawsuit, such reasonable period shall not exceed an additional 90 days, provided that, if Developer fails to remedy such failure with respect to any Lawsuit or Marina Lawsuit within the initial 30 day cure period set forth above, the City, may at its option and discretion, and at Developer's cost and expense, intervene in such Lawsuit or Marina Lawsuit and take such action as reasonably deemed necessary by the City to avoid or mitigate any adverse action or ruling, including a default judgment in the Lawsuit or Marina Lawsuit, as applicable and the City shall have no liability to Developer, Existing Marina Lessee or Marina Lessee in connection therewith. The terms of this provision shall be incorporated into the Marina Lease and, as applicable, the Existing Marina Lease. Any action taken by this City pursuant to this Section 7.1(s) shall not be deemed to modify any obligations of Developer, Marina Lessee or Existing Marina Lessee or be deemed to cure any default by any such Person under this Agreement or, as applicable, the Marina Lease or Existing Marina Lease. Marina Lessee and Existing Marina Lessee each hereby joins in and consents to this Agreement for purposes of acknowledging and confirming its agreement to the terms of this Section 7.1(s) and to evidence its agreement to enter into the amendments to the Marina Lease and Existing Marina Lease, as applicable, contemplated by this Section 7.1(s).

In no event shall the time period for curing an Event of Default constitute an extension of the Construction Completion Date or a waiver of any of the City's rights or remedies hereunder for an Event of Default which is not cured as aforesaid.

Section 7.2 Remedies for Developer's Default.

(a) If an Event of Default occurs hereunder, the City may elect any one or more of the following remedies, without limitation:

(i) if the Event of Default is a Material Event of Default, terminate this Agreement;

(ii) an action for specific performance and injunctive relief to enforce the terms, covenants, conditions and other provisions of this Agreement against Developer as a result of or arising out of such Event of Default; or

(iii) recover damages for Developer's breach of this Agreement; or

(iv) in the case of an Event of Default under Section 7.1(e), Developer shall pay liquidated damages of $1,000 per calendar day from the Building Permit Outside Date through the actual date on which Developer obtains the Building Permit, as compensation to the City for failure to obtain the Building Permit by the Building Permit Outside Date and not as a penalty (the "Building Permit Liquidated Damages"), which shall be paid on or before the Construction Commencement Date and as a condition to the issuance of the Building Permit and Commencement of Construction; or

(v) in the case of an Event of Default under Section 7.1(g) for failure to Complete Construction of (x) the Commercial Retail Project, excluding the Park Project, prior to the Construction Completion Date, Developer shall pay liquidated damages of $1,000 per calendar day from the Construction Completion Date through the actual date on which Developer Completes Construction of the Commercial Retail Project, excluding the Park Project, (y) the Park Project prior to the Park Project Completion Date, Developer shall pay liquidated damages of $1,000 per calendar day from the Park Project Completion Date through the actual date on which Developer Completes Construction of the Park

Project and (z) the Residential Project by that date that is twelve (12) months after the Construction Completion Date, Developer shall pay liquidated damages of $1,000 per calendar day from the date that is twelve (12) months after the Construction Completion Date through the actual date on which Developer Completes Construction of the Residential Project, with the foregoing as compensation to the City for delayed Completion of Construction and not as a penalty (the foregoing, collectively, the "Completion Liquidated Damages") which shall be paid on or before, and as a condition to, the issuance of any Certificate of Occupancy for the Project or any portion thereof.

(b) The parties hereby agree and acknowledge that the liquidated damages described in Sections 7.2(a)(iv) and 7.2(a)(v) above are not a penalty and are reasonable in the light of the anticipated or actual losses to be incurred by the City due to Developer's failure to meet the milestones provided herein. In the event a court of competent jurisdiction determines that any liquidated damages herein are unenforceable, notwithstanding Developer's agreement herein that such amounts are fair and reasonable, Developer shall not be relieved of its obligations to the City for the actual damages resulting from Developer's failure to meet the milestones provided herein. The City's election of a right or remedy hereunder with respect to any one or more Events of Default shall not limit or otherwise affect the City's right to elect any of the remedies available to it hereunder or as provided by law and/or in equity with respect to that or any other Event of Default. Notwithstanding anything to the contrary contained in this Agreement, any Event of Default hereunder shall not constitute a default or event of default under the Master Sublease or the Recognition Agreement except with respect to a Material Event of Default that occurs prior to the Commercial Release Date.

(c) If this Agreement is terminated prior to Closing as provided in Section 7.2(a)(i) hereof, the Purchase and Sale Agreement conclusively and automatically shall be deemed terminated and the City will have the right to exercise all of its rights and remedies thereunder, including to receive or retain all or a portion of the Initial Purchase Price as set forth in the Purchase and Sale Agreement.

(d) Upon any termination of this Agreement as a result of a Material Event of Default prior to the Vesting Date, the City shall have all rights and remedies under, and the parties shall proceed in accordance with, Section 2.10(b)(v) hereof, and Developer shall quit and peaceably surrender the Development Site (which includes all improvements thereon, subject to Developer's demolition obligations hereunder), and all property related thereto in its possession to the City, and all rights and interest of Developer created under this Agreement in and to the Development Site and the Project (in each case, which includes all improvements thereon, subject to Developer's demolition obligations hereunder) and every part thereof shall cease and terminate and the Developer shall re-convey the Residential Parcel to the City.

(e) Upon any termination of this Agreement after the Vesting Date (whether pursuant to this Section 7.2 or otherwise), and the City shall have all rights and remedies under, and parties shall proceed in accordance with, Section 2.10(b)(vi) hereof and Developer shall quit and peaceably surrender the Commercial Retail Premises (which includes all improvements thereon, subject to Developer's demolition obligations hereunder) and all property related thereto in its possession to the City, and all rights and interest of Developer created under this Agreement in and to the Commercial Retail Premises and the Commercial Retail Project (in each case, which includes all improvements thereon, subject to Developer's demolition obligations hereunder) and every part thereof shall cease and terminate. Nothing contained in this Section 7.2(e) is intended to modify or amend Developer's rights and interest under the Master Sublease to the extent the Master Sublease is in effect but the Developer's rights and interests under the Master Sublease shall be subordinate to the ARF Easements granted in the Alternate Easement

Agreement. For the avoidance of doubt, upon the occurrence of the Vesting Date, Developer shall have no obligation to reconvey the Residential Parcel to the City.

(f) If Developer fails to so surrender the Development Site or Commercial Retail Premises, as applicable, in accordance with Sections 7.2(d) or (e) above, the City, without notice, subject to the rights of Marina Lessee and the Commercial Retail Developer (as sublessee thereunder), may re-enter and repossess Developer's interest in the Development Site or Commercial Retail Premises (including any Existing Improvements, Commercial Retail Improvements or Improvements), as applicable, without process of law, subject to applicable Governmental Requirements.

(g) In the event the City elects to terminate this Agreement after a Material Event of Default and such termination is stayed by order of any court having jurisdiction of any matter relating to this Agreement, or by any federal or state statute, then following the expiration of any such stay, the City shall have the right, at its election, to terminate this Agreement with five (5) days' written notice to Developer, Developer as debtor in possession or if a trustee has been appointed, to such trustee.

(h) As an additional inducement to and material consideration for City agreeing to this Agreement, Developer agrees that in the event a Bankruptcy or Judicial Action (as defined herein) is commenced which subjects the City to any stay in the exercise of the City's rights and remedies under this Agreement, including the automatic stay imposed by section 362 of the United States Bankruptcy Code (individually and collectively, "Stay"), then, provided the Stay is lifted and released as to all Mortgagees and Mezzanine Lenders (to the extent the Mortgage loan documents and Mezzanine Loan documents, as applicable, include Stay relief provisions), Developer irrevocably consents and agrees to the Stay being lifted and released against City, and City shall thereafter be entitled to exercise all of its rights and remedies against Developer under this Agreement. Developer acknowledges that it is knowingly, voluntarily, and intentionally waiving its rights to any Stay and agrees that the benefits provided to Developer under the terms of this Agreement are valuable consideration for such waiver. As used in this Section, the term "Bankruptcy or Judicial Action" shall mean any voluntary or involuntary case filed by or against Developer under the Bankruptcy Code, or any voluntary or involuntary petition in composition, readjustment, liquidation, or dissolution, or any state and federal bankruptcy law action filed by or against Developer, any action where Developer is adjudicated as bankrupt or insolvent, any action for dissolution of Developer or any action in furtherance of any of the foregoing, or any other action, case, or proceeding that has the effect of staying (or in which a Stay is being obtained against) the enforcement by the City of its rights and remedies under this Agreement.

(i) Notwithstanding the foregoing, in the event that Developer seeks to assume and assign this Agreement pursuant to section 365 of the Bankruptcy Code it will be required to provide to the City adequate assurance of future performance which shall consist of evidence that such assignee satisfies the "Acceptable Owner Criteria" set forth in **Exhibit "A"**.

(j) Notwithstanding anything to the contrary contained in this Agreement, in no event shall the City have the right to terminate this Agreement unless the Event of Default is a Material Event of Default. The term "Material Event of Default" means:

(i) if Residential Developer defaults under the Purchase and Sale Agreement by failing to pay any portion of the deposits and/or the Purchase Price as and when due thereunder and such failure continues beyond any applicable notice and cure period set forth in the Purchase and Sale Agreement;

(ii) if Residential Developer defaults in the payment of any principal or interest as and when due under the City Note and such failure continues beyond any applicable notice and cure period set forth in the City Note;

(iii) an Event of Default under Section 7.1(f);

(iv) if Developer fails, after Commencement of Construction, to cause the Completion of Construction to occur by that date that is eight (8) years after satisfaction of the Construction Commencement Conditions;

(v) an Event of Default under Section 7.1(h);

(vi) an Event of Default under Section 7.1(q); and

(vii) an Event of Default under Section 7.1(s).

(k) The City hereby acknowledges and agrees that its sole and exclusive remedy for any Event of Default by the Developer under this Agreement that is not a Material Event of Default shall be limited to liquidated damages as set forth herein, an action for damages and/or an action for specific performance.

(l) Notwithstanding anything to the contrary contained in this Agreement, in no event whatsoever shall the Developer be liable to the City for any indirect, special, incidental, consequential, punitive, economic damages (including, without limitation, diminution of property value) lost profits or similar damages, whether or not foreseeable or advised of the possibility of the same, in connection with, arising from or as a result of any Event of Default by the Developer under this Agreement; provided that the foregoing does not and is not intended to modify or amend the Developer's obligation to pay any liquidated damages as set forth herein.

(m) Notwithstanding anything to the contrary contained in this Agreement, including references to the joint and several nature of the liability of Residential Developer and Commercial Retail Developer, in no event shall the Commercial Retail Developer be liable to the City with respect to defaults, Events of Default or Material Events of Default first arising from and after the Commercial Release Date and the satisfaction of any conditions thereto expressly set forth in this Agreement.

Section 7.3 **Default by the City.** An event of default by the City shall be deemed to have occurred under this Agreement if the City fails to perform any obligation or fulfill any covenant or agreement of the City set forth in this Agreement and such failure shall continue for thirty (30) days following the City's receipt of written notice of the non-performance; provided, however, the City shall not be in default of this Agreement:

(a) if the City provides Developer with a written response within said thirty (30) day period indicating the status of the City's resolution of the breach and providing for a mutually agreeable schedule to correct same; or

(b) with respect to any breach that is capable of being cured but that cannot reasonably be cured within said thirty (30) day period, if the City commences to cure such breach within such thirty (30) day period (or as soon thereafter as is reasonably possible) and diligently continues to cure the breach until completion, but no longer than a total of one hundred twenty (120) days.

If such an event of default by the City occurs hereunder, the Developer shall have all rights and remedies available to it under this Agreement, at law and/or equity, including an action for specific performance and injunctive relief to enforce the terms, covenants, conditions and other provisions of this Agreement against the City as a result of or arising out of such event of default. The Developer's election of a right or remedy under this Agreement, at law and/or in equity, with respect to any event of default by the City shall not limit or otherwise affect the Developer's right to elect any other right or remedy available to it under this Agreement, at law and/or in equity with respect to the same or any other event of default by the City.

Notwithstanding anything to the contrary contained in this Agreement, in no event whatsoever shall the City be liable to Developer for any indirect, special, incidental, consequential, punitive, economic damages (including, without limitation, diminution of property value) lost profits or similar damages, whether or not foreseeable or advised of the possibility of the same, in connection with, arising from or as a result of any event of default by the City under this Agreement.

Section 7.4 Unavoidable Delay; Third Party Challenges; Termination Rights.

(a) Neither the City nor Developer, as the case may be, shall be considered in breach of or in default of any of its non-monetary obligations, including suspension of construction activities, hereunder by reason of Unavoidable Delay; provided that the Party claiming such Unavoidable Delay delivers written notice to the other Party of such Unavoidable Delay within thirty (30) days after first becoming aware of the commencement of such Unavoidable Delay, which notice shall describe in reasonable detail the events giving rise to the Unavoidable Delay; and such Party shall diligently attempt to remove, resolve or otherwise seek to mitigate such delay and keep the other Party advised with respect thereto. Time is of the essence with respect to this provision, and any failure by a Party to timely deliver such notice of an Unavoidable Delay shall be deemed a waiver of such Party's right to delay performance as a result of such Unavoidable Delay. With respect to any Unavoidable Delay that is an "Act of God" (e.g., a hurricane) that is of such an extent that reasonable methods of communication or access are not available, then notwithstanding Section 11.5 of this Agreement to the contrary, notice by Developer shall be deemed sufficiently given to City if transmitted via electronic transmission to the City Manager and City Attorney; provided that as soon as reasonably practicable following the occurrence of such "Act of God" a copy of such notice is delivered pursuant to the terms of Section 11.5 hereof.

(b) Subject to the notice requirements of Section 7.4(a) above, all time periods set forth in this Agreement shall be tolled due to Unavoidable Delay, during the pendency of any Lawsuit and during the pendency of any Marina Lawsuit, provided that tolling with respect to Lawsuits and Marina Lawsuits shall not exceed a period of forty-two (42) months in the aggregate; provided, however, that the Construction Completion Date shall not be tolled for any Lawsuit or any Marina Lawsuit. In the event of any Lawsuit instituted by any Person that is not a City Party, Developer shall defend any such Lawsuit at its sole cost and expense using legal counsel reasonably acceptable to the City. Developer shall further indemnify and hold the City and the City Parties harmless from and against all Claims of any and every kind arising out of, relating to or resulting from any such Lawsuit instituted by any Person that is not a City Party. This paragraph shall survive the expiration or any earlier termination of this Agreement.

(c) If a Lawsuit or Marina Lawsuit instituted by any Person that is not a City Party is still pending more than forty-two (42) months after it has been commenced, then Developer, at its option, may from and after the expiration of such forty-two (42) month period and while the Lawsuit or Marina Lawsuit remains unresolved, elect to terminate this Agreement by delivering a written notice of

termination to the City, whereupon this Agreement shall be terminated, and the City and the Developer shall have no further obligation and/or liability to each other hereunder, except as otherwise expressly provided herein. If Developer, after using diligent good faith efforts, has been unable to obtain the Project Approvals within fifty-four (54) months after the Effective Date (as such period may be tolled in accordance with this Section 7.4(c)), then either Party shall have the right to terminate this Agreement. If either Party terminates this Agreement in accordance with this Section 7.4(c) prior to the Closing, the Purchase and Sale Agreement shall automatically and conclusively be terminated, the deposits thereunder shall be returned to the Residential Developer and the City and the Residential Developer shall be released from their respective obligations thereunder. If either Party terminates this Agreement in accordance with this Section 7.4(c) after Closing but prior to the Vesting Date, the City shall receive and/or retain that portion of the Initial Purchase Price paid to the City, the Residential Developer will re-convey the Residential Parcel to the City, and upon such re-conveyance, the City Note and City Mortgage shall automatically terminate, extinguish and be of no further force or effect, the City shall satisfy the City Mortgage of record at Residential Developer's sole cost and expense, and if there has been no successful challenge to the Marina Lease and the Marina Lease is then in effect, the City shall enter into an amendment of the Marina Lease with the Marina Lessee to include the portion of the Residential Parcel up to a height of fifty (50) feet NGVD within the premises demised under the Marina Lease and the City may credit a portion of such retained Initial Purchase Price against the obligations of the Marina Lessee as set forth in the Marina Lease, or if there has been a successful challenge to the Marina Lease and the Marina Lease is not then in effect, then the Existing Marina Lessee shall receive a rent credit as further described in Section 2.10(b)(ii) above.

(d) Developer shall have the right to terminate this Agreement prior to the Commencement of Construction due to: (i) changes to the Project Concept Plan or Approved Plans required by the City's Design Review Board, Planning Board or any other Governmental Authority (including the City) that render the Project economically unfeasible in the reasonable business judgment of Developer; or (ii) the Project cannot meet the Concurrency Requirements, or the costs of concurrency mitigation are, in the reasonable business judgment of Developer, economically unfeasible. Following a termination of this Agreement by Developer in accordance with this Section 7.4(d) prior to Closing, the Purchase and Sale Agreement shall automatically and conclusively be terminated, the deposits thereunder shall be returned to the Residential Developer and the City and the Residential Developer shall be released from their respective obligations thereunder. Following a termination of this Agreement by Developer in accordance with this Section 7.4(d) after Closing but prior to the Vesting Date, the City shall receive and/or retain that portion of the Initial Purchase Price paid to the City, the Residential Developer will re-convey the Residential Parcel to the City, and upon such re-conveyance, the City Note and City Mortgage shall automatically terminate, extinguish and be of no further force or effect, the City shall satisfy the City Mortgage of record at Residential Developer's sole cost and expense, and if there has been no successful challenge to the Marina Lease and the Marina Lease is then in effect, the City shall enter into an amendment to the Marina Lease with the Marina Lessee to include the portion of the Residential Parcel up to a height of fifty (50) feet NGVD within the premises demised under the Marina Lease and the City may credit a portion of such retained Initial Purchase Price against the obligations of the Marina Lessee as set forth in the Marina Lease, or if there has been a successful challenge to the Marina Lease and the Marina Lease is not then in effect, then the Existing Marina Lessee shall receive a rent credit as further described in Section 2.1(b)(ii) above.

(e) Notwithstanding anything to the contrary contained in this Agreement, following the occurrence of the Vesting Date, Developer shall have no obligation to re-convey the Residential Parcel to the City. As described in Section 2.10(b) above, Residential Developer acknowledges and agrees that if

the City terminates this Agreement as a result of a Material Event of Default after the occurrence of the Vesting Date, the Marina Lessee will construct the Alternate Replacement Facilities in accordance with the Marina Lease and pursuant to the easements and rights granted by Residential Developer to Marina Lessee over and upon the Residential Parcel to construct the Alternate Replacement Facilities pursuant to the Reciprocal Easement Agreement or the Alternate Easement Agreement, as applicable. Residential Developer acknowledges and agrees that such easements and rights granted by Residential Developer to the Marina Lessee over and upon the Residential Parcel are broad in scope and materially (if not entirely) restrict and impair Residential Developer's ability to construct a project on the Residential Parcel and Residential Developer hereby releases the City and Marina Lessee from any and all Claims of Residential Developer or any successors and/or assigns of Residential Developer in connection with any of the foregoing.

(f) If the Marina Lease is not signed by Marina Lessee and effective on or before March 15, 2021 or the term thereof does not commence as of January 1, 2022, then either Party shall have the right to terminate this Agreement. If either Party terminates this Agreement in accordance with this Section 7.4(f) prior to the Closing, the Purchase and Sale Agreement shall be terminated, and the City shall retain the First Deposit and, to the extent paid, the Additional At Risk Deposit (each, as defined in the Purchase Agreement), as agreed and liquidated damages.

(g) Marina Lessee and Existing Marina Lessee each hereby joins in and consents to this Agreement for purposes of acknowledging and confirming its agreement to the terms of this Section 7.4 and to evidence its agreement to enter into the amendments to the Marina Lease and Existing Marina Lease, as applicable, contemplated by this Section 7.4.

Section 7.5 Remedies Cumulative; Waiver. The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative and concurrent, and the exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach, or of any of its remedies for any other default or breach by the other Party. No waiver of any default or Event of Default hereunder shall extend to or affect any subsequent or other default or Event of Default then existing, or impair any rights, powers or remedies consequent thereon, and no delay or omission of any Party to exercise any right, power or remedy shall be construed to waive any such default or Event of Default or to constitute acquiescence thereof.

Section 7.6 Intentionally Deleted.

Section 7.7 Survival of Reciprocal Easement Agreement. No termination or expiration of this Agreement after the Closing shall affect or impair the Reciprocal Easement Agreement, which shall continue to encumber the Development Site with respect to any of the City's and Developer's successors in accordance with the terms of the Reciprocal Easement Agreement.

Section 7.8 Dispute Resolution.

(a) City and Developer agree that any dispute, claim or controversy between them relating to or arising under this Agreement ("Dispute") will first be submitted, by written notice, to a designated representative of each of the City and Developer who will meet at City's place of business or other mutually agreeable location, or by teleconference, and confer in an effort to resolve such dispute. Any decision of the representatives will be final and binding on the Parties. In the event the representatives are unable to resolve any dispute within ten (10) days after submission to them, either Party may refer

the dispute to mediation. The exclusive venue for any Dispute not resolved by mediation shall be any state or federal court of competent jurisdiction sitting in or for Miami-Dade County, Florida, except for Development Disputes, which shall be resolved in accordance with Section 7.9 and disputes related to City's disapproval of a Proposed Major Transferee as an Acceptable Owner or whether Developer, Existing Marina Lessee and/or Marina Lessee has diligently pursued and exhausted all appeals in any Marina Lawsuit in good faith through the applicable Court of Appeal, which will be resolved in accordance with Section 7.10.

(b) TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE CITY AND DEVELOPER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER OF THEM OR THEIR HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS OR ASSIGNS MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE PARTIES ENTERING INTO THIS AGREEMENT.

Section 7.9 Expedited Arbitration of Development Disputes.

(a) If Developer or City asserts that a Development Dispute has arisen, such asserting Party shall give prompt written notice thereof to the other Party, and such Development Dispute shall be submitted to binding arbitration by the Development Arbitrator in accordance with this Section 7.9.

(b) The Parties shall cooperate to select an independent, neutral, professional arbitrator experienced in the resolution of construction claims and associated subject matter having at least ten (10) years of residential and retail mixed use development or construction experience in the Miami-Dade County area to serve as the arbitrator (the "Development Arbitrator"). If the Parties cannot agree on a single Development Arbitrator, then each Party shall select an arbitrator with such development or construction experience, who shall jointly select a third arbitrator with such development or construction experience and the three arbitrators shall collectively constitute the Development Arbitrator.

(c) The Development Arbitrator shall, no later than five (5) Business Days after being selected, hold a preliminary, informal meeting with City and Developer in an attempt to mediate such Development Dispute. If such Development Dispute is not resolved at such meeting, the Development Arbitrator shall at such meeting establish a date (the "Hearing Date"), not earlier than five (5) Business Days after such meeting nor later than twenty (20) days after such meeting for a hearing (a "Hearing") to be held in accordance with this Agreement to resolve such Development Dispute.

(d) Developer and City each shall have the right to make one (1) written submission to the Development Arbitrator prior to the Hearing. Such submission shall be received by the Development Arbitrator and the other Party not later than two (2) Business Days prior to the Hearing Date. The Parties agree that no discovery (as the term is commonly construed in litigation proceedings) will be permitted and agree that neither Party nor the Development Arbitrator shall have discovery rights in connection with a Development Dispute.

(e) The Hearing shall be conducted by the Development Arbitrator. It is the intention of the Parties that the Hearing on a Development Dispute shall be conducted in an informal and expeditious manner. No transcript or recording shall be made. Each Party shall have the opportunity to make a brief statement and to present documentary and other support for its position, which may include the testimony of not more than four (4) individuals, two (2) of whom may be outside experts. There shall be

no presumption in favor of either Party's position. Any procedural matter not covered herein shall be governed by procedures mutually agreed upon by the Parties, or if they are unable to agree, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (as amended hereby).

(f) The Hearing shall be held in a location selected by the Development Arbitrator in Miami-Dade County, Florida. Provided that the Development Arbitrator is accompanied by representatives of both Developer and City, the Development Arbitrator may, at its option, visit the Development Site to make an independent review in connection with any Development Dispute.

(g) The Development Arbitrator, in rendering its decision with regard to any Development Dispute, shall take into account and at a minimum consider the following factors, which shall be used to guide its decision:

(i) City does not have any Approval rights with respect to the matter of interior design and decor of the Project except to the extent the same is reflected in the Approved Plans or Mandatory Project Elements;

(ii) the mutual goal of Developer and City is that costs in excess of the Budgeted Improvement Costs should be avoided or minimized unless proposed by Developer and for which Developer has agreed to provide adequate funds;

(iii) the mutual goal of Developer and City is that the construction of the Project be completed and the Completion of Construction occur by the Construction Completion Date;

(iv) the Project must comply with all Governmental Requirements; and

(v) the magnitude of the modification to the Approved Plans.

(h) Pending resolution of the Development Dispute, Developer may not implement the matter which is the subject of such Development Dispute.

(i) The Development Arbitrator shall render a decision, in writing, as to any Development Dispute not later than two (2) Business Days following the conclusion of the Hearing regarding such Development Dispute and shall provide a brief written basis for its decision not later than five (5) Business Days thereafter. Such decision of the Development Arbitrator shall be rendered by (a) the decision of the single Development Arbitrator, (b) the decision of two of the arbitrators comprising the Development Arbitrator, if two are able to agree, (c) the decision of the third arbitrator appointed by each of the Parties' arbitrators, if no two of the three arbitrators are able to agree within such period, or (d) agreement between the Parties prior to and independently of the decision of the Development Arbitrator. As to each Development Dispute, the Development Arbitrator's decision shall be limited to resolution of the Development Dispute in question, and the Development Arbitrator shall have no right whatsoever to impose or grant to either Party any remedy other than a decision as to: (i) whether the plans and specifications to be submitted to the Design Review Board conform in all material respects to the Project Concept Plan and include the Mandatory Project Elements (in each case, except to the extent the City Commission otherwise approves); (ii) whether the Plans and Specifications are consistent with the Approved DRB Plans; (iii) whether a modification to the Project is a substantial deviation from the Approved Plans or a Prohibited Project Change requiring City's Approval pursuant to Section 2.3; (iv) any contention that City has unreasonably failed to Approve any modifications to the Approved Plans in

accordance with this Agreement; (v) any contention that the City has unreasonably failed to Approve a General Contractor for the Project in accordance with Section 2.9(b); or (vi) any disagreement as to permitted delays in the Commencement of Construction Date or the Construction Completion Date or (vii) after Commencement of Construction, any disagreement as to whether Developer is diligently prosecuting the Work in good faith.

(j) The decision of the Development Arbitrator shall be final and binding on the Parties for all purposes and may be entered in any court of competent jurisdiction.

(k) If any matter submitted to the Development Arbitrator hereunder is settled by agreement between the Parties prior to, or independently of, the final determination of the Development Arbitrator, any and all expenses of such binding determination (including fees of the Development Arbitrator) will be shared equally by the Parties; and the expense of such binding determination resolved by final determination of the Development Arbitrator (including fees of the Development Arbitrator) will be borne by the Party against whom such determination has been concluded.

Section 7.10 Disputes Regarding Disapproval of a Proposed Transferee.

(a) If the City Manager determines that a Proposed Major Transferee does not satisfy the definition of an Acceptable Owner and the Acceptable Owner Criteria pursuant to **Exhibit "A"** attached hereto, and Developer disagrees, and if the matter is not resolved by the designated representatives of the City and Developer as provided in Section 7.8(a) above, then solely with respect to any such determination made by the City Manager, Developer, as its sole remedy, may submit such matter to a panel of experts for a binding determination in accordance with this Section 7.10 (an "Arbitrator"). For the avoidance of doubt, in the event the City Manager exercises his or her right to seek the City Commission's direction or Approval of a Proposed Major Transferee, Developer shall not have the right to submit the City Commission's determination or disapproval of a Proposed Major Transferee to arbitration pursuant to this Section 7.10, but the City Commission shall be subject to the same time period and standards of judgment as would apply to the City Manager as provided in **Exhibit "A"**.

(b) If Developer elects to proceed with an Arbitrator in accordance with this Section 7.10, the determination of whether a Proposed Major Transferee is an Acceptable Owner will be made by (a) an expert selected jointly by the City and Developer, or (b) if the City and Developer fail to agree upon a single expert, by an expert selected by the City, an expert selected by Developer and a third expert appointed by the experts selected by the Parties. Any Arbitrator or expert panelist hereunder will each have at least ten (10) years of professional experience in the commercial real estate development industry as a legal or other consultant. The Parties agree that no discovery (as the term is commonly construed in litigation proceedings) will be permitted and agree that neither Party nor the Arbitrator shall have discovery rights in connection with a Dispute hereunder. The proceeding before the Arbitrator shall be conducted in an informal and expeditious manner. No transcript or recording shall be made. Each Party shall have the opportunity to make a brief statement and to present documentary and other support for its position, which may include the testimony of not more than four (4) individuals, two (2) of whom may be outside experts. There shall be no presumption in favor of either Party's position. Any procedural matter not covered herein shall be governed by procedures mutually agreed upon by the Parties, or if they are unable to agree, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (as amended hereby).

(c) The matter submitted to the Arbitrator will be conclusively determined within thirty (30) days of the appointment of the last Arbitrator by (a) the decision of the single expert, (b) the decision of any two of the three experts, if two are able to agree, (c) the decision of the third expert, if no two of the three experts are able to agree within such period, or (d) agreement between the Parties prior to and independently of the decision of the Arbitrator.

(d) With respect to whether a Proposed Major Transferee satisfies the definition of an Acceptable Owner and the Acceptable Owner Criteria pursuant to **Exhibit "A"**, the Arbitrator will determine that such Proposed Major Transferee either satisfies such definition and criteria or fails to satisfy such definition and criteria. If any matter submitted to the Arbitrator hereunder is settled by agreement between the Parties prior to, and independently of, the final determination of the Arbitrator, any and all expenses of such binding determination (including fees of the Arbitrator) will be shared equally by the Parties; and the expense of such binding determination resolved by final determination of the Arbitrator (including fees of the Arbitrator) will be borne by the Party against whom such determination has been concluded.

Section 7.11 Disputes Regarding Diligent Prosecution.

(a) Any dispute arising under this Agreement with respect to whether Developer, Existing Marina Lessee and/or Marina Lessee has diligently pursued and exhausted all appeals of any Marina Lawsuit in good faith through the applicable Court of Appeal (a "**Prosecution Dispute**") will first be submitted, by written notice ("**Notice of Dispute**"), to a designated representative of the City and a designated representative of Developer who will meet at the City's place of business or other mutually agreeable location, or by teleconference, and confer in an effort to resolve such Prosecution Dispute. Any decision of the representatives will be final and binding on the Parties. In the event the representatives are unable to resolve any Prosecution Dispute within ten (10) days after receipt of the Notice of Dispute, then Developer, as its sole remedy, may submit such matter to JAMS Miami Center for resolution on an expedited basis without any pre-hearing discovery before an arbitrator (the "**Neutral**").

(b) If Developer elects to proceed with a Neutral in accordance with **Section 7.11(a)** the determination will be made by (i) an expert selected jointly by the City and Developer from the panel of Neutrals at Jams Miami Center, or (ii) if the City and Developer fail to agree upon a Neutral, by an expert selected by the City from the panel of Neutrals at Jams Miami Center, a Neutral selected by Developer from the panel of Neutrals at Jams Miami Center and a third expert appointed by the Neutrals selected by the parties. Any Neutral or expert panelist hereunder will be a certified mediator with at least ten (10) years of professional experience litigating commercial contract disputes. The parties agree that no discovery (as the term is commonly construed in litigation proceedings) will be permitted and agree that neither party nor the Neutral shall have discovery rights in connection with a Prosecution Dispute hereunder. The proceeding before the Neutral shall be conducted in an informal and expeditious manner. No transcript or recording shall be made. Each party shall have the opportunity to make a brief statement and to present documentary and other support for its position, which may include the testimony of not more than four (4) individuals, two (2) of whom may be outside experts. There shall be no presumption in favor of either party's position. Any procedural matter not covered herein shall be governed by procedures mutually agreed upon by the Parties, or if they are unable to agree, in accordance with the JAMS Expedited Arbitration Procedures (as amended hereby).

(c) The matter submitted to the Neutral will be conclusively determined within thirty (30) days of the appointment of the last Neutral by (i) the decision of the single mutually agreed Neutral, (ii)

the decision of any two of the three selected Neutrals, if two are able to agree, (iii) the decision of the third expert, if no two of the three experts are able to agree within such period, or (iii) agreement between the parties prior to and independently of the decision of the Neutral.

(d) The Neutral will determine that Developer, Marina Lessee, Existing Marina Lessee and/or their respective affiliates either did proceed diligently and in good faith to defend a Lawsuit and/or Marina Lawsuit, as applicable, including the exhaustion of all appeals, or did not proceed diligently and in good faith to defend a Lawsuit and/or Marina Lawsuit, as applicable, including the exhaustion of all appeals. If any matter submitted to the Neutral hereunder is settled by agreement between the parties prior to, and independently of, the final determination of the Neutral, any and all expenses of such binding determination (including fees of the Neutral) will be shared equally by the parties; otherwise, the expense of such binding determination resolved by final determination of the Neutral (including fees of the Neutral) will be borne by the party against whom such determination has been concluded.

ARTICLE VIII
PROTECTION AGAINST MECHANICS' LIENS AND OTHER CLAIMS; INDEMNIFICATION

Section 8.1 **Developer's Duty to Keep Project Free of Liens**.

(a) Developer shall not create, or cause to be created, or, with respect to work performed by or on behalf of Developer, suffer to exist any lien, encumbrance or charge upon the right, title and interest of the City in the Development Site or any part thereof or appurtenance thereto, or, in connection therewith, any lien, encumbrance or charge upon any assets of, or funds to be appropriated to, the City. Nothing contained in this Agreement shall be deemed or construed to constitute the consent or request of the City, express or by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of the Project, or any part thereof, nor as giving Developer, any Mortgagee or any other Person any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against City's interest in the Development Site, or any part thereof, or against assets of the City, or City's interest in any monetary obligations of Developer as defined in this Agreement.

(b) Notice is hereby given, and Developer shall cause all construction agreements entered into between Developer and the General Contractor or other contractor in privity with Developer or subcontractor in privity with the General Contractor or any other subcontractor to provide that:

(i) City shall not be liable for any work performed or to be performed at the Project or any part thereof for or on behalf of the Developer, any Mortgagee, or any other Person or for any materials furnished or to be furnished to the Project, or any part thereof, for any of the foregoing; and

(ii) no mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials shall be attached to or affect City's interest in the Development Site, or any part thereof, or any assets of, or funds to be appropriated to, the City.

Section 8.2 **Discharging and Contesting Liens.** If any such lien as described in Section 8.1 is filed against the City's interest in the Development Site or any part thereof, or if any public improvement lien

created, or caused or, with respect to work performed by or on behalf of Developer, suffered to be created by Developer shall be filed against any assets of, or funds appropriated to, the City, Developer shall, within thirty (30) days after Developer receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien or public improvement lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Developer desires to contest any such lien, it shall notify the City of its intention to do so within thirty (30) days after Developer has notice of the filing of such lien. In such case, Developer, at Developer's sole cost and expense, shall furnish a cash deposit or surety bond in an amount sufficient to pay such lien and any cost (including interest and penalties), liability or damage arising out of such contest. The lien, if Developer timely provides the bond described above, shall not be an Event of Default hereunder until thirty (30) days after the final determination of the validity thereof provided that, within that time, Developer shall satisfy and discharge such lien to the extent held valid; provided, however, that the satisfaction and discharge of any such lien shall not, in any case, be delayed until execution is had on any judgment rendered thereon, or else such delay shall be considered an Event of Default hereunder. In the event of any such contest, Developer shall protect and indemnify the City and the City Parties against any Claims resulting therefrom as provided in Section 8.3. Notwithstanding anything to the contrary contained in this Section 8.2, in the case of a public improvement lien which provides for installment payments as a means of satisfying such lien, Developer shall be required only to pay, on a timely basis, all installments when due. In the event of any such contest, Developer shall protect and indemnify the City and the City Parties against all Claims resulting therefrom as provided in Section 8.3.

Section 8.3 Indemnification.

(a) Developer acknowledges and agrees that this Agreement is not an agreement between City and any architect, engineer, general contractor, subcontractor, sub-subcontractor, or materialman or any combination thereof for the construction, alteration, repair, or demolition of a building, structure, appurtenance, or appliance on the Development Site, and therefore that the limitations on indemnity provisions in Section 725.06, Florida Statutes, as such statute may be amended from time to time, do not apply to this Agreement. Accordingly, to the fullest extent permitted by law, Developer shall defend, indemnify and hold harmless the City and the City Parties from any and all Claims first arising following the Effective Date, and arising out of, relating to or resulting from any of the following occurrences or events, whether by Developer or its employees, agents, partners, principals, or contractors: (i) the development, construction, use and operation of the Project or any part thereof which is not in compliance with the terms of this Agreement; (ii) the negligent acts or omissions of Developer or its employees, agents, partners, principals, or contractors; or (iii) any challenge to the validity of any Transfer by a third party through legal proceedings or otherwise based on the action or inaction of Developer or its employees, agents, partners, principals, or contractors, except to the extent any liability, losses or damages are caused by the gross negligence or willful misconduct of the City or its officers, employees, agents, or contractors.

(b) Developer shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the City which are covered by this indemnity obligation, where applicable, including appellate proceedings, and shall pay reasonable costs, judgments, and reasonable attorney's fees which may issue thereon.

(c) Developer expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Developer shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City or any City Parties as herein provided. The City shall give to

Developer reasonable notice of any such claims, suits or actions. The provisions of this Section 8.3 shall survive the expiration or early termination of this Agreement.

(d) Developer covenants and agrees that any contracts entered into by Developer and the General Contractor for the Work shall include the indemnities required by this Section 8.3 from the General Contractor in favor of Developer and the City.

Section 8.4 Environmental Matters.

(a) **Defined Terms.**

(i) "Environment" means the soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata and ambient air.

(ii) "Environmental Condition" means any condition with respect to the Development Site, whether or not yet discovered, but excluding the Existing Environmental Conditions ([except] [OPEN] to the extent of any Release [or Threat of Release] [OPEN] from or the exacerbation (and not mere discovery) of any such Existing Environmental Conditions associated with Developer's performance of its obligations under this Development Agreement including any construction, demolition or preparation by Developer of the Development Site for construction, but only to the extent directly caused by Developer's acts or omissions (excluding mere discovery of any condition)), which results in any Environmental Damages, including any condition resulting from Developer's activities on the Development Site or the activities of any other property owner or operator in the vicinity of the Development Site or any activity or operation formerly conducted by any Person on or off the Development Site.

(iii) "Environmental Damages" means all claims, judgments, damages (but not including (a) special, speculative, exemplary, or punitive damages, or (b) consequential damages in the nature of alleged "lost profits" or "lost opportunities", in each case with respect to the foregoing clauses (a) and (b) except to the extent that a party seeking indemnification of such amount has paid or is required to pay such measure of damages other than as a result of (and to the extent of) its own gross negligence, willful misconduct or fraud), losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, any of which are incurred at any time as a result of the assessment, monitoring, remediation or mitigation of an Environmental Condition (and shall include any damages for the failure to do so), including, without limitation, fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with investigation and remediation, including the preparation of any feasibility studies or reports and the performance of any remedial, abatement, containment, closure, restoration or monitoring work.

(iv) "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq.; the Toxic Substances Control Act, 15 U.S.C. 2601 et. seq.; the Clean Water Act, 33 U.S.C. 1251 et seq.; the Clean Air Act, 42 U.S.C. 7401 et. seq.; the Oil Pollution Act, 33 U.S.C. 2701 et. seq., the Hazardous Materials Transportation Act, 49 U.S.C. 1801 et. seq.; the Refuse Act of 1989, 33 U.S.C. 407; as such laws have been amended or supplemented from time-to-time, and the regulations promulgated thereunder; and any equivalent state or local laws; and all other Governmental Requirements relating to reporting, licensing, permitting, investigation and remediation of Releases or Threat of Release into the

Environment, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances or pertaining to the protection of the health and safety of employees or the public.

(v) "Environmental Permit" means any Governmental Approval required under any Environmental Law in connection with the ownership, use or operation of the Project by a federal, state or local governmental or quasi-governmental entity having jurisdiction over the Development Site, but excluding any of the foregoing relating to the Existing Environmental Conditions.

(vi) "Existing Environmental Conditions" means the following:

(1) Any release or threatened release the source of which is reasonably determined to be from the existing fuel storage, distribution and dispensing system including, without limitation, the tanks, lines, pumps, dispensing equipment and all associated equipment.

(2) Any hazardous substance known or discovered during the development process that is consistent with or reasonably expected to be caused by, or the result of, the historical use of the Development Site as a petroleum storage facility.

(3) Elevated levels of arsenic in the soil and/or groundwater which can reasonably be determined to be the result of importation of soils used to fill the Development Site in the past.

(vii) "Hazardous Substance" means any substances or materials presently or hereinafter identified to be toxic or hazardous according to any of the Environmental Laws, including any asbestos, PCB, radioactive substances, petroleum based products, radon gas and includes hazardous wastes, hazardous substances, extremely hazardous substances, hazardous materials, toxic substances, toxic chemicals, oil, petroleum products and their by-products, and pollutants or contaminants as those terms are defined in the Environmental Laws.

(viii) "Release" means any releasing, seeping, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of a Hazardous Substance into the Environment in violation of Environmental Laws that are applicable to the Development Site but excluding any of the foregoing relating to the Existing Environmental Conditions.

(ix) "Threat of Release" means a substantial likelihood of a Release which requires action Environmental Laws that are applicable to the Development Site to prevent or mitigate damage to the Environment which may result from such Release but excluding any Threat of Release relating to the Existing Environmental Conditions.

(b) **Representations and Warranties and Covenants of Developer**. Developer represents and warrants that it has made such physical inspection of the Development Site, and has inspected such records of the City, Miami-Dade County, Florida, the State of Florida, and the United States of America, as Developer deemed necessary to make an informed business decision that it would enter into this Agreement with the knowledge that, as between Developer and the City, but provided that Closing occurs, as between Developer and the City, Developer shall be solely responsible for the remediation and abatement of any Environmental Condition existing as of the Effective Date, including any Environmental Condition caused by the City or any prior owner of the Land, and to the extent Developer Commences

and Completes Construction of the Project, any Existing Environmental Conditions (but only to the extent required under applicable Environmental Laws in connection with the development and construction of the Project), that must be remediated and/or abated pursuant to any applicable Environmental Laws. Provided Closing occurs, Developer agrees to expeditiously undertake such assessment, remediation, and monitoring of the soil and ground water within the Development Site if and to the extent required under applicable Environmental Laws in connection with the development and construction of the Project, including with respect to Existing Environmental Conditions but only to the extent Developer Commences and Completes Construction of the Project (and then only to the extent required under applicable Environmental Laws in connection with the development and construction of the Project); and to take such action as necessary to obtain a No Further Action with Conditions determination from DERM or DEP, if required under Environmental Laws, as soon as may be practical after the Closing Date, including with respect to Existing Environmental Conditions to the extent Developer Commences and Completes Construction of the Project (and then only to the extent required under applicable Environmental Laws in connection with the development and construction of the Project). It is understood and agreed that the No Further Action with Conditions includes the use of both engineering controls and institutional controls typically included with a No Further Action with Conditions. Developer agrees that in connection with any remediation or abatement pursuant to this Section 8.4 it will provide to the City all correspondence, reports, studies and other documents exchanged between the City, its consultants, and DERM or DEP promptly after those documents are provided to Developer or received by Developer from DERM or DEP. Developer shall keep City reasonably apprised periodically and following the City's request (which, after Commencement of Construction, may be as part of Developer's monthly construction updates pursuant to Section 2.13(a)) of the status and progress of any such remediation.

(c) **Use of Hazardous Substances**. Except for the Existing Environmental Conditions, Developer shall not cause or permit any Hazardous Substances to be brought on, kept or used in or about the Development Site except as necessary in connection with the construction or operation of the Project and in compliance with all Environmental Laws.

(d) **Environmental Indemnification by Developer**. Provided the Closing occurs, Developer hereby indemnifies and holds harmless the City and the City Parties from and against any and all Environmental Damages to the Development Site. Such obligation of Developer shall include the burden and expense of defending all claims, suits and proceedings (with counsel reasonably satisfactory to the City), even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against the City and any of the City Parties. Without limiting the foregoing, if the presence or Release on or from the Development Site caused or permitted by Developer results in contamination of the Development Site, Developer shall promptly take all actions at its sole cost and expense as are necessary to remediate Development Site in compliance with Environmental Laws in effect from time to time and to comply with any requirements imposed by any Governmental Authorities; provided that the City's Approval of such actions shall first be obtained.

(e) **Compliance**. Except with respect to the Existing Environmental Conditions, Developer, at its sole cost and expense, shall comply with all Environmental Laws with respect to the construction of the Project and the operations of Developer on the Development Site. City will reasonably cooperate in all respects with Developer, at Developer's sole cost and expense, during the process of addressing any Environmental Condition and will execute all applications, affidavits, covenants and any other required document needed to complete compliance with all Environmental Laws. City will authorize the recording,

in the chain of title of the Development Site, any covenant or other limiting document required or needed to comply with any Environmental Law.

(f) **Representations, Warranties and Covenants of Existing Marina Lessee and Marina Lessee.** Existing Marina Lessee and Marina Lessee, jointly and severally, represent, warrant and covenant that Existing Marina Lessee and Marina Lessee are and shall be solely responsible for the remediation and abatement of any Existing Environmental Condition that must be remediated or abated pursuant to any applicable Environmental Laws; that Existing Marina Lessee and Marina Lessee will expeditiously undertake such assessment, remediation, and monitoring of the soil and ground water within the Development Site if and to the extent required under applicable Environmental Laws with respect to any Existing Environmental Condition; and to take such action as necessary to obtain a No Further Action determination from DERM or DEP, if required under applicable Environmental Laws as soon as may be practical after the Effective Date with respect to Existing Environmental Conditions. Nothing contained herein is intended to modify or amend the obligations of Existing Marina Lessee under the Existing Marina Lease or the obligations of Marina Lessee under the Marina Lease. [OPEN]

Notwithstanding anything to the contrary contained in this Agreement, neither Developer nor General Contractor, or other contractor in privity with Developer, has a duty to indemnify the City or the City Parties in connection with any Environmental Damages to the extent caused by the negligent or intentional conduct of the City, its contractors or any City Parties.

The provisions of this Section 8.4 shall survive the expiration or earlier termination of this Agreement.

Marina Lessee and Existing Marina Lessee each hereby joins in and consents to this Agreement for purposes of acknowledging and confirming its agreement to the terms of this Section 8.4.

Section 8.5 Limitation of City's Liability.

(a) Any tort liability to which the City is exposed under this Agreement shall be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations shall be applied as if the parties had not entered into this Agreement, and City expressly does not waive any of its rights and immunities thereunder.

(b) City will not in any event whatsoever be liable for any injury or damage to Developer (unless caused by the gross negligence or willful misconduct of City, its agents, contractors or employees) or to any other Person happening on, in or about the Development Site and its appurtenances, nor for any injury or damage to the Development Site or to any property belonging to Developer (unless caused by the gross negligence or willful misconduct of City, its agents, contractors or employees) or to any other Person which may be caused by any fire or breakage, or by the use, misuse or abuse of any of the Improvements (including any of the common areas within the buildings, equipment, elevators, hatches, openings, installations, stairways, hallways or other common facilities or the improvements to the land described in this Agreement), or which may arise from any other cause whatsoever (unless caused by the gross negligence or willful misconduct of City, its agents, contractors or employees).

(c) City will not be liable to Developer or to any other Person for any failure of telephone, computer system, cable TV, water supply, sewage disposal, gas or electric current, nor for any injury or damage to any property of Developer or to any Person or to the Development Site caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or

disturbances, or water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Development Site, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by any Person (unless caused by the gross negligence or willful misconduct of City, its agents, contractors or employees). For the avoidance of doubt, nothing in this Section 8.5(c) shall be deemed to limit, restrict or abridge the provisions of this Agreement regarding Force Majeure Events and Unavoidable Delays.

ARTICLE IX
RISK OF LOSS, INSURANCE AND RECONSTRUCTION

Section 9.1 **Risk of Loss**. The risk of loss to any of the Work and to any goods, materials and equipment provided or to be provided under this Agreement, shall remain with the Developer until Completion of Construction. Should any of the Work, or any such goods, materials and equipment be destroyed, mutilated, defaced or otherwise damaged prior to Completion of Construction, Developer shall repair or replace the same at its sole cost. The payment bond and performance bond or other security or insurance protection required by this Agreement or otherwise provided by the Developer or the General Contractor shall in no way limit the responsibility of the Developer under this Section.

Section 9.2 **General Insurance Provisions [OPEN]**. After Closing and prior to any activity by Developer on the Development Site, and thereafter, at all times during the Term, Developer at its sole cost and expense shall procure the insurance specified below. In addition, Developer shall require any General Contractor to maintain the insurance coverages set forth below. All policies must be executable in the State of Florida. All insurers must maintain an AM Best rating of A- or better. The terms and conditions of all policies must be equivalent to the policy forms issued by the Insurance Services Office (ISO) or the National Council on Compensation Insurance (NCCI). Said insurance policies shall be primary over any and all insurance available to the City whether purchased or not and shall be non-contributory. Developer and any General Contractor shall be solely responsible for all deductibles contained in their respective policies. All policies procured pursuant to this Article IX shall be subject to maximum deductibles reasonably acceptable to the City. The City of Miami Beach will be included as an "additional insured" on the commercial general liability and automobile liability (to the extent available), and as loss payee on the builder's risk policy.

Section 9.3 **Evidence of Insurance**. After Closing and prior to any activity by Developer on the Development Site, and annually thereafter, Developer shall deliver satisfactory evidence of the required insurance to the City. Satisfactory evidence shall be: (a) a certificate of insurance for all required coverage; and (b) a copy of the actual insurance policy for builder's risk coverage. The City, at is sole option, may request a certified copy of any or all insurance policies required by this Agreement, or the applicable portions thereof if insurance is provided through a master insurance program. All insurance policies must specify they are not subject to cancellation or non-renewal without a minimum of 30 days notification by the insurer to the City, the City's Risk Management Division and the First Mortgagee, with a minimum of 10 days notification by the insurer to the City, the City's Risk Management Division and the First Mortgagee prior to cancellation or non-renewal for non-payment of premium. Developer will deliver to the City, at least 30 days prior to the date of expiration of any insurance policy, a renewal policy replacing any policies expiring during the Term of this Agreement, or a certificate thereof, together with evidence that the full premiums have been paid unless the premiums are being financed; provided that such financing shall be permitted only if such policy provides that the insurer will deliver to the City reasonable

advance written notice prior to the cancellation of any coverage thereunder and a reasonable period of time within which the City has the right, but not the obligation, to pay any unpaid premiums to avoid any lapse in coverage. Premiums may be paid in annual installments. All certificates of insurance shall (i) be in a form acceptable to the City, (ii) name the types of policies provided, (iii) refer specifically to this Agreement; (iv) evidence the waiver of subrogation in favor of the City as required by Section 9.10 below; and (v) evidence that coverage shall be primary and noncontributory, and that each policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium payment by the City. Developer shall deliver, together with each certificate of insurance, a letter from the agent or broker placing such insurance, certifying to the City that the coverage provided meets the coverage required under this Agreement. The official title of the certificate holder is "City of Miami Beach, Florida." Additional insured certificates for the City shall read "City of Miami Beach, Florida", and shall be addressed to 1700 Convention Center Drive, Miami Beach, FL, 33139, Attn: Risk Management, 3rd Floor.

Section 9.4 **Required Coverages**. In addition to such insurance as may be required by law, the Developer shall procure and maintain, or cause others to procure and maintain, without lapse or material change, the following insurance, which may be provided through master blanket insurance policies:

(a) Commercial General Liability Insurance on a comprehensive basis, including contractual liability, to cover the Leased Property and Developer's operations and indemnity obligations, in an amount not less than $5,000,000 combined single limit per occurrence for bodily injury and property damage. Such insurance may be provided through a combination of primary and excess/umbrella liability policies.

(b) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used by Developer in connection with its operations under this Lease in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage. Coverage must be afforded equivalent to the latest edition of the Business Automobile Liability policy, as filed by the Insurance Services Office (ISO).

(c) Builders Risk Insurance during the course of construction, issued in the name of Developer, any General Contractor and the City as their interests may appear, in amount(s) not less than 100% of the insurable value of the Project completed structure(s), covering perils on an "All Risk" basis, including flood, earthquake, and windstorm. Policy(s) must clearly indicate that underground structures (if applicable) and materials being installed are covered. Any deductibles are the sole responsibility of Developer.

(d) Workers' Compensation and Employers Liability Insurance with limits sufficient to respond to Florida Statute §440. In addition, Developer shall obtain Employers' Liability Insurance with limits of not less than: (i) $500,000 Bodily Injury by Accident, (ii) $500,000 Bodily Injury by Disease and (iii) $500,000 Bodily Injury by Disease, each employee.

(e) Professional Liability. Developer shall cause any architects or engineers to maintain architects and engineers errors and omissions liability insurance specific to the activities or scope of work such consultants will perform. If coverage is provided on a "claims made" basis, the policy shall provide for the reporting of claims for a period of five (5) years following the completion of all construction activities. The minimum limits acceptable shall be $1,000,000 per occurrence and $3,000,000 in the annual aggregate.

Section 9.5 **Premiums and Renewals**. Developer shall pay as the same become due all premiums for the insurance required by this Article IX, shall renew or replace each such policy and deliver to the City

evidence of the payment of the full premium thereof prior to the expiration date of such policy, and shall promptly deliver to the City all original Certificates of Insurance and copies of all such renewal or replacement policies.

Section 9.6 **Adequacy Of Insurance Coverage**. The adequacy of the insurance coverage required by this Article IX may be reviewed periodically by the City in its sole discretion. Except with respect to "CCIP" and "OCIP" policies, the City reserves the right, but not the obligation, to review and reasonably revise the insurance requirements every three (3) years, (including but not limited to deductibles, limits, coverages and endorsements) provided such revisions are commercially reasonable, customary and commonly available regarding properties similar in type, size, use and location to the Development Site and the Improvements and further provided that such coverage is available at commercially reasonable rates (including fiduciary liability and directors and officers liability insurance). Developer agrees that City may, if it so elects, at City's expense, have the Improvements appraised for purposes of obtaining the proper amount of insurance hereunder. Any review by the City shall not constitute an approval or acceptance of the amount of insurance coverage.

Section 9.7 **City May Procure Insurance if Developer Fails To Do So**. If Developer refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this Agreement within thirty (30) days after written notice from the City to Developer and First Mortgagee, the City, at its option, may procure or renew such insurance. In that event, all commercially reasonable amounts of money paid therefor by the City shall be paid by Developer, together with interest thereon at the Default Rate (as defined in the City Note) from the date the same were paid by the City to the date of payment thereof by Developer. Such amounts, together with all interest accrued thereon, shall be paid by Developer to the City within ten (10) days of written notice thereof.

Section 9.8 **Effect of Loss or Damage**. Any loss or damage by fire or other casualty of or to any of the Improvements on the Development Site at any time shall not operate to terminate this Agreement or to relieve or discharge Developer from the performance and fulfillment of any of Developer's obligations pursuant to this Agreement. No acceptance or approval of any insurance agreement or agreements by the City shall relieve or release or be construed to relieve or release Developer from any liability, duty or obligation assumed by, or imposed upon it by the provisions of this Agreement.

Section 9.9 **Proof of Loss**. Whenever any Improvements, or any part thereof, constructed on the Development Site shall have been damaged or destroyed, Developer shall promptly make proof of loss in accordance with the terms of the insurance policies and shall proceed promptly to collect or cause to be collected all valid claims which may have arisen against insurers or others based upon any such damage or destruction.

Section 9.10 **Insurance Proceeds**. All sums payable for loss and damage arising out of the casualties covered by the property insurance policies shall be payable to Developer for restoration of the Project, subject to the rights of any First Mortgagee. Developer shall use diligent, good faith efforts to satisfy all conditions of the First Mortgage to permit release and disbursement of such proceeds towards the costs of restoration of the Project.

Section 9.11 **Waiver of Subrogation**. Where permitted by law, each Party hereby waives all rights of recovery by subrogation or otherwise (including claims related to deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage), against the other Party and its respective officers, agents or employees.

Section 9.12 **Inadequacy of Insurance Proceeds**. Developer's liability hereunder to timely commence and complete restoration of the damaged or destroyed Lessee Improvements shall be absolute, irrespective of whether insurance proceeds received, if any, are adequate to pay for said restoration.

Section 9.13 **No City Obligation to Provide Property Insurance**. Developer acknowledges and agrees that the City shall have no obligation to provide any property insurance on any Improvements or property of Developer located on the Development Site. If the City does maintain any property insurance coverage, Developer acknowledges that such insurance shall be for the sole benefit of the City and Developer shall have no right or claim to such proceeds.

Section 9.14 **Compliance**. Developer's compliance with the requirements of this Article IX shall not relieve Developer of its liability, or be construed to relieve or limit, Developer of any responsibility, liability or obligation imposed under any other portion of this Agreement, or by law, including, any indemnification obligations which Developer owes to the City.

Section 9.15 **Right to Examine**. The City reserves the right, upon reasonable notice, to examine the original or true copies of policies of insurance (including binders, amendments, exclusions, riders and applications), or applicable portions of any master insurance policy, to determine the true extent of coverage. Lessee Developer agrees to permit such inspections and make available such policies or portions thereof at the offices of the City.

Section 9.16 **Personal Property**. Any personal property of Developer or of others placed on the Development Site shall be at the sole risk of Developer or the owners thereof, and the City shall not be liable for any loss or damage thereto for any cause except as a result of the gross negligence or willful misconduct of the City or its employees, agents or contractors.

ARTICLE X
MAINTENANCE AND REPAIRS

Section 10.1 **Standards Generally**. During the period of time commencing on any Early Work (other than Early Work described in clauses (i) and (ii) of the definition thereof) until the earlier of termination of this Agreement or Completion of Construction, Developer shall maintain the Development Site in a clean, slightly, sanitary and safe condition to the extent required by and in accordance with all applicable Governmental Requirements. In no event shall City be responsible or liable for any maintenance or repair of any Improvement, fixture, equipment, structure, facility, alteration, or addition thereto on the Development Site.

Section 10.2 **Utilities**. City, in its proprietary capacity, will not be required to furnish any services, utilities or facilities whatsoever to the Development Site solely by virtue of this Agreement. Any services provided to the Development Site shall be pursuant to the terms of a separate agreement.

Section 10.3 **Intentionally Deleted**.

Section 10.4 **Removal of Trash**. Developer shall, at its sole cost and expense, store, dispose of, and remove or cause to be removed from the Development Site all trash and refuse which might accumulate in unreasonable quantities and arise from its use of the Development Site. Upon substantial completion of portions of the Work, Developer shall and shall cause the General Contractor to remove all rubbish, tools, scaffolding and surplus materials related to such substantially complete portions of the Work from the Development Site.

Section 10.5 **Excavation of Land**. Except in connection with the construction of the Project and as reasonably necessary in connection with the remediation of any Environmental Condition or Existing Environmental Condition, Developer shall make no excavation of any of the land, Developer shall not remove soil or earth from the Development Site, and Developer shall not dig, construct or drill any well of any nature on the Development Site, except in compliance with all applicable Governmental Requirements.

Section 10.6 **Water and Sewerage System**. Developer shall operate and maintain, at its sole cost and expense, all the components of the water, sanitary sewerage and storm drainage facilities constructed by Developer as part of the Project.

Section 10.7 **Industrial Waste Facilities**. Except as set forth in Section 8.4, Developer shall be fully responsible for all industrial wastes on the Development Site caused or produced by Developer or third-parties engaged by or performing work on behalf of Developer to the extent such third-parties are operating on the Development Site during the period of time commencing on any Early Work until the earlier of termination of this Agreement or Completion of Construction, as well as the proper disposal thereof, in accordance with applicable Governmental Requirements.

Section 10.8 **Inspections**. Upon Commencement of Construction, the City and/or its designated representatives shall have the right, during normal working hours, after prior reasonable notice to inspect the Development Site and the Improvements to identify those items of maintenance reasonably required of Developer to comply with the maintenance requirements under the express terms of this Agreement. If Developer has failed to fulfill its maintenance obligations under this Agreement, City shall provide written notice and Developer shall perform all corrective work identified in such notice within thirty (30) days of receipt of the notice from City; provided, however that if such corrective work cannot be reasonably accomplished within a thirty (30) day period, then Developer shall commence the corrective work within that thirty (30) day period and diligently prosecute same to completion. Trash and debris maintenance shall be corrected within two (2) Business Days following receipt of written notice from City. Failure of City to inspect as aforementioned shall not impose any liability on the City. Nothing in this contractual provision relating to City's inspections shall preclude City from making inspections of the Development Site in accordance with City's regulatory authority.

Section 10.9 **Failure of Developer to Maintain**. If Developer has failed to comply with its maintenance obligations under this Agreement, the City shall provide to Developer a written list of deficiencies, reflecting the amount of time to be reasonably allowed for Developer to correct same. If Developer fails to correct or commence to correct such deficiencies within the time allowed and has not registered an objection as to its obligation to do so, the City, at its option, may elect to correct any or all of such deficiencies, in which case, the City shall give Developer fifteen (15) days further written notice of its intention to do so, and if Developer has not corrected or commenced to correct the same within such additional fifteen (15) day period, the City may enter upon the Development Site and perform all work, which, in the reasonable judgment of the City, is necessary and Developer shall pay the cost of such work, plus twenty-five percent (25%) for administrative costs, to the City within thirty (30) days after written demand therefor. If Developer has not corrected or commenced to correct such deficiencies within such additional fifteen (15) day period, Developer shall not undertake performance of such repairs or cleanup without specific prior written authorization from the City.

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 11.1 **No Partnership or Joint Venture**. It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners, or creating or establishing the relationship of a joint venture between the City and Developer, or as constituting Developer as the agent or representative of the City for any purpose or in any manner whatsoever.

Section 11.2 **Recording**. Within fourteen (14) days after the Effective Date, the City shall record this Agreement in the Public Records of Miami-Dade County, Florida. Developer shall be responsible for all recording fees and other related fees and costs related to the recording of this Agreement. The provisions hereof shall remain in full force and effect during the Term, and subject to the conditions of this Agreement, shall be binding upon the Parties and all successors in interest to the Parties.

Section 11.3 **Florida and Local Laws Prevail**. This Agreement shall be governed by the laws of the State of Florida. This Agreement is subject to and shall comply with the City Code as the same is in existence as of the execution of this Agreement and the ordinances of the City of Miami Beach. Any conflicts between this Agreement and the City Code shall be resolved in favor of the latter. If any term, covenant, or condition of this Agreement or the application thereof to any Person or circumstances shall to any extent, be illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity or becomes unenforceable because of judicial construction, the remaining terms, covenants and conditions of this Agreement, or application of such term, covenant or condition to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law. Any dispute arising out of or relating to this Agreement that specifically provides for arbitration (and only such provisions) shall be subject to arbitration as expressly provided herein. In any such arbitration or in any legal action brought by either Party because of a breach of this Agreement or to enforce any provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and paralegals' fees and costs, including those incurred in subsequent actions to enforce or vacate an arbitration award, bankruptcy awards and orders, and those incurred on appeal.

Section 11.4 **No Conflicts of Interest/City Representatives not Individually Liable**. No member, official, representative, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, representative or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. No member, official, elected representative or employee of the City shall be personally liable to Developer or any successor in interest in the event of any default or breach by the City or for any amount which may become due to Developer or successor or on any obligations under the terms of this Agreement.

Section 11.5 **Notice.** A notice or communication, under this Agreement by the City, on the one hand, to Developer, or, on the other, by Developer to the City shall be sufficiently given or delivered if in writing and dispatched by hand delivery, or by nationally recognized overnight courier providing receipts, or by registered or certified mail, postage prepaid, return receipt requested to:

(a) Developer. In the case of a notice or communication to Developer if addressed as follows:

To:

Marina Park Residential, LLC
3310 Mary Street
Suite 302
Coconut Grove, Florida 33133
Attention: David P. Martin and Ellen Buckley

And:

Marina Park Commercial, LLC
3310 Mary Street
Suite 302
Coconut Grove, Florida 33133
Attention: David P. Martin and Ellen Buckley

With Copies Copy To:

Gangemi Law Group, PLLC
3310 Mary Street
Suite 303
Miami, Florida 33133
Attention: Laura Gangemi Vignola, Esq.

(b) City. In the case of a notice or communication to the City, if addressed as follows:

To:

City Manager
City of Miami Beach, Florida
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

With Copies To:

City Attorney
City of Miami Beach, Florida
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

or if such notice is addressed in such other way in respect to any of the foregoing Parties as that Party may, from time-to-time, designate in writing, dispatched as provided in this Section.

Section 11.6 **Estoppel Certificates.** The City and Developer shall, within thirty (30) days after written request by the other, execute, acknowledge and deliver to the Party which has requested the same or to

any actual or prospective First Mortgagee, Mezzanine Lender, or purchaser of any direct or indirect equity interest in Developer, a certificate stating that:

(a) this Agreement is in full force and effect and has not been modified, supplemented or amended in any way, or, if there have been modifications, this Agreement is in full force and effect as modified, identifying such modification agreement, and if this Agreement is not in force and effect, the certificate shall so state;

(b) this Agreement as modified represents the entire agreement between the Parties as to this subject matter, or, if it does not, the certificate shall so state;

(c) the dates on which the Term of this Agreement commenced and will terminate;

(d) to the knowledge of the certifying Party all conditions under this Agreement to be performed up to that date by the City or Developer, as the case may be, have been performed or satisfied and, as of the date of such certificate, there are no existing defaults, defenses or offsets which the City or Developer, as the case may be, has against the enforcement of this Agreement by the other Party, or, if such conditions have not been satisfied or if there are any defaults, defenses or offsets, the certificate shall so state; and

(e) in connection with any request by a prospective First Mortgagee or Mezzanine Lender, that such proposed First Mortgagee or Mezzanine Lender (as applicable) and such proposed financing satisfy the requirements of Section 6.1, including the requirements of Section 6.1(g).

The Party to whom any such certificate shall be issued may rely on the matters therein set forth; however, in delivering such certificate neither Developer nor the City (nor any individual signing such certificate on such Party's behalf) shall be liable for the accuracy of the statements made therein, but rather shall be estopped from denying the veracity or accuracy of the same. Any certificate required to be made by the City or Developer pursuant to this paragraph shall be deemed to have been made by the City or Developer (as the case may be) and not by the person signing same.

Section 11.7 Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 11.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original. Any such counterparts shall constitute one and the same instrument. This Agreement shall become effective only upon execution and delivery of this Agreement by the Parties hereto.

Section 11.9 Successors and Assigns; No Third Party Beneficiaries. Except to the extent limited elsewhere in this Agreement, all of the covenants conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the City and Developer. Developer shall have the right to assign this Agreement in connection with any Permitted Transfers and in connection with any other Transfers that are Approved by the City Manager pursuant to the terms hereof. Developer and the City acknowledge and agree that except for a First Mortgagee or a Mezzanine Lender, if any, each of which shall have the rights set forth in Article VI hereof, and except for Existing Marina Lessee and Marina Lessee, each of which shall have the rights set forth in Section 2.10(b), no third party shall have any rights or claims arising hereunder, nor is it intended that any third party shall be a third party beneficiary of any provisions hereof.

Section 11.10 Entire Agreement. This Agreement and its Exhibits, together with the Purchase and Sale Agreement, the City Note, the City Mortgage, the Marina Lease, the Reciprocal Easement Agreement and the Recognition Agreement, constitute the sole and only agreements of the Parties hereto with respect to the subject matter hereof and thereof and correctly set forth the rights, duties, and obligations of each to the other as of its date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement, the Purchase and Sale Agreement, the City Note, the City Mortgage, the Marina Lease, the Reciprocal Easement Agreement and/or the Recognition Agreement are of no force or effect and are merged into this Agreement.

Section 11.11 Amendments.

(a) No amendments to this Agreement shall be binding on any Party unless in writing and signed by all Parties.

(b) Solely to the limited extent as may be necessary to (i) reasonably facilitate the Construction Loan to finance the Project and/or the Mezzanine Loan, the City Manager shall have the delegated authority (but not the obligation), after consultation with the City's Chief Financial Officer and City Attorney, to negotiate and execute modifications to Article 9, Article 10, Sections 6.1(a)(vi) through 6.1(a)(ix), and Sections 6.1(b) through 6.1(k) of this Agreement, and (ii) conform the initial legal descriptions of the Residential Parcel and Commercial Retail Premises to the updated and/or actual legal descriptions thereof following receipt of all Governmental Approvals and following Completion of Construction, and the City Manager shall have the delegated authority (but not the obligation), after consultation with the City Attorney, to amend **Exhibit "B-2"** [Residential Parcel] and **Exhibit "L"** [Commercial Retail Premises] attached hereto. All other amendments must be approved by majority vote of the City Commission, subject to the requirements of applicable law.

(c) The City shall not be obligated to expend any money or undertake any obligation connected with any such amendment proposed by Developer, or otherwise connected with any action requested by or for the benefit of Developer under this Agreement, and shall be reimbursed by Developer for all out of pocket expenses (including third party consultants and attorneys) incurred by the City. Prior to the City taking action regarding any such request, Developer shall deposit with the City the estimated amount of such costs, as reasonably determined by the City.

Section 11.12 Non-Subordination of City's Interest. The City's fee interest in and ownership of the Land (excluding the Residential Parcel after the Vesting Date) and the City's rights and interest in this Agreement (including the rights to any monetary obligations of Developer to the City under this Agreement) shall not be subject or subordinate to or encumbered by any financing for the Project or lien or encumbrances affecting Developer's interest in this Agreement or the Improvements or by any acts or omissions of Developer hereunder. In this regard, any monetary obligations of Developer to the City under this Agreement then payable at any point in time during the Term shall be paid by Developer to the City and shall be superior in right to all claims or rights hereunder or described above in this Section, including the payment of debt service, and any distributions of profits to Developer or any of its Affiliates or owners. City acknowledges that this Agreement shall not be subordinate to any future mortgage against the fee interest in the Land. Notwithstanding anything to the contrary contained in this Agreement, if all or any portion of the interest of the City in the Land or this Agreement shall be acquired by reason of foreclosure of any mortgage, security agreement, lien or other encumbrance or other proceedings brought to enforce the rights of the holder(s) thereof, by deed in lieu of foreclosure or by any other method, and as a result any Person succeeds to such interests of City, this Agreement and the rights of Developer hereunder shall

continue in full force and effect and shall not be terminated or disturbed except as otherwise expressly permitted by the terms of this Agreement.

Section 11.13 City Manager's Delegated Authority. Notwithstanding any provision to the contrary in this Agreement, nothing herein shall preclude the City Manager from seeking direction from or electing to have the City Commission determine any matter arising out of or related to this Agreement, including, without limitation, any Approval contemplated under this Agreement (within the timeframe specified therefor as if the Approval was being determined by the City Manager), any proposed amendment or modification to this Agreement or any separate agreement relating to the Project or otherwise referenced in this Agreement.

Section 11.14 Holidays. It is hereby agreed that whenever a notice or performance under the terms of this Agreement is to be made or given on a Saturday or Sunday or on a legal holiday recognized by the City, it shall be postponed to the next following Business Day, not a Saturday, Sunday or legal holiday.

Section 11.15 No Brokers. Developer shall be responsible for, and shall hold the City harmless with respect to, the payment of any commission claimed by or owed to any real estate broker or other Person retained by Developer and which is entitled to a commission as a result of the execution and delivery of this Agreement. The City similarly shall be responsible for, and shall hold Developer harmless with respect to, the payment of any commission claimed by or owed to any real estate broker or other Person retained by the City and which is entitled to a commission as a result of the execution and delivery of this Agreement. This provision shall survive the expiration or termination of this Agreement.

Section 11.16 No Liability for Approvals and Inspections. Except as may be otherwise expressly provided herein, no approval to be made by the City in its capacity as the owner of the Land or any inspection of the Work or the Project by the City under this Agreement, shall render the City liable for its failure to discover any defects or nonconformance with any Governmental Requirement.

Section 11.17 Radon. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the county public health unit for Miami-Dade County.

Section 11.18 Developer Entity. On the date of execution hereof, each entity comprising the Developer is a limited liability company. In the event that at any time during the Term of this Agreement and any extensions and renewals thereof, Developer is a [corporation or an entity other than a limited liability company], then any references herein to member, membership interest, manager and the like which are applicable to a limited liability company shall mean and be changed to the equivalent designation of such term which is appropriate to the nature of the new Developer entity.

Section 11.19 Inflation Adjustments. All adjustments for inflation required under this Agreement shall be calculated utilizing the United States Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers; U.S. City average (1982-84=100). If the United States Department of Labor should no longer compile and publish this index, the most similar index compiled and published by said Department or any other branch or department of the federal government shall be used for the purpose of computing the inflation adjustments provided for in this Agreement. If no such index is compiled or published by any branch or department of the federal government, the statistics reflecting cost of living increases as

compiled by any institution or organization or individual designated by the City and generally recognized as an authority by financial or insurance institutions shall be used as a basis for such adjustments.

Section 11.20 Standard of Conduct. The implied covenant of good faith and fair dealing under Florida law is expressly adopted.

Section 11.21 Waiver of Consequential Damages. Notwithstanding anything contained in this Agreement to the contrary, in no event shall either Party be liable to the other for any consequential, exemplary or punitive damages.

Section 11.22 Reservation of Rights. This Agreement shall not affect any rights that may have accrued to any Party to this Agreement under applicable laws and each Party hereto reserves any and all of such rights.

Section 11.23 Reimbursement. Developer shall reimburse all of the City's reasonable costs and expenses (including attorneys', advisors' and third party appraisers' fees, charges and disbursements) incurred by the City and arising in connection with this Agreement, the Purchase Agreement, the Marina Lease, the Reciprocal Easement Agreement, the Alternate Easement Agreement, the Recognition Agreement and all other agreements, documents and instruments prepared, executed and/or delivered in connection therewith, incurred through the date of second reading of the proposed transaction, which is currently anticipated for July 29, 2020 and thereafter, for all such costs and expenses of the City not to exceed $75,000; provided, however, in the event Developer[, Marina Lessee or Existing Marina Lessee] [OPEN] requests any revisions or amendments to this Agreement and the other transaction documents referenced herein that are not expressly contemplated by and referenced in this Agreement and such other documents, Developer shall be responsible for all of the City's reasonable attorneys', advisors' and third party appraisers' fees, charges and disbursements incurred in connection therewith notwithstanding the foregoing cap.

[signature pages to follow]

IN WITNESS WHEREOF, Developer has caused this Agreement to be duly signed in its name, and the City of Miami Beach has caused this Agreement to be signed in its name by the Mayor, and duly attested to by the City Clerk, and approved as to form and sufficiency by the City Attorney, on the day and year first above written.

WITNESSED BY:

_____
Print Name:

_____
Print Name:

CITY:

CITY OF MIAMI BEACH, FLORIDA

By: _____
Dan Gelber
Mayor

ATTEST

By: _____
City Clerk

Approved for form and legal sufficiency

By: _____
City Attorney

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me, by means of [___] physical presence or [___] online notarization, this __ day of _____, 2020, by Dan Gelber, as mayor of the City of Miami Beach, Florida, who is personally known to me or who produced _____ as identification.

_____
Notary Public
Commission Number:_____

Commission Expires:_____

DEVELOPER:

WITNESSED BY:

RESIDENTIAL DEVELOPER:

_____

MARINA PARK RESIDENTIAL, LLC

Print Name:

By:_____

Name:

_____

Print Name:

Title:

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me, by means of [___] physical presence or [___] online notarization, this __ day of _____, 2020, by _____, as _____ of MARINA PARK RESIDENTIAL LLC, a Delaware limited liability company, who is personally known to me or who produced _____ as identification.

_____

Notary Public

Commission Number:_____

Commission Expires:_____

WITNESSED BY:

DEVELOPER:

COMMERCIAL RETAIL DEVELOPER:

MARINA PARK COMMERCIAL LLC

_____
Print Name:

By:_____
Name:
Title:

_____
Print Name:

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me, by means of [___] physical presence or [___] online notarization, this __ day of _____, 2020, by _____, as _____ of MARINA PARK COMMERCIAL LLC , a Delaware limited liability company, who is personally known to me or who produced _____ as identification.

_____
Notary Public
Commission Number:_____

Commission Expires:_____

Joined in and consented to by Existing Marina Lessee solely for purposes of acknowledging and confirming its agreement to the terms of Section 2.10(b), 2.11(k), 4.1, 7.1(s), 7.4 and 8.4 of this Agreement.

WITNESSED BY:

_____
Print Name:

_____
Print Name:

EXISTING MARINA LESSEE:

MARINA BEACH MARINA ASSOCIATES, LTD.

By:_____, its general partner

By:_____
Name:
Title:

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me, by means of [___] physical presence or [___] online notarization, this __ day of _____, 2020, by _____, as _____ of [_____], a [_____], the general partner of Miami Beach Marina Associates, Ltd., who is personally known to me or who produced _____ as identification.

_____
Notary Public
Commission Number:_____

Commission Expires:_____

Joined in and consented to by Marina Lessee solely for purposes of acknowledging and confirming its agreement to the terms of Section 2.10(b), 2.11(k), 4.1, 7.1(s), 7.4 and 8.4 of this Agreement.

WITNESSED BY:

MARINA LESSEE:

_____
Print Name:

MB MARINA PARK, LLC

_____
Print Name:

By:_____
Name:
Title:

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me, by means of [___] physical presence or [___] online notarization, this __ day of _____, 2020, by _____, as _____ of MB MARINA PARK, LLC, a Delaware limited liability company, who is personally known to me or who produced _____ as identification.

_____
Notary Public
Commission Number:_____

Commission Expires:_____

EXHIBIT "A"
ACCEPTABLE OWNER DEFINITION

A. "Acceptable Owner" means any individual, corporation or other entity which has, at a minimum, the following qualifications:

1. The Proposed Major Transferee is not a Foreign Instrumentality other than a member country of the European Union, as existing on the Effective Date, United Kingdom, Canada, Norway, Switzerland and Mexico, or a Person Controlled by any of the foregoing countries.

2. The Proposed Major Transferee must not be owned, or Controlled by entities or individuals who have been convicted, or are presently under indictment, for felonies under the laws of any foreign or United States of America jurisdiction. But the foregoing shall not apply to individuals or entities owning less than a twenty percent (20%) equity interest in the proposed transferee, other than officers, directors, managers or others who have the power to direct and control the business and affairs of the proposed transferee.

3. The Proposed Major Transferee must not in its charter or organizational documents (defined as the articles of incorporation and bylaws for any corporation, the partnership agreement and partnership certificate for any partnership, the articles of organization and limited liability company operating agreement for any limited liability company, the trust agreement for any trust and the constitution of the relevant government for any governmental entity, but expressly excluding any statements, positions, actions or allegations not contained in such charter organizational documents) expressly advocate or have as its stated purpose: (a) the violent overthrow of or armed resistance against, the U.S. government; or (b) genocide or violence against any persons; or (c) discrimination, hatred or animosity toward persons based solely on their race, creed, color, sex or national origin.

4. The Proposed Major Transferee or an Affiliate of such Proposed Major Transferee Controlling such Proposed Major Transferee or Person with an ownership interest in such Proposed Major Transferee Controlling such Proposed Major Transferee, shall have had no violations of any applicable law against such Proposed Major Transferee, or any other property owned or managed by such Proposed Major Transferee, within Florida, which have resulted in a forfeiture of the Proposed Major Transferee's entire interest in such other property.

5. The Proposed Major Transferee must not (nor any of the individuals or entities who own at least a twenty percent (20%) equity interest in such Proposed Major Transferee or are officers, directors, managers or otherwise have the power to direct and control the business and affairs of such Proposed Major Transferee) have filed or been discharged from bankruptcy, or have been the subject of an involuntary bankruptcy, reorganization or insolvency proceedings within the past five (5) years (bankruptcy filings by Affiliates shall not disqualify a Proposed Major Transferee, unless such Affiliates are any of the individuals or entities described in the parenthetical immediately above).

B. "Acceptable Owner Criteria": The foregoing categories of requirements set forth in paragraph A above are collectively defined as the "Acceptable Owner Criteria."

C. Evaluation of the Acceptable Owner Criteria:

Solely for the purpose of evaluating whether the Proposed Major Transferee has met the Acceptable Owner Criteria, the Proposed Major Transferee shall provide the following information to the Developer and certify that the information provided by the Proposed Major Transferee is true and correct and that the proposed transferee meets or exceeds the Acceptable Owner Criteria:

1. information sufficient for the City or any outside vendor engaged by the City to perform a due diligence investigation pursuant to paragraph D below, including copies of any applicable operating licenses;

2. identification and summary description of its principals and its major real estate or other investments;

3. a list of all bankruptcies filed by such Proposed Major Transferee or to which such Proposed Major Transferee was a party-bankrupt, if any; and

4. such other evidence as is commercially reasonably necessary as determined by Developer to establish that the new entity proposed to be the Acceptable Owner meets the Acceptable Owner Criteria.

D. With respect to any proposed Transfer to a Proposed Major Transferee, City may, at its sole discretion, engage an outside vendor to perform a due diligence investigation at the Developer's or such Proposed Major Transferee's sole expense, which may include a search of civil, criminal, or bankruptcy proceedings in federal and state jurisdictions; regulatory filings; tax filings; lien, judgment and Uniform Commercial Code searches; business registrations, and the like; provided, however, that City's right to conduct its own due diligence shall not expand or deemed to expand the Acceptable Owner Criteria or impose additional criteria with respect to whether a proposed transferee constitutes an Acceptable Owner. City shall be entitled to engage an independent accounting firm, the reasonable costs of which shall be borne by Developer or such Proposed Major Transferee, to review the information upon which the Proposed Major Transferee's certifications were based, for the purpose of determining whether the certifications and/or information provided to the City is accurate and complete. Developer shall, or shall cause such Proposed Major Transferee to, reimburse City, upon demand, for any reasonable costs incurred by City in connection with such Transfer or proposed Transfer to a Proposed Major Transferee, including the reasonable out-of-pocket costs of making inquiries and investigations into the conformance with the Acceptable Owner Criteria of such Proposed Major Transferee and the reasonable legal costs incurred, if any, in connection therewith.

E. <u>Confirmation/Approval Process for Proposed Transferees</u>:

Regarding the City's confirmation that a Proposed Major Transferee is an Acceptable Owner, or the City's approval of a Transfer that is not a Permitted Transfer, the parties hereby agree that:

1. The City Manager shall rely solely on the Proposed Major Transferee's certification that the Proposed Major Transferee meets the Acceptable Owner Criteria (if a Permitted Transfer), along with the information provided by the Proposed Major Transferee and the results of any due diligence investigation performed by the City.

2. The City Manager shall not unreasonably withhold the City's confirmation if the Proposed Major Transferee complies with the Acceptable Owner Criteria.

3. The 7City Manager shall not unreasonably withhold the City's Approval of a Transfer that is not a Permitted Transfer, except that with respect to a Transfer to a Foreign Instrumentality (other than a member country of the European Union, as existing on the Effective Date, United Kingdom, Canada, Norway and Mexico or Persons Controlled by any of the foregoing countries), such Transfer shall be subject to the prior written approval of the City Commission, which may be granted, conditioned or withheld by the City Commission in its sole discretion; and

4. If a proposed Transfer requires the City's confirmation or Approval, Developer shall deliver written notice to the City, which shall include (i) the name and address of the proposed transferee; (ii) the name and address of the proposed transferor; (iii) information describing the nature of the transaction; (iv) the percentage interest being conveyed; and (iv) the materials described in paragraph C above.

5. The City Manager shall have up to forty-five (45) days after the delivery of such written notice and the information required under paragraph C above, to determine whether, on a commercially reasonable basis, the Proposed Major Transferee meets the Acceptable Owner Criteria if a Permitted Transfer. The City Manager shall have up to sixty (60) days after the delivery of such written notice and the information required under paragraph C above whether to Approve in accordance herewith a Transfer that is not a Permitted Transfer.

6. Provided that no Event of Default is then continuing, Developer's request for confirmation that the Proposed Major Transferee meets the Acceptable Owner Criteria shall be deemed confirmed if the first correspondence from Developer to the City requesting such confirmation is in an envelope marked "PRIORITY" and contains a bold-faced, conspicuous (in a font size that is not less than fourteen (14)) legend at the top of the first page thereof stating that "THIS IS A REQUEST FOR CONFIRMATION OF A PERMITTED TRANSFER UNDER SECTION 5.4 OF THE DEVELOPMENT AGREEMENT, DATED AS OF [_____], 2020, AND FAILURE TO RESPOND TO THIS REQUEST WITHIN FORTY-FIVE (45) DAYS WILL RESULT IN THE REQUEST BEING DEEMED CONFIRMED," and is accompanied by the information and documents required above and City fails to respond or to deny such request for confirmation in writing within such forty-five (45) day period. Provided that no Event of Default is then continuing, Developer's request for Approval of a Transfer that is not a Permitted Transfer shall be deemed Approved if the first correspondence from Developer to the City requesting such Approval is in an envelope marked "PRIORITY" and contains a bold-faced, conspicuous (in a font size that is not less than fourteen (14)) legend at the top of the first page thereof stating that "THIS IS A REQUEST FOR APPROVAL OF A TRANSFER UNDER SECTION 5.4 OF THE DEVELOPMENT AGREEMENT, DATED AS OF [_____], 2020, AND FAILURE TO RESPOND TO THIS REQUEST WITHIN SIXTY (60) DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED" and is accompanied by the information and documents required above and City fails to respond or to deny such request for Approval in writing within such sixty (60) day period. Any Transfer shall be subject to the deemed Approval provisions set forth above in this subparagraph E.6, provided, however, that the City Commission shall have sixty (60) days after receipt of written notice from Developer for Approval of any proposed Transfer to a Foreign Instrumentality (other than a member country of the European Union, as existing on the Effective Date, United Kingdom, Canada, Norway and Mexico or Persons Controlled by any of the foregoing countries), to approve or disapprove of such proposed Transfer, and if the City has not notified Developer, in writing, of the City Commission's approval of such Transfer within such sixty (60) day period, then such Transfer shall be deemed approved.

7. If the City notifies Developer, in writing, within the first thirty (30) days of such forty-five (45) or sixty (60) day period, as applicable, that the information submitted is, on a commercially reasonable basis, incomplete or insufficient (and specifies in what ways it is incomplete or insufficient), then Developer shall supplement such information, on a commercially reasonable basis, and the City Manager (or City Commission, with respect to Transfers to Foreign Instrumentalities requiring City Commission approval) shall have twenty (20) days after such supplemental information is provided to make its determination whether the Proposed Major Transferee meets the Acceptable Owner Criteria or to Approve a Transfer that is not a Permitted Transfer.

8. If the City Manager does not confirm that the Proposed Major Transferee does not meet the Acceptable Owner Criteria or disapproves a Transfer that is not a Permitted Transfer, the City Manager shall provide to Developer specific written, commercially reasonable reasons for such action. The failure to object to the Proposed Major Transferee or Transfer within the applicable time period set forth above shall be deemed to be the confirmation by the City of the Proposed Major Transferee as an Acceptable Owner or Approval of the proposed Transfer, except with respect to a proposed Transfer to a Foreign Instrumentality (other than a member country of the European Union, as existing on the Effective Date, United Kingdom, Canada, Norway and Mexico or Persons Controlled by any of the foregoing countries), which the City Commission must expressly approve in writing, as provided above, in order for such Transfer to be effective.

9. No confirmation by the City of a Proposed Major Transferee as an Acceptable Owner or its meeting of the Acceptable Owner Criteria shall have the effect of waiving or estopping the City from later claiming that said Acceptable Owner is no longer developing, operating or maintaining the Project according to the terms of this Agreement.

F. Interpretation:

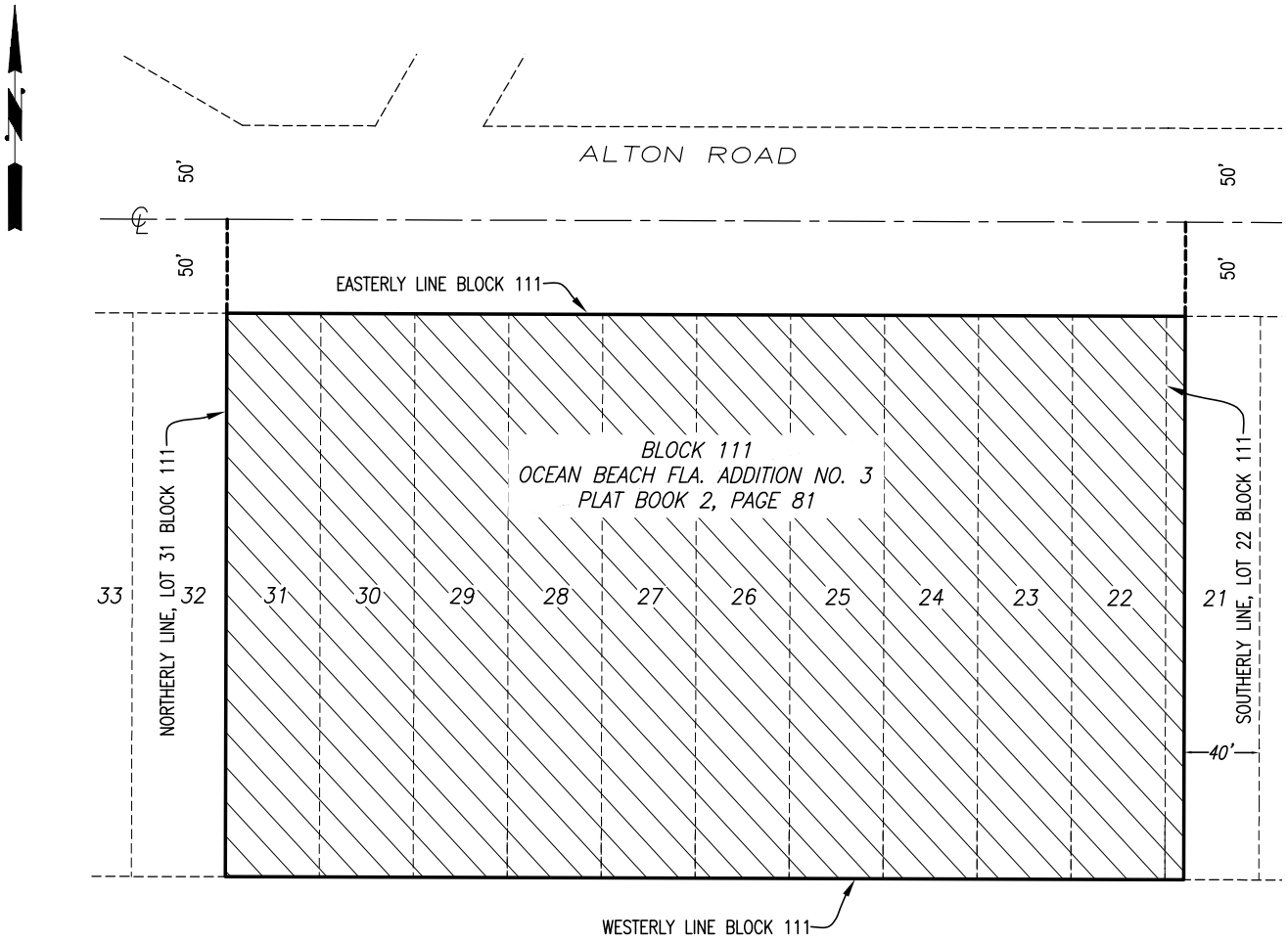
1. All acts and omissions as well as rights and duties shall be done in a commercially reasonable manner, unless the standard of “sole discretion” is used.

2. The implied covenant of good faith and fair dealing under Florida law is expressly adopted.

EXHIBIT "B-1"
LEGAL DESCRIPTION OF THE LAND

All of Lots 22 through 31, inclusive, and Lot 21, LESS the Southerly 40.00 feet thereof, in Block 111, of OCEAN BEACH, FLORIDA ADDITION NO. 3, according to the Plat thereof, as recorded in Plat Book 2, Page 81, of the Public Records of Miami-Dade County, Florida.

SKETCH TO ACCOMPANY LEGAL DESCRIPTION



LEGAL DESCRIPTION:

300–390 ALTON ROAD

ALL OF LOTS 22 THROUGH 31, INCLUSIVE, AND LOT 21, LESS THE SOUTHERLY 40.00 FEET THEREOF, IN BLOCK 111, OF OCEAN BEACH, FLORIDA ADDITION NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGE 81, OF THE PUBLIC RECORDS OF MIAMI–DADE COUNTY, FLORIDA.

SSA SCHWEBKE **SHISKIN** + ASSOCIATES (LB–87)

LAND SURVEYORS • ENGINEERS • LAND PLANNERS

3240 CORPORATE WAY, MIRAMAR, FLORIDA 33025 DADE:(305) 652–7010 BROWARD:(954) 435–7010 FAX:(305) 652–8284

THIS IS NOT A "LAND SURVEY."

ORDER NO.: 212255

DATE: JULY 21, 2020

SHEET 1 OF 1 SHEET(S)

F.B.: N.A.

EXHIBIT "B-2"
LEGAL DESCRIPTION OF THE RESIDENTIAL PARCEL

In accordance with Section 4.1(b) of this Agreement:

A maximum of 0.3 acres of the following described land to consist of the to-be-designed lobby and ancillary areas of the residential portion of the Project: All of Lots 22 through 31, inclusive, and Lot 21, LESS the Southerly 40.00 feet thereof, in Block 111, of OCEAN BEACH, FLORIDA ADDITION NO. 3, according to the Plat thereof, as recorded in Plat Book 2, Page 81, of the Public Records of Miami-Dade County, Florida. TOGETHER WITH air space above such Lots to the extent required for the 275,000 square foot residential improvements to be constructed therein.

The proposed design of the commercial and residential portion of the Project will evolve through the design development process and accordingly, the initial legal description of the Residential Parcel will be preliminary in nature and will be attached to this Agreement by amendment. The initial legal description will be consistent with the limitations contained herein and, in accordance with this Agreement, shall be sufficient to accommodate the design development for the residential portion of the Project and will thereafter be revised to conform to the updated and actual legal description thereof following receipt of all Governmental Approvals and following completion of the Project in accordance with this Agreement.

EXHIBIT "C"
COVENANT IN LIEU OF UNITY OF TITLE

Prepared by and Return to:

Raul J. Aguila, City Attorney
City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

(Space Reserved for Clerk)

DECLARATION OF RESTRICTIVE COVENANTS
IN LIEU OF UNITY OF TITLE

KNOW ALL BY THESE PRESENTS that the undersigned Owners hereby make, declare and impose on the land herein described, the following covenants that will run with the title to the land, which shall be binding on the Owners, their heirs, successors, assigns, personal representatives, mortgagees and lessees, and against all persons claiming by, through or under any of them;

WITNESSETH:

WHEREAS, the Owners hold fee simple title to certain property in the City of Miami Beach, Florida, located at 300-390 Alton Road, Miami Beach, Florida, and which is legally described in **Exhibit "A"** attached hereto and made a part hereof (the "**Property**"); and

WHEREAS, the Owners and the City of Miami Beach, a Florida municipal corporation (the "**City**"), entered into that certain Development Agreement dated as of _____ ____, 20__, a memorandum of which is recorded in Official Records Book _____, at Page _____ of the Public Records of Miami-Dade County (the "**Development Agreement**"'); and

WHEREAS, on _____ [date] the Owners obtained approval of the Design Review Board (DRB) under File No. _____ as recorded in Official Records Book _____, at Page _____ of the Public Records of Miami-Dade; and

WHEREAS, the Owners may develop buildings on the Property for sale to multiple owners in a condominium or non-condominium format of ownership and/or in one or more phases; and

WHEREAS, this instrument is executed in order to assure that the development of the property with future multiple ownership or phased development will not violate the Land Development Regulations of the City of Miami Beach.

NOW THEREFORE, in consideration of the premises, the Owners hereby agree as follows:

1. After a site plan for the Property has been submitted and approved under the City's Land Development Regulations, the Property will be developed as a unified development site in substantial

accordance with such approved site plan for the Property. No modification of such approved site plan shall be effectuated without the written consent of the then owner(s) of the portion or phase of the Property for which such proposed modification is sought and the Director of the City's Planning Department (such person, or any successor thereof, is referred to herein as the "**Director**"). No such then owner(s) nor the Director shall unreasonably withhold, condition or delay its consent, provided the proposed modification is in compliance with the Land Development Regulations. Should any such then owner(s) or the Director withhold, condition or delay its consent to any such proposed modification, then the owner(s) seeking the proposed modification shall be permitted to seek the same by application to modify the approved site plan at public hearing before the appropriate City board or the City Commission of Miami Beach, Florida (whichever by law has jurisdiction over such matters). If a public hearing is required, approval of such application shall be in addition to all other required approvals necessary for the proposed modification sought. Notwithstanding anything to the contrary contained in this Declaration: (a) if any building on the Property (or portion of a building) is developed and sold to multiple owners in a condominium format or non-condominium format of ownership with an owners' association, then only the owners' association (as opposed to each individual unit owner governed by the owners' association) shall be required to give, grant or execute any consent, approval or document required by this Declaration, and such consent, approval or document as given, granted or executed by the owners' association shall bind each and every individual unit owner in such building (or portion of the building) governed by the owners' association; (b) if the Property is developed in phases, then only the owner(s) of the phase(s) affected by the proposed modification shall be required to give, grant or execute any consent, approval or document required by this Declaration, and no consent, approval or document shall be required from the owner(s) of any phase(s) unaffected by such proposed modification shall be required; (c) the City shall not be required to obtain any consent, approval or document from any owner with respect to any proposed modification (including any subsequent zoning application) relating to the Park Project (as such term is defined in the Development Agreement); and (d) this Declaration of Restrictive Covenants in Lieu of Unity of Title (the "**Declaration**") shall not create any additional obligations for the Owners (or their respective successors and/or assigns) to obtain any consent, approval or document from the City with respect to any proposed modification (including any subsequent zoning application) relating to the "**Development Site**" (as such term is defined in the Development Agreement), other than the written consent of the Director for modifications to the approved site plan, as provided above. Nothing contained in the preceding sentence shall relieve the Owners (and their successors and assigns) from the obligation to obtain any approvals or authorizations from the City required by law or any other instrument or agreement apart from this Declaration.

2. If the Property is developed in phases, then each phase will be developed in substantial accordance with the approved site plan for the Property.

3. In the event the Owners shall convey any portion of the Property to any person or entity subsequent to site plan approval for the Property, each of the subsequent owners shall be bound by the terms, covenants, restrictions and limitations of this Declaration. Owners further agree that they will not convey portions of the Property to any other person or entity unless and until the Owners and such other person or entity shall have mutually executed and delivered, in recordable form, an instrument to be known as an "**easement and operating agreement**" which shall contain, among other things, the following easements to the extent required for the Property to be developed, constructed, conveyed, maintained and operated in accordance with the approved site plan for the Property despite the Property having multiple owners:

(i) Easements in the common area of each parcel for ingress to and egress from the other parcels;
(ii) Easements in the common area of each parcel for the passage and parking of vehicles:
(iii) Easements in the common area of each parcel for the passage and accommodation of pedestrians;
(iv) Easements for access roads across the common area of each parcel to public and private roadways;
(v) Easements for the installation, use, operation, maintenance, repair, replacement, relocation and removal of utility facilities in appropriate areas in each such parcel;
(vi) Easements on each such parcel for construction of buildings and improvements in favor of each such other parcel;
(vii) Easements upon each such parcel in favor of each adjoining parcel for the installation, use, maintenance, repair, replacement and removal of common construction improvements such as footings, supports and foundations;
(viii) Easements on each parcel for attachment of buildings;
(ix) Easements on each parcel for building overhangs and other overhangs and projections encroaching upon such parcel from the adjoining parcels such as, by way of example, marquees, canopies, lights, lighting devices, awnings, wing walls and the like;
(x) Appropriate reservation of rights to grant easements to utility companies;
(xi) Appropriate reservation of rights to grant road rights-of-way and curb cuts;
(xii) Easements in favor of each such parcel for pedestrian and vehicular traffic over dedicated private ring roads and access roads; and
(xiii) Appropriate agreements between the owners of the several parcels as to the obligation to maintain and repair all private roadways, parking facilities, common areas and common facilities and the like.

These easement, reservation and agreement provisions (or portions thereof) will be waived by the Director if they are not applicable to the portion of the Property then being conveyed (such as, but not limited to, conveyances to purchasers of individual condominium units, or conveyance that are separated by a street or road). These easement, reservation and agreement provisions shall not otherwise be waived or amended without prior written approval of the City Attorney. In addition, the easement and operating agreement shall contain such other provisions with respect to the development, construction, conveyance, maintenance and operation of the Property as to which the parties thereto may agree, all to the end that although the Property may have several owners, it will be developed, constructed, conveyed, maintained and operated in accordance with the site plan approved for the Property.

4. The provisions of this Declaration shall become effective upon their recordation in the public records of Miami-Dade County, Florida, and shall continue in effect for a period of thirty (30) years after the date of such recordation, after which time they shall be extended automatically for successive periods of ten (10) years each, unless released in writing by the then owner(s) of the Development Site and the Director (acting for and on behalf of the City) upon the demonstration and affirmative finding that the same is no longer necessary to preserve and protect the Development Site for the purposes herein intended.

5. The terms, covenants, restrictions and limitations of this Declaration may be amended, modified or released by a written instrument executed by the then owner(s) of the Development Site (with joinders by all mortgagees) and the Director (acting for and on behalf of the City). Should this Declaration be so modified, amended or released, then the Director shall forthwith execute a written

instrument effectuating and acknowledging such amendment, modification or release; it being acknowledged and agreed that no amendment, modification or release of this Declaration shall be effective without the Director's written approval of, or execution of a written instrument effectuating and acknowledging, such amendment, modification or release.

6. Enforcement of the terms, covenants, restrictions and limitations of this Declaration shall be by action against any parties or persons violating or attempting to violate any such terms, covenants, restriction or limitation of this Declaration. The prevailing party to in action or suit pertaining to or arising out of this Declaration shall be entitled to recover, in addition to costs and disbursements, allowed by law, such sum as the Court may adjudge to be reasonable for the services of his attorney. As used herein, the term "prevailing party" means the party who receives substantially the relief sought upon final, non-appealable judgment, order, or other disposition of a court of competent jurisdiction. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

7. Invalidation of any term, covenant, restriction or limitation of this Declaration by a final, non-appealable order of a court of competent jurisdiction shall not affect any of the other term, covenant, restriction or limitation of this Declaration, all of which shall remain in full force and effect.

8. This Declaration shall be recorded in the public records of Miami-Dade County at the Owners' expense.

9. All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

10. In the event of any violation of this Declaration, in addition to any other remedies available, the City is hereby authorized to withhold any future permits, and refuse to make any inspections or grant any approval, until such time as this Declaration is complied with.

11. This Declaration is recorded for the limited purpose of ensuring that the Property is developed as a unified development site under the City's land development regulations and is not intended to and does not modify, limit, or derogate any rights or privileges that may benefit the Property or any portion thereof, including, without limitation, any available exemption from or reduction in ad valorem taxation and assessments, nor does this Declaration prohibit the division of the Property into independent tax parcels and folios as the Owner may deem necessary or appropriate in its sole discretion, and all such rights and privileges are hereby expressly reserved.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK—SIGNATURE PAGES TO FOLLOW]

Signed, witnessed, executed and acknowledged on this ____ day of _____, _____.

[*Note: All others require attachment of original corporate resolution of authorization]

WITNESSES:

_____
Signature

_____
Print Name

_____
Signature

_____
Print Name

OWNER:

_____
Individual Signature

_____
Print Name

_____
Name of Corporate Entity

_____
Position with Corporate Entity (Prez. VP, CEO)

Address: _____

_____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me, by means of [___] physical presence or [___] online notarization, by _____ _____, who is personally known to me or has produced _____, as identification.

Witness my signature and official seal this _____ day of _____, _____, in the County and State aforesaid.

_____

My Commission Expires:

Notary Public-State of _____

_____
Print Name

Signed, witnessed, executed and acknowledged on this ____ day of _____, _____.

WITNESSES:

_____
Signature

_____
Print Name

_____
Signature

_____
Print Name

OWNER:

_____
Individual Signature

_____
Print Name

Address: _____

_____

_____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me, by means of [___] physical presence or [___] online notarization, by _____ _____, who is personally known to me or has produced _____, as identification.

Witness my signature and official seal this ____ day of _____, _____, in the County and State aforesaid.

_____

Notary Public-State of _____

My Commission Expires:

_____
Print Name

Approved:

_____ _____
Director of Planning Date

Approved as to form & language & for execution:

_____ _____
City Attorney Date

EXHIBIT A
TO COVENANT IN LIEU OF UNITY OF TITLE

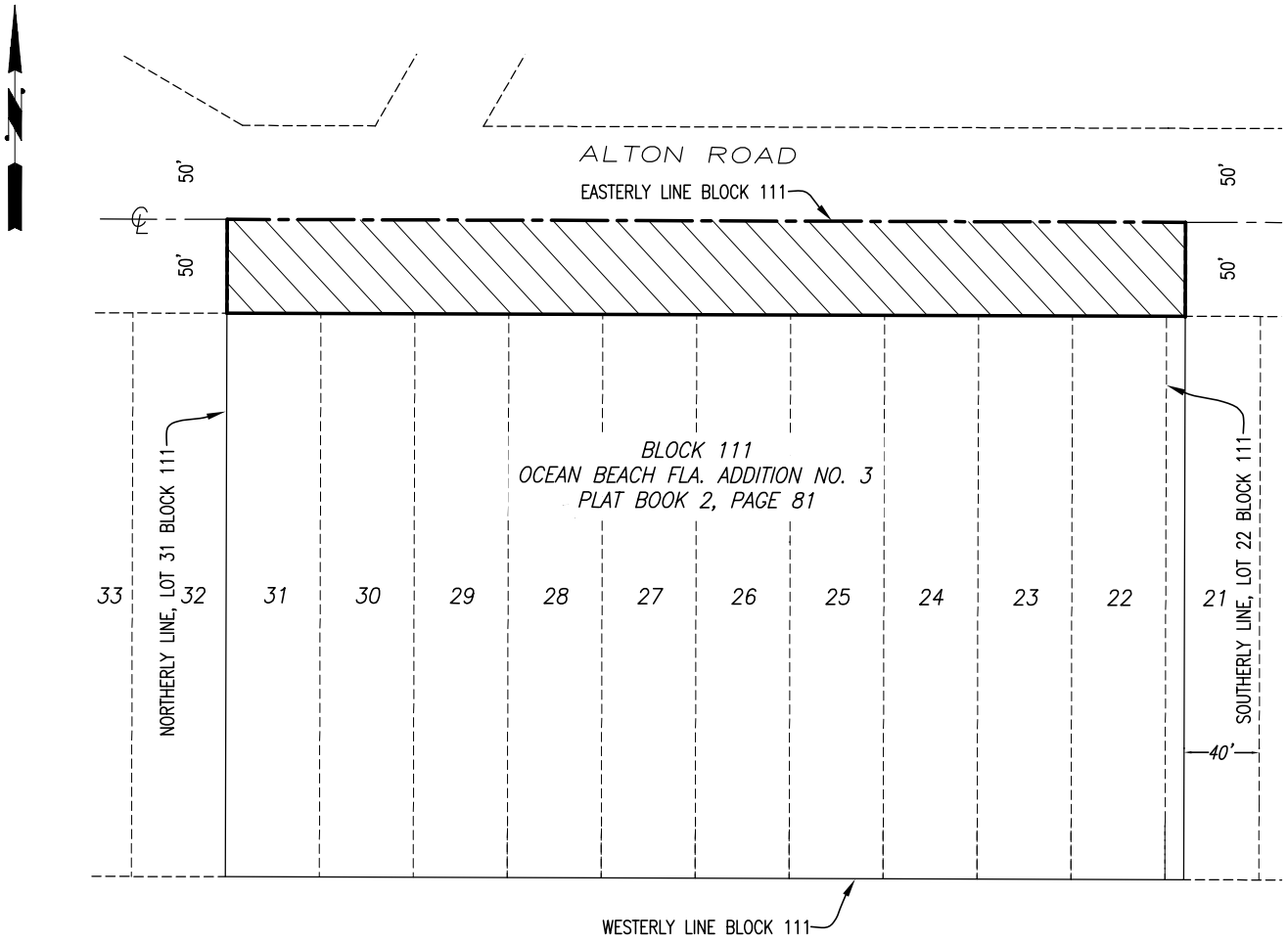
PROPERTY DESCRIPTION

[see attached]

EXHIBIT "D"
LEGAL DESCRIPTION OF CITY ROW AREA

[see attached]

SKETCH TO ACCOMPANY LEGAL DESCRIPTION



LEGAL DESCRIPTION:

PORTION OF ALTON ROAD RIGHT-OF-WAY ADJACENT TO 300-390 ALTON ROAD:

ALL THAT PORTION OF ALTON ROAD LYING WESTERLY OF THE CENTERLINE AND LYING EASTERLY OF, AND ADJACENT TO, LOTS 22 THROUGH 31, INCLUSIVE, AND LOT 21, LESS THE SOUTHERLY 40.00 FEET THEREOF, IN BLOCK 111, OF OCEAN BEACH, FLORIDA ADDITION NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGE 81, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

SSA SCHWEBKE **SHISKIN** + ASSOCIATES (LB-87)

LAND SURVEYORS • ENGINEERS • LAND PLANNERS

3240 CORPORATE WAY, MIRAMAR, FLORIDA 33025 DADE:(305) 652-7010 BROWARD:(954) 435-7010 FAX:(305) 652-8284

THIS IS NOT A "LAND SURVEY."

ORDER NO.: 212255A

DATE: JULY 21, 2020

SHEET 1 OF 1 SHEET(S)

F.B.: N.A.

EXHIBIT "E-1"

ARTICLES OF ORGANIZATION OF RESIDENTIAL DEVELOPER

[see attached]

EXHIBIT "E-2"

ARTICLES OF ORGANIZATION OF COMMERCIAL RETAIL DEVELOPER

[see attached]

EXHIBIT "F"
MANDATORY PROJECT ELEMENTS

(a) Commercial Retail Improvements and Commercial Retail Project, including Park Project.

(i) The Commercial Retail Improvements shall have (y) approximately 45,000 square feet of neighborhood-oriented retail uses, cafes and/or restaurants and office and marina uses and (z) any outdoor seating created in connection with such uses; provided, however, the Commercial Retail Improvements shall not include any free-standing outdoor bars or entertainment (unless otherwise permitted by the City Code) or other uses prohibited by the Marina Lease.

(ii) The Commercial Retail Improvements shall include approximately 100 parking spaces for use by the marina and Commercial Retail Premises [to replace the parking spaces within the Existing Improvements] [OPEN] and drop off area for valet to serve the Commercial Retail Improvements and other [operational amenities of the marina including short term loading/unlading/delivery for marina tenants, office/retail tenants, and an area (with adequate turn ratios) to handle fuel tractor trailer, box trucks and vessel provisioning vehicles located on the north side of the Podium and Tower.] [OPEN]

(iii) The Commercial Retail Improvements shall include a publicly accessible restroom facility, which, at Developer's election, may be located within the Park Project.

(iv) The Commercial Retail Improvements shall include the Green Space and the Park Project; provided however, and notwithstanding anything to the contrary contained in this Agreement, those areas of the Green Space that do not constitute the Park Project are not required to be completed until Completion of Construction of the entire Project. The Certificate of Occupancy – Park shall be issued no later than the Park Project Completion Date.

(v) The ground floor footprint of the Podium shall not exceed 45,000 gross square feet (exterior wall to exterior wall).

(vi) Baseline Park.

(b) Residential Improvements and Residential Project.

(i) The Residential Improvements shall include up to 60 residential units constructed within approximately 275,000 gross square feet of residential building development and associated infrastructure; provided, however, that the total floor area of the Residential Improvements and the Commercial Retail Improvements shall not exceed 319,802 square feet.

(ii) The Tower shall not exceed 120 feet by 120 feet in width from 66' NGVD and shall not exceed 385 feet in height (as measured from Base Flood Elevation plus maximum Freeboard (BFE + 5 feet), and further, as provided in the City's Land Development Regulations, including Section 142-1161 of the City Code), and any architectural projections thereof will comply with the terms of this Agreement and other applicable provisions of the City's Land Development Regulations.

(c) Tapering. The Podium shall taper [with increasing setbacks from the ground floor until it is less than the width of the Tower] [OPEN].

EXHIBIT "G"

FORM OF MARINA LEASE

[see attached]

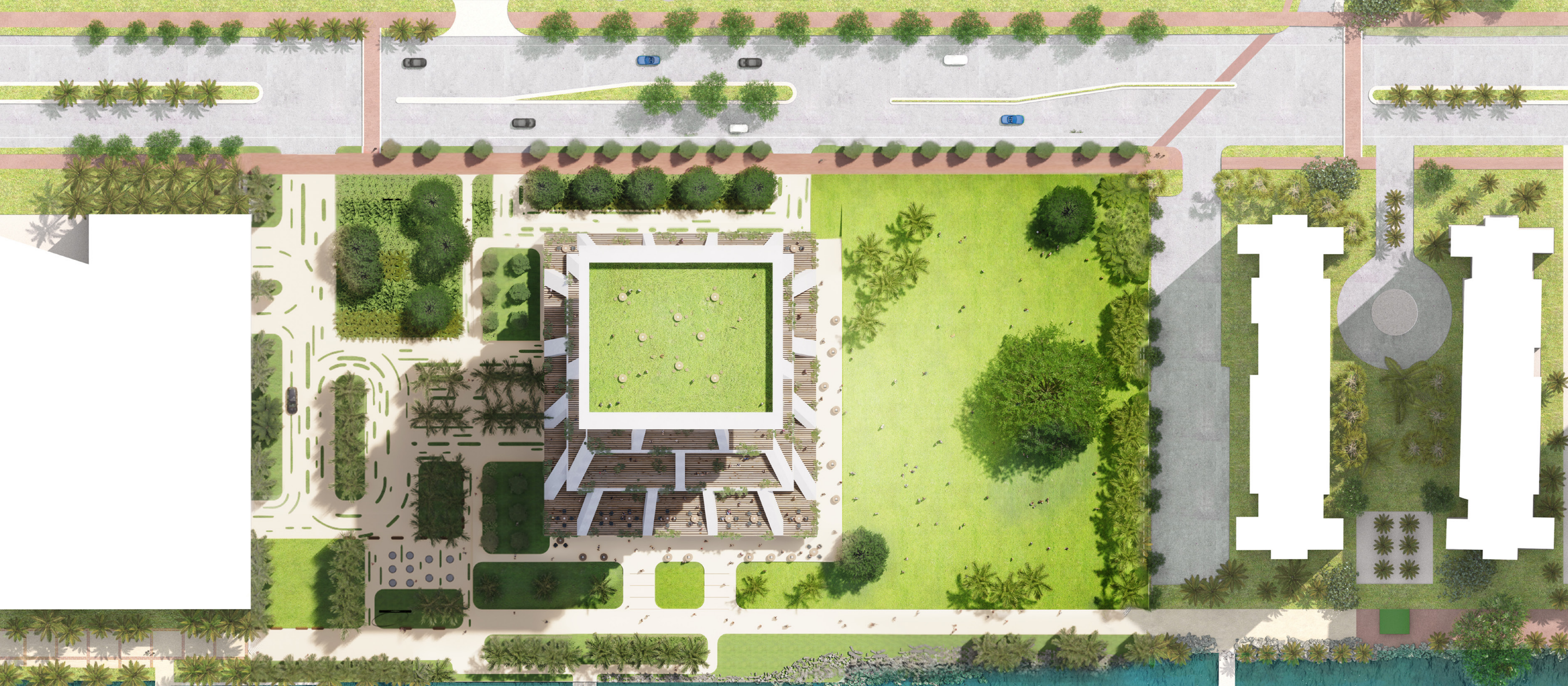
(Marina Lease is attached as Exhibit 5 to the consolidated Commission Memorandum for the Marina Park Project, to which this Development Agreement is attached)

EXHIBIT "H"
PUBLIC BENEFIT IMPROVEMENTS

- Resiliency Features and Improvements for the Park:
    - A stormwater management system capable of retaining and disposing runoff in accordance with the City of Miami Beach as well as the F-DOT design storm requirements.
        - Miami-Dade County RER (DERM) 5-Year, 1-Hour 3.2" rainfall storm
        - Miami-Dade County RER (DERM) 5-Year, 24-Hour, 6" rainfall storm
        - City of Miami Beach 10-Year, 24-Hour, 8.75" rainfall storm (which includes a 1.25 factor of safety)
        - FDOT 100-Year, 24-Hour, 13" rainfall storm
    - Water management for park on-site stormwater, which may include:
        - The topography sloped and pitched to manage the water quality interface between stormwater, groundwater and baywater.
        - Cistern to capture water runoff during storm events and provide reuse opportunity to irrigate planting.
    - The park will provide different areas to include open green spaces, benches, drinking fountains, outdoor living rooms enclosed with landscaping.
    - Provide landscape to encourage habitat areas for pollinators, including at least 70% of plants and trees to be native.
    - Provide lighting to limit backlight, up light and glare, within temperature ranges in accordance with City safety requirements, including but not limited to light poles, lighted bollards and landscaping lighting.
    - Information and educational signage to be installed to inform and inspire the public about resiliency and sustainability efforts being made in the property/park.
- Water quality improvements for offsite stormwater management, which shall include the following, provided funding is available:
    - Cistern to capture water runoff during storm events and provide reuse opportunity to irrigate planting.
    - Stormwater water management for water quality to be for a total capacity of 16,000 GPM; with an aspirational goal to achieve 24,000 GPM (construction and installation only; City to maintain all wells and stormwater management facilities associated with this requirement)
- Alton Road ROW Enhancements
- Baywalk Enhancements in front of Area 1 and Area 9, exclusive of the sea wall, bulkhead, rip-rap and associated support structures, which may include:
    - Pavers, lighting, benches, and landscaping
- Artwork spent on project above and beyond the AIPP requirements

EXHIBIT "I"
PROJECT CONCEPT PLAN

[see attached]



MARINA PARK - CONCEPT SITE PLAN

EXHIBIT "J"
FORM OF PURCHASE AND SALE AGREEMENT

[see attached]

(Purchase and Sale Agreement is attached as Exhibit 4 to the consolidated Commission Memorandum for the Marina Park Project, to which this Development Agreement is attached)

EXHIBIT "K"
FORM OF RECIPROCAL EASEMENT AGREEMENT

[see attached]

(Reciprocal Easement Agreement is attached as part of Exhibit 4 to the consolidated Commission Memorandum for the Marina Park Project, to which this Development Agreement is attached)

EXHIBIT "L"

LEGAL DESCRIPTION OF COMMERCIAL RETAIL PREMISES

In accordance with Section 4.1(a) of this Agreement, the Commercial Retail Premises will include up to 45,000 square feet of the Land for the commercial portion of the Project, and the legal description thereof will be incorporated into this Agreement following Design Review Board Approval of the Project and shall be subject to further revision upon Completion of Construction of the Project in accordance with Section 2.20 of this Agreement.

EXHIBIT "M"
PRESENTLY PERMITTED DEVELOPMENT

(a) Permitted Development and Uses. The Development Site is currently located within the GU zoning district. The development regulations in the GU district are the average requirements contained in the surrounding zoning districts. The Development Site is surrounded by property zoned C-PS4, and as such, the C-PS4 zoning district regulations apply to the adjacent GU district. The main permitted uses in the City's GU District are government buildings and uses, including but not limited to parking lots and garages; parks and associated parking; schools; performing arts and cultural facilities; monuments and memorials. Any use not listed above shall only be approved after the city commission holds a public hearing. For the avoidance of doubt, no additional public hearing shall be required for approval of the uses authorized by the Development Agreement, following the City Commission's approval, following two readings/public hearings, of the Development Agreement, which shall be deemed to satisfy the public hearing requirement in Section 142-422 of the City Code.

(b) Density, Building Heights, Setbacks and Intensities. The maximum density, heights, setbacks and intensities for any development on the Development Site shall be regulated by the City's Land Development Regulations, Comprehensive Plan and any Governmental Requirements. The maximum floor area ratio in the C-PS4 district is 2.5. Building height requirements are as follows: 385 feet maximum height. The development regulations (setbacks, floor area ratio, signs, parking, etc.) shall be the average of the requirements contained in the surrounding zoning districts as determined by the City's Planning and Zoning Director. Notwithstanding the foregoing, the permitted height for the Project shall not exceed 385 feet, measured from Base Flood Elevation plus maximum Freeboard (BFE + 5 feet), and further, as provided in the City's Land Development Regulations, including, without limitation, Section 142-1161 of the City Code. This Agreement permits the following development on the Development Site: (i) up to 60 residential units, including single-family detached dwellings, townhomes, condominiums, and apartments; and (ii) approximately 45,000 square feet of retail, office and restaurant uses. The total floor area to be developed on the Development Site shall not exceed 319,802 square feet.

THIS EXHIBIT DESCRIBES THE PRESENTLY PERMITTED DEVELOPMENT FOR PURPOSES OF THE ACT ONLY. THE PROJECT SHALL CONFORM TO THE DESCRIPTION, TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT.

EXHIBIT "N"
REQUIRED DEVELOPMENT PERMITS AND VARIANCES

The following constitutes a generalized list of local permits anticipated as necessary to be approved by the terms of this Agreement:

1. Design Review Board, Planning Board, and/or Board of Adjustment approvals, pursuant to Chapter 118 of the City of Miami Beach Code.
2. Utility Permits
3. Demolition Permits
4. Building Permits
5. Environmental Permits
6. Hazardous Materials Removal Permit, if removal of hazardous materials is found necessary.
7. Public Works Permit, Paving and Drainage
8. Public Works Permit, Water and Sewer
9. Public Works Revocable Permits
10. Certificates of Use and/or Occupancy
11. Any variances or waivers that may be required pursuant to Chapters 114 through 142 of the City of Miami Beach Code
12. All other governmental approvals as may be applicable to the subject property from time to time pursuant to the terms of this Development Agreement, including but not limited to restrictive covenants in lieu of unity of title

EXHIBIT "O"
PUBLIC FACILITIES

The proposed development will be serviced by those roadway transportation facilities currently in existence as provided by state, county, and local roadways. The proposed development will also be serviced by public transportation facilities currently in existence, as provided by Miami- Dade County, the City of Miami Beach, and such other governmental entities as may presently operate public transportation services within the City of Miami Beach. Sanitary sewer, solid waste, drainage, and potable water services for the proposed development shall be those services currently in existence and owned or operated by Miami-Dade County, the Miami-Dade County Water and Sewer Department, the City of Miami Beach, and State of Florida. The proposed development shall be serviced by those existing educational facilities owned or operated by the Miami-Dade Public Schools District, if applicable. The proposed development shall be serviced by those existing parks and recreational facilities owned or operated by the United States Government within Miami Dade County, by the State of Florida, by Miami-Dade County, and by the City of Miami Beach. The proposed development shall be serviced by those existing health systems and facilities operated by the United States Government within Miami-Dade County, by the State of Florida, by Miami-Dade County, and by the City of Miami Beach.

The proposed development will also be serviced by any and all public facilities, as such are defined in Section 163.3221(13) of the Act, that are described in the Comprehensive Plan, specifically including those facilities described in the Infrastructure Element and the Capital Improvements Element therein, a copy of which is available for public inspection in the offices of the City Clerk of the City of Miami Beach. Notwithstanding the foregoing, the Project may be required to provide for some of its own services, including solid waste removal and stormwater drainage. The foregoing, however, shall not be deemed to be an approval of, nor shall it be deemed to relieve Developer of the obligation to comply with Section 163.3180, Florida Statutes.

EXHIBIT "P"
PUBLIC RESERVATIONS AND DEDICATIONS

1. Upon delivery of the completed Park Project to the City, the Park will be dedicated as a public park for the benefit of the general public pursuant to Section 4.1(e); and
2. Easements or reservations contemplated under Section 4.1(c) and Section 4.1(d) of this Agreement.

EXHIBIT "Q"
SHELL AND CORE IMPROVEMENTS OF BASELINE COMMERCIAL BUILDING

1. The structure, including columns, girders, beams, joists, and roof deck.

2. Masonry or concrete exterior walls.

3. Floor: Concrete slab shall be provided by Developer.

4. Egress Door: Egress will be provided per City Code requirements.

5. Electrical Service: Developer shall provide empty conduit for electrical service. Distribution within the tenant space to be by tenant. Electrical panel by tenant.

6. Telephone: Developer shall provide one (1) empty conduit from point of service to a location within the tenant space.

7. Water: Developer will bring domestic water and sanitary sewer lines to each tenant space.

8. Storefront: Developer shall provide code-compliant storefront system.

9. Heating, Ventilation and Air Conditioning: Developer will provide a supply and return line from the base building system stubbed into the tenant space and valved off. Each tenant will be required to provide its own A/C system.

10. Sprinkler System: Code-compliant sprinkler system to be provided by Developer.

The foregoing specifications shall be subject to change and in accordance with applicable City Code requirements.

EXHIBIT "R"
OWNERSHIP INTERESTS IN DEVELOPER

[see attached]

EXHIBIT "S"
CONSTRUCTION AGREEMENT REQUIRED CLAUSES

(a) The City shall be named as an additional insured on all insurance required by such Construction Agreement and under which the Developer is an additional or named insured.

(b) The Construction Agreement shall contain usual and customary warranties by the Contractor in favor or the Developer and the City (including a warranty against defective workmanship) for a period of not less than one year following substantial completion of the Project or applicable portion thereof.

EXHIBIT "T"
FORM OF PERFORMANCE BOND AND PAYMENT BOND

AIA® Document A312™ - 2010

Payment Bond

CONTRACTOR:
(Name, legal status and address)
« »« »
« »

SURETY:
(Name, legal status and principal place of business)
« »« »
« »

OWNER:
(Name, legal status and address)
« »« »
« »

CONSTRUCTION CONTRACT
Date: « »
Amount: $ « »
Description:
(Name and location)
« »
« »

BOND
Date:
(Not earlier than Construction Contract Date)
« »
Amount: $ « »
Modifications to this Bond: « » None X See Section 18

CONTRACTOR AS PRINCIPAL
Company: *(Corporate Seal)*

Signature:
Name and Title: « »« »

SURETY
Company: *(Corporate Seal)*

Signature:
Name and Title: « »« »

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or **BROKER:**
« »
« »
« »

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)
« »
« »
« »« »
« »

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and

.2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change to the Construction Contract, or to related subcontracts, purchase orders and other obligations, including, without limitation, changes to the work to performed under the Construction Contract, changes to the Contract Price of the Construction Contract or changes to the time within which the work under the Construction Contract is to be performed, and the obligations of the Surety and this Bond shall in no way be impaired by any such changes.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- **.1** the name of the Claimant;
- **.2** the name of the person for whom the labor was done, or materials or equipment furnished;
- **.3** a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- **.4** a brief description of the labor, materials or equipment furnished;
- **.5** the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- **.6** the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- **.7** the total amount of previous payments received by the Claimant; and
- **.8** the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

This Payment Bond is intended to, and shall be deemed to be, an unconditional statutory Payment Bond pursuant to the requirements of Section 713.23, Florida Statutes. All of the provisions of Section 713.23, Florida Statutes, and all related provisions of Chapter 713, Florida Statutes, are incorporated into this Payment Bond by this reference. Insofar as any provision of this Payment Bond is inconsistent with, or more limiting or more expansive than, the provisions of Section 713.23, Florida Statutes, or any related provision of Chapter 713, Florida Statutes, then the statutory provisions shall control.

In addition to the modification set forth in this Section 18, Section 11 of this Bond has been modified as set forth therein.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		**SURETY**	
Company:	*(Corporate Seal)*	Company:	*(Corporate Seal)*
Signature:		Signature:	
Name and Title:	« »« »	Name and Title:	« »« »
Address:	« »	Address:	« »

AIA® Document A312™ - 2010

Performance Bond

CONTRACTOR:
(Name, legal status and address)
« »« »
« »

SURETY:
(Name, legal status and principal place of business)
« »« »
« »

OWNER:
(Name, legal status and address)
« »« »
« »

CONSTRUCTION CONTRACT
Date: « »
Amount: $ « »
Description:
(Name and location)
« »

BOND
Date:
(Not earlier than Construction Contract Date)
« »
Amount: $ « »
Modifications to this Bond: « » None X See Section 16

CONTRACTOR AS PRINCIPAL
Company: *(Corporate Seal)*

Signature:
Name and Title: « »« »

SURETY
Company: *(Corporate Seal)*

Signature:
Name and Title: « »« »

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or **BROKER:**
« »
« »
« »

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)
« »
« »
« »
« »

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

.1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

.2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

.3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by the Surety or a qualified surety acceptable to the Owner equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default (the Owner's acceptance of such contractors or sureties shall not be unreasonably withheld); or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall be equal to those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for, but not limited to, the following:

.1 the responsibilities of the Contractor for correction of defective work, latent defects in the work and completion of the Construction Contract;

.2 additional legal, design professional, delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and

.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change to the Construction Contract, or to related subcontracts, purchase orders and other obligations, including, without limitation, changes to the work to performed under the Construction Contract, changes to the Contract Price of the Construction Contract or changes to the time within which the work under the Construction Contract is to be performed, and the obligations of the Surety and this Bond shall in no way be impaired by any such changes.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within the applicable statute of limitations of the jurisdiction in which the Project is located.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

Sections 4, 5.3, 7, 10, & 11 to this Bond have been modified as set forth above.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		**SURETY**	
Company:	*(Corporate Seal)*	Company:	*(Corporate Seal)*
Signature:		Signature:	
Name and Title:	« »« »	Name and Title:	« »« »
Address:	« »	Address:	« »

RIDER

To be attached to and form a part of Bond No. _____, naming _____ as Principal, and _____ as Surety, in favor of _____ ("Owner") and _____ ("Additional Obligee"), in the amount of _____ ($_____).

The foregoing, however, is subject to the following provisions:

1. Notwithstanding anything contained herein to the contrary, there shall be no liability under the attached bond to the Additional Obligee, if there has been a failure by the Additional Obligee which has not been remedied or waived, (i) to pay the Contractor or the Surety (if the Surety elects to act under Sections 5.1, 5.2 or 5.3 of the attached bond), as required under the Construction Contract, or (ii) to perform and comply with the other material terms of the Construction Contract."
2. If the Surety elects to act under Section 5.1, 5.3 or 5.4 of the attached bond, then the Surety's aggregate liability to the Owner and the Additional Obligee, or any of them individually, is limited to the amount of the attached bond.

Signed and Sealed this _____ day of _____, _____

PRINCIPAL:

_____

By: _____

SURETY:

_____

By: _____
Attorney in fact

(CORPORATE SEAL)

(Power of Attorney must be attached)