CITY OF
FORT LAUDERDALE

All-America City

Memorandum

Memorandum No: 24-009

Date: January 12, 2024

To: Honorable Mayor, Vice Mayor, and Commissioners

From: Greg Chavarria, City Manager

Re: January 23, 2024, Agenda Publication Preview of Substantive Documents

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In the interest of providing additional review time for items with substantive documentation in the upcoming agenda, the below draft backup documents are being shared prior to official publication:

- CAM 24-0109: Resolution Approving Amendment No. 2 to the Master Lease Agreement Between the City of Fort Lauderdale and Rahn Bahia Mar, LLC for City Owned Property Known as Bahia Mar, Approving the Amended and Restated Declaration of Covenants and Restrictions of the Bahia Mar Master Association, Inc.
  - Amendment No. 2 to Master Lease Agreement
  - Declaration of Restrictive Covenants
  - Amended and Restated Declaration of C&R

- CAM 24-0003: Public Hearing - Resolution Approving Sublease Agreement for City-Owned Property Located at 501 Seabreeze Boulevard, Fort Lauderdale, Florida 33316, Pursuant to Section 8.13 of the City Charter, to ISHOF Peninsula, LLC
  - ISHOF Peninsula LLC Sub-lease Agreement

We anticipate these items will be presented on the January 23, 2024, agenda. Please note, these documents are in draft form and the content, along with the anticipated agenda date, are subject to change.

Please let us know if you need any clarification as you review the draft materials.

c: Anthony G. Fajardo, Assistant City Manager
Susan Grant, Assistant City Manager
Thomas J. Ansbro, City Attorney
David R. Soloman, City Clerk
Patrick Reilly, City Auditor
Department Directors
CMO Managers

CAM 24-0109 Backup: Amendment No. 2 to Master Lease Agreement

Amendment No. 2 to Master Lease Agreement

This Amendment No. 2, to the Master Lease Agreement ("**Amendment**") dated the _____ day of ___, 2024, by and between the City of Ft. Lauderdale, a municipal corporation of Florida ("**LESSOR**" or "**CITY**") and Rahn Bahia Mar L.L.C., a Delaware limited liability company ("**LESSEE**", together with LESSOR collectively referred to as "**Parties**" and individually as a "**Party**").

WHEREAS, the Parties entered into that certain Master Lease Agreement having an effective date of April 13, 2022 ("**Original Lease**") as amended by Amendment No. 1 to Master Lease Agreement dated October 31, 2022 ("**First Amendment**" together with the Original Lease collectively "**Lease**"); and

WHEREAS, the City has authorized and approved (i) the creation of the Bahia Mar Community Development District ("**CDD**"), pursuant to Ordinance No. C-23-44 of the City, (ii) the conveyance by the City to the CDD of the air rights described on **Schedule 1** attached hereto and made a part hereof ("**CDD Air Rights Parcel**") pursuant to Resolution No. ___, and (iii) the execution and recordation in the Public Records of Broward County, Florida prior to the conveyance of the CDD Air Rights Parcel of a Declaration of Restrictive Covenant in the form of **Schedule 2** attached hereto and made a part hereof ("**Restrictive Covenant**") and the Amended and Restated Master Declaration in the form of **Schedule 3** attached hereto and made a part hereof ("**Master Declaration**").

NOW THEREFORE, in consideration of $10 and other good and valuable consideration, the receipt adequacy and sufficiency of which is hereby acknowledged the Parties intending to be legally abound hereby agree as follows:

1. The restitutions hereof set forth are true and correct and are incorporated herein by this reference.

2. The Lease is amended by this Amendment and remains in full force and effect. To the extent of any inconsistency between the terms and provisions of this Amendment and the terms of the Lease, the terms of this Amendment shall supersede control to the extent of such inconsistency. Terms not otherwise defined herein shall have the meaning set forth in the Lease.

3. Section 3 and Section 4 of the First Amendment are amended and restated to provide that the "**Branded Hotel Parcel**" shall be located within the Hotel Building (and not the Hotel).

4. The definition of both "**Hotel Improvements**" and "**Hotel Building**" is amended to include the Hotel (and any parking and other related auxiliary and/or ancillary improvements related thereto) (as same may be modified from time to time), the Branded Hotel Unit(s) and any Branded Apartment Unit(s) to the extent located therein.

5. Section 7 of the First Amendment is revised to reflect that a "**Phased Building**" may also include the proposed Hotel Improvements.

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6. Exhibit B-9 of the First Amendment is revised to reflect that the Hotel and Residential R5 may also be a Phased Parcel and the premises upon which the Hotel Improvements are intended to be constructed shall be a Phased Parcel. At such time as the Lessee requests the City enter into a Phased Lease for the Hotel Improvements (including the Hotel, the Hotel Branded Unit(s), and any Branded Apartment Unit(s) to be located in the Hotel Improvements), the same shall be a Phased Parcel of a Phased Lease and removed from the Premises demised under the Master Lease.

7. Section 1.3 of the Lease is amended to provide that the Phased Lessee shall be authorized and permitted to terminate the Phased Lease demised to such Phased Lessee as provided in the Restrictive Covenant and upon any such termination, the Restrictive Covenant shall remain in full force and effect.

8. Article 3 of the Lease is amended to add the following definitions:

"**Air Rights Owner**" shall mean the CDD and any successor in interest of portions of the CDD Air Rights Parcel from time to time.

"**Approved Site Plan**" shall mean the site plan approved by the City on or about June 20, 2023, in the basic layout is attached hereto and made a part hereof as **Schedule 3**.

"**CDD**" shall mean the Bahia Mar Community Development District and its successor and assigns.

"**CDD Air Rights Parcel**" shall mean the fee simple title of the air rights with respect to the property described in **Schedule 1** attached hereto and made a part hereof.

"**Phase 1**" shall mean the two (2) residential buildings (identified as Residential Tower 1 and Residential Tower 2 on the Approved Site Plan) and the Hotel Building (identified as Hotel on the Approved Site Plan).

"**Promenade**" shall mean the boardwalk, landscape buffer and other improvements, if any identified as Marina Promenade on the Approved Site Plan.

"**Restrictive Covenant**" shall mean that certain Declaration of Restrictive Covenant in the form of **Schedule 2** attached hereto and made a part hereof and any amendment thereto.

"**Specified Park**" shall mean the park identified as Bahia Mar Central Park on the Approved Site Plan.

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9. The definition of Phased Lease in the Lease and **Exhibit G** attached to the Lease are hereby amended to add Section 4.4 to the Phased Lease which shall read as follows:

> Section 4.4 Termination. The LESSEE shall have the right to terminate this Phased Lease upon written notice to the LESSOR as provided in the Restrictive Covenant.

10. The definition of Phased Lessor in each Phased Lease is amended to reflect that the Lessor shall be the City and each applicable Air Rights Owner shall join in each such Phased Lease to subject the CDD Air Rights Parcel owned by such applicable Air Rights Owner located above each Phased Parcel to be a portion of such Phased Parcel of such Phased Lease, with the City retaining all economic benefits under each such Phased Lease.

11. The definition of "**Commercial Space**" in each Phased Lease is amended so that Commercial Space shall include the Hotel.

12. The Master Declaration is deleted in its entirety and the Amended and Restated Master Declaration in the form of **Schedule 4** attached hereto and made a part hereof shall be the Master Declaration.

13. The Lease is amended to add subsection 11.13 as follows:

> 11.13 Construction of Specified Park and Promenade. The LESSEE agrees that, subject to a Force Majeure Event, the LESSEE shall substantially complete or cause to be substantially completed, the Promenade and Specified Park on or before obtaining a certificate of occupancy (or similar governmental approval permitting occupancy) of the three buildings comprising Phase 1.

14. The Lease is amended to add Article 40 as follows:

Article 40
CDD

> **Section** 40.1 Authorization. The City has (i) established the CDD pursuant to Ordinance No. C-23-44 of the City, and (ii) agreed to execute and have recorded in the Public Records of Broward County, Florida, the Restrictive Covenant, Master Declaration and a deed conveying to the CDD the CDD Air Rights Parcel ("**Deed**").
>
> Section 40.2. Execution and Recordation. Simultaneous with the execution of this Amendment (i) the City and the other parties to the Restrictive Covenant and Master Declaration shall execute such Restrictive Covenant and Master Declaration and the LESSEE shall record same in the Public Records of Broward County, Florida, and (ii) the City shall execute and deliver to the CDD the Deed conveying the CDD Air Rights Parcel to the CDD and the CDD shall record the Deed.

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15. This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same Amendment. Facsimile or electronic transmission copies of execution pages of this Amendment or any amendments of this Amendment or notices pursuant this Amendment shall constitute original execution documents for purposes of this Amendment or any such amendment or notice.

[SIGNATURES ON FOLLOWING PAGES]

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IN WITNESS WHEREOF, the Parties have executed this Amendment as of the day and year first above written.

WITNESSES:

_____

_____
[Witness type/print name]

_____

_____
[Witness type/print name]

LESSOR:
CITY OF FORT LAUDERDALE

By:_____
_____, Mayor

By:_____
_____, City Manager

ATTEST:

_____
_____, City Clerk

WITNESSES:

_____

_____
[Witness type/print name]

_____

_____
[Witness type/print name]

LESSEE:

RAHN BAHIA MAR L.L.C., a Delaware limited liability company (successor-in-interest to Rahn Bahia Mar, Ltd., a Florida limited partnership)

By:_____
Name:_____
Title:_____

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STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____, 20__, by _____, Mayor of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida. He is personally known to me or produced _____ as identification.

_____
Notary Public, State of Florida
(Signature of Notary taking Acknowledgement)

_____
Name of Notary Typed,
Printed or Stamped

My Commission Expires: _____

_____
Commission Number

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____, 20__, by _____, City Manager of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida. He is personally known to me or has produced _____ as identification.

Notary Public, State of Florida
(Signature of Notary taking Acknowledgement)

_____
Name of Notary Typed,
Printed or Stamped

My Commission Expires: _____

_____
Commission Number

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STATE OF FLORIDA:
COUNTY OF _____:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____, 20__, by _____, as the _____ of RAHN BAHIA MAR L.L.C, a Delaware limited liability company, on behalf of the company. He is personally known to me or produced _____ as identification.

_____
Notary Public, State of Florida
(Signature of Notary taking Acknowledgement)

_____
Name of Notary Typed,
Printed or Stamped

My Commission Expires: _____

_____
Commission Number

The undersigned, the holder of that certain mortgage recorded as Instrument #114608286 of the Public Records of Broward County, Florida, as amended, joins in this Master Lease Agreement to consent to the terms of this Master Lease Agreement.

SYNOVUS BANK, a Georgia banking corporation

By: _____
Name: _____
Title: _____
Date: _____

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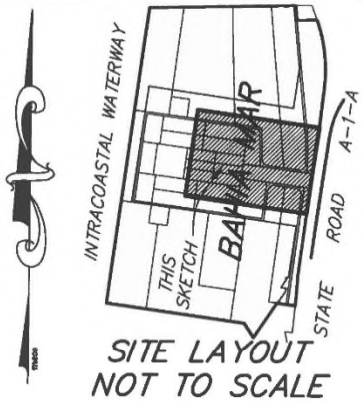
SCHEDULE 1

CDD AIR RIGHTS PARCEL

McLAUGHLIN ENGINEERING COMPANY LB 285
A DIVISION OF CONTROL POINT ASSOCIATES, INC. LB 8137
CUTTING EDGE SURVEYING * PLATTING * LAND PLANNING
1700 N.W. 64th STREET #400, FORT LAUDERDALE, FLORIDA 33309
PHONE: (954) 763-7611 * EMAIL: JHADDIX@CPASURVEY.COM

SKETCH AND DESCRIPTION
BAHIA MAR
CDD PODIUM AIRSPACE
SHEET 1 OF 2 SHEETS



SITE LAYOUT
NOT TO SCALE

LEGAL DESCRIPTION:

A portion of the Parcels and those certain 10.00 foot Walkways adjacent thereto and within said Parcels, BAHIA MAR, according to the plat thereof, as recorded in Plat Book 35, Page 39, of the public records of Broward County, Florida, **above the ground level (preconstruction), Elevation= 3.5 feet, North American Vertical Datum 1988,** more fully described as follows:

Commencing at the Northeast corner of Parcel 32, of said BAHIA MAR; thence South 05°24'49" East, a distance of 80.22 feet; thence North 88°51'31" East, a distance of 110.52 feet to a point on a curve; thence Southerly on the West right of way line of State Road A-1-A (Seabreeze Boulevard) the following four (4) courses and distances 1) thence Southerly on said curve to the right, whose radius point bears South 71°48'21" West, with a radius of 876.51 feet, a central angle of 24°37'04", an arc distance of 376.60 feet to a point of tangency; 2) thence South 06°25'25" West, a distance of 216.58 feet to the Point of Beginning; 3) thence continuing South 06°25'25" West, a distance of 9.63 feet; 4) to the end of said four (4) courses and distances; thence South 08°01'55" West, a distance of 465.71 feet; thence North 81°58'10" West, a distance of 669.51 feet; thence North 08°01'50" East, a distance of 475.33 feet; thence South 81°58'10" East, a distance of 669.24 feet to the Point of Beginning.

Said lands situate, lying and being in the City of Fort Lauderdale, Broward County Florida and containing 318,241 square feet or 7.3058 acres more or less.

NOTES:

1) This sketch reflects all easements and rights-of-way, as shown on above referenced record plat(s). The subject property was not abstracted for other easements road reservations or rights-of-way of record by McLaughlin Engineering Company.
2) Legal description prepared by McLaughlin Engineering Co.
3) This drawing is not valid unless sealed with an embossed surveyors seal.
4) THIS IS NOT A BOUNDARY SURVEY.
5) Bearings shown assume the North line of plat (35/39), as North 81°51'26" East.

CERTIFICATION

Certified Correct. Dated at Fort Lauderdale, Florida this 4th day of October, 2023.

McLAUGHLIN ENGINEERING COMPANY
A DIVISION OF CONTROL POINT ASSOC. INC.

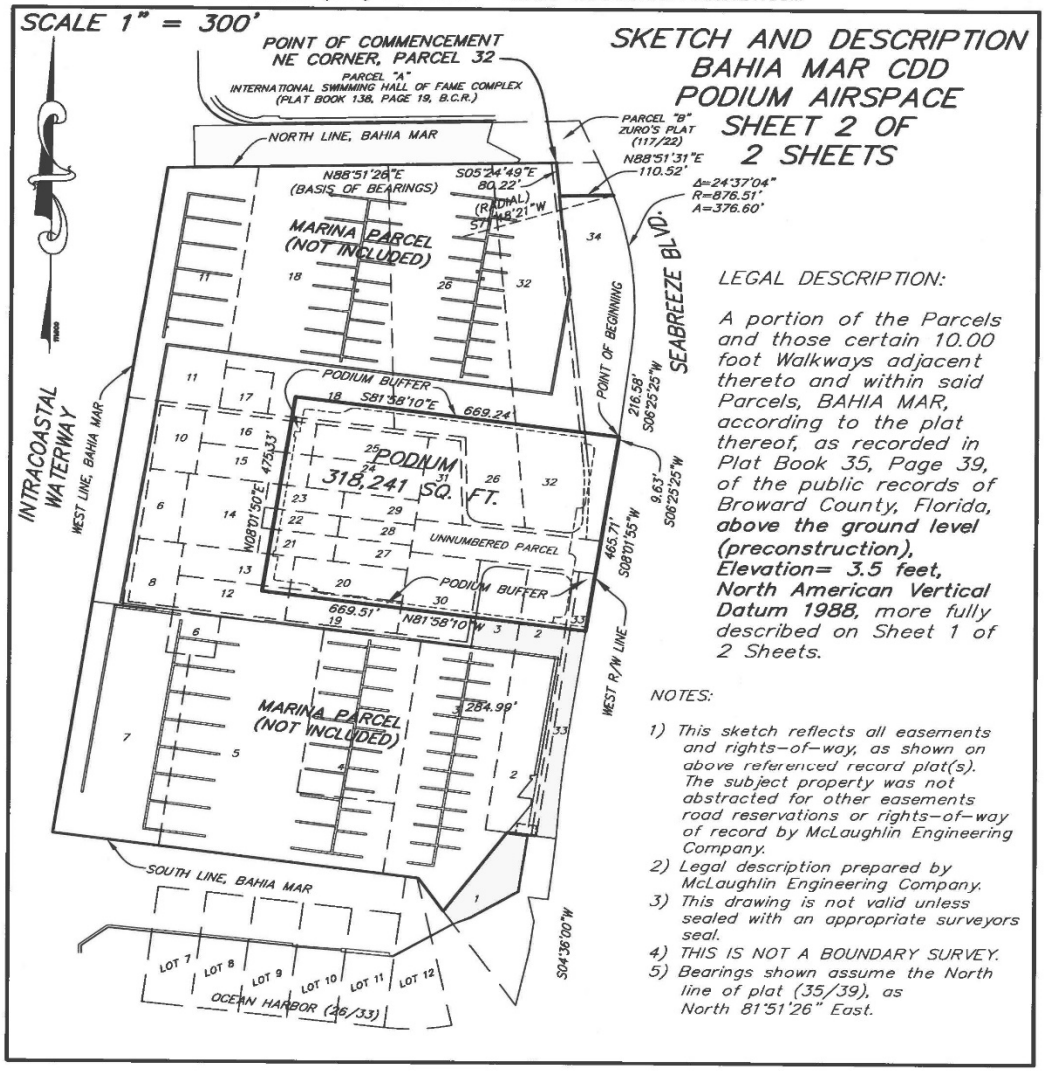
JAMES M. McLAUGHLIN JR.
Registered Land Surveyor No. LS4497
State of Florida.

FIELD BOOK NO. _____ DRAWN BY: JMMjr

JOB ORDER NO. 230306 (BAHIA MAR) CHECKED BY: _____

REF. DWG.: A-20(14), 97-3-134 C: \JMMjr/2023/ 230306 (BAHIA MAR)

McLAUGHLIN ENGINEERING COMPANY LB 285
A DIVISION OF CONTROL POINT ASSOCIATES, INC. LB 8137
CUTTING EDGE SURVEYING * PLATTING * LAND PLANNING
1700 N.W. 64th STREET #400, FORT LAUDERDALE, FLORIDA 33309
PHONE: (954) 763-7611 * EMAIL: JHADDIX@CPASURVEY.COM



SKETCH AND DESCRIPTION
BAHIA MAR CDD
PODIUM AIRSPACE
SHEET 2 OF 2 SHEETS

LEGAL DESCRIPTION:

A portion of the Parcels and those certain 10.00 foot Walkways adjacent thereto and within said Parcels, BAHIA MAR, according to the plat thereof, as recorded in Plat Book 35, Page 39, of the public records of Broward County, Florida, **above the ground level (preconstruction), Elevation= 3.5 feet, North American Vertical Datum 1988,** more fully described on Sheet 1 of 2 Sheets.

NOTES:

1) This sketch reflects all easements and rights-of-way, as shown on above referenced record plat(s). The subject property was not abstracted for other easements road reservations or rights-of-way of record by McLaughlin Engineering Company.
2) Legal description prepared by McLaughlin Engineering Company.
3) This drawing is not valid unless sealed with an appropriate surveyors seal.
4) THIS IS NOT A BOUNDARY SURVEY.
5) Bearings shown assume the North line of plat (35/39), as North 81°51'26" East.

FIELD BOOK NO. _____

JOB ORDER NO. 230306 (BAHIA MAR)

REF. DWG.: A-20(14), 97-3-134

DRAWN BY: JMMjr

CHECKED BY: _____

C:\JMMjr/2023/ 230306 (BAHIA MAR)

SCHEDULE 2

RESTRICTIVE COVENANT

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SCHEDULE 3

APPROVED SITE PLAN

SCHEDULE 4

AMENDED AND RESTATED MASTER DECLARATION

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CAM 24-0109 Backup: Declaration of Restrictive Covenants

Prepared by and Return to:
Barry E. Somerstein, Esq.
Greenspoon Marder LLP
200 East Broward Boulevard, Suite 1800
Fort Lauderdale, FL 33301

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS ("**Restrictive Covenant**") is made as of the _____ day of _____, 2024 by RAHN BAHIA MAR L.L.C., a Delaware limited liability company authorized to do business in the State of Florida ("**Master Tenant**"), having an address of 1175 Northeast 125th Street, Suite 102, North Miami, Florida 33161, CITY OF FLORIDA LAUDERDALE, a municipal corporation of Florida, its successors and assigns ("**City**"), having an address of 100 North Andrews Avenue, Fort Lauderdale, Florida 33301 and BAHIA MAR COMMUNITY DEVELOPMENT DISTRICT, its successor and assigns ("**CDD**"), having an address of c/o GMS – South Florida, 5385 N. Nob Hill Road, Sunrise, Florida 33351.

WHEREAS, the City is the fee simple title owner of the property generally located at 801 Seabreeze Boulevard in the City of Fort Lauderdale, as more particularly described on **Exhibit A** attached hereto and made a part hereof ("**Property**"); and

WHEREAS, the Master Tenant is lessee of that certain Master Lease between the Master Tenant and the City dated April 13, 2022, as same may be amended from time to time ("**Master Lease**") with respect to the Property; and

WHEREAS, the CDD was established by the City, and the boundaries of the CDD include the property as set forth on **Exhibit B** attached hereto and made a part hereof ("**CDD Public Improvements Area**"), whereby the CDD may perform certain activities authorized by Chapter 190, Florida Statutes including, but not limited to, construction, maintenance, and/or operation functions with respect to public improvements to be constructed within the CDD Public Improvements Area; and

WHEREAS, the CDD Public Improvements Area, and any future portions thereof conveyed to any third party Air Rights Owner, are, is and shall be subject to assessments which the CDD may impose in the CDD Public Improvements Area and the following matters affecting title to such CDD Public Improvements Area, as more particularly described on **Exhibit C** attached hereto and made a part hereof, as same may be amended from time to time (collectively "**Existing Title Documents**"); and

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WHEREAS, promptly after the execution and recordation of the Master Declaration (as hereinafter defined) and this Restrictive Covenant, (i) the City shall convey to the CDD the fee simple title air rights to the portion of the CDD Public Improvements Area as described on **Exhibit D** attached hereto and made a part hereof ("**CDD Air Rights Parcel**"), subject to the terms and provisions of this Restrictive Covenant and the Existing Title Documents, to assist the CDD in performing its functions as needed in connection with public improvements constructed within the CDD Air Rights Parcel, and (ii) the Master Tenant shall remit to the City the "**Workforce Education Program Contribution**" (as hereinafter defined); and

WHEREAS, within the CDD Air Rights Parcel, the CDD intends to own public parking spaces ("**Public Parking Area**") constructed within the Podium located within portions of the CDD Air Rights Parcel owned by the CDD, and

WHEREAS, the CDD intends to sell to the Master Tenant or Phased Lessee(s) portions of the CDD Air Rights Parcel in excess of what the CDD needs for the Public Parking Area ("**Excess Air Rights Parcel(s)**"); and

WHEREAS, since the CDD Air Rights Parcel does not include any portion of the surface of the premises leased to the Master Tenant under the Master Lease, the City and the CDD have agreed that with respect to each Phased Parcel leased to the Phased Lessee under each Phased Lease, the applicable Air Rights Owner shall join in such Phased Lease to include as a portion of the Phased Parcel demised under such Phased Lease, the portion of the CDD Air Rights Parcel owned by such Air Rights Owner and located above the ground portion of the Phased Parcel demised under such Phased Lease, with the intent that the Phased Parcel would include the ground and the air rights above such ground, and

WHEREAS, after Substantial Completion of applicable portions of the Podium, the Phased Lessee who acquired the Excess Air Rights Parcel applicable to its Phased Parcel demised under its Phased Lease intends to terminate its Phased Lease and own, develop, operate, sell, finance and otherwise deal with all improvements located within such Applicable Air Rights Parcel owned by such Phased Lessee; and

WHEREAS, this Restrictive Covenant shall only apply to the property within each Applicable Air Rights Parcel which previously was contained within each Applicable Terminated Phased Lease.

WHEREAS, the Master Tenant, City, each Air Rights Owner (individually, a "**Party**" and collectively, "**Parties**") desire to reflect that the Parties recognize the CDD Air Rights Parcel is being conveyed to the CDD, subject to the terms and provisions of this Restrictive Covenant and Existing Title Documents and the agreements to be entered into as contemplated by such Existing Title Documents, including any Phased Lease; and

WHEREAS, the Parties desire to execute this Restrictive Covenant to provide that the conveyance of the CDD Air Rights Parcel to the CDD will not result in the loss to the City of the

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revenue and all other obligations, restrictions, covenants, representations and other provisions which benefit the City as contemplated in the Master Lease (as applicable) and any Phased Lease(s) executed as contemplated by the Master Lease all as set forth in this Restrictive Covenant.

NOW, THEREFORE, in consideration of Ten Dollars ($10.00) and other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, the Parties hereby declare that the CDD Public Improvements Area and CDD Air Rights Parcel shall be subject to the terms, provisions and restrictions set forth in this Restrictive Covenant.

NOW THEREFORE, in consideration of other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, the Parties intending to be legally bound hereby agree as follows:

1. Recitations. The recitations heretofore set forth are true and correct and are incorporated herein by this reference.

2. Defined Terms. The following terms as used and referred to herein shall have the meaning set forth below:

"**Act**" shall mean Chapter 718, Florida Statutes as such Chapter may be amended or replaced as of the time of submission of the Branded Unit to the Act.

"**Adjustment Date**" shall mean on the first January 1 occurring after the earlier to occur of (i) three (3) years after the Initial Payment Date or (ii) the date 50% of the Branded Residential Units have been conveyed from the Original Branded Residential Unit Owner to Initial Third Party Branded Residential Unit Owner(s) ("**First Adjustment Date**"), and on January 1 of each and every year thereafter during the Term.

"**Affiliate**" shall mean a Person who owns directly or indirectly (i) fifty-one percent (51%) or more of equity securities of the specified person with respect to whether or not a Sublessee is an Affiliate for purposes of a Fair Market Value Rent determination for a sublease with an Affiliate as provided in the definition of Gross Revenue; and (ii) fifty-one percent (51%) or more of equity securities of the specified person as to other determinations of Affiliates, including with regard to assignment or subleases.

"**Air Rights Owner(s)**" shall mean the CDD and any successor in interest of any portion of the CDD Air Rights Parcel. The Phased Lessee that terminates its Phased Lease, will be an Air Rights Owner of its portion of the CDD Air Rights Parcel. After the recordation of each Regime, the Association of such Regime (on behalf of the Unit Owners in such Regime), shall be deemed to be the Air Rights Owner of such Regime and the Unit Owners in such Regime shall not be deemed to be an Air Rights Owner.

"**Annual Payment**" shall mean the (i) Residential Annual Payment, and (ii) Commercial Annual Payment.

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"**Annual Payment Date**" shall mean January 31 of each year of the Term for the prior calendar year (or part thereof if applicable) from and after the Applicable Commencement Date. The Commercial Applicable Payment under this Restrictive Covenant and the "Percentage Sum" (as provided in the Master Lease) shall be prorated with the Applicable Phased Lessee being responsible to report Gross Revenue prior to the termination of the Applicable Phased Lease as set forth in such Applicable Phased Lease being terminated and Commercial Party shall report the Gross Revenue on each anniversary thereafter (as to the Commercial Space or the Commercial Units, as applicable).

"**Applicable Air Rights Parcel**" shall mean, respectively, the portion of the CDD Air Rights Parcel which was demised under a Phased Lease prior to the termination of such Applicable Terminated Phased Lease.

"**Applicable Commencement Date**" shall mean the date of the execution of each respective Applicable Phased Lease.

"**Applicable Percentage**" shall mean during each Year of the Term, 4.25% until the Start Date, whereupon the Applicable Percentage shall be reduced to 3.75% from the Start Date until the Completion Date, at which time the Applicable Percentage shall be increased up to 4.5% as to the Hotel, and 6% as to the balance of the Commercial Space, other than the Hotel.

"**Applicable Phased Lease**" shall mean each respective Phased Lease that includes any portion of the Applicable Air Rights Parcel prior to the termination of such Applicable Terminated Phased Lease.

"**Applicable Phased Lessee**" shall mean each respective Phased Lessee who is the lessee under each executed Phased Lease prior to the termination of such Applicable Terminated Phased Lease.

"**Applicable Terminated Phased Lease**" shall have the meaning set forth in Section 5.

"**Association**" shall mean each applicable condominium association created under the Regime Documents for each Applicable Air Rights Parcel.

"**Boat Show**" shall mean the Fort Lauderdale International Boat Show, which typically runs 5 consecutive days each year in the Fall, and includes multiple locations within the City of Fort Lauderdale, including the Property. Typically featured at the Property are a range of large boats, such as yachts and superyachts, sport fishers, high performance boats, cabin cruisers, along with retailers, concessions, and food and beverages. For purposes of this Restrictive Covenant, the Boat Show includes the forgoing description, and specifically its activities at the Property.

"**Branded**" shall mean each such Branded Apartment Unit or Branded Hotel Unit within each Applicable Air Rights Parcel which shall be partially managed by a four (4) star or higher hotel chain. Such management services provided by such hotel chain shall include access to a centralized rental reservation system for each Unit Owner and may include, at the option of each

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Association, management of recreation facilities, food & beverage outlets, fitness and/or health care related facilities, etc.

"**Branded Apartment Unit**" shall mean each residential dwelling unit located in the Proposed Improvements existing prior to the recording of the Regime Documents, whereby such areas would become Branded Residential Units upon recording of the Regime Documents.

"**Branded Hotel Units**" shall mean each hotel room, if any, within the Applicable Air Rights Parcel which is submitted to the Regime under the Act.

"**Branded Residential Unit**" shall mean: (i) each Branded Apartment Unit submitted to the Regime pursuant to the Regime Documents within such Applicable Air Rights Parcel and (ii) each Branded Hotel Unit submitted to the Regime pursuant to the Regime Documents with respect to such Applicable Air Rights Parcel.

"**Branded Residential Unit Owner**" shall mean the owner of the Branded Residential Unit.

"**Building**" or "**Proposed Improvements**" shall mean the building containing the apartment units, retail units and other improvements, facilities and appurtenances as provided in the applicable Regime Documents located within the Applicable Air Rights Parcel.

"**CDD**" shall have the meaning set forth in the preamble.

"**CDD Air Rights Parcel**" shall have the meaning set forth in the Recitals.

"**CDD Public Improvements Area**" shall have the meaning set forth in the Recitals.

"**City**" or "**Lessor**" shall have the meaning set forth in the preamble.

"**City Manager**" shall mean the City Manager of the City of Fort Lauderdale or other City official who may hereafter replace such office.

"City Sales Fee" shall mean, in connection with the initial conveyance of title of each Branded Residential Unit from the Original Branded Residential Unit Owner to the Initial Third Party Branded Residential Unit Owner within each Applicable Air Rights Parcel, 2% of the Net Sales Proceeds for such Branded Residential Unit for the Square Foot Price up to $1,200 per Square Foot plus: (i) for each Branded Residential Unit where the Square Foot Price is more than $1,200 per Square Foot and less than $1,500 per Square Foot, then 3% of the Net Sales Proceeds on the portion of the Square Foot Price in excess of $1,200 per square feet, (ii) for each Branded Residential Unit where the Square Foot Price is more than $1,500 per Square Foot and less than $1,800 per Square Foot, then 4% of the Net Sales Proceeds on the portion in excess of $1,200 per square foot, or (iii) for each Branded Residential Unit where the Square Foot Price exceeds $1,800 per Square Foot, then 5% of the Net Sales Proceeds on the portion of the Square Foot Price in excess of $1,200 per Square Foot.

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"**City Transfer Fee**" shall mean an amount equal to .375% of the Net Sales Proceeds in connection with any conveyance of a Conveyed Branded Residential Unit within each Applicable Air Rights Parcel which shall be paid to the City at the closing of such Conveyed Branded Residential Unit. No City Transfer Fee shall be payable in connection with the conveyance of a Conveyed Branded Residential Unit (i) to a Related Person(s), or (ii) for estate planning purposes of the transferor (as in the case of a transfer to a trustee for the benefit of the transferor or Related Person(s)).

"**Commercial Annual Payment**" shall mean the Applicable Percentage of the amount of the Gross Revenue derived from such Commercial Space or Commercial Unit (as applicable) by the Commercial Party for the prior calendar year (or prorated portion of a calendar year if less than one year).

"Commercial Party" shall mean the Applicable Phased Lessee (or Air Rights Owner and Phase Lessee under the Applicable Terminated Phased Lease) as long as the Applicable Air Rights Parcel is not submitted to a Regime and the Commercial Unit Owner once the Commercial Space is part of a Regime within such Applicable Air Rights Parcel.

"**Commercial Space**" shall mean the area located in the Building which is used as a restaurant, retail, office, Hotel, or other commercial space, parking and any other appurtenances related thereto (excluding Branded Residential Units and Branded Apartment Units, Branded Hotel Units, parking, and Common Areas related thereto) prior to the recording of the Regime Documents with respect to each such Applicable Air Rights Parcel, whereby such space would be a Commercial Unit upon recording of such Regime Documents.

"**Commercial Unit**" shall be each of the commercial condominium units created for such Commercial Space(s) pursuant to the Regime Documents with respect to each Applicable Air Rights Parcel.

"**Commercial Unit Owner**" shall mean the owner of a Commercial Unit. Any tenant of a Commercial Unit Owner shall be considered a tenant.

"**Common Areas**" shall mean the common areas or common elements of any Regime created pursuant to the Regime Documents within each Applicable Air Rights Parcel.

"Community Trust Entity" shall mean the Community Foundation of Broward, the United Way of Broward, and/or any other organization as mutually agreed to in writing by City and the Applicable Phased Lessee ("**CTE**") who will receive the Community Trust Sales Fee and split the proceeds of all receipts into separate trust funds for the benefit of the following needs of the residents of the City of Fort Lauderdale: (i) affordable housing/homelessness programs, (ii) inner City parks programs, (iii) environmental/sustainability causes; and (iv) such other causes as mutually agreed to in writing by the City and the Applicable Phased Lessee. The trust funds will be used to support such programs/causes and not for major capital improvements. An advisory board of no more than five residents of the City will be responsible for making recommendations

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to the CTE on where and how often said trust funds should be disbursed pursuant to these parameters. The Master Lessee and the City hereby agree to work closely together to finalize specific trust fund documents including the makeup of the advisory board, the splitting of contributed funds between the applicable trust funds, and minimum annual distributions of such funds.

"**Community Trust Sales Fee"** shall be an amount equal to 0.25% of the Net Sales Proceeds in connection with the initial conveyance of title of such Branded Residential Unit within each Applicable Air Rights Parcel from the Original Branded Residential Unit Owner to the Initial Third Party Branded Residential Unit Owner which shall be paid to the Community Trust Entity at the closing of such Branded Residential Unit within such Applicable Air Rights Parcel.

"**Community Trust Transfer Fee**" shall mean an amount equal to 0.125% of the Net Sales Proceeds in connection with any conveyance of a Conveyed Branded Residential Unit within each Applicable Air Rights Parcel which shall be paid to the Community Trust Entity at the closing of such Conveyed Branded Residential Unit. No Community Trust Transfer Fee shall be payable in connection with the conveyance of a Conveyed Branded Residential Unit (i) to a person or persons related by blood, marriage, or adoption to the transferor ("**Related Person(s)**"), or (ii) for estate planning purposes of the transferor (as in the case of a transfer to a trustee for the benefit of the transferor or Related Person(s)).

"**Completion Date**" shall mean the earlier to occur of (a) the date of the final certificate of occupancy (or similar payment) for the Proposed Improvements within such Applicable Air Rights Parcel, or (b) the date which is the twelfth (12^{th}) anniversary of the Start Date, subject to extension due to a Force Majeure Event.

"**Consideration**" shall mean the Annual Payment, City Sales Fee, and City Transfer Fee. For the avoidance of doubt, any payments made as to any Unit under a Phased Lease or an Applicable Phased Lease shall be credited to any Consideration payable hereunder to avoid double payment.

"**Conveyed Branded Residential Unit**" shall mean each Branded Residential Unit within such Applicable Air Rights Parcel after having been initially conveyed by the Original Branded Residential Unit Owner (or by a lender of the Branded Residential Unit Owner who acquires such Branded Residential Unit by foreclosure or deed in lieu of foreclosure) to a third-party purchaser of such Branded Residential Unit (but shall not include the transfer of the Branded Residential Unit in connection with a foreclosure of the Mortgage encumbering the Applicable Air Rights Parcel).

"**CPA Firm**" shall mean an independent firm of certified public accountants licensed by the State of Florida.

"**CPI Adjustment**" shall mean the Residential Annual Payment then in effect on the day immediately proceeding each Adjustment Date shall be multiplied by the percentage where the

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numerator is the CPI Index number in effect on October 1st immediately prior to such Adjustment Date and the denominator is the CPI Index number in effect on October 1st of the prior year but in no event shall any such CPI Adjustment be less than an increase of 1% nor more than an increase of 3%.

"**CPI Index**" shall mean the Consumer Price Index for All Urban Consumers (CPI-U) for all items (U.S. City Average) published by the Bureau of Labor Statistics, U.S., U.S. Department of Labor (1967 equals 100). If the Bureau of Labor Statistics shall ever cease to compile or publish the CPI-U, then CPI Index shall thereafter mean such other index of process published by the U.S. Government as most nearly approximates the CPI-U now published.

"**Cure Period**" shall mean, with respect to (a) the failure to pay any monetary obligation required to be paid to the City as set forth in this Restrictive Covenant, a period of thirty (30) days from the date the City shall provide written notice to the applicable defaulting Party Required to Perform in default in such payment, and (b) with respect to non-monetary defaults, a period of sixty (60) days from the date of the City's written notice to such applicable Party Required to Perform who is in default of such non-monetary default, provided that with respect to any non-monetary defaults if such default is not cured within such sixty (60) days and the defaulting Party Required to Perform proceeds with diligence to complete same, such Cure Period shall be extended for a reasonable time as appropriate to complete such cure.

"**Default Rate**" shall mean twelve percent (12%) per annum, simple interest.

"**Estoppel Statements**" shall have the meaning set forth in Section 10.

"**Excess Air Rights Parcel(s)**" shall have the meaning set forth in the Recitals.

"**Excluded Revenues**" shall have the meaning set forth in the definition of Gross Revenues.

"**Existing Title Documents**" shall have the meaning set forth in the Recitals.

"**Fair Market Value Rent**" shall be the amount of rent in effect on the commencement date of such lease representing at least ninety percent (90%) of the amount of rent that a third party tenant would pay a third party landlord for the lease of comparable space then being determined, taking into consideration, the amount of tenant improvement allowance being provided, brokerage commission being paid, age of the premises, location of such premises, term of such lease, and other applicable considerations in determining fair market value. In connection with each lease in which the Fair Market Value Rent needs to be determined, the City and Commercial Party will attempt to agree between themselves as to the Fair Market Value Rent and, to the extent the City and Commercial Party agree to same, such rent agreed to by the City and Commercial Party shall be deemed to be the Fair Market Value Rent for such lease. In the event the City and Commercial Party are unable to reach agreement as to the Fair Market Value Rent for such lease within thirty

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(30) days after written request by either party to the other, then the determination of the Fair Market Value Rent for such lease shall be determined as follows:

(i) Within ten (10) business days after the failure of the City and Commercial Party to agree on the Fair Market Value Rent for such lease, the City shall appoint an MAI appraiser having at least ten (10) years' experience appraising commercial property in the Broward County area that has not performed appraisal services for the City in the last five (5) year period prior to such determination ("**City Appraiser**") and Commercial Party shall appoint an MAI appraiser having had at least ten (10) years' experience appraising commercial property in the Broward County area who has not performed appraisal services for Commercial Party within the five (5) year period prior to such determination ("**Commercial Party Appraiser**"). In the event either the City or Commercial Party fails to timely appoint such MAI appraiser, then the MAI appraiser of the party who timely appoints its MAI appraiser shall, acting alone, determine such Fair Market Value Rent. Within thirty (30) days of the appointment of the City Appraiser and/or Commercial Party Appraiser, the City Appraiser and Commercial Party Appraiser shall each submit their determination of the Fair Market Value Rent in question. In the event either party's MAI appraiser fails to provide its determination of Fair Market Value Rent within such thirty (30) day period, then the Fair Market Value Rent of the MAI appraiser who timely provides its determination of Fair Market Value Rent shall be deemed to be the Fair Market Value Rent. If neither such party timely appoints its MAI appraiser or if both MAI appraisers fail to timely provide its determination of Fair Market Value Rent, then such parties shall again restart the process to determine Fair Market Value Rent. To the extent that the Fair Market Value Rent as determined by the City Appraiser and Commercial Party Appraiser are within ten percent (10%) of each other, the Fair Market Value Rent shall be the average of the Fair Market Value Rent as determined by the City Appraiser and Commercial Party Appraiser.

(ii) If the Fair Market Value Rent as determined by the City Appraiser and Commercial Party Appraiser are not within ten percent (10%) of each other, then the City Appraiser and Commercial Party Appraiser shall jointly select a third appraiser within ten (10) days of request by the City or Commercial Party to do so. If they fail to agree to such third appraiser within such ten (10) day period, then such third appraiser shall be selected by Commercial Party and the City, and if they fail to agree on a third appraiser, then in accordance with the rules of the American Arbitration Association, a third appraiser shall be selected. The third appraiser in all cases shall be an MAI appraiser having at least ten years' experience appraising commercial property in the Broward County area who has not performed appraisal services for the City or Commercial Party within the five year period immediately prior to the date of such determination ("**Third Appraiser**"). Upon appointment of the Third Appraiser, such Third Appraiser shall make a determination of the Fair Market Value Rent within thirty (30) days of being appointed and which Fair Market Value Rent shall no higher than the highest Fair Market Value Rent and no

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lower than the lowest Fair Market Value Rent of the City Appraiser and Commercial Party Appraiser. The Fair Market Value Rent shall be the average of the two closest appraised values of Fair Market Value Rent between the City Appraiser, Commercial Party Appraiser, and the Third Appraiser. The Commercial Party shall pay for the Commercial Party Appraiser, the City shall pay for the City Appraiser and the costs of any arbitration and the Third Appraiser shall be split equally between the City and Commercial Party or, to the extent the City desires that Commercial Party pays the full cost of such arbitration and Third Appraiser, then one-half (1/2) of the cost of such arbitration and the Third Appraiser may be offset by Commercial Party against Commercial Annual Payment due under this Lease.

"**Force Majeure Event**" shall mean any of the following occurring in or directly impacting Broward County, Florida: (a) hurricane, flood, tornado, excessive rain, wind, or other extreme unpredictable weather, natural disaster, meteorological events, seismic event, or other acts of God; (b) fire or other casualty; (c) earthquake; (d) explosion; (e) war (whether or not formally declared); (f) civil unrest, riot, civil commotion or insurrection, or rebellion; (g) area-wide or industry-wide strike, lockout, or other labor dispute; (h) condemnation; (i) act or threat of terrorism; (j) a regional or national disruption of the delivery of materials, ability to receive services or utilities, or of shipping or transportation services; (k) shortage of any material or commodity, which is not due to the Party Required to Perform's failure to appropriately contract for the same; (l) embargo, quarantine, disease and/or virus outbreak, pandemic, or epidemic; (m) national, regional or local emergency; or (n) any other acts outside the control of the Party Required to Perform. Notwithstanding anything to the contrary herein, failure to secure or retain financing shall not be deemed a Force Majeure Event.

"**Governmental Approvals**" shall mean all governmental and quasi-governmental approvals from applicable city, county and other agencies and authorities required to develop the Proposed Improvements pursuant to the Site Plan, including, but not limited to, site plan approvals, plat approvals and recordation, public dedications, environmental approvals, land use approvals, zoning approvals, building permits, certificates of occupancy, and all other governmental approvals required in connection with the development of the Proposed Improvements contemplated by the Site Plan (and the expiration of all appeal periods with respect thereto) and other matters pertaining to the Applicable Air Rights Parcel.

"**Gross Revenue**" means the following derived from each Commercial Space or Commercial Unit within the Applicable Air Rights Parcel:

(a) Notwithstanding anything contained herein to the contrary, with respect to leased space, an amount equal to the base annual rent (excluding taxes, insurance, common area charges and additional rent) paid by the lessee to the Commercial Party (i) if the lessee is not an Affiliate of the Commercial Party, or (ii) if the Sublessee is an Affiliate of the Commercial Party, then the amount of base annual rent (excluding taxes, insurance, common area charges and additional rent) paid by such lessee to the Commercial Party, provided the annual base rent (excluding taxes,

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insurance, common area charges and additional rent) payable under such lease shall be at a Fair Market Value Rent for such space.

(b) The following shall be applicable (i) if the Commercial Party shall operate the business itself rather than sublease its Commercial Space or Commercial Unit, or (ii) if such lease is to an Affiliate of such Commercial Party at less than a Fair Market Value Rent, to wit:

Except as otherwise provided in this definition of Gross Revenue, the total of all revenues, rents, income and receipts received by the Commercial Party from any person(s) whomsoever (less any refunds) of every kind derived directly or indirectly from the operation of the Commercial Space or Commercial Unit (as applicable), including, without limitation, income (from both cash and credit transactions and before commissions) from the following activity on the Commercial Space or Commercial Unit (as applicable):

(i) the rental of rooms, convention and meeting room facilities, banquet or other facilities (including facilities for the Boat Show which is annually held in the Commercial Space or Commercial Unit (as applicable)), exhibits, sales displays or advertising space of every kind, provided that as to the rental of convention, meeting and banquet room facilities and facilities for the Boat Show, where such facilities are rented to Non-Affiliated Persons, and where such Non-Affiliated Persons also conduct sales in conjunction with the rental fee paid for the rental of the aforementioned facilities, the Gross Revenue shall be limited to the rental fee paid to the Commercial Party for the rental of the aforementioned facilities and shall not include the sales or revenues of such Non-Affiliated Persons renting the aforementioned facilities;

(ii) Food, beverage (including alcoholic beverages sold by the drink or bottle), convention and banquet sales, including room service, and sales from vending machines provided that in room mini-bars shall be calculated on a net basis, wherein net mini-bar revenues shall be defined as gross mini-bar revenue, less any lease payment made by the Commercial Party to a Person, with such net basis being subject to the Limitation on Net Income Rule and subject to the terms of subsection (c)(ii), where applicable, whereby the rent under any such food and beverage lease/concession agreement/management agreement will be included in Gross Revenue but Gross Revenues will not include the food and beverage sales received by the operator;

(iii) Net Income received from concessions, if any, subject to the Limitation on Net Income Rule;

(iv) Net Income, if any, derived from telephone, cable television and telecommunication services, movie rentals, audio-visual services, and valet parking, such net income being subject to the Limitation on the Net Income Rule;

(v) Personal services, laundry services;

(vi) Wholesale and/or retail sales of goods or services, including merchandise;

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(vii) Proceeds, if any, from business interruption or other loss of income insurance;

(viii) Commercial Party's portion of any eminent domain award which is awarded to the Commercial Party, in excess of the aggregate of (1) any such proceeds which are reinvested in the Commercial Space or Commercial Unit, as applicable; (2) the fair market value of Commercial Party's equity in the portion of the Commercial Space or Commercial Units, as applicable, which is taken; and (3) the amount, if any, used to pay any mortgagee whose mortgage encumbers the portion of the Commercial Space or Commercial Units, as applicable, that is taken.

(c) Gross Revenue shall not include ("**Excluded Revenue**"):

(i) Gratuities received by employees;

(ii) The portion of rent payable by a lessee attributable to tenant improvements given to such lessee under its lease amortized over the initial term of such lease at a commercially reasonable interest rate ("**Tenant Allowances**"), provided such Tenant Allowances shall only be excluded from Gross Revenue of leases to Affiliates of Commercial Party to the extent the rent of such lease or sublease to an Affiliate of the Applicable Phased Lessee is a Fair Market Value Rent;

(iii) Federal, state or municipal excise, sales, use, occupancy or similar taxes collected directly from tenants, sub-tenants, patrons, guests or otherwise, provided such taxes are separately stated;

(iv) Insurance proceeds (other than business interruption, or loss of income insurance);

(v) Proceeds from the disposition of personal property (such as furniture, fixtures and equipment no longer necessary for the operation of the Commercial Space or Commercial Unit, as applicable);

(vi) Interest income, if any;

(vii) Deposits until same are forfeited by the person making the deposit;

(viii) Advance rentals until such time that they are earned;

(ix) Any award or payment made by a governmental authority in connection with the exercise of any right of eminent domain, condemnation, or similar right or power relating to leasehold improvements and other property of Commercial Party, except as provided in (b) above;

(x) Taxes, common area charges, utilities, insurance, expenses, and cure costs paid by any lessee or sublessee to Commercial Party as reimbursement or payment of such expenses;

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(xi) In connection with any lease of portions of the Commercial Spaces or Commercial Units, as applicable, without a Building thereon, then only the rent paid for the portion of the Commercial Spaces or Commercial Units, as applicable, being leased shall be included in Gross Revenue and there shall be excluded from Gross Revenue, any rent which reimburses Commercial Party for any tenant improvements allowance given by Commercial Party to a lessee, amortized at a commercially reasonable interest rate over the initial term of such lease; or

(d) In the event that additional or new revenue-producing space or sources are created upon the Applicable Air Rights Parcel or in the event that Commercial Party, directly or indirectly, subsequently converts any space from the functions set forth in subsection (a) of this definition of Gross Revenue, to other legitimate business functions, then and in those events the Gross Revenue derived from such space or uses by Commercial Party shall be included in the Gross Revenue for calculation of the Commercial Annual Payment, subject to the other provisions in this definition of Gross Revenue.

"**Hotel**" shall mean any hotel located within the Property, but the term Hotel only refers to the portion of the Hotel Building operated as a hotel but excludes the Branded Hotel Parcel and any Branded Residential Units located within the Hotel Building.

"**Hotel Building**" shall mean the building in which the Hotel, the Branded Hotel Parcel, and any Branded Residential Unit(s) are located.

"**Initial Payment Date**" shall mean the date commencing on the later of (i) the recording of the Regime Documents in the Public Records of Broward County, Florida with respect to such Applicable Air Rights Parcel, and (ii) the date of the initial conveyance of title of the first Conveyed Branded Residential Unit within such Applicable Air Rights Parcel to a third party.

"**Initial Third Party Branded Residential Unit Owner**" shall mean the first Branded Residential Unit Owner of a Conveyed Branded Residential Unit.

"**Limitation on Net Income Rule**" means that where Gross Revenues are predicated on Branded Residential Unit a "**Net Income**" formula for any given function, that the allowable deductible expenses under such formula shall in no event exceed the gross revenues from that function, and that no deficit of expenses over gross revenues shall be carried over from one calendar year to another.

"**Master Declaration**" shall mean the Amended and Restated Declaration of Covenants & Restrictions being recorded on or about the date of this Restrictive Covenant which amends and restates the Declaration of Covenants & Restrictions of Bahia Mar Master Association Inc. recorded under Instrument # 116096957 of the Public Records of Broward County, Florida, as same may be amended from time to time.

"**Master Tenant**" shall have the meaning set forth in the preamble.

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"**Master Lease**" shall have the meaning set forth in the Recitals.

"**Net Income**" shall mean Gross Revenue which is net of direct expenses paid to Non-Affiliated Persons.

"**Net Sales Proceeds**" shall mean an amount equal to the purchase price of each Branded Residential Unit less reasonable and bona fide closing expenses, such as title insurance, documentary stamps, recording charges, attorneys' fees, and brokerage commissions.

"**Non-Affiliated Persons**" shall mean a Person or Persons who are not direct Affiliates of the Commercial Party of the applicable Commercial Space or Commercial Unit, as applicable.

"**Original Branded Residential Unit Owner**" shall mean the first Branded Residential Unit Owner who recorded the Regime Documents.

"**Owner(s)**" shall mean the owners of interests in the CDD Air Rights Parcel and their successors and assigns (excluding Unit Owners).

"**Party**" or "**Parties**" shall have the meaning set forth in the Recitals.

"**Party Required to Perform**" shall have the meaning set forth in Section 7(d).

"**Payments**" shall mean the monetary payments payable to the City by the Party Required to Perform as set forth in this Restrictive Covenant.

"**Permitted Uses**" shall mean the permitted uses within the CDD Air Rights Parcel as set forth in Section 6(a).

"**Phased Lease**" shall have the meaning set forth in the Master Lease.

"**Phased Lessee**" shall have the meaning set forth in the Master Lease.

"**Phased Lessor**" shall have the meaning set forth in the Master Lease.

"**Phased Parcel**" shall have the meaning set forth in the Master Lease.

"**Podium**" shall mean the structure(s) shown on the Site Plan upon which the applicable Buildings are to be constructed, recognizing that the Hotel Building (containing the Branded Hotel Parcel) and each Residential Building may be built on a portion of the Podium.

"**Public Parking Area**" shall have the meaning set forth in the Recitals.

"**Prohibited Uses**" shall mean the prohibited uses set forth in Sections 6(b), (c) and (d).

"**Regime**" shall mean each applicable fee simple condominium (with respect to the Applicable Air Rights Parcel) under the Act of the State of Florida.

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"**Regime Documents**" will mean the declaration creating the Regime, the Prospectus, and all other documents necessary or required by the Act to submit all or portions of the Applicable Air Rights Parcel to the Regime, disclosing the existence of this Restrictive Covenant, and to create the Regime. The Applicable Phased Lessee shall prepare the Regime Documents and submit same to the City Manager for its limited review and approval in accordance with Section 32.12 of the Applicable Phased Lease, which limited approval shall not be unreasonably withheld or delayed. The Regime Documents shall provide for the Association under such Regime Documents to comply with the obligations of such Association as provided in these Restrictive Covenants.

"**Related Person**" shall have the meaning set forth in the definition of Community Trust Transfer Fee.

"**Residential Annual Payment**" shall be the annual amount payable by each Branded Residential Unit Owner (other than the Original Branded Residential Unit Owner) to the Association (who shall act as collection agent for the City) who shall remit same as collected to the City on each Annual Payment Date in an amount equal to (i) One and 30/100 Dollars ($1.30) multiplied by the Square Footage as actually constructed with respect to such Branded Residential Unit(s) each year until the First Adjustment Date whereupon on the First Adjustment Date and each Adjustment Date thereafter, the Residential Annual Rent then in effect immediately prior to such Adjustment Date shall be increased by the CPI Adjustment. Residential Annual Rent is a separate and different obligation from the Sales Consideration Fee and the Transfer Fee.

"**Residential Building(s)**" shall mean each of the Buildings within the Applicable Air Rights Parcel (other than the Hotel Building) which contains Residential Units.

"**Restrictive Covenant**" shall mean this restrictive covenant, together with all amendments thereto, as agreed to in writing by the Parties.

"**Sales Consideration Fee**" shall be: (i) the City Sales Fee payable to the City and (ii) the Community Trust Sales Fee payable to the Applicable Phased Lessee to be promptly remitted to the Community Trust Entity, each in connection with the initial conveyance of title of each such Branded Residential Unit from the Original Branded Residential Unit Owner to an Initial Third Party Branded Residential Unit Owner which is contemplated to be paid out of the closing of each such Branded Residential Unit. The Applicable Phased Lessee agrees that the City has a lien right, whereby a lien may be filed on each Branded Residential Unit which does not pay such Sales Consideration Fee payable as to such Branded Residential Unit as provided in this Restrictive Covenant.

"**Site Plan**" shall mean the site plan which has been approved by the City with respect to the CDD Air Rights Parcel, as may be amended from time to time.

"**Specified Air Rights Owner**" shall mean, respectively, the Air Rights Owner(s) (other than the CDD).

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"**Square Foot Price**" shall mean the Net Sales Proceeds divided by the Square Footage of such Branded Residential Unit.

"**Square Footage**" shall mean the aggregate square footage of each Branded Residential Unit (as applicable) located in the Applicable Air Rights Parcel measured from the interior face of the boundary walls, excluding balconies (i.e. paint to paint) of each such Branded Residential Unit (as applicable).

"**Start Date**" shall mean a date after the Applicable Commencement Date which is the date of commencement of construction of the first to occur of the first Residential Building or the new Hotel Building within the CDD Air Rights Parcel as contemplated by the Site Plan after the Governmental Approvals have been obtained for such improvements.

"**Subsequent Sale**" shall mean the sale of a Commercial Branded Residential Unit.

"**Substantial Completion**" shall mean completion of the work (as evidenced by a shell certificate of occupancy, certificate of completion or comparable certificate issued by the City in its governmental capacity under the Florida Building Code (and incorporated life safety codes), as amended, evidencing the work for which such certificate or permit has been issued as intended in the next sentence is completed). It is the intent that Substantial Completion of the Proposed Improvements shall be when completion of the Proposed Improvements is to a level to permit conveyances of Branded Units under the Act.

"**Subsequent Branded Residential Unit Owner(s)**" shall mean the Initial Third Party Branded Residential Unit Owner and each subsequent Residential Unit Owner to whom a Conveyed Branded Residential Unit within an Applicable Air Rights Parcel is then being conveyed.

"**Term**" shall mean one hundred (100) years from the recording of the first Regime Document applicable to the Building constructed in the Applicable Air Rights Parcel related to the first Applicable Phased Lease which is executed.

"**Termination Date**" shall mean the effective date of termination of any Applicable Phased Lease by the Applicable Phased Lessee as provided in Section 5.

"**Transfer Fee(s)**" shall be (i) the City Transfer Fee payable to the City and (ii) the Community Trust Transfer Fee payable to the Community Trust Entity, each to be paid at the closing of each Subsequent Sale.

"**Unit**" shall mean each Branded Residential Unit and/or Commercial Unit which is the subject of the Regime pursuant to the Regime Documents with respect to such Applicable Air Rights Parcel.

"**Unit Owner**" shall mean the owner of a Unit.

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"**Workforce Education Programs Contribution**" shall mean Two Hundred Fifty Thousand Dollars ($250,000).

"**Year**" shall mean the fiscal year from the Applicable Commencement Date and the following twelve (12) month period thereafter as to such Applicable Air Rights Parcel.

3. Acknowledgements. The Parties acknowledge and agree that (i) the conveyance of the CDD Air Rights Parcel to the CDD is subject to, (a) the rights and obligations of the City and the Master Tenant under the Master Lease, and (b) the rights and obligations of the provisions of the Existing Title Documents, including each Phased Lease which may be executed in the future by the City and each Phased Lessee, and (ii) upon any termination of the Master Lease, (a) the Master Declaration shall remain in full force and effect, and (b) the ownership of the improvements located within each portion of the CDD Air Rights Parcel and the ownership of the CDD Air Rights Parcel shall remain in full force and effect with its Owner(s).

Upon any Air Rights Owner conveying any portion of the CDD Air Rights Parcel to a transferee Air Rights Owner ("**Transferee Air Rights Owner**"), such deed of conveyance shall have the Transferee Air Rights Owner (as an applicable Party Required to Perform) assume all obligations that such Transferee Air Rights Owner is required to perform under this Restrictive Covenant from and after such conveyance of any portion of the CDD Air Rights Parcel to such Transferee Air Rights Owner (collectively an "**Assumption**"). This Restrictive Covenant is a covenant running with the land binding upon each Air Rights Owner (including each Transferee Air Rights Owner) whether or not such Assumption is provided for in the deed of conveyance to such Transferee Air Rights Owner.

4. Consent. The Master Tenant consents to the transfer of the CDD Air Rights Parcel to the CDD, subject to the terms and provisions of the Master Lease, Existing Title Documents and the terms of this Restrictive Covenant. As a requirement to the conveyance of the CDD Air Rights Parcel from the City to the CDD, the Air Rights Owner shall be required and hereby agrees to join in each Phased Lease to include as a portion of the Phased Parcel demised under such Phased Lease, the portion of the CDD Air Rights Parcel located above the ground portion of the Phased Parcel demised under such Phased Lease.

5. Termination of Applicable Phased Lease.

(a) The CDD intends to (i) have the Public Parking Area constructed within the Podium and (ii) sell to the Master Tenant or Phased Lessee(s) any Excess Air Rights Parcel(s) in excess of what the CDD needs for the Public Parking Area. After Substantial Completion of portions of the Podium, the Phased Lessee who acquired the Excess Air Rights Parcel applicable to its Phased Parcel demised under its Phased Lease, intends to terminate its Phased Lease and own, develop, operate, sell, finance and otherwise deal with any Commercial Space, Hotel, and/or other improvements located within such Applicable Air Rights Parcel.

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(b) Each Applicable Phased Lessee shall have the right, at its option, to elect in writing to terminate such Applicable Phased Lease upon written notice of such termination to the City ("**Applicable Phased Lease Termination Notice**"), whereupon delivery of such Applicable Phased Lease Termination Notice (a) such Applicable Phased Lease shall terminate (such terminated Phased Lease being the "**Applicable Terminated Phased Lease**") and the City, CDD and such Applicable Phased Lessee shall promptly execute such documents reasonably requested by the City or the Applicable Phased Lessee to reflect such Applicable Terminated Phased Lease was terminated and the Applicable Phased Lessee shall have no further obligations under such Applicable Terminated Phased Lease but the Applicable Air Rights Parcel shall continue to be subject to the terms and provisions of this Restrictive Covenant. Notwithstanding anything to the contrary contained in the Applicable Terminated Phased Lease, following the termination of the Applicable Terminated Phased Lease, the ownership of the improvements located within the applicable portion of the CDD Air Rights Parcel and the ownership of the CDD Air Rights Parcel shall remain with the Owner of such portion.

6. Uses.

(a) Permitted Use. Except as stated below, the Applicable Phased Lessee and Owners agree, and the City consents, that the CDD Air Rights Parcel shall include Building(s) which contains mixed use components consistent with zoning applicable to the CDD Air Rights Parcel, from time to time, including the Podium, retail, office, hotel room, residential dwelling units (whether or not any of such hotel room or residential dwelling uses are submitted to Regime form of ownership), landscaping, common areas, parking areas, and other uses defined as permitted uses under applicable zoning and which are not either a prohibited use under such zoning or a Prohibited Use under this Restrictive Covenant (collectively "**Permitted Use**"); provided, however, without the consent of the City Manager: (i) any Branded Apartment Units hereinafter developed on the CDD Air Rights Parcel will be Branded and any Branded Hotel Units shall be Branded and the Owners will not modify the uses of the Premises in a manner which would result in there being; (i) Branded Apartment Units in excess of three hundred fifty (350) Branded Apartment Units; (ii) Branded Hotel Units in excess of sixty (60) Branded Hotel Units, (iii) two hundred fifty-six (256) hotel rooms, plus (iv) not more than 88,000 square feet of retail/office space. The Permitted Uses also includes uses such as restaurant(s), cocktail lounge(s), liquor package store, food stores, yacht brokerage offices, convention hall, retail stores, marine stores, marine service station, offices, the Boat Show and other kindred and similar businesses, and also includes all uses for the operation of the Boat Show. Except for the Prohibited Uses as set forth in this Sections 6(b), (c) and (d) (unless the City consents to any Party conducting the Prohibited Uses within the CDD Air Rights Parcel, such consent being subject to the City's exclusive and sole discretion, and upon such approval, such uses shall be deemed Permitted Uses), and uses which are prohibited under applicable zoning, it is not the intention of the Parties that the Applicable Phase Lessee and/or Owner(s) shall be unduly restricted in the use of the CDD Air Rights Parcel other than the Applicable Phased Lessee and Owners are required to conduct legal business or businesses within the CDD Air Rights Parcel in conformance with the terms of this Restrictive Covenant (excluding the Prohibited Uses without the consent of the City as aforesaid) in keeping with the purpose for which the improvements thereon were constructed. The Hotel,

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when operated, shall be maintained and operated so that it achieves and maintains at least a 3 Star Rating (however, upon redevelopment of the Hotel pursuant to the Site Plan, a 4 Star Rating) from a nationally recognized hotel rating system/guide ("**Hotel Standards**"). In the event that these rating standards are discontinued, the parties shall reasonably agree on a successor standard that is as equivalent as possible to the foregoing ratings. The Branded Apartment Units and Branded Hotel Units shall be Branded.

(b) No Illegal Activity. The Applicable Phased Lessee and Owner(s) each agree that it will not knowingly permit the CDD Air Rights Parcel or any portion thereof to be used by it for any illegal purpose.

(c) Gambling. Without the consent of the City, which may be granted or withheld in the City's absolute discretion, any type of illegal gambling within the CDD Air Rights Parcel is prohibited, unless future zoning allows such use.

(d) Live Adult Entertainment. Without the consent of the City, which may be granted or withheld in the City's absolute discretion, no illegal live adult entertainment establishments (as defined in Section 15-156(a) of the City of Fort Lauderdale Code of Ordinances in effect as of the Applicable Commencement Date) shall be allowed within the CDD Air Rights Parcel, unless future zoning allows such use.

7. Consideration.

(a) Consideration. From and after the Termination Date until the end of the Term, the Party Required to Perform shall pay to the City the Consideration solely related to Units in an Applicable Air Rights Parcel (to the extent due); however, (i) the Sales Consideration Fee shall be paid within five (5) business days after the closing of the initial conveyance of title of each Branded Residential Unit which is not a Conveyed Branded Residential Unit to a third party purchaser, and (ii) the Residential Annual Payment for each Branded Residential Unit shall be payable by the Branded Residential Unit Owner (other than the Original Branded Unit Owner) to the Association and Commercial Annual Payment for each Commercial Unit shall be payable by each Commercial Unit Owner to the Association, and promptly upon the Association's receipt of such Annual Payment, the Association shall pay the Residential Annual Payment and Commercial Annual Payment received by the Association to the City on the applicable Annual Payment Date (prorated for any portion of a calendar year applicable to the Annual Payment Date), and promptly after the Association's later receipt of Annual Payment owed by a Unit Owner, it shall promptly remit same to the City. Notwithstanding the foregoing, the Original Branded Residential Unit Owner shall be obligated to pay the Sales Consideration Fee.

(b) Commercial Annual Payment Computation. Within one-hundred twenty (120) days after the end of each calendar year, the Applicable Phased Lessee (until the creation of the Regime) and the Commercial Unit Owner (after the creation of the Regime) shall pay to the City (prior to the creation of the Regime) and each Commercial Unit Owner shall pay to the Association (after the creation of the Regime) as collection agent, to remit to the City, a sum equal

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to the Commercial Annual Payment from each Commercial Unit Owner for its Commercial Unit within such Applicable Air Rights Parcel for the preceding calendar year. Additionally, the Applicable Phased Lessee (prior to the creation of the Regime) and each Commercial Unit Owner shall further deliver to the City (prior to the creation of the Regime) and to the Association (after the creation of the Regime) for delivery to the City at said time a detailed statement duly signed by a CPA Firm selected by the Applicable Phased Lessee (prior to creation of the Regime) and each such Commercial Unit Owner (after creation of such Regime) certified to the City and the Association (after creation of the Regime) setting forth an itemization of all Gross Revenue for the preceding calendar year, which statement shall further show and indicate the Gross Revenue, if any, for each of the classifications set forth in the definition of Gross Revenue. Such detailed statement shall be similar in format with the detailed statements provided by the Master Lessee in the lease year under the Master Lease.

(c) Records. The Applicable Phased Lessee (until the creation of the Regime) and the Commercial Unit Owner (after the creation of the Regime) shall keep and maintain accurate records and complete books and records of account indicating all of Applicable Phased Lessee's (until the creation of the Regime) and the Commercial Unit Owner's (after the creation of the Regime) Gross Revenue. Said records and statements of Gross Revenue shall be kept and maintained by the Applicable Phased Lessee (until the creation of the Regime) and the Commercial Unit Owner (after the creation of the Regime) in accordance with generally accepted accounting principles and shall be available to be examined by the City or its agents, employees or representatives, and said records shall be kept and maintained, or a true and accurate copy thereof shall be kept and maintained in Miami-Dade County or Broward County for a period of at least five (5) years. In the event that the Applicable Phased Lessee (until the creation of the Regime) and the Commercial Unit Owner (after the creation of the Regime) has intentionally, willfully and with the intent to defraud made any reports to the City showing less Gross Revenue than actually received, such conduct and action on the part of the Applicable Phased Lessee (until the creation of the Regime) and the Commercial Unit Owner (after the creation of the Regime) shall constitute a material breach of the covenants of this Restrictive Covenant by the Applicable Phased Lessee (until the creation of the Regime) and the Commercial Unit Owner (after the creation of the Regime), subject to the Cure Period as set forth in this Restrictive Covenant. In the event that litigation has been timely instituted, the applicable records shall be maintained until all legal proceedings have been resolved.

(d) Additional Consideration. If the City is required or elects to pay any sum or sums or incur any obligations or expense by reason of the failure, neglect or refusal of any Owner, Applicable Phased Lessee, Commercial Party or Association required to pay or perform its obligations under this Restrictive Covenant ("**Party Required to Perform**"), which breach is not cured by the Party Required to Perform within the applicable Cure Period, the Party Required to Perform agrees to pay the reasonable sums so paid or the reasonable expense so incurred by the City to cure such default, including all interest, costs, damages and penalties, and reasonable attorneys' fees and costs, and each and every part of the same shall be and become Additional Consideration payable by the Party Required to Perform within thirty (30) calendar days after written demand therefor (together with reasonable supporting documentation of such sums

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expended) together with interest thereon at the Default Rate after said thirty (30) day period if not paid within such thirty (30) days period. As to non-monetary defaults, if the applicable Party Required to Perform commences correction of said default within a sixty (60) day period and proceeds with diligence to completion, then the Cure Period shall be extended for a reasonable time as appropriate to complete such cure. This provision shall extend to any mortgagee of all or any part of the CDD Air Rights Parcel with whom the City has executed a Non-Disturbance Agreement in the event such mortgagee elects to exercise its option to cure such default. Additionally, to the extent of any Consideration that is owed by any Party Required to Perform after the recording of the Regime Documents creating the Regime, the Association shall have an additional Cure Period (not to exceed one hundred eighty (180) days) to enable the Association to levy a special assessment for the amount of such amount of Consideration and the Association shall have thirty (30) days after the imposition of such special assessments to pay such Consideration.

(e) Late Payments - Interest. The City shall be entitled to collect interest at the Default Rate from the date any sum is due to the City until the date paid on any amounts that are not paid within ten (10) business days of their due date under this Restrictive Covenant. The right of the City to require payment of such interest and the obligation of the Party Required to Perform to pay same shall be in addition to and not in lieu of the right of the City to enforce other provisions herein and to pursue other remedies provided by law.

(f) Place of Payments. All payments of Consideration required to be made by the Applicable Phased Lessee (prior to the creation of the Regime Documents) and by the Association (after the creation of the Regime Documents) to the City under this Restrictive Covenant shall be made payable to the City at Office of City Manager, 100 North Andrews Avenue, Fort Lauderdale, Florida 33301, or to such other office or address as may be substituted therefor pursuant to Section 11. All Consideration shall be payable without demand, offset or deduction, other than as set forth in this Restrictive Covenant.

(g) Proration. The Parties agree that the Consideration payable under this Restrictive Covenant shall be reduced by the amount of any Rent previously paid under the Applicable Terminated Phased Lease as of the applicable Termination Date of such Applicable Terminated Phased Lease.

(h) Sales Consideration Fee. The Original Branded Residential Unit Owner agrees that the Association has a lien right on each Branded Residential Unit to secure the payment of the Sales Consideration Fee applicable thereto and a lien may be filed if such Sales Consideration Fee is not paid within thirty (30) days after written notice from the City or Community Trust Entity (as applicable) to the Original Branded Residential Unit Owner and the Association. While the Original Branded Residential Unit Owner (and the Association to the extent not paid by the Original Branded Residential Unit Owner) is responsible for payment of the Sales Consideration Fee, it is the intent of the Parties that at each initial closing, the closing agent handling such closing would collect the Sales Consideration Fee payable for such Branded Residential Unit and remit same to the City, together with a copy of an executed closing statement

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for such Branded Residential Unit, and that in connection with such closing, the Association, the City and Community Trust Entity (as applicable) would provide a partial release (in a form to be prepared by LESSEE or Original Branded Residential Unit Owner and such form reasonably approved by the City Manager) for such Branded Residential Unit indicating that such Sales Consideration Fee for such Branded Residential Unit has been paid ("**Partial Release**"), which Partial Release would be recorded (at the Original Branded Residential Unit Owner's or its grantee's expense) at such closing simultaneous with the closing agent disbursing such Sales Consideration Fee to the City and the Community Trust Entity (as applicable). Upon payment of the Sales Consideration Fee for any Branded Residential Unit that is not a Conveyed Branded Residential Unit, such Branded Residential Unit becomes a Conveyed Branded Residential Unit, it shall no longer be obligated to pay the Sales Consideration Fee, and the Association shall not impose any assessment on such Conveyed Branded Residential Unit for the Sales Consideration Fee. If, however, the Sales Consideration Fee for any Branded Residential Unit that is not a Conveyed Branded Residential Unit was not paid when due, thereafter the Original Branded Residential Unit remains obligated to pay the Sales Consideration Fee but with interest at the Default Rate, and the Association shall impose a special assessment on such Branded Residential Unit for such Sales Consideration Fee and interest, collect same, and pay same to the City and Community Trust Entity (as applicable). The Sales Consideration Fee is a separate and different obligation than the Residential Annual Consideration and the Transfer Fee. The City and Community Trust Entity (as applicable) shall be a third-party beneficiary of such lien rights and shall be entitled to enforce same to the extent the Association shall fail to do so.

(i) Transfer Fee. Each Subsequent Branded Residential Unit Owner agrees that the Association has a lien right on such Conveyed Branded Residential Unit to secure the payment of any Transfer Fee applicable thereto and a lien may be filed if such Transfer Fee is not paid within thirty (30) days after written notice from the City or Community Trust Entity (as applicable) to the Subsequent Branded Residential Unit Owner and the Association. While such Subsequent Branded Residential Unit Owner (and the Association to the extent not paid by the applicable Subsequent Branded Residential Unit Owner) is responsible for payment of the Transfer Fee, it is the intent of the Parties that at each closing of a Subsequent Sale the closing agent handling such closing would collect the Transfer Fee payable for such Conveyed Branded Residential Unit and remit same to the City and Community Trust Entity (as applicable), together with a copy of an executed closing statement for such Conveyed Branded Residential Unit, and that in connection with such closing, the Association, the City and Community Trust Entity (as applicable) would provide a partial release (in a form to be prepared by the Subsequent Branded Residential Unit Owner and such form reasonably approved by the City Manager) for such Conveyed Branded Residential Unit indicating that such Transfer Fee for such Conveyed Branded Residential Unit has been paid ("**Partial Release**"), which Partial Release would be recorded (at Subsequent Branded Residential Unit Owner or the grantee's expense) at such closing simultaneous with the closing agent disbursing such Transfer Fee to the City and Community Trust Entity (as applicable). If, however, the Transfer Fee for any Conveyed Branded Residential Unit payable at each Subsequent Sale was not paid when due, such Subsequent Branded Residential Unit Owner remains obligated to pay the Transfer Fee but with interest at the Default Rate, and the Association shall impose a special assessment on such Conveyed Branded Residential Unit for

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such Transfer Fee for and interest for such Subsequent Sale, collect same, and pay same to the City and Community Trust Entity (as applicable). The Transfer Fee is a separate and different obligation than the Residential Annual Rent and the Sales Consideration Fee. The City and Community Trust Entity (as applicable) shall be a third-party beneficiary of such lien rights and shall be entitled to enforce same to the extent the Association shall fail to do so.

(j) Workforce Education Programs Contribution. Upon the transfer by the City to the CDD of the CDD Air Rights Parcel, the Master Tenant shall pay to the City the Workforce Education Programs Contribution and the City shall use such funds to enhance work force training programs (including employment advancement programs) for city residents located within zip code 33311.

8. Remedies. Until the earlier to occur of the expiration of the Term or the end of the duration of the Regime (provided the Regime has not been terminated pursuant to the Act prior to the expiration of the Term), the Regime Documents shall include provisions which describe the obligations of the Association in this Restrictive Covenant and state that the Association (or any successor in interest to the Association) shall (i) act as the City's collection agent for the collection of Annual Payment due from each Branded Unit Owner (excluding the Original Branded Residential Unit Owner) and, upon receipt of the applicable Annual Payment from the Unit Owner(s) (excluding the Original Branded Residential Unit Owner), shall timely pay the Annual Payment to the City as provided in this Restrictive Covenant, and (ii) promptly assess an assessment and, if not timely paid, to cause a claim of lien to be executed and recorded in the Broward County Public Records pursuant to Chapter 718.116, Florida Statutes against the Units of the Regime who do not pay their respective Annual Payment when due. In the event the Association records any claim of lien, it shall deliver notice of such claim of lien together with a copy of the recorded claim of lien to Lessor within five (5) days after the date such claim of lien is recorded.

If the Sales Consideration Fee for any Branded Residential Unit was not paid when due, thereafter when such Unit becomes a Conveyed Branded Residential Unit, it shall pay both Sales Consideration Fee and interest at the Default Rate, and the Association (or any successor in interest to the Association) shall levy special assessments on such Conveyed Branded Residential Unit for such Sales Consideration Fee and interest, sufficient to collect and pay same to the City.

The City may elect to cure any non-monetary default of Party Required to Perform (which is not cured within the applicable Cure Period of the Party Required to Perform) and, upon such cure taking place, all of the City's reasonably incurred costs in connection with such cure shall become Additional Consideration which shall be due and payable within thirty (30) days of written notice from the City to the Party Required to Perform of such costs incurred by the City(together with providing reasonable supporting documentation of such expense). The Regime Documents shall collaterally assign the Association's lien rights and the rights of enforcement thereof against the Units to the City solely to the extent necessary to collect the Annual Payment due from such Unit Owner so the Association may pay same to the City.

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Each of the foregoing obligations of the Association and Unit Owners shall be affirmatively set forth in the Regime Documents. The common expense definition in the Regime Documents shall include the Annual Rent due and payable under the Applicable Phased Lease until the termination of the Applicable Terminated Phased Lease and the Annual Payment after the termination of such Applicable Terminated Phased Lease, and shall provide that the provisions hereby relating to the payment of the obligations set forth in this Section 8 and the foregoing obligations of the Association shall not be amended without the prior written consent of the Applicable Phased Lessee until the Regime is created and the Association thereafter. In the event of a default under this Restrictive Covenant not cured within the applicable Cure Period, then subject to the provisions of this Section 8, the City shall have all other remedies available against the Party Required to Perform, including:

(a) seeking compensatory damages from the Association;

(b) seeking a decree of specific performance requiring the Association to impose the assessments and reassessments required by this Lease in an amount sufficient to pay all Rent required by this Lease in the manner so required, enforce same by foreclosure of the lien securing payment of same and judicial sale (i) collect such assessments against the Units who have not paid its applicable Annual Rent attributable to such Unit, and (ii) collect special assessments (which shall be a common law lien and not a lien for common expenses) against any Branded Residential Unit that has failed to pay Sales Consideration Fee to the extent due upon the conveyance of such Branded Residential Unit, and pay same to the City;

(c) the right to foreclose the annual assessment and special assessment lien rights under the collateral assignment referred to above, and such right shall also be set forth in the Regime Documents.

9. Lien Rights. The Association shall act as the collection agent for the City to collect the Residential Annual Payment from each Branded Residential Unit Owner (other than the Original Unit Owner) and Commercial Annual Payment from each Commercial Unit Owner. The Regime Documents shall provide for (i) a special assessment being payable by each Branded Residential Unit Owner for the Residential Annual Payment for its Branded Residential Unit and by each Commercial Unit Owner for the Commercial Annual Payment for its Commercial Unit, and (ii) a lien against each such Unit for failure to pay its Annual Payment attributable to such Unit, which lien shall be enforced by the Association and the City shall be a third party beneficiary entitled to enforce the lien on the Unit(s) which do not timely pay their Annual Payment, not cured within the Cure Period.

10. Estoppel Statement. Not more than three (3) times a year, upon not less than thirty (30) days prior request by a Party or Party Required to Perform hereto, the Party or Party Required to Perform being requested to provide such estoppel will deliver a statement in writing ("**Estoppel Statements**") certifying: (a) whether this Restrictive Covenant is unmodified and in full force and effect (or, if there have been modifications, that this Restrictive Covenant as modified is in full force and effect and stating the modifications); (b) the dates to which the Consideration and other

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charges have been paid by such Party Required to Perform; (c) to the best of the actual knowledge of the signor, whether any facts are known that either Party is in default and, if none, that no facts are known which would cause a Party or Party Required to Perform to be in default under the provisions of this Restrictive Covenant, or, if in default, the nature thereof in detail; and (d) such other information pertaining to this Restrictive Covenant as any Party or Party Required to Perform may reasonably request.

Additionally, upon the request of the City or Applicable Phased Lessee to the other, the City and the Applicable Phased Lessee shall execute and deliver to each other a certificate confirming to its knowledge the Applicable Commencement Date, the Start Date, and the Term.

11. All notices of request, demand and other communications hereunder shall be addressed to the parties as follows:

As to Master Tenant:	Rahn Bahia Mar L.L.C. 1175 N.E. 125th Street, Suite 102 North Miami, FL 33161 Attn: J. Kenneth Tate Telephone: (305) 891-1107 Email: Kenny@tatecapital.com
As to Applicable Phased Lessee:	The address set forth in the Applicable Phased Lease
As to CDD:	Bahia Mar Community Development District 5385 N. Nob Hill Road Sunrise, Florida 33351 Attn: District Manager Telephone: (954) 721-8681 Email: rhans@gmssf.com
As to City:	City of Fort Lauderdale 100 North Andrews Avenue Fort Lauderdale, FL 33301 Attn:_____ Telephone:_____ Email:_____
As to Association (s):	The address as set forth in the records of the CDD.
As to Owner(s):	The address as set forth in the records of the CDD

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unless the address or telephone number is changed by the Party or Owner(s) by like notice given to the other Parties or Owner(s). Notice shall be in writing and shall be deemed delivered: (a) three (3) days after mailing when mailed certified mail, return receipt requested, postage prepaid, or upon hand delivery to the Owner(s) as set forth on the tax records of the tax assessor of Broward County, Florida, (b) on the day of delivery by Federal Express or other nationally recognized overnight delivery service for delivery at the address indicated, or (c) when received by electronic transmission at the email address indicated (with confirmation of receipt). Notice sent by counsel for any Party or Owner(s) shall be deemed to be notice sent by such Party or Owner(s).

12. Gender. The use of any gender in this Restrictive Covenant shall be deemed to include all other genders and the use of the singular shall be deemed to include the plural, and vice versa, unless the context otherwise requires.

13. Further Assurances. From time to time after the date hereof each Party, Association or Owner(s) hereto shall furnish, execute and acknowledge, without charge, such other instruments, documents, materials, and/or information as the other Parties, Association or Owner(s) hereto may reasonably request in order to confirm to such parties the benefits contemplated hereby.

14. Exculpation. Notwithstanding anything herein to the contrary, the representations, covenants, undertakings, and agreements made in this Restrictive Covenant are not made or intended as personal representations, covenants, undertakings or agreements by any Party, Applicable Phased Lessee, Association or Owner(s) or for the purpose or with the intention of binding such Party, Applicable Phased Lessee, Association or Owner(s) personally, but are made and intended for the purpose of binding the property of such Party, Applicable Phased Lessee, Association or Owner(s). No personal liability is assumed by nor shall at any time be asserted or enforceable against such Party, Association or Owner(s) on account of any representation, covenant, undertaking or agreement of such Party, Applicable Phased Lessee, Association or Owner(s) contained in this Restrictive Covenant either expressed or implied. All such personal liability, if any, is expressly waived and released by the CDD and the City and by all persons claiming by, through or under the CDD or the City.

15. Indemnity.

(a) The Specified Air Rights Owners for each respective Phased Parcel shall indemnify, defend, and hold harmless the City from and against all claims from compensatory damages (including those for bodily injury, disease, sickness, death, property damage), demands, fines, penalties, causes of action, administrative proceedings, liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees and experts' fees), which are asserted against the City by third parties which relate, refer, or pertain to:

(i) the rights, responsibilities, and obligations of Specified Air Rights Owners under this Restrictive Covenant, the breach or default by Specified Air Rights Owners of any covenant or provision of this Restrictive Covenant, or any Phased Lease in effect or Specified

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Air Rights Owner's possession, use, or occupancy of the Applicable Air Rights Parcel or the Improvements, or some or all of the foregoing;

(ii) any Regime development on the Applicable Air Rights Parcel owned by such Specified Air Rights Owner, to the extent a Regime is created by such Specified Air Rights Owner upon any portion of the Applicable Air Rights Parcel, that such Regime does not comply with the Act, or that no Regime was created in connection with the intended Regime, or that this Restricted Covenant does not comply with §718.122, §718.401 or §718.404 of the Act, or that any documents used by Specified Air Rights Owner in the sale or marketing or description of the Regime condominium were inaccurate, misleading, incomplete, or failed to satisfy all legal requirements, or that involve owners or occupants of the Regime Units;

(iii) construction liens; other liens, levy or execution by judgment creditors; liens and assessments imposed by governmental authorities (excluding the City); prescriptive rights and adverse possession, or other loss of title to or encumbrance of the City's interest in the Applicable Air Rights Parcel owned by such Specified Air Rights Owner arising due to Specified Air Rights Owner's acts or failure to act after it terminates its Phased Lease (other than when caused by the acts of or with the consent of the City or through condemnation). Specified Air Rights Owners acknowledges and agrees that the City shall not be deemed to have waived any of its rights not to be subject to adverse possession, prescriptive rights or other loss of title as may be afforded the City as to its property, pursuant to applicable law;

(iv) negligent, reckless, or willful or intentional acts or omissions of Specified Air Rights Owner, or anyone directly or indirectly employed by them and anyone for whose acts they may be liable during the performance of construction work or services related to its property; or

(v) negligent, reckless, or willful or intentional acts or omissions of Specified Air Rights Owner, or of any other Person enjoying a right of possession or use of any portion of the Applicable Air Rights Parcel owned by such Specified Air Rights Owner by through or under them (except when such Person enjoying such derivative right of possession or use is the City or its agent, through access or use of the Applicable Air Rights Parcel owned by such Specified Air Rights Owner).

(vi) any defects in the design or construction of the Units.

The foregoing indemnity shall not apply to the extent of the City's (or its agents, employees, contractors or others acting on behalf of the City) negligent, grossly negligent, or intentional acts or omissions which make the City liable for any of the matters described in (i)-(v) above or for events conducted by or in connection with access or use of the Applicable Air Rights Parcel owned by such Specified Air Rights Owner by the City.

(b) The City and each Specified Air Rights Owner agree that the prevailing Party shall be entitled to recover from the non-prevailing Party, reasonable attorneys' fees, experts'

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fees and costs incurred by the prevailing Party in connection with a dispute with respect to the provision of this Article 15.

(c) In any matter asserted against the City by third parties which falls within the scope of this indemnity, neither the provisions of this Restrictive Covenant, nor the Specified Air Rights Owner's indemnification of the City hereunder are intended to waive or affect, and shall not be construed to waive or affect, the City's sovereign immunity, and at all times the City shall retain its sovereign immunity to the greatest extent as may be provided by law. Furthermore, in defending the City against claims of third parties pursuant to the Indemnity provided in this Section 15, the Specified Air Rights Owner may assert the City's sovereign immunity to the greatest extent as may be provided by law.

(d) In the event the City's insurance coverage requires that the City's carrier defend any claim that falls within the scope of this indemnity, the Specified Air Rights Owner shall not be responsible to reimburse the City for its costs of defense, to the extent such defense is provided pursuant to the City's insurance policy.

The indemnities set forth in this Section 15 shall survive termination of each Phased Lease.

16. Miscellaneous Provisions.

(a) Effective Date. The effective date of this Restrictive Covenant shall be the date last signed by the City, CDD and Master Tenant.

(b) Governing Law. This Restrictive Covenant shall be interpreted and governed by and construed in accordance with the laws of or applicable to the State of Florida. Broward County, Florida is the agreed upon venue.

(c) 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 health department.

(d) Force Majeure Event. For the purpose of any of the provisions of this Restrictive Covenant, the Party Required to Perform, as the case may be, shall not be considered in breach of or in default of any of its obligations under this Restrictive Covenant in the event of any Force Majeure Event; it being the purpose and intent of this provision that in the event of the occurrence of any such Force Majeure Event, the time or times for the performance of the covenants and provisions of such Party Required to Perform under this Restrictive Covenant shall be excused and extended for the period of such delay. This provision shall not apply to payment of Payments.

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(e) Assignability and Binding Effect. This Restrictive Covenant shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto and the Owner(s).

(f) Amendments. Any amendments to this Restrictive Covenant shall be in writing and executed by the following parties (such parties as applicable are an "**Applicable Party**"): (i) prior to the creation of the Regime on the Applicable Air Rights Parcel, the CDD (to the extent its rights or obligations under these Restrictive Covenants are adversely amended), Applicable Phased Lessee or Owners (other than Unit Owners), as applicable (to the extent its rights or obligations under these Restrictive Covenants are adversely amended), and City Commission of the City (to the extent its rights or obligations under these Restrictive Covenants are adversely amended), and (ii) following the creation of the Regime on the Applicable Air Rights Parcel, the CDD (to the extent its rights or obligations under these Restrictive Covenants are adversely amended), the City Commission of the City (to the extent its rights or obligations under these Restrictive Covenants are adversely amended) and the Association (to the extent its rights or obligations under these Restrictive Covenants are adversely amended). To the extent of a proposed amendment to the Restrictive Covenant, a draft of such amendment shall be sent to the City in order to provide the City a reasonable period of time to advise whether or not it is the City's position that they have the right to reject such amendment, as such amendment adversely effects the rights or obligations of the City and, to the extent the City believes that such amendment adversely effects the City's rights or obligations, it shall in such response advise its basis for such position. If the City does not respond within thirty (30) days of written request, the proposed amendment shall be deemed approved by the City. Any amendments to this Restrictive Covenant shall be recorded in the Public Records of Broward County, Florida. Notwithstanding anything contained herein to the contrary, no amendment to this Restrictive Covenant shall be made which would materially adversely affect the rights or obligations of any Applicable Party without the written consent of such Applicable Party.

(g) Waiver of Jury Trial. The Parties, Association and each Owner knowingly, irrevocably, voluntarily and intentionally waive any right they may have to a trial by jury in respect of any action, proceeding or counterclaim based on this Restrictive Covenant, or arising out of, under or in connection with this Restrictive Covenant or any amendment or modification of this Restrictive Covenant, or any other agreement executed by and between the parties in connection with this Restrictive Covenant, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any Party, Applicable Phased Lessee, Association or Owner hereto.

(h) Severability. If any provision of this Restrictive Covenant, or any paragraph, sentence, clause, phrase, or word, or the application thereof, is held invalid, then, to the extent possible, and provided that none of the substantive rights, obligations or liabilities of any party are altered, the remainder of this Restrictive Covenant shall be construed as if such invalid part were never included herein and this Restrictive Covenant shall be and remain valid and enforceable to the fullest extent permitted by law. If, however, the clause determined to be invalid materially affects the performance of the Party Required to Perform or materially impacts the Parties', Applicable Phased Lessee's, Association's or Owners' expectations or positions with

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respect to this Restrictive Covenant, the Parties, Applicable Phased Lessee, Association (for itself and/or any Unit Owners) or Owners (other than the Unit Owners) (as applicable) will negotiate in good faith and modify this Restrictive Covenant in some fashion so as to, as near as possible, place the Parties, Association (for itself and/or any Unit Owners) or Owners (other than the Unit Owners) in the same position they were in, viz-a-vie, their intent, performance expectations, and economic position.

(i) Captions; Exhibits. The captions contained in this Restrictive Covenant are inserted only as a matter of convenience and for reference and in no way define, limit or prescribe the scope of this Restrictive Covenant or the intent of any provisions hereof. All exhibits attached to this Restrictive Covenant and referenced herein are incorporated herein as if fully set forth in this Restrictive Covenant.

(j) Recording. The Restrictive Covenant shall be recorded in the Public Records of Broward County, Florida, at the expense of Master Tenant.

(k) Counterparts. This Restrictive Covenant may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

(l) Construction and Interpretation. Each of the Parties hereto and their counsel have reviewed and revised, or requested revisions to, this Restrictive Covenant, and the usual rule of construction that any ambiguities are to be resolved against the drafting Party shall be inapplicable in the construction and interpretation of this Restrictive Covenant and any amendments or exhibits to this Agreement.

(m) Consent. Wherever in this Restrictive Covenant the approval or consent of the City Manager is required, it is understood and agreed that unless specifically stated to the contrary, such approval or consent shall be granted or withheld in City Manager's reasonable discretion, within a reasonable time, and shall not be unreasonably withheld, conditioned or delayed. Except as may be otherwise specifically provided herein, the following actions under this Restrictive Covenant shall be taken or not taken by the City Manager in the discretion of the City Manager acting reasonably:

(i) The exercise of City Manager's rights of entry and inspection;

(ii) The execution of Estoppel Statements (or any modifications of the terms thereof) to be given by City Manager under this Restrictive Covenant;

(iii) Other provisions of this Restrictive Covenant where the act, approval or consent of the City Manager is expressly authorized.

The City Manager shall, where the City Manager's approval or consent is to be given on behalf of City Manager, approve, approve with stated conditions, or disapprove (and specify with specificity the basis for such stated conditions or disapproval) within thirty (30)

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days of the City Manager's receipt of a written request or such consent shall be deemed given. In the event that City Manager fail to provide such consent or denial within such 30-day period, the party making the request for such approval may deliver written notice to City Manager that City Manager has not responded to such party's request for approval or consent within the required 30-day period and City Manager shall have an additional ten (10) days thereafter to respond to such party with such approval or disapproval and the City Manager's failure to respond after the expiration of the additional 10-day period shall be deemed an approval.

(SIGNATURE APPEAR ON FOLLOWING PAGES)

DRAFT

Master Tenant has executed this Restrictive Covenant this ____ day of _____, 2024.

RAHN BAHIA MAR L.L.C., a Delaware limited liability company

By:_____
Name:_____
Title:_____

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

On the _____ day of _____, 2023, before me by means of ☐ physical presence or ☐ online notarization, a notary public in and for said sate, personally appeared J. Kenneth Tate, the Vice President of RAHN BAHIA MAR L.L.C., a Delaware limited liability company, known to me to be the person who executed the within Restrictive Covenant on behalf of said Company and acknowledged to me that he executed the same for the purposes therein stated.

Witness my hand and notarial seal subscribed and affixed in said County and State, the day and year first above written.

_____
Notary Public, State of Florida

_____
Typed, printed or stamped name of Notary Public

My commission expires:

DRAFT

The City has executed this Restrictive Covenant this _____ day of _____, 2024.

CITY OF FORT LAUDERDALE

_____

By: _____
, Mayor

By: _____
Name: _____
Title: _____

By: _____
City Clerk

Attest: _____
City Clerk

Approved as to Form:

_____
City Attorney

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STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____, 20__, by _____, Mayor of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida and _____ as City Clerk they are personally known to me or produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, ___.

(SEAL)

_____
Notary Public
Print Name:_____

My Commission Expires:

CITY SIGNATURE PAGE

The CDD has executed this Restrictive Covenant this _____ day of _____, 2024.

BAHIA MAR COMMUNITY DEVELOPMENT DISTRICT

By:_____
Name:_____
Title:_____

STATE OF FLORIDA)
)
COUNTY OF)

On the _____ day of _____, 2023, before me by means of ☐ physical presence or ☐ online notarization, a notary public in and for said sate, personally appeared _____, the _____ of BAHIA MAR COMMUNITY DEVELOPMENT DISTRICT, a _____, known to me to be the person who executed the within Restrictive Covenant on behalf of said Company and acknowledged to me that he executed the same for the purposes therein stated.

Witness my hand and notarial seal subscribed and affixed in said County and State, the day and year first above written.

_____
Notary Public, State of Florida

_____
Typed, printed or stamped name of Notary Public

My commission expires:

DRAFT

CDD SIGNATURE PAGE

JOINDER

SYNOVUS BANK, a Georgia banking corporation, the holder of that certain Amended and Restated Mortgage, Assignment of Rents Security Agreement and Fixture Filing, and Notice of Future Advance recorded in Instrument #114608286 of the Public Records of Broward County, Florida and all loan documents related thereto, as amended from time to time hereby consents to this Declaration and the provisions of the Declaration.

IN WITNESS WHEREOF, SYNOVUS BANK has caused these presents to be signed in the name by its proper officer this _____ day of _____, 2024.

WITNESSES:

SYNOVUS BANK,
a Georgia banking corporation

_____
Signature

_____
Print Name

_____
Signature

_____
Print Name

By:_____
Name:_____
Title:_____

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, by _____, the _____ of SYNOVUS BANK, a Georgia banking corporation, freely and voluntarily under authority duly vested in him/her by said corporation and that the seal affixed thereto is the true corporate seal of said corporation. He/she is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 2024.

_____
Notary Public

_____
Typed, printed or stamped name of Notary Public

My Commission Expires:

JOINDER

DRAFT

EXHIBIT A

PROPERTY

All that part of Bahia Mar, according to the plat thereof, recorded in Plat Book 35, Page 39 of the public records of Broward County, Florida, lying west of the right-of-way line of Seabreeze Boulevard, excepting therefrom Parcel 1; also excepting therefrom the North 80 feet of Parcel 34.

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EXHIBIT B

CDD PUBLIC IMPROVEMENTS AREA

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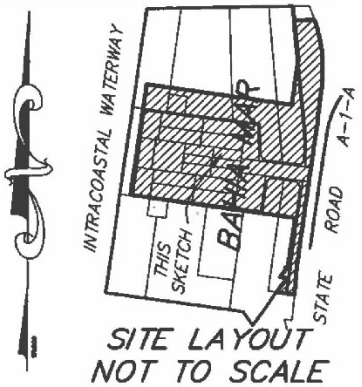
McLAUGHLIN ENGINEERING COMPANY LB 285
A DIVISION OF CONTROL POINT ASSOCIATES, INC. LB 8137
CUTTING EDGE SURVEYING * PLATTING * LAND PLANNING
1700 N.W. 64th STREET #400, FORT LAUDERDALE, FLORIDA 33309
PHONE: (954) 763-7611 * EMAIL: JHADDIX@CPASURVEY.COM

SKETCH AND DESCRIPTION
BAHIA MAR CDD SITE
SHEET 1 OF 2 SHEETS



SITE LAYOUT
NOT TO SCALE

LEGAL DESCRIPTION:

A portion of the Parcels and those certain 10.00 foot Walkways adjacent thereto and within said Parcels, BAHIA MAR, according to the plat thereof, as recorded in Plat Book 35, Page 39, of the public records of Broward County, Florida, more fully described as follows:

Commencing at the Northeast corner of Parcel 32, of said BAHIA MAR; thence South 05°24'49" East, a distance of 80.22 feet to the Point of Beginning; thence North 88°51'31" East, a distance of 110.52 feet to a point on a curve; thence Southerly on the West right of way line of State Road A-1-A (Seabreeze Boulevard) the following six (6) courses and distances 1) thence Southerly on said curve to the right, whose radius point bears South 71°48'21" West, with a radius of 876.51 feet, a central angle of 24°37'04", an arc distance of 376.60 feet to a point of tangency; 2) thence South 06°25'25" West, a distance of 226.21 feet; 3) thence South 08°01'55" West, a distance of 700.37 feet to a point of curve; 4) thence Southerly on said curve to the left, with a radius of 2935.35 feet, a central angle of 03°56'09", an arc distance of 201.91 feet to a point of tangency; 5) thence South 04°05'46" West, a distance of 50.00 feet; 6) thence South 04°36'00" West, a distance of 20.31 feet to the end of said six (6) courses and distances; thence North 81°57'59" West, on the South line of said Parcels 33 and 2a, distance of 99.93 feet; thence North 35°18'52" East, a distance of 81.26 feet; thence North 07°15'43" East, a distance of 14.94 feet; thence North 81°51'50" West, a distance of 29.26 feet; thence North 34°15'43" East, a distance of 53.37 feet; thence North 82°45'12" West, a distance of 4.55 feet; thence North 08°00'24" East, a distance of 7.99 feet; thence South 80°43'25" East, a distance of 7.98 feet; thence North 07°14'48" East, a distance of 3.63 feet; thence South 83°07'40" East, a distance of 5.83 feet; thence North 08°17'38" East, a distance of 284.99 feet; thence North 81°41'33" West, a distance of 181.34 feet; thence North 81°56'46" West, a distance of 311.67 feet; thence North 81°35'54" West, a distance of 414.05 feet; thence North 08°16'19" East, a distance of 634.25 feet; thence South 81°44'28" East, a distance of 796.02 feet; thence North 08°15'42" East, a distance of 258.16 feet; thence North 05°12'38" West, a distance of 224.92 feet to the Point of Beginning.

Said lands situate, lying and being in the City of Fort Lauderdale, Broward County Florida and containing 696,197 square feet or 15.9825 acres more or less.

NOTES:

1) This sketch reflects all easements and rights-of-way, as shown on above referenced record plat(s). The subject property was not abstracted for other easements road reservations or rights-of-way of record by McLaughlin Engineering Company.
2) Legal description prepared by McLaughlin Engineering Co.
3) This drawing is not valid unless sealed with an embossed surveyors seal.
4) THIS IS NOT A BOUNDARY SURVEY.
5) Bearings shown assume the North line of plat (35/39), as North 81°51'26" East.

CERTIFICATION

Certified Correct. Dated at Fort Lauderdale, Florida this 25th day of September, 2023.

McLAUGHLIN ENGINEERING COMPANY
A DIVISION OF CONTROL POINT ASSOC. INC.

JERALD A. McLAUGHLIN
Registered Land Surveyor No. LS5269
State of Florida.

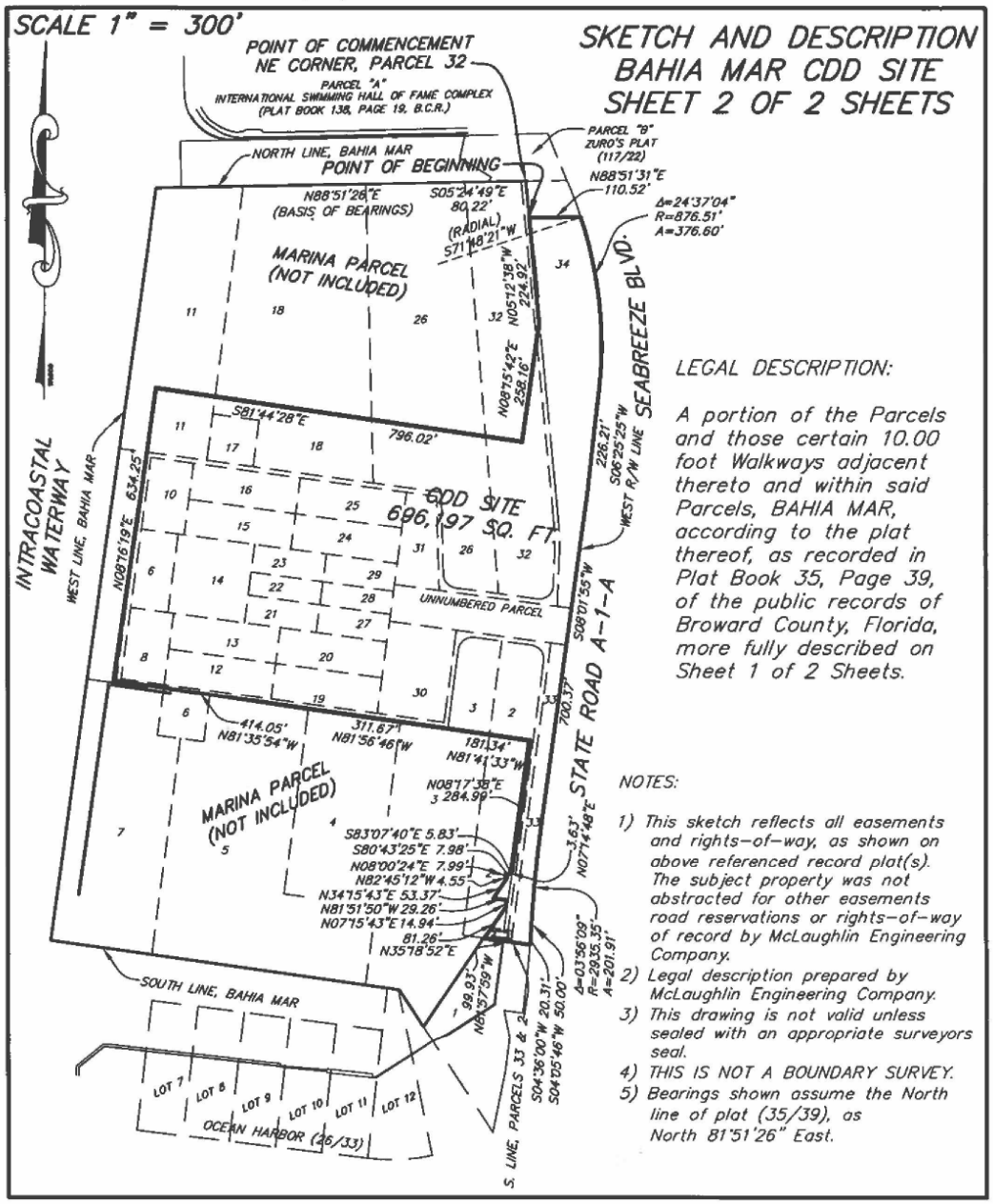
FIELD BOOK NO. _____ DRAWN BY: JMMjr

JOB ORDER NO. 230306 (BAHIA MAR) CHECKED BY: _____

REF. DWG.: A-20(14), 97-3-134 C:\JMMjr/2023/ 230306 (BAHIA MAR)

EXHIBIT B

McLAUGHLIN ENGINEERING COMPANY LB 285
A DIVISION OF CONTROL POINT ASSOCIATES, INC. LB 8137
CUTTING EDGE SURVEYING * PLATTING * LAND PLANNING
1700 N.W. 64th STREET #400, FORT LAUDERDALE, FLORIDA 33309
PHONE: (954) 763-7611 * EMAIL: JHADDIX@CPASURVEY.COM



FIELD BOOK NO. _____ DRAWN BY: JMMjr

JOB ORDER NO. 230306 (BAHIA MAR) CHECKED BY: _____

REF. DWG.: A-20(14), 97-3-134 C: \JMMjr/2023/ 230306 (BAHIA MAR)

EXHIBIT B

EXHIBIT C

OTHER EXISTING TITLE DOCUMENTS

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EXHIBIT D

CDD AIR RIGHTS PARCEL

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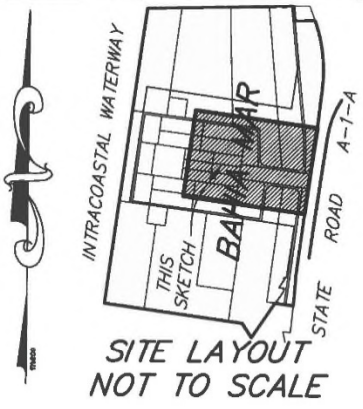
McLAUGHLIN ENGINEERING COMPANY LB 285
A DIVISION OF CONTROL POINT ASSOCIATES, INC. LB 8137
CUTTING EDGE SURVEYING * PLATTING * LAND PLANNING
1700 N.W. 64th STREET #400, FORT LAUDERDALE, FLORIDA 33309
PHONE: (954) 763-7611 * EMAIL: JHADDIX@CPASURVEY.COM

SKETCH AND DESCRIPTION
BAHIA MAR
CDD PODIUM AIRSPACE
SHEET 1 OF 2 SHEETS



SITE LAYOUT
NOT TO SCALE

LEGAL DESCRIPTION:

A portion of the Parcels and those certain 10.00 foot Walkways adjacent thereto and within said Parcels, BAHIA MAR, according to the plat thereof, as recorded in Plat Book 35, Page 39, of the public records of Broward County, Florida, **above the ground level (preconstruction), Elevation= 3.5 feet, North American Vertical Datum 1988,** more fully described as follows:

Commencing at the Northeast corner of Parcel 32, of said BAHIA MAR; thence South 05°24'49" East, a distance of 80.22 feet; thence North 88°51'31" East, a distance of 110.52 feet to a point on a curve; thence Southerly on the West right of way line of State Road A-1-A (Seabreeze Boulevard) the following four (4) courses and distances 1) thence Southerly on said curve to the right, whose radius point bears South 71°48'21" West, with a radius of 876.51 feet, a central angle of 24°37'04", an arc distance of 376.60 feet to a point of tangency; 2) thence South 06°25'25" West, a distance of 216.58 feet to the Point of Beginning; 3) thence continuing South 06°25'25" West, a distance of 9.63 feet; 4) to the end of said four (4) courses and distances; thence South 08°01'55" West, a distance of 465.71 feet; thence North 81°58'10" West, a distance of 669.51 feet; thence North 08°01'50" East, a distance of 475.33 feet; thence South 81°58'10" East, a distance of 669.24 feet to the Point of Beginning.

Said lands situate, lying and being in the City of Fort Lauderdale, Broward County Florida and containing 318,241 square feet or 7.3058 acres more or less.

NOTES:

1) This sketch reflects all easements and rights-of-way, as shown on above referenced record plat(s). The subject property was not abstracted for other easements road reservations or rights-of-way of record by McLaughlin Engineering Company.
2) Legal description prepared by McLaughlin Engineering Co.
3) This drawing is not valid unless sealed with an embossed surveyors seal.
4) THIS IS NOT A BOUNDARY SURVEY.
5) Bearings shown assume the North line of plat (35/39), as North 81°51'26" East.

CERTIFICATION

Certified Correct. Dated at Fort Lauderdale, Florida this 4th day of October, 2023.

McLAUGHLIN ENGINEERING COMPANY
A DIVISION OF CONTROL POINT ASSOC. INC.

JAMES M. McLAUGHLIN JR.
Registered Land Surveyor No. LS4497
State of Florida.

FIELD BOOK NO. _____

JOB ORDER NO. 230306 (BAHIA MAR)

REF. DWG.: A-20(14), 97-3-134

DRAWN BY: JMMjr

CHECKED BY: _____

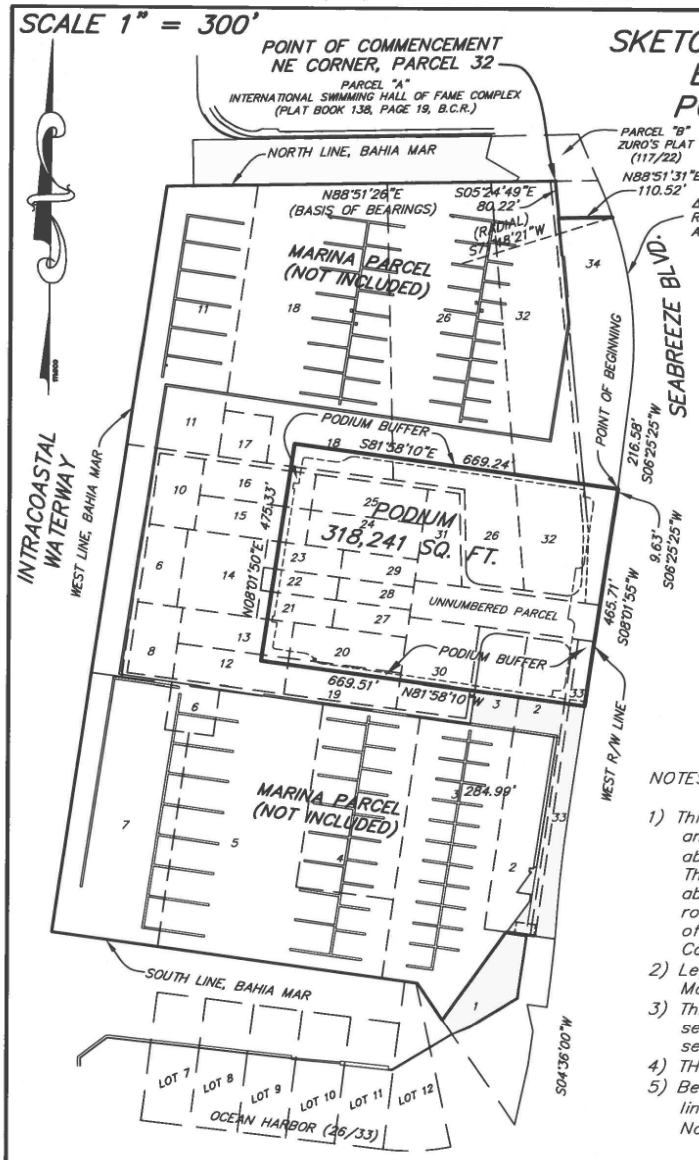
C:\JMMjr/2023/ 230306 (BAHIA MAR)

EXHIBIT D

McLAUGHLIN ENGINEERING COMPANY LB 285
A DIVISION OF CONTROL POINT ASSOCIATES, INC. LB 8137
CUTTING EDGE SURVEYING * PLATTING * LAND PLANNING
1700 N.W. 64th STREET #400, FORT LAUDERDALE, FLORIDA 33309
PHONE: (954) 763-7611 * EMAIL: JHADDIX@CPASURVEY.COM

SCALE 1" = 300'

SKETCH AND DESCRIPTION
BAHIA MAR CDD
PODIUM AIRSPACE
SHEET 2 OF 2 SHEETS



LEGAL DESCRIPTION:

A portion of the Parcels and those certain 10.00 foot Walkways adjacent thereto and within said Parcels, BAHIA MAR, according to the plat thereof, as recorded in Plat Book 35, Page 39, of the public records of Broward County, Florida, **above the ground level (preconstruction), Elevation= 3.5 feet, North American Vertical Datum 1988**, more fully described on Sheet 1 of 2 Sheets.

NOTES:

1) This sketch reflects all easements and rights-of-way, as shown on above referenced record plat(s). The subject property was not abstracted for other easements road reservations or rights-of-way of record by McLaughlin Engineering Company.
2) Legal description prepared by McLaughlin Engineering Company.
3) This drawing is not valid unless sealed with an appropriate surveyors seal.
4) THIS IS NOT A BOUNDARY SURVEY.
5) Bearings shown assume the North line of plat (35/39), as North 81°51'26" East.

FIELD BOOK NO. _____

JOB ORDER NO. 230306 (BAHIA MAR)

REF. DWG.: A-20(14), 97-3-134

DRAWN BY: JMMjr

CHECKED BY: _____

C: \JMMjr/2023/ 230306 (BAHIA MAR)

EXHIBIT D

CAM 24-0109 Backup: Amended and Restated Declaration of C&R

BES 12/28/23

Return to: (enclose self-addressed stamped envelope)
Barry E. Somerstein, Esq.
Greenspoon Marder LLP
200 East Broward Boulevard, Suite 1800
Fort Lauderdale, FL 33301

This Instrument Prepared by:
Barry E. Somerstein, Esq.
Greenspoon Marder LLP
200 East Broward Boulevard, Suite 1800
Fort Lauderdale, FL 33301

SPACE ABOVE THIS LINE FOR PROCESSING DATA **SPACE ABOVE THIS LINE FOR PROCESSING DATA**

AMENDED AND RESTATED DECLARATION OF COVENANTS & RESTRICTIONS OF BAHIA MAR MASTER ASSOCIATION, INC.

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TABLE OF CONTENTS

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AMENDED AND RESTATED
DECLARATION OF COVENANTS & RESTRICTIONS
OF BAHIA MAR MASTER ASSOCIATION, INC.

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS & RESTRICTIONS OF BAHIA MAR MASTER ASSOCIATION, INC. ("**Declaration**") is made as of this _____ day of _____, 2024 by Rahn Bahia Mar L.L.C., a Delaware limited liability company authorized to do business in Florida ("**Developer**") and joined in by Bahia Mar Master Association, Inc., a Florida corporation not for profit (the "**Association**"), Bahia Mar Community Development District ("**CDD**"), City of Fort Lauderdale, Florida ("**City**"), Rahn Marina LLC, a Florida limited liability company ("**Marina Sublessee**"), TRR Bahia Mar Marina Village, LLC, a Florida limited liability company ("**Marina Village Sublessee**") and, solely with respect to Section 21.3(b) of this Declaration that inures to the benefit of Marine Industries Association of South Florida, Inc. and Yachting Promotions, Inc. (collectively, the "**Boat Show Tenant**").

WHEREAS, a Declaration of Covenants & Restrictions of Bahia Mar Master Association, Inc. was recorded in Instrument Number 116096957 of the Public Records, Broward County, Florida ("**Original Declaration**"); and

WHEREAS, the Parties wish to modify and restate the Original Declaration in accordance with the terms of this Amended and Restated Declaration of Covenants & Restrictions of Bahia Mar Master Association, Inc. ("**Declaration**"); and

WHEREAS, the Developer is the lessee under the Master Lease with respect to the Property; and

WHEREAS, various portions of the Property are intended to be used for commercial, hotel, office, marina, residential, Special Functions, and other lawful uses; and

WHEREAS, it is in the mutual best interest of the Owners of the Parcels, and the CDD as to the Parcel it owns, to maintain and preserve the character, quality and aesthetic standards of the Property and the surrounding buildings, improvements, docks, roadways, sidewalks and common areas, with particular emphasis upon the exterior design and landscaping, and the entries, structural elements and public areas serving or located in the Buildings, the roof and exterior of the Buildings, and the efficient operation of the Property in which the Parcels are to be located; and

WHEREAS, Developer and the City desire to set forth certain rights, easements, appurtenances, interests and benefits of the Owners of the Parcels; and

WHEREAS, Bahia Mar Community Development District has been formed with respect to the CDD Public Improvement Area to enable the CDD to acquire the CDD Air Rights Parcel and to perform construction, maintenance and/or operation functions with respect to public improvements to be constructed within the CDD Public Improvement Areas; and

WHEREAS, Developer and City have determined that it is desirable for the efficient preservation of the values and amenities established with respect to the Property to create the

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Association a not-for-profit, Florida corporation under Chapter 617, Florida Statutes, which corporation has joined in this Declaration and to which there have been and will be delegated and assigned (i) certain powers and duties of ownership, operation, administration, maintenance and repair of portions of the Property; (ii) the enforcement of the covenants and restrictions contained herein; and (iii) the collection and disbursement of the "**Shared Expenses**" (as hereinafter defined); and

WHEREAS, Developer previously executed and recorded the Original Declaration and desires to amend, restate and replace the Original Declaration with this Declaration and hereby affirms its commitment in the Original Declaration and the Developer and the City do presently commit their respective interests in the Property which is legally described in **Exhibit A** hereto to the covenants, conditions, provisions and restrictions contained in this Declaration. To the extent of any inconsistencies between the terms of the Original Declaration and the terms of this Declaration, the terms of this Declaration shall control; and

WHEREAS, this Declaration imposes upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the Owners and the CDD of each portion of the Property, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance, and preservation of the Property.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein set forth, Developer and the City hereby declare that the Property shall be owned, held, used, transferred, sold, conveyed, demised and occupied, subject to the covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth which shall run with title to all portions of the Property and be binding on all Parties having any right, title or interest in any portion of the Property, their successors and assigns.

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ARTICLE 1
DEFINITIONS

Whenever used in this Declaration and the Exhibits hereto the following terms shall have the meanings specified below unless the context otherwise requires:

"**Act**" means Chapter 718, Florida Statutes, in effect on the date the applicable Regime Declaration is filed in the Public Records of the County. The Act does not apply to this Declaration since this Declaration does not create a Regime.

"**Air Rights Fee Owner(s)**" shall mean the CDD and/or other owner of any portion of the fee simple title interest in the CDD Air Rights Parcel other than a Regime Unit Owner.

"**Applicable Air Rights Parcel**" shall mean the portion of the CDD Air Rights Parcel which was demised under a Phased Lease to the extent such Phased Lease has been terminated as provided in the Restrictive Covenant.

"**Approved Plans**" means the plans and specifications for the Building(s), as such plans and specifications may be amended from time to time to the extent such plans and specifications and all amendments thereto are approved by the Architectural Committee. Upon completion of the

Building(s), the Owner of the Parcel containing the Building(s) shall provide "as-built" plans to the Association.

"**Approved Site Plan**" shall mean the then existing site plan (approved by the Developer and with City Governmental Approval) with respect to the Property as same may be amended and/or replaced from time to time. A sketch of the Approved Site Plan presently in effect is attached hereto as **Exhibit B.** To the extent the Approved Site Plan is modified (by the Developer and with City Governmental Approval) to a Site Plan different from the Approved Site Plan reflected in **Exhibit B** ("**Subsequent Site Plan**"), then the Shared Facilities may be amended by Developer to conform to such Subsequent Site Plan.

"**Architect**" shall mean a particular architect or architectural firm, licensed to practice in the State of Florida, who shall perform the functions of Architect called for in this Declaration. The practitioner or firm who shall serve as the Architect in any instance shall be determined in accordance with the terms of this Declaration.

"**Architectural Committee**" means the persons or firms appointed pursuant to Section 9.2 hereof.

"**Assessment**" means any charges which may be assessed hereunder pursuant to Article 4 from time to time against an Owner and for the charges attributable to the CDD.

"**Association**" means the Bahia Mar Master Association, Inc., a Florida not-for-profit corporation, which shall have as its initial members the Owners of the Marina Parcel, the Marina Village Parcel, and the Balance Parcel.

"**Balance Parcel**" shall mean the Property less the Marina Parcel, the Marina Village Parcel and, to the extent designated as a Parcel under a Supplemental Declaration, each Phased Parcel (and upon termination of the Phased Lease, the Parcel owned by the CDD and the Applicable Air Rights Parcel related to premises previously demised under such terminated Phased Lease) and any Subleased Parcel.

"**Board**" shall mean the Board of Directors of the Association.

"**Boat Show"** shall mean the Fort Lauderdale International Boat Show conducted annually each year within the "**Show Site**" during the "**Show Dates**" as described in and pursuant to the Boat Show Lease.

"**Boat Show Activities**" shall have the meaning set forth in Section 2.11 of this Declaration.

"Boat Show Event of Default" shall mean a default by or through any Boat Show Tenant of their obligations, representations, or covenants under the Boat Show Lease not cured within the cure period set forth in Section 18(a) of the Boat Show Lease.

"Boat Show Landlord" shall mean Rahn Bahia Mar L.L.C. and its successors and assigns of the Boat Show Lease; however, in no event may a Regime Association become the Boat Show Landlord.

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"**Boat Show Lease**" shall mean and refer to that certain Extended Boat Show Lease dated June 6, 2017 between the Boat Show Landlord and the Boat Show Tenant, as may be now or further amended from time to time. The Boat Show Lease is referred to in this Declaration but the terms thereof are confidential and may only be disclosed if authorized in writing by Boat Show Landlord in its sole discretion. A redacted version of portions of such Boat Show Lease as of the date hereof is attached hereto as **Exhibit C**.

"**Boat Show Tenant**" shall mean Marine Industries Association of South Florida Inc. and Yachting Promotions, Inc., and their permitted successors and/or permitted assigns pursuant to the Boat Show Lease.

"**Branded**" shall mean at a quality of finish and management consistent with comparable residential and hotel units managed by a luxury hotel chain.

"**Bridge**" shall mean the pedestrian bridge over State Road A-1-A which provides pedestrian access to/from Fort Lauderdale beach on the east side of State Road A-1-A over State Road A-1-A to the boundary of the Property on the west side of State Road A-1-A, which may be utilized by Developer for access for such persons as Developer designates from time to time and for such other lawful uses designated by Developer. The Developer hereby designates that the Owners and the CDD may utilize the Bridge and the Bridge is a Shared Facility.

"**Buildings**" shall mean the improvements (including the existing buildings and other improvements located on the Property) and those to be developed on the Property as contemplated by the Approved Site Plan including but not limited to the Podium and all improvements to be located thereunder, within, or over the Podium such as parking areas, foundations, pilings, hotels, restaurants, offices, retail and commercial facilities, apartments and appurtenances thereto.

"**Bulkheads**" shall mean the bulkhead separating the Marina Parcel and the Upland within the Property as generally shown on **Exhibit D** as same may be relocated by Developer from time to time pursuant to the terms of the Marina Sublease.

"**Capital Improvement Assessment**" means a charge against each Owner and its Parcel(s), representing a portion of the costs incurred by the Association for construction (other than the initial construction planned by Developer, the cost of which shall be borne by Developer), installation or replacement of any capital improvement to or for any portion of the Shared Facilities for which the Owners and their respective Parcels are responsible as provided in this Declaration, or any repair of such an improvement amounting to a capital expenditure under generally accepted accounting principles, which the Association may from time to time undertake pursuant to this Declaration.

"**Casualty Decision**" shall have the meaning set forth in Section 8.3(b).

"**CDD**" shall mean the Bahia Mar Community Development District, its successors and assigns.

"**CDD Air Rights Parcel**" shall mean the fee simple title to air rights conveyed by the City to the CDD of portions of the Property with respect to the Podium as described on **Exhibit E** attached hereto and made apart hereof.

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"**CDD Public Improvements Area**" shall mean the portion of the Property described on **Exhibit F** attached hereto and made apart hereof.

"**City**" means the City of Fort Lauderdale, a Florida municipal corporation.

"**City Governmental Approval**" shall mean the approval (with all appeal periods having expired) by the City in its capacity as a governmental authority to the extent such governmental approval is generally applicable as opposed to approval by the City as lessor under the Master Lease in its proprietary function.

"**City Manager**" means the City Manager of the City of Fort Lauderdale.

"**Commercial Unit(s)**" shall mean commercial or retail units/spaces within the Property.

"**Common Assessment**" means the charge against each Owner and its respective Parcel representing a portion of the Shared Expenses.

"**County**" means Broward County, Florida.

"**Creditor Owner**" shall mean an Owner who has paid or advanced amounts due pursuant to this Declaration for the account of a Defaulting Owner or who has performed other obligations required to be performed by this Declaration on behalf of a Defaulting Owner, as permitted under this Declaration.

"**Declaration**" means this instrument as it may be amended or supplemented from time to time.

"**Default Rate**" shall mean the rate of interest per annum equal to the lesser of (i) the highest non usurious rate permitted under applicable law or (ii) such interest as the Board may determine from time to time.

"**Defaulting Owner**" shall mean any Owner who is delinquent on its obligation to pay Assessments or other amounts due and payable pursuant to the terms of this Declaration or who has failed to perform other obligations required to be performed by this Declaration. For purposes of this Declaration, a Defaulting Owner may be (a) the Regime Association in the event it fails to remit to the Association all amounts it is required to pay to the Association pursuant to this Declaration, and/or (b) the Owner of any Parcel which is not submitted to a Regime.

"**Developer**" or "**Declarant**" means RAHN BAHIA MAR L.L.C. and any other party to whom it may assign its rights, in whole or in part, as Developer in writing pursuant to a written assignment recorded in the Public Records of Broward County, Florida, provided that no Owner, solely by reason of its acquisition of a Parcel or a Regime Unit Owner purchasing a Regime Unit therein, shall be considered a successor or assignee of such rights and obligations unless it is specifically designated as such in an instrument executed by Developer.

"**Development Rights**" shall mean the "**Development Rights**" as defined in the Marina Sublease.

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"**Drives and Parking Areas**" shall mean only the paved driving surfaces, and designated parking areas existing from time to time throughout the Property, which areas as they presently exist are within the area generally shown on **Exhibit G** attached hereto and made a part hereof; recognizing that Developer shall have the sole and absolute right, at its expense, to modify and/or relocate (permanently or temporarily) from time to time the location of such paved driving surfaces and designated parking areas and the Drives and Parking Areas in accordance with the requirements of the Marina Covenant; provided the CDD has control over the parking within the Parcel owned by the CDD subject to existing easement rights, including the easement rights granted by Developer set forth in this Declaration. For avoidance of doubt, except during Special Functions, the Drives and Parking Areas will always have driveway access to State Road A-1-A, also known as Seabreeze Boulevard, subject to any qualifications expressly set forth in the Marina Sublease and/or Boat Show Lease.

"**Easements**" shall have the meaning set forth in Section 2.18.

"**Force Majeure Event**" shall mean any of the following occurring in or directly impacting Broward County, Florida: (a) hurricane, flood, tornado, excessive rain, wind, or other extreme unpredictable weather, natural disaster, meteorological events, seismic event, or other acts of God; (b) fire or other casualty; (c) earthquake; (d) explosion; (e) war (whether or not formally declared); (f) civil unrest, riot, civil commotion or insurrection, or rebellion; (g) area-wide or industry-wide strike, lockout, or other labor dispute; (h) condemnation; (i) act or threat of terrorism; (j) a regional or national disruption of the delivery of materials, ability to receive services or utilities, or of shipping or transportation services; (k) shortage of any material or commodity, which is not due to such Person's failure to appropriately contract for the same; (l) embargo, quarantine, disease and/or virus outbreak, pandemic, or epidemic; (m) national, regional or local emergency; or (n) any other acts outside the control of such Persons. Notwithstanding anything to the contrary herein, failure to secure or retain financing shall not be deemed a Force Majeure Event and no Force Majeure Event shall excuse or delay the payment of money.

"**Fueling Area**" shall mean the underground location of the fuel tanks, fuel lines, and fueling system in the area generally shown on **Exhibit H** as same may be relocated (temporarily or permanently) by Developer from time to time, pursuant to the terms of the Marina Sublease.

"**Governing Documents**" shall mean and refer to this Declaration, Restrictive Covenant, the Association's Articles of Incorporation, the Association's By-Laws, and any rules and regulations promulgated by the Association's Board.

"**Hotel Unit(s)**" shall mean hotel rooms located within the Property.

"**Improvements**" shall mean the Buildings and other improvements, including, but not limited to, docks, driveways, parking areas, sidewalks, and other improvements to the Property existing on, under or over the Property from time to time.

"**Incremental Increase**" shall have the meaning set forth in the Marina Sublease.

"**Institutional Mortgage**" shall mean a mortgage held by an Institutional Mortgagee on any leasehold or subleasehold Parcel within the Property.

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"**Institutional Mortgagee**" shall mean any lending institution owning a first mortgage encumbering any leasehold or subleasehold Parcel on any portion of the Property, which owner and holder of said mortgage shall either be the Developer, a bank, life insurance company, federal or state savings and loan association, real estate or mortgage investment trust, building and loan association, mortgage banking company licensed to do business in the State of Florida, or any subsidiary thereof, licensed or qualified to make mortgage loans in the State of Florida or a national banking association chartered under the laws of the United States of America or any "secondary mortgage market institution," including the Federal National Mortgage Association ("**FNMA**"), Government National Mortgage Association ("**GNMA**"), Federal Home Loan Mortgage Corporation ("**FHLMC**") and such other secondary mortgage market institutions as the Board shall hereafter approve in writing; any and all lenders, and the successors and assigns of such lenders, which have loaned money to Developer and which hold a mortgage on any portion of the Land securing any such loan; any pension or profit-sharing funds qualified under the Internal Revenue Code; the Veterans Administration, the Federal Housing Administration or the Department of Housing and Urban Development or such other lender as is generally recognized in Florida as an Institutional Mortgagee; or Developer, its successors and assigns.

"**Insurance Trustee**" means the institution appointed pursuant to Section 12.1 hereof.

"**Limited Shared Facilities**" means those Shared Facilities which are available for use by only one or more, but not all, Owners or the CDD as described in **Exhibit I** attached hereto or as otherwise designated by the Developer in a Supplemented Declaration.

"**Maintenance**" means, and shall include with regard to any particular component of the Improvements and/or the Property, the maintenance (including, but not limited to, painting and other decorating), operation, inspection (including, but not limited to, inspection for the purpose of meter reading), testing, repair, preservation, replacement and/or cleaning (including, but not limited to, dusting, washing, mopping and vacuuming) thereof, as well as any other action commonly or customarily regarded as maintenance.

"**Majority Vote**" shall mean the majority vote of the members of the Board provided that as long as Developer is a lessee of the Master Lease, the term Majority Vote shall mean a majority of the Board appointed by the Developer.

"**Manager(s)**" means any manager(s), now or hereafter retained by the Developer under a management agreement with the Association to assist the Association in fulfilling or carrying out certain duties, powers or functions of the Association to operate and maintain the Shared Facilities and shall also mean and refer to any successor manager of the Shared Facilities pursuant to any future management agreement executed by the Association.

"**Marina Covenant**" shall have the meaning set forth in Section 2.16(b) of this Declaration.

"**Marina Easements**" shall, subject to the terms of the Marina Sublease, mean the areas encumbered by the Marina Exclusive Easements and certain non-exclusive easements over the following areas (i) the non-exclusive right to use the Drives and Parking Areas for ingress, egress and parking by Marina Sublessee and its tenants, guests, employees, contractors, vendors and

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invitees, (ii) the non-exclusive right to install, operate and maintain underground utility lines (to the extent that Developer fails to properly maintain or repair in accordance with the Marina Sublease) running through the Upland in their present locations as such utility lines may be relocated from time to time with the written approval of Developer, in order to provide utility service to the Marina Parcel and the Marina Easements, and (iii) the non-exclusive rights to use other Shared Facilities on the Upland as specifically defined in the Marina Sublease or this Declaration.

"**Marina Exclusive Easements**" shall mean the exclusive right to (i) use the Marina Office Building and (ii) use, operate, and maintain the below-grade fuel tanks and fueling system (including, but not limited to, tanks, fuel lines and fuel pumps) in the Fueling Area, as same may be relocated by Developer from time to time pursuant to the terms of the Marina Sublease.

"**Marina Office Building**" shall mean the building containing the Captain's Quarters and certain office space, and the building housing the dockmaster's office, which are presently located as generally shown on **Exhibit J** (as same may be modified, relocated and/or replaced in accordance with the Marina Sublease).

"**Marina Parcel**" shall mean the marina area situated within the Property in Broward County, Florida (from the water property line to the water side of all Bulkheads) and all improvements thereon, including, but not limited to, the docks and accessories in such area and piers, wharfs, pilings, and security gates/structures at the entrance of some of the docks demised under the Marina Sublease.

"**Marina Sublease**" shall mean the Sublease between Developer and Rahn Marina, LLC dated May 13, 2019, as amended, as referred to in the memorandum of which was recorded in Instrument Number 116096958 of the Public Records of Broward County, Florida, as amended.

"**Marina Sublessee**" shall mean the lessee under the Marina Sublease only during such time the Marina Sublease remains in effect. The Marina Sublessee, as of the date of this Declaration, is Rahn Marina, LLC, its successors and assigns.

"**Marina Village Activities**" shall mean the food and beverage services, entertainment activities, and all other lawful activities conducted from the Marina Village Parcel.

"**Marina Village Parcel**" shall mean the leasehold interest demised under the Marina Village Sublease.

"**Marina Village Sublease**" shall mean the Marina Village Sublease between Developer and Marina Village Sublessee, its successors and assigns, dated February 11, 2022, as amended, as referred to in the memorandum which was recorded in Instrument Number 119102284 of the Public Records of Broward County, Florida.

"**Marina Village Sublessee**" shall mean the lessee under the Marina Village Sublease only during such time the Marina Village Sublease remains in effect. The Marina Village Sublease as of the date of this Sublease is TRR Bahia Mar Marina Village, LLC, its successors and assigns.

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"**Master Lease**" shall mean and refer to that certain Master Lease dated April 13, 2022 by and between the City of Fort Lauderdale, Florida and RAHN BAHIA MAR L.L.C., a Delaware limited liability company, a memorandum of which is recorded under Instrument Number 118135051 of the Public Records of Broward County, Florida, and any amendments, renewals, extensions, or continuations thereof.

"**Member(s)**" shall mean each Owner, as may change from time to time.

"**Mortgagee**" means any holder of a first mortgage lien on a Parcel, or on a leasehold interest in an entire Parcel, or on a Regime Unit, which mortgage is security for a loan advanced in good faith to finance the purchase of rights in and/or construction of the Parcel or a Regime Unit, or to refinance a loan of such nature, provided that such holder shall give notice, as prescribed in Section 17.4, to the parties prescribed in Section 17.4, that it is the holder of such mortgage prior to being considered a Mortgagee for purposes hereof.

"**Non-Performing Owner**" shall have the meaning set forth in Section 8.1(c).

"**Notice of Claim of Lien**" means the notice to be provided to a Defaulting Owner before the Association and/or Creditor Owner is permitted to exercise their respective rights to foreclose an Assessment lien under this Declaration.

"**Occupant**" means any person or entity rightly in possession of all or part of a Parcel other than the Owner.

"**Owner(s)**" means the Developer, the City (if the Master Lease is terminated), Air Rights Fee Owner(s), Marina Village Sublessee, Marina Sublessee, Phased Lessee, and any party designated an Owner by Developer in a Supplemental Declaration and their respective successors and assigns of their Owner's interest in such applicable Parcel, individually, as the context shall require, but the CDD shall not be an Owner. For purposes of this Declaration, once a Regime Declaration is recorded amongst the public records of the County, the Regime Association shall be deemed the Owner of that Regime Parcel, however, each Regime Unit Owner shall not be an Owner.

"**Parcel(s)**" means a (i) Balance Parcel, (ii) the Marina Parcel, (iii) the Marina Village Parcel, (iv) Applicable Air Rights Parcel, (v) any portion of the Property owned by the CDD, and (vi) any Phased Parcel and any Subleased Parcel which is submitted as a Parcel pursuant to a Supplemental Declaration, individually, as the context shall require.

"Park(s)" means the parks (including the Specified Park) as shown on **Exhibit G** as such Parks may be modified by Developer from time to time.

"**Parking Spaces**" shall have the meaning set forth in Section 2.7.

"**Parties**" shall mean the parties set forth in the Preamble of this Declaration and their successors and assigns (as applicable).

"**Permitted Times**" shall mean the hours of 6:00 a.m. to 9:00 p.m. each day, except when designated for use for Special Functions or for the operation of the Marina Parcel and/or the

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operation of the Marina Village Parcel. Such Permitted Times may be revised from time to time by Developer, the Association, or with the reasonable approval of the City Manager; recognizing it is the intent of the Parties that Developer has or will grant certain parties rights from time to time to operate Special Functions within the Shared Facilities.

"**Perpetual Easements**" shall mean the Perpetual Easements which are appurtenant to the CDD Air Rights Parcel and the Specified Access Improvement Parcel as provided in Section 2.5(f).

"**Person(s)**" shall mean a person, firm or entity.

"**Phased Lease**" shall have the meaning set forth in the Master Lease.

"**Phased Parcel**" shall mean the leasehold parcel demised under a Phased Lease.

"**Podium**" shall mean the structure(s) shown on the Approved Site Plan upon which the applicable Improvements are to be constructed thereon, including hotel, parking garage, drives and ramps, retail and commercial facilities, apartments and other improvements which are intended to be located thereon.

"**Promenade**" shall mean the area shown on the Approved Site Plan when constructed (which Promenade shall include landscaping and hard surfaces, which hard surfaces shall only be used for pedestrian (including bicycle) traffic and golf carts (to the extent permitted by applicable governmental authorities including the City in their regulatory capacity). Developer shall have the right to modify such location (which modification may require prior written consent of Marina Sublessee to the extent specifically set forth in the Marina Sublease).

"**Property**" shall mean the leasehold interest of the Developer initially demised under the Master Lease which is legally described on **Exhibit A** as of the date of the execution of this Declaration. The Property is comprised of the Upland and the Marina Parcel.

"**Reconstruction Assessment**" means a charge against an Owner and/or the CDD and its Parcel (as applicable) representing a portion of the cost incurred by the Association for reconstructing the portion of the Building in which that Owner's and/or the CDD's Parcel (as applicable) is situated or for reconstructing the Shared Facilities for which such Owner is obligated to pay Shared Expenses as provided in this Declaration arising out of an event of maintenance, casualty, or condemnation.

"**Regime**" is a leasehold condominium formed pursuant to the Act on a Parcel pursuant to a Regime Declaration.

"**Regime Association**" means the not-for-profit corporation formed or to be formed to operate each Regime Parcel. For purposes of this Declaration only, the Regime Association shall be deemed the Owner of the applicable Regime Parcel upon the recording of the Regime Declaration; it being acknowledged, however, that the Regime Association will not have or hold actual title to each Regime Unit within such Regime Parcel. There may be multiple Regime Associations within the Property. In no event shall a Regime Association be the lessor under the Boat Show Lease.

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"**Regime Declaration**" means a Declaration of Regime which may be recorded by Owner of an applicable Parcel submitting its Parcel to the provisions of the Act, together with all exhibits to the Regime Declaration, as such Regime Declaration and exhibits thereto may be amended from time to time.

"**Regime Parcel**" shall mean a Parcel submitted to a Regime by a Regime Declaration.

"**Regime Unit(s)**" means the units created under the Regime initially or subsequently constructed upon a Regime Parcel(s) which may be comprised of Residential Units, Hotel Units, and/or Commercial Units. Regime Units are to be located in a Regime Parcel but are not deemed a Regime Parcel.

"**Regime Unit Owner**" shall mean the owner of a Regime Unit.

"**Release of Lien**" means the instrument to be provided by either the Association and/or Creditor Owner, whichever the case may be, to a Defaulting Owner after the Defaulting Owner has cured any and all defaults for which a Notice of Lien was filed by the Association and/or Creditor Owner.

"**Residential Unit(s)**" shall mean the residential apartments/residences within the Property.

"**Restrictive Covenant**" shall mean the Declaration of Restrictive Covenant by and between the Developer, City and CDD dated on or about the date hereof and to be recorded and effective after the recording of this Declaration.

"**Sales Consideration Fee**" shall have the meaning set forth in a Phased Lease as to the payment of such Sales Consideration Fee as provided in such Phased Lease.

"**Shared Expenses**" means the actual and estimated cost of Maintenance of the Shared Facilities (including unpaid Assessments not paid by the Owner and/or CDD (as applicable) responsible for payment); all costs of the Association incurred in the performance of its duties; the costs of management and administration of the Shared Facilities, including, but not limited to, costs incurred for the services of managers, accountants, attorneys and employees; costs of providing services, personnel or equipment for the Shared Facilities; costs of all cleaning and other services benefiting the Shared Facilities; costs of comprehensive general liability insurance for the Shared Facilities, workmen's compensation insurance and other insurance covering or connected with the Shared Facilities; real and personal property taxes for the Shared Facilities, the Improvements and the Land, if any, which are not separately assessed against the Parcels; costs of funding any reserve funds established for replacement, deferred maintenance, repair and upgrading of the Shared Facilities and personal property thereon; and costs of all other items or services incurred by the Association for any reason whatsoever in connection with the Shared Facilities or for the benefit of the Owners or within the parameters stated in Section 4.2.

"**Shared Facilities**" means those portions, components, features or systems of the Property, which by purpose, nature, intent or function afford benefits to or serve more than one Parcel, rather than a single Parcel exclusively as designated by the Developer from time to time, including those which are declared to be Shared Facilities in this Declaration, provided, however,

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the CDD shall have the right to reasonably elect, upon written notice to the Association within thirty (30) days of being notified of the Shared Facilities to be as set forth on **Exhibit G**, which of the Shared Facilities the CDD elects it does not desire to utilize ("**Election Not to Utilize**") and, to the extent the CDD does not timely send an Election Not to Utilize, the CDD shall be deemed to elect to be able to utilize all such Shared Facilities to be made available to the CDD on **Exhibit G**. Developer hereby declares the portions of the Property described in **Exhibit G** attached hereto to be Shared Facilities which includes but is not limited to the Drives and Parking Area, Parks, Promenade and Bridge as each may be modified from time to time by the Developer. The Shared Facilities need not be legally described. Included in **Exhibit G** and/or **Exhibit B** is a site plan of the Property, as of the date hereof, which depicts certain Shared Facilities that are available to all Owners and certain Shared Facilities that are available to only certain Owners and/or the CDD (as applicable), i.e., Limited Shared Facilities. Non-inclusion in **Exhibit G** of any particular portion, component, feature or system of the Improvements shall not prevent the same from being considered a Shared Facility if the definition of Shared Facility is otherwise satisfied by such item. Each Shared Facility shall be burdened with the easements set forth in Article II or elsewhere in this Declaration in favor of the Owner and/or the CDD not owning a Parcel in which such Shared Facility is located, but each Shared Facility and such easements therein as may be created in this Declaration shall be subject to the rights, powers and duties reserved for or granted or delegated in Article II or elsewhere in this Declaration to Developer, the CDD, or the Owner of the Parcel in which such Shared Facility is located or the Association. The Developer may designate that certain Shared Facilities are only available to certain Parcels.

"**Show Dates**" shall have the meaning set forth in the definition of Boat Show.

"**Show Site**" shall have the meaning set forth in the definition of Boat Show.

"**Specified Access Improvement Parcel**" shall mean the property described on **Exhibit K**.

"**Special Assessment**" means an assessment levied by the Association for a non-recurring expense and which, was not included in the Association's budget.

"**Special Charge**" means a charge against an Owner and its Parcel, directly attributable to such Owner, equal to the cost incurred in connection with the enforcement of this Declaration against such Owner for failure to duly perform its obligations hereunder, and such other charges as may be provided for in Section 4.3.

"**Special Functions**" shall mean (i) special events conducted on or around the Property, the Promenade, Parks, and/or other portions of the Shared Facilities as authorized by Developer such as concerts, the Boat Show, weddings, and/or other special events; and (ii) for reasonable times for renovation, relocation, repair, and maintenance. It is the intent that after construction thereof, the Promenade and the Specified Park will generally be available for public use as contemplated in Section 2.5(b) of this Declaration, subject to Special Functions which would result in closure of (x) portions of the Promenade and/or Specified Park during time periods such as, but not limited to, concerts, road rally, the Boat Show, weddings, conference events, promotional events, civic or charitable events, or similar events which may or may not require a special event permit or other authorization from the City, and (y) with respect to other portions of the Property,

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including the Shared Facilities, as authorized by Developer. Such Special Functions resulting in closure of the Promenade and/or Specified Park shall be subject to the following limitations (i) use and closure of the Specified Park may occur in connection with the business conducted in connection with the hotel and other operations upon the Property, including, but not limited to, weddings, parties, conference and other events, luncheon or dinners, etc. ("**Operations**") provided closure of the Specified Park in connection with Operations shall be limited to up to two (2) days each month for a period of up to 12 hours per day (or such additional times as approved by the City in accordance with the City's special events permit requirements); (ii) closure of the Promenade and/or Specified Park may occur in connection with the Boat Show during Show Dates as provided in the Boat Show Lease; (iii) closure of the Promenade and/or Specified Park may occur in connection with permits issued by the City for special events; and (iv) the Promenade and/or Specified Park shall only be open to the public during Permitted Times and subject to reasonable rules and regulations as established by Developer from time to time. Developer shall need to obtain the approval by the City for such additional events. In addition to the foregoing, portions of the Shared Facilities (including the Promenade and/or Specified Park) may be closed for such period of time and restricted to such use as determined by Developer as reasonably necessary due to Force Majeure Events and as reasonably required to perform renovations, construction, repair damage, and/or to perform maintenance in connection with portions of the Property.

"Specified Park" shall have the meaning set forth in the Master Lease.

"**Specified Percentage**" shall mean the percentage that such Parcel shall pay as to the Shared Expenses as set forth on **Exhibit L**, as same may be modified from time to time pursuant thereto.

"**Specified Requirements**" shall have the meaning set forth as follows:

(i) Promenade running directly parallel to the seawall perimeter of the Marina directly servicing any of the Marina's facilities (including the docks) which shall maintain a width of approximately twenty feet (20') from the seawall perimeter, height clearance of at least fifteen feet (15') for vertical improvements which encroach the Promenade or air space above the Promenade.

(ii) No less than the existing number of access points from the Drives and Parking Areas to the Promenade as shown on the Approved Site Plan which access points shall be generally located as shown on the Approved Site Plan or such other areas providing substantially comparable function to the Marina.

(iii) On-street and off-street parking spaces in the Drives and Parking Areas ("**Marina Parking**") as currently shown on the Approved Site Plan on both the north side of the Upland and south side of the Upland which shall be located no more than forty feet (40') from the northern or southern seawall perimeter of the Marina Parcel and located within two hundred fifty feet (250') of the western seawall perimeter of the Marina Parcel. Marina Parking shall be kept reasonably available for properly licensed and mobile commercial vehicles serving the Marina Parcel which shall include, without limitation, fuel trucks providing in-dock fueling through fuel hoses connecting yachts to vehicles in the Marina Parking and other vehicles serving

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the Marina Parcel including, without limitation, trucks providing pump-out services and provisioning services to slip tenants.

The Marina Sublessee agrees that the Specified Requirements are subject to reasonable rules and regulations established by the Developer from time to time.

"**Sublease**" shall mean a sublease between Developer and a sub-lessee.

"**Subleased Parcel(s)**" shall mean the parcel demised under a Sublease.

"Subsequent Site Plan" shall have the meaning set forth in the definition of Approved Site Plan.

"**Sub-Sublessee**" shall mean the Sub-Sublessee pursuant to the Sub-Sublease by and between Marina Sublessee, its successors and assigns (as sub-sublessor) and Developer, its successors and assigns (as sub-sublessee), as same has been or shall hereinafter be amended and/or extended from time to time.

"**Successor Owner**" shall have the meaning set forth in in Section 16.1.

"**Supplemental Declaration**" shall mean an instrument executed by Developer from time to time where the Developer may (i) designate a Phased Parcel and/or Subleased Parcel as a Parcel, (ii) imposing restrictions such as maximum square footage and/or maximum use (i.e., number of Residential Units or Hotel Units, etc.) of development, use restrictions or other restrictions as Developer may elect to be imposed on such Phased Parcel or Subleased Parcel, (iii) allocate the Specified Percentage for such Phased Parcel and/or Subleased Parcel, (iv) may modify **Exhibit L** to change the Specified Percentages by which the Owners are allocated Shared Expenses, provided the Specified Percentage of an existing Parcel shall not be increased without the written consent of the Owner of such Parcel, or the CDD (as to the Parcel owned by the CDD) which consent shall not be unreasonably withheld, delayed or conditioned (v) sets forth the name and addresses of such new Owner of the Parcel created by such Supplemental Declaration, (vi) designate Limited Shared Facilities, and (vii) such other matters as Developer may reasonably designate. The Association shall join in the execution of any Supplemental Declaration at the request of Developer but such joinder shall not be required to make any such Supplemental Declaration effective. Neither the Owners nor the CDD shall be required to join in the execution of any Supplemental Declaration made by Developer but shall nevertheless be bound thereby.

"**Units**" shall mean a Hotel Unit(s), Residential Unit(s), and/or Commercial Unit(s) located within a Parcel.

"**Upland**" shall mean the portion of the Property excluding the Marina Parcel.

"**Visible Area**" means any portion of a Building's curtain wall, facade, roof, or other area of the Building visible from any Parcel, from the outside of the Building, or visible to persons utilizing the rights of ingress and egress through a given Parcel, including glass enclosed areas.

"**Voting Interests**" means those number of votes set forth on **Exhibit M** attached hereto and made a part hereof.

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ARTICLE 2
GENERAL PLAN OF DEVELOPMENT; PARCELS AND EASEMENTS

Section 2.1 General Plan of Development. Developer is the owner of the leasehold interest in the Property pursuant to the Master Lease and presently plans that all or parts of the Property will be developed as a multi-staged, mixed-use project known as the Bahia Mar. The Property is intended to encompass hotels, marina, apartment units, residential dwelling units, offices, retail, restaurants, parking. amenities, Special Functions, and all other lawful uses, subject to the terms of this Declaration. Developer's general plan of development is to provide for its existing uses as same may be modified from time to time by the Approved Site Plan. Developer's general plan of development of the Property may also include whatever facilities and amenities Developer considers in its sole judgment to be appropriate to the Property.

Developer may unilaterally subject any portion of the Property submitted to this Declaration initially or by subsequent Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners, and obligating such Owners to pay the costs incurred by the Association through Assessments. Any such Supplemental Declaration may modify **Exhibit L** to change the allocation of Shared Expenses among the Owners and Parcels, provided the Specified Percentage of an existing Parcel shall not be increased without the written consent of the Owner of such Parcel or the CDD (as to the Parcel owned by the CDD), which consent shall not be unreasonably withheld, delayed or conditioned.

Developer expressly reserves the right to (i) commence construction and development of the Property if and when Developer desires; (ii) develop the Property upon such timetable as Developer, in its sole discretion, chooses; and (iii) modify the plan of development and Approved Site Plan of the Property in such manner as it, in its sole discretion, chooses, subject to complying with the Specified Requirements. Nothing contained herein shall be construed as obligating Developer to develop the Property according to the present plan of development or in accordance with any Approved Site Plan existing from time to time.

As more fully set forth in its Articles of Incorporation, the Association was formed to serve its Members, and, except as otherwise specifically indicated, its activities shall be directed by its Board. The Association shall be governed by Chapter 617, Fla. Stat., as amended from time to time, shall have all of the rights, duties, and powers of a Florida corporation not for profit, and shall be authorized, in its discretion, to enforce the provisions of this Declaration.

Since the Property is comprised of retail, commercial, office, hotel, marina and residential use, it is intended that the Association will be governed by Chapter 617 Fla. Stat. and shall not be governed by Chapters 718, 719, and/or 720, Fla. Stat. Members may submit their interests in the Property to a Regime, provided the Regime Association and all others with respect to such Regime Parcel shall take subject to the terms of this Declaration. Each Member, by acquiring its Parcel, agrees that the Association will be governed by Chapter 617 Fla. Stat. and not by Chapters 718, 719 and/or 720 Fla. Stat. and each such Owner and those claiming by, through or under them are estopped from objecting to the foregoing.

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Section 2.2 Creation of Separate Parcels. Developer, by executing and recording this Declaration, does hereby declare and establish that the Parcel owned by the CDD, Marina Parcel, Marina Village Parcel, each Applicable Air Rights Parcel (when created) and Balance Parcel are each a separate Parcel and each such Parcel and City join in this Declaration to consent to the terms of this Declaration. The Developer reserves the right to create additional Parcels, including any Phased Parcel, each Applicable Air Rights Parcel (when created) and/or Subleased Parcel which is designated as a Parcel by Developer in a Supplemental Declaration. By making a Phased Parcel, each Applicable Air Rights Parcel (when created), and/or Subleased Parcel a Parcel, the legal description of the Balance Parcel would automatically be deemed amended to less out of the Balance Parcel the legal description of the Phased Parcel, each Applicable Air Rights Parcel (when created), and/or Subleased Parcel which is then so designated as a Parcel. The Marina Parcel, Marina Village Parcel, Balance Parcel, each Applicable Air Rights Parcel (when created), and each other Parcel created by Supplemental Declaration will each be a separate Parcel. No merger of estates or interests shall be deemed to occur in any instance in which a single person or entity has right, title or interest in or an encumbrance against or easement over one or more Parcels, or any combination thereof, except where legally valid and proper affirmative action is taken to create such merger. Developer may assign any and all of its rights and powers under this Declaration ("**Assigned Rights**"), in whole or in part, to any other person and/or entity who accepts such Assigned Rights ("**Assignee Developer**"), and unless the instrument assigning the Assigned Rights provides otherwise, the assignment of the Assigned Rights shall not work to divest Developer of the Assigned Rights, but rather, Developer and Assignee Developer shall have the right to exercise the Assigned Rights concurrently with one another. Notwithstanding the foregoing, as long as no Boat Show Event of Default exists, the Boat Show Landlord shall not assign the Assigned Rights with respect to the Boat Show Lease, the Boat Show Activities, the Show Dates, and/or the Show Site in whole or in part, to a Regime Association or an Owner (other than Boat Show Landlord, Developer or their respective affiliates) of a Phased Parcel which has been submitted to a Regime.

Section 2.3 Easements. Subject to the provisions of Section 2.5(f) and Section 2.11, each Owner (other than in subsection (g) below which shall be solely for the benefit of the CDD) shall have the following non-exclusive easements during the term of the Master Lease through, across, and upon the Parcels, subject to the reasonable regulation of easements provided for in this Article 2.

(a) For use of the electric service vaults and the cables and conduits therein through which electric power is supplied by the public utility to the Parcels, as well as vaults, cables and conduits for cable television, telecommunications, internet, telephone and related services, all as substantially shown on the Approved Plans and/or the Approved Site Plan.

(b) For use of the domestic and fire protection water service lines, sanitary and storm sewer lines, soil lines, gas lines, grease traps, and sewage ejector lines, including all valves, traps and clean-out appurtenant to any such line serving the Parcels, all substantially as shown on the Approved Plans and/or the Approved Site Plan.

(c) For use of the Shared Facilities located within a Parcel to the extent necessary for the functioning of the Shared Facilities in accordance with the intended respective purpose of each particular Shared Facility.

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(d) For the continued existence of encroachments in the event that, by reason of the construction of the Improvements or the subsequent settling or shifting of the Improvements as provided in the Approved Plans, any part of the Improvements on any Parcel encroaches or shall hereafter encroach upon any other Parcel. Such easement for the continued existence of such encroachments on a Parcel shall exist only so long as all or any part of the encroachment shall remain.

(e) For Maintenance of any Shared Facility, or for any facility located within a Parcel, for which another Owner has Maintenance responsibility, or for which the other Owner is otherwise permitted or required to perform the Maintenance.

(f) For entry upon, and for ingress and egress through a Parcel, with persons, materials and equipment, to the extent reasonably necessary in the performance of the Maintenance of any Improvements, whether or not located within the Owner's Parcel, for which the Owner has Maintenance responsibility, or for which the Owner is otherwise permitted or required to perform the Maintenance.

(g) To permit the CDD to bond, construct, own, operate and maintain public improvements made with respect to the Property.

(h) For ingress and egress through a Parcel to the extent necessitated by an emergency involving danger to life, limb, or property.

(i) For pedestrian ingress and egress through a Parcel intended and designated for pedestrian use, and for pedestrian ingress and egress through the entrance, service entrance, paths, and walkways located on the Drives and Parking Areas in the Property or Bridge that are at any point in time intended and designated for pedestrian use, including, but not limited to, those portions of any Parcel required to afford reasonable access from each Parcel to the public right of ways adjoining the Parcel and for the use in common with the Owner of such Parcel, including its tenants, invitees, and agents of such facilities and areas of the Parcel for any other uses for which such facilities and/or areas are normally used in a first class, mixed-use, residential and commercial building, including, without limitation, the elevators located within the Parcel, all substantially as shown on the Approved Plans and/or the Approved Site Plan.

(j) For the installation, maintenance, repair, and utilization of foundations to support any Improvements located within the Property as may be designated by the Developer from time to time;

(k) For ingress, egress, and access (pedestrian, bicycle and vehicular over such portions of the Property as the Developer may designate in writing from time to time) for construction, maintenance, repair and operation of parking, utilities and/or other utilization of the Shared Facilities, as may be designated by the Developer in writing from time to time.

Section 2.4 Extent of Owners' Rights and Easements. Except as expressly provided herein to the contrary, any right and easement created by or under any provision of this Declaration shall be subject to Section 2.11 and the following:

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(a) The right of the Developer to establish and enforce reasonable rules and regulations pertaining to the use of the Shared Facilities, provided such rules and regulations, to the extent applicable to the CDD, shall be subject to its approval which shall not be unreasonably withheld, delayed, or conditioned.

(b) The right of the Association to borrow money for the purpose of improving the Shared Facilities and, in furtherance thereof, to mortgage, pledge or hypothecate the Shared Facilities and Assessments therefor as security for money borrowed or debts incurred, provided that the rights of the mortgagee or secured party in any such case shall be subordinate to the rights and easements of the Owners, the CDD, and Regime Unit Owner(s) under this Declaration, including their rights in the Shared Facilities and the Owners', the CDD's and Regime Unit Owner(s)' use of such rights.

(c) The right of Developer and any of Developer's affiliates or designees to the non-exclusive use of the Shared Facilities without charge, for purposes of sales, leasing, display, exhibit, access, construction, ingress and egress, and/or for Special Functions.

(d) The right or duty of the Association to reconstruct, replace or refinish any Improvements upon the Shared Facilities, subject to those conditions and limitations set forth elsewhere in this Declaration.

(e) The right or duty of the Association to plant, replace, and/or maintain the trees, shrubs, ground cover and other vegetation, and "hard-scape" upon any portion of the Shared Facilities designed for such use.

(f) The rights and easements provided elsewhere in this Declaration.

(g) All plats, restrictions, covenants, conditions, reservations, limitations, easements and other matters of record affecting the Shared Facilities or other portions of the Property.

(h) Any easement granted pursuant to paragraphs (a) through (k) of Section 2.3 shall be subject to such reasonable rules and regulations as the Developer may impose, provided such rules and regulations, to the extent applicable to the CDD, shall be subject to its approval which shall not be unreasonably withheld, delayed, or conditioned.

(i) The right of any Owner, or any Regime Unit Owner, or any party purchasing any Parcel or any Regime Unit upon becoming the leasehold or fee owner thereof, shall have the right to mortgage, pledge or hypothecate its interest in its Parcel or Regime Unit in order to finance the purchase of or the making of improvements to the Parcel or Regime Unit in question, or to refinance any loan made for such purpose, without the consent of any other party, provided that the rights of any mortgagee or secured party in such case shall be subject to the rights of the Owners and Regime Unit Owner(s) under this Declaration, including, but not limited to, their respective rights in the Shared Facilities.

(j) The Parties recognize the Association shall perform its obligations under this Declaration and be entitled to enforce its rights under this Declaration.

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Section 2.5 Specific Easements.

(a) Marina Sublessee's Rights under the Marina Sublease. Subject to the provisions of Section 2.11, the Marina Sublessee, its employees, agents, guests, customers, and vendors, shall have an exclusive easement to use the Marina Exclusive Easements and a non-exclusive easement to use and access to all other Marina Easements as more specifically set forth in the Marina Sublease including, without limitation, the use of at least three hundred (300) parking spaces within the Drives and Parking Areas located on the Upland in areas designated from time to time in the sole and absolute discretion of the Developer, subject to the terms and conditions of the Marina Sublease, provided, however, that any parking located on the Upland shall not be available to the Marina Sublessee or its employees, agents, guests, customers or vendors, nor shall any Marina Easements be available for the benefit of the Marina Parcel during any of the Show Dates recognizing such Marina Easements are sublet by Marina Sublessee back to Marina Sublessor pursuant to the Sub-Sublease during the Show Dates.

(b) Promenade and Specified Park. Subject to the provisions of Section 2.11, from and after the completion of construction of the Promenade and/or Specified Park (as applicable), there is hereby granted a non-exclusive easement appurtenant to each Parcel over such Promenade and/or Specified Park (as applicable) for access and use by each Owner and their respective customers, sub-tenants, guests and invitees during Permitted Times. The general members of the public shall be granted a non-exclusive right to use the Promenade and/or Specified Park, subject to the following continuing conditions and limitations as to such use:

(i) The non-exclusive use of the Promenade or Specified Park by general members of the public shall not create, and shall never be construed or interpreted to create, a dedication to the public; notwithstanding the foregoing however, members of the public shall have non-exclusive use of certain portions of the Promenade and ingress and egress over certain portions of the Promenade and/or Specified Park for pedestrian traffic, subject to the provisions (a) providing for closure and restriction of the rights to use the Promenade and/or Specified Park as set forth in the definition of Special Functions, (b) the provisions of this Section 2.5(b), and (c) the other terms of this Declaration;

(ii) Developer shall, subject to the criteria which may be adopted by Developer from time to time (subject to the approval of such criteria by the City Manager (which approval shall not be unreasonably withheld, delayed or conditioned), be exclusively able to restrict, limit, or prevent access to the Promenade (or any portion thereof) to any specific member(s) of the public as Developer may deem appropriate to avoid loitering, creating a nuisance, restricting access during Special Functions and/or otherwise violating the rules and regulations adopted with respect to the Promenade, such that Developer retains at all times the right and ability to seek to enforce the foregoing and laws related to trespass;

(iii) The Promenade, Specified Park, and/or other portions of the Property shall not be, nor shall any of such areas ever be by reason of provisions of this Declaration, a public forum, limited public forum, or any other type of public forum as may exist now or in the future for purposes of the exercise of rights pursuant to the First Amendment to the United States Constitution and any companion provision under the Florida Constitution. The Promenade shall also be subject to the easement rights granted under this Declaration;

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(iv) The use of the Promenade and/or Parks shall remain subject to rules, regulations, and restrictions as Developer may impose from time to time;

(v) The use of the Promenade and/or Specified Park by the public shall be limited to Permitted Times, and may be closed to the public partially or entirely during Special Functions, subject to the limitations set forth in the definition of Specified Functions;

(vi) Developer shall have the right (but not the obligation) to place cameras and record activities, conduct surveillance, and provide security functions and other security related activities around the Property (other than on the Parcel owned by the CDD without the CDD's approval which shall not be unreasonably withheld, delayed, or conditioned) as Developer deems appropriate from time to time;

(vii) Use of the Promenade and/or Parks shall be subject to temporary disruptions (x) as Developer may reasonably designate in connection with activities Developer conducts, such as construction, maintenance, repairs, and other activities conducted on portions of the Property as shall be determined from time to time by Developer (x) subject to the terms of the Boat Show Lease, in connection with the Boat Show Activities during the Show Dates, and (y) subject to the terms of the Marina Sublease and/or the Marina Village Sublease, and (z) due to acts of a Force Majeure Event;

(viii) Use of the Promenade and/or Parks shall be in its then "AS IS" condition and any Person using the Promenade and/or Parks does so at their own risk; and

(ix) Developer shall be able to enforce the covenants and restrictions described in this Declaration; and additionally, neither the City nor any third party may enforce the rights of any member of the general public to the non-exclusive use of certain portions of the Promenade and/or Specified Park as contemplated in this Declaration.

(c) A perpetual (for the term of the Master Lease and/or Phased Lease, as and to the extent applicable), non-exclusive easement in favor of and reserved for Developer, the CDD (as to the Parcel owned by the CDD), the Association, and any and all utility companies as designated by Developer or the Association (i) to install conduits, lines, cable, wires and the like ("**Equipment**"), (ii) to maintain, repair, or service such Equipment, and (iii) for ingress and egress purposes in order to afford reasonable access to and for Developer, the CDD (as to the Parcel owned by the CDD), the Association, and those utility companies designated by Developer or the Association in order to install, maintain, repair, service, or replace such Equipment, all in such areas located within the Property as designated by Developer, CDD (as to the Parcel owned by the CDD) or the Association; provided however, that the easements granted in this subparagraph shall not adversely and materially impact upon the use and enjoyment of the Parcels by the Owner thereof. The easements granted and reserved in this subparagraph to and for Developer, CDD (as to the Parcel owned by the CDD) and the Association may be assigned by Developer, CDD (as to the Parcel owned by the CDD) or the Association to any other person and/or entity in whole or in part.

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(d) Enforcement Easement. The Developer, CDD (as to the Parcel owned by the CDD) and the Association shall have an easement for ingress and egress over each Parcel to enforce the terms of this Declaration.

(e) Easement for Boat Show Operation. The Developer reserves an easement over the Property located outside the Building(s) to be able to permit the operation of the Boat Show during the Show Dates and to conduct Special Functions.

(f) Perpetual Easements. The City does hereby grant to the Owners of the CDD Air Rights Parcel and the Specified Access Improvement Parcel (their respective successors and assigns) and their authorized agents, representatives, licensees, contractors, tenants, unit owners and invitees as designated by the Developer as a covenant remaining with the CDD Air Rights Parcel and the Specified Access Improvements Parcel ("**Perpetual Easements**") on, under and over the CDD Air Rights Parcel and Specified Access Improvements Parcel for each of the following purposes:

(i) To accommodate the design, construction maintenance, repair, replacement, as well as the ownership, use and enjoyment of the Improvements;

(ii) The right to construct, operate, repair, maintain, own, use and enjoy the Improvements;

(iii) The rights of subsurface, lateral and subjacent support between and among elements of the Improvements and City property including, but not limited to, subsurface pilings and the right to install utilities and other improvements necessitated by subsurface, vertical or lateral development of said Improvements and attachment thereof to the other elements of the Improvements;

(iv) The right of ingress, egress and access (for pedestrian, bicycle and vehicular traffic) to and through the CDD Air Rights Parcel and Specified Access Improvement Parcel to adjacent areas.

(v) For use of the electric service vaults and the cables, conduits and other utility facilities within the Property through which electric power and other utility service is supplied by the public or private utility to the CDD Air Rights Parcel and/or Specified Access Improvement Parcel, as well as for vaults, cables and conduits for cable television, telecommunications, internet, telephone and related services for the benefit of the CDD Air Rights Parcel and/or Specified Access Improvement Parcel.

(vi) For use of the domestic and fire protection water service lines, sanitary and storm sewer lines, soil lines, gas lines, grease traps, and sewage ejector lines, including all valves, traps and clean-out appurtenant to any such lines within the Property serving the CDD Air Rights Parcel and/or Specified Access Improvement Parcel.

(vii) For the continued existence of encroachments in the event that, by reason of the construction of the Improvements or the subsequent settling or shifting of the Improvements as provided in the Approved Plans, any part of the Improvements on any portion of the CDD Air Rights Parcel and/or Specified Access Improvement Parcel which encroaches or shall

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hereafter encroach upon any other portions of the Property. Such easement for the continued existence of such encroachments shall exist only so long as all or any part of the encroachment shall remain.

Section 2.6 Delegation of Use. Any Owner or Regime Unit Owner may delegate its right of use and enjoyment of and to the Shared Facilities as follows: (a) in the case of a Regime Unit Owner, to those members of his/her family and to those Occupants, employees, licensees, lessees, invitees, and guests to whom the Regime Declaration permits such Regime Unit Owner to delegate, license or lease the use of such Regime Unit; and (b) in the case of an Regime Unit Owner which is not a resident of a Regime Unit, to those Occupants, employees, licensees, lessees, invitees, and guests to whom the Regime Declaration permits such Regime Unit Owner to delegate, license or lease the use of such Regime Unit; provided, however, said delegation of use and enjoyment of and to the Shared Facilities shall be subject in all cases to reasonable regulation by the Association.

Section 2.7 Parking Spaces. Each respective Owner(s) (as applicable) shall have the right, subject to Section 2.11 and the provisions of the second paragraph of this Section 2.7, at any time and from time to time, to: (a) utilize their respective parking spaces existing from time to time as a Shared Facility allocated to parking ("**Parking Spaces**"), and (b) subject to the right of Developer to control, operate, license, grant and assign Parking Spaces on the Drives and Parking Areas as it determines; provided, however, the CDD shall have exclusive rights to license, grant, and/or assign public parking spaces owned by the CDD in any Parcel then owned by the CDD, subject to existing easement rights including the easement rights granted by Developer pursuant to this Declaration. Unless otherwise agreed to in writing by Developer, the Developer may charge for Parking Spaces and all fees collected by Developer for use of any Parking Spaces located outside the CDD Parcel owned by the CDD in whatever form (other than the Shared Expenses with respect thereto), including charging for use of electric charging stations, shall belong solely to Developer. The Developer shall have the exclusive right to conduct valet services upon the Shared Facilities located outside the Parcel owned by the CDD. The Developer shall have the exclusive right to set the rates to be charged for use of the Parking Spaces located outside the Parcel owned by the CDD.

Notwithstanding any language to the contrary contained in the immediately preceding paragraph, the control, operation, licensing, granting and assigning of Parking Spaces may be in such areas as designated by the Developer from time to time except the CDD has control over parking in the Parcel owned by the CDD subject to existing easement rights, including the easement rights granted by Developer set forth in this Declaration. The initial restricted parking areas are set forth on the sketch included as part of **Exhibit G**.

The foregoing allocation of Parking Spaces shall not prohibit Developer from modifying same from time to time located outside the Parcel owned by the CDD.

Section 2.8 Waiver of Use. No Owner may (i) exempt itself from liability for Assessments, (ii) release the Parcel owned by it from the Assessments, (iii) exempt itself from liens and charges provided for herein, either by waiver of the use and enjoyment of the Shared Facilities or by abandonment of its Parcel. The CDD shall be responsible for Assessments related to the allocation of the charges to the CDD for Assessments as set forth in this Declaration.

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Section 2.9 No Affirmative Obligations. The provisions of this Article 2 shall not be deemed to imply, or to impose, upon the grantor of any easement provided in this Article 2, or of any other easement provided for in this Declaration, any affirmative obligation relating to said easements. The only affirmative obligations relating to said easements imposed upon any such grantor are those affirmative obligations which are specifically set forth in this Declaration.

Section 2.10 Amendment and Restatement. This Declaration amends and restates the Original Declaration in its entirety. In the event of any conflicts between this Declaration and the terms of the Original Declaration, the terms of this Declaration shall control.

Section 2.11 Allowable Uses, Restrictions, and Disclosures. The provisions of this Declaration are subject to the terms of the Boat Show Lease and to the extent of any inconsistency between the terms of the Boat Show Lease and this Declaration, the terms of the Boat Show Lease shall control. All rights in the Property, all maintenance obligations, and all easements, established by this Declaration or otherwise provided for herein are subject to this Section 2.11 and, except with respect to the Perpetual Easements, are specifically and deliberately made inferior to and subject to (i) the terms and provisions of the Master Lease and Phased Lease, if applicable, (ii) the terms of the Boat Show Lease, the rights of the Boat Show Tenant, including but not limited to, conducting the Boat Show and Boat Show Activities, and (iii) the right of an Owner to conduct Special Functions and other events within the Property as approved by the Developer (which events other than the Boat Show shall require the written approval of (y) the Owner of the Marina Parcel if conducted on any portion of the Marina Parcel or the Marina Exclusive Easements other than the Captain's Quarters as provided in the Marina Sublease, and/or (z) the Owner of the Marina Village Parcel if conducted on any portion of the Marina Village Parcel). Each Member and each Regime Unit Owner (whether an owner, lessee, or sublessee of any of the Property now or hereafter existing and their guests, invitees or Occupants, subject to this Declaration by acceptance of a lease, or other conveyance thereof) hereby agrees and are put on notice that (subject to the terms of the Boat Show Lease) the Boat Show Tenant has the right of access to and use of the Show Site during the Show Dates during each year during the term of the Boat Show Lease to operate the Boat Show, which shall include, without limitation, the staging, mobilization, restoration, repair and cleaning activities of the Boat Show during the Show Dates (and thereafter for restoration or repairs, if necessary), including providing access to the Show Site during the Show Dates to their invitees, contractors, agents, employees, etc. (collectively, the "**Boat Show Activities**"). By the acceptance of a license, lease, deed or other conveyance or mortgage, leasehold, license or other interest, and by using any portion of the Property, each such grantee, occupant, and user automatically acknowledges, stipulates, and agrees that the Boat Show Activities (during the Show Dates as provided in the Boat Show Lease) and the Developer's right to conduct Special Functions and other events and activities (including providing access to the Property to Developer (or its assigns), its invitees, contractors, agents, employees, etc.) as permitted hereby or by applicable law (and not otherwise restricted by restrictive agreements applicable to such portion of the Property) (x) will restrict such parties' right to use portions of the Shared Facilities during such Special Functions (including, but not limited to, the Boat Show), and (y) such uses shall not be deemed nuisances, noxious or offensive activities under any applicable covenants or at law generally. Furthermore, the Members, each Regime Unit Owner, and their guests, invitees, and occupants are estopped from objecting to and/or restricting any such activity (including but not limited to, hours of operation, noise, congregation of people, and other impact resulting from any allowable and authorized use herein) referred to in this Section 2.11.

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Section 2.12 Marina Village. Each Member and each Regime Unit Owner (whether an owner, lessee or sublessee of any of the Property now or hereafter existing and their guests, invitees or Occupants hereby agree and are put on notice that the Marina will conduct the Marina Village Activity and accept and are hereby estopped from objecting to such Marina Village Activity and to any hours of operation, noise, congregation of people or other impact resulting from such Marina Village Activities, subject to the terms of the Marina Sublease and this Declaration.

Section 2.13 Acknowledgement and Waiver. As the Association is located within a resort community, including a marina, Owners and each Regime Unit Owner understand and agree that Owners, each Regime Unit Owner, their heirs, or assigns relinquish any right to complain, object, or seek any legal remedies to enjoin (i) the Marina Sublessee or its invitees or assigns from using the Marina Property or the Marina Easements in accordance with the Marina Sublease, (ii) the Developer from conducting any other events and activities (including providing access to the Property to invitees, contractors, agents, employees, etc.) as permitted under the Marina Sublease (to the extent applicable), by applicable law, and not otherwise restricted by restrictive covenants applicable to such portion of the Property, (iii) the Marina Village Activities on the Marina Village, and/or (iv) Boat Show Activities on the Property. Owners, tenants, residents, guests, and invitees on the Property and users of Parking Spaces on the Upland shall each be deemed to acknowledge that the Boat Show (in accordance with the terms of the Boat Show Lease) and the use of the Property as a commercial mega-yacht marina may burden and/or interfere with their use of the Upland, and such owners, tenants, residents, guests, and invitees on the Upland specifically waive and relinquish any right to complain, object, or seek any legal remedies to enjoin the Boat Show from being conducted pursuant to the terms of the Boat Show Lease on the Show Site during the Show Dates (unless the Boat Show Lease has been terminated or a Boat Show Event of Default exists) and/or marina activities on the Marina Property and the use of the Marina Easements.

Section 2.14 Notice to Future Occupants. Each Owner and Occupant within the Property owned, assigned, or leased by such Owner takes subject to the understanding that (i) nothing contained in this Declaration shall in any way restrict the right of the Developer to own, lease, operate, develop, redevelop, repair or otherwise deal with the Property as permitted under the Master Lease and/or Phased Lease (as applicable), other than based upon separate written agreement(s) between Developer and third parties ("**Specified Parties**") such as the Marina Sublease and the Marina Village Sublease ("**Third Party Agreements**"), but no one other than the applicable Specified Party is a third party beneficiary of such Third Party Agreements, (ii) the Marina Parcel is for the sole and exclusive use of the Owner of the Marina Parcel except as expressly set forth in the Marina Sublease, the Boat Show Lease and the Master Lease, (iii) the Owner's, the Occupant's and their invitees' rights in the Upland are inferior to and subject to all rights and easements of the Owner of the Marina Parcel and use of the Marina Easements as set forth in the Marina Sublease except that (pursuant to the terms of the Boat Show Lease) the Boat Show Tenant and the Developer (its successors and assigns) have the right of access to and use of the Show Site during the Show Dates to conduct Boat Show Activities to the extent provided in the Boat Show Lease, and (iv) the Marina Village Parcel is for the sole and exclusive use of the Owner of the Marina Village Parcel (and its designees), except as expressly set forth in this Declaration, in the Marina Village Sublease, the Marina Sublease, the Boat Show Lease, and the Master Lease. By the acceptance of a license, lease, deed or other conveyance or mortgage,

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leasehold, license or other interest, and by using any portion of the Property, each such lessee, grantee, Occupant and user automatically acknowledges, stipulates and agrees that none of the Boat Show Activities in accordance with the Boat Show Lease or the marina activities permitted under the Marina Sublease shall be deemed nuisances, noxious or offensive activities under any applicable covenants or at law generally. This Declaration shall constitute notice that the Marina Parcel will be operated with the Marina Activities in accordance with the Marina Sublease, the Marina Village will be operated with the Marina Village Activities in accordance with the Marina Village Sublease and the Show Site will be operated with Boat Show Activities during the Show Dates in accordance with the Boat Show Lease. Each Owner, Occupant, invitees and their respective successors and assigns acknowledges, understands and agrees that, as a result, (i) there may be increased noise levels associated with (x) the Marina Activities and Marina Village Activities throughout the day and night in accordance with the Marina Sublease and Marina Village Sublease (as applicable), and (y) the Boat Show Activities throughout the day and night during the Show Dates in accordance with the Boat Show Lease, (ii) the operation of a marina and of a Boat Show are inherently dangerous activities, and (iii) the operation of (x) the Marina Village with the Marina Village Activities (y) the Boat Show with Boat Show Activities pursuant to the Boat Show Lease and (z) the Marina Activities (including a first class, mega-yacht marina) on the Marina Parcel; each will not be deemed a nuisance under this Declaration provided same is conducted in accordance with the terms of the Marina Sublease, Marina Village Sublease and/or the Boat Show Lease (as applicable).

Section 2.15 Construction on Upland. The Developer and/or any future developer on each portion of the Upland, the Marina Sublessee, the Marina Village Sublessee, and any one claiming by, through or under such party shall cause its work to be performed in strict compliance with the requirements of the Master Lease, Marina Sublease, Marina Village Sublease, Phased Lease, the Boat Show Lease(s) (as applicable), and this Declaration with the following provisions:

(a) Hours of Operation. Outside work (except for emergencies) may only be performed between 8:00 a.m. until 8:00 p.m., local time and not on any weekend, any national holiday, or during the Boat Show during the Boat Show Dates as provided in the Boat Show Lease, without the prior written consent of the Board, which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding anything contained herein to the contrary, the Boat Show and Boat Show Activities may be performed in accordance with the terms of the Boat Show Lease and complying with all applicable laws, ordinances, and/or regulations of governmental authority.

(b) Access. The Developer (or its written designee) shall, during the course of the work by such Developer (or its written designee) or other party performing work on the Property, cause the Marina Sublessee and their respective employees, managers, guests, and invitees to have reasonable vehicular and pedestrian access to the Marina Parcel from State Road AIA (subject to temporary disruption due to casualty, condemnation or construction activities, or any Special Functions). The applicable party performing such work shall use reasonable efforts to minimize the duration and extent of any temporary blockages of driveways and/or vehicular parking areas, and to the extent feasible, shall notify the affected Member of any planned closures or blockages of access routes.

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(c) Interference. The Developer or other Owner (or their written designee) when performing such work, will not occupy any portion of the Marina Parcel in violation of the Marina Sublease without the prior written consent of the Owner of the Marina Parcel which consent will not be unreasonably withheld, conditioned or delayed. The applicable Owner of the Marina Parcel and its invitees, licensees, or any other party claiming by or through Marina Sublessee will not occupy any portion of the Parcel within the Upland (other than its permitted use of the Marina Easements) without the written consent of the applicable Owner of such Parcel.

The Developer or other Owner (or their written designee) when performing such work, will not occupy any portion of the Marina Village Parcel in violation of the Marina Village Sublease without the prior written consent of the Owner of the Marina Village Parcel which consent will not be unreasonably withheld, conditioned or delayed.

(d) Staging and Storage Plan. Prior to the commencement of any major construction, the Person performing such work (and the Owner who hired such Person) shall endeavor to provide any adversely affected Owner upon whose Parcel such work is being done with a logistics, staging, and storage plan. The plan shall propose mitigation measures to minimize construction impacts to adjacent residential and businesses areas.

(e) Dust Mitigation. The Person performing such work (and the Owner who hired such Person) shall comply with all applicable city and county requirements pertaining to mitigation of fugitive dust as a result of the work.

(f) Cleanup. During the course of the work, the Person performing such work (and the Owner who hired such Person) shall use its commercially reasonable efforts in good faith to maintain the work area free and clear of materials, rubbish, dirt, and debris and will cause its contractors to do likewise so that each applicable Owner can reasonably operate its respective Parcel.

(g) Repair of Damage. To the extent any improvements or personal property (including vessels) located on the Property are damaged by any Person performing work on the Property, the Person performing such work (and the Owner who hired such Person) shall reconstruct or repair any such damage to substantially the same or better condition than the condition of such improvements or personal property (including vessels) prior to such damage.

(h) Project Communications. Each Owner (or its written designee) shall keep the Board regularly informed about the status of all major work performed by the Owner on its Parcel. Prior to the commencement of such work, the Owner (or its written designee) shall provide the Board with phone number(s) and email address(es) at which the Board can reach the Owner (or its written designee) in the event of an emergency or other event which reasonably requires the immediate attention of the Owner (or its written designee).

Section 2.16 Development Plan and Modifications.

(a) Development. The development and redevelopment of the Property shall be in substantial conformity with the Approved Site Plan and in conformity with applicable law, the Master Lease, Phased Lease, Marina Village Sublease, the Marina Sublease, Restrictive Covenant and/or the Boat Show Lease (all as applicable). The Developer (or its assigns) retains

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and shall have full control over the Development Rights. Each Residential Unit (which is submitted to a Regime) and Hotel Unit within the Property shall be Branded. Commercial Unit(s) (whether or not submitted to a Regime), and Residential Unit(s) (if not submitted to a Regime) do not need to be Branded.

(b) Marina Covenant. During the term of the Marina Sublease, in the event the Developer shall amend the Approved Site Plan (where such amendment is not brought forth by any applicable governmental authority) which amendment adversely affects the Marina Property in any material respect ("**Specified Modification**") then the provisions of the Specified Requirements shall be a covenant ("**Marina Covenant**") that runs with the Marina Sublessee's leasehold interest in the land constituting the Property subject to modification and reasonable rules and regulations, but only as permitted in the Marina Sublease: In such circumstances, the Marina Sublessee shall have the right to approve such Specified Modification which approval shall not be unreasonably withheld, conditioned or delayed. The Developer and Marina Sublessee shall cooperate in good faith to find a reasonable and economically viable solution to provide substantially similar functions to the Marina Property with respect to adversely affected Specified Requirements. In the event Marina Sublessee does not (i) approve, or (ii) disapprove with specified reasonable detail the basis for the disapproval of the Specified Modification within fifteen (15) business days of submission of such Specified Modification by Developer to the Marina Sublessee, such approval by Marina Sublessee shall be deemed given.

Section 2.17 Acquisition of Property. The Association shall have the power and authority to acquire, convey, transfer, lease, encumber, and abandon such interests in real and personal property as it may deem beneficial to its Members and/or to Owners of any interests in any portion of the Property but subject to the terms and conditions of the Master Lease, Marina Sublease, Marina Village Sublease, any Phased Lease, Restrictive Covenant and the Boat Show Lease, to the extent applicable.

Section 2.18 Subordination. Except with respect to the easements created under this Declaration ("**Easements**") this Declaration is subject to the terms and conditions of the Master Lease and each Phased Lease, if any. In the event of a conflict between the Master Lease and/or Phased Lease and this Declaration, the terms, conditions, covenants and restrictions of the Master Lease and/or Phased Lease (as applicable) shall control, except as to the Easements, whereupon this Declaration shall control.

The City is joining in this Declaration to grant the Easements and to acknowledge that this Declaration governs the rights, duties, obligations, terms, conditions, and covenants of the parties who possess, own, visit, occupy, or hold a property right in the Property. However, the City shall have no fiduciary obligations or other obligation to perform or comply with the obligations of the Developer under this Declaration and shall have no obligation to perform Developer obligations under this Declaration provided however upon any termination of the Master Lease the City as owner of the Premises which was demised under the Master Lease immediately prior to such termination if applicable shall (1) be an Owner (2) at the City's option (in its sole discretion) the City may elect in writing ("**City Election**") to obtain the rights and obligations of Developer after the date of such City Elections and (3) recognize that the Perpetual Easements and Restrictive Covenant shall remain in full force and effect. The City shall not interfere with any Owners'

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exercise of their rights under this Declaration to the extent that it does not materially affect the rights of the City (other than as an Owner, if applicable).

Nothing herein shall be deemed a waiver of the City's sovereign immunity. Nothing herein shall be deemed the right to foreclose on the City's fee simple interest or the right to file or claim a lien on the fee interest of the City in the Property.

ARTICLE 3
POWERS AND DUTIES OF ASSOCIATION

Section 3.1 Powers and Duties. The Association shall have the exclusive power and duty to:

(a) Perform Maintenance with respect to, repair and otherwise manage the Shared Facilities in accordance with the provisions of this Declaration.

(b) Clean or cause the Shared Facilities to be cleaned on a regular basis in accordance with the standards of a first class residential, office and commercial property, and to perform or cause to be performed other standard janitorial services as to the same.

(c) Oversee obtaining for the benefit of the Owners for distribution through the Shared Facilities, all water, sanitary sewage and other utility services, as necessary, to service the Shared Facilities.

(d) Take whatever other actions the Association deems advisable with respect to the Shared Facilities as may be permitted hereunder or by law.

(e) Employ or contract with a Manager (which may be an affiliate of the Developer) to perform all or any part of the duties and responsibilities of the Association.

(f) Delegate its powers to committees, officers and employees.

(g) Permit events (e.g., concerts, weddings, art shows, farmers markets, etc.) to be conducted upon the Shared Facilities. The revenue of such events shall be payable to the Owner of the Parcel in which such event occurs, other than the Boat Show, which revenue shall be exclusively paid as provided in agreement(s) between the Developer and Marina Lessee.

The Association shall use its good faith efforts to provide the services described above at reasonable levels comparable with practices in other similar properties, subject to the Association's reasonable discretion, and subject to interruption due to the need to make repairs, alterations or improvements, or due to a Force Majeure Event, proceedings or regulations of any governmental authority, rationing, interruption of transportation facilities, and any cause beyond the reasonable control of the Association. The obligation of the Owners to pay Assessments hereunder shall not abate in the event of any interruption of service. The Association shall use its best efforts to and shall pursue with diligence all actions required to enable restoration of service in the event of such interruption. All costs and expenses incurred by the Association in performance of this Article 3 with respect to the Shared Facilities and as more particularly set forth

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on **Exhibit L** hereto shall be Shared Expenses which shall be included in the Common Assessments and subject to the payment obligation of the Owners as set forth in this Declaration.

Notwithstanding anything contained in the Declaration to the contrary, each Owner, the Association, and the Board acknowledge and agree that, except with respect to the Easements, this Declaration is subject to and subordinate to the Boat Show Lease and neither the Association, any Owner (other than the Boat Show Landlord), and/or the Board shall have, to the extent of the rights of the Boat Show Tenant under the Boat Show Lease (i) any power or duty over the Show Site during the Show Dates, (ii) any right to control or direct, or in any way object to, the Boat Show Activities conducted in accordance with the Boat Show Lease, and (iii) any right to alter, in any material manner, the Show Site during the Show Dates unless such material alteration (a) is not restricted under the Boat Show Lease, (b) is authorized pursuant to the Boat Show Lease, or (c) has been approved by the Boat Show Tenant, which approval will not be unreasonably withheld, delayed, or conditioned. The revenues under the Boat Show Lease shall be exclusively paid to the Boat Show Landlord pursuant to the terms of the Boat Show Lease.

Section 3.2 Membership. Each Owner shall be a member of the Association ("**Members**"). At such time as a Parcel is declared to be a Regime, the Regime Association established to operate such Parcel shall be the member of the Association in place of the former Owner of such Parcel. The Regime Unit Owner(s) within such Regime shall not be Members of the Association. Each Owner and Regime Unit Owner, by acceptance of a deed or other instrument evidencing his, her or its ownership interest in a Building or any portion thereof, and whether or not stated therein, acknowledges the rights, powers and authority of the Association as stated and provided for in this Declaration, as the same may be amended from time to time, and agrees to abide by and be bound by the provisions of this Declaration. In addition, the family, relatives, Occupants, guests, invitees, lessees, contractors, employees licensees and agents of each Owner and each Regime Unit Owner shall, while in or on any part of the Land or Improvements, abide and be bound by the provisions of this Declaration. Attached hereto as **Exhibits N** and **O**, respectively, are the initial Articles of Incorporation ("**Articles**") and Bylaws ("**Bylaws**") of the Association, the terms of which are incorporated herein and made a part hereof by this reference, recognizing that such Articles and Bylaws may be modified from time to time.

(a) The Association shall be governed by its Board ("**Board**") which shall be appointed, designated or elected as set forth in the Articles and Bylaws.

(b) The Association shall carry out the functions and services as specified in this Declaration to the extent such functions and services can be provided with the proceeds first obtained from Common Assessments, and then, if necessary, from Special Assessments. The functions and services referred to in this Declaration to be carried out or offered by the Association at any particular time shall be determined by the Board, taking into consideration the proceeds of Assessments, the needs of the Members, the needs of the Improvements, and/or the needs of the Shared Facilities. The functions and services which the Association is authorized to carry out or to provide may be added to or reduced at any time upon affirmative vote of a majority of the Board.

(c) The Association is not intended to own the Shared Facilities and the Owner of the leasehold interest in which such Shared Facility is located shall continue to own such interest

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in the Shared Facility, subject to the provisions of this Declaration, but shall not alter such Shared Facility without the written consent of the Association.

Section 3.3 Miscellaneous. In addition to the powers and duties of the Association set forth elsewhere in this Declaration, the Association shall have the exclusive power and duty to approve in writing the type and quality of fixtures, tables, chairs, other types of furniture and equipment, and all other items proposed to be used and located in a Visible Area within a Parcel, except for the Parcel owned by the CDD, prior to the use and placement of the same within the Property, which approval shall be given in the sole and absolute discretion of the Association.

ARTICLE 4
COVENANT FOR ASSESSMENTS

Section 4.1 Creation of the Lien and Obligation of Assessments. Each Owner of a Parcel and the CDD (as to the Parcel owned by the CDD) is hereby deemed to have covenanted, to pay the Association: (a) Common Assessments, (b) Special Assessments, (c) Capital Improvement Assessments, (d) Special Charges, and (e) Reconstruction Assessments. All of the aforementioned, which collectively are herein referred to as "**Assessments**" shall be imposed and collected as hereinafter provided.

Assessments, together with interest, late charges, costs and reasonable attorneys' fees for the collection thereof, shall be a charge and continuing lien upon the Parcel against which the Assessment is made, provided no lien may be filed against any Parcel owned by the CDD, unless allowed by applicable law. Each such Assessment, together with interest, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of the person(s) or entity(ies) who was or were the Owner of the Parcel at the time when the Assessment against it came and fell due. Subject to the provisions hereof protecting Mortgagees, any personal obligation for delinquent Assessments shall pass to the successors-in-title to the Owner of the Parcel against which the Assessments were made and in cases in which a Parcel is owned by more than one individual or entity, shall be the joint and several obligation of each and all of those individuals or entities. At such time as a Parcel is declared to be a Regime and while the Parcel remains a Regime, the lien for Assessments shall be created and imposed on the entire Parcel. The Association shall deposit all monies collected as Assessments in one or more accounts as it may elect in its discretion. The Association shall have the right to collect Assessments directly from Regime Unit Owner(s) or may require the Regime Association, if applicable, to collect and remit same to the Association.

Except as set forth in the preceding paragraph, liens on a Parcel which exist or may be imposed under this Declaration are liens on such entire Parcel and all portions thereof.

Section 4.2 Common Assessments. Common Assessments shall be levied by the Association to pay for the Shared Expenses, to fund performance by the Association of its duties under Article 3 of this Declaration, its duties under other provisions of this Declaration which are performed for the benefit of all Owners and the CDD and to improve, repair, replace, and maintain the Shared Facilities as provided herein. Disbursements from income received as Common Assessments shall be made by the Association for such purposes as it deems necessary

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for the discharge of its responsibilities herein and to reimburse Developer for prepaid expenses which it advanced from time to time which may be classified as Shared Expenses.

Section 4.3 Special Charges. Special Charges shall be levied against an Owner or the CDD (as applicable) for the cost of any Maintenance of the Shared Facilities made necessary by the willful or negligent act of such Owner or the CDD (as applicable), or a person for whom such Owner is responsible, to the extent insurance proceeds are insufficient to cover the damage. For the purpose of this section, the applicable Regime Association shall be considered to be responsible for its Regime Unit Owner(s), and its and their respective employees, agents, occupants, lessees, licensees and invitees. A Special Charge may also be levied against the CDD, an Owner, or a Regime Unit Owner, if applicable, for the costs of enforcement of this Declaration against the CDD, such Owner, or Regime Unit Owner, if the CDD, such Owner, or Regime Unit Owner (as applicable) is in default of a covenant or provision of this Declaration, and may also be levied in any other instance authorized elsewhere in this Declaration.

Section 4.4 Reconstruction Assessments, Capital Improvement Assessments and Special Assessments. In addition to the Common Assessments and Special Charges authorized above, Reconstruction Assessments, Capital Improvement Assessments and Special Assessments may or shall be levied as hereafter provided. Reconstruction Assessments shall be levied in such circumstances, for such purposes and amounts, and in such proportions as are authorized in and determined pursuant to Sections 8.3(a) and 10.4 hereof or generally in Articles 8 and 10 of this Declaration. Capital Improvement Assessments may be levied from time to time by the Association for the purpose of funding, in whole or in part, any capital improvement to the Shared Facilities or for a new improvement which satisfies the definition of a Shared Facility. Special Assessments may be levied from time to time by the Association for the purpose of funding, in whole or in part, any repair, replacement, maintenance, or improvement to Improvements and/or Shared Facilities for which the Association has such obligations and responsibilities under this Declaration. No action authorized in this Section 4.4 shall be taken without the prior written consent of Developer as long as Developer or any affiliate of Developer owns any Parcel or portion thereof.

Section 4.5 Rate and Payment of Assessments. Common Assessments, Capital Improvement Assessments and Reconstruction Assessments provided for in this Article 4 shall be allocated and assessed among the Parcels and the Owners thereof as follows:

(a) The above Assessments shall be allocated among the Parcels, the CDD and the Owners thereof as set forth in Article 23 hereof and **Exhibit L** attached hereto and made a part hereof. As additional Parcels are created by Supplemental Declarations, Developer may modify the allocation of Assessments by amending **Exhibit L** as provided in such Supplemental Declaration, but such Specified Percentage shall not increase as to a Parcel without the written consent of the Owner of such Parcel, or CDD as to its Parcel, which consent shall not be unreasonably withheld, delayed or conditioned.

(b) The Regime Association shall allocate an Assessment levied upon the Regime among its Regime Unit Owner(s) by using the formula set forth in the Regime Declaration for sharing common expenses.

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(c) In the event any Parcel is declared to be a Regime, the Regime Association established to operate such Parcel shall, at the request of the Association, collect the Shared Expenses applicable to each Regime Unit situated within such Parcel and shall remit such funds to the Association. Further, the Association, as well as the Regime Association, shall have a lien right against each Regime Unit within the such Regime Parcel to secure payment of each Regime Unit's applicable portion of the Shared Expenses.

Common Assessments shall be estimated annually, in accordance with Section 4.6, and payable in monthly or quarterly installments as the Association may determine, one full month or quarter (as applicable), in advance, on the dates determined by the Association of which dates the Association shall inform the Owners and the CDD reasonably in advance. Adjustments to the Common Assessments made necessary by changes in the Shared Expenses shall be made during a particular fiscal year or at the beginning of the next fiscal year, as the Association determines, but until notified of how adjustments are to be handled, Owners and the CDD shall continue to pay installments at the same intervals and in the same amounts as the most recent previously due installments. Special Assessments, Capital Improvement Assessments and Reconstruction Assessments shall be due within thirty (30) days after notice of such Assessment is duly given by the Association, or in such monthly or quarterly installments as the Association may specify. Special Charges shall be due within thirty (30) days after notice of such Special Charge is duly given, except as may be otherwise specifically provided in this Declaration.

If any installment of any Assessment is not paid when due, all scheduled or pending installments of such Assessment for the following twelve months may be accelerated and shall be due in one lump sum, to the extent allowed by law at the time of recording this Declaration. If a certain type of Assessment or installment thereof is defaulted upon, in addition to acceleration of all installments of such Assessment, all other types of Assessments, or installments may be accelerated and deemed due in one lump sum. The determination whether to accelerate Assessments or installments thereof shall be made by the Association in the course of enforcement of defaulted obligations pursuant to Section 5.4.

Notwithstanding anything herein to the contrary, any Assessment owed by the CDD to the Association shall be paid to the extent of availability within the then current CDD budget, and if no such funds are available within said budget, such payment of any Assessment owned by the CDD will be included within the CDD next budgetary cycle and then paid to the Association, in accordance with Florida law.

Section 4.6 Working Fund Contribution. Upon request of the Association, each Member shall be required to advance to the Association a Working Fund Contribution equal to two (2) months of the then current Assessment due from the applicable Parcel. The amount of the Working Fund Contribution is subject to prospective change in the Board's sole discretion. The purpose of the Working Fund Contribution is to ensure that the Association will have cash available to meet unforeseen expenditures, pay its obligations, and to acquire additional equipment and services deemed necessary or desirable by the Board. Working Fund Contributions are not advance payments of Assessments and shall have no effect on future Assessments, nor are they required to be held in reserve. To further ensure that the Association will have sufficient cash available to pay for such expenses, Shared Expenses and other expenses, Developer may from time to time advance monies to the Association. In the event Developer advances monies to the

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Association, upon request of the Developer, the Association must repay to the Developer any such advances.

Section 4.7 Accounting and Budgeting Matters. The Association shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures for the Shared Facilities for which the Parcels are obligated to pay Shared Expenses as herein provided, for each fiscal year, and shall cause to be distributed a copy of each such statement to each Owner, the CDD, and to each Mortgagee who has filed a written request for copies of the same with the Association. At least thirty (30) days prior to the beginning of each fiscal year, the Association shall prepare and distribute to the Owners and the CDD a written, itemized estimate (budget) of the expenses to be incurred by the Association during such year in performing its functions under this Declaration and for which the Parcels are obligated to contribute. The first annual Common Assessment (including any Working Fund Contribution) for any Parcel shall be adjusted according to the number of months remaining in that fiscal year after the Owner of the Parcel becomes a Member of the Association. The estimate may (but need not) include reasonable reserves for repairing and replacing improvements (computed by means of a formula based upon the estimated life and estimated repair and replacement costs for each improvement) and may (but need not) include reserves for contingencies (neither such reserve shall be considered a Capital Improvement Assessment or Reconstruction Assessment). Common Assessments shall be based on such budget. The Association may at any time, amend such budget and the Common Assessments shall be amended accordingly to the extent such budget and Common Assessments were inadequate and additional sums are needed. Written notice of any change in the amount of the annual Common Assessment shall be sent to every Owner and the CDD at least thirty (30) days prior to the effective date of the change. At the end of any fiscal year all excess funds over and above the amounts used for Shared Expenses shall be retained by the Association and used to reduce the following year's Common Assessments.

Section 4.8 Financial Reporting. Within ninety (90) days after the end of the fiscal year, or annually on a date provided in the Bylaws, the Association shall prepare and complete, or cause to be prepared and completed by a third party, a financial statement for the preceding fiscal year. Within twenty-one (21) days after the financial statement is completed or received by the Association from a third party, the Association shall mail to the CDD and each Owner at the address last furnished to the Association by the CDD and each respective Owner (as applicable), or hand deliver to the CDD and each Owner, a copy of the final financial statement or a notice that a copy of the financial statement will be mailed or hand delivered to each of the respective Owners, without charge, upon receipt of a written request from the CDD and each respective Owner (as applicable). Promptly after its receipt of the financial statement, each Owner shall deliver a copy of the financial statement to each Regime Association within its Regime Parcel. The requirements of this Section 4.8 may be waived by the Board upon the unanimous vote of all members of the Board.

Section 4.9 Developer's Deficit Funding. Anything to the contrary herein notwithstanding, neither Developer nor any affiliate of Developer shall be liable for any Assessments imposed upon any Parcel of which it or they are the Owners as long as Developer and/or affiliates of Developer pay all deficits in operation of the Shared Facilities above the Assessments collectible from other Owners of Parcels. In calculating any such deficit, only actual current expenses (other than management fees, capital expenses and reserves) shall be counted.

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No Assessments shall be due from Developer or any affiliate of Developer for any Parcel until a certificate of occupancy or temporary certificate of occupancy has been issued therefor.

ARTICLE 5
EFFECT OF NON-PAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION AND CREDITOR OWNER

Section 5.1 Imposition of Lien. A lien is hereby imposed on each Parcel and Regime Unit (a) for enforcement by and for the benefit of the Association, to secure payment of all Assessments now or hereafter imposed in accordance with this Declaration, and (b) for enforcement by and for the benefit of any Creditor Owner, to secure repayment to such Creditor Owner of amounts advanced by such Creditor Owner, in the manner provided in Section 5.2, for the account of a Defaulting Owner, provided, however, notwithstanding anything in this Agreement to the contrary, no lien may be filed against any Parcel owned by the CDD, unless allowed by applicable law. Such lien shall also secure payment to the Association or repayment to the Creditor Owner of all late charges and interest assessed on delinquent Assessments pursuant to Section 4.5, reimbursement for or payment of all reasonable attorneys, fees and other reasonable costs incurred by the Association or Creditor Owner in connection with the collection of claims relating to unpaid Assessments or other amounts due and/or the enforcement of the lien and payment of all amounts for all other Assessments, if any, the maturity of which may have been accelerated pursuant to Section 5.4 as a result of the event of a default in one payment of Assessments. If all or any portion of any installment of a Common Assessment, Special Assessment, Capital Improvement Assessment, Special Charge or Reconstruction Assessment is not paid within ten (10) days after its due date, the Owner responsible therefor may be required to pay a late charge equal to ten (10%) percent of the amount unpaid. If all or any portion of any installment of an Assessment or any other amount due hereunder is not paid within thirty (30) days after it is due, the Owner responsible therefor shall owe interest on the unpaid amount from its due date at the highest lawful rate then applicable to loans of that amount until such outstanding amount is paid in full.

Any claim of lien recorded by or at the direction of the Association shall relate back to the date of recording this Declaration. The right of the City to file a lien with respect to the non-payment of a Sales Consideration Fee as provided in the applicable Phased Lease to the extent not timely paid shall take priority over the lien rights of the Association or any other party or beneficiary of this Declaration.

Section 5.2 Creditor Owner Advances on Behalf of Defaulting Owner. If any Owner shall fail to pay Assessments or such other amounts as may be due and payable pursuant to the terms of this Declaration (including, without limitation, late charges and interest on past due Assessments), then any other Owner may pay the same, and the Defaulting Owner shall then be indebted to the Creditor Owner for such amounts, on which interest shall accrue at the rate and in the manner specified in Section 5.1, and the Creditor Owner shall also have the lien on the Defaulting Owner's Parcel provided for in Section 5.1 to secure payment of such indebtedness, provided, however, notwithstanding anything in this Agreement to the contrary, no lien may be filed against any Parcel owned by the CDD, unless allowed by applicable law.

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Section 5.3 Notice of Claim of Lien. No action shall be brought to foreclose any Assessment lien herein unless at least thirty (30) days has expired following the date a Notice of Claim of Lien is deposited in the United States mail, certified or registered, postage prepaid, to the address of the Defaulting Owner of the Parcel, and a copy thereof has been recorded by the Association or the Creditor Owner, whichever is applicable, in the Public Records of the County. Any such Notice of Claim of Lien must recite a sufficient legal description of the Parcel liened, the record Owner or reputed Owner thereof, the amount claimed (which may include interest and late charges on the unpaid Assessment at the rates and amounts described in Section 5.1, reasonable attorneys' fees, late charges and expenses of collection in connection with the debt secured by the lien, and late charges), and the name and address of the claimant. Any such Notice of Claim of Lien shall be signed and acknowledged by an officer or agent of the Association or the Creditor Owner, whichever is applicable. No Claim of Lien shall be issued against the CDD and no foreclosure action may be brought against the any Parcel owned by the CDD, unless in either case allowed under applicable law.

Section 5.4 Collection of Unpaid Assessments. If any Assessment or installment thereof is not paid within thirty (30) days after its due date, the Association or the Creditor Owner (whichever is applicable) shall mail a default notice to the Defaulting Owner and simultaneously to each Mortgagee of the Defaulting Owner's Parcel and/or to each Mortgagee of the Regime Unit(s) within such Regime Parcel who has requested a copy of any such default notice, and in the event that an action for lien foreclosure is contemplated, a Notice of Claim of Lien pursuant to the preceding section shall also be sent to the Defaulting Owner and Mortgagees, if any, who have requested a copy of such notice. A single notice meeting the requirements of both the default notice and the Notice of Claim of Lien may in the alternative be issued, in accordance with the same schedule and to the same persons as stated in the preceding sentence. The default notice shall specify (a) the fact that one or more Assessments or installments thereof or other amounts due hereunder are delinquent, (b) the action required to cure the default, (c) a date, not less than thirty (30) days from the date that the default notice is mailed to the Defaulting Owner, by which date such defaults must be cured, and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the Assessments or installments thereof becoming due in the following twelve months, and in the acceleration of all other Assessments which shall have been levied but not yet become due and payable, and may also result in the foreclosure of the lien securing unpaid amounts.

Section 5.5 Creditor Owner's Remedies for Non-Payment.

(a) Enforcement of Lien. Except as to the Parcel owned by the CDD (unless a lien is permitted on such Parcel owned by the CDD), the Creditor Owner may bring an action in its name to foreclose any lien on a Parcel in the manner in which mortgages of real property are foreclosed in Florida and may also bring an action to recover a money judgment for unpaid Assessments or other amounts due with interest thereon (plus the costs and expenses mentioned in Section 5.1 hereof) without waiving any claim of lien, provided that in either case the Creditor Owner must give the Defaulting Owner at least thirty (30) days written notice of its intentions and, in the case of a foreclosure, must file a Notice of Claim of Lien in the Public Records of the County as described in Section 5.3. For the purposes of clarification, the thirty (30) day time period set forth in this Section 5.5(a) runs from the later of: (i) the date the notice is sent; or (ii) the date the notice of lien is recorded. Upon the curing of any default (including, but not limited to, the payment

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of fees and costs secured by the Creditor Owner's lien) for which a Notice of Claim of Lien was filed, the Defaulting Owner is entitled to have a satisfaction of lien recorded upon payment to the Creditor Owner. Attorney's Fees and Other Costs of Enforcement. Except as to the PArcel owned by the CDD, reasonable attorneys' fees incurred by the Association or Creditor Owner, whichever is applicable, incident to the collection of unpaid Assessments or other amounts due or the enforcement of any lien provided for by Section 5.1 (including, but not limited to, attorneys' fees in connection with any review of a judicial or administrative proceeding by appeal or otherwise), together with all sums advanced and paid by the Association or Creditor Owner, whichever is applicable, for taxes and payments on account of superior liens or encumbrances that may be required to be advanced by the Association or Creditor Owner, whichever is applicable, in order to preserve and protect its lien, shall be payable by the Defaulting Owner and secured by the lien of the Association or Creditor Owner, whichever is applicable.

Section 5.6 Curing of Default. Upon the curing of any default for which a Notice of Claim of Lien was filed by the Association or Creditor Owner, whichever is applicable, an officer thereof shall record an appropriate Release of Lien upon payment by the Defaulting Owner of a fee, to be determined by the Association, to cover the cost of preparing and recording the Release of Lien. A certificate executed and acknowledged by any authorized officer or agent of the Association or Creditor Owner, whichever is applicable, stating the amount of the indebtedness secured by the lien upon any Parcel created hereunder shall be conclusive as to the amount of such indebtedness as of the date of the certificate with respect to all persons, other than the Owner of the subject Parcel, who rely on it in good faith. Such a certificate shall be furnished to any Owner upon request and payment of a reasonable fee as established by the Association.

Section 5.7 Cumulative Remedies. The liens and the rights of foreclosure and sale hereunder shall be in addition to and not in substitution for all other rights and remedies which the Association or Creditor Owner and their respective successors and assigns may have hereunder and under law, including a suit to recover a money judgment.

Section 5.8 Institutional Mortgages. Notwithstanding the foregoing provisions of this Article V, the liability of an Institutional Mortgagee or its successor or assignees who acquire title to a Parcel by foreclosure or by deed in lieu of foreclosure for the unpaid Assessments (or installments thereof) that became due prior to the Institutional Mortgagee's acquisition of title is limited to the lesser of:

(a) The Parcel's unpaid Common Assessments and/or Assessments which accrued or came due during the twelve (12) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or

(b) One percent (1%) of the original mortgage debt.

The provisions of this Section 5.8 shall not apply unless the Institutional Mortgagee joins the Association as a defendant in the foreclosure action. Joinder of the Association is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the Institutional Mortgagee.

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The Institutional Mortgagee or its successor or assignees acquiring title shall pay the amount owed to the Association within thirty (30) days after transfer of title. Failure to pay the full amount when due shall entitle the Association to record a Claim of Lien against the Parcel and proceed in the same manner as provided in this Article 5 for the collection of unpaid Assessments. An Institutional Mortgagee acquiring title to a Parcel as a result of foreclosure or deed in lieu thereof shall not, during the period of its ownership of such Parcel, whether or not such Parcel is occupied, be excused from the payment of Assessments coming due during the period of such ownership.

Section 5.9 Each Claim Separate. Each claim arising under this Declaration shall be separate and distinct, and no defense, set-off or counterclaim arising against the enforcement of any lien or other claim shall thereby be or become a defense, setoff or counterclaim against the enforcement of any other lien or claim.

Section 5.10 Lien on Parcel Submitted to Regime. Any lien on a Regime Parcel submitted to a Regime shall be released by the Association as to any Regime Unit in such Regime Parcel upon payment by such Regime Unit Owner of its percentage (i.e., undivided interest in the Regime common elements) of the assessment of the Association.

ARTICLE 6
OPERATION AND MAINTENANCE

Section 6.1 Compliance with Laws and Insurance Requirements. Each Owner shall comply with all laws, rules, orders, ordinances, regulations and requirements (hereafter in this Section 6.1 collectively referred to as "laws" and each of which is individually referred to as a "law") now or hereafter enacted or promulgated, by the United States, the State of Florida, the County, the City, and of any other governmental or quasi-governmental authority or agency thereof now or hereafter having jurisdiction, and of any other lawful authority having jurisdiction, relating to the ownership, Maintenance, or use of the Parcel owned by such Owner, if noncompliance with such law would subject any other Owner to liability or criminal prosecution, or would jeopardize the full force or effect of the certificates of occupancy for the Improvements, or portions thereof, or would result in the imposition of a lien against the Parcel of any other Owner or would cause termination of or would increase the rate of premiums on any casualty or public liability insurance policy maintained by the Association or the Owner of a Parcel, as the case may be. The provisions of this section shall not be deemed to relieve any Owner of the obligation to perform any Maintenance for which such Owner has the responsibility.

Section 6.2 Construction and Other Liens. The CDD and/or an Owner, if applicable ("**Creating Owner**"), shall, within sixty (60) days after the filing of any construction, materialman's or other lien, bond off or otherwise remove of record any construction, materialman's or other lien affecting the Parcel of any other Owner, arising by reason of any work or materials provided to or ordered by such Creating Owner or by reason of any act taken or suffered or omitted by such Creating Owner. Removal of record of such lien may be accomplished by any means provided in the Florida Construction Lien Law or a successor statute thereto.

Section 6.3 Disturbances. None of the CDD, any Owner, nor any Regime Unit Owner shall permit any noxious odor, noise or vibration which under the circumstances is

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unreasonable to emanate from the Parcel or any Regime Unit owned by the CDD, such Owner, or Regime Unit Owner (as applicable), which will damage or disturb the occupancy of any other Parcel, Regime Unit or the enjoyment of any Shared Facility.

The Owner and/or the CDD (as applicable) who is to bear the Maintenance responsibility for any Shared Facility located within another Parcel, shall utilize its best efforts to not permit and to correct any noxious odor, noise or vibration which under the circumstances is unreasonable to emanate from such Shared Facility which will damage or disturb the occupancy of the Parcel of the CDD, any other Owner, a Regime Unit or the use and enjoyment of any Shared Facility serving the CDD or any other Owner. Notwithstanding the foregoing, the CDD and all Owners recognize and acknowledge that certain activities within a mixed use residential and commercial building will by their very nature result in noise and odors which are unavoidable. By taking title to their respective Parcels and Regime Unit(s), the CDD, each Owner and the Regime Unit Owner agrees to these anticipated and unavoidable conditions.

All activities by or on behalf of the CDD, any Owner in the use and occupancy of such CDD's or Owner's Parcel (as applicable), including, without limitation, Maintenance, shall be performed, insofar as possible, in a manner which minimizes interference with the use and enjoyment of any other Parcel.

Section 6.4 Maintenance of Parcels. Subject to Section 6.5, the CDD and each Owner shall be responsible for the Maintenance of all portions of its Parcel as well as the fixtures and equipment in its Parcel that serve only its Parcel, including, but not limited, to heating, ventilating and air conditioning equipment, plumbing fixtures and connections thereto, and electric panels, outlets and wiring. The CDD and each Owner shall also be responsible for the Maintenance of all facilities exclusively serving its Parcel which are located within the Parcel of the CDD or another Owner (as applicable).

Section 6.5 Maintenance of Shared Facilities. The Association shall be responsible for the Maintenance of all portions of the Shared Facilities. Notwithstanding that a condominium may be created upon a Parcel which may result in the Shared Facilities located within such Parcel being common element of such condominium, the Association shall retain the right to maintain such Shared Facilities or the Association may require the condominium association to maintain same.

Section 6.6 Requirements. All Maintenance in the Shared Facilities shall be performed in a good and workmanlike manner, by employees or agents of the Association or Manager, or (in the case of Maintenance which is not the responsibility of the Association, and the performance of which has not been left, delegated or assumed to or by the Association or the Manager) by licensed bonded contractors approved by the Association in advance of the performance of such Maintenance (unless a state of emergency requires otherwise) which contractors shall carry public liability insurance and employer liability insurance in amounts satisfactory to the Association and such worker's compensation insurance as required by law.

Section 6.7 Obligations of Owners. Obligations of an Owner hereunder shall be the several obligations of all persons, corporations, partnerships, trusts or entities who own leasehold interests in the Parcel of such Owner, but only to the extent of each Regime Unit's pro

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rata share of the obligation which shall be in the same percentage as the undivided interest in the Regime Parcel common elements appurtenant to each such Regime Unit. Acts of the board of directors or of the president of the Regime Association provided for in an Regime Declaration shall be deemed to be the act of the Owner, and the board of directors of the Regime Association or the president of the Regime Association shall act as the Owner, in any instance where such board of directors or president is authorized to act for its Regime Unit Owner(s) on the matter in question by law or by this Declaration, the Regime Declaration or the Articles of Incorporation or Bylaws of the Regime Association.

ARTICLE 7
INSURANCE

Section 7.1 Casualty Insurance. The CDD and each Owner shall keep the Improvements and Shared Facilities on its Parcel in each case insured against loss or damage by casualties and hazards as may from time to time be carried by prudent owners of similar property in the County, with all risk, extended coverage, fire, vandalism and malicious mischief endorsements in an amount equal to the full replacement value thereof excluding the cost of excavation and of foundations. The Board, in its sole discretion may review such coverage of the Owners to determine if such insurance is acceptable to the Association including that such insurance is for full replacement value (with a reasonable deductible not to exceed five percent (5%) unless approved in writing by the Association). Each Owner shall provide the insurance reasonably requested in writing by the Association including any deficiency in coverage as determined by the Association. The CDD shall keep the Improvements on its Parcel insured against loss or damage by casualties and hazards in accordance with applicable insurance coverages available to the CDD, to ensure that full replacement value of the CDD Improvements are satisfied.

The insurance policies shall provide that all monies for losses payable thereunder shall be paid to the Insurance Trustee provided for in Section 12.1. Such policies shall name as parties insured as their interest may appear, (i) the CDD and each Owner (and as to any Parcel submitted to Regime, the applicable Regime Association shall be deemed the Owner of such Parcel), (ii) at the request of any Owner, the leasehold or sub-leasehold mortgagee of all or any portion of the Parcel owned by such Owner, (iii) at the request of the board of directors of any Regime Association established with respect to any Parcel, the Regime Association as well as its officers and directors, and (iv) the Association. At the request of any Owner, such policies shall contain standard mortgagee clauses in favor of any mortgagee of all or any portion of the Parcel owned by such Owner and/or any holder of a mortgage on a leasehold interest in all or any portion of such Parcel, as their interests may appear, provided that the cost of adding any standard mortgagee clause shall be borne by the Owner requesting such addition. Nevertheless, all monies payable under such policies shall be payable in accordance with the provisions of this Declaration. Each such policy shall provide that the acts of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under the policy. Each such policy shall contain waivers of subrogation for the benefit of all Owners and waivers of any defense based on co-insurance or other insurance, and shall provide that such policies may not be cancelled or modified without at least thirty (30) days prior written notice to all of the named insureds and mortgagees. The CDD shall not be required to name other parties as insureds, unless such the CDD is able to obtain such insurance to provide for same.

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Section 7.2 Liability Insurance. The Association shall maintain (a) comprehensive general liability insurance against claims for personal injury, death or property damage occurring upon, in or about the Shared Facilities, and on, in or about the streets, sidewalks and passage-ways adjoining the Property for which the Association (or an Owner) has the Maintenance responsibility, (b) directors and officers liability insurance for the Association, and (c) worker's compensation and employers' liability insurance to the extent required by law. Said insurance shall be in at least such amounts as from time to time are carried by prudent owners of residential or commercial buildings in the County. The expense of such general liability insurance and other coverages required by Section 7.1 and 7.2 shall be a Shared Expense. In no event, however, shall the comprehensive general liability insurance required by clause (a) above afford protection for a combined single limit of less than $1,000,000.00 in respect to any occurrence and of less than $2,000,000.00 in respect to property damage, nor shall the amount of workmen's compensation and employers' liability insurance required under clause (b) above be less than the amount required by applicable laws or regulations. Unless waived in writing by the Association, the policies effecting such comprehensive general liability insurance shall name as insured parties, as their interests may appear, (i) the Manager, (ii) the CDD and each of the Owners, (iii) at the request of the CDD or any Owner, any lessee of all or any portion of the Parcel owned by such Owner (as applicable), (iv) any mortgagee in possession of any portion of a Parcel, (v) any leasehold mortgagee in possession of any portion of a Parcel demised to a lessee who is named as a party insured or additional insured, (vi) at the request of any Owner, the managing agent of the Parcel owned by the CDD and by such Owner, (vii) at the request of the CDD and/or any Owner, the partners, directors, officers and/or employees of the CDD and/or such Owner; and (viii) at the request of the board of directors of any Regime Association established with respect to a Regime Parcel, the Regime Association as well as the directors and officers of such Regime Association. Each such policy, to the extent obtainable, shall provide that the acts of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under the policy and each such policy shall contain waivers of subrogation (except in the case of workmen's compensation and employer's liability policies) for the benefit of all Owners, and waivers of any defense based on coinsurance or other insurance, and shall provide that such policies may not be cancelled or modified without at least thirty (30) days, prior written notice to all of the insureds and mortgagees. The Association may from time to time increase the minimum amount of liability coverage referenced above at its discretion.

Section 7.3 Other Insurance. The Association may from time to time obtain such other insurance as the Association shall determine from time to time.

Section 7.4 Insurance Policies. Approximately thirty (30) days prior to the expiration of any policy of insurance from time to time maintained pursuant to Section 7.1, 7.2 and 7.3, the Association shall effect the renewal or replacement of such policy.

Section 7.5 Insurance for Regime Unit Owner(s). If a Regime Declaration is recorded for any Parcel, then the Regime Unit Owner(s) within such Regime Association shall be permitted to carry liability insurance for their own benefit at their own expense, provided, that all policies for such insurance shall contain waivers of subrogation for the benefit of all Owners (including Regime Unit Owner(s)), and, further, provided, that the liability of the carriers issuing the insurance obtained pursuant to Section 7.2, shall not be affected or diminished by reason of any such insurance carried by the Regime Unit Owner(s).

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Section 7.6 Sovereign Immunity. The CDD is a local unit of special purpose government organized under the provisions of Chapter 190, Florida Statutes, that the CDD is a "State agency or subdivision" as defined in Section 768.28, Florida Statutes, and that the CDD is afforded the protections, immunities, and limitations of liability afforded the CDD thereunder. Nothing in this Agreement is intended or should be construed as a waiver of the doctrine of sovereign immunity or protections, immunities and limitations of liability afforded the CDD pursuant to Section 768.28, Florida Statutes.

ARTICLE 8
DAMAGE TO THE IMPROVEMENTS

Section 8.1 Repair and Restoration.

(a) Mandatory Repair and Restoration by an Owner in Occurrences Involving No Damage Affecting any other Parcel and/or any Shared Facilities. If any portion of a Parcel is damaged by fire or other casualty and there is no damage to any other Parcel or any Shared Facility serving and/or contained in any other Parcel and there is no damage to any improvements located in any other Parcel or any Shared Facilities, then the portion of the Parcel so damaged (except for furniture, furnishings, equipment, any and all other personal property and fixtures in the Unit(s) contained in the Parcel) shall be repaired and restored as promptly as is reasonable by the Owner of such Parcel in accordance with the then existing Approved Plans (with such changes as are permitted by Section 9.1).

(b) Mandatory Repair and Restoration of Damage Affecting More than One Parcel and/or Shared Facilities. If any portion of another Parcel and/or or any Shared Facilities are damaged, and if the provisions of the preceding paragraph of this Section 8.1 are not applicable, then the repair and restoration of such damage to another Parcel and/or any Shared Facility located on such damaged Parcel(s) shall be repaired by the Owner of such Parcel unless the Association (in its sole discretion) elects in writing to have the damage of such Shared Facility performed by the Association on behalf of all the Owners with such changes to the Improvements or replacement Improvements as the Association may authorize. The Association shall, in accordance with the provisions of this Article 8 be entitled to withdraw any insurance proceeds derived from either the Association's or any Owners' policies of insurance (provided that the insurance proceeds derived from the Owners' policies of insurance are directly attributable to that portion or those portions of the Parcels to be repaired and restored by the Association) and which are held by the Insurance Trustee by reason of such damage for application to the cost and expense of such repair and restoration performed by the Association.

(c) Self-Help. If at any time any Owner or the CDD (as applicable) (hereinafter referred to in this paragraph as the "**Non-Performing Owner**") shall not be proceeding diligently with any work of repair and restoration required of it hereby, then the CDD or any other Owner who would be benefited by such repair and restoration shall give written notice simultaneously to both the Non-Performing Owner and the Association specifying the manner in which such repair and restoration is not proceeding diligently, provided repair by the CDD shall be subject to the provisions of this Article 8. If, upon expiration of thirty (30) days after the giving of notice, the

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work of repair and restoration is not proceeding diligently, then, subject to the Non-Performing Owner's right to dispute as set forth below, the Association may perform such repair and restoration in accordance with the then existing Approved Plans (thereby releasing the Non-Performing Owner from any liability for the quality of such repair or restoration performed by the Association) and may take all appropriate steps to carry out the same, including, without limitation, entry onto the Parcel of any Owner to the extent necessary to perform such repair and restoration. The Association, in order to perform such repair and restoration shall, in accordance with Article 8, be entitled to withdraw any insurance proceeds derived from said Non-Performing Owner's policies of insurance and which are held by the Insurance Trustee by reason of such damage, for application to the cost and expense of such repair and restoration. If at any time an Owner disagrees as to whether the work of repair and restoration is proceeding diligently, then such dispute shall be settled by arbitration in accordance with Article 14, and the Association shall not perform such repair and restoration until the dispute shall have been settled. Any Owner who is diligently negotiating in good faith the settlement of any insurance claim under a policy held by it pursuant to Article 7, which is required to fund repair of a casualty insured by the policy in question, shall not be regarded as failing to proceed diligently with any repair or restoration required of it.

Section 8.2 Repair and Restoration Procedures. If the Association requires an Architect to prepare any plans relating to any repair or restoration, the plans and specifications for any repair or restoration to be performed under Section 8.1 shall be prepared by the Architect designated in accordance with Section 12.1. Unless the CDD and the Owners (as applicable) shall otherwise agree in writing, plans and specifications for any repair or restoration shall be developed consistent with the then existing Approved Plans. The Architect, if any, shall assist the CDD and/or the Owner responsible for performing the repair or restoration in question in obtaining bids therefor from responsible contractors. Such contractor shall be chosen in the manner provided in Article 11 hereof. The contractor shall work under the administration of the Architect, if any, and the Owner responsible under Section 8.1 for causing such repair and restoration to be performed. The Architect, if any, for a given repair or restoration is hereby authorized and directed to deliver such certifications and instructions as may be required by Article 12 to the Insurance Trustee, from time to time as such repair and restoration progress, to obtain disbursement for application to the cost and expense of such repair and restoration of (a) the insurance proceeds and (b) any other monies for such repair or restoration, which may have been deposited with the Insurance Trustee pursuant to Section 8.3. All instructions to the Insurance Trustee shall be made available by the Architect, if any, at reasonable times for inspection by the CCD and/or any Owner who will benefit from the repair or restoration being made.

Section 8.3 Application of Insurance Proceeds and other Funds to Repair and Restoration.

(a) Insufficient Insurance Proceeds. All insurance proceeds paid in connection with a casualty shall be used to their full extent to fund restoration and repair hereunder. If the cost and expense of performing any repair and restoration provided for in Section 8.1 shall exceed the amount of insurance proceeds paid under policies maintained by the CDD or the Owners (as applicable) by reason of the damage being repaired and restored, then such excess cost and expense shall be borne (subject to Section 8.3(b)) by the CDD and/or the Owners (as applicable) in proportion to the cost and expense of repairing and restoring the improvements, which proportion shall be determined by the Board. For the purpose of determining such proportions, the cost and

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expense of repairing and restoring any Shared Facility shall be allocated by the Association to the CDD and/or the Owners (as applicable) in the proportion which shall be determined pursuant to Article 23 and **Exhibit L**. In any such instance of repair or restoration which is to be performed pursuant to Section 8.1, if the Association's estimate of the cost and expense of performing such repair or restoration (or, if a fixed cost construction contract shall have been executed providing for the performance of such repair and restoration, then the fixed costs so provided for, plus all other expenses estimated by the Association) exceeds the amount of insurance proceeds paid by reason of the damage which shall have necessitated such repair and restoration, then the Association shall impose a Reconstruction Assessment upon the CDD and each Owner for its proportionate share of the amount of such excess cost and expense which shall be borne as provided above in this Section 8.3 (a), whereupon, the CDD and each Owner shall so deposit with the Insurance Trustee the amount of such Owner's Reconstruction Assessment. If the CDD or any Owner shall fail to pay, or, as the case may be, deposit, the Reconstruction Assessment in accordance with this paragraph, then the CDD and/or said Owner's (as applicable) obligation to pay or deposit the Reconstruction Assessment may be enforced, and the lien on said Owner's Parcel securing payment of the Reconstruction Assessment may be foreclosed, in accordance with Article 5 hereof, provided, however, notwithstanding anything in this Agreement to the contrary, no lien may be filed against any Parcel owned by the CDD, unless allowed by applicable law and no foreclosure action may proceed against any Parcel owned by the CDD, unless permitted under applicable law.

(b) Limitations on Repair or Restoration of the Parcels. In the event a Building is totally destroyed or incurs Substantial Damage, as hereinafter defined in Section 8.3(d), or condemnation as contemplated in Article 10, and the CDD or an Owner (as to a Parcel not a Regime) and as to a Regime Parcel that a Regime Declaration is recorded, and if following such recording, a casualty occurs, seventy-five percent (75%) of the voting interests of such Regime Association elect, in each case, to duly and promptly resolve not to proceed with repair or restoration of the Improvements on such Regime Parcel ("**Casualty Decision**"), then the Improvements and Parcels, or any portion or portions thereof, shall not be repaired or restored and the CDD or the Owner of such Parcel (as applicable) shall remove all of the damaged Improvements and debris from the Parcel, sod and irrigate such area of the Parcel and such Parcel shall remain obligated to continue to be bound by this Declaration and to pay Assessments. If, however, the CDD and/or the Owner (as applicable) fails to make a Casualty Decision, then the Improvements on such Parcel shall be repaired and restored as provided in Section 8.1.

(c) Excess Repair and Restoration Funds. Upon completion of the repair and restoration in accordance with this Article of any damage to the Improvements and/or Shared Facilities, any insurance proceeds and any Reconstruction Assessments paid to the Insurance Trustee by reason of such damage in excess of the cost and expense of performing such repair and restoration shall be refunded to the CDD and/or the Owners (as applicable) in the respective proportions by which each Owner contributed funds to the funds held by the Insurance Trustee, attributing to the CDD and each Owner as its contribution of the proceeds paid into the Insurance Trustee fund by the insurer under any insurance policy maintained by such Owner, plus any Reconstruction Assessment paid by the CDD and/or such Owner for such repair and restoration, or, in the absence of any Reconstruction Assessment or the CDD and/or Owner insurance proceeds, in accordance with the CDD's and/or each Owner's (as applicable) portion of Shared Expenses.

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(d) Substantial Damage. For the purpose of Section 8.3 and generally in this Declaration, Substantial Damage to the Improvements shall be defined as follows: (i) an amount greater than or equal to 50% of the replacement value of the Improvements destroyed by such a casualty or loss occurring during the period commencing with the initial recordation of this Declaration and terminating thirty (30) years thereafter ("**Initial Period**"); (ii) an amount greater than or equal to 35% of the replacement value of the Improvements destroyed by a casualty or loss occurring at any time during the period commencing with the end of the Initial Period and terminating ten (10) years thereafter ("**Second Period**"); and (iii) an amount greater than or equal to 25% of the replacement value of the Improvements destroyed by a casualty or loss occurring at any time during the period commencing with the end of the Second Period.

Section 8.4 Limitations on Repair or Restoration by the Association. In the event that any casualty or loss results in the total destruction or Substantial Damage to the Improvements (other than any Shared Facilities) and the CDD and Owner of the Parcel(s) affected properly make their Casualty Decision, then no repair or restoration shall take place, notwithstanding any obligation the Association might otherwise have to make such repairs under Section 8.1(b). The CDD and the Owners shall make their Casualty Decision on or before the one hundred eightieth (180th) day following the date such casualty or loss occurred and shall deliver written notice of the Casualty Decision to the other Owners, the Association and the Insurance Trustee. In the event the CDD or an Owner does not make its Casualty Decision within said one hundred eighty (180) day time period, then the CDD or the Owner (as applicable) shall be deemed to have exercised the option to proceed with the repair or restoration. If the CDD or an Owner makes a Casualty Decision for its Improvements in accordance with this Declaration, then any insurance funds available for such Improvements shall be paid to the Insurance Trustee for the benefit of the CDD or the Owners and their respective mortgagees, as their interest may appear. Notwithstanding anything herein to the contrary, only the Association can make the decision not to repair or restore any Shared Facilities.

Section 8.5 Legal Variances. If, to perform any repair or restoration provided for in Section 8.1, it shall be necessary to obtain a variance, special permit or exception to or change in zoning or other laws ("**variance**") in order to repair or restore the Improvements to its condition as described in the Approved Plans immediately prior to such damage, and if the CDD or an Owner believes it is possible to obtain the variance, and so notifies the CDD or other Owners as applicable, in writing, then the CDD or other Owners (as applicable) shall cooperate to obtain the variance. If architectural and/or legal services shall be necessary to obtain the variance, then the CDD and/or the Owner responsible for requiring such variance shall retain an Architect and/or attorney to perform such services. The legal and architectural fees and all other costs and expenses of applying for and obtaining the variance, shall be considered as a part of the cost and expense of carrying out the repair and restoration. There shall be no obligation to commence any repair or restoration while the CDD and/or an Owner (as applicable) is diligently attempting to obtain a variance under this Section.

If any repair or restoration to be performed pursuant to Section 8.1 hereof cannot be carried out in compliance with the law, and if the variance is not obtained pursuant to the immediately preceding paragraph within six (6) months of the date of the casualty, then necessary adjustments shall be made in the plans and specifications for such repair and restoration so that the Improvements, as repaired and restored, shall comply with law. However, no substantial reduction

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in the floor area contained within any Parcel or serving the Parcel shall be made without the consent of the CDD or the Owner who shall be affected by such reduction. If the CDD or said Owner shall be unwilling to so consent, and if it shall not be feasible to make such adjustments without substantially reducing said floor areas, then such repair and restoration shall not be performed pursuant to Section 8.1. Subject to the provisions of the following paragraph, any insurance proceeds, less costs and expenses paid or incurred in applying for the variance, shall be paid out by the Insurance Trustee to the CDD or the Owners (as applicable) in proportion to the amount such proceeds shall have been paid by the insurers, the CDD and/or the Owners for damage to Improvements within the respective Parcels of each of the Owners.

If, pursuant to the immediately preceding paragraph, repair and restoration is not to be performed pursuant to Section 8.1, then the Improvements within each Parcel shall be demolished (and the demolished area sodded) or secured, as the CDD or the Owner of each Parcel (as applicable) shall elect to such extent, if any, as may be necessary to comply with all laws, rules, orders, ordinances, regulations and requirements of any government or municipality or any agency thereof having jurisdiction. Such demolition or securing of the Improvements, shall be mandatory and shall be performed by the CDD or the Owner responsible for the damaged Parcel, who shall be entitled to withdraw any insurance proceeds attributable to policies of insurance held by the Insurance Trustee by reason of such damage. The cost and expense of such demolition and/or securing of Improvements shall be allocated among the CDD and the Owners in proportion to their responsibility of the cost and expense of demolishing and securing the Improvements within each of their respective Parcels, except that for the purpose of determining such proportions, the cost and expense of demolishing or securing any Shared Facility located within one Parcel alone, shall be allocated to the CDD and the Owners in the proportions of their responsibility which shall be determined pursuant to Article 23.

Section 8.6 Disputes. If any dispute shall arise pursuant to the provisions of this Article 8 then the dispute shall be settled by arbitration in accordance with Article 14 hereof, but the arbitrators shall have no power or authority to vary the provisions of this Article 8 without the consent of the CDD and each Owner (as applicable).

Section 8.7 Applicable Law Pertaining to the CDD. Notwithstanding anything in this Section 8 to the contrary, to the extent that applicable law shall require that the CDD perform certain functions in connection with the restoration and/or improvements contemplated in this Section 8, then the Parties hereby agree that such applicable law shall control and the Parties shall work cooperatively and in a reasonable manner in order that the CDD may comply with their requirements under applicable law in connection with work.

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ARTICLE 9
ALTERATIONS; ARCHITECTURAL CONTROL

Section 9.1 Alterations. Subject to the provisions of **Exhibit L** with respect to cost-sharing of Shared Facilities, to the provisions of Article 23, and to the limitations contained in this Article, the CDD or any Owner may, at any time, at such CDD or Owner's sole cost and expense, make alterations to the Improvements within the CDD's or such Owner's Parcel (as applicable) subject to the terms of this Declaration. In connection with such alterations, the CDD or the Owner may relocate any easement within such Parcel granted to the CDD or any other Owner pursuant to Article 2 to an area approved in writing by the Association, provided, however, that such alterations shall not, without the CDD's or such other Owner's consent, unreasonably diminish the benefits afforded to the CDD or such other Owner by such easement, or materially interrupt the CDD or such other Owner's use of such (or substantially comparable) easement. Neither the CDD nor any Owner shall alter any Shared Facility in its Parcel without the written consent of the Association.

If at any time the CDD or any Owner proposes to make alterations to its Parcel, and if such alterations will change the location of, reduce the area of, or otherwise affect, any easement granted to the CDD or another Owner (as applicable) pursuant to Article 2, affects in any material respect any Shared Facilities, or such alteration is of the type for which the consent of the other Owners is required under the preceding paragraph, then, before commencing such alterations, the Owner who proposes to make such alterations shall give to the CDD or other applicable Owners a copy of the plans and specifications ("**Plans**") showing the proposed alterations. If the CDD or other Owners fail to give the CDD or the Owner who proposes to make such alterations ("**Proposing Owner**") a written notice ("**Objection Notice**") objecting to the proposed alterations (which such notice shall set forth the specific objections to the Plans) within thirty (30) days after receipt of the Plans ("**Objection Period**"), then, subject to the other restrictions set forth in this Article, the proposed alterations may be made by the Proposing Owner, provided that alterations actually made are shown in accordance with the Plans furnished to the CDD or such other Owners. If the CDD or other Owners ("**Objecting Owners**") shall provide the Proposing Owner with the Objection Notice within the Objection Period and otherwise in accordance with this paragraph, and if the Proposing Owner and the Objecting Owners do not resolve their differences within fifteen (15) days after the Proposing Owner's receipt of the Objection Notice, then the Proposing Owner shall not commence construction of the Alterations until the dispute has been settled by arbitration in accordance with Article 14.

The CDD and any Owner making any alterations shall comply with all laws, rules, orders, ordinances, regulations and requirements of any government or municipality or any agency thereof having jurisdiction and shall, within thirty (30) days after demand by the CDD or any other Owner, discharge, by the filing of a bond or otherwise, any construction, materialman's or other lien asserted against the Parcel of the CDD and/or such other Owner (as applicable) by reason of the making of such alterations. The CDD and/or any Owner (as applicable) making an alteration shall provide to the Association a complete set of as-built plans with respect to the work performed within thirty (30) days of substantial completion of said work. The CDD or an Owner shall, to the extent reasonably practicable, make alterations in such a manner as to minimize any noise or vibration or odor which would disturb an Occupant or Occupants of a Parcel owned by the CDD or any other Owner (as applicable).

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Any such alterations shall be made at the cost of the CDD or Owner performing the same; provided, however, if the same are performed by the Association to a Shared Facility, then such alterations shall be paid for through Common Assessments, Special Assessments or a Capital Improvement Assessment, as may be applicable.

Upon completion of any alteration pursuant to this Section 9.1, the Approved Plans shall be amended to reflect such alteration "as-built."

Section 9.2 Composition. An Architectural Committee to act on behalf of the Association shall initially consist of three (3) members, who initially shall be persons designated by the Association. Each of those persons shall hold office until the Association removes him or her and replaces him or her with a new appointee before that time. Each member shall hold office until such time as he or she resigns or is removed, as provided herein.

Section 9.3 Review of Proposed Construction. Subject to Section 9.10 and such rights of approval granted in Section 9.1 or elsewhere in this Declaration, no improvement or alteration as provided for in this Article, or reconstruction, repair, demolition or the like as provided for in Articles 8 and 10, (including landscaping, drainage and utility lines in the Shared Facilities) shall be performed, erected or installed on or in a Improvements by any Owner, nor any subdivision, platting or replatting of a Parcel shall be made by an Owner, unless and until, in any such case, the plans and specifications showing the nature, kind, shape, aesthetics, height, materials and location of the same have been submitted to, and approved in writing, by the Architectural Committee. The Architectural Committee shall approve proposals or plans and specifications submitted for its approval only if it determines that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the Property as a whole, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures and is otherwise desirable. The Architectural Committee may condition its approval of proposals and plans and specifications as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted to it for its review and approval. Decisions of the Architectural Committee shall require the approval of a majority of its members. The Architectural Committee may also issue rules or guidelines setting forth procedures for the submission of plans for review and approval. The Architectural Committee may require such detail in plans and specifications submitted for its review as it considers proper, including, without limitation, floor plans, surveys, elevation drawings and descriptions or samples of materials and colors. Until receipt by it of required plans and specifications and other requested information as necessary, the Architectural Committee may postpone review of any proposal submitted for approval. The Architectural Committee shall have thirty (30) days after delivery of all required materials to approve or reject any such plans, and a proposal that is not rejected within such thirty (30) day period shall be deemed approved. Notwithstanding any provisions in this Article 9 to the contrary, the approval of the Architectural Committee shall not be required for any non-structural additions, changes or alterations if the non-structural additions, changes or alterations are not in a Visible Area within the Parcel or are replacements of like kind materials and color.

Section 9.4 Meetings of the Architectural Committee. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Committee may from time to time, by resolution adopted in writing by a majority of

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its members designate a representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Architectural Committee, except the granting of variances pursuant to Section 9.9. In the absence of such a designation, the vote of a majority of its members of the Architectural Committee, after at least seven days prior written notice of the upcoming occurrence of a vote of the Architectural Committee, shall constitute an act of the Architectural Committee. The Association shall receive notices of requests for alterations and shall give notice to the members of the Architectural Committee. The Architectural Committee will schedule meetings and votes pursuant to the terms of this Declaration.

Section 9.5 No Waiver of Future Approvals. The approval of the Architectural Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

Section 9.6 Compensation of Members or the Architectural Committee. The members of the Architectural Committee shall receive no compensation for services rendered, other than reimbursement for third party expenses incurred by them on behalf of the Architectural Committee in the performance of their duties hereunder. The Architectural Committee may retain an Architect or engineer to advise it in its deliberations, to review plans and specifications submitted by the CDD or an Owner ("**Applicant Party**") and to inspect work for which approval is required. The Architectural Committee may impose a fee upon an Applicant Party to defray the costs and fees of the Architect or engineer in reviewing the Applicant Party's plans and specifications and inspecting the work.

Section 9.7 Inspection of Work. The inspection of work and correction of defects therein, if any, shall proceed as follows:

(a) Notice of Completion. Upon the completion of any work for which approved plans are required under this Article, the Applicant Party for such approval shall give the Architectural Committee written notice of the completion.

(b) Inspection. Within thirty (30) days thereafter, the Architectural Committee or its authorized representative may inspect the work. If the Architectural Committee finds that the work was not done in substantial compliance with the approved plans, it shall notify the Applicant Party in writing of the noncompliance within thirty (30) days thereafter, specifying the particulars of noncompliance.

(c) Non-Compliance. Any Applicant Party who receives notice of a non-compliance as provided in Section 9.7(b) of this Article shall remedy the noncompliance within thirty (30) days of being notified or request approval of the constructed work, and, if such Applicant Party fails to remedy the noncompliance or obtain approval of constructed work, the Architectural Committee shall simultaneously notify the Association, the CDD, and other Owners in writing of the failure, its nature and the estimated cost of correcting or removing it. If the Applicant Party does not comply with the notice of noncompliance or obtain approval of the as constructed work within said thirty (30) days, then the Association, at its option, may either remove

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the non-complying improvement or remedy the non-compliance, and in either case the Applicant Party shall reimburse the Association, upon demand, for all expenses incurred in connection with the Association's action. If the Applicant Party fails to promptly reimburse the Association its expenses, the Association shall levy a Special Charge against the Applicant Party and its Parcel for reimbursement.

(d) Effect of Committee's Failure to Notify Applicant. If for any reason the Architectural Committee fails to notify the Applicant/Owner of any non-compliance within thirty (30) days after its receipt of a written notice of completion from the Applicant Party, the improvements shall be deemed to be in accordance with the plans approved by the Architectural Committee.

Section 9.8 Non-Liability of Architectural Committee Members. Neither the Architectural Committee, any of its members, nor its authorized representative, shall be liable to any Regime Association, any Owner, any Regime Unit Owner or any other person or entity for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Committee's duties hereunder, unless the loss, damage or injury is due to the willful misconduct or bad faith of one of its members (in which case only the culpable member shall have any liability). The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition on the basis of aesthetic considerations and the overall benefit or detriment which would result to the Property. The Architectural Committee shall take into consideration the aesthetic aspects of the architectural designs, landscaping, color schemes, finishes and materials and similar features. It shall not, however, be responsible for reviewing any plan or design from the standpoint of structural safety or conformance with building or other codes.

Section 9.9 Variances. The Architectural Committee may authorize a variance from compliance with any of the architectural provisions of this Declaration when circumstances such as natural obstructions, hardship, or aesthetic or environmental considerations dictate a variance. Any such variance must be evidenced in a writing signed by at least two members of the Architectural Committee. No violation of this Declaration shall be deemed to have occurred with respect to a matter for which the variance was granted. The granting of such a variance shall not, however, operate to waive any of the restrictions in this Declaration for any purpose except as to the particular Parcel and particular provisions hereof covered by the variance, nor shall it affect in any way the CDD's (to the extent CDD is required to comply with such applicable law) or the Owner's obligation to comply with all governmental laws and regulations affecting its use of the Parcel covered by the variance, including, but not limited to, zoning ordinances and set-back lines or requirements imposed by any governmental, quasi-governmental or municipal agent or authority, nor the Owner's obligation to seek approval by another Owner as set forth in Section 9.1.

Section 9.10 Developer's Exemption. The provisions of this Article 9 shall not apply to Developer and to any and all construction, alterations, additions or other work planned or performed by Developer or any affiliate of Developer.

Section 9.11 Insurance. The Association may require builder's risk, worker's compensation, and other insurance as determined by the Association from time to time.

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ARTICLE 10
CONDEMNATION

Section 10.1 Payment to Insurance Trustee. Any awards for damage, direct and consequential, resulting from the taking, other than a temporary taking, by the exercise of the power of eminent domain, by any sovereign, municipality or other public or private authority, of all or any part of the Improvements or the easements or other appurtenances thereto shall be paid to the Insurance Trustee provided for in Section 12.1.

Section 10.2 Allocation of Awards. The awards received by the Insurance Trustee pursuant to Section 10.1 shall be allocated by the Architect among the CDD and/or the Owners in that proportion which the damage to the CDD and/or each Owner's Parcel and to all easements and other appurtenances thereto shall bear to the damage to all of the Parcels and the easements and other appurtenances thereto, taking into account the allocation provided for in Article 23 and **Exhibit L**, and the award shall be distributed by the Insurance Trustee to the CDD or the respective Owners (as applicable) (or to any lessee or mortgagee to whom any Owner's rights to such award are assigned pursuant to Section 17.4) in accordance with such allocation, subject, however, to the provisions of Sections 10.4 and 10.5. If the damages to each Parcel and the easements and other appurtenances thereto shall have been determined by a court of law or equity in connection with the taking proceeding, then, subject to any right of appeal, such determination shall be conclusive as to the proportions of the total award to be allocated to the CDD and each of the Owners pursuant to this Section 10.2, in lieu of application of the preceding sentence. Notwithstanding the foregoing, all condemnation proceeds allocated to the CDD or any Owner shall first be paid to the Insurance Trustee, for utilization pursuant to Section 10.4 in funding repair and restoration, and Sections 10.3 and 10.4 shall control the timing and amount of any subsequent distribution to the CDD and/or Owners (as applicable).

Section 10.3 Repair and Restoration Following Condemnation. If the taking authority shall take a portion of the improvements within only one Parcel and if such taking does not include any Shared Facilities within such Parcel which serve or benefit the CDD and/or any Owner of another Parcel (as applicable), then, subject to the provisions of Section 10.5, the repair and restoration of such improvements shall be performed by the CDD or the Owner of such improvements, and the CDD or such Owner shall be entitled to withdraw, for application to the cost of said repair and restoration, in accordance with the provisions of Article 8, that portion (which may be 100%) of any condemnation award or awards paid to the Insurance Trustee by reason of such taking which shall have been allocated to the CDD and/or such Owner (as applicable) of such improvements pursuant to Section 10.2.

In the event of a taking, if the provisions of the preceding paragraph shall not be applicable, then, subject to the provisions of Section 10.5, the repair and restoration of any damage to the Improvements occasioned by such taking shall be performed by the CDD or the Owner (as applicable), and if the Association elects, the Association may elect to have the CDD and/or such Owner (as applicable) restore such Shared Facilities on its Parcel or the Association may elect to restore such Shared Facility on behalf of all of the Owners. The plans and specifications for such repair and restoration shall be prepared by the Architect. Such plans and specifications shall provide for such changes in the Improvements as shall be required by reason of such taking. After completing the preparation of such plans and specifications, the Architect shall furnish to the CCD

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or each applicable Owner a set of such plans and specifications, and shall assist the CDD, Owner and/or the Association (as applicable) in obtaining bids for such repair and restoration from responsible contractors. On the basis of such bids the Architect shall furnish the CDD and each applicable Owner with an estimate of the portions of the cost and expense of such repair and restoration which are to be borne by the CDD and each of the Owners, respectively, in accordance with the allocation provided for in Section 10.4. Such contractor shall be selected in the manner provided in Article 11 hereof. The contractor shall work under the administration of the Architect and the Association unless the work does not include or affect in any manner any Shared Facilities, in which case the contractor shall work with only the Architect and the CDD and each applicable Owner. The Association is hereby authorized, empowered and directed to instruct the Insurance Trustee from time to time as such repair and restoration progress, to disburse in accordance with the Architect's certificate issued pursuant to Section 12.2 the condemnation award or awards paid to the Insurance Trustee pursuant to Section 10.1 by reason of the taking and any other moneys deposited with the Insurance Trustee pursuant to Section 10.4, for application to the cost and expense of such repair and restoration. Each such instruction given by the Association to the Insurance Trustee to disburse funds for such cost and expense shall be accompanied by a statement of the Architect setting forth the portion of such cost and expense which is to be borne by the CDD and each of the respective Owners pursuant to the allocation provided for in Section 10.4. The Insurance Trustee shall charge the CDD each Owner's portion of such cost and expense against the portion of the condemnation award or awards allocated to the CDD and/or to such Owner (as applicable) pursuant to Section 10.2.

Section 10.4 Allocation of Costs of Repair and Restoration. All condemnation awards paid to the Insurance Trustee shall first be used to fund all repair and restoration to be performed under Section 10.3. To the extent the condemnation awards paid into the Insurance Trustee are insufficient to fully fund any repair and restoration to be performed under Section 10.3, or if there are no such awards, the cost and expense of performing the repair and restoration provided for in Section 10.3 shall be borne by the CDD and the respective Owners in that proportion which the cost and expense of repairing and restoring the improvements within the Parcel of each Owner, respectively, shall bear to the entire cost and expense of such repair and restoration, except that the cost and expense of repairing and restoring any Shared Facility located within the Parcel shall be allocated to the CDD and the Owners pursuant to Article 23 and **Exhibit L**.

If the condemnation awards paid to the Insurance Trustee exceed 120% of the estimate of the cost of the repair and restoration determined by the Architect pursuant to Section 10.3, then the Insurance Trustee shall distribute to the CDD and the applicable Owners, in advance of performance of restoration and repair, and surplus awards in excess of 120% of the estimated cost of repair and restoration, such surplus to be distributed to the CDD and the applicable Owners in the respective proportions determined under Section 10.2 to be their respective shares of the condemnation awards. The sum retained by the Insurance Trustee shall be held and disbursed in accordance herewith to fund restoration and repair. If the cost of repair and restoration as determined by the Architect exceeds the amount of the condemnation awards paid to the Insurance Trustee, then a Reconstruction Assessment shall be payable by the CDD and all of the Owners for the difference, which amount shall be deposited with the Insurance Trustee, the proportionate responsibility of the CDD and each Owner for such amount being determined as provided in the second sentence of the first paragraph of this Section 10.4. If the CDD or any Owner shall fail to

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pay the Reconstruction Assessment in accordance with this paragraph, then said Owner's obligation to pay the Reconstruction Assessment may be enforced, and the lien on said Owner's Parcel securing payment of the Reconstruction Assessment may be foreclosed, in accordance with Article 5 hereof, but no lien shall be filed against any Parcel owned by the CDD unless allowed under applicable law.

Upon completion of any repair and restoration of the damages in accordance with this Article, any condemnation awards and Reconstruction Assessments paid to the Insurance Trustee which remain after payment of the cost and expense of performing such repair and restoration shall be refunded to the CDD and/or the Owners in the respective proportions by which the CDD and/or each Owner contributed funds to the funds held by the Insurance Trustee, attributing to each Owner as its contribution any condemnation award amount paid into the Insurance Trustee fund and allocated to the CDD and/or such Owner under Section 10.2, plus any Reconstruction Assessment paid by the CDD and/or such Owner for such repair and restoration.

Section 10.5 Limitations on Repair or Restoration of any Parcel which has been declared to be a Regime. In the event that a Regime Declaration with respect to a Parcel is recorded, and if following such recording, a condemnation occurs, and there is a total condemnation or Substantial Taking, as hereinafter defined in Section 10.6 (d), of the Improvements, and there is a timely Casualty Decision for such Parcel not to proceed with repair or restoration of the Improvements (not including any Shared Facilities within such Parcel which must be repaired and restored unless released in writing of such obligation by the Association in the Association's sole discretion), then the Improvements and Parcels, or any portion or portions thereof, shall not be repaired or restored and such Improvements demolished (or altered as approved by the Association), all debris removed and such Parcels shall remain obligated for all obligations under this Declaration. If however, a Casualty Decision is not timely made, then the Improvements shall be repaired and restored as provided in this Article 10. Notwithstanding the above, the CDD and/or the Owner of such Parcel (as applicable) must repair and restore any Shared Facility within such Parcel, unless released in writing of such obligation by the Association in the Association's sole discretion.

Section 10.6 Substantial Taking. For the purpose of Section 10.5 and generally in this Declaration, Substantial Taking of the Improvements shall be defined as follows: (i) an amount greater than or equal to 50% of the replacement value of the Improvements destroyed by such a condemnation occurring during the period commencing with the initial recordation of this Declaration and terminating thirty (30) years thereafter ("**Initial Period**"); (ii) an amount greater than or equal to 35% of the replacement value of the Improvements destroyed by a condemnation occurring at any time during the period commencing with the end of the Initial Period and terminating ten (10) years thereafter ("**Second Period**"); and (iii) an amount greater than or equal to 25% of the replacement value of the Improvements destroyed by a condemnation occurring at any time during the period commencing with the end of the Second Period.

Section 10.7 Temporary Taking. In the event of a taking of the temporary use of any space (other than Shared Facilities), the CDD and the respective Owners shall be entitled to receive directly from the taking authority any award for such taking of space within their respective Parcels or within any easement or appurtenance, according to the law then applicable. Any award for such temporary taking of Shared Facilities space shall be paid to the Association.

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Section 10.8 Disputes. If any dispute shall arise pursuant to this Article 10, such dispute shall be settled by arbitration in accordance with Article 14, but the arbitrators shall have no power or authority to vary the provisions of this Article 10 without the consent of the CDD (if applicable) and each applicable Owner.

Section 10.9 Applicable Law Pertaining to the CDD in Connection with Condemnation. Notwithstanding the foregoing, to the extent that applicable law shall require that the CDD perform certain functions in connection with the restoration and/or improvements contemplated in this Section 10, then the Parties hereby agree that such applicable law shall control and the Parties shall work cooperatively and in a reasonable manner in order that the CDD may comply with their requirements under applicable law in connection with such work.

ARTICLE 11
SELECTION OF CONTRACTORS OR THE ARCHITECT

Section 11.1 Selection of Contractors. When any repair, restoration, reconstruction, demolition, removal of debris or filling required to be performed pursuant to Article 8 and/or Article 10 is to be funded with funds attributable to the insurance policies, condemnation awards, and/or Reconstruction Assessments of the CCD alone or a single Owner, such CDD or Owner may choose the contractor who shall perform such work, provided that the Architectural Committee shall have the right to approve any such contractor chosen by the Owner, which approval shall not be unreasonably withheld, conditioned or delayed. In each event wherein a contractor is needed to perform any repair, restoration, demolition, removal of debris or filling required to be performed pursuant to Article 8 and/or Article 10, and such work is to be funded under the terms of this Declaration with funds attributable to the insurance policies, condemnation awards, and/or Reconstruction Assessment of more than one Owner and the CDD, then the Association shall invite all of the contractors nominated by itself to submit bids for the work to be performed. The terms of bidding shall require that all bids be for a fixed cost and submitted at a particular place or places by a specified time and date. The Association shall allow the contractors a reasonable time, following the announcement of the invitation to bid, to review any plans and specifications and to prepare estimates. The conditions of bidding shall require, unless such requirement is waived by the Association, that the successful contractor post a performance bond and a labor and material payment bond, issued by a company authorized to engage in the business of issuing such bonds in the State of Florida (and which is acceptable to the Association), in an amount equal to the amount of such contract. The bond shall name the Association and all applicable Owners, and the holder or holders of the first mortgage upon each applicable Parcel or upon the leasehold interest of such lessee, as joint and individual obligees, shall provide that all amounts which may be payable to the obligees thereunder shall be paid to the Insurance Trustee, and shall be conditioned on the completion of and payment for the work to be performed. Unless the Owners on whose behalf such work is to be performed otherwise instructs the Association in writing, the Association shall select the lowest bidding responsive and responsible contractor, and shall, in the name of and for the account of the Owners to be benefited by the work to be performed, enter into a construction contract with such contractor providing for the completion of and payment for such work.

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Section 11.2 Selection of the Architect. The Architect shall be as selected by the CDD or applicable Owner as to its Building and other Improvements on its Parcel (other than the Shared Facilities). The Association shall have the power to appoint an Architect for purposes of any repair, restoration, reconstruction, and the like, under this Declaration concerning only the Shared Facilities. The CDD and each Owner, respectively, shall have the power to appoint an Architect for purposes of any repair, restoration, reconstruction, and the like, under this Declaration concerning only its Parcel and provided that no Shared Facility shall be a part of any such repair, restoration or reconstruction. In all other cases of repair or restoration, the Association shall have the right to select an Architect, and shall give written notice of such choice to the applicable Owners, provided, however, any restoration to be performed by the CDD shall be subject to the provisions of Article 8.

ARTICLE 12
DISBURSEMENT OF FUNDS BY INSURANCE TRUSTEE

Section 12.1 Insurance Trustee. The Insurance Trustee shall be a bank or trust company authorized to do business in the State of Florida. The bank or trust company named by the Association in a written notice given to the CDD and/or applicable Owners (as applicable) shall act as Insurance Trustee. The Insurance Trustee may retain free of trust, from the monies held by it, the Insurance Trustee's reasonable fees and expenses for acting as Insurance Trustee.

The Insurance Trustee shall have no obligation to pay interest on any monies held by it unless the Insurance Trustee shall have given an express written undertaking to the Association to do so. However, if the monies on deposit are not held in an interest bearing account pursuant to agreement among the Insurance Trustee and the Association, then the Insurance Trustee, within thirty (30) days after request from the CDD or any Owner given to the Insurance Trustee, the Association and to the CDD and/or other Owners (as applicable) shall purchase with such monies, to the extent feasible, United States Government securities payable to bearer and of the most practicable maturities, not in excess of one year, except insofar as it would, in the good faith judgment of the Insurance Trustee, be impracticable to invest in such securities by reason of any disbursement of such monies which the Insurance Trustee expects to make shortly thereafter, and the Insurance Trustee shall hold such securities in trust hereunder. Any interest paid or received by the Insurance Trustee on monies or securities held in trust, and any gain on the redemption or sale of any securities, shall be added to the monies or securities so held in trust by the Insurance Trustee. Unless the Insurance Trustee shall have undertaken to pay interest thereon, monies received by the Insurance Trustee pursuant to any of the provisions of this Declaration shall not be mingled with the Insurance Trustee's own funds and shall be held by the Insurance Trustee in trust for the use and purposes herein provided.

The Insurance Trustee shall have the authority and duty to disburse funds held by it pursuant to this Declaration in the manner, to the persons, and at the times provided in this Declaration. The Insurance Trustee shall not be liable or accountable for any action taken or suffered by the Insurance Trustee, or for any disbursement of monies by the Insurance Trustee, in good faith in reliance on advice of legal counsel. The Insurance Trustee shall have no affirmative obligation to make a determination of the amount of, or to effect the collection of, any insurance proceeds or condemnation award, unless the Insurance Trustee shall have given an express written

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undertaking to do so, which shall otherwise be the obligation of the CDD and/or the Owners (as applicable).

The Insurance Trustee may rely conclusively on any Architect's certificate furnished to the Insurance Trustee in accordance with the provisions of Section 12.2 hereof and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate.

Section 12.2 Architect's Certificate. In any instance when, pursuant to any provision of this Declaration, the Insurance Trustee shall be required to disburse insurance proceeds, condemnation awards or other funds for application to the cost of repair, restoration and/or demolition, the Insurance Trustee shall not be required to make disbursements more often than at thirty (30) day intervals, and each request for disbursement shall be made in writing at least five (5) days in advance. Each request for disbursement shall be accompanied by a certificate of the Architect, dated not more than ten (10) days prior to the request for disbursement, setting forth the following:

(a) That the sum then requested to be disbursed either has been paid by or on behalf of the CDD, an Owner or Owners (in which case the certificate shall name the CDD, such Owner or Owners) or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished, or agreed to render or furnish, certain services, equipment, and materials and the principal subdivisions or categories thereof and the respective amounts so paid or due to each person in respect thereof and stating the progress of the work up to the date of the certificate;

(b) That the sum then requested to be withdrawn, plus all sums previously withdrawn, does not exceed the cost of the work actually accomplished up to the date of such certificate plus the cost of materials supplied and actually stored on-site (which materials shall be adequately insured against fire, theft and other casualties for the benefit of the CDD and all applicable Owners);

(c) That no part of the cost of the services and materials described in the foregoing paragraph (i) which is being counted as a basis for the then pending application has been the basis of the withdrawal of any funds in any previous application; and

(d) That following the making of the requested advance, the funds remaining with the Insurance Trustee shall be sufficient to complete the repair and restoration based upon the Architect's estimate of such cost to complete.

Upon compliance with the foregoing provisions of this Section 12.2, the Insurance Trustee shall, out of the monies held by the Insurance Trustee, pay or cause to be paid to the CDD and/or the applicable Owners, contractors, subcontractors, materialmen, engineers, architects and other persons named in the Architect's certificate the respective amounts stated in the certificate to be due them.

Section 12.3 No Reliance by Contractors. No contractor, subcontractor, mechanic, materialman, laborer or any other person whatsoever, other than the CDD and the Owners and any mortgagee or lessee to whom the CDD's and/or an Owner's rights (as applicable)

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shall have been assigned as permitted in Section 17.4, shall have any interest in or rights to or lien upon any funds held by the Insurance Trustee. The CDD and the Owners and, pursuant to such assignment, any such mortgagees and lessees by agreement among themselves, may at any time provide for a different disposition of funds than that provided for in this Declaration, without the necessity of obtaining the consent of any contractor, subcontractor, mechanic, materialman, laborer or any other person whatsoever. If at any time the CDD or the Owners (as applicable), and such mortgagees and lessees, if any, shall jointly instruct the Insurance Trustee with regard to the disbursement of any funds held by the Insurance Trustee, then the Insurance Trustee shall disburse said funds in accordance with said instructions. The Insurance Trustee shall have no liability to anyone by reason of having so disbursed said funds in accordance with said instructions.

ARTICLE 13
FORCE MAJEURE

Section 13.1 Force Majeure Event. A Non-Performing Owner shall not be deemed to be in default in the performance of any non-monetary obligation of such Non-Performing Owner under this Declaration, other than an obligation requiring the payment of a sum of money, if and so long as non-monetary performance of such obligation shall be directly caused by a Force Majeure Event. Within fifteen (15) days after the giving of any written notice by the Association to the Non-Performing Owner describing the non-performance by such Non-Performing Owner of any such obligation, the Non-Performing Owner shall notify the Association in writing of the existence and nature of any such cause for non-performance which is beyond the control of the Non-Performing Owner, and the steps, if any, which the Non-Performing Owner shall have taken to eliminate the cause for non-performance. Thereafter, the Non-Performing Owner shall from time to time on written request of the Association keep the Association fully informed in writing of all further developments concerning such cause for nonperformance and the efforts, if any, being made by the Non-Performing Owner to end the cause for non-performance.

ARTICLE 14
ARBITRATION

Section 14.1 Notice to Arbitrate. If a dispute shall arise between or among the CDD or any of the Owners, and if, pursuant to any provision of this Declaration, the dispute is to be settled by arbitration, then the CDD or any Owner may serve upon the CDD or other Owner or Owners involved in the dispute a written notice demanding that the dispute be arbitrated pursuant to this Article 14.

Section 14.2 Appointment of Arbitrators and Procedure. The arbitrators shall be appointed pursuant to the then applicable rules of the American Arbitration Association, or any organization successor thereto, and the proceeding shall follow said rules and shall take place in the County. Judgment upon the determination rendered by the arbitrators may be entered in any court having jurisdiction thereof. The fees and expenses of the arbitrators shall be divided equally between or among the CDD or such Owners (as applicable). If the CDD or any Owner (as applicable) shall fail to pay its share of any fees or expenses of the arbitrators it shall be deemed to be a Defaulting Owner, and the CDD or any other Owner or Owners (as applicable) may pay the same and become a Creditor Owner. The Defaulting Owner shall upon demand reimburse the

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Creditor Owner for such payment, which the failure of the Defaulting Owner to do so, shall permit the Creditor Owner all of the right and remedies afforded to Creditor Owners in Article 5 of this Declaration. If in connection with any arbitration it shall be necessary to determine the value of any Parcel or portion thereof, the arbitrators who shall be selected shall be disinterested persons of recognized competence in the field of real estate appraisal.

ARTICLE 15
ESTOPPEL CERTIFICATES

Section 15.1 Estoppel Certificates. The CDD, each Owner and the Association agrees within thirty (30) days after written request by any Owner ("**Requesting Owner**") to execute and deliver to the Requesting Owner or to any existing or prospective purchaser, mortgagee or lessee designated by such Requesting Owner, a certificate in recordable form stating to the best of its knowledge: (a) whether or not there is any existing default hereunder by the Requesting Owner, the CDD or any other Owner in the payment of any sum of money owing to the CDD or an Owner; (b) whether or not there is any existing default hereunder by the CDD or any Owner with respect to which a notice of default has been given by the Association and, if there is any such default, specifying the nature and extent thereof; (c) whether or not there are any sums (other than those arising within the previous forty-five (45) days out of the normal course of operation of the Association) which the Requesting Owner or the Association is entitled to receive or demand from any other Owner hereunder and, if there is any such sum, specifying the nature and extent thereof; (d) whether or not the Association has performed or caused to be performed, or is then performing or causing to be performed, any Maintenance or other work not in the normal course of operation of the Association or the Shared Facilities, the cost of which the Association is or may be entitled to charge in whole or in part to the CDD or any Owner but has not yet charged to the CDD or such other Owner, and if there be any such Maintenance or other work, specifying the nature and extent thereof; (e) whether or not there are any set-offs, defenses or counterclaims then being asserted or otherwise known against enforcement of any obligations hereunder which are to be performed by the Requesting Owner, and, if so, the nature and extent thereof; (f) whether or not the CDD or any Owner has given any notice to the Requesting Owner making a demand or claim hereunder which has not yet been discharged or otherwise resolved, or given any notice of a dispute to be settled or resolved by arbitration in accordance with the provisions of Article 14, and if so, a copy of any such notice shall be delivered with the certificate; (g) whether or not there is any pending dispute involving the Requesting Owner which has been submitted for arbitration hereunder, and if so, specifying the nature of the dispute; (h) whether or not the arbitrators have made any ruling or decision involving the Requesting Owner within the ninety (90) days preceding the date of such certificate, and if so, identifying such ruling or decision; (i) confirming the Boat Show Tenant' right to operate the Boat Show during Show Dates pursuant to the Boat Show Lease, and (j) whether or not the Requesting Owner has made any then outstanding assignment of rights, privileges, easements or rights of entry pursuant to Section 17.4 or otherwise, and if so, identifying such assignment. In the event of the recording of a Regime Declaration, any such certificates which are required of the Owner with respect to the Parcel which has been declared a Regime shall be given by the president or vice president of the Regime Association governing said Regime, and such certificate shall be regarded as that of the Owner of such Parcel.

In addition to the estoppel certificates delivered pursuant to the foregoing paragraph, each Owner shall deliver to the Association, within thirty (30) days after written request

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therefor (but not more often than twice in each calendar year), a certificate setting forth the names of the owners of record (as shown by the Public Records of the County), of all Regime Unit Owners in the Regime Parcel at the time of the giving of such certificate, as well as the names of the directors and the officers of the respective Regime Association.

ARTICLE 16
NOTICES

Section 16.1 Giving of Notice. Any notice, demand, election or other communication (hereafter in this Article 16 collectively referred to as "**Notices**", and singly referred to as a "**Notice**") which the CDD or any Owner or other party hereto shall desire or be required to give pursuant to the provisions of this Declaration shall be sent by: (i) a nationally recognized overnight mail delivery service or carrier (such as Federal Express) with delivery charges prepaid, (ii) registered or certified mail with postage, including registration or certification charges, prepaid, enclosed in a sealed envelope, or (iii) electronic mail with a verification of delivery. The Notice shall be addressed to the person intended to be given such notice at the address herein provided. The giving of such notice shall be deemed complete at the time the same is (i) deposited with the nationally recognized overnight mail delivery service or carrier, (ii) deposited in the Regime United States mail, or (iii) sent by electronic mail with verification of delivery, whichever the case may be. Notices to the CDD or any Owner shall be sent to the CDD or such Owner addressed as follows or to such other address as may be designated by the CDD or such Owner from time to time in a notice given pursuant to this Section 16.1 (as applicable):

If to Developer: Rahn Bahia Mar L.L.C.
1175 N.E. 125th Street, Suite 102
North Miami, Florida 33161
Attn: J. Kenneth Tate, Vice President
Email: kenny@tatecapital.com

If to Marina Sublessee: Rahn Marina, LLC
17330 Preston Road, Suite 220A
Dallas, TX 75252
Attn: Brian Redmond, Founding Principal and President
Email: bryan@suntexventures.com

If to Marina Village Sublessee: TRR Bahia Mar Marina Village, LLC
1175 N.E. 125th Street, Suite 102
North Miami, Florida 33161
Attn: J. Kenneth Tate, Vice President
Email: kenny@tatecapital.com

If to Boat Show Tenant: Marina Industries Association of South Florida, Inc.
2312 S. Andrews Avenue
Fort Lauderdale, FL 33316

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Attn: Executive Director

If to City: City of Fort Lauderdale

_____

Fort Lauderdale, FL 33301
Attn: City Manager
Email: _____

And

Yachting Promotions, Inc.
c/o Informa Group PLC
711 Third Avenue, 8th Floor
New York, NY 10017
Attn: Thomas Etter
Senior Vice President and General Counsel – Americas
Email: tom.etter@informa.com

CDD: Bahia Mar Community Development District
c/o GMS – South Florida
5385 N. Nob Hill Road
Sunrise, FL 33351
Attn: District Supervisor
Email: Rhans@gmssf.com

The initial address of each subsequent Owner created by Supplemental Declarant shall be as set forth in such Supplemental Declaration.

The CDD or any Owner may from time to time by written notice to the other Owners or CDD (as applicable) in accordance with this Article 16 designate a different address which shall be substituted as specified above.

Copies of notices to any lessee or holder of a mortgage entitled to receive such copies pursuant to Section 17.4 shall be addressed to such lessee or holder of a mortgage at the address or addresses designated by such lessee or holder of a mortgage in the manner set forth above or to such other address or addresses as such lessee or holder of a mortgage may thereafter from time to time designate by written notice given pursuant to the provisions of this Article 16.

If at any time and from time to time any person, corporation, or other entity shall succeed in whole or in part to the interest or estate of the CDD or any Owner ("**Successor Owner**"), then such Successor Owner shall not be entitled to receive any notice hereunder, and any notice given (or deemed to have been given) to the CDD or prior Owner of such interest or estate shall be deemed to have been given to such Successor Owner, unless and until the Successor Owner shall have given written notice of the change of ownership together with a copy of the instrument indicating the change in ownership. Nothing herein contained shall be construed to preclude personal service of any notice, demand, request or other communication in the same manner that personal service of a summons or other legal process may be made.

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Section 16.2 Multiple Ownership. If at any time the interest or estate of any Owner hereto shall be owned by more than one person, corporation or other entity (hereafter in this paragraph collectively referred to as "**Said Owners**") , then Said Owners shall give to such other Owner a written notice, executed and acknowledged by all of Said Owners, in form proper for recording, which shall (a) designate one person, corporation or other entity having an address in the State of Florida to whom shall be given, as agent for all of Said Owners, all notices thereafter given to Said Owners hereunder and (b) designate such person, corporation or other entity as agent for the service of process in any action or proceeding, whether before a court or by arbitration, involving the determination or enforcement of any rights or obligations hereunder. Thereafter, until such designation is revoked by written notice given by all of Said Owners or their successors in interest, any notice and any summons, complaint or other legal process, or any notice given in connection with an arbitration proceeding (which such summonses, complaints, legal processes and notices given in connection with arbitration proceedings are hereafter in this Section 16.2 collectively referred to as "**legal process**") given to, or served upon, such agent shall be deemed to have been given to, or served upon, each and every one of Said Owners at the same time that such notice or legal process is given to, or served upon, such agent. If Said Owners shall fail so to designate in writing one such agent to whom all notices are to be given and upon whom any legal process is to be served, or if such designation shall be revoked as aforesaid and a new agent is not designated, then any notice or legal process may be given to, or served upon, any one of Said Owners as agent for all of Said Owners and such notice or legal process shall be deemed to have been given to, or served upon, each and every one of Said Owners at the same time that such notice or legal process is given to, or served upon, any one of them, and each of Said Owners shall be deemed to have appointed each of the other Said Owners as agent for the receipt of notices and the service of legal process as aforesaid.

Notwithstanding the foregoing provisions of this Section 16.2, to the extent permitted by law, in the event of the recording of a Regime Declaration in connection with any one or more of the Parcels, notices to the Owner of said Regime Association of such Regime Parcel and all of its constituent Regime Unit Owner(s) shall be served upon the president of the Regime Association for such Regime Parcel, and such president shall be the agent for service of process of the Owner and its constituent Regime Unit Owner(s). Legal process served upon such agent shall be effective service upon the Owner and its respective constituent Regime Unit Owner(s) as though served individually on each and all such persons. Said president of the Regime Association may be empowered to give notice and/or serve process on behalf of the Owner and any or all of its constituent Regime Unit Owner(s) for any purposes under this Declaration, which notice shall be binding upon the Regime Association as Owner and/or its constituent Regime Unit Owner(s) on whose behalf it shall have been given.

The provisions of this Section 16.2 does not apply to the CDD.

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ARTICLE 17
HEIRS, SUCCESSORS AND ASSIGNS

Section 17.1 Provisions Run with the Land; Priority. This Declaration is intended to and shall run with the real property benefited and burdened hereby, and shall bind and inure to the benefit of the parties hereto and their successors in title. This Declaration shall be superior to and have priority over any Regime Declaration recorded with respect to a Parcel.

Section 17.2 Release on Conveyance. In the event that any person or entity ("**Seller**") who owns all or any portion of its interest in any Parcel conveys to a Successor Owner all of the right, title and interest of such Seller in such Parcel or portion thereof, then the Seller shall from the time of such conveyance and notice of same to the Association, the CCD and the other Owners pursuant to Section 16.1 be entirely relieved from the obligation to observe and perform all covenants and obligations which the Seller would otherwise be liable hereunder to observe and perform by virtue of ownership of the interest conveyed. In the event of any such conveyance by a Seller of all of its interest in a Parcel or portion thereof, the Successor Owner shall from the time of such conveyance be deemed to have assumed the liability to observe and perform all the covenants and obligations imposed by this Declaration on the person owning the interest conveyed. No Seller shall be released by virtue of this Section 17.2 from liability incurred under any covenant or obligation in this Declaration prior to the time of its conveyance of all of its interest and the delivery of the notice pursuant to Section 16.1. In any case in which a transfer or conveyance of title occurs by reason of eminent domain, and such taking is only for a temporary period, or for only a portion of a Parcel, the Seller in such instance shall be relieved from performance of its covenants and obligations hereunder only to the extent prescribed elsewhere in this Declaration, and to the extent not so prescribed herein, as may be prescribed by such legal or equitable principles then applicable in the State of Florida.

Section 17.3 Easements Benefit Tenants, etc. Subject to the provisions of this Declaration, any easement or right of entry herein granted to the CDD or any Owner shall be for the benefit not only the CDD or of such Owner (as applicable), but also for the benefit of any tenants, licensees, employees, Occupants, guests, invitees, agents and contractors of such Owner whom such Owner shall have the right to permit to use such easement or right of entry.

Section 17.4 Assignment of Rights to Lessees, Mortgagees. The CDD or any Owner may, without the necessity of conveying the interest of such Owner's Parcel, assign or otherwise transfer to any lessee of the entire Parcel, or to the holder of a first mortgage covering all or any of such Parcel, all or any of the rights, privileges, easements and rights of entry herein given to the CDD or such Owner (including, without limitation, any right to make any election, to exercise any option or discretion, to give any notice, to perform any work of demolition, restoration, repair, replacement or rebuilding, to receive moneys from the Insurance Trustee other than the moneys required for restoration, repair or reconstruction of the Shared Facilities and to receive any and all other moneys payable to the CDD or such Owner (as applicable). Any such lessee may in turn assign or otherwise transfer all or any of such rights, privileges, easements and rights of entry to the holder of a first mortgage covering the leasehold estate of such lessee, and any such lessee or holder of a first mortgage may exercise any such right, privilege, easement or right of entry so assigned or otherwise transferred to it to the same extent as if in each instance this Declaration specifically granted such right, privilege, easement or right of entry to such lessee or

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holder of a first mortgage. Neither the CDD nor any other Owner (as applicable) (or the Insurance Trustee or any other person having any rights hereunder), shall be bound to recognize any assignment, lease, mortgage or other transfer referred to in this Section 17.4, or the exercise or accrual of any rights pursuant to such assignment, lease, mortgage or other transfer, or to recognize any holder of a first mortgage as a Mortgagee hereunder, until the CDD or such other Owner, the Insurance Trustee and the Association are given written notice, in the manner provided in Article 16 for the giving of Notice, of such assignment, lease, mortgage or other transfer, which Notice shall then be imputed to any other person having rights hereunder. Said Notice shall be accompanied by a certified copy of the instrument effecting such assignment or other transfer. The CDD, any Owner, the Insurance Trustee, the Association, mortgagee or lessee who is given written Notice as aforesaid of such assignment or other transfer, and any successor, personal representative, heir or assign of the CDD, such Owner, Insurance Trustee and Association or such other person, shall thereafter, simultaneously with the giving of any Notice under this Declaration to such assignor or transferor, give to such lessee or holder of a first mortgage a copy of such Notice pursuant to said Article 18. No such Notice shall be effective against such lessee or holder unless a copy thereof is given to such lessee or holder as aforesaid.

Any such lessee or holder of a first mortgage to whom rights, privileges, easements or rights of entry are assigned or otherwise transferred pursuant to this Section 17.4 shall, within ten (10) days after written request made by the CDD or any Owner (but not more than twice during each calendar year), execute, acknowledge and deliver to the CDD or such Owner, or to any existing or prospective purchaser, mortgagee or lessee designated by the CDD or such Owner (as applicable) an executed estoppel certificate in recordable form containing the statements called for in Section 15.1. Subject to any applicable Regime Declaration, any Regime Unit Owner (as applicable) may assign or otherwise transfer its rights in the manner described in this Section 17.4 with respect to its Regime Unit. To be considered a Mortgagee of a Parcel for purposes of this Declaration, the holder of such a first mortgage shall give Notice as prescribed in Section 16.1. In addition to giving Notice as prescribed in this Section 16.1, the holder of a first mortgage lien as to any Parcel shall also satisfy the definition of Mortgagee included in Article 1 in order to be considered a Mortgagee under this Declaration.

Section 17.5 Certain Imputations and Stipulations Concerning Notice under Article 17. If pursuant to Section 17.4, notice of the identity of a particular lessee of an entire Parcel or holder of a first mortgage on a Parcel or a Regime Unit is given to the Owners of the other Parcels, the Insurance Trustee, and/or the Association, as those parties are then identified and constituted, knowledge of such notice and its contents shall be imputed without further action to the successors and assigns of such Owners, Insurance Trustee, and Association. Knowledge of such notice shall likewise continue to be imputed to the persons to whom knowledge of notices to the CDD, other Owners, Insurance Trustee, and Association is imputed under Section 17.4, regardless of any succession or assignment among the CDD, other Owners, Insurance Trustee, Association, and/or among such person to whom knowledge or notice is imputed under Section 17.4. Binding notice is hereby given, in satisfaction of all requirements of Section 17.4, that the Mortgagee(s) of the Parcel(s), until further notice shall be given in accordance herewith, to _____ at the following address: _____. **[Fill in at time with applicable mortgagees]**

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ARTICLE 18
CERTAIN RESTRICTIONS AND OBLIGATIONS WITH RESPECT TO THE PARCELS

Section 18.1 Regime Declaration and Amendments Thereto. The Regime Declaration, if any, for any Parcel, shall be initially in the form approved by Developer and the City and no material amendment thereto affecting the Association shall be made without the prior written consent of the Association and no material amendment thereto affecting the City shall be made without the prior written consent of the City Manager, which consent shall not be unreasonably withheld, delayed, or conditioned. Each Owner agrees that the Regime Association may exercise the rights of the board of directors of the Regime Association, if any, and its aggrieved Regime Unit Owner(s) under Section 718.303 of the Act in the case of the failure of any Regime Unit Owner of such Regime to comply with the Regime Declaration, the articles of incorporation, bylaws, rules and regulations of the Regime Association or this Declaration.

Section 18.2 Covenant Not To Sue. Developer hereby discloses that due to certain conditions imposed upon Developer by certain governmental and/or quasi-governmental agencies and/or divisions (collectively, "**Government Authority**") regarding the construction of the Improvements, certain areas or portions of the Improvements may be subject to flooding ("**Flooding**"). Specifically, Developer hereby discloses that the Parcels may be situated on or below grade (below the adjacent street) and therefore, during periods of heavy rain, the Parcels may flood. The Association, the CDD, the Owners, each Regime Association, and each Regime Unit Owner hereby warrant, represent and covenant not to commence or institute any litigation, lawsuit, cause of action, claim or the like, in either law, equity or otherwise, against Developer or any party developing such Parcel, for any damage or injury to either property or person (including death) that arises from, is in connection with, or results from the Flooding. In this regard, the Owners shall indemnify and defend, and the Association, , each Owner, each Regime Association and each Regime Unit Owner, jointly and severally, shall not hold Developer liable, for any and all cost and expense (including, but not limited to, attorney fees and costs through all trial and appellate levels and proceedings), damage, liability, litigation, lawsuit, cause of action or claim, in either law, equity or otherwise, incurred by and/or commenced against Developer arising from, in connection with or resulting from the Flooding.

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ARTICLE 19
SEVERABILITY

Section 19.1 Severability. If any provision of this Declaration is prohibited by or is unenforceable under any applicable law, such provision shall be severed without invalidating the remaining provisions of this Declaration. To the full extent permitted by law the remaining provisions of this Declaration shall be deemed to be a valid and binding agreement in accordance with its terms.

ARTICLE 20
REMEDIES

Section 20.1 Remedies. The remedies provided in this Declaration shall not be exclusive and, in the event of a breach of any of the terms, covenants and conditions hereof, the

CDD and the Owners shall be entitled to pursue any remedies available at law or in equity, including specific performance, in addition to and not in lieu of any of the remedies provided herein.

ARTICLE 21
MISCELLANEOUS

Section 21.1 Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 21.2 Gender. The use of any gender in this Declaration shall be deemed to include all other genders and the use of the singular shall be deemed to include the plural, and vice versa, unless the context otherwise requires.

Section 21.3 Amendments.

(a) This Declaration and the provisions herein may be amended, changed, terminated or modified by Developer without the consent of any Owner for as long as Developer owns any Parcel or any portion of a Parcel provided the Developer will not amend the provisions of this Declaration if such amendment would have a material adverse effect on an Owner without the consent of such Owner which consent shall not be unreasonably withheld, delayed or conditioned. While Developer owns any Parcel in the Property, there shall be no amendments to this Declaration or actions of the Association affecting the Developer without the written consent of Developer. After Developer no longer owns any portion of a Parcel, this Declaration may be amended by the vote of two-thirds (2/3) of the Voting Interests of the Owners. Any material amendment to this Declaration affecting the City shall require the written consent of the City, which consent shall not be unreasonably withheld, delayed, or conditioned. Any material amendment to this Declaration affecting the CDD in any material respect or affecting the Parcel owned by the CDD shall require the written consent of the CDD, which consent shall not be unreasonably withheld, delayed, or conditioned.

(b) Notwithstanding anything contained in this Declaration to the contrary, as long as the Boat Show Lease has not been terminated and/or no Boat Show Event of Default exists, the provisions of this Section 21.3, the last sentence of the definition of Regime Association, the definition of Special Functions, the last sentence of Section 2.2, Sections 2.5(b) (vii), 2.11, 2.13, 2.14, 2.15(a), 2.16(a), 3.1 (the last paragraph), or 24(b) (collectively the "**Specified Provisions**") (in each case which inure to the benefit of the Boat Show Tenant) shall not be amended, changed, terminated, or modified in any material manner by Developer, the Association, the Board, and/or the Owners without the written consent of the Boat Show Tenant and City, which consent shall not be unreasonably withheld, delayed or conditioned.

Section 21.4 Governing Law. This Declaration shall be governed, construed, applied and enforced in accordance with the laws of Florida including matters affecting title to all real property described herein.

Section 21.5 Further Assurances. From time to time after the date hereof each party hereto shall furnish, execute and acknowledge, without charge, such other instruments,

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documents, materials and information as the other parties hereto may reasonably request in order to confirm to such parties the benefits contemplated hereby.

Section 21.6 Exculpation. Notwithstanding anything herein to the contrary, the representations, covenants, undertakings and agreements made in this Declaration by Developer are not made or intended as personal representations, covenants, undertakings or agreements by Developer or for the purpose or with the intention of binding Developer personally, but are made and intended for the purpose of binding the property of Developer. No personal liability is assumed by nor shall at any time be asserted or enforceable against Developer on account of any representation, covenant, undertaking or agreement of Developer contained in this Declaration either expressed or implied. All such personal liability, if any, is expressly waived and released by the Association and the Owners and by all persons claiming by, through or under the Owners.

Section 21.7 Limitation on Powers. Anything in this Declaration to the contrary notwithstanding, the existence or exercise of any easement, right, power, authority, privilege or duty of the Association as the same pertains to any Regime located within the Parcels which would cause the Association to be subject to Chapter 718, Florida Statutes, shall at the option of the Association be null, void and of no effect to the extent, but only to the extent, that such existence or exercise is finally determined to subject the Association to the provisions of said Chapter 718. It is the intent of this provision that the Association not be deemed to be a condominium association, and that the fee interest of an Owner which is not within a declared condominium (or any other portion of the Parcels not expressly declared to be a part of a condominium) not be deemed to be common elements of any such Regime, within the meaning of applicable laws or administrative rules for any purpose.

ARTICLE 22
MEANING OF OWNER

In the event of the recording of a Regime Declaration, wherever in this Declaration the consent or approval of the Owner is required or provided for, and no other means by which such consent or approval shall be given is specified, the same shall be deemed to have been given if the president of the Regime Association for the Parcel created by the Regime Declaration, shall have given such consent or approval.

ARTICLE 23
STANDARD OF ALLOCATION

Whenever, pursuant to this Declaration, it shall be necessary to determine the proportion of any Assessment hereunder which is to be borne by the CDD and/or each Owner, the following shall apply:

(a) The proportion to be borne by the CDD and the Owner of any Parcel shall be determined in the manner provided in **Exhibit L,** as may be modified as provided in this Declaration.

(b) In the event that any new facilities, not presently called for or shown in the Approved Plans, shall hereafter be constructed pursuant to this Declaration and such new facility meets the definition of a Shared Facility, Assessments pertaining to such facility, shall be allocated

DRAFT

as determined by Developer in the Supplemental Declaration (until the Developer turns over control of the Association), after which time as determined by the Association and amended by Supplemental Declaration signed by the Association.

ARTICLE 24
TERMINATION

(a) As long as Developer owns any Parcel, this Declaration may not be terminated without the approval of the Developer and the City. After Developer no longer owns any Parcel (or portion thereof), this Declaration may be terminated (other than with respect to the Perpetual Easements which shall remain effective) upon the approval of a plan of termination by (a) not less than 80% of the Voting Interests of all Owners which must include the consent of the Marina Sublessee (or the Marina Owner if the Marina Sublease is not in effect or the Marina Sublessee is not in good standing pursuant to such Marina Sublease), (b) the Association, (c) the CDD, and (d) the City. The required consent of the Marina Sublessee (or Marina Owner, if applicable), Association, CDD, and the City may not be unreasonably withheld, conditioned, or delayed.

(b) In the event the term of this Declaration expires or this Declaration is terminated and the Boat Show Lease has not been terminated and/or the Boat Show Tenant's right to possession under the Boat Show Lease has not been terminated, then the Specified Provisions applicable to the Boat Show Tenant shall remain in effect, subject to the terms of the Boat Show Lease. Upon any termination of the Boat Show Lease or upon any termination of the Boat Show Tenant's right to possession under the Boat Show Lease, then all provisions of this Declaration providing for any rights of the Boat Show Tenant shall terminate and shall no longer be applicable.

(c) The Term of this Declaration shall (i) remain in effect until the later of (a) the expiration of the term of the last Phased Lease still in effect or (b) the expiration of the term of the Master Lease, as to all provisions hereof other than those related to the Perpetual Easements and (ii) be perpetual as to the Perpetual Easements.

[SIGNATURE PAGE FOLLOWS]

DRAFT

IN WITNESS WHEREOF, this Declaration has been duly executed and delivered by Developer on the day and year first above written.

Signed, sealed and delivered
in the presence of:

RAHN BAHIA MAR L.L.C., a Delaware limited liability company

_____
Print Name:_____

By:_____
Print Name:_____
Title:_____

_____
Print Name:_____

STATE OF)
) SS:
COUNTY OF)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, by _____, as _____ of **RAHN BAHIA MAR L.L.C.**, a Delaware limited liability company, freely and voluntarily under authority duly vested in him/her by said entity. He/She is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, ____.

_____
Notary Public
Print Name:_____

My Commission Expires:

_____

DRAFT

JOINDER

BAHIA MAR MASTER ASSOCIATION, INC., a Florida corporation not for profit, hereby agrees to accept all the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration and Exhibits attached hereto.

IN WITNESS WHEREOF, BAHIA MAR ASSOCIATION, INC. has caused these presents to be signed in its name by its proper officer and its corporate seal to be affixed this _____ day of _____, ____.

Signed, sealed and delivered
in the presence of:

BAHIA MAR MASTER ASSOCIATION, INC., a Florida corporation not-for-profit

_____ By:_____
Print Name:_____ Print Name:_____
Title:_____

_____
Print Name:_____

STATE OF)
) SS:
COUNTY OF)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, by _____, as _____ of BAHIA MAR MASTER ASSOCIATION, INC., a Florida corporation not for profit, freely and voluntarily under authority duly vested in him/her by said entity. He is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, ____.

_____
Notary Public
My Commission Expires: Print Name:_____

_____

DRAFT

JOINDER

RAHN MARINA, LLC, a Delaware limited liability company, the leasehold owner of the Marina Parcel and sublessee under the Marina Sublease hereby agrees to accept all the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration and Exhibits attached hereto and commits it Parcel to the Declaration.

IN WITNESS WHEREOF, RAHN MARINA, LLC has caused these presents to be signed in its name by its proper manager this _____ day of _____, ____.

Signed, sealed and delivered
in the presence of:

RAHN MARINA, LLC, a Delaware limited liability company

_____
Print Name:_____

_____
Print Name:_____

By:_____
Print Name:_____
Title:_____

STATE OF)
) SS:
COUNTY OF)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, by _____, as _____ of **RAHN MARINA, LLC**, a Delaware limited liability company, a Delaware limited liability company, freely and voluntarily under authority duly vested in him/her by said entity. He is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, ___.

_____
Notary Public
Print Name:_____

My Commission Expires:

_____

DRAFT

JOINDER

TRR BAHIA MAR MARINA VILLAGE, LLC, a Florida limited liability company, the leasehold owner of the Marina Village Parcel and the sublessee of the Marina Village Sublease hereby agrees to accept all the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration and Exhibits attached hereto and commits it Parcel to the Declaration.

IN WITNESS WHEREOF, TRR BAHIA MAR MARINA VILLAGE, LLC has caused these presents to be signed in its name by its proper manager this _____ day of _____, ____.

Signed, sealed and delivered
in the presence of:

TRR BAHIA MAR MARINA VILLAGE, LLC, a Florida limited liability company

_____
Print Name:_____

By:_____
Print Name:_____
Title:_____

_____
Print Name:_____

STATE OF)
) SS:
COUNTY OF)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, by _____, as _____ of **TRR BAHIA MAR MARINA VILLAGE, LLC**, a Florida limited liability company, a Delaware limited liability company, freely and voluntarily under authority duly vested in him/her by said entity. He is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, ___.

_____
Notary Public
Print Name:_____

My Commission Expires:

_____

DRAFT

JOINDER

The undersigned, on behalf of the Boat Show Tenant, hereby consents to the Declaration and the provisions of this Declaration and all Exhibits attached hereto.

Signed, sealed and delivered
in the presence of:

MARINE INDUSTRY ASSOCIATION OF SOUTH FLORIDA, INC.

_____ By: _____
Print Name: _____ Print Name: _____
Title: _____

_____
Print Name: _____

YACHTING PROMOTIONS, INC.

_____ By: _____
Print Name: _____ Print Name: _____
Title: _____

_____
Print Name: _____

DRAFT

STATE OF)
) SS:
COUNTY OF)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, by _____, as _____ of _____, freely and voluntarily under authority duly vested in him/her by said entity. He is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, ___.

_____
Notary Public
My Commission Expires: Print Name: _____

STATE OF)
) SS:
COUNTY OF)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, by _____, as _____ of _____, freely and voluntarily under authority duly vested in him/her by said entity. He is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, ___.

_____
Notary Public
My Commission Expires: Print Name:_____

_____

DRAFT

JOINDER

The undersigned, on behalf of the CDD, hereby consents to the Declaration and the provisions of this Declaration and all Exhibits attached hereto.

Signed, sealed and delivered
in the presence of:

BAHIA MAR COMMUNITY DEVELOPMENT DISTRICT

_____
Print Name:_____

_____
Print Name:_____

By:_____
Print Name:_____
Title:_____

STATE OF)
) SS:
COUNTY OF)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, by _____, as _____ of **BAHIA MAR COMMUNITY DEVELOPMENT DISTRICT**, freely and voluntarily under authority duly vested in him/her by said entity. He is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, ___.

_____
Notary Public
My Commission Expires: Print Name:_____

DRAFT

JOINDER

CITY OF FORT LAUDERDALE, Florida, the owner of the fee title to the Property hereby joins in this Declaration to grant and convey the Perpetual Easements as provided in this Declaration and to agree to and consent to the Declaration and the provisions of this Declaration and Exhibits attached hereto.

IN WITNESS WHEREOF, CITY OF FORT LAUDERDALE has caused these presents to be signed in its name by its proper manager this _____ day of _____, ____.

Signed, sealed and delivered
in the presence of:

_____
Print Name:_____

_____
Print Name:_____

CITY OF FORT LAUDERDALE

By:_____
Name:_____
Title: Mayor

By:_____
Name:_____
Title: City Manager

ATTEST:

_____
_____, City Clerk

Approved as to form:

_____
_____, City Attorney

DRAFT

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____, 20__, by _____, Mayor of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida and _____ as City Clerk they are personally known to me or produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, ___.

(SEAL)

_____
Notary Public
Print Name:_____
My Commission Expires:

JOINDER

_____, a _____, the holder of that certain Mortgage recorded in Official Records Book _____ of the Public Records of Broward County, Florida and all related loan documents hereby consents to the Declaration and the provisions of this Declaration and all Exhibits attached hereto.

IN WITNESS WHEREOF, _____ has caused these presents to be signed in its name by its proper manager this _____ day of _____, ____.

Signed, sealed and delivered
in the presence of:

_____, a _____

_____
Print Name:_____

By:_____
Print Name:_____
Title:_____

_____
Print Name:_____

STATE OF)
) SS:
COUNTY OF)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, by _____, as _____ of _____, a _____, freely and voluntarily under authority duly vested in him/her by said entity. He is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, ___.

_____
Notary Public
Print Name:_____
My Commission Expires:

DRAFT

SCHEDULE OF EXHIBITS

Exhibit A	Legal Description of the Property
Exhibit B	Sketch of Approved Site Plan
Exhibit C	Redacted Portions of the Boat Show Lease
Exhibit D	Bulkheads
Exhibit E	CDD Air Rights Parcel
Exhibit F	CDD Public Improvements Parcel
Exhibit G	Description of the Shared Facilities (including Parks, Drives and Parking Areas, Promenade, and Bridge)
Exhibit H	Fueling Area
Exhibit I	Limited Shared Facilities
Exhibit J	Marina Office Building
Exhibit K	Specified Access Improvement Parcel
Exhibit L	Specified Percentage
Exhibit M	Schedule of Voting Interests
Exhibit N	Articles of the Association
Exhibit O	Bylaws of the Association

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EXHIBIT A
Legal Description of the Property

All that part of BAHIA MAR, according to the plat thereof recorded in Plat Book 35, page 39 of the public records of Broward County, Florida, lying West of the West right of way line of Seabreeze Boulevard, excepting therefrom Parcel No. 1 and also excepting the North 80 feet of Parcel No. 34.

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EXHIBIT B
Sketch of Approved Site Plan

EXHIBIT C
Redacted Portions of the Boat Show Lease

The Developer has provided this Exhibit to the City.

DRAFT

EXHIBIT D
Bulkhead

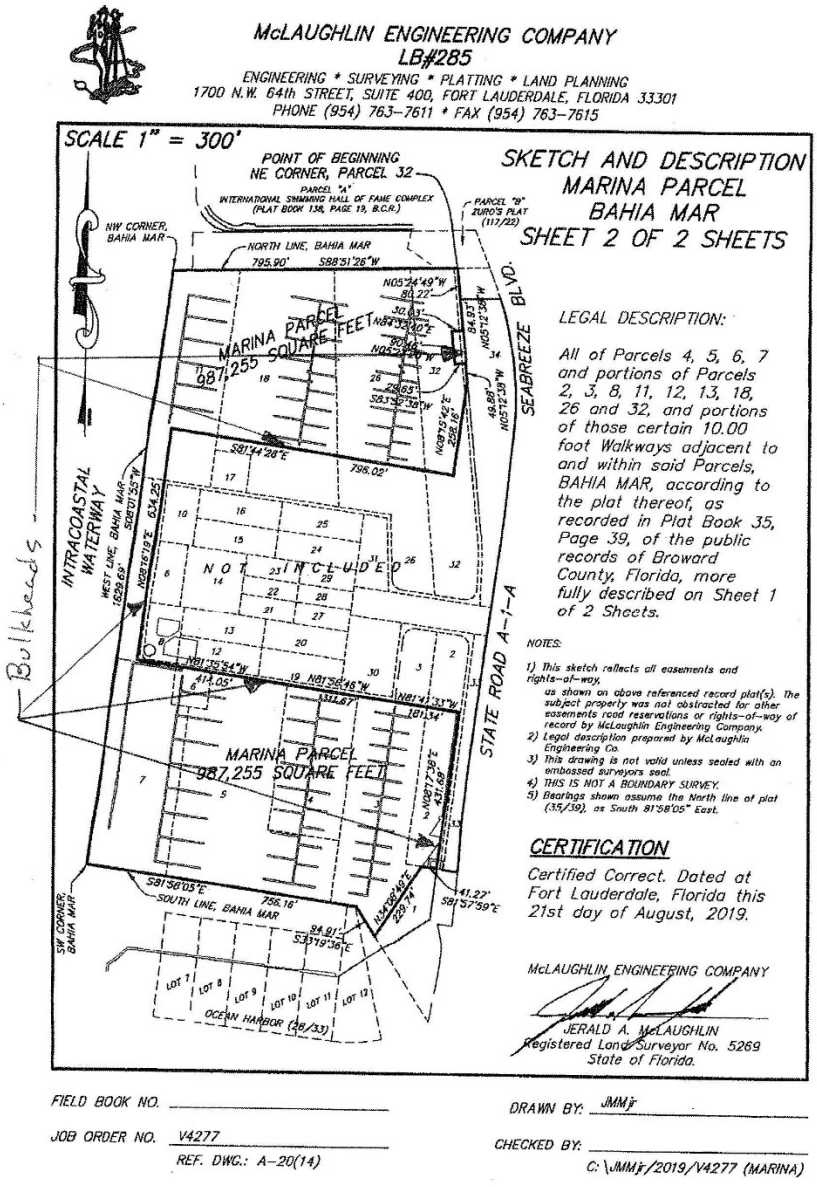
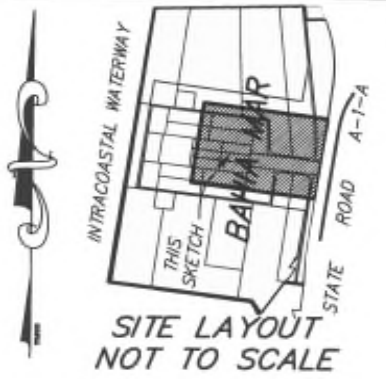


EXHIBIT E
CDD Air Rights Parcel

McLAUGHLIN ENGINEERING COMPANY LB 285
A DIVISION OF CONTROL POINT ASSOCIATES, INC. LB 8137
CUTTING EDGE SURVEYING * PLATTING * LAND PLANNING
1700 N.W. 64th STREET #400, FORT LAUDERDALE, FLORIDA 33309
PHONE: (954) 763-7611 * EMAIL: JHADDIX@CPASURVEY.COM

SKETCH AND DESCRIPTION
BAHIA MAR
CDD PODIUM AIRSPACE
SHEET 1 OF 2 SHEETS



SITE LAYOUT
NOT TO SCALE

LEGAL DESCRIPTION:

A portion of the Parcels and those certain 10.00 foot Walkways adjacent thereto and within said Parcels, BAHIA MAR, according to the plat thereof, as recorded in Plat Book 35, Page 39, of the public records of Broward County, Florida, **above the ground level (preconstruction), Elevation= 3.5 feet, North American Vertical Datum 1988,** more fully described as follows:

Commencing at the Northeast corner of Parcel 32, of said BAHIA MAR; thence South 05°24'49" East, a distance of 80.22 feet; thence North 88°51'31" East, a distance of 110.52 feet to a point on a curve; thence Southerly on the West right of way line of State Road A-1-A (Seabreeze Boulevard) the following four (4) courses and distances 1) thence Southerly on said curve to the right, whose radius point bears South 71°48'21" West, with a radius of 876.51 feet, a central angle of 24°37'04", an arc distance of 376.60 feet to a point of tangency; 2) thence South 06°25'25" West, a distance of 216.58 feet to the Point of Beginning; 3) thence continuing South 06°25'25" West, a distance of 9.63 feet; 4) to the end of said four (4) courses and distances; thence South 08°01'55" West, a distance of 465.71 feet; thence North 81°58'10" West, a distance of 669.51 feet; thence North 08°01'50" East, a distance of 475.33 feet; thence South 81°58'10" East, a distance of 669.24 feet to the Point of Beginning.

Said lands situate, lying and being in the City of Fort Lauderdale, Broward County Florida and containing 318,241 square feet or 7.3058 acres more or less.

NOTES:

1) This sketch reflects all easements and rights-of-way, as shown on above referenced record plat(s). The subject property was not abstracted for other easements road reservations or rights-of-way of record by McLaughlin Engineering Company.
2) Legal description prepared by McLaughlin Engineering Co.
3) This drawing is not valid unless sealed with an embossed surveyors seal.
4) THIS IS NOT A BOUNDARY SURVEY.
5) Bearings shown assume the North line of plat (35/39), as North 81°51'26" East.

CERTIFICATION

Certified Correct. Dated at Fort Lauderdale, Florida this 4th day of October, 2023.

McLAUGHLIN ENGINEERING COMPANY
A DIVISION OF CONTROL POINT ASSOC. INC.

JAMES M. McLAUGHLIN JR.
Registered Land Surveyor No. LS4497
State of Florida.

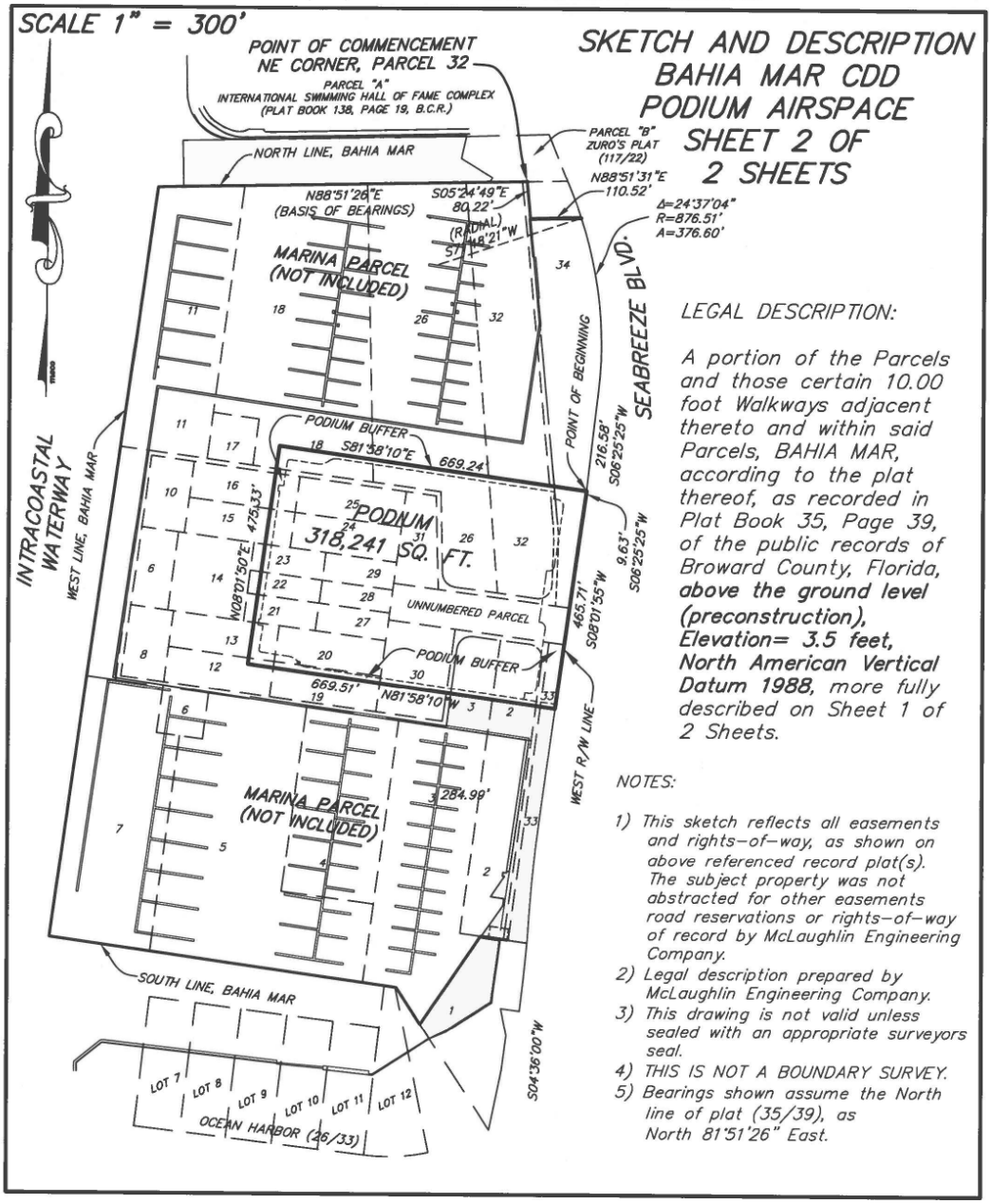
FIELD BOOK NO. _____ DRAWN BY: JMMjr

JOB ORDER NO. 230306 (BAHIA MAR) CHECKED BY: _____

REF. DWG.: A-20(14), 97-3-134 C:\JMMjr/2023/ 230306 (BAHIA MAR)

McLAUGHLIN ENGINEERING COMPANY LB 285
A DIVISION OF CONTROL POINT ASSOCIATES, INC. LB 8137
CUTTING EDGE SURVEYING * PLATTING * LAND PLANNING
1700 N.W. 64th STREET #400, FORT LAUDERDALE, FLORIDA 33309
PHONE: (954) 763-7611 * EMAIL: JHADDIX@CPASURVEY.COM

SKETCH AND DESCRIPTION
BAHIA MAR CDD
PODIUM AIRSPACE
SHEET 2 OF 2 SHEETS



LEGAL DESCRIPTION:

A portion of the Parcels and those certain 10.00 foot Walkways adjacent thereto and within said Parcels, BAHIA MAR, according to the plat thereof, as recorded in Plat Book 35, Page 39, of the public records of Broward County, Florida, **above the ground level (preconstruction), Elevation= 3.5 feet, North American Vertical Datum 1988**, more fully described on Sheet 1 of 2 Sheets.

NOTES:

1) This sketch reflects all easements and rights-of-way, as shown on above referenced record plat(s). The subject property was not abstracted for other easements road reservations or rights-of-way of record by McLaughlin Engineering Company.
2) Legal description prepared by McLaughlin Engineering Company.
3) This drawing is not valid unless sealed with an appropriate surveyors seal.
4) THIS IS NOT A BOUNDARY SURVEY.
5) Bearings shown assume the North line of plat (35/39), as North 81°51'26" East.

FIELD BOOK NO. _____

JOB ORDER NO. 230306 (BAHIA MAR)

REF. DWG.: A-20(14), 97-3-134

DRAWN BY: JMMjr

CHECKED BY: _____

C: \JMMjr/2023/ 230306 (BAHIA MAR)

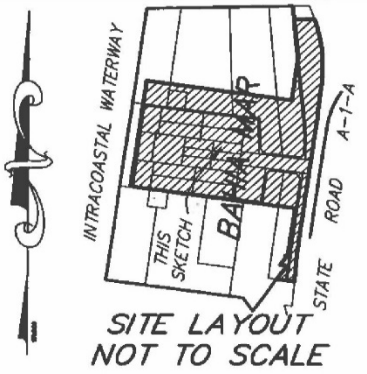
37958.0003
55423556.19

EXHIBIT F

CDD Public Improvements Area

McLAUGHLIN ENGINEERING COMPANY LB 285
A DIVISION OF CONTROL POINT ASSOCIATES, INC. LB 8137
CUTTING EDGE SURVEYING * PLATTING * LAND PLANNING
1700 N.W. 64th STREET #400, FORT LAUDERDALE, FLORIDA 33309
PHONE: (954) 763-7611 * EMAIL: JHADDIX@CPASURVEY.COM

SKETCH AND DESCRIPTION
BAHIA MAR CDD SITE
SHEET 1 OF 2 SHEETS



SITE LAYOUT
NOT TO SCALE

LEGAL DESCRIPTION:

A portion of the Parcels and those certain 10.00 foot Walkways adjacent thereto and within said Parcels, BAHIA MAR, according to the plat thereof, as recorded in Plat Book 35, Page 39, of the public records of Broward County, Florida, more fully described as follows:

Commencing at the Northeast corner of Parcel 32, of said BAHIA MAR; thence South 05°24'49" East, a distance of 80.22 feet to the Point of Beginning; thence North 88°51'31" East, a distance of 110.52 feet to a point on a curve; thence Southerly on the West right of way line of State Road A-1-A (Seabreeze Boulevard) the following six (6) courses and distances 1) thence Southerly on said curve to the right, whose radius point bears South 71°48'21" West, with a radius of 876.51 feet, a central angle of 24°37'04", an arc distance of 376.60 feet to a point of tangency; 2) thence South 06°25'25" West, a distance of 226.21 feet; 3) thence South 08°01'55" West, a distance of 700.37 feet to a point of curve; 4) thence Southerly on said curve to the left, with a radius of 2935.35 feet, a central angle of 03°56'09", an arc distance of 201.91 feet to a point of tangency; 5) thence South 04°05'46" West, a distance of 50.00 feet; 6) thence South 04°36'00" West, a distance of 20.31 feet to the end of said six (6) courses and distances; thence North 81°57'59" West, on the South line of said Parcels 33 and 2a, distance of 99.93 feet; thence North 35°18'52" East, a distance of 81.26 feet; thence North 07°15'43" East, a distance of 14.94 feet; thence North 81°51'50" West, a distance of 29.26 feet; thence North 34°15'43" East, a distance of 53.37 feet; thence North 82°45'12" West, a distance of 4.55 feet; thence North 08°00'24" East, a distance of 7.99 feet; thence South 80°43'25" East, a distance of 7.98 feet; thence North 07°14'48" East, a distance of 3.63 feet; thence South 83°07'40" East, a distance of 5.83 feet; thence North 08°17'38" East, a distance of 284.99 feet; thence North 81°41'33" West, a distance of 181.34 feet; thence North 81°56'46" West, a distance of 311.67 feet; thence North 81°35'54" West, a distance of 414.05 feet; thence North 08°16'19" East, a distance of 634.25 feet; thence South 81°44'28" East, a distance of 796.02 feet; thence North 08°15'42" East, a distance of 258.16 feet; thence North 05°12'38" West, a distance of 224.92 feet to the Point of Beginning.

Said lands situate, lying and being in the City of Fort Lauderdale, Broward County Florida and containing 696,197 square feet or 15.9825 acres more or less.

NOTES:

1) This sketch reflects all easements and rights-of-way, as shown on above referenced record plat(s). The subject property was not abstracted for other easements road reservations or rights-of-way of record by McLaughlin Engineering Company.
2) Legal description prepared by McLaughlin Engineering Co.
3) This drawing is not valid unless sealed with an embossed surveyors seal.
4) THIS IS NOT A BOUNDARY SURVEY.
5) Bearings shown assume the North line of plat (35/39), as North 81°51'26" East.

CERTIFICATION

Certified Correct. Dated at Fort Lauderdale, Florida this 25th day of September, 2023.

McLAUGHLIN ENGINEERING COMPANY
A DIVISION OF CONTROL POINT ASSOC. INC.

JERALD A. McLAUGHLIN
Registered Land Surveyor No. LS5269
State of Florida.

FIELD BOOK NO. _____ DRAWN BY: JMMjr

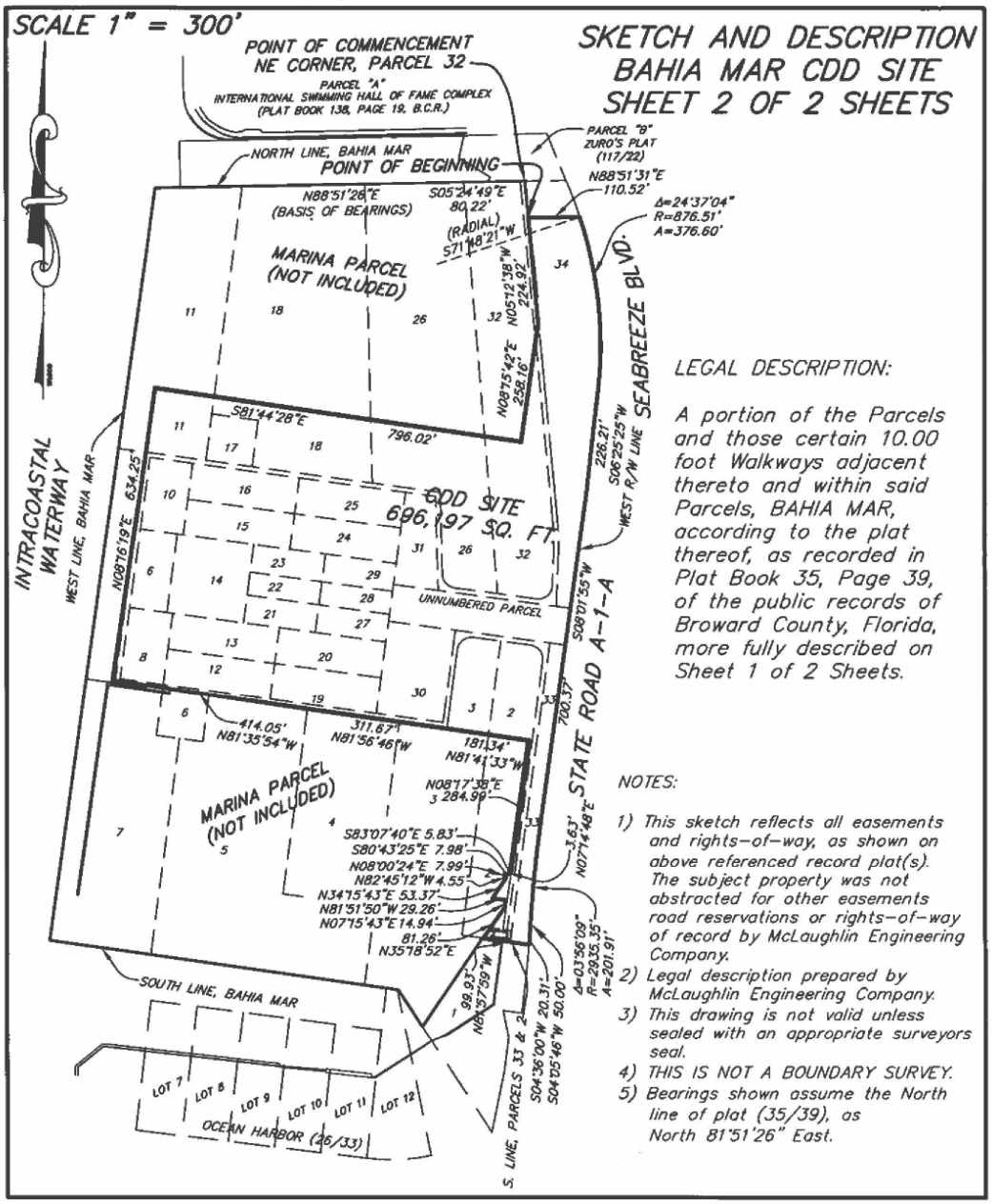
JOB ORDER NO. 230306 (BAHIA MAR) CHECKED BY: _____

REF. DWG.: A-20(14), 97-3-134 C:\JMMjr/2023/ 230306 (BAHIA MAR)

McLAUGHLIN ENGINEERING COMPANY LB 285
A DIVISION OF CONTROL POINT ASSOCIATES, INC. LB 8137
CUTTING EDGE SURVEYING * PLATTING * LAND PLANNING
1700 N.W. 64th STREET #400, FORT LAUDERDALE, FLORIDA 33309
PHONE: (954) 763-7611 * EMAIL: JHADDIX@CPASURVEY.COM

SKETCH AND DESCRIPTION
BAHIA MAR CDD SITE
SHEET 2 OF 2 SHEETS

SCALE 1" = 300'



LEGAL DESCRIPTION:

A portion of the Parcels and those certain 10.00 foot Walkways adjacent thereto and within said Parcels, BAHIA MAR, according to the plat thereof, as recorded in Plat Book 35, Page 39, of the public records of Broward County, Florida, more fully described on Sheet 1 of 2 Sheets.

NOTES:

1) This sketch reflects all easements and rights-of-way, as shown on above referenced record plat(s). The subject property was not abstracted for other easements road reservations or rights-of-way of record by McLaughlin Engineering Company.
2) Legal description prepared by McLaughlin Engineering Company.
3) This drawing is not valid unless sealed with an appropriate surveyors seal.
4) THIS IS NOT A BOUNDARY SURVEY.
5) Bearings shown assume the North line of plat (35/39), as North 81°51'26" East.

FIELD BOOK NO. _____ DRAWN BY: JMMjr

JOB ORDER NO. 230306 (BAHIA MAR) CHECKED BY: _____

REF. DWG.: A-20(14), 97-3-134 C: \JMMjr/2023/ 230306 (BAHIA MAR)

37958.0003
55423556.19

EXHIBIT G
Description of the Shared Facilities
(including Parks, Drives and Parking Areas, Promenade, and Bridge)

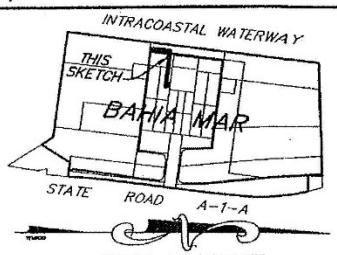
The Developer shall provide this Exhibit to the City and the CDD (as to any such area which is intended to benefit or burden the CDD) for their review and approval , which approval shall not be unreasonably withheld, delayed or conditioned.

DRAFT

EXHIBIT H
Fueling Area

McLAUGHLIN ENGINEERING COMPANY
LB#285
ENGINEERING * SURVEYING * PLATTING * LAND PLANNING
1700 N.W. 64th STREET, SUITE 400, FORT LAUDERDALE, FLORIDA 33301
PHONE (954) 763-7611 * FAX (954) 763-7615

SKETCH AND DESCRIPTION
FUEL ACCESS PARCEL
BAHIA MAR
SHEET 1 OF 2 SHEETS



SITE LAYOUT
NOT TO SCALE

LEGAL DESCRIPTION:

A portion of Parcels 8, 13; AND portions of those certain 10.00 foot Walkways adjacent to and within said Parcels; AND ALSO a portion of the unidentified area West of the Face of Bulkhead, BAHIA MAR, according to the plat thereof, as recorded in Plat Book 35, Page 39, of the public records of Broward County, Florida, more fully described as follows:

Commencing at the Southwest corner of said BAHIA MAR; thence North 08°01'55" East, on the West line of said BAHIA MAR, a distance of 570.74 feet; thence South 81°35'54" East, a distance of 40.02 feet to the Point of Beginning; thence continuing South 81°35'54" East, a distance of 10.00 feet; thence North 08°16'19" East, a distance of 122.98 feet; thence South 81°53'08" East, a distance of 47.92 feet; thence North 08°17'32" East, a distance of 5.00 feet; thence South 81°53'08" East, a distance of 201.84 feet; thence North 08°06'52" East, a distance of 25.00 feet; thence North 81°53'08" West, a distance of 30.00 feet; thence South 08°06'52" West, a distance of 15.00 feet; thence North 81°53'08" West, a distance of 229.73 feet; thence South 08°16'19" West, a distance of 137.93 feet to the Point of Beginning.

Said lands situate, lying and being in the City of Fort Lauderdale, Broward County Florida and containing 4,567 square feet or 0.1048 acres more or less.

NOTES:

1) This sketch reflects all easements and rights-of-way, as shown on above referenced record plat(s). The subject property was not abstracted for other easements road reservations or rights-of-way of record by McLaughlin Engineering Company.
2) Legal description prepared by McLaughlin Engineering Co.
3) This drawing is not valid unless sealed with an embossed surveyors seal.
4) THIS IS NOT A BOUNDARY SURVEY.
5) Bearings shown assume the North line of plat (35/39), as North 81°58'05" East.

CERTIFICATION

Certified Correct. Dated at Fort Lauderdale, Florida this 15th day of May, 2019.

McLAUGHLIN ENGINEERING COMPANY

JERALD A. McLAUGHLIN
Registered Land Surveyor No. 5269
State of Florida.

FIELD BOOK NO. _____ DRAWN BY: JMMjr

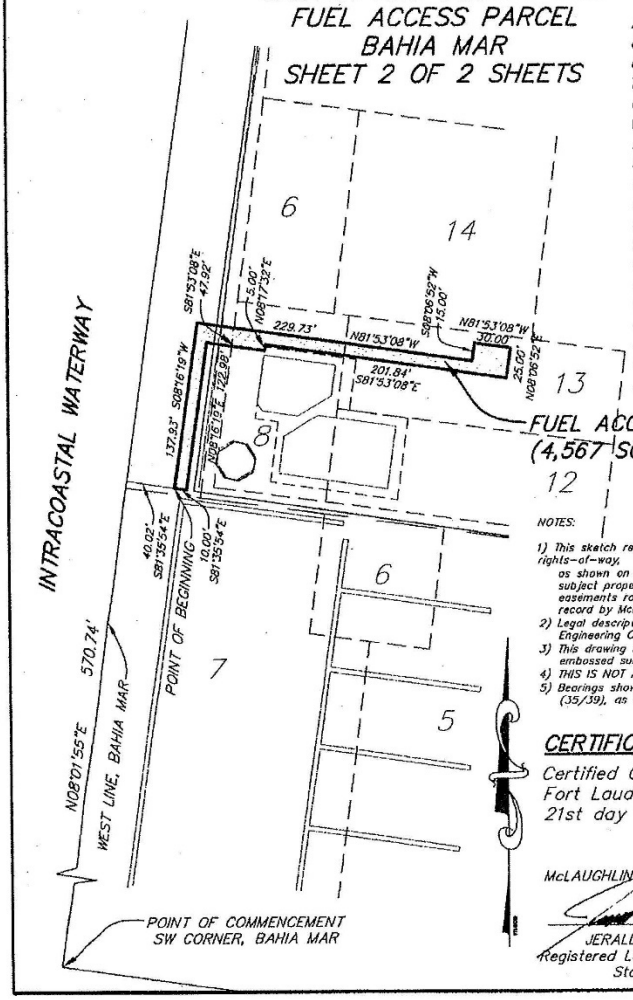
JOB ORDER NO. V-4277 CHECKED BY: _____

REF. DWG.: A-20(14) C:\JMMjr/2019/V4277 (MARINA)

McLAUGHLIN ENGINEERING COMPANY
LB#285
ENGINEERING * SURVEYING * PLATTING * LAND PLANNING
1700 N.W. 64th STREET, SUITE 400, FORT LAUDERDALE, FLORIDA 33309
PHONE (954) 763-7611 * FAX (954) 763-7615

SCALE 1" = 100'

SKETCH AND DESCRIPTION
FUEL ACCESS PARCEL
BAHIA MAR
SHEET 2 OF 2 SHEETS



LEGAL DESCRIPTION:

A portion of Parcels 8, 13; AND portions of those certain 10.00 foot Walkways adjacent to and within said Parcels; AND ALSO a portion of the unidentified area West of the Face of Bulkhead, BAHIA MAR, according to the plat thereof, as recorded in Plat Book 35, Page 39, of the public records of Broward County, Florida more fully described on Sheet 1 of 2 Sheets.

NOTES:

1) This sketch reflects all easements and rights-of-way, as shown on above referenced record plat(s). The subject property was not abstracted for other easements road reservations or rights-of-way of record by McLaughlin Engineering Company.
2) Legal description prepared by McLaughlin Engineering Co.
3) This drawing is not valid unless sealed with an embossed surveyors seal.
4) THIS IS NOT A BOUNDARY SURVEY.
5) Bearings shown assume the West line of plat (35/39), as North 01°01'55" East.

CERTIFICATION

Certified Correct. Dated at Fort Lauderdale, Florida this 21st day of August, 2019.

McLAUGHLIN ENGINEERING COMPANY

JERALD A. McLAUGHLIN
Registered Land Surveyor No. 5269
State of Florida.

FIELD BOOK NO. _____ DRAWN BY: JMMjr

JOB ORDER NO. V-4277 CHECKED BY: _____

REF. DWG.: A-20(14)

37958.0003
55423556.19

EXHIBIT I
Limited Shared Facilities

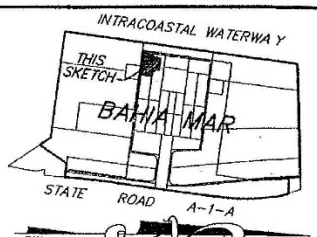
The Developer shall provide this Exhibit to the City (and the CDD as to any Limited Shared Facility to be owned by the CDD, if any) for its review and approval , which approval shall not be unreasonably withheld, delayed or conditioned.

DRAFT

EXHIBIT J
Marina Office Building

McLAUGHLIN ENGINEERING COMPANY
LB#285
ENGINEERING * SURVEYING * PLATTING * LAND PLANNING
1700 N.W. 64th STREET, SUITE 400, FORT LAUDERDALE, FLORIDA 33301
PHONE (954) 763-7611 * FAX (954) 763-7615

SKETCH AND DESCRIPTION
MARINA BUILDING PARCEL
BAHIA MAR
SHEET 1 OF 2 SHEETS



SITE LAYOUT
NOT TO SCALE

LEGAL DESCRIPTION:

A portion of Parcels 8, 12 and 13, BAHIA MAR, according to the plat thereof, as recorded in Plat Book 35, Page 39, of the public records of Broward County, Florida; AND a portion of that certain 10 foot Walkway adjacent to said Parcel 8, more fully described as follows:

Commencing at the Southwest corner of said BAHIA MAR; thence North 08°01'55" East, on the West line of said BAHIA MAR, a distance of 629.17 feet; thence South 81°42'28" East, a distance of 79.95 feet to the Point of Beginning; thence continuing South 81°42'28" East, a distance of 37.83 feet; thence South 58°35'35" West, a distance of 26.62 feet; thence North 31°24'25" West, a distance of 3.93 feet; thence North 75°43'57" West, a distance of 12.11 feet; thence South 58°35'35" West, a distance of 14.12 feet; thence South 12°55'08" West, a distance of 12.11 feet; thence South 31°24'25" East, a distance of 13.72 feet; thence South 76°05'02" East, a distance of 12.25 feet; thence North 58°35'35" East, a distance of 13.81 feet; thence North 13°16'13" East, a distance of 12.25 feet; thence North 31°24'25" West, a distance of 4.79 feet; thence North 58°35'35" East, a distance of 22.47 feet; thence South 08°17'21" West, a distance of 35.74 feet; thence South 81°42'39" East, a distance of 106.04 feet; thence North 08°17'21" East, a distance of 67.63 feet; thence North 81°42'39" West, a distance of 39.37 feet; thence North 08°17'21" East, a distance of 15.25 feet; thence North 81°42'39" West, a distance of 9.97 feet; thence North 08°17'21" East, a distance of 27.14 feet; thence North 81°42'28" West, a distance of 76.31 feet; thence South 08°17'32" West, a distance of 53.37 feet; thence North 81°42'28" West, a distance of 18.21 feet; thence South 08°17'32" West, a distance of 14.42 feet to the Point of Beginning.

Said lands situate, lying and being in the City of Fort Lauderdale, Broward County Florida and containing 12,258 square feet or 0.2814 acres more or less.

NOTES:

1) This sketch reflects all easements and rights-of-way, as shown on above referenced record plat(s). The subject property was not abstracted for other easements road reservations or rights-of-way of record by McLaughlin Engineering Company.
2) Legal description prepared by McLaughlin Engineering Co.
3) This drawing is not valid unless sealed with an embossed surveyors seal.
4) THIS IS NOT A BOUNDARY SURVEY.
5) Bearings shown assume the North line of plat (35/39), as North 81°58'05" East.

CERTIFICATION

Certified Correct. Dated at Fort Lauderdale, Florida this 21st day of August, 2019. Revised this 27th day of August, 2019.
McLAUGHLIN ENGINEERING COMPANY

JERALD A. McLAUGHLIN
Registered Land Surveyor No. 5269
State of Florida.

FIELD BOOK NO. _____ DRAWN BY: JMMjr

JOB ORDER NO. V-4277 CHECKED BY: _____

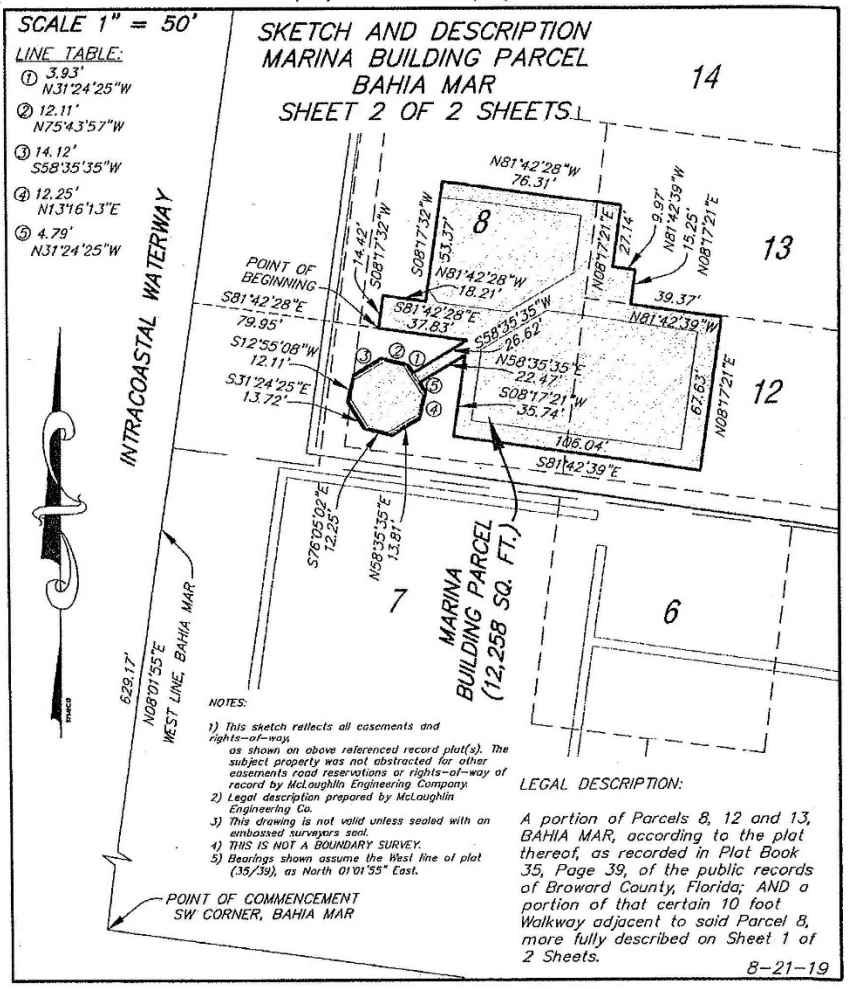
REF. DWG.: A-20(14) C:\JMMjr/2019/V4277 (MARINA)

McLAUGHLIN ENGINEERING COMPANY
LB#285
ENGINEERING * SURVEYING * PLATTING * LAND PLANNING
1700 N.W. 64th STREET, SUITE 400, FORT LAUDERDALE, FLORIDA 33301
PHONE (954) 763-7611 * FAX (954) 763-7615

SCALE 1" = 50'

SKETCH AND DESCRIPTION
MARINA BUILDING PARCEL
BAHIA MAR
SHEET 2 OF 2 SHEETS

LINE TABLE:
① 3.93' N31°24'25"W
② 12.11' N75°43'57"W
③ 14.12' S58°35'35"W
④ 12.25' N13°16'13"E
⑤ 4.79' N31°24'25"W



NOTES:
1) This sketch reflects all easements and rights-of-way, as shown on above referenced record plat(s). The subject property was not abstracted for other easements road reservations or rights-of-way of record by McLaughlin Engineering Company.
2) Legal description prepared by McLaughlin Engineering Co.
3) This drawing is not valid unless sealed with an embossed surveyors seal.
4) THIS IS NOT A BOUNDARY SURVEY.
5) Bearings shown assume the West line of plat (35/39), as North 01°01'55" East.

LEGAL DESCRIPTION:

A portion of Parcels 8, 12 and 13, BAHIA MAR, according to the plat thereof, as recorded in Plat Book 35, Page 39, of the public records of Broward County, Florida; AND a portion of that certain 10 foot Walkway adjacent to said Parcel 8, more fully described on Sheet 1 of 2 Sheets.

8-21-19

FIELD BOOK NO. _____
JOB ORDER NO. V-4277
REF. DWG.: A-20(14)

DRAWN BY: JMMjr
CHECKED BY: _____

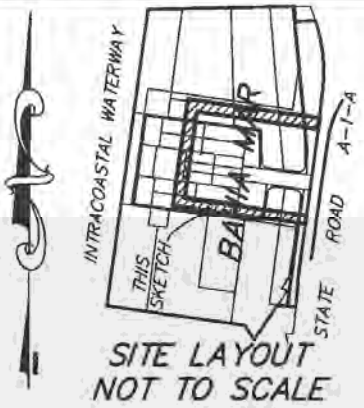
40256524.12
37958.0012

37958.0003
55423556.19

EXHIBIT K
Specified Access Improvement Parcel

McLAUGHLIN ENGINEERING COMPANY LB 285
A DIVISION OF CONTROL POINT ASSOCIATES, INC. LB 8137
CUTTING EDGE SURVEYING * PLATTING * LAND PLANNING
1700 N.W. 64th STREET #400, FORT LAUDERDALE, FLORIDA 33309
PHONE: (954) 763-7611 * EMAIL: JHADDIX@CPASURVEY.COM

SKETCH AND DESCRIPTION
BAHIA MAR
LOOP ROAD
SHEET 1 OF 2 SHEETS



SITE LAYOUT
NOT TO SCALE

LEGAL DESCRIPTION:

A portion of the Parcels and those certain 10.00 foot Walkways adjacent thereto and within said Parcels, BAHIA MAR, according to the plat thereof, as recorded in Plat Book 35, Page 39, of the public records of Broward County, Florida, more fully described as follows:

Commencing at the Northeast corner of Parcel 32, of said BAHIA MAR; thence South 05°24'49" East, a distance of 80.22 feet; thence North 88°51'31" East, a distance of 110.52 feet to a point on a curve; thence Southerly on the West right-of-way line of State Road A-1-A (Seabreeze Boulevard) and on said curve to the right, whose radius point bears South 71°48'21" West, with a radius of 876.51 feet, a central angle of 24°37'04", an arc distance of 376.60 feet to a point of tangency; thence South 06°25'25" West, on said West right-of-way line, a distance of 157.64 feet to the Point of Beginning; thence North 81°44'32" West, a distance of 724.06 feet; thence South 08°16'19" West, a distance of 584.81 feet; thence South 81°35'54" East, a distance of 189.03 feet; thence South 81°56'46" East, a distance of 311.65 feet; thence South 81°41'33" East, a distance of 227.74 feet; thence North 08°01'55" East, on said West right-of-way line of State Road A-1-A (Seabreeze Boulevard), a distance of 50.12 feet; thence North 81°58'10" West, a distance of 669.51 feet; thence North 08°01'50" East, a distance of 475.33 feet; thence South 81°58'10" East, a distance of 669.24 feet; thence North 06°25'25" East on the said West right-of-way line of State Road A-1-A (Seabreeze Boulevard), a distance of 58.94 feet to the Point of Beginning.

Said lands situate, lying and being in the City of Fort Lauderdale, Broward County Florida and containing 106,861 square feet or 2.4532 acres more or less.

NOTES:

1) This sketch reflects all easements and rights-of-way, as shown on above referenced record plat(s). The subject property was not abstracted for other easements road reservations or rights-of-way of record by McLaughlin Engineering Company.
2) Legal description prepared by McLaughlin Engineering Co.
3) This drawing is not valid unless sealed with an embossed surveyors seal.
4) THIS IS NOT A BOUNDARY SURVEY.
5) Bearings shown assume the North line of plat (35/39), as North 81°51'26" East.

CERTIFICATION

Certified Correct. Dated at Fort Lauderdale, Florida this 25th day of September, 2023.

McLAUGHLIN ENGINEERING COMPANY
A DIVISION OF CONTROL POINT ASSOC. INC.

JERALD A. McLAUGHLIN
Registered Land Surveyor No. LS5269
State of Florida.

FIELD BOOK NO. _____ DRAWN BY: JMMjr

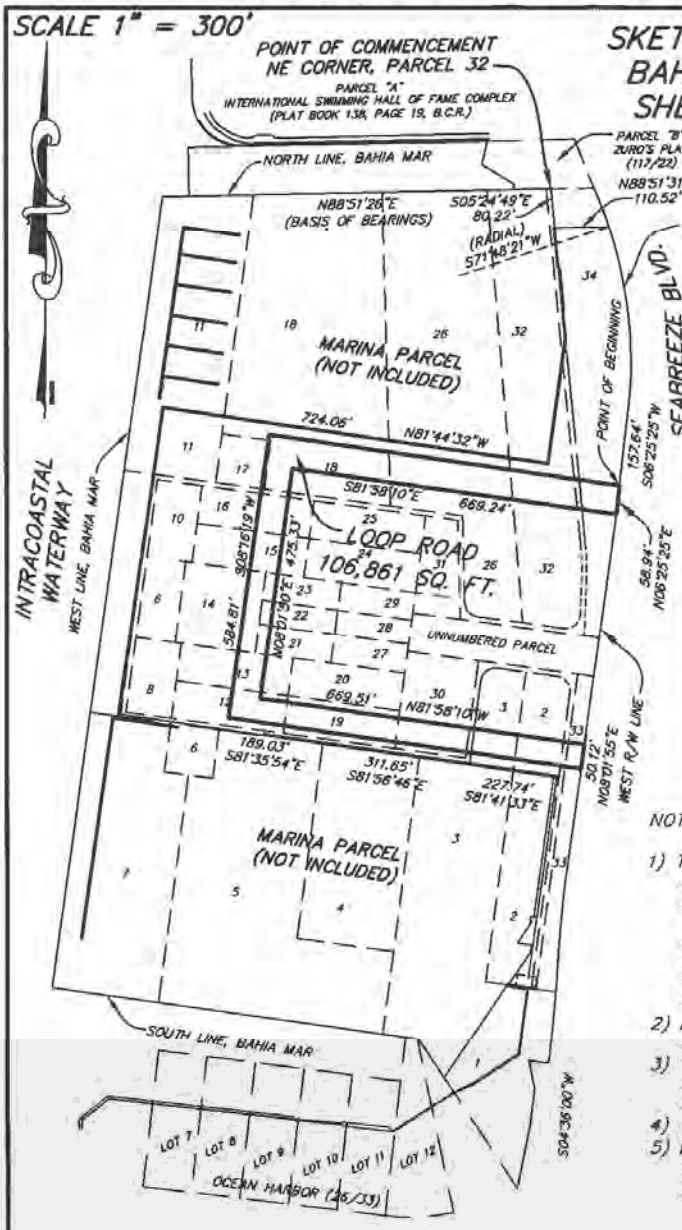
JOB ORDER NO. 230306 (BAHIA MAR) CHECKED BY: _____

REF. DWG.: A-20(14), 97-3-134 C:\JMMjr/2023/ 230306 (BAHIA MAR)

McLAUGHLIN ENGINEERING COMPANY LB 285
A DIVISION OF CONTROL POINT ASSOCIATES, INC. LB 8137
CUTTING EDGE SURVEYING * PLATTING * LAND PLANNING
1700 N.W. 64th STREET #400, FORT LAUDERDALE, FLORIDA 33309
PHONE: (954) 763-7611 * EMAIL: JHADDIX@CPASURVEY.COM

SKETCH AND DESCRIPTION
BAHIA MAR LOOP ROAD
SHEET 2 OF 2 SHEETS

SCALE 1" = 300'



LEGAL DESCRIPTION:

A portion of the Parcels and those certain 10.00 foot Walkways adjacent thereto and within said Parcels, BAHIA MAR, according to the plat thereof, as recorded in Plat Book 35, Page 39, of the public records of Broward County, Florida, more fully described on Sheet 1 of 2 Sheets.

NOTES:

1) This sketch reflects all easements and rights-of-way, as shown on above referenced record plat(s). The subject property was not abstracted for other easements road reservations or rights-of-way of record by McLaughlin Engineering Company.
2) Legal description prepared by McLaughlin Engineering Company.
3) This drawing is not valid unless sealed with an appropriate surveyors seal.
4) THIS IS NOT A BOUNDARY SURVEY.
5) Bearings shown assume the North line of plat (35/39), as North 81°51'26" East.

FIELD BOOK NO. _____

JOB ORDER NO. 230306 (BAHIA MAR)

REF. DWG.: A-20(14), 97-3-134

DRAWN BY: JMMjr

CHECKED BY: _____

C:\JMMjr/2023/ 230306 (BAHIA MAR)

37958.0003
55423556.19

EXHIBIT L
Specified Percentage

The Developer shall provide this Exhibit to the City and the CDD (as to the impact to the CDD based on the Parcel owned by the CDD) for their review and approval, which approval shall not be unreasonably withheld, delayed or conditioned, and the Marina Sublessee shall have the right to reasonably approve the Specified Percentage allocated to the Marina Parcel and the Marina Office Building during the term of the Marina Sublease if same is increased above the Specified Percentage set forth in the Marina Sublease.

DRAFT

EXHIBIT M
Schedule of Voting Interests

The Developer shall provide this Exhibit to the City for its review and approval, which approval shall not be unreasonably withheld, delayed or conditioned.

DRAFT

EXHIBIT N
Articles of the Association

State of Florida

Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of BAHIA MAR MASTER ASSOCIATION, INC., a Florida corporation, filed on August 30, 2019, as shown by the records of this office.

I further certify the document was electronically received under FAX audit number H19000262287. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below.

The document number of this corporation is N19000009010.

Authentication Code: 719A00018103-090319-N19000009010-1/1

Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the
Third day of September, 2019

Secretary of State

September 3, 2019

FLORIDA DEPARTMENT OF STATE
Division of Corporations

BAHIA MAR MASTER ASSOCIATION, INC.
1175 N.E. 125TH STREET SUITE 102
ATTN: J. KENNETH TATE
NORTH MIAMI, FL 33161

The Articles of Incorporation for BAHIA MAR MASTER ASSOCIATION, INC. were filed on August 30, 2019, and assigned document number N19000009010. Please refer to this number whenever corresponding with this office.

Enclosed is the certification requested. To be official, the certification for a certified copy must be attached to the original document that was electronically submitted and filed under FAX audit number H19000262287.

To maintain "active" status with the Division of Corporations, an annual report must be filed yearly between January 1st and May 1st beginning in the year following the file date or effective date indicated above. It is your responsibility to remember to file your annual report in a timely manner.

A Federal Employer Identification Number (FEI/EIN) will be required when this report is filed. Apply today with the IRS online at:

https://sa.www4.irs.gov/modiein/individual/index.jsp.

Please be aware if the corporate address changes, it is the responsibility of the corporation to notify this office.

Should you have questions regarding corporations, please contact this office at (850) 245-6052.

Tyrone Scott
Regulatory Specialist II
New Filings Section
Division of Corporations Letter Number: 719A00018103

P.O BOX 6327 – Tallahassee, Florida 32314

FloridaD epartmentof S tate
Division of Corporations
Electronic Filing Cover Sheet

Note:P leasep rintt hisp agean du sei tas a covers heet.T ypet hef axa uditn umber(shownbe low)on t het op and bottom ofa llpa gesof t hedoc ument.

(((H19000262287 3)))

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Note:D ON OTh itt heR EFRESH/RELOADbu ttonon y ourbr owserfromt hispa ge. Doings o willg eneratea notherc over sheet.

To:
Division of Corporations
Fax Number : (850)617-6381

From:
Account Name : GREENSPOON MARDER, P.A.
Account Number : 076064003722
Phone : (888)491-1120ext. 6217
Fax Number : (954)333-4242

GM File No. 37958.0012

Enter the email address for this business entity to be used for future annual report mailings. Enter only one email address please.

Email Address: kenny@tatecapital.com

FLORIDA PROFIT/NON PROFIT CORPORATION
BAHIA MAR MASTER ASSOCIATION, INC.

Certificateof S tatus	**1**
Certified Copy	**1**
PageC ount	**09**
Estimated Charge	**$87.50**

Electronic Filing Menu Corporate Filing Menu Help

ARTICLES OF INCORPORATION
OF
BAHIA MAR MASTER ASSOCIATION, INC.
(A Florida Corporation Not For Profit)

In order to form a corporation not for profit under and in accordance with the provisions of Chapter 617 of the Florida Statutes, the undersigned hereby incorporates this corporation not for profit for the purposes and with the powers hereinafter set forth and, to that end, the undersigned, by these Articles of Incorporation, certifies as follows:

ARTICLE I
DEFINITIONS

The following words and phrases when used in these Articles of Incorporation (unless the context clearly reflects another meaning) shall have the following meanings:

1. "**Articles**" means these Articles of Incorporation and any amendments hereto.

2. "**Assessment**" means any charges which may be assessed under the Declaration from time to time against the Members of the Association, including "**Regular Assessments**", "**Special Assessments**" and "**Default Assessments**" (as such terms are defined in the Declaration).

3. "**Association**" means the Bahia Mar Master Association, Inc., a Florida corporation not-for-profit.

4. "**Authorized Representative**" mean the person designated by each Member to be the Authorized Representatives of such Member on the Board of Directors and to vote on any matter to be voted on by such Member as a Member or as a member of the Board of Directors.

5. "**Bahia Mar Complex**" or "**Master Premises**" or "**Demised Premises**" or "**Property**" shall mean the leasehold interest of Rahn of the Master Premises demised by the City to Rahn under the Master Lease, which is comprising the Upland Premises and the Marina Property.

6. "**Bylaws**" means the Bylaws of the Association and any amendments thereto.

7. "**City**" shall mean the City of Fort Lauderdale, Florida.

8. "**County**" shall mean Broward County, Florida.

9. "**Declaration**" means the Declaration of Covenants and Restrictions of Bahia Mar Master Association, Inc., to be recorded amongst the Public Records of the County, as it may be amended or supplemented from time to time.

10. "**Developer**" means Rahn, its successors and assigns, and any other party it may assign its rights, in whole or in part, as Developer in writing pursuant to a written assignment recorded in the Public Records of the County.

11. "**Governing Documents**" means the Declaration, these Articles, the Bylaws, and any Rules and Regulations promulgated by the Association's Board of Directors.

12. "**Majority Vote**" shall mean the majority vote of the members of the Board of Directors provided that as long as Developer is a lessee of the Master Lease, the term Majority Vote shall mean a majority of the Board of Directors appointed by the Class A Member.

13. "**Marina Property**" shall mean the marina area situated in the Bahia Mar Complex in the County (from the water property line to the water side of all Bulkheads) and all improvements thereon, including, but not limited to, the docks and accessories in such area and piers, wharfs, pilings, and security gates/structures at the entrance of some of the docks, as more particularly described on **Exhibit C** attached hereto and made a part hereof.

14. "**Marina Sublease**" shall mean that certain Sublease and Easement Agreement dated as of May 13, 2019 between Rahn and Rahn Marina, LLC.

15. "**Master Lease**" shall mean and refer to that certain Amended and Restated Lease Agreement dated January 4, 1995 by and between the City of Fort Lauderdale, Florida and RAHN BAHIA MAR, L.L.C., a Delaware limited liability company, recorded in Official Records Book 23158, Page 347 of the Public Records of Broward County, Florida, and any amendments, renewals, extensions, or continuations thereof.

16. "**Member**" or "**Association Member**" shall mean and refer to any person or entity holding any of the classes of membership described within Article V.

17. "**Rahn**" shall mean Rahn Bahia Mar, LLC, its successors and assigns.

18. "**Shared Areas**" shall mean the (i) Bulkheads, (ii) Drives and Parking Areas, (iii) Boardwalk; (iv) Landscaping, (v) Dumpster, Refuse and Maintenance Area, (vi) Pool, (vii) Bathroom/Showers, (viii) Fitness Center, (ix) Tennis Courts, and/or (x) Laundry Room, as such areas are defined in the Marina Sublease.

19. "**Shared Expenses**" shall have the meaning set forth in the Marina Sublease.

20. "**Upland Premises**" shall mean the portion of the Bahia Mar Complex not including the Marina Property. Rahn shall have the right, but not the obligation, to assign (in whole or in part) the Upland Premises pursuant to one or more sublease(s) or assignment(s) to such person(s) as Rahn may designate from time to time (individually an "**Upland Sublease**" and collectively, "**Upland Subleases**").

21. "**Weighted Vote**" shall mean the majority vote of the Authorized Representatives of the Members as Members or as a member of the Board of Directors, provided that as long as

Developer is a lessee of the Master Lease the term Weighted Vote shall mean a majority of the Authorized Representatives of the Class A Member.

Unless otherwise defined herein, the terms defined in the Declaration are incorporated herein by reference and shall appear in initial capital letters each time such terms appears in these Articles.

ARTICLE II
NAME

The name of this corporation shall be BAHIA MAR MASTER ASSOCIATION, INC., a Florida corporation not for profit, whose principal address and mailing address is 1175 N.E. 125th Street, Suite 102, North Miami, Florida 33161 Attn: J. Kenneth Tate.

ARTICLE III
PURPOSES

The purpose for which the Association is organized is to take title to certain Association assets, operate, administer, manage, lease and maintain the Bahia Mar Complex in accordance with the terms of, and purposes set forth in, the Declaration and to carry out the covenants and enforce the provisions of the Declaration.

ARTICLE IV
POWERS

The Association shall have the following powers and shall be governed by the following provisions:

A. The Association shall have all of the common law and statutory powers of a corporation not for profit.

B. The Association shall have all of the powers granted to the Association in the Governing Documents. All of the provisions of the Declaration and Bylaws which grant powers to the Association are incorporated into these Articles.

C. The Association shall have all of the powers reasonably necessary to implement the purposes of the Association, including, but not limited to, the following:

1. To perform any act required or contemplated by it under the Governing Documents.

2. To make, establish, amend and enforce reasonable rules and regulations governing the use of the Shared Areas.

3. To make, levy and collect Assessments for the purpose of obtaining funds from its "Members" (as hereinafter defined) to pay Shared Expenses and other costs defined in

the Declaration and costs of collection, and to use and expend the proceeds of Assessments in the exercise of the powers and duties of the Association.

4. To maintain, repair, replace and operate the Shares Facilities in accordance with the Governing Documents.

5. To enforce by legal means the obligations of the Members and the provisions of the Governing Documents.

6. To employ personnel, retain independent contractors and professional personnel, and enter into service contracts to provide for the maintenance, operation, administration and management of the Shared Facilities and to enter into any other agreements consistent with the purposes of the Association, including, but not limited to, agreements with respect to professional management of the Shared Facilities and to delegate to such professional manager certain powers and duties of the Association.

7. To enter into the Declaration and any amendments thereto and instruments referred to therein.

8. To provide, to the extent deemed necessary by the Board, any and all services and do any and all things which are incidental to or in furtherance of things listed herein or to carry out the Association mandate to keep and maintain the Bahia Mar Complex in a proper and aesthetically pleasing condition and to provide the Members with services, amenities, controls and enforcement which will enhance the quality of life at the Bahia Mar Complex.

9. Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of seventy-five percent (75%) of the Authorized Representatives of the Members (at a duly called meeting of the Members at which a quorum is present) prior to the engagement of legal counsel by the Association for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

(a) the collection of Assessments;

(b) the collection of other charges which Owners are obligated to pay pursuant to the Governing Documents;

(c) the enforcement of any applicable use and occupancy restrictions contained in the Governing Documents;

(d) dealing with an emergency when waiting to obtain the approval of the Members creates a substantial risk of irreparable injury to the Shares Facilities or to Member(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of seventy-five percent (75%) of the Authorized Representatives of the Members); or

(e) filing a compulsory counterclaim.

ARTICLE V
MEMBERS AND VOTING

A. Membership in the Association. There shall be four classes of membership in the Association. A "**Member**" may belong to more than one class:

1. Class A. Class A Members shall be the Developer and/or any permitted successor(s) or assign(s) (in whole or in part, direct or indirect) of the lessee interest under the Master Lease.

2. Class B. Class B Member shall be the Marina Sublessee or a permitted successor or assign of the entire Marina Sublessee interest in the Marina Sublease to the extent permitted under the Marina Sublease.

3. Class C. Class C Members shall be each of the sublessees of the Upland Premises whom are operating a hotel(s), restaurant(s), or other commercial enterprise(s) who is designated in writing by Developer from time to time as a Class C Member.

4. Class D. Class D Members shall be each of the sublessees of the Upland Premises whom are submitted to condominium form of ownership or established as homeowners' associations by Developer (or assigns of Developer) whereby such Member shall be such condominium association or homeowners' association, as applicable.

Each Member shall have the right to appoint its Authorized Representative(s) to vote on all matters to be voted on by the Members as follows:

(i) Each Member (other than the Class A Member) shall be entitled to appoint one (1) Authorized Representative and

(ii) The Class A Member shall have the right to appoint the number of Authorized Representatives equal to the greater of (a) four or (b) the number equal to all Authorized Representatives appointed by the Class B, Class C and Class D Members plus two (2) (i.e. if all Authorized Representatives of the Class B, Class C and Class D equal five (5) votes then the Class A Member may appoint seven (7) Authorized Representatives with the right to vote seven (7) votes).

B. Entitlement to Vote. Every Class of Membership shall have the right to vote its membership interest on matters that require a membership vote through the Weighted Vote of the Authorized Representatives as expressly set forth in the Declaration. No change in the ownership or Authorized Representative of a Member shall be effective for voting purposes unless and until the Board of Directors is given actual written notice of such change and is provided satisfactory proof thereof. Notwithstanding anything contained herein to the contrary, no Weighted Vote or vote or action of the Members, Directors or Authorized Representatives may impair, diminish, or adversely affect, in any material manner, the rights or property of the Marina Sublessee in a manner discriminatory from other Members or may affect the Marina Sublessee's use of the Marina Property or the Marina Covenant (as defined in the Marina

Sublease) pursuant to the terms of the Marina Sublease unless the Authorized Representative of the Class B Member has consented in writing.

C. Quorum. A quorum of Members for conducting business at a meeting of the Members shall be attendance, in person or by proxy, by at least three (3) Authorized Representatives of the Members but no quorum of Members shall occur without a majority of the Class A Authorized Representatives being present or by proxy.

ARTICLE VI
TERM

The term for which this Association is to exist shall be perpetual. In the event of dissolution of the Association (unless same is reinstated), other than incident to a merger or consolidation, all of the assets of the Association shall be conveyed to a similar not for profit corporation or a public agency having a similar purpose, or any Member may petition the appropriate circuit court of the State of Florida for the appointment of a receiver to manage the affairs of the dissolved Association and its properties in the place and instead of the dissolved Association and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association and its properties.

ARTICLE VII
INCORPORATOR

The name and address of the Incorporator of these Articles is:

J. Kenneth Tate
1175 N.E. 125th Street; Suite 102
North Miami, Florida 33161

ARTICLE VIII
OFFICERS

The Board of Directors shall elect, by Majority Vote, its officers at the annual meeting of the Board of Directors. The Association shall have a President who shall be the Association's chief executive officer and who shall be the chairperson at all meetings of the Members of the Association and all meetings of the Board of Directors. The Association shall have a Vice President who shall automatically assume the privileges and duties of the President during periods of the President's unavailability or upon the President's resignation, death, incapacity, or removal from office. The Association shall have a Secretary who shall supervise the taking of meeting minutes. Unless delegated to a manager or other Association employee or agent, the Association's Secretary shall be the Association's records custodian and shall maintain the Association's books and records using reasonable care. The Association shall also have a Treasurer who shall supervise the Association's financial affairs, be principally responsible for proposing budgets and budget changes, present financial reports or financial summaries at all meetings of the Association's Board of Directors, and be principally responsible for monitoring the collection of Association receivables and the payment of Association obligations. Any person may simultaneously hold two officer positions except that the President and Vice

President may not be the same person. Any officer may resign at any time by tendering his or her notice of resignation in writing to the Secretary with a copy to the President. Any officer may be removed from office and/or replaced by Majority Vote of all of the members of the Board of Directors serving at the time that such vote is taken.

ARTICLE IX
FIRST OFFICERS

The names of the officers who are to serve until the first annual meeting of the Board of Directors following incorporation of the Association are as follows:

President	James D. Tate
Vice President/Secretary/Treasurer	J. Kenneth Tate
Vice President	Barry E. Somerstein

ARTICLE X
BOARD OF DIRECTORS

A. Designation of Authorized Representative to serve on Board of Directors. Every Class of Membership shall have the right to designate its Authorized Representative(s) to serve on the Association's Board of Directors. Any Class of Membership may change its Authorized Representative serving on the Board of Directors at any time by providing written notice to the Association along with satisfactory proof thereof. The Association shall act and administer its affairs at the direction of the Board of Directors except where Chapter 617, Fla. Stat., requires Membership participation, approval, or consent. The number of members of the Board of Directors shall be equal to (i) one board member for each Member (other than the Class A Member) and (ii) the Class A Member shall have the right to appoint the number of board members equal to the greater of (a) four or (b) such number equal to all board members appointed by the Class B, Class C and Class D board members plus two (2) (i.e. if all board members of the Class B, Class C and Class D equaled 5, then the Class A Member may appoint 7 board members).

B. First Board. The names and addresses of the persons who are to serve as Directors on the first Board are as follows:

NAMES	ADDRESSES
James D. Tate	1175 N.E. 125 Street; Suite 102 North Miami, Florida 33161
J. Kenneth Tate	1175 N.E. 125 Street; Suite 102 North Miami, Florida 33161
Barry E. Somerstein	200 East Broward Boulevard; Suite 1800 Fort Lauderdale, Florida 33301

ARTICLE XI
INDEMNIFICATION

Each and every Director and officer of the Association shall be indemnified by the Association against all costs, expenses and liabilities, including attorney and paralegal fees at all trial and appellate levels and post-judgment proceedings, reasonably incurred by or imposed upon such person in connection with any negotiation, proceeding, arbitration, litigation or settlement in which such person becomes involved by reason of such person being or having been a Director or officer of the Association, and the foregoing provision for indemnification shall apply whether or not such person is a Director or officer at the time such cost, expense or liability is incurred. Notwithstanding the above, in the event of any such settlement, the indemnification provisions provided in this Article XI shall not be automatic and shall apply only when the Board approves such settlement and reimbursement for the costs and expenses of such settlement as being in the best interest of the Association, and in the event a Director or officer admits that such person is or is adjudged guilty of willful misfeasance or malfeasance in the performance of such person's duties, the indemnification provisions of this Article XI shall not apply. The foregoing right of indemnification provided in this Article XI shall be in addition to and not exclusive of any and all rights of indemnification to which a Director or officer of the Association may be entitled under statute or common law.

ARTICLE XII
BYLAWS

The Bylaws shall be adopted by the first Board, and thereafter may be altered, amended or rescinded in the manner provided for in the Bylaws. In the event of any conflict between the provisions of these Articles and the provisions of the Bylaws, the provisions of these Articles shall control.

ARTICLE XIII
AMENDMENTS

A. These Articles may be amended solely by a Majority Vote of the Board, without the prior consent of the Members, at a duly called meeting of the Board.

B. An amendment may be adopted by a written statement (in lieu of a meeting) signed by Directors representing a Majority Vote setting forth their intention that an amendment to the Articles be adopted.

C. Notwithstanding any provisions of this Article XIII to the contrary, these Articles shall not be amended in any manner which shall prejudice the rights of: (i) Developer, without the prior written consent thereto by Developer, for so long as Developer is a lessee of the Master Lease and (ii) the Marina Sublessee to develop, use, maintain, repair, and/or operate the Marina Property pursuant to the terms of the Marina Sublease, without the prior written consent thereto of the Authorized Representative of the Class B Member.

D. Notwithstanding the foregoing provisions of this Article XIII, no amendment to these Articles shall be adopted which shall abridge, amend or alter the rights of Developer

hereunder, including, but not limited to, Developer's right to designate and select members of the Board or otherwise designate and select Directors as provided in Article X hereof.

E. Any instrument amending these Articles shall identify the particular article or articles being amended and shall provide a reasonable method to identify the amendment being made. A certified copy of each such amendment shall be attached to any certified copy of these Articles, and a copy of each amendment certified by the Secretary of State shall be recorded amongst the Public Records of the County.

ARTICLE XIV
REGISTERED OFFICE AND REGISTERED AGENT

The street address of the initial registered office of the Association is 1175 N.E. 125th Street, Suite 102, North Miami, Florida 33161 Attn: J. Kenneth Tate and the initial registered agent of the Association at that address shall be J. Kenneth Tate.

IN WITNESS WHEREOF, the Incorporator has hereunto affixed his signature, this 29th day of August, 2019.

J. Kenneth Tate, Incorporator

The undersigned hereby accepts the designation of Registered Agent as set forth in Article XIV of these Articles of Incorporation, and acknowledges that he is familiar with and accepts the obligations imposed upon registered agents under the Florida Not for Profit Corporation Act.

Print Name: J. Kenneth Tate
Dated: 8/29/19

EXHIBIT O
Bylaws of the Association

BYLAWS
OF
BAHIA MAR MASTER ASSOCIATION, INC.

Section 1. Identification of Master Association

These are the Bylaws of Bahia Mar Master Association, Inc. ("Master Association" or "Association") as duly adopted by its Board of Directors ("Board" or "Board of Directors"). The Master Association is a corporation not for profit, organized pursuant to Chapter 617, Florida Statutes.

1.1. The office of the Master Association shall be for the present at 1175 N.E. 125th Street, Suite 102, North Miami, Florida 33161 Attn: J. Kenneth Tate and thereafter may be located at any place designated by the Board.

1.2. The fiscal year of the Master Association shall be the calendar year.

1.3. The seal of the Master Association shall bear the name of the Master Association, the word "Florida" and the words "Corporation Not For Profit."

Section 2. Explanation of Terminology

The terms defined in the Articles of Incorporation of the Master Association ("Articles") as well as in the Declaration of Covenants and Restrictions for Bahia Mar Master Association, Inc. ("Master Declaration"), are incorporated herein by reference and shall appear in initial capital letters each time such terms appear in these Bylaws. The Articles, the Master Declaration, these Bylaws, and any Rules and Regulations duly promulgated by the Board of Directors are collectively referred to as the "Governing Documents".

Section 3. Membership; Members' Meetings; Voting and Proxies

3.1. Membership. The qualification of Members, the manner of their admission to membership in the Master Association and the manner of termination of such membership shall be as set forth in the Articles.

3.2. Voting.

A. Authorized Representative. Each Member shall have the right to appoint its Authorized Representative(s) to vote on all matters to be voted on by the Members as follows:

(i) Each Member (other than the Class A Member) shall be entitled to appoint one (1) Authorized Representative and

(ii) The Class A Member shall have the right to appoint the number of Authorized Representatives equal to the greater of (a) four or (b) the number equal to all

Authorized Representatives appointed by the Class B, Class C and Class D Members plus two (2) (i.e. if all Authorized Representatives of the Class B, Class C and Class D equal five (5) votes then the Class A Member may appoint seven (7) Authorized Representatives with the right to vote seven (7) votes.

B. Entitlement to Vote. Every Class of Membership shall have the right to vote its membership interest on matters that require a membership vote through the Weighted Vote of the Authorized Representatives as expressly set forth in the Governing Documents. No change in the ownership or Authorized Representative of a Member shall be effective for voting purposes unless and until the Board of Directors is given actual written notice of such change and is provided satisfactory proof thereof.

C. Quorum. A quorum of Members for conducting business at a meeting of the Members shall be attendance, in person or by proxy, by at least three (3) Authorized Representatives of the Members but no quorum of Members shall occur without a majority of the Class A Authorized Representatives being present or by proxy.

3.3. Members' Meetings. There shall be no regular or annual meetings of the Association Members. The Board of Directors may call a special meeting of the Association Members upon providing fourteen (14) days' written notice to all Members. The date, time, and location of any such special meetings shall be selected by the Board of Directors. Meetings of Members shall be open to persons owning an interest in any portion of the Property or leasing the Marina Property and shall follow an agenda determined by the Association's President or other person chairing the meeting. Subject to reasonable rules set by the Board of Directors, Members (or their representatives) who are not members of the Board of Directors shall have the right to comment up to three (3) minutes on each agenda item provided such Member (or their representative) is civil and not disruptive. Each Member of the Association shall be entitled to one (1) vote and the Weighted Vote through the Authorized Representatives of the Members shall be required to approve action requiring the approval of the Members. The vote of Authorized Representative(s) of the Members may be cast in person or by proxy on matters where membership vote is required by Chapter 617, Fla. Stat. It is the intent of the Association and Members to leave all governance matters to the discretion of the Board of Directors where permitted by Chapter 617, Fla. Stat.

3.4. The Authorized Representatives may, at the discretion of the Board of Directors, act by written response in lieu of a Meeting provided written notice of the matter or matters to be agreed upon is given to the Authorized Representatives or duly waived in accordance with the provisions of these Bylaws. The notice with respect to actions to be taken by written response in lieu of a Meeting shall set forth the time period during which the written responses must be received by the Master Association and shall comply with Fla. Stat. §617.0701(4), as amended from time to time, and to the extent applicable.

3.5. Minutes of all Members' Meetings shall be kept in a businesslike manner and be available for inspection by Members and Directors at a reasonable time determined by the Association, which would be within ten (10) business days of a written request, by such Member or Directors. The Master Association shall retain minutes for at least seven (7) years subsequent to the date of the meeting the minutes reflect.

Section 4. Board; Board of Directors Meetings

4.1. The business and administration of the Master Association shall be performed by its Board.

4.2. The designation of Authorized Representatives as Directors shall be conducted in accordance with the Articles.

4.3. (a) Any person elected or designated as an Authorized Representative to serve as a Director shall have all the rights, privileges, duties and obligations of a Director of the Master Association.

(b) The term of a Director's service shall be as stated in the Articles and, if not so stated, shall extend until his or her successor is duly appointed and qualified or until he or she resigns or is removed in the manner elsewhere provided.

4.4. Board Meetings. The Board of Directors shall hold an annual organizational meeting of the Board of Directors at least once every calendar year and shall hold such other regular and special meetings of the Board of Directors as it deems appropriate. The date, time, and location of any meetings of the Board of Directors shall be selected by the Board of Directors. Notice of each meeting of the Board of Directors shall be delivered to all members of the Board of Directors in writing not less than 48 hours prior to the meeting's start time except in an emergency and shall also be posted conspicuously on the Property not less than 48 hours prior to the meeting's start time except in an emergency. Members of the Board of Directors may attend meetings of the Board of Directors via teleconference or video conference. A quorum of members of the Board of Directors for conducting business shall be attendance and participation by at least three (3) Board members but no quorum shall occur without a majority of the Class A Board of Directors members being present. Meetings of the Board of Directors shall be open to Members and persons owning an interest in any portion of the Property or leasing all of the Marina Property and shall follow an agenda determined by the Association's President or other person chairing the meeting. Subject to reasonable rules set by the Board of Directors, Members (or their representatives) who are not members of the Board of Directors shall have the right to comment up to three (3) minutes on each agenda item provided such Member (or their representative) is civil and not disruptive. Minutes of each meeting of the Board of Directors shall be taken and shall be retained for at least seven (7) years in the Association's books and records. Each member of the Board of Directors shall have one (1) vote which may be cast by proxy. Action of the Board of Directors at which a quorum is present shall be taken based on the Majority Vote of the members of the Board of Directors.

4.5. The presiding officer at all Board meetings shall be the President. In the absence of the President, the Vice President shall preside over such Board meeting. In the absence of the President and the Vice President, the Board of Directors shall designate any one of their number to preside.

4.6. To the extent allowed by applicable law, meetings between the Board of Directors and the Master Association's counsel and/or meetings to discuss or take action on

personnel matters may be closed to non-members of the Board of Directors. In the event a Member conducts himself or herself in a manner detrimental to the carrying on of the meeting, then any Director may expel said Member from the meeting by any reasonable means which may be necessary to accomplish said Member's expulsion. Also, any Director shall have the right to exclude from any meeting of the Board of Directors any person who is not able to provide sufficient proof that he or she is a Member or a duly authorized representative, agent or proxy holder of a Member, unless said person has been specifically invited by any of the Directors to participate in such meeting.

4.7. To the extent allowed by applicable law, any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if a consent in writing, specifically setting forth the action to be taken, is signed by a Majority Vote of the Directors entitled to vote with respect to the subject matter thereof and such consent shall have the same force and effect as a unanimous vote of the Directors, provided, however, whenever the levying of assessments is to be considered, such action may be considered only at a meeting of the Board of Directors properly noticed in accordance with applicable law but not less than forty-eight (48) hours prior to the time of the meeting except in an emergency.

Section 5. Powers and Duties of the Board

5.1. The affairs of the Master Association shall be managed by the Board. The powers and duties of the Board shall include, but not be limited to, all powers and duties set forth in the Governing Documents, as well as all of the powers and duties of a director of a corporation not for profit not inconsistent therewith.

5.2. The Master Association may employ a manager to perform any of the duties, powers or functions of the Master Association. Notwithstanding the foregoing, the Master Association may not delegate to the manager the power to conclusively determine whether the Master Association should make expenditures for capital additions or improvements chargeable against the Master Association funds. The members of the Board shall not be personally liable for any omission or improper exercise by the manager of any duty, power or function delegated to the manager by the Master Association.

Section 6. Late Fees

The Member who fails to timely pay any Assessment shall be charged a late charge of Twenty-Five and No/100 Dollars ($25.00) or five percent (5%) of the past due amount, whichever is greater, for such late Assessment. This amount is subject to change in the Board's sole discretion. In addition, any party who fails to pay any Assessment within ten (10) days of the due date shall be charged interest thereon at the Default Rate. The delinquent Member shall be responsible to pay all Default Assessments (including, but not limited to, attorneys' fees, fines and other expenses) incurred in connection with the collection of late Assessments whether or not an action at law to collect said Assessments and foreclose the Master Association's lien has been commenced. In addition to any other collection rights that the Master Association may have, to the extent the Association prevails in such litigation, it shall be entitled to recover against a Member any reasonable attorneys' fees and costs that it incurred as the result of a foreclosure lawsuit brought against the Member and/or as the result of a bankruptcy filed by the Member.

Section 7. Officers of the Master Association

7.1. Executive officers of the Master Association shall be the President, who shall be a Director, a Vice President, a Treasurer and a Secretary, all of whom shall be elected annually by the Board of Directors. Any officer may be removed without cause from office by vote of the Directors at any meeting of the Board of Directors. The Board of Directors may, from time to time, elect such other officers and assistant officers and designate their powers and duties as the Board of Directors shall find to be required to manage the affairs of the Master Association. One person may hold any two offices simultaneously, except when the functions of such offices are incompatible, but no person shall hold the office of President and Vice President simultaneously.

7.2. The President shall be the chief executive officer of the Master Association. He or she shall have all of the powers and duties which are usually vested in the office of the President of an association or a corporation not for profit, including, but not limited to, the power to appoint such committees from among the Members at such times as he or she may, in his or her discretion, determine appropriate to assist in the conduct of the affairs of the Master Association. If in attendance, the President shall preside at all meetings of the Board of Directors and the Members; provided, however, that the President may appoint a substitute.

7.3. In the absence or disability of the President, the Vice President shall exercise the powers and perform the duties of the President as more particularly set forth in the Articles. The Vice President shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board of Directors. In the event there shall be more than one Vice President elected by the Board of Directors, then such Vice Presidents shall be designated "First", Second, etc. and such Vice Presidents shall exercise the powers and perform the duties of the presidency in such order.

7.4. The Secretary shall keep the minutes of all meetings of the Board of Directors and the Members, which minutes shall be kept in such manner and made available as set forth in the Articles. The Secretary shall have custody of the seal of the Master Association and affix the same to instruments requiring such seal when duly authorized and directed to do so. The Secretary shall be custodian for the corporate records of the Master Association, except those of the Treasurer, and shall perform all of the duties incident to the office of Secretary of the Master Association as may be required by the Board of Directors or the President. The Assistant Secretary, if any, shall perform the duties of the Secretary when the Secretary is absent and shall assist the Secretary under the supervision of the Secretary.

7.5. The Treasurer shall have custody of all of the monies of the Master Association, including funds, securities and evidences of indebtedness. The Treasurer shall keep the assessment rolls and accounts of the Members and shall keep the books of the Master Association in accordance with good accounting practices and he or she shall perform all of the duties incident to the office of the Treasurer. The Assistant Treasurer, if any, shall perform the duties of the Treasurer when the Treasurer is absent and shall assist the Treasurer under the supervision of the Treasurer.

7.6. The Master Association's Directors and officers shall serve as volunteers without compensation. The compensation of the employees of the Master Association shall be fixed by the Board. This provision shall not preclude the Board from hiring a Director as an employee of the Master Association or preclude contracting with a Director or a party affiliated with a Director for the management or performance of contract services for all or any part of the Master Premises.

Section 8. Resignations

Any Director or officer may resign his or her post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date unless withdrawn. The acceptance of a resignation shall not be required to make it effective.

Section 9. Accounting Records; Fiscal Management

9.1. The Master Association shall maintain accounting records in accordance with good accounting practices, which shall be open to inspection by Members and Institutional Mortgagees or their respective authorized representatives at reasonable times. Such authorization as a representative of a Member must be in writing and signed by the person giving the authorization and dated within sixty (60) days of the date of the inspection. Such records shall include, but not be limited to: (i) a record of all receipts and expenditures; (ii) an account for the Master Association which shall designate the name and address of the office thereof, the amount of the Assessment charged to the Members, the amounts and due dates for payment of same, the amounts paid upon the account and the dates paid, and the balance due; (iii) any tax returns, financial statements and financial reports of the Master Association; and (iv) any other records that identify, measure, record or communicate financial information.

9.2. The Board of Directors shall adopt a Budget (as defined and provided for in the Master Declaration) of the anticipated operating expenses for each forthcoming calendar year (the fiscal year of the Master Association being the calendar year) at a special meeting of the Board of Directors ("Budget Meeting") called for that purpose to be held prior to the end of the year preceding the year to which the Budget applies. Prior to the Budget Meeting, a proposed Budget shall be prepared by or on behalf of the Board of Directors. Within thirty (30) days after adoption of the Budget, a copy thereof shall be furnished to the Members and shall be given notice of the Assessments applicable to its property. The copy of the Budget, if requested, shall be deemed furnished and the notice of the Assessment shall be deemed given upon its delivery or upon its being mailed to each Member at its last known address as shown on the records of the Master Association. If a Budget is not timely adopted for any reason, the prior year's budget shall remain in effect until a new Budget has been duly adopted.

9.3. In administering the finances of the Master Association, the following procedures shall govern: (i) the fiscal year shall be the calendar year; (ii) any monies received by the Master Association in any calendar year may be used by the Master Association to pay expenses incurred in the same calendar year; (iii) there shall be apportioned between calendar years on a *pro rata* basis any expenses which are prepaid in any one calendar year for operating expenses which cover more than such calendar year; and (iv) Assessments are payable monthly or quarterly (as

determined by the Board from time to time) in amounts based upon the Budget, as may be adjusted from time to time, of the Master Association equal to the Master Association's estimated out-of-pocket expenses incurred for maintaining the Property. Notwithstanding the foregoing, the Assessment shall be of sufficient magnitude to ensure an adequacy and availability of cash to meet all budgeted expenses in any calendar year as such expenses are incurred in accordance with good accounting practices.

9.4. The Board of Directors shall not be required to anticipate revenue from Assessments or expend funds to pay for operating expenses which shall exceed budgeted items, and the Board of Directors is not required to engage in deficit spending. Should there exist any deficiency which results from there being greater operating expenses than monies from Assessments, then such deficits shall be carried into the next succeeding year's Budget as a deficiency or shall be the subject of a Special Assessment or an upward adjustment to the Assessment.

9.5. The depository of the Master Association shall be such bank or banks as shall be designated from time to time by the Board in which the monies of the Master Association shall be deposited. Withdrawal of monies from such account shall be only by checks signed (or wires authorized) by such persons as are authorized by the Board; however, only Directors and/or officers may be signatories.

9.6. A report of the accounts of the Master Association shall be made in compliance with Chapter 617, Fla. Stat.

9.7 In all financial matters, the Directors shall at all times act in the best interests of the Master Association.

Section 10. Rules and Regulations

The Board may at any meeting of the Board adopt rules and regulations or amend, modify or rescind then existing rules and regulations for the operation of the Master Premises; provided, however, that such rules and regulations are not inconsistent with the terms or provisions of the Governing Documents. Copies of any rules and regulations promulgated, amended or rescinded shall be mailed or delivered to all Members at the last known address for such Members as shown on the records of the Master Association at the time of such delivery or mailing and shall not take effect until forty-eight (48) hours after such delivery or mailing, or, in the event both forms of notification are used, whichever is later. Care shall be taken to ensure that posted rules and regulations are conspicuously displayed and easily readable and that posted signs or announcements are designed with a view toward protection from weather and the elements. Posted rules and regulations which are torn down or lost shall be promptly replaced upon the Board being notified of such circumstance. No rule or regulation shall impair the Marina Sublessee's rights to develop, use, maintain, repair, and/or operate the Marina Property pursuant to the terms of the Marina Sublease, unless the rule or regulation has received the prior written consent of the Authorized Representative of the Class B Member.

Section 11. Parliamentary Rules

Persons chairing meetings of the Master Association or its Board of Directors shall aspire to conduct meetings in accordance with the latest edition of Robert's Rules of Order; provided, however, if such rules of order are in conflict with any of the Governing Documents, Robert's Rules of Order shall yield to the provisions of such instrument.

Section 12. Amendment of the Bylaws

12.1. These Bylaws may be amended by the affirmative vote of a majority of the Directors then in office at any regular meeting of the Board or at any special meeting of the Board called for that purpose or by written instrument signed by all of the Directors as is permitted by these Bylaws.

12.2. Notwithstanding the foregoing provisions of this Section 12, there shall be no amendment to these Bylaws which shall abridge, amend or alter the rights of: (i) the Class A Member, without the prior written consent thereto by the Class A Member; (ii) any Institutional Mortgagee without the prior written consent of such Institutional Mortgagee, and (iii) the Marina Sublessee to develop, use, maintain, repair, and/or operate the Marina Property pursuant to the terms of the Marina Sublease, without the prior written consent thereto of the Authorized Representative of the Class B Member.

12.3. Any instrument amending, modifying, repealing or adding Bylaws shall identify the particular section or sections affected and give the exact language of such modification, amendment or addition or of the provisions repealed. A copy of each such amendment, modification, repeal or addition attested to by the Secretary or Assistant Secretary of the Master Association shall be recorded amongst the Public Records of the County.

Section 13. Interpretation

In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Master Declaration and these Bylaws, the Master Declaration shall control; and in the event of any conflict between the Articles and the Master Declaration, the Master Declaration shall control.

The foregoing Bylaws of Bahia Mar Master Association, Inc. were adopted by the Board of Directors as of the date of filing the Articles of Incorporation for the Master Association.

CAM 24-0003 Backup: ISHOF Peninsula LLC Sub-lease Agreement

SUB-LEASE AGREEMENT
ISHOF PENINSULA LLC

THIS SUB-LEASE AGREEMENT (hereinafter the "Lease" or 'Agreement"), made and entered into as of the date the last party signs this Sub-Lease Agreement (the "Effective Date") is by and between:

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida, whose address is 100 North Andrews Ave., Fort Lauderdale, FL 33301 (hereinafter "LESSOR" or the "CITY" or "LANDLORD"),

AND

ISHOF PENINSULA LLC, a Florida limited liability company whose principal address is 1 Hall of Fame Drive, Fort Lauderdale, FL 33316 (hereinafter "LESSEE" or "Tenant" or "ISHOF"), each of which may be referred to individually as "Party" or jointly as "Parties".

WHEREAS, INTERNATIONAL SWIMMING HALL OF FAME, INC. is a Florida Not for Profit corporation (the "Parent Company") whose mission is to operate the International Swimming Hall of Fame Museum and Shrine; and

WHEREAS, LESSEE is a wholly owned subsidiary of the International Swimming Hall of Fame, Inc. and will maintain and operate a portion of the state of the art facilities on the Aquatic Center Peninsula which facilities will provide recreational, sporting and cultural facilities for the public at large ; and

WHEREAS, LESSOR finds that LESSEE's activities serve a significant public purpose and LESSOR wishes to encourage and assist the same; and

WHEREAS, Hall of Fame Partners, LLC ("HOFP"), a Florida limited liability company, submitted an unsolicited proposal to demolish the existing Hall of Fame Museum and Shrine and adjacent buildings and to construct an ocean rescue facility and to construct state of the art facilities to provide recreational, sporting and cultural facilities for the public at large on the Aquatic Center Peninsula (the "Project" or "Qualified Project"); and

WHEREAS, the City Commission finds that constructing recreational, sporting and cultural facilities for the public at large constitutes a public purpose; and

WHEREAS, on December__, 2021, the City and HOFP entered into an interim agreement in accordance with Section 255.065(6), Florida Statutes, for the purposes of authorizing HOFP to commence project planning and development, design, environmental analysis, and other activities concerning the Project, including the availability of financing; and

WHEREAS, on September 19, 2023, the City Commission approved a Comprehensive Agreement with HOFP, which provides in part, that HOFP will cause to be constructed recreational, cultural and sporting facilities for the benefit of LESSEE; and

WHEREAS, the City Commission finds that the LESSEE's actions do not conflict with use by the public of any public land adjacent thereto; and

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WHEREAS the City Commission adopted Resolution No. 23_____ on December 19,, 2023, pursuant to Section 8.13 of the City Charter declaring its intent to lease the Leased Premises for a term not to exceed thirty (30) years; and

WHEREAS, in accordance with Section 8.13 of the City Charter, a Public Hearing was held before the City Commission during a Regular Meeting of the City Commission held on January 23, 2024, for the purpose of permitting citizens and taxpayers the opportunity to review the proposed Lease and object to the execution, form or conditions of the proposed Lease; and

WHEREAS, by approval of the City Commission, the Mayor and the City Manager were authorized, empowered and directed to execute this Lease by adoption of Resolution No. 24-__, during a Public Hearing at its Regular Meeting on January 23, 2024; and

NOW THEREFORE, in consideration of the mutual covenants exchanged herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the LESSOR and LESSEE agree as follows:

ARTICLE 1 - LEASE OF LEASED PREMISES

1.1 **Lease**. The foregoing recitals are true and correct in all respects and are incorporated herein. On the terms and conditions set forth in this Lease, and in consideration of the LESSEE's periodic payment of rents and performance of all other terms and conditions of this Lease, the LESSOR hereby leases to LESSEE and LESSEE hereby leases from LESSOR and LESSOR grants LESSEE a possessory interest in and to the Leased Premises described below for the Term (hereinafter defined) subject to the terms and conditions set forth in this Lease.

1.2 **Leased Premises**. LESSOR leases the Leased Premises to LESSEE and LESSEE rent from LESSOR the Leased Premises located at 501 Seabreeze Blvd., Broward County, FL 33316, and described as follows:

All other portions of the Qualified Project less and except the Museum, Café, VIP Suites, Welcome Center and any other portions leased to the Parent Company all as located in the East or West Buildings of the Qualified Project, (as defined below) and less and except the areas described below, subject to the right, title and interest of HOFP and LESSOR under the Ground Lease and Master Facilities Lease. Both Parties acknowledge and agree to amend this Lease to more specifically define and clarify those portions of the Qualified Project that are subject to the terms of this Lease, provided such descriptions comply with the intent of the parties to the Comprehensive Agreement.

Whenever used herein, the term "Leased Premises" or “Premises” shall not include the real estate and does not include the land and improvements known as the Aquatic Center Improvements as defined in the Comprehensive Agreement, the Ocean Rescue facilities, the public dock the dry land training facility, training pool, lockers and shall exclude any other improvements retained by LESSOR or HOFP under the Comprehensive Agreement.

1.3 **Limitations on Grant of Possessory Interest**. The grant of possessory interest and rights hereunder by LESSOR to LESSEE is subject to the following:

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1.3.1 Each and any condition, restriction, covenant, easement and/or limitation recorded against the Leased Premises, including, without limitation, the Dedication from the Trustees of the Internal Improvement Fund of the State of Florida recorded in Official Records Book 2611, Page 314 of the Public Records of Broward County, Florida and any future easement or covenants, limitations or restrictions on the Leased Premises related to or reasonably necessary for development of the Qualified Project (as defined in the Comprehensive Agreement) provided such matters do not materially interfere with LESSEE's use and enjoyment of the Leased Premises.

1.3.2 Existing or future land planning, land use or zoning laws, building codes, ordinances, statutes or regulations of any governmental entity or agency for the United States of America, State of Florida, Broward County or City of Fort Lauderdale, or any other governmental agency having jurisdiction over the Leased Premises and with legal authority to impose such restrictions.

1.3.3 LESSEE's satisfactory performance of all the terms and conditions contained in this Lease: and

1.3.4 Underground and overhead utilities facilities, including, but not limited to, water, wastewater, storm water and electrical lines, telephone and telecommunications facilities lines and septic tank, if any.

1.3.5 The reservation of rights, prohibition on uses, parking, operation and management rights, revenue sharing, right of first refusal, exclusive leasing rights, development rights and other obligations, benefits, privileges, terms and conditions set forth in the Comprehensive Agreement dated_____ by and between LESSOR and Hall of Fame Partners, LLC (the " CA" or the "Comprehensive Agreement"), Ground Lease dated_____ by and between LESSOR and Hall of Fame Partners LLC (the "Ground Lease") and the Master Facilities Lease Agreement dated_____ by and between LESSOR and Hall of Fame Partners, LLC (the "Master Facilities Lease") and such other agreements related to the Project (collectively the "Agreements"). LESSEE shall comply with all the terms and conditions of the Agreements to the extent such terms and conditions requires the cooperation and compliance of LESSEE and failure to do so shall be an event of default under this Lease.

1.3.6 Rules and regulations that may be adopted by LESSOR and/or HOFP, or its affiliates, regarding operation, management and use of the Qualified Project (as defined in the CA).

1.4 **Quiet Enjoyment**. LESSEE, while paying Rent (hereinafter defined) and Additional Rent (hereinafter defined) and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Leased Premises for the term hereof without hindrance or molestation from LESSOR subject to the terms and provisions of this Lease and the Agreements.

1.5 **Contract Administrator**. The contract administrator for LESSOR under this Lease shall be the City Manager of LESSOR (the "City Manager"), or his or her designee (the "Lessor Contract Administrator"). In the administration of this Lease, as contrasted with matters in this Lease where the LESSOR is required to act, LESSEE may rely upon instructions or determinations made by the City Manager or the Lessor Contract Administrator, as the case may be. The contract

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administrator for the LESSEE under this Lease shall be the Chief Executive Officer of LESSEE. (the "Lessee Contract Administrator").

1.6 **Condition of the Leased Premises**. The LESSEE stipulates and agrees that it is familiar with the condition of the Leased Premises and therefore accepts the Leased Premises in "AS IS" condition without any warranties in accordance with the terms of Section 6.1 of this Lease.

1.7 **Demolition of Existing Improvements**. The LESSEE acknowledges that the existing improvements have been demolished and consents and approves of the demolition of the existing improvements leased to LESSEE under the prior lease. In addition, LESSEE consents to construction of the Qualified Project and ISHOF Improvements on the Leased Premises (as defined in the 2018 Lease by and between the LESSOR and LESSEE). Construction of the East and West Building within the Qualified Project is a benefit to the LESSEE and adequate consideration for its consent.

ARTICLE 2 - USE OF PREMISES

2.1 **Permissible Uses**. LESSEE shall use the Leased Premises to operate the Leased Premises in compliance and as permitted under the Agreements, the site plan approved by the City and in accordance with the uses permitted under the City's Unified Land Development Regulations and the Leased Premises shall be open and available to the general public. Any other uses shall require the written consent of LESSOR, in its sole discretion. No operations, activities or uses shall violate or create a default under the Agreements. The Lessee shall operate the Leased Premises in cooperation and coordination with the LESSOR's parks and recreation department and in accordance with the Agreements and shall maintain the Leased Premises in a first-class condition consistent with the prestige and purpose of operating and managing the Qualified Project..

2.1.1 **Sub-Subleases**. Any and all sub-subleases, licenses, concessions or agreements granting other party with the right to occupy of use all or a portion of the Leased Premises (the "Subordinate Party") shall be subject to the terms and conditions of the Agreements and will require preapprovals from the LESSOR and the HOFP and all other parties designated in the Agreements. Prior to entering into an agreement with a Subordinate Party, LESSEE shall present such agreement to the City Manager for approval which agreements shall reflect market rate rents, terms and conditions as determined by the City Manager and in accordance with the Agreements. The sub-sublease, license and/or concession shall include, among other terms and conditions, indemnity and insurance in favor of LESSOR, as approved by LESSOR in its sole discretion. The term of the sub-sublease, license or concession shall not exceed the term of this Lease. Each sub-sublease, license and/or concession shall incorporate the terms and conditions of this Lease and the Agreements. In its sole discretion, LESSOR shall have the right to be named as a third-party beneficiary under each sub-sublease, license, concession or other agreement granting a third party rights to use or occupy the Leased Premises or to require the Subordinate Party to enter into a recognition agreement with the City. LESSEE shall not refuse to enter into a sub-sublease, license or concession agreement that has been approved by the LESSOR and HOFP. Such refusal of an approved sub-sublease, license or concession shall be deemed an event of default under this Lease.

2.2 **Compliance with Regulations of Public Bodies**. LESSEE covenants and agrees

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that it shall, at its own cost and expense, make such improvements on the Leased Premises, perform such acts and do such things as shall be lawfully required by any public body having jurisdiction over the Leased Premises, in order to comply with the applicable requirements relating to sanitation, fire hazard, zoning, historic designation regulations, environmental requirements (subject to Article 5 below) and other similar requirements designed to protect the public, worker and environments. LESSEE shall not use the Leased Premises, nor shall the Leased Premises suffer any such use during the Term, which is in violation of any of the statutes, laws, ordinances, rules or regulations of the federal, state, county, municipal government or any other governmental authority having jurisdiction over the Leased Premises.

2.3 **Improvements**. After turnover of the Leased Premises to LESSOR as contemplated in the Agreements, LESSOR shall transfer a portion of the ISHOF Improvements to LESSEE. Thereafter, LESSEE shall not construct any permanent improvements upon the Leased Premises without the City Manager's express written consent as set forth in this section of the Lease and without the approval of the parties designated in the Agreements. LESSEE shall not construct any subsequent improvements, nor perform any material alteration, modification or demolition of any improvements upon the Leased Premises without first securing from the City Manager and HOFP, or its authorized agent, written approval indicating that the proposed construction, alteration, modification or demolition is acceptable, which approval shall not unreasonably withheld, delayed or conditioned. As a condition of acceptance, the City may impose reasonable conditions on LESSEE. Notwithstanding the foregoing LESSEE may make interior alterations that are not structural without the City's prior approval, so long as LESSEE obtains the required permit(s) from the City, in accordance with applicable codes and ordinances***. Upon expiration or termination of this Lease, any improvements constructed on the Leased Premises either by HOFP or under the direction of HOFP or LESSEE shall become the property of the LESSOR.*** Nothing herein shall be construed as a waiver of the LESSOR's police or regulatory policy in issuing development approvals. Approvals by the LESSOR pursuant to this Lease shall be considered approvals in its proprietary capacity and not under its police or regulatory power.

2.4 **Liability for Personal Property**. All personal property placed or moved onto the Leased Premises is at the sole risk of LESSEE or other owner of such personal property. LESSOR shall not be liable for any damage to such personal property, or for personal injuries or damage to LESSEE or any of LESSEE's sub- subtenants, licensees, concessionaires, agents, servants, employees, contractors, patrons, guests or invitees or to trespassers on the Leased Premises that arise from any person's tortious acts or omissions, regardless of the status of the person.

2.5 **ADA Compliance**. LESSEE shall have the continuing obligation of compliance at its sole cost and expense with the Americans With Disabilities Act, as the same may be amended from time to time, with respect to the Leased Premises.

ARTICLE 3 - TERM OF LEASE

3.1 **Term**. The term of this Lease commences on the Rent Commencement Date (hereinafter defined) and runs for a period of thirty (30) years thereafter (the "Term") unless this Lease is terminated prior to the expiration date pursuant to this Lease.

3.2 **Dates**.

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3.1.1 **Effective Date**. The effective date of this Lease shall be the date that the last Party executes this Lease.

3.1.2 **Rent Commencement Date**. The Rent Commencement Date of this Lease is the earlier date the Lessee takes possession of the Leased Premises or the date that LESSOR notifies LESSOR that the Leased Premises are legally available for occupancy.

3.3 **Recordation of Memorandum of Lease**. A Memorandum of Lease, to be executed by both Parties contemporaneous with the Rent Commencement Date, shall be recorded by LESSEE, at LESSEE's expense, in the Public Records of Broward County, Florida.

3.4 **Representations and Warranties**. All steps, acts and conditions required by the organizational and other documents creating and binding on the LESSEE to be done as a condition precedent to the execution of this Lease have been done, and the LESSEE has full authority to enter into this Lease and the individual signing on behalf of LESSEE has been delegated the authority to enter into a binding agreement on behalf of the LESSEE.

3.5 **Agreement to Cooperate.** Both parties acknowledge that the terms of the Comprehensive Agreement contemplates construction of the East and West Buildings and other improvements within the Qualified Project (as defined in the Comprehensive Agreement). LESSEE will cooperate with LESSOR and the principals of HOFP, its affiliates, agents and other parties with respect to entering into sub-sub lease, license or concession arrangements. The prospective tenants, rental rates and other material terms and conditions of the sub-sublease, license and/or concession are determined and selected by HOFP and its affiliates. Further, as to completion of the improvements, naming rights, except for naming rights related to the museum and welcome center, tenant allowance, if any, ingress and egress to the building, parking needs, access to valet, if any, signage for the Museum and Welcome Center and other matters related to occupancy, operation, promotion, marketing management, maintenance and use of the Leased Premises, LESSEE and LESSOR agree to come to terms on such matters, in consultation with HOFP and its affiliates and agents on or before the Rent Commencement Date and amend this Agreement at that time to memorialize the consents and agreement of the parties. In the event the East or West Buildings or both are not constructed, regardless of the reason, then LESSOR is and shall be released from any and all liability, duties, responsibilities or obligations to LESSEE and this Lease and any prior agreements shall be deemed terminated and of no further force or effect, except those matters of LESSEE which survive termination. It is anticipated that the Leased Premises shall be complete within five (5) years after the Commencement Date (as defined in the Comprehensive Agreement), subject to Force Majeure. Further, LESSEE acknowledges and agrees to comply with the Agreements including without limitation execution of the Subordination, Non-Disturbance and Attornment Agreement as set forth in Exhibit D of the Master Facilities Lease.

3.6 **Rent on Net Return Basis**. It is intended that the rent provided for in this Lease shall be a net return to LESSOR as provided herein, free of any expenses or charges with respect to the Leased Premises, including, without limitation, maintenance, security services, structural and non-structural repairs, replacement, taxes and assessments, and this Lease shall be construed in accordance with and to effectuate this intention.

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3.7 **Audit Rights**. The LESSOR shall have the right at all reasonable times to inspect the books and records of the LESSEE pertaining to the performance by it of its obligations under this Agreement. LESSOR shall have the right to audit the books, records, and accounts of LESSEE that are related to this Agreement. LESSEE shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement in accordance with generally accepted accounting practices and standards. All books, records, and accounts of LESSEE shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, LESSEE shall make same available at no cost to LESSOR in written form. LESSEE shall preserve and make available, at reasonable times for examination and audit by LESSOR in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit, litigation or other action has been initiated and has not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings, litigation or other action. If the Florida public records law is determined by LESSOR to be applicable, LESSEE shall comply with all requirements thereof. Any incomplete or incorrect entry in such books, records, and accounts shall be deemed an event of default under this Agreement.

3.8 **Termination of Sub-Lease.** The LESSOR reserves the right to terminate this Lease prior to the Rent Commencement Date in the event all or a portion of the improvements of the Qualified Project (as defined in the CA) or ISHOF Improvements (as defined in the CA) are not completed as evidenced by a certificate of occupancy or other appropriate governmental approval or in the event all or a portion of the ISHOF Improvements are not completed. LESSOR shall provide written notice of the termination to LESSEE and such termination of this Lease shall become effective upon the date specified in the notice. Thereafter, both parties shall be relieved released of any further liability under this Agreement except for those matters which survive termination. Alternatively, subject to compliance with the LESSOR's charter, the parties may agree to negotiate a new mutually acceptable lease. Such agreement to cooperate does not create an implied agreement or obligation of LESSOR to construct any improvements or to fund any improvements, it being the intent that LESSEE shall take possession of the Leased Premises in its then current condition and LESSEE waives any right to raise any claims for damages arising from the demolition of any buildings or improvements on the Leased Premises or any failure to construct the Qualified Project or ISHOF Improvements.

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ARTICLE 4 - RENT AND ADDITIONAL PAYMENTS

4.1 **Amount and Payment of Rent**. As rent for the Leased Premises, LESSEE shall pay to LESSOR the monthly rent as agreed upon by the parties prior to the Rent Commencement Date commencing with the Rent Commencement Date and continuing each and every successive month thereafter through the balance of the Term (the "Rent"). Rent shall be payable at the election of the LESSOR by wire, ACH draft or other electronic transfer method set forth in the Master Facilities Lease. It is anticipated that the rent will increase as each phase of the Qualified Project is completed. If LESSEE fails to pay its rent on the due date, then LESSEE shall pay any and all related late charges or penalties paid by LESSOR under the Master Facilities Lease.

4.1.1. **Rent**. Subject to the revenue sharing arrangement in the Agreements, Lessee shall be obligated to pay monthly rent starting on the Rent Commencement Date and on each and every successive calendar month thereafter and during and throughout the Term of this

Lease as follows:

4.1.1.1 Leased Based Revenue (as defined in the CA); and

4.1.1.2 Non-Leased Based Revenue (as defined in the CA) less the Excluded Revenue as defined in the CA and in Section 4.1.2 of this Lease; and

4.1.1.4 Prior to the Rent Commencement Date, the parties shall amend this Lease to establish the amount of the Leased Based Revenue, Non-Leased Based Revenue, and all other rents owed under the Comprehensive Agreement by LESSEE to LESSOR (collectively, the "Rent"). Further, all Rent shall be subject to an annual year-over-year increase of three percent (3%).

The obligation of LESSEE to make payments of Rent and Additional Rent on the dates due is absolute and unconditional and is not subject to any set-off, credit, adjustment, abatement, defense, counterclaim or recoupment for any reason.

4.1.2 **Excluded Revenue.** Both parties acknowledge that the following revenue referred to as the ISHOF Excluded Revenue in the CA is excluded from rent owed to LESSOR:

1. LESSEE'S museum ticket and shop sales.

2. Revenues generated by the VIP suites located within LESSEE leased space.

3. Revenues generated by VIP seat sales as to VIP seats located within LESSEE leased space.

4. Facility Sponsorships during Events and Shows in the Aquatic Center Improvements held by LESSEE, subject to the superior rights of HOFP and Facilities Manager to the Aquatic Center Improvements (as more particularly described in Section 3.08(f) of the Comprehensive Agreement). For purposes hereof, it is understood and agreed that Facility sponsorships shall include fundraising events which are held by LESSEE from time to time.

5. Entertainment Venues for LESSEE as to Entertainment Venues located within LESSEE leased space.

6. Subject to the rights of HOFP, naming Rights within the respective LESSEE leased space areas in the East or West Buildings.

7. Flow Rider revenues, if LESSEE elects to sub-sublease the Flow Rider from LESSOR.

8. Grants or donations which support the public mission of LESSEE.

4.2 **Sales Tax, Fees, Special Assessments, etc**. Beginning on the Rent Commencement

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Date, all costs, expenses, sales or use taxes, or taxes of any nature or kind, special assessments, connection fees, and any other charges, fees or like impositions incurred or imposed against the Leased Premises, to the extent applicable, or any use thereof, including revenue derived therefrom, and any costs, expenses, fees, taxes or assessments in or upon the real property or improvements constructed thereon shall be made and paid by LESSEE in accordance with the provisions of this Lease, it being the intent of the parties that, LESSEE is responsible for paying all the expenses and obligations that relate to the Leased Premises or any improvements thereon and that arise or become due during the Term. Should any such tax rate change under the Florida sales tax statute or other applicable statutes, LESSEE shall pay LESSOR the amounts reflective of such changes.

4.3 **Additional Rent Payments**. Exclusive of Rent due under Section 4.1 and all sums due under Section 4.2 hereof, all other payments that LESSEE is obligated to make under this Lease shall be considered "Additional Rent" regardless of whether the payments are so designated. All Additional Rent payments are due and payable within thirty (30) days after rendition of a statement, therefore.

4.4 **Utility or Service Charges**. Beginning on the Rent Commencement Date, LESSEE agrees to pay all utility service charges including, but not limited to gas, electricity, telephone, telecommunications, heating, air conditioning, water & sewer, storm water utility fees, and other similar service charges attributed to the Leased Premises. If any of these charges remain unpaid after they become due, LESSOR may exercise its remedies as set forth in Article 11. LESSOR shall not be liable to LESSEE for damage nor otherwise because of LESSEE's failure to arrange for or to obtain any utilities or services referenced above for the Leased Premises that are supplied by parties. No such failure, interruption or curtailment may constitute a constructive or partial eviction.

4.5 **Governmental Charges or Services**. Beginning on the Rent Commencement Date and subject to the provisions of Section 4.7, LESSEE must pay all ad valorem and non-ad valorem taxes and other governmental fees, charges or assessments that are related to the Leased Premises or personalty situated thereon or operations conducted thereon that arise during the term of the Lease. Nothing shall preclude LESSEE from seeking an exemption from ad valorem and other taxes due to its Parent Company's status as a tax-exempt organization under Internal Revenue Code Section 501c (3). LESSEE shall pay all such taxes and other charges when due and before any fine, penalty, interest or other cost is added, becomes due, or is imposed by operation of law for nonpayment. These taxes and other charges include, but are not necessarily limited to the following:

4.5.1 All taxes, assessments, water, sewer, connection fees, garbage rates and charges, public utility charges, excise levies, licenses and permit fees.

4.5.2 All such charges, whether they are general or special, ordinary or extraordinary, foreseen or unforeseen, assessed, levied, confirmed or imposed upon the Leased Premise or use thereof or improvements thereto or personalty situated thereon.

4.5.3 All such charges that arise from, become payable from or with respect to, or become a lien on any of the following:

(a) All or any part of the Leased Premises or use thereof or improvements thereto or personalty situated thereon.
(b) Any appurtenance to the Leased Premises.

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(c) The rent and income received by the LESSEE from any sub subtenant, licensee concessionaire or any other party with the right to occupy or use all or a portion of the Leased Premises.

(d) Any use or occupation of the Leased Premises.

(e) Any document to which the LESSEE is a party and that creates or transfers an interest or estate in the Leased Premises.

(f) Sales or use tax arising from LESSEE's operations; or

(g) Any taxes or charges applicable to the Rent or Additional Rent paid under this Lease.

4.6 **Payments and Receipts**. Upon LESSOR's written request, LESSEE shall deliver to LESSOR official receipts that show payment of all charges required under this Article and contained in LESSOR's written request. These receipts must be delivered to the place where the Rent payments are to be made. The LESSEE shall pay every tax or other charge required to be made under this Article before the charge or tax becomes delinquent under the law then governing payment of the tax or other charge, unless the tax or charge is challenged by LESSEE in accordance with Section 4.7 of this Lease.

4.7 **LESSEE'S Challenge of Tax**. So long as LESSOR is not in default under the Agreements, LESSEE may contest the validity of any tax, tax claim, or charge or assessment, described herein without being in default for nonpayment of taxes under this Lease, provided LESSEE complies with terms and conditions of this Section and the Agreements. LESSEE must give LESSOR and all parties designated under the Agreements written notice of LESSEE's intention to contest and LESSEE must also furnish LESSOR with a bond with surety by a surety company qualified to do business in the State of Florida or cash paid into escrow and held by LESSOR. The bond or cash must be in an amount equal to the 125% of the amount of the taxes, claim, charge or assessment together with estimated penalties and interest being contested and must be conditioned upon payment of the taxes, claim, charge or assessment once the validity has been determined. LESSEE must give written notice accompanied by evidence of the bond or escrow to LESSOR not later than sixty (60) days before the contested taxes would otherwise become delinquent.

4.8 **LESSOR'S Remedy for LESSEE'S Nonpayment**. If LESSEE fails, refuses, or neglects to pay any taxes, fees, assessments or other governmental charges under this Article, unless challenged as provided in Section 4.7 of this Lease, the LESSOR may pay them. On LESSOR's demand, LESSEE shall reimburse LESSOR all amounts LESSOR has paid, plus expenses and attorney's fees reasonably incurred in connection with such payments, together with interest at the rate of six (6%) per cent per annum from the date LESSOR paid such outstanding taxes, fees, assessments or other governmental charges, up to but not exceeding the maximum rate of interest allowable under Florida law. On the day LESSOR demands repayment or reimbursement from LESSEE, LESSOR is entitled to collect or enforce these payments in the same manner as a payment of Rent. The LESSOR's election to pay the taxes, fees, assessments or other governmental charges does not waive LESSEE's default.

ARTICLE 5 - HAZARDOUS SUBSTANCES

5.1 **Definitions.** For the purpose of administering this Article, the following terms shall have the meaning as set forth below:

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(a) "**Environmental Agency**" means a governmental agency at any level of government having jurisdiction over Hazardous Substances and Hazardous Substances Laws and the term as used herein shall also include a court of competent jurisdiction when used as a forum for enforcement or interpretation of Hazardous Substances Laws.

(b) "**Hazardous Substances** " means any hazardous or toxic substances, materials or wastes, including, but not limited to those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table, 49 CFR 172.101 or by the Environmental Protection Agency as hazardous substances, 40 CFR Part 302, as now in effect or as same may be amended from time to time, or such substances, materials and wastes which are now or hereafter become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyl, (iv) radon, (v) any substance designated as a "hazardous substance" pursuant to Sec. 311 of the Clean Water Act, 33 U.S.C. Sec. 1251, et seq. or listed pursuant to Sec. 307 of the Clean Water Act, 33 U.S.C. Sec. 1317, (vi) defined as "hazardous waste" pursuant to Sec. 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901, et seq., (vii) defined as a "hazardous substance pursuant to Sec. 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601, et seq., or (viii) designated as a "hazardous substance" as defined in Chapter 403, Part IV, Florida Statutes, or (ix) any other similar federal, state or local regulations.

(c) "**Hazardous Substances Laws**" means all local, state and federal laws, ordinances, statutes, rules, regulation and orders as same may now exist or may from time to time be amended, relating to industrial hygiene, environmental protection and/or regulation, or the use, analysis, generation, manufacture, storage, disposal or transportation of Hazardous Substances.

(d) "**Petroleum Products**" as defined by Florida Administrative Code Sec. 62-761.200 are any liquid fuel commodities made from petroleum including, but not limited to, diesel fuel, kerosene, gasoline, and fuels that contain mixtures of gasoline and other products.

(e) "**Products**" is defined in Sec. 377.19 (11), Florida Statutes, as same may be amended from time to time, as any commodity made from oil or gas and includes refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, untracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha, distillate, condensate, gasoline, used oil, kerosene, benzene, wash oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or byproducts derived from oil or gas, and blends or mixtures of two or more liquid products or byproducts derived from oil or gas, whether hereinabove enumerated or not.

(f) The term "property damage" as used in this Article includes, but is not limited to, damage to the property of the LESSEE, LESSOR and/or of any third parties caused by or resulting from LESSEE's breach of any of the covenants in this Article and shall include remedial activities performed by an Environmental Agency or by LESSEE pursuant to directives from an Environmental Agency.

5.2 **LESSOR'S Consent Required**. Beginning on the Rent Commencement Date and continuing throughout the Term, no Hazardous Substances shall be brought upon or kept or used in or about the Leased Premises by any person whomsoever, unless LESSEE first obtains written consent from the City Manager and the necessary parties designated in the Agreements (except de

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minimis quantities of Hazardous Substances used in the ordinary course of LESSEE's business and in accordance with applicable Hazardous Substance Laws).

5.3 **Compliance with Hazardous Substances Laws**. Beginning on the Rent Commencement Date and continuing throughout the Term and with respect to Hazardous Substances brought onto the Leased Premises by any person whomsoever other than LESSOR, its agents, employees, contractors or licensees acting within the course and scope of their duties, LESSEE shall have the absolute responsibility to ensure that the Leased Premises are used at all times and all operations or activities conducted thereupon are in compliance with all Hazardous Substances Laws and all permits, licenses and other Environmental Agency approvals required for any such activity conducted upon the Leased Premises.

5.4 **Hazardous Substances Handling**.

5.4.1 LESSEE covenants that beginning on the Rent Commencement Date and continuing throughout the Term hereof, any Hazardous Substance brought upon the Leased Premises by any person whomsoever, shall be handled, treated, dealt with and managed in conformity with all applicable Hazardous Substances Laws and prudent industry practices regarding management of such Hazardous Substances. LESSEE covenants that any and all Hazardous Substances removed from the Leased Premises shall be removed and transported solely by duly licensed haulers to duly licensed facilities for final disposition of such Hazardous Substances and wastes and only in accordance with Hazardous Substances Laws and consistent with all conditions of any and all permits, licenses and other Environmental Agency approvals required for such removal and transportation.

5.4.2 Upon expiration of the Term or earlier termination of this Lease, LESSEE shall cause all Hazardous Substances which are brought upon the Leased Premises subsequent to the Rent Commencement Date by any person whomsoever, to be removed from the Leased Premises and to be transported for use, storage or disposal in accordance and in compliance with all applicable Hazardous Substances Laws; provided, however, that LESSEE shall not take any remedial action in response to the presence of Hazardous Substances in or about the Leased Premises, nor enter any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Substances Laws in any way connected with the Leased Premises, without first notifying LESSOR and other parties required to receive notices in the Agreements of LESSEE's intention to do so and affording LESSOR reasonable opportunity to appear, intervene, or otherwise appropriately assert and protect LESSOR' s interest with respect thereto.

5.5 **Notices**.

5.5.1 If at any time LESSEE shall become aware or have reasonable cause to believe that any Hazardous Substance has come to be located on or beneath the Leased Premises (except de minimis quantities of Hazardous Substances used in the ordinary course of LESSEE's business and in accordance with applicable Hazardous Substance Laws), LESSEE shall promptly upon discovering such presence or suspected presence of the Hazardous Substance give written notice of that condition to LESSOR, as provided herein and any other party required to receive notice under the Agreements.

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5.5.2 In addition, LESSEE shall promptly notify LESSOR and other parties required to receive notice under the Agreements in writing of (i) any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed or threatened pursuant to any Hazardous Substances Law, (ii) any written claim made or threatened by any person against LESSEE, the Leased Premises or improvements located thereon relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Substances, and (iii) any reports made to any Environmental Agency arising out of or in connection with any Hazardous Substances in or removed from the Leased Premises or any improvements located thereon, including any complaints, notices, warnings or asserted violations in connection therewith.

5.5.3 LESSEE shall also supply to LESSOR as promptly as possible, and, in any event, within five (5) days after LESSEE first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Leased Premises or improvements located thereon or LESSEE's use thereof.

5.6 **Environmental Liabilities**. Any Hazardous Substances discovered on, under or within the Leased Premises that are in violation of the Hazardous Substances Laws, shall be the absolute responsibility of the LESSEE and LESSEE shall indemnify LESSOR pursuant to Section 5.7 and LESSEE shall be the "Indemnitor" and LESSOR shall be the "Indemnitee" as the terms are defined therein.

5.7 Hazardous Substances Indemnification.

5.7.1 Except for matters reflected in the Environmental Report (as defined in the Comprehensive Agreement), Indemnitor agrees to and shall indemnify, defend and hold Indemnitee harmless of and from any and all claims, demands, fines, penalties, causes of action, administrative proceedings liabilities, damages, losses, costs and expenses, which are asserted against the Indemnitee for bodily injury, disease, sickness, death, property damage (including the loss of use therefrom), damage or injury to the environment or natural resources, or some or all of the foregoing, and which relate, refer, or pertain to:

(a) the existence of Hazardous Substances on, under, or over the Leased Premises, or

(b) Hazardous Substances being released into the air, water, groundwater, or onto the ground in connection with the use of or operations on the Leased Premises, or

(c) gaseous emissions (excluding methane, radon, and other naturally occurring gases) from the Leased Premises, or

(d) the use, generation, or storage of Hazardous Substances on the Leased Premises, or

(e) the disposal of Hazardous Substances, or

(f) some or all of the foregoing.

5.7.2 Indemnitor shall further indemnify, defend and hold Indemnitee harmless from and against any and all liability, including, but not limited to, all damages directly arising out of the use, generation, storage or disposal of Hazardous Substances in, on, under, above or about the Leased Premises during the Term, including, without limitation the following when

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required by Hazardous Substances Laws or by governmental entities and agencies that enforce Hazardous Substances Laws (herein "Environmental Agencies"):

(a) all required or necessary inspections, investigations, applications, permits, plans, licenses, consent orders, and the like; and,

(b) all cleaning, detoxification, remediation, cleanup and disposal; and

(c) all tests, audit, monitoring, and reporting; and

(d) all fees, costs, assessments, fines and penalties charged by Environmental Agencies.

5.7.3 Indemnitor further agrees that its indemnification obligations shall include, but are not limited to, liability for damages resulting from the personal injury or death of any agent, licensee, subtenant, sub subtenant, vendor, employee or volunteer, invitee, guest of Indemnitor, regardless of whether Indemnitor has paid the employee under the Workers' Compensation Laws of the State of Florida, or other similar federal or state legislation for the protection of employees.

5.7.4 Indemnitor agrees that the foregoing obligations to indemnify, defend and hold Indemnitee harmless, effective pursuant to this section, extends to and includes all reasonable attorneys' fees, experts' fees and costs incurred in the defense of any of the foregoing claims or demands as well as enforcement of the provisions of this Article respecting Hazardous Substances. The indemnification provided in this Lease is effective on the Rent Commencement Date and shall survive the termination of this Lease, but shall end, with respect to any claim or cause of action, with the expiration of any applicable statute of limitation for such claim or cause of action.

5.7.5 Indemnitee reserves the right to select counsel of its own choosing, subject to Indemnitor approval, which shall not be unreasonably, withheld, conditioned or delayed, in the event Indemnitor is called upon to defend Indemnitee pursuant to this indemnity.

5.8 **Environmental Testing**.

5.8.1 Beginning after the Rent Commencement Date and continuing throughout the Term, LESSOR, HOFP, Facilities Manager, or their agents, may, upon reasonable prior written notice to LESSEE (taking into account the potential disruption of the LESSEE's operation) enter upon the Leased Premises for the purpose of conducting environmental tests ("LESSOR'S Tests") to determine the presence and/or extent of contamination by Hazardous Substances in, on, under, above, within or about the Leased Premises. LESSOR shall not be entitled to conduct the LESSOR'S Tests unless:

(a) An Environmental Agency shall have issued a notice of violation with respect to the Hazardous Substances on, within, above, about or under the Leased Premises; or

(b) LESSOR has probable cause to believe that LESSEE has violated Hazardous Substance Laws relating to the LESSEE's use of the Leased Premises.

5.8.2 **LESSOR'S Tests shall be at the sole cost and expense of LESSEE**. The

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cost and expenses of LESSOR'S Tests shall not be included in the scope of any indemnification set forth in this Article, unless the LESSOR's Tests reveal the presence of Hazardous Substances at levels that are in violation of the Hazardous Substances Laws. No LESSOR'S Tests shall be conducted until LESSOR has provided to LESSEE the name of the environmental engineering firm licensed to perform such work in the State of Florida (the "Permitted Firm").

5.9 **Environmental Procedure; Consent to Assignment**.

5.9.1 Any provisions herein to the contrary notwithstanding, LESSEE shall, at its own cost and expense, furnish to LESSOR a Phase I Environmental Assessment and/or Phase II Environmental Assessment of the Leased Premises, by a Permitted Firm. The foregoing is referred to hereinafter as the "Environmental Procedure."

5.9.2 The Environmental Procedure shall include a qualitative and quantitative analysis of the presence of Hazardous Substances in, on, under, above, within or about the Leased Premises.

5.9.3 If the Environmental Procedure establishes the presence of Hazardous Substances at levels that are in violation of the Hazardous Substance Laws, then LESSOR may withhold consent to the assignment of the leasehold interest or any part thereof, sub-sublease, license or concession, until security is posted with LESSOR which is deemed by LESSOR to be reasonably adequate to cover 150% of the projected costs of any legally required clean-up, detoxification or remediation of the Leased Premises from the presence of Hazardous Substances in, on, under, above, within or about the Leased Premises and any and all fines or penalties associated therewith.

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ARTICLE 6 - CONDITION OF PREMISES

6.1 **LESSEE'S Acceptance and Maintenance of Leased Premises**.

6.1.1 **"AS IS" Condition**. LESSEE acknowledges that prior to the Rent Commencement Date hereof it has performed sufficient inspections of the Leased Premises in order to fully assess and make itself aware of the condition of the Leased Premises and all improvements thereon, and that LESSEE is leasing the Leased Premises in its "AS IS" condition. LESSEE acknowledges that the LESSOR has made no other representations or warranties as to the condition or status of the Leased Premises, or the workmanship of the construction of the Qualified Project or ISHOF Improvements and that LESSEE is not relying on any representations or warranties of the LESSOR or any broker(s) or agent of LESSOR in leasing the Leased Premises. LESSEE acknowledges that neither LESSOR nor any agent or employee of LESSOR has provided any other representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning with respect to:

(a) The nature, quality or condition of the Leased Premises, including, without limitation, the water, soil and geology.

(b) The suitability of the Leased Premises for any and all activities and

uses which LESSEE, its sub-subtenants, licensees or concessionaires, may conduct thereon.

(c) The compliance of or by the Leased Premises or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body.

(d) The habitability, merchantability or fitness for a particular purpose of the Leased Premises.

(e) The workmanship or quality of construction of the Qualified Project.

(f) Any other matter with respect to the Leased Premises.

Without limiting the foregoing, LESSOR does not and has not made and specifically disclaims any other representation or warranty regarding the presence or absence of any Hazardous Substances, at, on, under or about the Leased Premises or the compliance or non-compliance of the Leased Premises with any laws, rules, regulations or orders regarding Hazardous Substances Laws. Hazardous Substances shall also include Radon Gas. LESSEE further acknowledges that neither LESSOR nor any agent of LESSOR has provided any representation or warranty with respect to the existence of asbestos or other Hazardous Substances on the Leased Premises. Accordingly, as between LESSOR and LESSEE under this Lease, the physical condition of the Leased Premises and compliance with all applicable laws, statutes, ordinances or regulations with respect to the physical condition of the Leased Premises shall be the sole responsibility and obligation of LESSEE.

6.1.2 **Maintenance**. At its expense, LESSEE shall maintain the Leased Premises and any new improvements constructed by LESSEE in a good state of repair and in a condition consistent with the Permissible Uses set forth in Section 2.1 hereof. LESSEE shall not suffer or permit the commission of any waste or neglect of the grounds, landscaping, buildings, fixtures and equipment that LESSEE brings, constructs or placed on the Leased Premises. LESSEE shall repair, replace and renovate the Leased Premises and all the improvements located thereon as often as is necessary to keep these items in a good state of repair. It is anticipated that LESSEE shall coordinate all maintenance activities with the Facilities Manager (as defined in the Comprehensive Agreement). With respect to the Leased Premises, it is the intent of LESSOR that LESSEE comply with the maintenance obligations under the Master Facilities Lease.

6.2 **Condition at End of Term.** At the earlier of the expiration of the Term or termination of this Lease, LESSEE and its sub-sublessees, licensees and/or concessionaires shall quit the Leased Premises and surrender it and all improvements, including all existing or to be constructed improvements thereon, including without limitation, all permanently affixed fixtures, to LESSOR, normal wear and tear excepted.

ARTICLE 7 - LIENS

7.1 **Liens against the Leased Premises**. LESSEE shall have no power or authority to incur any indebtedness giving a right to a lien of any kind or character upon the right, title or interest of LESSOR or HOFP in and to the Leased Premises, and no person shall ever be entitled to any lien, directly or indirectly derived through or under the LESSEE, or its agents, servants, employees, contractors or officers or on account of any act or omission of said LESSEE as to LESSOR's or HOFP right, title or interest in and to the Leased Premises. All persons contracting with the LESSEE

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or furnishing materials, labor or services to said LESSEE, or to its agents or servants, as well as all other persons shall be bound by this provision of this Lease and the Agreements. Should any such lien be filed, LESSEE shall discharge the same within thirty (30) days thereafter, by paying the same or by filing a bond, or otherwise, as permitted by law. LESSEE shall not be deemed to be the agent of LESSOR or HOFP, so as to confer upon a laborer bestowing labor upon or within the Leased Premises or upon material men who furnish material incorporated in the construction and improvements upon the foregoing, a construction lien pursuant to Chapter 713, Florida Statutes or an equitable lien upon the LESSOR's or HOFP right, title or interest in and to the Leased Premises. These provisions shall be deemed a notice under Section 713.10(2), Florida Statutes of the "non-liability" of the LESSOR or HOFP.

ARTICLE 8 - ENTRY AND INSPECTION OF PREMISES

8.1 **LESSOR'S Inspection and Entry Rights**. LESSOR, or any agent thereof, HOFP, Facilities Manager, upon reasonable notice, shall be entitled to enter the Leased Premises during any reasonable business hours for any of the following reasons:

8.1.1 To examine the Leased Premises; or

8.1.2 To make all repairs, addition(s) or alteration(s) that LESSOR deems necessary for safety or preservation of the Leased Premises or improvements located thereon, after fifteen (15) days advance notice to LESSEE that the Leased Premises or any portion thereof needs maintenance or repair and LESSEE fails to take appropriate curative actions; or

8.1.3 To remove signs, fixtures, alterations or additions that do not conform to the terms of this Lease or the Agreements after fifteen (15) days advance notice to LESSEE that the Leased Premises or any portion thereof is not in compliance with the terms of this Lease and LESSEE has failed to take appropriate curative actions. Provided that nothing herein shall be construed in such a manner as to impose upon LESSOR the obligation to so enter the Leased Premises and perform any act referenced above.

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8.2 **Annual Inspections**. Notwithstanding the foregoing, LESSOR may conduct annual inspections of the Leased Premises at LESSOR'S sole cost and expense, upon three (3) days prior written notice to LESSEE. Said inspection shall take place during normal business hours at a reasonable time mutually agreed to between the parties.

8.3 **Liability for Entry**. LESSEE, nor any agent, servant, employee, independent contractor, licensee or subtenant claiming by, through or under LESSEE, or any invitees thereof shall have any claim or cause of action against LESSOR because of LESSOR's entry or other action taken under this Article, except to the extent that any such claim or cause of action is due to the intentional or grossly negligent conduct of LESSOR, its agents, servants, employees, contractors or licensees acting within the scope and course of their duties.

ARTICLE 9 - INSURANCE AND INDEMNIFICATION

9.1 **Indemnity**.

9.1.1 LESSEE shall protect, defend, indemnify and hold harmless the LESSOR, its

public officials, officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses including attorney's fees or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of LESSEE under this Lease and the Agreements, conditions contained therein, the location, construction, repair, maintenance, use or occupancy of the Leased Premises or improvements located thereon, or the breach or default by LESSEE of any covenant or provision of this Lease or the Agreements, any acts or omissions of LESSEE which causes an event of default by LESSOR under the Agreements except for any occurrence arising out of or resulting from LESSOR's breach of this Lease or the gross negligence or intentional acts of the LESSOR, its officers, agents and employees acting within the course and scope of their employment. This indemnity shall survive termination of this Lease and is not limited by insurance coverage.

9.1.2 Without limiting the foregoing any and all such claims, suits, causes of action relating to personal injury, death, damage to property or defects in construction completed by Lessee or its sub-subtenants or assignees, rehabilitation or restoration of the Leased Premises, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right, or any actual or alleged violation of the City's Charter or any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, except for any occurrence arising out of or resulting from LESSOR'S breach of this Lease, or gross negligence or intentional acts of LESSOR, or its officers, agents and employees acting within the course and scope of their employment ("Claims"), is included in the indemnity.

9.1.3 LESSEE further agrees to investigate, handle, respond to, provide defense for, and defend any such Claims at its sole expense and agrees to bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by the LESSOR, LESSEE shall assume and defend not only itself but also the LESSOR in connection with any such Claims and any such defense shall be at no cost or expense whatsoever to LESSOR, provided that LESSOR, exercisable by LESSOR's City Manager or Risk Manager (the "Risk Manager") shall retain the right to select counsel of its own choosing, subject to the LESSEE'S approval which shall not be unreasonably withheld, conditioned or delayed.

9.2 **LESSOR'S Liability**. In no event shall LESSOR's liability for any breach of this Lease exceed the actual damages incurred by LESSEE as a direct and proximate result of that breach. Actual damages shall not include LESSEE's office or administrative overhead, loss of efficiency, consequential, indirect, special, exemplary or punitive damages. Further, LESSOR shall not be liable, either vicariously or directly, in the event HOFP, its agents, lenders, contractors, or employees or the Facilities Manager, its agents, lenders, contractors or employees violate any term, provision or condition under this Lease, it being the intent that LESSEE shall seek remedy directly against either HOFP or the Facilities Manager. In particular, LESSOR shall have no liability to LESSEE in the event HOFP or its agents in the exercise of its rights under the Comprehensive Agreement names a portion of the Leased Premises or permits a use of the Leased Premises that is in bad taste, offensive or an embarrassment to the image of LESSEE or its Parent Company. . This provision is not intended to be a measure or agreed amount of LESSOR'S liability with respect to any particular breach and shall not be utilized by any court or otherwise for the purpose of determining any liability of LESSOR hereunder except only as a maximum amount not to be exceeded in any event. Furthermore, no property, whether real or personal, including the Leased

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Premises or other assets of LESSOR shall be subject to levy, execution or other enforcement procedure for the satisfaction of LESSEE's remedies under or with respect to this Lease and LESSOR shall not be liable for any deficiency.

9.3 **Insurance.** During the term of this Lease and during any renewal or extension term of this Agreement, the LESSEE, at the LESSEE's sole expense, shall provide insurance of such types and with such terms and limits as noted below. These insurance provisions and the insurance requirements of the Agreements shall be incorporated in all sub-subleases, licenses and concession agreements. Providing proof of and maintaining adequate insurance coverage are material obligations of LESSEE. LESSEE shall provide LESSOR with a Certificate of Insurance evidencing such coverage. LESSEE's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Lessee shall not be interpreted as limiting LESSEE's liability and obligations under this Agreement. All insurance policies shall be from insurers authorized to write insurance policies in the State of Florida and that possess an A.M. Best rating of A-, VII or better. All insurance policies are subject to approval by LESSOR's Risk Manager.

The coverages, limits, and endorsements required herein protect the interests of LESSOR, and these coverages, limits, and endorsements may not be relied upon by LESSEE for assessing the extent or determining appropriate types and limits of coverage to protect LESSEE against any loss exposure, whether as a result of this Lease or otherwise. The requirements contained herein, as well as LESSOR's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by LESSEE under this Lease.

The following insurance policies and coverages are required:

Property Coverage and Business Interruption Insurance.
Coverage must be afforded in an amount not less than 100% of the current value of the Leased Premises after the improvements are complete, net of the value of the underlying land, with a deductible of no more than $25,000 each claim. Coverage form shall include, but not be limited to:

- All Risk Coverage including Flood and Windstorm with no coinsurance clause.
- Any separate Flood and/or Windstorm deductibles are subject to approval by the Lessor.

The deductibles set forth above notwithstanding, the following deductibles are approved by the Lessor:

- a maximum deductible of $50,000 for Earth Movement; and
- a maximum deductible of 5% of the Replacement Cost of the property for Named Windstorm.

This policy shall insure the interests of the Lessor and Lessee in the Leased Premises against all risk of physical loss and damage, and name the Lessor as a loss payee, to extent of the value of the premises after the Improvements are complete.

LESSEE will maintain business interruption insurance in an amount sufficient to cover not less than twenty-four (24) months of rent owed hereunder.

All rights of subrogation shall be waived against LESSOR under the property coverage policy.

LESSEE shall, at LESSEE's own expense, take all reasonable precautions to protect the Leased Premises from damage or destruction.

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9.3.1 **Collection of Insurance**. In the event of destruction of or damage to any of the Leased Premises or the buildings, other structures and improvements covered by insurance, the funds payable pursuant to such insurance policies shall be payable to, and deposited in, a commercial national bank as trustee, located in Fort Lauderdale, Florida, selected by LESSOR, as a trust fund, and the funds shall be used for the purpose of reconstruction or repair, as the case may be, of any of the buildings, other structures or improvements so damaged or destroyed. Such reconstruction and repair work shall be done in strict conformity with the ordinances, rules, regulations, ordinances and charter of LESSOR. Should the cost of reconstruction or repair exceed the amount of funds available from the proceeds of such insurance policy, then in such an event, such funds shall be used as far as the same will permit in paying the cost of the reconstruction or repair. In the event that the cost of such reconstruction or repair work shall be less than the proceeds derived from such insurance policies, the surplus shall be payable to LESSOR.

9.3.2 **Commercial General Liability**

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- $_____ each occurrence and $_____ aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury

Policy must include coverage for Contractual Liability and Independent Contractors.

9.3.3 LESSOR and LESSOR'S officers, employees, and volunteers are to be covered as additional insureds with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of LESSEE. The coverage shall contain no special limitation on the scope of protection afforded to LESSOR or LESSOR'S officers, employees, and volunteers.

9.4 **Business Automobile Liability**

9.4.1 Coverage must be afforded for owned, hired, scheduled and non-owned vehicles for bodily injury and property damage in an amount not less than $1,000,000 combined single limit for each accident.

9.4.2 If LESSEE does not own vehicles, LESSEE shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

9.5 **Workers' Compensation and Employer's Liability**

9.5.1 Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of LESSOR must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by LESSOR's Risk Manager, if they are in accordance with Florida Statute.

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9.5.2 LESSEE waives, and LESSEE shall ensure that LESSEE's insurance carrier waives all subrogation rights against LESSOR and LESSOR's officers, employees, and volunteers for all losses or damages. LESSOR requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

9.5.3 Lessee must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable.

9.6 **Insurance Certificate Requirements**

a. LESSEE shall provide LESSOR with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Lease.
b. LESSEE shall provide to LESSOR a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of LESSEE to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
d. In the event the Lease term goes beyond the expiration date of the insurance policy, LESSEE shall provide LESSOR with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. LESSOR reserves the right to suspend the Lease until this requirement is met.
e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract date or prior date.
f. LESSOR shall be named as an Additional Insured on all liability policies, with the exception of Workers' Compensation.
g. LESSOR shall be granted a Waiver of Subrogation on LESSEE's Workers' Compensation insurance policy.
h. The title of this Lease, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:
City of Fort Lauderdale
101 NW 3rd Avenue
Fort Lauderdale, FL 33301
Attn: Risk Manager

9.6.1 LESSEE has the sole responsibility for the payment of all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding LESSOR as an Additional Insured shall be at LESSEE's expense.

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9.6.2 If LESSEE's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, LESSEE may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

9.6.3 LESSEE's insurance coverage shall be primary insurance as applied to LESSOR and LESSOR's officers, employees, and volunteers. Any insurance or self-insurance maintained by LESSOR covering LESSOR, LESSOR's officers, employees, or volunteers shall be non-contributory.

9.6.4 Any exclusion or provision in the insurance maintained by LESSEE that excludes coverage for work contemplated in this Lease shall be unacceptable and shall be considered breach of contract.

9.6.5 All required insurance policies must be maintained until the contract work has been accepted by LESSOR, or until this Lease is terminated, whichever is later. Any lapse in coverage shall be considered a default under this Lease. In addition, LESSEE must provide to LESSOR confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Lease. LESSOR reserves the right to review, at any time, coverage forms and limits of LESSEE's insurance policies.

9.6.6 LESSEE shall provide notice of any and all claims, accidents, and any other occurrences associated with this Lease to LESSEE's insurance company or companies and LESSOR's Risk Management office, as soon as practical.

9.6.7 It is LESSEE's responsibility to ensure that any and all of LESSEE's independent contractors and subcontractors comply with these insurance requirements. All coverage for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of LESSEE.

9.6.8 Prior to commencement of construction activities, LESSEE (or any subtenant, sublessee or other party in possession of all or a portion of the Premises) shall provide evidence of, "All Risk" Completed Value Form, Builder's Risk insurance coverage ("Builder's Risk coverage"). The Builder's Risk coverage shall remain in force at least until substantial completion of the improvements by LESSEE, as evidenced by a final Certificate of Occupancy or Completion, at which time LESSEE shall procure property insurance so that there is continuous coverage in force and effect with no lapse in protection. Upon expiration or termination of the Builder's Risk coverage, LESSEE shall provide evidence of property insurance together with fire and extended coverage for the full value of the improvements including coverage for wind. Coverage shall be effective no later than the date of expiration of the builder's risk policy and shall remain in force thereafter throughout the Term of this Lease.

(a) Prior to the commencement of construction LESSEE shall require LESSEE's contractors and any subcontractors to provide the minimum insurance designated in this Lease and to include LESSOR as an additional insured on any general liability and excess liability policies.

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(b) If the Leased Premises is located in a federally designated flood plain, a flood insurance policy acceptable to LESSOR shall also be delivered to LESSOR, providing coverage in the entirety of the Term for the maximum amount reasonably necessary to insure against the risk of loss from damage to the Leased Premises and improvements located thereon caused by a flood.

(c) LESSEE agrees to cooperate with LESSOR in obtaining the benefits of any insurance or other proceeds lawfully or equitably payable to LESSOR in connection with this Lease.

(d) LESSOR's Risk Management Division reserves the right, but not the obligation, to review and revise any insurance requirements from time-to-time, including, but not limited to, deductibles, limits, coverages, and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or any changes in the improvements, including changes in the scope of work or specifications affecting the applicability of coverage.

9.7 **Performance and Payment Bond**: To the extent LESSEE seeks to construct improvements and to the extent required by LESSOR, at its election, LESSEE shall obtain from its general contractor a Performance Bond and a separate Payment Bond in favor of LESSOR and LESSEE and other parties designed by LESSOR, in accordance with the requirements of this Section.

9.7.1 The Performance Bond and Payment Bond shall be in the amount of One Hundred percent (100%) of the price of the construction contract for any proposed improvements, guaranteeing the parties the agreed upon performance and completion of the work covered in such contract, as well as full and complete payment of all suppliers, material persons, laborers, or subcontractors employed by the general contractor to perform work with respect to the proposed improvements. The Performance Bond and Payment Bond shall be executed by a surety company satisfying the requirements of this section.

9.7.2 The Performance Bond and Payment Bond shall remain in force for one (1) year after final completion of the construction work, with liability equal to One Hundred Percent (100%) of the construction contract price. LESSEE or any sub subtenant, licensee or concessionaire as applicable, shall require and ensure that its general contractor maintain the Performance Bond and Payment Bond throughout the course of the construction phase of the work, and for one (1) year following the final completion and acceptance by LESSOR of the construction work for the proposed improvements.

9.7.3 The Performance Bond and Payment Bond must be executed by a surety company of recognized standing that is authorized to do business in the State as a surety, has a resident agent in the State, and has been in business with a record of successful continuous operation for at least five (5) years. The surety company shall hold a current Certificate of Authority as an acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the required bonding amount exceeds the underwriting limitation set forth in such circular, in order to qualify as a satisfactory surety, the net retention of the surety company shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance,

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or other methods in accordance with Treasury Circular 297, Revised (31 CFR Section 223.10, Section 223.11). Further, the surety company shall provide the parties with evidence satisfactory to each party, that such excess risk has been protected in an acceptable manner.

9.7.4 The Performance Bond and Payment Bond shall be unconditional, must contain dual obligee riders in favor of LESSOR and LESSEE, and comply with the provisions of Section 713.23 or Section 255.05, Florida Statutes.

9.7.5 LESSEE, at LESSEE's sole cost, shall record the executed Payment and Performance Bond as an exhibit to the Notice of Commencement in the official public records of Broward County, Florida. LESSEE shall provide LESSOR with a copy of the recorded Notice of Commencement prior to commencement of construction.

9.7.6 To the extent the insurance requirements under this Lease conflicts with the insurance requirements of the Master Facilities Lease, at LESSOR's election, LESSOR may elect to impose the insurance requirements of the Master Facilities Lease and thereafter, LESSEE shall comply with the insurance requirements in the Master Facilities Lease.

ARTICLE 10 - ASSIGNMENTS

10.1 **Assignment.**

10.1.1 LESSEE shall not assign its leasehold interest nor sub-sublet, license or grant any concession for the use of the Leased Premises to another person or entity without obtaining the prior written consent of the City Commission of the City, in its reasonable discretion. If required by the Agreements, LESSEE shall obtain the consent of HOFP, and other parties designated in the Agreements. Any interest of a sub-subtenant, assignee, licensee, concessionaire or party in possession shall be subject to the terms and conditions of this Lease and the Agreements, such that the failure of the interested party to comply with and abide by the terms of this Lease and the Agreements shall be deemed a default under this Lease.

10.1.2 LESSEE shall, by written notice, advise LESSOR of its desire from and after a stated date (which shall not be less than sixty (60) days) to assign, sub-sublet, license or grant a concession to all or a portion of its interest under this Lease for any part of the Term hereof. LESSEE shall supply LESSOR and HOFP with such information, financial statements, verifications and related materials as LESSOR or HOFP may reasonably request or desire to evaluate the written request to such a transfer; and in such event LESSOR shall have the right, in its reasonable discretion, to be exercised by giving written notice to LESSEE within sixty (60) days after receipt of LESSEE's notice and all of the aforesaid materials to either refuse or consent to such a transfer. Said notice by LESSEE shall state the name and address of the proposed party.

10.1.3 As a condition to LESSOR's prior written consent of the proposed transfer of interest, sub-sublease, license or concession, the proposed party shall agree in writing to comply with and be bound by all of the terms, covenants, conditions, provisions and agreements of this Lease and the Agreements, and LESSEE shall deliver to LESSOR promptly

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after execution, an executed copy of such sub-sublease, assignment or license or concessionaire agreement and an agreement of said compliance by each sub-subtenant, assignee, licensee or other party in possession.

10.2 **Continued Liability of LESSEE**. LESSOR'S consent to any license, assignment, encumbrance, subletting, occupation, or other transfer shall not release LESSEE from any of LESSEE's obligations hereunder or be deemed to be a consent to any subsequent occurrence. Any license, assignment, encumbrance, subletting, occupation, or other transfer of this Lease that does not comply with the provisions of this Section or the Agreements shall be void.

10.3 **Sale of Business or Assets**. LESSEE hereby represents that as a Florida limited liability company, it has not issued or conveyed any interest in LESSEE to an individual or another entity except to the Parent Company. LESSEE agrees not to sell, assign, transfer, convey, pledge, hypothecate or alienate 1) its company to another party, 2) all or substantially all of its assets to another party or 3) its interests in any affiliate or subsidiary, without the written consent of the LESSOR, which consent may be granted or denied in its sole discretion. Violation of this condition shall be deemed an event of default and LESSOR shall have the right to terminate this Lease at its election.

ARTICLE 11 - LESSOR'S REMEDIES

11.1 **Events of Default**. The occurrence of any one or more of the following shall constitute an Event of Default by LESSEE under this Lease: (i) LESSEE's failure to pay any sum due hereunder within ten (10) days after the same shall become due; (ii) LESSEE's failure to perform or observe any of the agreements, covenants or conditions contained in the Lease or the Agreements on LESSEE's part to be performed or observed if such failure continues for more than thirty (30) days after notice from City or such reasonable time to cure as mutually agreed to by both parties; (iii) LESSEE's vacating or abandoning the Premises; (iv) LESSEE's failure to materially comply with the terms of the Agreements; v) LESSEE's leasehold estate being taken by execution, attachment or process of law or being subjected to any bankruptcy proceeding or (vi) LESSEE makes a misrepresentation or omission of a material fact. If any Event of Default occurs, then at any time thereafter while the Event of Default continues, City shall have the right to pursue such remedies as may be available to City under the law, including, without limitation, the right to give LESSEE notice that City intends to terminate this Lease upon a specified date not less than ten (10) days after the date notice is received by LESSEE, in which event this Lease shall then expire on the date specified as if that date had been originally fixed as the expiration date of the Term of this Lease. If, however, the default is cured within the ten (10) day period and the City is so notified, this Lease will continue.

11.2 **Accord and Satisfaction**. If LESSEE pays or LESSOR receives an amount that is less than the amount stipulated to be paid under any Lease provision, that payment is considered to be made only on account of an earlier payment of that stipulated amount. No endorsement or statement on any check or letter may be deemed an accord and satisfaction. LESSOR may accept any check or payment without prejudice to LESSOR's right to recover the balance due or to pursue any other available remedy.

11.3 **Remedies in Event of Default**. If LESSEE abandons or vacates the Leased Premises

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before the end of the Term , if LESSEE is in arrears in Rent or Additional Rent, LESSEE commits an event of default under the Agreements or LESSEE commits an event of default under Section 11.1 referenced above and payments and applicable cure periods have expired, LESSOR may cancel or terminate this Lease, subject to the notice and opportunity to cure provisions set forth in the Section above and LESSEE's right, title and interest in the Leased Premises shall terminate as of the date set forth in the notice. In addition, LESSOR may partially or fully accelerate the Rent which would become due through the end of the Term and demand immediate payment in full. LESSOR may enforce the provisions of this Lease and protect the rights of LESSOR by a suit or suits in equity or at law for the performance of any covenant or agreement herein, or any other appropriate legal or equitable remedy, including without limitation, injunctive relief, recovery of all moneys due or to become due from LESSEE under any of the provisions of this Lease or the Agreements, specific performance and any other damages incurred by LESSOR arising from LESSOR's default under this Lease.

11.4 **Cancellation of Lease**. On cancellation or termination of this Lease, LESSOR shall be entitled to peaceably enter the Leased Premises as LESSEE's agent to regain or relet the Leased Premises. LESSOR shall incur no liability for such entry. As LESSEE's agent, LESSOR may relet the Leased Premises with or without any improvements, fixtures or personal property that may be upon it, and the reletting may be made at such price, in such terms and for such duration as LESSOR determines and for which LESSOR receives rent. LESSOR shall apply any rent received from reletting to the payment of the rent due under this Lease. If, after deducting the expenses of reletting the Leased Premises, LESSOR does not realize the full rental provided under this Lease, LESSEE shall pay any deficiency.

11.5 **Dispossession on Default; Notice and Opportunity to Cure**.

11.5.1 If LESSEE defaults in the performance of any covenant, term, or condition of this Lease or Agreements, LESSOR may give LESSEE written notice of that default, as provided in Section 12.2. If LESSEE fails to cure a default in payment of Rent or Additional Rent within ten (10) days after notice is given, LESSOR may terminate this Lease. For defaults other than nonpayment of Rent or Additional Rent, LESSEE shall cure such default within thirty (30) days after notice is given or within such greater period of time as specified in the notice.

11.5.2 If the default (other than for nonpayment of Rent or Additional Rent) is of such a nature that it cannot be reasonably cured within time specified, LESSOR may terminate this Lease only if LESSEE fails to proceed with reasonable diligence and in good faith to cure the default within thirty (30) days after written notice is given. Thereafter, termination of this Lease may occur only after LESSOR gives not less than ten (10) days' advance written notice to LESSEE and such default remains uncured. On the date specified in the notice, the Term will end, and LESSEE shall quit and surrender the Leased Premises to LESSOR, except that LESSEE will remain liable as provided under this Lease. If LESSEE has committed an event of default under the Agreements, then the notice and opportunity to cure provisions under the Agreements shall control.

11.5.3 On termination of this Lease, LESSOR may peaceably reenter the Leased Premises without notice to dispossessed LESSEE, any legal representative of LESSEE or any other occupant of the Leased Premises. LESSOR may retain possession through

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summary proceedings or otherwise and LESSOR shall then hold the Leased Premises as if this Lease has not been made.

11.6 **Damages on Default**. If LESSOR retakes possession under Section 11.4, LESSOR shall have the following rights:

11.6.1 LESSOR shall be entitled to Rent or Additional Rent through the end of the term of the Lease will become due immediately, plus any expenses (including, but not limited to attorneys' fees, brokerage fees, advertising, administrative time, labor and materials related to removal of unfinished structures or reconstruction of existing facilities on the Leased Premises, etc.) that LESSOR incurs in returning the Leased Premises to good order and/or preparing it for re- letting, if LESSOR elects to re-let, plus interest on Rent and Additional Rent when due at the rate of six (6%) percent per annum.

11.6.2 LESSOR shall be entitled, but is not obligated, to re-let all or any part of the Leased Premises in LESSOR's name or otherwise, for any duration, on any terms, including but not limited to any provisions for concessions or free rent, or for any amount of rent that is higher than that in this Lease.

11.6.3 LESSOR's election to not re-let all or any part of the Leased Premises shall not release or affect LESSEE's liability for damages. Any suit that LESSOR brings to collect the amount of the deficiency for any rental period will not prejudice in any way LESSOR's rights to collect the deficiency for any subsequent rental period by a similar proceeding. In putting the Leased Premises in good order or in preparing it for re-letting, LESSOR may alter, repair, replace, landscape, remove any unfinished structures or decorate any part of the Leased Premises in any reasonable way that LESSOR considers advisable and necessary to re-let the Leased Premises. LESSOR's alteration, repair, removal of unfinished structures, replacement, landscape or decoration will not release LESSEE from liability under this Lease.

11.6.4 LESSOR is not liable in any way for failure to re-let the Leased Premises, or if the Leased Premises are re-let, for failure to collect the rent under the re-letting. LESSEE will not receive any excess of the net rents collected from re-letting over the sums payable by LESSEE to LESSOR under this Section.

11.6.5 The obligations of LESSOR under this Lease do not constitute personal obligations of the public officials, charter officers, employees or agents of LESSOR, and LESSOR will not seek recourse against the public officials, charter officers, employees or agents of LESSOR or any of their personal assets for such satisfaction. LESSOR shall not be liable for consequential, special, punitive, indirect or exemplary damages to LESSEE.

11.7 **Insolvency or Bankruptcy**. Subject to the provisions hereof respecting severability, should LESSEE at any time during the Term suffer or permit the appointment of a receiver to take possession of all or substantially all of the assets of LESSEE, or an assignment of LESSEE for the benefit of creditors, or any action taken or suffered by LESSEE under any insolvency, bankruptcy, or reorganization act, such action shall at LESSOR's option, constitute a breach and default of this Lease by LESSEE and LESSEE agrees to provide adequate protection and adequate assurance of future performance to the LESSOR which will include, but not be limited to the following:

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11.7.1 All monetary and non-monetary defaults existing prior to the breach or default referenced above shall be cured within the time specified above and shall include all costs and reasonable attorneys' fees expended by LESSOR to the date of curing the default.

11.7.2 All obligations of the LESSEE must be performed in accordance with the terms of this Lease and Agreements. If at any time during the pendency of the bankruptcy proceeding the LESSEE or its successor in interest fails to perform any of the monetary or non-monetary obligations under the terms of this Lease or Agreements, or fails to cure any pre-filing default, the LESSEE HEREBY STIPULATES AND AGREES TO WAIVE ITS RIGHTS TO NOTICE AND HEARING AND TO ALLOW THE LESSOR TOTAL RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C.§ 362 TO ENFORCE ITS RIGHTS UNDER THIS LEASE AND UNDER STATE LAW INCLUDING BUT NOT LIMITED TO ISSUANCE AND ENFORCEMENT OF A JUDGMENT OF EVICTION, WRIT OF ASSISTANCE AND WRIT OF POSSESSION.

11.8 **Condemnation**. Upon a condemnation, any awards are subject to the terms of the Agreements, it being acknowledged that Facilities Landlord holds all right, title and interest in the ISHOF Improvements.

11.9 **Holding Over**. LESSEE will, at the termination of this Lease by lapse of time or otherwise yield immediate possession of the Leased Premises. Without limiting LESSOR's rights and remedies set forth in this Lease, in the event of holding over by LESSEE after the expiration of the Lease Term or other termination of this Lease, or in the event LESSEE continues to occupy the Leased Premises after the termination of LESSEE's right of possession or occupancy of the Leased Premises subsequent to such termination or expiration shall be that of a tenancy at sufferance and in no event for month-to-month or year-to-year, but LESSEE shall, throughout the entire holdover period, be subject to all the terms and provisions of this Lease and shall pay for its use and occupancy an amount (on a per month basis without reduction for any partial months during any such holdover) equal to double the Rent paid the year immediately preceding the holdover period for the Leased Premises. No holding over by LESSEE or payments of money by LESSEE to LESSOR after the expiration of the term of this Lease shall be construed to extend the Lease Term or prevent LESSOR from recovery of immediate possession of the Premises by summary proceedings or otherwise.

11.10 **Cumulative Remedies**. LESSOR's remedies contained in the Lease are in addition to the right of a Landlord under Florida Statutes governing non-residential Landlord-Tenant relationships and to all other remedies available to a landlord at law or in equity.

11.11 **Scrutinized Companies.** Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the Tenant certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2020), as may be amended or revised, and that it is not engaged in a boycott of Israel, and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2020), as may be amended or revised. The City may terminate this Agreement at the City's option if the Tenant is found to have submitted a false certification as

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provided under subsection (5) of section 287.135, Florida Statutes (2020), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2020), as may be amended or revised, or is engaged in a boycott of Israeli has been engaged in business operations in Cuba or Syria, as defined in Section 287.135,Florida Statutes (2020), as may be amended or revised.

ARTICLE 12 - MISCELLANEOUS

12.1 **Requirement for Notice**. LESSEE shall give LESSOR, HOFP and the Facilities Manager prompt written notice of any accidents on, in, over, within, under and above the Leased Premises in which damage to property or injury to a person occurs. Whenever it is provided herein that notice, demand, request or other communication shall or may be given to, or served upon, either of the parties by the other, or either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or with respect to any matter set forth in this Lease, each such notice, demand, request or other communication shall be in writing and any law or statute to the contrary notwithstanding shall not be effective for any purpose unless the same shall be given by hand-delivery, overnight delivery by a nationally recognized service such as Federal Express, or by email to the addresses set forth below, or at such other address or addresses and to such other person or firm as LESSOR or LESSEE may from time to time designate by notice as herein provided. All notices, demands, requests or other communications hereunder shall be deemed to have been given or served for all purposes hereunder: (a) upon receipt, if hand-delivered or (b) the next day if by overnight delivery.

To: Lessee
Chief Executive Officer
1 Hall of Fame Drive
Fort Lauderdale, Fl 3316

To: Lessor
City Manager
City of Fort Lauderdale
101 NE Third Avenue,
Fort Lauderdale, FL 33301

With a Copy to:
City Attorney
City of Fort Lauderdale
1 East Broward Blvd., Suite 1605
Fort Lauderdale, Fl 33301

To:
Hensel Phelps Services LLC
888 SE 3rd Avenue, Suite 200
Fort Lauderdale, Fl 33316

To:
HOFP
c/o Capital Group P3
Development of Florida LLC
55 NE 5th Avenue, Suite 501

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Boca Raton, Fl 33432
Attn: Mario Caprini

12.2 **Time Is of The Essence**. Time is of the essence as to the performance of all terms and conditions under this Lease.

12.3 **LESSOR'S Cumulative Rights**. LESSOR's rights under this Lease are cumulative, and LESSOR'S failure to promptly exercise any rights given under this Lease shall not operate or forfeit any of these rights.

12.4 **Modifications, Releases and Discharges**. No modification, release, discharge or waiver of any provision of this Lease will be of any effect unless it is in writing and signed by the LESSOR and LESSEE.

12.5 **Time**. In computing any period of time expressed in day(s) in this Lease, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day, which is neither a Saturday, Sunday nor legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

12.6 **Captions.** The captions, headings and title of this Lease are solely for convenience of reference and are not to affect its interpretation.

12.7 **Survival**. All obligations of LESSEE hereunder not fully performed as of the expiration or earlier termination of the Term of this lease shall survive the expiration or earlier termination of the Term hereof.

12.8 **Delays beyond control of Lessor or Lessee**. Whenever a period of time is herein prescribed for action to be taken by LESSOR or LESSEE, LESSOR or LESSEE shall not be liable or responsible for and there shall be excluded from the computation for any such period of time, any delays due to causes which are beyond the control of LESSOR or LESSEE. Financial inability to perform or lack of funding shall not be deemed a cause beyond the control of LESSEE.

12.9 **Assignment, Pledge, Security Interest**. LESSEE may not, without LESSOR's prior written consent, grant a mortgage or other security interest, in its leasehold interest in the Leased Premises. Any grant by LESSEE of a mortgage or security interest in its leasehold interest by LESSEE without LESSOR'S prior written consent will be null and void. Nothing herein shall be construed as a right to encumber or subordinate the interest of the LESSOR in the Leased Premises, of which encumbrance or subordination is prohibited.

12.10 **Interpretation of Lease; Severability**. This Lease shall be construed in accordance with the laws of the State of Florida. If any provision hereof, or its application to any person or situation, is deemed invalid or unenforceable for any reason and to any extent, the remainder of this Lease, or the application of the remainder of the provisions, shall not be affected. Rather, this Lease is to be enforced to the fullest extent permitted by law. Each covenant, term, condition, obligation

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or other provision of this Lease is to be construed as a separate and independent covenant of the party who is bound by or who undertakes it, and each is independent of any other provision of this Lease, unless otherwise expressly provided. All terms and words used in this Lease, regardless of the number or gender in which they are used, are deemed to include any other number and other gender as the context requires.

12.11 **Successors**. This Lease shall be binding on and inure to the benefit of the parties, their successors and permitted assigns.

12.12 **No Waiver of Sovereign Immunity**. Nothing contained in this Lease is intended to serve as a waiver of sovereign immunity by any agency, including LESSOR, to which sovereign immunity may be applicable. Nothing herein shall be considered as a waiver of the limitations set forth in Section 768.28, Florida Statutes, as amended.

12.13 **No Third-Party Beneficiaries**. Except as may be expressly set forth to the contrary herein, the parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Lease. None of the parties intend to directly or substantially benefit a third party by this Lease. The parties agree that there are no third-party beneficiaries to this Lease and that no third party shall be entitled to assert a claim against any of the parties based on this Lease. Nothing herein shall be construed as consent by Lessor to be sued by third parties in any manner arising out of any Lease.

12.14 **Non-Discrimination**. LESSEE shall not discriminate against any person in the performance of duties, responsibilities and obligations under this Lease because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

12.15 **Records**. Each party shall maintain its own respective records and documents associated with this Lease in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Chapter 119, Florida Statutes, as same may be amended from time to time and any resultant award of attorney's fees for non-compliance with that law.

12.15.1 LESSEE and all contractors or subcontractors (the "**Contractor**") engaging in services in connection with construction and/or maintenance of the Leased Premises shall:

(a) Keep and maintain public records that ordinarily and necessarily would be required by CITY in order to perform the services rendered.

(b) Upon request from CITY's custodian of public records, provide CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2016), as may be amended or revised, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law and as to LESSEE for the duration of the Lease and as to Contractor for the duration of the contract term and following completion of said contract if Contractor does not transfer the records to CITY.

(d) Upon completion of said construction at the Leased Premises, transfer,

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at no cost, to CITY all public records in possession of LESSEE or Contractor or keep and maintain public records required by CITY to perform the service. If Contractor transfers all public records to CITY upon completion of the construction on the Leased Premises, LESSEE and Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If LESSEE or Contractor keeps and maintains public records upon completion of any construction on the Leased Premises, LESSEE and Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to CITY, upon request from CITY's custodian of public records, in a format that is compatible with the information technology systems of CITY.

(e) **If LESSEE or any contractor has questions regarding the application of Chapter 119, Florida Statutes, to LESSEE or Contractor's duty to provide public records relating to its contract, contact the CITY's custodian of public records by telephone at 954-828-5002 or by e-mail at PRRCONTRACT@FORTLAUDERDALE.GOV or by mail at 100 North Andrews Avenue, Fort Lauderdale, FL 33301 Attention: Custodian of Public Records.**

12.16 **Entire Agreement**. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Lease that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

12.17 **Preparation of Agreement**. The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Lease has been their joint effort.

12.18 **Waiver**. The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Lease and, therefore, is a material term hereof Any party's failure to enforce any provision of this Lease shall not be deemed a waiver of such provision or modification of this Lease. A waiver of any breach of a provision of this Lease shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Lease.

12.19 **Governing Law**. This Lease shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Lease and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida. To that end, LESSEE expressly waives whatever other privilege to venue it may otherwise have.

12.20 **Force Majeure**. Neither party shall be obligated to perform any duty, requirement or obligation under this Lease if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, pandemics, strikes, or other labor disputes,

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riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds alone on the part of LESSEE be deemed Force Majeure.

12.21 **Radon Gas**. 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 your county public health unit.

12. 23 **Loss of Non-Profit Status**. LESSEE's Parent Company is a tax-exempt organization as recognized by the Internal Revenue Service. If the Parent Company non-profit status is revoked by the IRS due to Parent Company or LESSEE's actions (as opposed to changes in the law governing non-profits), such revocation shall constitute an event of default under this Lease and LESSOR shall be entitled to exercise any and all remedies available under this Lease, including, termination of this Lease.

12.24 **Broker**. Each party hereby represents and warrants to the other, that it has neither contacted nor entered into an agreement with any real estate broker, agent, finder, or any other party in connection with this transaction, or taken any action that would result in any real estate broker's, finders, or other fees or commissions being due or payable to any other party with respect to the transaction contemplated by this Lease. Each party hereby indemnifies and agrees to hold the other party harmless from any loss, liability, damage, cost, or expense (including reasonable attorney's fees) resulting to the other party from a breach of the representation made by the indemnifying party in this Section.

12.25 **Public Entity Crime**. As provided in Section 287.132-133, Florida Statutes, a person or affiliate who has been placed on the State of Florida convicted vendor list following a conviction for a public entity crime may not submit a bid for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. By entering into this Lease or performing any work in furtherance hereof, LESSEE certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the Commencement Date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes.

12.26 **Waiver of Jury Trial.** THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS OR COUNTERCLAIMS BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER IN CONNECTION WITH THIS LEASE.

12.27. **Governing Body**. During the term of this Lease, LESSOR shall have the right to appoint one voting member, with full rights, powers and privileges, to the governing body of the LESSEE and LESSEE shall amend its charter documents, if necessary to authorize this power of appointment.

12.28 **Florida Foreign Entities Act**. Pursuant to the Florida Foreign Entities Act, Sections 692.202-205, Florida Statutes, Foreign Principals of Foreign Countries of Concern

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are prohibited from owning or acquiring any interest in certain types of Florida real property. LESSEE represents that neither it nor, to the best of LESSEE's knowledge, after due inquiry, any of LESSEE's principals, officers, directors, employees, subsidiaries, affiliates, agents or representatives, is a Foreign Principal as defined in the Florida Foreign Entities Act. LESSEE further represents and warrants that it, to the best of LESSEE's knowledge, after due inquiry, its principals, officers, directors, employees, subsidiaries, affiliates, agents and representatives are and have been in compliance, and will comply strictly throughout the performance of this Sublease with the Florida Foreign Entities Act, and LESSEE has instituted and maintains policies and procedures reasonably designed to promote and achieve compliance with the Florida Foreign Entities Act and with the representations and warranties contained herein. LESSEE shall not take any action or omit to take any action that it believes, in good faith, would be in violation of the Florida Foreign Entities Act. LESSEE shall notify LESSOR immediately of any non-compliance with or breach of the covenants, representations and warranties contained in this section. LESSOR shall have the right to unilaterally terminate this Lease and/or pursue any other remedies available to it at law or in equity in the event of any non-compliance with or breach of the covenants, representations and warranties contained in this section. LESSEE acknowledges that LESSOR will rely upon the foregoing representations and warranties to establish LESSEE's compliance with the Florida Foreign Entities Act.

12.29 **Dispute Resolution**. If a dispute arises with respect to this Lease, the parties to the dispute shall first attempt to resolve it through direct discussions in the spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiation fail, the dispute shall be mediated by a mutually acceptable third-party to be chosen by the disputing parties within thirty (30) days after written notice by one of them demanding mediation. The disputing parties shall share the costs of the mediation equally. By mutual agreement the parties may postpone mediation until each has completed some specified but limited discovery about the dispute. By mutual agreement the parties may use a nonbinding form of dispute resolution other than mediation.

12.30 **Estoppel Certificate**. LESSEE shall from time to time, within thirty (30) days after request by LESSOR or HOFP, execute, acknowledge, and deliver to LESSOR a statement certifying that this Lease is unmodified and in full force and effect (or that the same is in full force and effect as modified, listing any instruments of modification), the dates to which Rent and other charges have been paid, whether or not LESSOR is in default hereunder, whether LESSEE has any claims or demands against LESSOR (and, if so, the default, claim, and/or demand shall be specified) and any other information that may be required by LESSOR, any prospective purchaser, ground lessor or mortgagee of the Leased Premises and such statement may be delivered by LESSOR to any prospective purchaser, ground lessor or mortgagee of the Leased Premises and may be relied upon by such prospective purchaser, ground lessor or mortgagee.

12.31 **Cross Default**. Contemporaneously with execution of this Lease, LESSOR and the Parent Company have entered into a similar sublease. A default under the sublease with the Parent Companyshall be deemed a default under this Lease and a default under this Lease shall be deemed a default under the Parent Company'ssublease, in which event LESSOR shall be entitled to exercise any and all remedies provided by law, including without limitation the right to pursue damages and/or the right to pursue equitable remedies such as injunctive relief or specific performance.

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[Signature Pages to Follow]

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IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written below.

WITNESSES:

CITY OF FORT LAUDERDALE, a Florida municipal corporation

_____

By: _____
Dean J. Trantalis, Mayor

_____
[Witness print or type name]

Date: _____

_____

By: _____
Greg Chavarria, City Manager

_____
[Witness print or type name]

Date: _____

ATTEST:

(CORPORATE SEAL)

_____
David R. Soloman, City Clerk

APPROVED AS TO FORM AND
CORRECTNESS:
Thomas J. Ansbro, City Attorney

_____
Lynn Solomon, Assistant City Attorney

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of □ physical presence or □ online notarization this _____ day of_____, 2023, by Dean J. Trantalis, Mayor of the City of Fort Lauderdale, a municipal corporation of Florida. He is personally known to me and did not take an oath.

_____
Notary Public Signature

(SEAL)

_____
Name of Notary Typed, Printed or Stamped

My Commission Expires: _____

_____
Commission Number

DRAFT

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of □ physical presence or □ online notarization this _____ day of _____, 2023, by Greg Chavarria, City Manager of the City of Fort Lauderdale, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)

_____
Notary Public, State of Florida

_____
Name of Notary Typed, Printed or Stamped

My Commission Expires: _____

_____
Commission Number

DRAFT

WITNESSES:

ISHOF PENINSULA LLC, a Florida limited liability company

By: _____

_____

Name: _____

_____
Type or print name

Title: _____

Date: _____

_____

_____
Type or print name

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of □ physical presence or □ online notarization this _____ day of _____, 2023, by (Name)_____as (Title) _____of ISHOF PENINSULA LLC, a Florida limited liability company on behalf of said company. He/ She is personally known to me or produced (Insert Proof of Identification)
_____ as identification and did / did not take an oath.

(SEAL)

_____
Notary Public signature

_____
Name Typed, Printed or Stamped
My Commission Expires:
Commission Number:

DRAFT