

DEVELOPMENT AGREEMENT MARGATE CITY CENTER

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is made and entered into as of this ____ day of _____, 2016 (the "**Effective Date**"), by and between NEW URBAN COMMUNITIES, L.L.C., a Florida limited liability company (the "**Developer**") and the MARGATE COMMUNITY REDEVELOPMENT AGENCY, a dependent district of the City of Margate, Florida (the "**CRA**").

RECITALS

A. The CRA is the owner of eleven (11) parcels comprising approximately 36.46 acres generally located at the intersection of State Road 7 and Margate Boulevard, in the City of Margate, Florida (the "**City**"), as more particularly described on **Exhibits A-1 to A-3** attached hereto (each of such parcels being referred to herein individually as a "**Parcel**," or jointly as the "**Parcels**," and collectively, as the "**CRA Property**"), which CRA Property the CRA desires to be redeveloped within the CRA Community Redevelopment Area pursuant to the goals outlined in the adopted Community Redevelopment Plan.

B. The CRA issued RFP #2015-03A, as amended, for development proposals for the CRA Property ("**RFP**") in order to qualify firms for the development of the CRA Property as a mixed use project including residential, commercial retail, office, medical, governmental facility or other appropriate uses. The RFP is incorporated by this reference into this Agreement.

C. The CRA received two responses to the RFP for the development of the Project (as hereinafter defined). The Developer's response to the RFP (certain aspects of which may be modified by this Agreement) is incorporated by this reference into this Agreement.

D. After extensive review of both responses to the RFP, including presentations of the respective proposed projects, the CRA Selection Committee and its consultants recommended to the CRA Board the negotiation of a Development Agreement with the Developer. Subsequent thereto, the CRA Board conditionally awarded the RFP to the Developer, subject to the negotiation of a Development Agreement for review and approval by the CRA Board, as well as evaluating and negotiating other criteria including preliminary design concept (Pre-Development Plan, massing, height, physical character), preliminary feasibility analyses and financing plan, preliminary environmental impact and traffic analysis; preliminary proposed terms for site disposition, including transfer of the fee interest of all or a portion thereof; preliminary project implementation schedule; and project team composition as it relates to CRA's goals of redeveloping the CRA Property.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein set forth, the Developer and CRA hereby agree as follows:

Article 1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

Article 2. General; Project; Definitions.

2.1 General. The purpose of this Agreement is to provide the terms and conditions pursuant to which the Developer shall develop the CRA Property. The CRA Property shall be entitled and developed in substantial accordance with the terms set forth in this Agreement, the Pre-Development Plan, the Site Plan, the Construction Documents and Applicable Laws (all as hereinafter defined) and within the time periods set forth in the Critical Path (as hereinafter defined). From and after the date of this Agreement, Developer shall diligently, expeditiously, and in good faith take all action necessary to develop the CRA Property for the Project in accordance with the terms and conditions of this Agreement, and in compliance with the Critical Path attached as **Exhibit D** to this Agreement.

2.2 Project. The Project, Margate City Center, consists of the following components: the Apartment Component, the Commercial Component, the Civic and Community Component and the Parking Component (all as hereinafter defined), together with related amenities and utilities, as generally set forth in the **Pre-Development Plan**, attached hereto as **Exhibit B** (individually a "Component" and collectively, the "Components"). Each respective Component of the Project will be developed on that portion of the CRA Property which is so designated on the Pre-Development Plan. The CRA will retain ownership of each portion of the CRA Property until such time as each Project Phase (as hereinafter defined) has received all required approvals and final permits for vertical construction of such Project Phase, the Developer Financing (as hereinafter defined) has been obtained and the Developer Equity (as hereinafter defined) has been contributed to the Project (and evidence of such Developer Financing, Developer Equity and all other conditions of closing have been satisfied), at which time each of the Parcels of the CRA Property corresponding to the Project Phase shall be conveyed to the Developer in accordance with the terms and conditions of this Agreement. The Components of the Project are more particularly described as follows:

(a) 968 residential apartment rental or condominium units (each a "**Unit**" and, collectively, the "**Units**"), such total number of units being subject to a permitted variance of five percent (5%) greater or lesser. The units shall be comprised of no less than twenty five percent (25%) one bedroom or studio Units, no less than fifty percent (50%) two bedroom Units and no less than ten percent (10%) three bedroom Units (collectively, the "**Apartment Component**"). A minimum of fifteen percent (15%) of the Apartment Component shall be set aside for affordable housing as defined by the Broward County Land Use Plan, unless a lesser percentage is approved by the City's Economic Development Department;

(b) approximately 100,000 square feet of commercial building space (collectively, the "**Commercial Component**"), excluding the Hotel, such total square footage being subject to allowable variances of five percent (5%) lesser and twenty-five percent (25%) greater;

(c) greenways, amphitheater and associated lawn, canal walk and boat launch, signature town square, community/fitness center, public parking structure and pedestrian and beautification improvements to existing rights-of-ways on Margate Blvd., NW 58th Avenue, Park Drive and US 441/SR7 (collectively, the "**Civic and Community Component**"), to be

designed, constructed and paid for by the CRA subject to the qualifications contained in Section 6.9, Public Facilities;

(d) parking for the Apartment Component and Commercial Component and a Parking Garage, to be constructed by the CRA, serving the Civic and Community Component and portions of the Apartment Component and Commercial Component (collectively, the **"Parking Component"**), to be developed in stages; and

(e) approximately eighty (80) room Hotel (the **"Hotel Component"**).

2.3 **Definitions.** As used in this Agreement, the following defined terms shall have the following meanings:

"Additional Deposit" shall mean the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00), which sum shall be non-refundable to Developer unless the CRA is in default of this Agreement, beyond any applicable notice and cure period, but which shall be applied towards the purchase price at the Closings, as provided in Article 7.

"Affiliates" shall mean any entity: (i) in which Developer, Timothy Hernandez, or Kevin Rickard own at least ten percent (10%) of the stock or other equity interests; and (ii) which is controlled by Developer, Tim Hernandez, Kevin Rickard, or a successor individual approved by the CRA. The term "controlled" for these purposes means the ability, whether by ownership of stock or other equity interests, or by contract or other written agreement, to act as the Manager, Managing Member, President, Managing Director, or Managing Partner, as the case may be depending on the type of entity, to direct day-to-day management and policies of the entity.

"Agreement" shall mean this Development Agreement.

"Applicable Laws" shall mean any applicable law, statute, code, ordinance, regulation, permit, license, approval or other rule or requirement now existing or hereafter enacted, adopted, promulgated, entered, or issued by Governmental Authorities, including, but not limited to, the Florida Building Code.

"Authorized Financing" shall mean acquisition, development, or construction financing consisting of, without limitation: debt financing, private equity, equity participations, joint venture, hybrid financing, mezzanine financing, or other financing arrangements, provided in each such event the material terms of all such financing arrangements shall be documented in a written loan commitment (or its reasonable equivalent).

"Business Day" shall mean any day that the City is open for business.

"City" shall mean the City of Margate, Florida.

"Code" shall mean the City's Charter, Code of Ordinances, and Land Development Regulations now existing or hereafter enacted, adopted, promulgated, entered, or issued by the City.

"Construction Contract" shall have the meaning provided in Section 6.3.

"Construction Documents" shall have the meaning provided in Section 5.4.

"CRA" shall have the meaning provided in the introductory paragraph herein.

"CRA Property" shall have the meaning provided in the first recital hereto.

"Cure Period" shall mean the twenty (20) day period after the receipt by the CRA of any Title Objection Notice, or such earlier date as the CRA may designate in writing.

"Deed" shall mean a special warranty deed conveying the applicable Parcel of CRA Property to Developer, subject to the Permitted Exceptions.

"Deposit" shall mean the Initial Deposit, Additional Deposit and any other deposits made in connection with this Agreement. Any interest earned on the Deposit or any portion thereof shall be deemed to be part of the Deposit and shall be paid to the party entitled to the Deposit.

"Design Contracts" shall mean those contracts between the Developer and the engineers and architects who have been engaged by the Developer to provide engineering and design services for the Project.

"Developer" shall have the meaning provided in the introductory paragraph herein.

"Developer Equity" shall mean the Developer's equity contribution to each Project Phase, which, when combined with the amount of Developer Financing in place for each Project Phase, shall be an amount sufficient to develop the Project Phase and complete the Work (as hereinafter defined) for the Project Phase, all based on the approved Development Plan for each Project Phase. The Developer's Equity shall be no less than ten percent (10%) of the amount necessary and sufficient to develop each Phase of the Project and complete the Work, based upon the approved development plan, construction plans and specifications, and approvals of all governmental jurisdictions for each Project Phase.

"Developer Financing" shall mean the financing to be obtained by the Developer for each Project Phase, in the amounts necessary to develop the Project Phase and complete the Work required for each Project Phase in accordance with this Agreement, taking into account the Developer Equity, which Developer Financing shall be traditional financing from an Institutional Lender or Authorized Financing (as defined above) and on commercially reasonable terms in the commercially reasonable approval of the CRA's Executive Director. Developer Financing shall also mean and refer to the construction loans for each Project Phase.

"Developer's Representatives" shall mean Developer and its directors, officers, employees, agents, affiliates or other representatives (including without limitation, attorneys, accountants, engineers, experts, consultants, contractors, financial advisors, and any other person or entity performing services for Developer in connection with this Agreement), and their respective successors and assigns.

"Developer's Surveys" shall mean up-to-date (certified to a date after the Effective Date) boundary surveys of the Parcels in each Phase of the Project, prepared in accordance with the State of Florida's minimum technical standards, certified to Developer, the CRA, the Title Company, and other persons or entities designated by Developer, to be obtained by Developer and delivered to the CRA at least thirty (30) days prior to the Closing Date for such Phase of the Project.

"Developer's Title Evidence" shall mean the Title Commitment and the Developer's Surveys.

"Development Approvals" shall have the meaning provided in Section 5.3.

"Effective Date" shall mean the date when the last one of the Developer and CRA executes this Agreement and delivers an unaltered counterpart hereof to the other party, which date shall be inserted on the first page of this Agreement.

"Event of Default" shall have the meaning provided in Sections 10.1 and 10.3.

"Force Majeure" shall have the meaning provided in Section 5.4.

"Governmental Authorities" shall mean the United States Government, the State of Florida, Broward County, the City or any other governmental agency or any instrumentality of any of them.

"Hazardous Materials" shall mean any material which may be dangerous to health or to the environment, including, without implied limitation, all "hazardous matter", "hazardous waste", and "hazardous substances", and "oil" as defined in or contemplated by any applicable federal, state or local law, rule, order or regulation relating to the protection of human health and the environment or hazardous or toxic substances or wastes, pollutants or contaminants, including all of the following statutes and their implementing regulations, as the same may have been amended from time to time:

(a) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq.;

(b) Toxic Substances Control Act, 15 U.S.C. §2601 et seq.;

(c) Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136;

(d) Hazardous Materials Transportation Act, 49 U.S.C. §§1801 -1812;

(e) Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.;

(f) Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.;

(g) Clean Air Act, 42 U.S.C. §7401 et seq.;

(h) Safe Drinking Water Act, 42 U.S.C. §3808 et seq.; or

(i) Applicable or equivalent laws and regulations of the State of Florida relating to hazardous matter, substances or wastes, oil or other petroleum products, and air or water quality.

"Hotel" shall mean a medium-priced hotel having two or more stories and no fewer than 80 rooms, catering to business and tourist travelers and providing certain amenities which include, but are not limited to, a lobby and seating area, swimming pool and breakfast service, similar to a Fairfield Inn or Hampton Inn, as same exist as of the Effective Date, or their equivalent.

"Initial Deposit" shall mean the sum of Fifty Thousand and 00/100 Dollars (\$50,000.00).

"Inspection Period" shall mean that period of time commencing on the Effective Date and expiring at 5:00 EST on the date that is one hundred twenty (120) days after the Effective Date.

"Institutional Lender" established federally chartered United States bank, United States trust company or other such recognized United States financial institution (or consortium thereof) of good repute and sound financial condition and having assets in excess of One Hundred Million Dollars (\$100,000,000.00).

"Owner's Policy" shall mean an owner's policy of title insurance to be issued by the Title Company to the Developer.

"Parking Garage" shall mean the parking structure described in Section 7.7.

"Permitted Exceptions" shall mean taxes and assessments, zoning restrictions or prohibitions imposed by governmental authority, easements which do not interfere with the Developer's intended construction of the Project, any matters created by, or through, Developer, and any title and survey matters which Developer has accepted or is deemed to have accepted, as set forth in this Agreement.

"Permitted Transfers" shall have the meaning provided in Section 15.3.

"Pre-Development Plan" shall mean the preliminary proposed site plan for the Project (and each Project Phase or portion thereof), together with elevations of the Project and each of the Project Phases, all as shown on composite **Exhibit B**, attached hereto and made a part hereof, and as revised during the site plan approval process from time to time, subject to the terms of this Agreement.

"Project" shall have the meaning provided in Section 2.2.

"Project Phase 1" shall mean the first phase of the Project, to be developed on the east side of State Road 7 and as shown on the Pre-Development Plan and described in **Exhibit A-1** attached hereto, which phase is comprised of (i) a portion of the Apartment Component and related amenities, (ii) a portion of the Commercial Component, (iii) all of the Civic and Community Component, and (iv) those portions of the Parking Component, roads and

necessary infrastructure to support the foregoing.

"Project Phase 2" shall mean the second phase of the Project, to be developed on the west side of State Road 7 and as shown on the Pre-Development Plan and described in **Exhibit A-2** attached hereto, which phase is comprised of (i) a portion of the Apartment Component and related amenities, (ii) a portion of the Commercial Component, and (iii) those portions of the Parking Component, roads, and necessary infrastructure to support the foregoing.

"Project Phase 3" shall mean the third phase of the Project, to be developed on the west side of State Road 7 and as shown on the Pre-Development Plan and described in **Exhibit A-3** attached hereto, which phase is comprised of (i) a portion of the Apartment Component and related amenities, (ii) a portion of the Commercial Component, (iii) a Hotel, as hereinafter defined in this Agreement, and (iv) those portions of the Parking Component, roads, and infrastructure necessary to support the foregoing.

"Project Phase" shall mean each of Project Phase 1, Project Phase 2 and Project Phase 3, as more fully set forth on the Pre-Development Plan and within the Development Plan. **"Project Phases"** shall mean collectively, Project Phase 1, Project Phase 2 and Project Phase 3 of the Project.

"Site Plan" shall mean the final approved site plan for the Project (and each Project Phase or portion thereof), together with elevations of the Project and each of the Project Phases, as described in Section 5.5.

"Surviving Obligations" shall mean any indemnities, covenants and obligations of Developer which survive any closing under, and any termination of this Agreement. Unless otherwise expressly set forth in this Agreement, all indemnities of Developer contained in this Agreement shall be Surviving Obligations.

"Termination Notice" shall mean written notice given by Developer to the CRA prior to the end of the Inspection Period stating that Developer has elected to terminate this Agreement.

"Title Commitment" shall mean a title insurance commitment with respect to the CRA Property (and each Parcel, as applicable) issued by the Title Company.

"Title Company" shall mean Chicago Title Insurance Company or such other nationally recognized title company chosen by Developer. Title Company shall act as escrow agent hereunder (the **"Escrow Agent"**).

"Title Defects" shall mean any matters in the Developer's Title Evidence to which Developer timely objects, excluding Permitted Exceptions.

"Title Objection Notice" shall mean Developer's written notice to the CRA describing any Title Defects.

"Transfer" shall have the meaning provided in Section 15.1.

2.4 Deposit. To secure the performance by Developer of its obligations under this Agreement, Developer shall, within five (5) Business Days after the Effective Date, deposit with the Title Company (a) the Initial Deposit, and (b) a W-9 Request for Taxpayer Identification Number and Certification form or other form sufficient for Escrow Agent to deposit the Initial Deposit in an interest-bearing account. Escrow Agent shall hold the Deposit in an interest-bearing “money market” account at a financial institution approved by the CRA. Upon expiration of the Inspection Period, Developer shall, within two (2) Business Days thereafter, deposit with the Title Company the Additional Deposit. The Deposit shall remain in escrow with Escrow Agent as security for Developer’s performance hereunder, provided however that it shall be disbursed as follows:

(a) Upon Developer’s Closing on Project Phase 1, the Escrow Agent shall disburse \$25,000.00 from the Deposit to the Closing Agent, which amount shall be credited to Developer at Closing. The balance of the Deposit shall continue to be held by the Escrow Agent in accordance with this Agreement.

(b) Upon Developer’s Closing on Project Phase 2, the Escrow Agent shall disburse \$25,000.00 from the Deposit to the Closing Agent, which amount shall be credited to Developer at Closing. The balance of the Deposit shall continue to be held by the Escrow Agent in accordance with this Agreement.

(c) Upon Developer’s Closing on Project Phase 3, the Escrow Agent shall disburse \$50,000.00 from the Deposit to the Closing Agent, which amount shall be credited to Developer at Closing. The remaining portion of the Deposit, together with any accrued interest thereon, shall be disbursed to Developer upon receipt by the CRA of the remaining fifty percent (50%) of the Contingent Fee for Phase 3.

Article 3. Developer’s Due Diligence.

3.1 Inspection Period. The Developer and the CRA hereby acknowledge that Developer has not yet had an opportunity to complete its due diligence review of the CRA Property and to fully review and evaluate this transaction. If, on or before 5:00 p.m. Eastern time on the final day of the Inspection Period, Developer determines, in its sole and absolute discretion, that Developer does not desire to proceed with this Agreement, then Developer shall have the right to give the Termination Notice to the CRA. In the event that the CRA receives the Termination Notice on or before 5:00 p.m. Eastern time on the final day of the Inspection Period, then this Agreement shall be deemed terminated, the CRA shall instruct Escrow Agent to return the Deposit to Developer and the parties shall be released from all further obligations to each other under this Agreement except for the Surviving Obligations. In the event that the CRA does not receive the Termination Notice on or before 5:00 p.m. Eastern time on the final day of the Inspection Period, the contingency set forth in this Section 3.1 shall be deemed satisfied and/or waived by Developer and, except as otherwise specifically set forth in this Agreement, Developer shall have no right to terminate this Agreement.

3.2 Physical Condition of the CRA Property.

(a) Subject to the terms of this Article 3, Developer and the Developer's Representatives shall have access to the CRA Property at reasonable times on or before the end of the Inspection Period in order to: (1) inspect the physical condition of the CRA Property, including conducting a Phase I environmental site assessment, and, if Developer reasonably deems it appropriate, a Phase II environmental site assessment; and (2) conduct any other reasonable examinations with respect to the CRA Property as Developer or the Developer's Representatives may deem reasonably necessary. The CRA shall designate a representative to coordinate access to the CRA Property for Developer and the Developer's Representatives and shall provide Developer with contact information for such designated representative. Developer shall coordinate all access to the CRA Property with the CRA's designated representative. Developer shall make any request for access to the CRA Property in a reasonable period of time prior to the date access is desired. Developer and the Developer's Representatives shall not have the right to access the CRA Property at any time that the CRA, in its sole and absolute discretion, determines would be unreasonably disruptive to any business operations at the CRA Property. In the event that any test, examination or inspection discloses a condition that could reasonably be considered dangerous or capable of causing injury to a person or property, Developer shall immediately notify the CRA of the existence of such condition, shall provide such information as the CRA may request in connection therewith, and shall take commercially reasonable steps to minimize the adverse effect that the test, examination or inspection may have on such condition. Upon receipt of any such notice and test information from the Developer, the CRA and Developer will make commercially reasonable efforts to agree upon a reasonable period of time (which may require that the CRA extend the Inspection Period, at its sole discretion) to allow the review of the test information presented by the CRA with any CRA environmental consultants and to develop a plan of action relating thereto. Notwithstanding the foregoing, in no event will the CRA be obligated to pursue any remediation of the CRA Property based on any such information or plan of action. Developer and the Developer's Representatives shall enter the CRA Property at their own risk. The CRA shall not be liable in any way for any damages or losses suffered by such parties. Developer shall be solely responsible for all costs and expenses in connection with Developer's testing, examination and inspection of the CRA Property. Developer shall comply with all Applicable Laws, applicable to Developer's testing, examination and inspection of the CRA Property. Developer shall immediately remove or bond to the CRA's satisfaction any lien or other encumbrance which attaches to the CRA Property in connection with Developer's testing, examination and inspection of the CRA Property. Upon completion of any test, examination or inspection, Developer shall restore any damage to the CRA Property caused by such test, examination or inspection. Developer shall provide the CRA with copies of all final reports generated as a result of Developer's testing, examination and inspection of the CRA Property. Developer hereby indemnifies, defends and holds the CRA harmless from all losses, liabilities, costs and expenses (including without limitation, reasonable attorneys' fees and court costs through all trial and appellate levels), damages, liens or alleged liens (including without limitation, mechanic's liens and materialmen's liens or claims of liens), claims, actions and causes of action arising or resulting from or relating to: (1) Developer's or Developer's Representatives' access to the CRA Property; (2) Developer's or Developer's Representatives' performance of tests, examinations or inspections of the CRA Property, whether pursuant to this Section 3.2 or otherwise; and (3) failure to pay any costs and expenses in connection with Developer's due diligence and/or otherwise in connection with Developer's

or Developer's Representatives' testing, examination and inspection of the CRA Property, including without limitation, Developer's failure to remove or bond any lien placed on the CRA Property as a result of Developer's testing, examination and inspection of the CRA Property.

(b) Developer may engage only qualified, fully licensed contractors, subcontractors or consultants to perform any testing, examination and inspection of the CRA Property, including without limitation, any environmental investigation (Phase I, Phase II and any other testing) of the CRA Property. No contractual, legal or other relationship shall be created between the CRA and any such contractor, subcontractor or consultant as a result of Developer's engagement of such contractor, subcontractor or consultant. This Agreement shall not create any obligation on the part of the CRA to pay any sum to any contractor, subcontractor or consultant or to see that payment is made by Developer to any contractor, subcontractor or consultant.

(c) To the extent Developer elects to perform any invasive environmental test (including without limitation, a Phase II environmental site assessment) with respect to the CRA Property, the parties agree that: (1) Except as otherwise specifically set forth in Section 3.3, Developer shall maintain the confidentiality of all information derived as the result of such test; (2) At least five (5) days prior to the proposed date of any such test, Developer shall provide the CRA with a copy of the proposed scope of work identifying all proposed tests to be performed and including a site plan identifying the locations of all proposed test sites, which proposed scope of work shall be subject to the prior written approval of the CRA, which approval shall not be unreasonably withheld; and (3) the CRA or its designee(s) may, at its/their option, be available during the taking of such tests and, at CRA's or its designee(s)' option and cost, may take split samples of any test borings. In the event that the testing discloses any condition that, in the reasonable opinion of a qualified, fully licensed environmental consultant, should be reported or disclosed by the CRA to any regulatory agency, then Developer shall immediately cease any further testing, shall immediately notify the CRA of the existence of such condition, and shall provide such information as the CRA may request in connection therewith. Developer agrees that, except as otherwise set forth in Section 3.3, any reporting or disclosure obligations shall be performed exclusively by the CRA, not by Developer.

(d) Developer and any Developer's Representative desiring access to the CRA Property must have (1) broad form commercial general liability insurance (occurrence insurance) with combined limits of not less than \$1,000,000.00, (2) business automobile liability insurance (occurrence insurance) for any owned, hired and non-owned vehicles with combined limits of not less than \$1,000,000.00, and (3) worker's compensation insurance in compliance with applicable laws. Any Developer's Representative desiring access to the CRA Property in order to perform an invasive environmental test must also have (4) professional liability or errors and omissions insurance with combined limits of not less than \$1,000,000.00 and (5) pollution liability insurance with combined limits of not less than \$1,000,000.00, both with retroactive policy dates prior to or the same as the Effective Date. All insurance policies providing such coverage must name the CRA, City of Margate and the CRA's designated property management company as additional insureds. Except where prohibited by law, all insurance policies must contain provisions waiving the applicable insurance companies' rights of recovery and subrogation against the CRA. No cancellation or modification of any such insurance coverage may be effective against the CRA unless the insurance company provides a notice of cancellation

or modification to the CRA at least thirty (30) days prior to the effective date of the cancellation or modification. No person or entity desiring access to the CRA Property shall have the right to access the CRA Property until such person or entity delivers to the CRA certificates of insurance evidencing the required coverage. Notwithstanding anything to the contrary contained in this Agreement, the insurance requirements set forth herein are not intended to, and shall not be deemed to, limit Developer's liability for any of its obligations under this Agreement.

(e) Permitted Removal of Invasive Plants by CRA. Prior to the Closing on Project Phase 1, the CRA shall, at its cost, remove the previously identified invasive plants and trees adjacent to the waterway situated in Project Phase 1.

3.3 "AS-IS, WHERE-IS" CONDITION. AS A MATERIAL PART OF THE CONSIDERATION FOR THIS AGREEMENT, THE CRA AND DEVELOPER AGREE THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT AND IN THE CLOSING DOCUMENTS, DEVELOPER IS ACQUIRING THE CRA PROPERTY "AS-IS, WHERE-IS" WITH ALL FAULTS AND DEFECTS, LATENT AND PATENT. DEVELOPER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT AND IN THE CLOSING DOCUMENTS, THE CRA HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, STATEMENTS, 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, OR WITH RESPECT TO (A) THE NATURE, QUALITY OR CONDITION OF THE CRA PROPERTY, INCLUDING WITHOUT LIMITATION, THE WATER, SOIL, AND GEOLOGY, AND THE PRESENCE OR ABSENCE OF ANY POLLUTANT, HAZARDOUS WASTE, SOLID WASTE, GAS OR OTHER SUBSTANCE ON OR ABOUT THE CRA PROPERTY, (B) THE INCOME TO BE DERIVED FROM THE CRA PROPERTY, (C) THE SUITABILITY OF THE CRA PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH DEVELOPER MAY INTEND TO CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE CRA PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL AUTHORITY OR BODY HAVING JURISDICTION OVER THE CRA PROPERTY, INCLUDING WITHOUT LIMITATION, ALL APPLICABLE ZONING AND CODE ENFORCEMENT LAWS, (E) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE CRA PROPERTY, OR (F) ANY OTHER MATTER RELATED TO OR CONCERNING THE CRA PROPERTY. DEVELOPER SHALL NOT SEEK RECOURSE AGAINST THE CRA ON ACCOUNT OF ANY LOSS, COST OR EXPENSE SUFFERED OR INCURRED BY DEVELOPER WITH REGARD TO ANY OF THE MATTERS DESCRIBED IN CLAUSES (A) THROUGH (F) ABOVE AND DEVELOPER HEREBY ASSUMES THE RISK OF ANY ADVERSE MATTERS RELATED TO THE MATTERS DESCRIBED IN THIS SECTION 3.3. DEVELOPER ACKNOWLEDGES THAT DEVELOPER, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE CRA PROPERTY, SHALL RELY SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY OR ON BEHALF OF THE CRA OR ANY STATEMENT, REPRESENTATION OR OTHER ASSERTION MADE BY THE CRA WITH RESPECT TO THE CRA PROPERTY, EXCEPT

FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT AND IN THE CLOSING DOCUMENTS. DEVELOPER FURTHER ACKNOWLEDGES THAT NO INDEPENDENT INVESTIGATION OR VERIFICATION HAS BEEN OR SHALL BE MADE BY THE CRA WITH RESPECT TO ANY INFORMATION SUPPLIED BY OR ON BEHALF OF THE CRA CONCERNING THE CRA PROPERTY, AND THE CRA MAKES NO REPRESENTATION AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION, IT BEING INTENDED BY THE PARTIES THAT DEVELOPER SHALL VERIFY THE ACCURACY AND COMPLETENESS OF SUCH INFORMATION ITSELF. DEVELOPER ACKNOWLEDGES THAT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS SECTION 3.3 ARE AN INTEGRAL PORTION OF THIS AGREEMENT AND THAT THE CRA WOULD NOT AGREE TO ENTER INTO THIS AGREEMENT WITHOUT THE DISCLAIMERS, AGREEMENTS, STATEMENTS AND CONDITIONS SET FORTH IN THIS SECTION 3.3.

3.4 Physical Condition After the Inspection Period. The CRA agrees that, after the expiration of the Inspection Period, the CRA will not take any actions that could materially and adversely affect the physical condition or the status of title to the CRA Property. Specifically, and without limitation, the CRA will not utilize the site for carnivals or fairs after May 1, 2017. The CRA may utilize the Project Phase 2 property for food truck events and music festivals (but no carnival-type rides) until ninety (90) days before the Closing on Project Phase 2. The CRA may utilize the Project Phase 3 property for food truck events and music festivals (but no carnival-type rides) until ninety (90) days before the Closing on Project Phase 3. At least thirty (30), but not more than sixty (60), days before the Closing on each Project Phase, the Developer shall have the right to update its environmental reports and re-inspect the CRA Property comprising the Project Phase to confirm that the condition of the property has not materially and adversely changed since the expiration of the Inspection Period. The provisions of Section 3.2 shall apply to any updated inspections. If the updated inspections or reports reveal any material adverse changes in the condition of the CRA Property occurring after the expiration of the Inspection Period, which were not caused by Developer or Developer's Representatives, the CRA shall have forty-five (45) days, following written notice thereof from the Developer to the CRA, to cure the material adverse change; provided, however, that if such material adverse change is capable of cure but cannot reasonably be cured within forty-five (45) days, such failure shall not constitute an Event of Default so long as the CRA provides the Developer with written notice within fifteen (15) days of receipt of the Developer's notice advising the Developer that the default cannot be reasonably cured within forty-five (45) days and specifying the reasons therefore and, within the thirty (30) day period, commences and thereafter is in good faith proceeding diligently and continuously to remedy such failure, but in no event shall any additional time to cure granted hereunder exceed three hundred sixty-five (365) days in the aggregate after CRA's receipt of the original written notice. If the CRA cannot cure such material adverse changes to Developer's reasonable satisfaction in the time set forth herein, Developer will have the right to terminate this Agreement as to any Parcels not yet purchased by Developer by delivering written notice to the CRA.

(a) If the updated inspections or reports reveal any material adverse changes in the condition of the CRA Property occurring after the expiration of the Inspection Period, which were not caused by the CRA or its invitees or licensees, the CRA's obligations to cure the material adverse changes shall be capped at \$50,000.00. If the cost to cure exceeds

\$50,000.00, the CRA shall provide written notice of the cost to cure to Developer. Developer shall have ten days to decide whether to: (i) pay that portion of cure amount exceeding \$50,000.00, (ii) waive the material adverse changes and accept the affected property as-is, or (iii) terminate this Agreement.

Article 4. Title and Survey Matters.

4.1 The CRA has given Developer copies of existing surveys of the CRA Property and copies of title insurance policies issued to the CRA affecting the CRA Property. Developer shall promptly, and in no event later than sixty (60) days subsequent to the Effective Date, obtain the initial Developer's Survey and initial Title Commitment.

4.2 Developer shall review the initial Developer's Title Evidence and shall, on or before the date which is seventy-five (75) days after the Effective Date, give the CRA a Title Objection Notice (the "**Initial Title Objection Notice**") of all Title Defects appearing in the initial Developer's Title Evidence. In the event Developer timely and properly objects to any Title Defect in the Initial Developer's Title Evidence, the CRA shall have the right (but without any obligation to do so) to attempt to cure such Title Defect within the Cure Period. In the event that the CRA does not cure any Title Defect within the Cure Period, and if prior to the end of the Cure Period the CRA has not agreed in writing to cure such Title Defect on or before Closing (as hereinafter defined), then Developer may, at Developer's option, either (i) elect to accept title to the CRA Property subject to the Title Defect without any adjustment to the Purchase Price (as hereinafter defined), in which event the Title Defect shall be deemed a Permitted Exception, or (ii) terminate this Agreement by providing written notice of termination to the CRA not later than five (5) Business Days after the end of the Cure Period. In the event that Developer timely and properly exercises the termination right in item (ii) above, then this Agreement shall be deemed terminated, the Deposit shall be returned to Developer and both parties shall thereafter be released from all further obligations hereunder except for the Surviving Obligations. In the event Developer fails to timely and properly terminate this Agreement as set forth in option (ii) above, then Developer shall be deemed to have selected option (i) above.

4.3 At least twenty (20), but not more than forty-five (45), days before the Closing on each Project Phase, the Developer shall obtain an updated Developer's Survey and updated Title Commitment for all CRA Property included in the upcoming Closing on the Project Phase. Developer shall review the updated Developer's Title Evidence and shall, on or before the date which is twenty (20) days before the Closing, give the CRA an updated Title Objection Notice (the "**Updated Title Objection Notice**") of those Title Defects recorded after the effective date of the Initial Title Objection Notice. In the event Developer timely and properly objects to any such Title Defect, the CRA shall have the right (but without any obligation to do so) to attempt to cure such Title Defect within the Cure Period. In the event that the CRA does not cure any Title Defect within the Cure Period, and if prior to the end of the Cure Period the CRA has not agreed in writing to cure such Title Defect on or before Closing (as hereinafter defined), then Developer may, at Developer's option, either (i) elect to accept title to the CRA Property subject to the Title Defect without any adjustment to the Purchase Price (as hereinafter defined), in which event the Title Defect shall be deemed a Permitted Exception, or (ii) terminate this Agreement by providing written notice of termination to the CRA not later than five (5) Business Days after the end of the Cure Period. In the event that Developer timely and properly exercises

the termination right in item (ii) above, then this Agreement shall be deemed terminated, the Deposit shall be returned to Developer and both parties shall thereafter be released from all further obligations hereunder except for the Surviving Obligations. In the event Developer fails to timely and properly terminate this Agreement as set forth in option (ii) above, then Developer shall be deemed to have selected option (i) above with respect that Project Phase. If the Cure Period does not end at least five Business Days before the scheduled Closing Date, the Closing Date shall automatically be extended to that date which is ten Business Days after the expiration of the Cure Period. The CRA will execute and deliver a GAP affidavit at Closing on each Project Phase covering the time period between the effective date of the Updated Developer's Title Evidence and the recording of the deed covering the Project Phase to Developer.

4.4 Developer has the right, at Developer's sole cost and expense, to obtain any and all endorsements to the Title Commitment and/or the Owner's Policy which Developer desires to obtain in connection with this transaction, but the obligations of the parties are not conditioned on Developer's obtaining such endorsements, other than if (i) Developer is unable to obtain an endorsement based on a breach of the CRA's obligations set forth in this Agreement which is not cured within the applicable cure period, or (ii) the endorsement is required by Developer's lender and the form of the endorsement is commonly required by lenders making loans secured by commercial real estate in Broward County .

Article 5. Pre-Development.

5.1 Pre-Development Plan and Pre-Development Budgets. The parties acknowledge and agree that the CRA has previously approved a pre-development plan and overall budget for the Project including a construction cost estimate for the Project prepared by the Developer (the "**Pre-Development Plan**" and the "**Pre-Development Budget**"), copies of which are attached hereto as composite **Exhibits B and C** and by this reference made a part hereof.

5.2 Contingent Fee Payment. The Developer agrees to pay the CRA, its successors and assigns, a fee for Pre-Development services contracted by the CRA, such as economic, analysis, site plan review, legal fees, consulting fees, and all other costs and expenses required for the CRA to review the Response to the RFP and to proceed and approve of the various aspects of the Project. This contingent fee ("**Fee**") shall be in a sum equal to one percent (1%) of the total costs of the development and construction of the Project (excluding the cost of the land) as calculated by the Developer, and approved by the CRA, in the most recent version of the proforma and other financial projections prepared by the Developer and delivered to lenders and/or investors prior to the execution of the Agreement. In the event of any inconsistencies in the projected total costs among different versions of the Developer financials, the version of the Developer financial showing the greatest total costs of Project development and construction shall be used to calculate the Fee. The schedule for payment of the Fee is fifty percent (50%) of the Fee being due and payable at the Closing of each Phase of the Project and the remaining fifty percent (50%) of the Fee for the Phase being due and payable within ten (10) days of the receipt of the first certificate of occupancy for the Phase. In addition to any other rights and remedies of the CRA under the terms hereof, in the Event of a Default by Developer hereunder, beyond any applicable notice and cure period, any remaining unpaid portion of the Fee at the time of default shall immediately become due and payable to the CRA upon written demand for same, irrespective of the stage of construction for any such Phase.

5.3 Development Approvals. The term "**Development Approvals**" as used in this Agreement, shall mean all City approvals, consents, permits, amendments, rezonings, special exceptions or variances as well as such other official actions of the Governmental Authorities which are necessary to develop each Project Phase and the Project as a whole and each Project Phase. As soon as practicable and prior to closing on each Project Phase, but no longer than what is shown on the Critical Path, as revised from time-to-time in accordance with this Agreement, the Developer shall submit to the CRA for its review and approval, all applications and other submittals required to obtain the Development Approvals for the respective Project Phase, such approval not to be unreasonably withheld, delayed or conditioned provided applications and other submittals are consistent with the approved Project Phase and comply with all Applicable Laws. Following such review and approval, the CRA hereby agrees to execute and deliver to the Developer, in the CRA's capacity as the owner of the CRA Property, all applications and other submittals required to obtain the Development Approvals. If any such documents in which the CRA's joinder is requested contain material financial obligations binding (or which may become binding) upon the CRA, such obligations must be assumed by the Developer. If this Agreement is terminated, then upon the CRA's request, Developer shall withdraw all of its pending applications and terminate all agreements which are terminable and/or withdrawable by Developer, with respect to the Development Approvals, which foregoing obligations shall survive termination of this Agreement. No later than the time of Site Plan submittal to the City, the Developer shall complete and submit to the CRA: all design requirements, including the proposed Site Plan prior to submittal; preliminary civil engineering; any other plans and specifications required for the development to proceed; design elements (excluding logos) for the various buildings within the Project, including definitions of sample architectural styles with representative illustrations; and copies of applications for any Development Approvals required for the development and construction of the Project. The CRA shall approve the foregoing if they are substantially consistent with the Pre-Development Plan attached hereto as **Exhibit B**. Thereafter, the Development Approvals shall proceed in accordance with the City's ordinances and Land Development Code and the representative design elements and style portion of the documents, once approved by the CRA, will be the "Architectural Scheme" for the Project.

5.4 Critical Path. The Developer will be responsible for initiating and diligently pursuing the Development Approval applications in accordance with the critical path schedule attached hereto as composite **Exhibit D** (the "**Critical Path**"), which Critical Path shall serve as the Developer's time frame for performance with respect to obtaining the Development Approvals and constructing the Project. Notwithstanding any other provisions of the Agreement, the dates set forth in the Critical Path shall be extended on a day for day basis for delays occasioned by the following events: acts of God; pandemic or other health related occurrence; terrorism; once construction begins - inclement weather which is in excess of those days normally forecasted by the National Weather Service for the given month in South Florida, which materially and adversely interfere with construction; unforeseen physical conditions on the site; withholding of governmental approvals or restrictions not due to the fault, delay or negligence of the Developer or the imposition of restrictions by a governmental body that materially changes the design or scope of the Project to an extent that renders the Project so difficult to construct as to make it commercially unreasonable; appeals of governmental approvals or lawsuits by any third party (whether individual or otherwise) instituted to prevent the issuance of any approvals or permits, or otherwise stop construction of the development after commencement; or similar events not reasonably foreseeable and beyond the reasonable control

of Developer (collectively, "Force Majeure"). By the tenth (10th) Business Day of each month, Developer shall deliver or cause to be delivered to the CRA a list of the days during each proceeding month as to which Developer believes the Force Majeure provisions apply and the reasons therefore, together with supporting documentation as to the extension on the Critical Path. The CRA shall, within ten (10) Business Days after receipt of any such list and supporting documentation, provide notice to Developer as to whether CRA disputes that any of the days set forth on that list would give rise to an extension of time for Developer's performance based on Force Majeure. In the event the CRA agrees with the extension requested by Developer, or any portion of the requested extension, then the Critical Path schedule shall be so extended hereunder.

The CRA shall cooperate with the Developer in processing all necessary Development Approvals to be issued by the City, as well as all other Governmental Authorities. The parties recognize that certain Development Approvals will require the City and/or its boards, departments or agencies, acting in their police power/quasi-judicial capacity, to consider certain governmental actions. The parties further recognize that all such considerations and actions shall be undertaken in accordance with established requirements of Applicable Laws in the exercise of the City's jurisdiction under the police power. Nothing in this Agreement is intended to limit or restrict the powers and responsibilities of the City in acting on such applications by virtue of the fact that the CRA may have been required to consent to such applications as the owner of the Property. Nothing in this Agreement shall entitle the Developer and/or the CRA to compel the City to take any action in its police power/quasi-judicial capacity, except to timely process the applications. The Developer shall pay for all permit fees, impact fees and all other costs and expenses associated with the Development Approvals and as required by Applicable Laws. The CRA agrees to use its good faith efforts to assist the Developer in expediting the review and approval process with applicable Governmental Authorities. Nothing in this Agreement is intended to, nor shall be construed as, zoning by contract.

5.5 Site Plan. The CRA hereby acknowledges and agrees that the Developer's Pre-Development Plan, as shown on **Exhibit B** attached hereto and made a part hereof, is acceptable to the CRA. The foregoing shall in no way constitute or be construed as the approval or issuance of a development order, it being expressly acknowledged and agreed by the Developer that the "Site Plan" will require separate submission, review, and approval pursuant to the requirements of the City's Code and requirements of any other Governmental Authorities. All landscaping shown on the proposed Site Plan shall be compliant with the City's code requirements. The entire proposed Site Plan, to be based upon the Pre-Development Site Plan attached as **Exhibit C** hereto, shall be approved by the City and all applicable Governmental Authorities in order for the Developer to proceed with development of the Project. Site plans of the respective Project Phases shall not satisfy this requirement of approval of the Site Plan for the entire Project. Except for a Permitted Change (as defined in Section 5.6 below) no changes, alterations or modifications shall be made to the Site Plan (either prior to or after Development Approvals) without the prior written approval of the CRA, which approval shall not be unreasonably withheld, delayed or conditioned; provided, however such approval may be withheld in the CRA's sole and absolute discretion if the requested change, alteration or modification consists of a Material Change. For purposes of this Agreement, a "**Material Change**" to the Site Plan means and refers to a requested change, alteration or modification that (i) increases or decreases

the total number of residential units by greater than five percent (5%), (ii) changes the composition of Units (number of bedrooms) by greater than ten percent (10%), decreases the amount of square footage in the Commercial Component by greater than five percent (5%), (iii) eliminates any improvement constituting the Civic and Community Component, or, in the aggregate with all other changes, alterations and modifications decreases the square footage of open space, building size, landscaped area or any other common areas by five percent (5%) or more, (iv) decreases the height of any building to below 20' or increases the height of any building above 60', (v) deletes any amenities, (vi) significantly modifies traffic circulation on the site as determined by the CRA Executive Director and/or (vii) significantly alters the Architectural Scheme from that previously approved by the CRA, as determined by the CRA Executive Director. The CRA Executive Director shall have the authority to approve all changes that are not classified as Material Changes. All Material Changes are subject to requirements of the City's review process. Following approval of the Site Plan for the Project by the City pursuant to the City's Code, except for Permitted Changes, the Developer shall not initiate or request review by the City of any changes or alterations to the approved Site Plan for the Project without the prior written approval of the CRA, which approval shall be granted in CRA's sole discretion. The CRA shall expeditiously process all requestes for Material Changes. For the purposes of this Agreement, the relocation of the Hotel by the Developer from Project Phase 3 to either Project Phase 1 or Project Phase 2, shall be deemed to be a change subject to the CRA's Executive Director's approval hereunder, but shall not be deemed to be a Material Change, provided that a minimum of 35% of any Margate Boulevard frontage is programmed for commercial use.

5.6 Plans and Specifications; Construction Documents. Following Development Approvals of the Site Plan and prior to commencement of any construction for the Project (including any demolition or site work), Developer shall prepare and submit to the CRA for review and its reasonable approval, all design documents prepared or furnished, in connection with the Developer's Work, including, without limitation, civil engineering, architectural, structural, mechanical, electrical, plumbing, fire protection and any other engineering documents necessary for the permitting and construction of the Project for and through all phases of design and construction (e.g., schematic, design development, and construction) (collectively referred to as the "**Plans and Specifications**"). The Plans and Specifications shall comply with all Applicable Laws including, without limitation, the Florida Building Code and all design requirements established by the Florida Accessibility Code and the Americans with Disabilities Act. The CRA shall provide its written approval or disapproval (specifying the basis for disapproval and/or comments) to any such Plans and Specifications within ten (10) Business Days of receipt of request for same, it being understood that CRA review and approval of the Plans and Specifications as set forth herein is not the review required by the City, but only a general review for compliance with the terms and conditions of this Agreement and, therefore, such review need not be limited to, governmental requirements; provided, however, if the CRA fails to either approve or disapprove (either with or without conditions) the submitted Plans and Specifications within fifteen (15) Business Days following written notice from the Developer to the CRA advising the CRA that it has failed or refused to provide comments to the Plans and Specifications submittal by Developer to the CRA, the Plans and Specifications in the form submitted shall be deemed approved by CRA. Without limiting the foregoing, the approval of the Plans and Specifications pursuant to this Agreement shall in no way constitute or be construed as the approval or issuance of a development order, it being expressly acknowledged and agreed by

Developer that the Plans and Specifications will require separate submission, review, and approval pursuant to the requirements of the City's Code and/or its applicable rules and regulations. Once any Plans and Specifications receive the written approval of the CRA or are deemed approved pursuant to this Agreement, such Plans and Specifications shall be deemed the "**Construction Documents**." The Construction Documents for each Project Phase or any portion thereof shall be signed and sealed by the Developer's design professional and shall consist of: (a) working drawings, (b) technical specifications, (c) schedule for accomplishing improvements, and (d) such other information as may be required by the City in accordance with its Code and as otherwise necessary to confirm compliance with this Agreement. No Material Changes or alterations (other than Permitted Changes) shall be made to any Construction Documents, without the prior written approval of the CRA, which approval shall be in the CRA's sole discretion. Developer is hereby authorized to make Permitted Changes without CRA approval. A "**Permitted Change**" shall mean (i) a change which is required to be made to comply with Applicable Laws; (ii) a change which involves only substituting materials of comparable or better quality; (iii) a change required by the failure of the Construction Documents to satisfy field conditions where the change will not have a material adverse effect on the quality, appearance or function of Project; (iv) changes that fall within the acceptable percentages described in Section 2.2 hereof; and (v) a change which is made to correct inconsistencies in various Construction Documents; provided, however, in each such instance, the Developer shall obtain any necessary approvals to a Permitted Change from the City or any other Governmental Authority to the extent required. The Developer shall provide written notice to the CRA prior to making any Permitted Changes. The approval or deemed approval by the CRA's Executive Director of any Plans and Specifications, Pre-Development Plan, Site Plan, designs or other documents submitted to the CRA pursuant to this Agreement shall not constitute a representation or warranty that such comply with all Applicable Laws and/or procedures of all applicable Governmental Authorities, it being expressly understood that the responsibility therefore shall at all times remain with the Developer.

Article 6. Development Obligations.

6.1 **General Obligations.** Subject to the terms and provisions of this Agreement, Developer shall be responsible for the design, engineering, permitting and construction of the Project and each Project Phase (except the Civic and Community Component in accordance with the terms of this Agreement and the approved Construction Documents and within the time periods required by the Critical Path. In connection therewith, Developer shall provide or cause to be provided and furnish or cause to be furnished, all materials, supplies, apparatus, appliances, equipment, fixtures, tools, implements and all other facilities provided for in the Construction Documents, and shall provide all labor, supervision, transportation, utilities and all other services, as and when required for or in connection with the construction, furnishing or equipping of, or for inclusion or incorporation in the Project and each Project Phase (excepting the Civic and Community Component) (collectively, the "**Work**"). Developer shall cause the design, engineering, permitting and construction of the Project and each Project Phase (except the Civic and Community Component, Parking Garage and right-of-way improvements) to be prosecuted with diligence and continuity and will achieve Substantial Completion (as hereinafter defined) of the Work, free and clear of liens or claims for liens for materials supplied and for labor or services performed in connection therewith on or before the Completion Date (as hereinafter defined). The CRA may look to the Developer and/or the applicable design

professional, general contractor and/or subcontractor with respect to any design and/or construction defect claims. All warranties in the contracts with the applicable design professional, general contractor and/or subcontractor shall expressly state that such are for the benefit of the CRA as well as the Developer, and, should the Developer default under this Agreement, in addition to any other remedies available to the CRA, such warranties shall be assigned to the CRA. For the purposes of this Agreement, "**Substantial Completion**" shall mean (i) the Project architect shall have certified in his/her reasonable discretion that "Required Percentage" (defined below) of each Project Phase has been completed substantially in accordance with the Construction Documents, (ii) the "Required Percentage" of all temporary certificates of occupancy (or their equivalent) and all other certificates, licenses, consents and approvals required for the temporary occupancy, use and operation of those Units and portions of the Commercial Component, Civic and Community Component and Parking Component, and common areas in the respective Project Phase shall have been issued by or obtained from the appropriate Governmental Authorities (provided that in order for the Project Phase to be deemed finally completed based upon the issuance of temporary certificates of occupancy [or their equivalent], following the issuance thereof, the Developer shall diligently and in good faith proceed to obtain the issuance of all permanent certificates of occupancy [or their equivalent] and all other certificates, licenses, consents, and approvals required for the permanent occupancy, use and operation of the Project Phase, all within the time frames required by Applicable Laws and the Critical Path and (iii) all construction costs and other costs and expenses incurred in connection with the Work have been paid in full or bonded, other than the costs to complete any punch list work or otherwise necessary to obtain the final certificates of occupancy. The "**Required Percentages**" for each component require completion of the following percentages of the total square footage of each component by phase (excluding the Hotel use):

	Apartment Component	Commercial Component
Project Phase 1	80%	60%
Project Phase 2	80%	60%
Project Phase 3	80%	75%

For the purposes of this Agreement, "**Final Completion**" shall mean (a) each Project Phase and the entire Project and all Work shall have been fully completed including all punch list items for any part of the Work undertaken on behalf of the CRA for any improvements constituting Civic and Community Components, substantially in accordance with Construction Documents, (b) all final certificates of occupancy (or their equivalent) all other certificates, licenses, consents and approvals required for the permanent occupancy, use and operation of all of the Units and common areas in the Project shall have been issued or obtained from the appropriate Governmental Authorities, (c) all construction costs and other costs and expenses incurred in connection with the Work including retainage and punch list items have been paid in full or bonded, (d) all contractor certificates and final waivers of lien for the Work have been obtained, and (e) all record drawings (other than as-builts to be delivered to the CRA), electronic files,

warranties and manuals have been delivered to the CRA. Substantial Completion of each Project Phase shall occur not later than the respective "Project Phase Substantial Completion Date" set forth on the Critical Path, subject to a day for day extension for events of Force Majeure (each the respective "**Project Phase Substantial Completion Date**").

The Substantial Completion deadline for Project Phase 1 calculated in **Exhibit D** assumes the CRA substantially completes its obligations to construct the improvements in the Civic and Community Component of Project Phase 1 by the calculated Substantial Completion deadline. If the CRA does not complete its obligations within that time, the Substantial Completion deadline for Project Phase 1 will be extended by the additional amount of time needed by the CRA to complete its Civic and Community Component obligations for Phase 1. Substantial Completion of the Civic and Community Component for Phase 1 shall mean completion of the Parking Garage and sixty percent (60%) completion of the the other Phase 1 Civic and Community improvements, including the Community Center, amphitheater, Boat Launch, Canal Walk and Town Square, as measured by total construction costs. Any delay in the CRA's completion of the Civic and Community Component of Phase 1 Improvements shall not constitute a default under this Agreement. Developer's sole remedy for such delay is the extension of time for the Phase 1 Substantial Completion deadline as provided above.

6.2 Development Plan and Development Budget. To the extent not provided under Section 5.1 above, prior to commencing the Work (including any demolition and site work), Developer shall prepare updated development plans and development budgets (which development plan, when approved by the CRA shall be referred to in this Agreement as the "**Final Phase Development Plan**") for each Project Phase and submit the same to the CRA for its approval, which approval may be granted or withheld by the CRA in its sole but reasonable discretion. The Final Phase Development Plan for each Project Phase shall include the following information:

(a) Final Construction Documents for each phase, including Plans and Specifications;

(b) a description in reasonable detail of the development requirements for the respective Project Phase;

(c) a line item budget for the estimated cost of the construction of the respective Project Phase based upon eighty percent (80%) Construction Documents (as approved by the CRA, the "**Final Phase Development Budget**");

(d) a construction schedule which shall be updated throughout construction and shall encompass design and engineering, and all of the trades necessary for the construction of the Work for the respective Project Phase;

(e) a description of the Developer Financing (including commitment letters (or their reasonable equivalents) from Institutional Lenders) and Developer Equity (including sources thereof and proof of funds) for the respective Project Phase;

(f) such other information as the CRA may reasonably request;

(g) any relevant information provided by the CRA to the Developer including, but not limited to, information regarding CRA Project Expenses, subsidies from other Governmental Authorities; and

(h) Developer's Survey for the respective Project Phase, together with a sketch and legal description of all Parcels shown on the Pre-Development Plan for civic and community uses ("Civic Parcels"), signed, sealed and certified to the CRA, from which the CRA may obtain its own survey on the Civic Parcels.

As used in this Agreement, the term Development Plan shall also include the approved Development Budget.

6.3 Construction Contract. The CRA has approved the Developer as the general contractor for the Project. The CRA shall have the right to approve any change to the general contractor for the Project. All subcontractors on the Project shall be properly licensed and insured and properly skilled in the type of work being done.

6.4 Local Hiring Initiatives. In an effort to support the CRA's Redevelopment Plan, and the Agency's job creation goals, the Developer agrees to work with the CRA to promote the hiring of qualified local residents and local subcontractors during the construction phases of the Project. "**Local**" is defined as the business address or resident/business owner's home address within US Postal Zip Codes 33063 and 33068 within the incorporated limits of the City of Margate. Such good faith efforts on behalf of the Developer shall include (but are not limited to):

(a) collaborating with the CRA on identifying and notifying local contracts and vendors of bid opportunities related to the construction of the Project;

(b) sending written notification to the CRA regarding the process and timing of bid opportunities and/or job openings; and

(c) maintaining records of construction related bids received from local contractors and providing regular reports to the CRA.

6.5 Marketing and Leasing. The Developer shall be solely responsible for the marketing, leasing, and/or sale of all Units and the Commercial Component included in the Project. The CRA shall have the right to review and comment on a marketing plan of each of the Units and for the commercial space (the "**Marketing Plan**").

6.6 Financing of Project. The parties acknowledge and agree that the Developer will obtain Developer Financing for the construction of the Project or each Project Phase. Within forty-five (45) days after the CRA approval of the Final Phase Development for each Project Phase, the Developer shall obtain from an Institutional Lender a binding commitment letter, or from the entities providing Authorized Financing, a loan commitment (or its reasonable equivalent) reflecting all material terms of Authorized Financing, containing no conditions that are not capable of satisfaction by the Developer prior to Closing, for construction loans for such Project Phase in amounts consistent with the approved Project Phase Development Budget

(collectively, the "**Project Phase Construction Loans**") and the amounts below. All financing, as contemplated in this Agreement, shall require an equitable contribution by the Developer of at least ten percent (10%) of the cost of all improvements, construction, soft costs, and development of the respective Project Phase or the total Project. The term Project Phase Construction Loans shall mean and apply to the individual construction loans for each Project Phase.

(a) Prior to Closing on each Project Phase, Developer's Equity (which may include that portion of the Deposit being credited at Closing) and Project Phase Construction Loans shall be sufficient to pay: the Purchase Price for that Project Phase, Developer's Closing Costs for that Project Phase, all funds needed for Developer to complete the infrastructure for that Project Phase, and construction financing for the construction of the following minimum percentages of improvements: (i) for Project Phase 1, eighty percent (80%) of the Apartment Component and sixty percent (60%) of the Commercial Component; (ii) for Project Phase 2, eighty percent (80%) of the Apartment Component and sixty percent (60%) of the Commercial Component; and (iii) for Project Phase 3, eighty percent (80%) of the Apartment Component and seventy-five percent (75%) of the Commercial Component.

(b) At Closing (as hereinafter defined) for each parcel of the CRA Property to be conveyed to the Developer for development of the respective Project Phase, the Developer shall provide evidence of the Construction Loans and Developer's Equity to the CRA. For purposes of the foregoing, a binding loan commitment issued by an Institutional Lender, or a loan commitment (or its reasonable equivalent) from the entity(ies) providing Authorized Financing, containing no conditions that are not capable of satisfaction by the Developer prior to Closing, and loan documents to be executed and delivered by Developer at Closing for the Project Phase Construction Loans, and evidence of cleared unencumbered funds evidencing Developer's Equity, shall constitute reasonable evidence of Developer Financing and Developer Equity. Absent such evidence, the CRA shall be under no obligation to close on the sale of the respective portion of the CRA Property, as such evidence shall be deemed conditions precedent to the CRA's performance under this Agreement. Further, the Developer's failure to obtain the required Construction Loans and to provide the necessary Developer Equity at Closing shall be a default of Developer.

6.7 Conveyance of CRA Property / Repurchase. Provided that an Event of Default on the part of Developer has not occurred or circumstances exists that with the passage of time and the giving of notice would constitute an Event of Default on the part of Developer, upon (a) approval of the respective Project Phase Development Plan, (b) issuance of all required permits for vertical construction, and (c) the closing of the Developer Financing, the CRA shall convey the portion of the CRA Property shown on the Pre-Development Plan and corresponding to the respective Project Phase to the Developer in accordance with Article 7 of this Agreement. Such conveyance shall be by Special Warranty Deed and subject only to Permitted Exceptions and otherwise on an "AS-IS" "WHERE-IS" basis with no representations or warranties of any kind whatsoever except for title as set for in the deed. In addition to the foregoing, the Developer agrees to accept title to such portion of the CRA Property subject to certain continuing restrictions and obligations (the "**Deed Restrictions**") which include, without limitation, restrictions on the rental of Units to meet affordable housing requirements, the Right of Repurchase (as defined below) and design review rights of the CRA. The foregoing restrictions

and the Right of Repurchase may instead, or in addition, be set forth, in whole or part, in the Declaration (as hereinafter defined). The Deed Restrictions shall be in a form agreed to by the parties within one hundred ten (110) days after the Effective Date. If for any reason the form of Deed Restrictions is not agreed to by the parties within one hundred ten (110) days after the Effective Date, either party may terminate this Agreement, unless the parties otherwise agree, in writing, to extend such period of time. For the purposes of this Agreement, the CRA's Right of Repurchase shall provide as follows:

(i) The CRA reserves the right, at its sole option and election, to repurchase the CRA Property, or portion thereof, from Developer (the "**Right of Repurchase**") in the event Developer shall default under the terms and conditions of this Agreement and/or the Declaration relating to a particular Project Phase, subject to, in all events, written notice from the CRA as required by the notice provisions of this Agreement to (a) the Developer and (b) the owner and holder of any mortgage then encumbering the CRA Property being repurchased, which notice shall (i) set forth with specificity the alleged default, and (ii) provide Developer and said mortgagee sixty (60) days within which to cure the default, or if the default is of such a nature that it cannot be cured within sixty (60) days, then the Developer and/or said mortgagee shall have commenced to cure such default within sixty (60) days. The exercise of the Right of Repurchase shall be conditioned upon either or both the Developer and said mortgagee failing to cure, or failing to commence to cure, a default (as applicable) within said sixty (60) day period or, having commenced such a cure, to fail to continuously thereafter prosecute the cure to completion. The Right of Repurchase shall not apply to (i) any portions of the CRA Property for which construction is completed and a certificate of occupancy has been issued, or (ii) to any portion of the CRA property not situated in Project Phase for which Developer is in default.

(ii) The price that the CRA shall pay to repurchase the CRA Property, or portion thereof, shall be the same price paid by the Developer for the land being repurchased, plus the actual costs of completed improvements made to the property, if any, at the time that the repurchase occurs, as verified by actual documented proof of payment for said improvements. The CRA's Right to Repurchase shall expire when fifty percent (50%) of the building foundation slabs have been constructed within the Project Phase, the public infrastructure improvements (drainage, water and sewer facilities) for the applicable Project Phase being considered for repurchase have been completed, and streets (excluding the second lift of asphalt) are constructed, all as certified by the project engineer of record (the "**Repurchase Expiration**").

6.8 Conveyance of Parcels Not Included in Phase Previously Purchased. The CRA shall not be obligated to convey to Developer or any other person, firm, or entity designated by Developer any Parcels located within Project Phases not previously conveyed to Developer in accordance with the terms of this Agreement. That is, in the event that Developer requests a conveyance by the CRA of an individual Parcel in a Project Phase not yet taken down (previously conveyed), that request shall be submitted in writing to the CRA and set forth the terms and conditions of the proposed sale or lease, and the proposed purchase price to be paid to the CRA upon Closing which shall be one hundred fifty percent (150%) of square footage price being paid for the Project Phase. Upon receipt of any such request from the Developer, the CRA will review the request and determine whether it agrees to convey any such Parcel out of sequence; however, in no event will the CRA be obligated to consent to any such conveyance.

The Purchase Price for the remainder of the Project Phase shall be reduced by the price paid for the Parcels purchased out of sequence.

6.9 Public Facilities. The Civic and Community Component of the Project, as shown on the approved Site Plan, including the Parking Garage, is intended for the use of the general public (other than interior roadways, drive aisles and surface parking areas) and shall be designed, constructed and paid for by the CRA (as provided in this Agreement) and shall be for the benefit of the general public of the City of Margate. The costs of the pedestrian and beautification improvements to Margate Blvd., NW 58th Avenue, Park Drive, and US 441/SR 7 may be paid in-part by the CRA and in-part by the Broward Metropolitan Planning Organization and/or the Florida Department of Transportation, if funding is available. The CRA may participate in funding greenway improvements to US 441 (SR 7). Developer shall cooperate with the CRA to ensure that the Civic and Community Center Component shall at all times be open and available to the public, as well as the tenants of Developer.

6.10 Hotel Carve-Out. Developer will use commercially reasonable efforts to develop a Hotel within the Project. At Developer's option, Developer may carve-out and exclude the Hotel site from the Closing on Project Phase 3 if Developer has satisfied all other conditions for the Closing on Project Phase 3 not related to Hotel. Developer shall provide written notice of such carve-out to the CRA at least thirty days before the Closing on Project Phase 3. In the event of such carve-out, (i) the portion of the CRA Property intended for development as a Hotel shall be excluded from the property conveyed to Developer at Closing, (ii) appropriate cross-access, utility and shared parking agreements shall be executed by the CRA and Developer for the affected area, and (iii) the purchase price for the Closing on Project Phase 3 shall be reduced pro rata by the square footage being excluded from Project Phase 3.

6.11 Partial Reservation of Commercial Space. For a period of one year from the Closing of Project Phase 1, Developer agrees to and shall reserve 20,000 square feet of commercial space within the Project for leasing or sale to businesses that are either currently located in the City or are principally owned by residents of the City. Such reserved commercial space shall be offered for lease or sale on the same terms the non-reserved commercial space is offered to the general public. The amount of reserved commercial square footage in each Project Phase shall be determined and designated by Developer in its sole and absolute discretion.

6.12 Park Drive Properties. For a period of thirty-six months from the Effective Date of this Agreement, the CRA may elect to add the "**Park Drive Properties**," as legally described on **Exhibit A-4**, to the properties comprising Phase 3 of the Project. Written notice of such election shall be delivered by the CRA to Developer within said thirty-six month period. In the event the CRA provides timely notice that the "Park Drive Properties" will be included as part of Project Phase 3: (i) the Park Drive Properties shall be added to the properties in Project Phase 3 being sold and conveyed to Developer, (ii) the price Developer is paying to purchase Project Phase 3 shall be increased by a price to be negotiated and agreed upon by the parties, (iii) the Park Drive Properties shall be part of Project Phase 3 for all purposes under this Agreement, and (iv) Developer is to build all improvements shown on the Pre-Development Plan for the Park Drive Properties. If the CRA and Developer cannot agree on a purchase price for the Park Drive Properties, the Park Drive Properties will not be included as part of Project Phase 3.

(a) If the CRA does not elect to add the Park Drive Properties to Project Phase 3, Developer will modify its Site Plan to remove the Park Drive Properties and adjust the proposed buildings and streets to account for their exclusion from the Site Plan, which modification will be subject to the approval of the CRA Executive Director.

Article 7. Closing.

7.1 Subject to Developer's satisfaction of the conditions precedent set forth in this Agreement, and pursuant to the Purchase Price Schedule (**Exhibit E**) and Critical Path (**Exhibit D**), the CRA will convey the Parcel, less the Civic Parcels as set forth in Section 6.2(h) above, on which such Project Phase Work is to commence. Each such closing (the "**Closing**") shall be held on the date which is no less than ten (10) days, nor more than thirty (30) days after the satisfaction of the foregoing conditions precedent (each such date a "**Closing Date**") at 10:00 a.m. local time in the offices of Escrow Agent or such other location as may be mutually agreed to by the parties; provided, however, that the parties agree that the Closing may be a "mail away" closing in which neither party is required to appear in person and all necessary Closing documents and funds are delivered to Escrow Agent in escrow on or before the Closing Date. At Closing, the following shall occur:

(a) The CRA shall execute and deliver to Escrow Agent the following documents with respect to the respective Parcel being conveyed:

(i) The Deed (containing the Deed Restrictions, if not otherwise set forth in the Declaration);

(ii) A customary "GAP" Affidavit;

(iii) A non-foreign affidavit in a form reasonably acceptable to the Title Company; and

(iv) Appropriate evidence of the CRA's formation, existence and authority to perform its obligations under this Agreement, as reasonably required by the Title Company.

(b) Developer shall deliver the Purchase Price (subject to prorations and adjustments provided for herein), an amount equal to fifty percent (50%) of the contingent Fee as required by Section 5.2 above, and any other necessary Closing funds by wire transfer of immediately available funds to an account designated by Escrow Agent.

(c) The CRA shall execute and deliver to Escrow Agent a closing statement (which shall be prepared by Escrow Agent) describing all funds due to the CRA in connection with the sale of the respective Parcel of CRA Property to Developer, all Closing costs to be paid by the CRA, all prorations to be made in accordance with Section 7.2 below, and any other matters reasonably requested by the CRA. Escrow Agent shall countersign the closing statement to indicate that it is acting as the closing agent for the transaction. Developer shall execute and deliver to Escrow Agent a closing statement (which shall be prepared by Escrow Agent) describing all funds due from Developer in connection with the sale of the respective Parcel of CRA Property to Developer, all Closing costs to be paid by Developer, all prorations to be made

in accordance with Section 7.2 below, and any other matters reasonably requested by Developer. Escrow Agent shall countersign the closing statement to indicate that it is acting as the closing agent for the transaction.

(d) The CRA and Developer shall execute and deliver to Escrow Agent such other documents as are reasonably necessary to consummate the Closing.

(e) Upon Escrow Agent's receipt of all necessary Closing documents and funds, and Escrow Agent's confirmation that it is ready to close in accordance with the terms of this Agreement and with the terms of any additional Closing instructions provided by the CRA and/or Developer, the CRA and Developer shall instruct Escrow Agent to close the transaction. Escrow Agent shall then close the transaction, shall distribute documents to the appropriate parties and shall deliver the net Closing proceeds (the Purchase Price minus any Closing costs the CRA agreed to pay) to the CRA by wire transfer of immediately available funds to an account designated by the CRA.

(f) Substantial Completion of Project Phase 1 is not a condition precedent for Developer's Closing on the purchase of Project Phase 2. However, Substantial Completion of Project Phase 1 is a condition precedent for the Purchase of Project Phase 3. Substantial Completion of Project Phase 2 is not a condition precedent for Developer's Closing on the purchase of Project Phase 3.

7.2 Prorations. To the extent applicable, Real estate taxes, personal property taxes, assessments and all other expense items and income items (if any) relating the CRA Property shall be prorated as of each Closing Date. All items subject to proration pertaining to the period prior to the respective Closing Date shall be credited or charged to the CRA. All items subject to proration pertaining to the period on and after the Closing Date shall be credited or charged to Developer. The CRA, Developer and Escrow Agent shall cooperate to produce a complete and accurate schedule of prorations to be made as of each Closing Date. All prorations which can be liquidated accurately or reasonably estimated as of the respective Closing Date shall be made as of such Closing Date. All other prorations shall be made in good faith, subject to a right to reprorate when actual amounts can be determined. In the event that any tax bill for the current fiscal tax year (as of the Closing Date) is not available before the applicable Closing Date, then any such taxes shall be prorated based on the prior year's tax statement. The CRA and Developer agree to reprorate any expense items and income items that were estimated at Closing once the actual amounts of such expense items and income items become known. The provisions of this Section 7.2 shall survive Closing.

7.3 Purchase Price. The Purchase Price for each Parcel of CRA Property shall be as set forth in **Exhibit E** and made a part hereof (the "**Purchase Price Schedule**").

7.4 Closing Costs. At each Closing, the CRA and Developer shall pay the following costs:

(a) CRA's Costs. The CRA shall pay:

(i) the documentary stamp taxes, intangible taxes or other transfer charges payable in connection with the transfer of the respective Parcel of CRA Property;

(ii) the cost to record any documents necessary to cure any Title Defects the CRA has agreed to cure; and

(iii) one-half (1/2) of the escrow fees charged by Escrow Agent.

(b) Developer's Costs. Developer shall pay:

(i) title searches;

(ii) the cost to record the Deed and any other Closing documents;

(iii) the cost of the Developer's Survey;

(iv) title insurance premiums on the Owner's Policy, including the cost for any additional/extended coverage under the Owner's Policy and any endorsements to the Owner's Policy (e.g. survey deletion);

(v) the costs related to Developer's due diligence;

(vi) the costs related to the Developer Financing obtained by Developer, including without limitation, all closing costs and title insurance premiums and endorsements in connection therewith;

(vii) one-half (1/2) of the escrow fees charged by Escrow Agent; and

(viii) all other costs related to the Closing unless the CRA agrees in writing to pay such costs.

(c) Legal Costs. Each party shall be responsible for payment of its own legal fees, except as provided in Section 19.13.

7.5 Declaration of Continuing Obligations, Reservation of Rights and Restrictive Covenants and Repurchase Rights of the CRA. On or before the Closing of the Project Phase 1 as set forth herein, the CRA and the Developer shall execute a Declaration of Continuing Obligations, Reservation of Rights, and Restrictive Covenants (the "**Declaration**"), to be recorded at Closing, addressing the maintenance, repair and replacement of the common areas of the Project, so that it remains consistent with the Site Plan, the prohibition of certain uses, the architectural control described in Section 7.6 below, the Right of Repurchase of the CRA, the rights and obligations of each party to the use, maintenance, and costs of all public and private streets, rights-of-way, surface parking, parking garages, recreational facilities and common areas whether owned by the CRA or the Developer. The Declaration shall be prepared by the CRA's legal counsel and be in a form and substance acceptable to the CRA and Developer in all respects. The Declaration shall be in a form agreed to by the parties within one hundred ten (110) days from the Effective Date. Upon approval and execution by the CRA and Developer, the CRA will be responsible for recording the Declaration in the Public Records of Broward County, Florida. If for any reason the Declaration is not agreed to by the parties within one hundred ten (110) days from the Effective Date, either party may terminate this Agreement, unless the parties otherwise agree, in writing, to extend such period of time. Said Declaration shall be executed as a covenant running with the land and shall continue to be enforced by the parties, their successors and assigns.

7.6 Architectural Control. The CRA shall retain architectural control over all elements of the commons areas, public spaces, and plans and specifications for any structure to be developed and constructed in the Project.

7.7 Parking Garage. The construction and use of the Parking Garage shall not interfere with any of the residents or tenants of the Developer and shall provide for ingress and egress onto dedicated public streets as part of the Project. All costs of the design, plans, specifications, construction and maintenance shall be borne by the CRA, except the Developer shall contribute the cost it would otherwise spend to build surface parking in the location of the Parking Garage. Such payment shall be due and payable to the CRA upon completion of the Parking Garage.

(a) Shared Use of Parking Garage. The CRA's construction of the Parking Garage will cause Developer to lose the surface area parking in the area where the Parking Garage is constructed. The CRA will provide to Developer and its successors in interest, (including, without limitation, renters of apartment units and owners of residential condominium units, if applicable) the shared use of and free parking for residents and invitees in an agreed-upon number of spaces in the Parking Garage. The specific terms, including specific terms regarding cost of maintenance shall be set forth in the Declaration, it being agreed that the Developer's allocable share of maintenance shall be limited to the cost of maintaining surface parking instead of structured parking.

7.8 Cost Credit to Developer. The City and CRA have obtained Environmental Resource Permit No. 06-00210-S-06 and Surface Water Management License No. SWM2016-009-0, both dated March 18, 2016, from Broward County. The permit and license require that a portion of the CRA Property be used for additional drainage and surface water management, beyond what was contemplated in Developer's RFP Response and Pre-Development Plan. The CRA agrees to contribute to the costs of the additional drainage and surface water management costs as follows:

(a) Developer, and its engineers and consultants, will work with the CRA's engineers and consultants to revise Developer's plans to accommodate the additional storage requirements while minimizing interference to Developer's Pre-Development Plan. Such additional storage may be provided by expansion of existing water bodies, exfiltration, or creation of retention and detention areas, or any combination of the foregoing.

(b) For additional drainage and storage provided through exfiltration, the CRA agrees to reimburse the Developer for the additional cost for the design and installation of the additional improvements.

(c) For additional drainage and storage provided through expansion of existing water bodies or additional detention and retention areas, the CRA agrees to reimburse the Developer for the additional cost for the design and installation of the additional improvements, together with a reimbursement for the value of additional land required to be utilized for drainage and storage under the permit and license. The reimbursement allocated to the land shall be calculated based upon square footage price of land for the applicable Project Phase where the land is located.

(d) Notwithstanding anything contained in this Agreement to the contrary, the total CRA contribution under this sub-section 7.8 and its sub-parts (a) through (c) is capped at \$75,000.00 in the aggregate and will be paid as a reimbursement against invoices incurred by Developer and land utilized on a Phase by Phase basis.

7.8 Condition Precedent to Closing on Project Phases 2 and 3. Developer's obligation to Close on the purchase of Project Phase 2 and Project Phase 3 is expressly conditioned upon the City obtaining from Broward County a final land use plan amendment adding not less than 400 additional residential units to the City's Land Use Plan, with such additional units being made available to be used by Developer in Project Phases 2 and 3.

Article 8. Performance of the Work.

8.1 Developer shall commence the Work for each Project Phase pursuant to the Construction Documents within thirty (30) days following Closing. Following commencement of any Work, Developer shall diligently pursue in good faith the completion of the Work so that Substantial Completion of the Project Phase is achieved no later than the Project Phase Substantial Completion Date, subject to extension as provided in this Agreement.

8.2 Prior to commencement of the Work for each Project Phase or any portion thereof (including any demolition or site work), Developer shall obtain and deliver to the CRA, and at all times during the performance of such Work require and obtain performance bonds and labor and material payment bonds reasonably acceptable to the CRA, covering any and all of the public infrastructure improvements to be constructed/installed in the Project (collectively referred to herein as the "**Bonds**"), which Bonds shall be dual obligee bonds in favor of Developer and the CRA. The Bonds shall in all respects conform to the requirements of Applicable Laws and shall (a) name the Developer and CRA as obligees; and (b) be in a form and substance reasonably satisfactory to the CRA and its legal counsel. The surety(ies) providing the Bonds must be licensed, duly authorized, and admitted to do business in the State of Florida and must be listed in the Federal Register (Dept. of Treasury, Circular 570). The cost of the premiums for the Bonds shall be included in the Project Phase Development Budget. Within ten (10) days of issuance, Developer shall record the Bonds in the Public Records of Broward County, which may be recorded by attaching the same to the notice of commencement. In lieu of the "Bonds" provisions in this section, Developer's obligations regarding the public infrastructure improvements may be secured by letters of credit in a form and substance reasonably satisfactory to the CRA and its legal counsel.

8.3 Except as may be otherwise expressly set forth in this Agreement and specifically excluding the CRA Project Expenses and all costs and expenses incurred by the CRA to administer this Agreement or otherwise perform its obligations hereunder, Developer shall be responsible for all costs and expenses for the design, engineering, permitting, construction, administration, and inspection of the Work for each Project Phase including, but not limited to, the following: (a) all labor and materials for the construction of the Work; (b) all compensation for the design professionals and engineers (and any other consultants) in connection with the preparation of the Pre-Development Plan and Site Plan, Construction Documents, and other documents; (c) all permit, license, construction and impact fees and other fees of Governmental

Authorities which are legally required at any time during the Developer's performance of the Work; (d) all costs associated with the installation, connection, removal, replacement, relocation and protection of all utilities and all related infrastructure including but not limited to water, sewer (except for a lift station), storm water drainage, telephone, cable, or electric, and (e) all sales, consumer, use and other similar taxes for the Work, which are legally required at any time during the Developer's performance of the Work.

(a) If a lift station is required to serve Developer's improvements on Project Phase 1, Developer shall be responsible for the costs relating to the design, materials, installation, and connection of the lift station, but the CRA shall be required to pay its prorata share of such costs attributable to the Community Center and Amphitheater. The allocation of costs shall be based on flow rates attributable to the improvements in Project Phase 1.

(b) Project Phase 2 and Project Phase 3 are already served by an existing lift station(s). If it becomes necessary for the existing lift station(s) to be re-designed, removed, altered, replaced, or relocated, Developer shall only be obligated to pay its pro rata share of such costs, as reasonably determined by the CRA.

8.4 The Developer agrees that the Work performed under this Agreement shall be (a) performed in accordance with Applicable Laws, including the Florida Building Code; (b) executed in a good and workmanlike manner, free from defects, and that all materials shall be new or made of recycled materials generally accepted and used in the construction industry; (c) undertaken in such a manner as to minimize interference and not adversely affect the business; residential operations of the parties and their respective tenants, invitees, customers and/or guests; (d) done in a manner consistent with industry standards and providing for safety measures for persons and property as is standard within the construction industry, including, without limitation, appropriate fencing, dust control and security to prevent theft or vandalism of the property adjoining any construction and/or any materials, vehicles or improvements located thereon; and (e) done so as to keep the property on which the construction is being undertaken in a neat and clean condition, with all debris removed off-site on a regular basis. To the extent the Developer and the CRA are simultaneously performing construction work on adjacent properties within the same Project Phase, then both parties agree to cooperate with each other during the construction process to address access issues, traffic control, logistics, staging and otherwise agree to adhere to the requirements provided in items (c) through (e) above. In the event the Developer would like to use a portion of the CRA Property for staging, access, or any other use related to construction on a neighboring Parcel, any such request shall be made to the CRA in writing and shall be subject to CRA Board approval and execution of the CRA's Temporary Use Agreement, if approved by the CRA Board.

8.5 The Developer shall, and shall cause its general contractor, subcontractors, and consultants to reasonably cooperate with the CRA in connection with the design, engineering and construction of the Work.

8.6 Within one hundred twenty (120) days after each Project Phase Final Completion Date, Developer shall provide the CRA with a complete set of "as built" plans and specifications, including one set of printed "record" drawings and one set on CAD, together with one flash drive

containing electronic data in a format of the "as-constructed" or "record" plans for the completed Project Phase.

8.7 In addition to any warranties provided by Applicable Laws, Developer shall cause the general contractor to warrant the Work for a period of one (1) year from the date of each Project Phase Final Completion. Subject to the foregoing warranty, all maintenance and repair obligations with respect to the Work shall be the responsibility of the Developer, which shall maintain and repair the Project and related sidewalks and landscaping at the Developer's cost and expense.

Article 9. Books and Records.

9.1 The Developer shall maintain complete and accurate books, records and accounts of all costs and expenses incurred in connection with the development of the Project. Upon the request of the CRA, all such books and records of the Developer which relate to the Project shall be available for inspection and audit by the CRA or any of its authorized representatives at all reasonable times during normal business hours. The Developer shall be entitled to retain such copies of the books and records as the Developer deems appropriate.

9.2 Developer's books and records shall be maintained or caused to be maintained in accordance with Generally Accepted Accounting Principles in a consistent manner, together with the pertinent documentation and to provide reasonable audit trails for a period of seven (7) years following Final Completion of the last Project Phase. The foregoing obligation shall expressly survive the expiration or earlier termination of this Agreement.

Article 10. Default; Termination.

10.1 Developer Default. An "Event of Default" or "default" entitling CRA to its remedies below shall occur by the Developer on the happening of any of the following events:

(a) Failure to Observe Agreement. The Developer shall fail to observe, satisfy or perform any material term, covenant or agreement contained in this Agreement and such failure shall continue without remedy for forty-five (45) days after written notice thereof from the CRA to the Developer; provided, however, that if such failure is capable of cure but cannot reasonably be cured within forty-five (45) days, such failure shall not constitute an Event of Default so long as the Developer provides CRA with written notice within fifteen (15) days of receipt of the CRA's default notice advising the CRA that the default cannot be reasonably cured within forty-five (45) days and specifying the reasons therefore and, within the thirty (30) day period, commences and thereafter is in good faith proceeding diligently and continuously to remedy such failure, but in no event shall any additional time to cure granted hereunder exceed one hundred twenty (120) days in the aggregate after Developer's receipt of the original written default notice; or

(b) Inaccuracy of Representation and Warranties. Any representation or warranty made herein by the Developer shall prove to have been incorrect in any material respect as of the date made; or

(c) Failure to Commence Construction. Failure to commence construction of any Phase as required by the Critical Path schedule, as revised from time-to-time pursuant to this Agreement; or

(d) Work Stoppage. The occurrence of any unscheduled work stoppage, or any work stoppage inconsistent with industry standards, of any building within a Project Phase, or portion thereof, for more than thirty (30) consecutive days, other than as a result of Force Majeure; or

(e) Failure to Complete by Completion Dates. The failure of the Developer to substantially complete any Project Phase by the applicable Project Phase Substantial Completion Date; or

(f) Abandonment of Development Approvals. The Developer abandons the diligent prosecution of any of the Development Approvals for the Project, or withdraws applications for the Development Approvals, each without the consent of the CRA, without amending or re-submitting requests for the Development Approvals within one hundred twenty (120) days; or

(g) Material Adverse Change. The occurrence of a material adverse change in the financial condition of the Developer or its members that materially and adversely impairs the Developer's ability to perform or to cause to be performed its obligations under this Agreement; or

(h) Bankruptcy. The Developer or its members shall generally fail to pay debts as such debts become due or shall admit in writing its or their inability to pay its or their debts as such debts become due or shall make a general assignment for the benefit of creditors; the Developer or its members shall commence any case, proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or them or its or their debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian, or other similar official for it or them or for all or any substantial part of its or their property; or any case, proceeding or other action against the Developer or its members shall be commenced seeking to have an order for relief entered against the Developer or its members, as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of the Developer or its members or their debts under any law relating to insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official for the Developer or its members or for all or any substantial part of their respective properties, and (i) the Developer or its members shall by any act or omission, indicate its consent or approval, of, or acquiescence in such case, proceeding or action, (ii) such case, proceeding or action results, in the entry of an order for relief that is not fully stayed within sixty (60) days after the entry thereof, or (iii) such, case, proceeding or action remains undismissed for a period of ninety (90) days or more or is dismissed or suspended only pursuant to Section 305 of the United States Bankruptcy Code or any corresponding provision of any future United States bankruptcy law; or

(i) Attachment/Garnishment. The issuance of any attachment or garnishment against the Developer and the failure to discharge the same (by bond or otherwise) within sixty (60) days from the issuance thereof, and the impact of which shall materially and adversely affect the Developer's ability to perform its obligations hereunder; or

(j) Judgments. One or more judgments, orders or decrees shall be entered against the Developer or its members which materially interferes with Developer's Construction Financing or ability to perform under this Agreement, and such judgments, orders, or decrees are not fully covered by effective insurance (less deductibles) or shall not have been vacated, discharged, stayed or bonded pending an appeal within thirty (30) days from the entry of such judgment, order or decree; or

(k) Unpermitted Transfer. If the Developer effectuates a Transfer not permitted by this Agreement.

(l) Failure to Close. The Developer shall fail to Close on the purchase of any Project Phase by the Closing Date set forth on the Critical Path (**Exhibit D**), as revised from time-to-time in accordance with this Agreement, as such Closing Date may be extended by any other provision of this Agreement, and such failure to close shall continue without a closing within thirty (30) days after written notice thereof from the CRA to the Developer. Nothing in this sub-section shall be construed as limiting any other provision of this Agreement providing an extension of any Closing Date.

The parties acknowledge and agree that with respect to the Events of Default set forth in subsections (b) through (l) above, Developer is not entitled to any cure period except as may be expressly set forth therein.

10.2 CRA's Remedies. Upon the occurrence of an Event of Default by the Developer, the CRA shall be entitled to equitable remedies (excluding specific performance) and the following additional remedies set forth below:

10.2.1 The CRA may elect to terminate this Agreement upon written notice to Developer. In the event of any such termination of this Agreement, (a) in the case of those portions of the CRA Property not yet conveyed to the Developer, the CRA shall not be obligated to convey any other CRA Property to the Developer; and (b) Developer shall assign all rights, title and interest in the Plans and Specifications, the Construction Contract, the Construction Documents and the Design Contracts to the CRA and otherwise comply with the provisions of Section 10.6 hereof.

10.2.2 The CRA shall have, in addition to any other rights and remedies hereunder, the right to (i) exercise its Right of Repurchase, as provided in the Deed Restriction and/or Declaration; and (ii) accelerate the payment of the Fee in accordance with Section 5.2.

10.2.3 The CRA may terminate this Agreement upon written notice to the Developer and, in connection therewith, the CRA shall be entitled to make demand upon the Escrow Agent to release that portion of the Deposit being held by the Escrow Agent to the CRA, whereupon the CRA may retain the Deposit as partial payment of the agreed-upon liquidated damages ("Liquidated Damages") for Developer's default hereunder. The Liquidated Damages

shall not be deemed to be a penalty, but shall be deemed liquidated damages for the damages that would be suffered by the CRA as a result of the Project not being developed, or a delay in the development of the Project or any Project Phase.

The amount of Liquidated Damages is fixed and agreed upon by and between the Developer and CRA because of the difficulty of fixing and ascertaining the actual damages the CRA would in such event sustain depending on when a Developer default occurs. Developer and CRA agree the amount of damages that the CRA would sustain and the amount of liquidated damages to be paid by Developer to the CRA are: (i) if an Event of Default occurs before the Closing on Parcel 1, the amount of liquidated damages is \$250,000.00, together with any unpaid portion of the Fee described in Section 5.2; (ii) if an Event of Default occurs after the Closing on Project Phase 1, but before the Closing on Project Phase 2, the amount of liquidated damages is \$200,000.00, together with any unpaid portion of the Fee described in Section 5.2; and (iii) if an Event of Default occurs after the Closing on Project Phase 2, but before the Closing on Project Phase 3, the amount of liquidated damages is \$150,000.00, together with any unpaid portion of the Fee described in Section 5.2. The CRA's ability to recover Liquidated Damages shall automatically terminate upon issuance of the first Certificate of Occupancy in Project Phase 3. The foregoing amounts of liquidated damages shall not be affected by the amount of any Deposit being held by Escrow Agent, other than the amount of liquidated damages payable shall be reduced by the amount of any portion of the Deposit paid by the Escrow Agent to the CRA following an Event of Default by Developer. These liquidated damages amounts have been negotiated and agreed to by the CRA and Developer and are intended to take the place of any remedy of the CRA seeking recovery of its actual damages following an Event of Default by Developer.

10.3 CRA Default. An "Event of Default" or "default" entitling the Developer to its remedies below shall occur by the CRA upon the happening of any of the following events:

(a) Failure to Observe Agreement. The CRA shall fail to observe, satisfy or perform any material term, covenant or agreement contained in this Agreement and such failure shall continue unremedied for forty-five days after written notice thereof from the Developer to the CRA; provided, however, that if such failure is capable of cure but cannot reasonably be cured within forty-five (45) days, such failure shall not constitute an Event of Default, so long as the CRA provides the Developer with written notice within fifteen (15) days of receipt of the Developer's default notice advising the Developer that the default cannot be reasonably cured within forty-five (45) days and specifying the reasons therefore and, within the forty-five (45) day period, commences and thereafter is in good faith proceeding diligently and continuously to remedy such failure, but in no event shall any additional time to cure granted hereunder exceed one hundred twenty (120) days in the aggregate after CRA's receipt of the original written default notice.

(b) Inaccuracy of Representation and Warranties. Any representation or warranty made herein by the CRA shall prove to have been incorrect in any material respect as of the date made.

10.4 Developer's Remedies. Upon the occurrence of an Event of Default by the CRA, the Developer shall be entitled to: (i) all rights and remedies available in equity on account of such Event of Default, including, without limitation, specific performance; or (ii) recovery of

solely Developer's actual and direct damages incurred (but not consequential, indirect, special, incidental, or speculative damages, including, without limitation, lost profits and lost opportunities). In addition to the foregoing remedies, the following additional remedies set forth below:

(a) The Developer may elect to terminate its obligations under this Agreement relating to any Parcels not yet purchased from CRA (the "**Partial Termination**"). Such Partial Termination shall be effected by delivery of written notice to the CRA. In the event of any such Partial Termination (a) in the case of those portions of the CRA Property not yet conveyed to the Developer, which are not the subject of a specific performance lawsuit, the Developer shall have no further obligations to purchase and develop those portions of the CRA Property; and (b) as to development of any Parcels already purchased by Developer, Developer and the CRA shall respectively continue to have all rights and obligations to develop those Parcels in accordance with the provisions of this Agreement to the same extent as if the remaining unsold Parcels were never part of this Agreement.

10.5 Attorney-in-Fact. For the purpose of carrying out the provisions of this Agreement but only on the occurrence of an Event of Default by the Developer and to the extent necessary to enable the CRA to exercise its rights and remedies on the occurrence of such Event of Default, the Developer hereby constitutes the CRA and each of its officials with full power of substitution, as its true and lawful attorney-in-fact to complete the Project and to do and perform any all actions permitted hereunder which directly relate to the Completion of the Project.

10.6 Termination. This Agreement (but not the Surviving Obligations) shall terminate upon the occurrence of the earlier of the following events:

(a) A termination of this Agreement as may be permitted under a Section of this Agreement; or

(b) The completion of the development and construction of the Project and the remaining obligations of the parties under this Agreement with respect to the Project pursuant to the terms and conditions of this Agreement.

10.7 Effect of Termination. Upon termination of this Agreement, the Developer shall, as soon as practicable, but in no event later than the fifteenth (15) days after a termination notice is given, or such shorter period of time in the event of emergency or a life/safety issue:

(a) Deliver to the CRA all Plans and Specifications, Construction Documents, materials, equipment, tools and supplies, keys, contracts and documents relating to the Project, and copies of such other accountings, papers, and records as the CRA shall request pertaining to the Project;

(b) Assign the Construction Contract, Design Contracts and such other existing contracts relating to the development of the Project (including, without limitation, contracts for preparation of the Construction Documents) to the CRA, as the CRA shall require;

(c) Vacate any portion of the Project then occupied by the Developer as a consequence of this Agreement and for which no certificate of occupancy has been issued; and

(d) Furnish all such information and otherwise cooperate in good faith in order to effectuate an orderly and systematic ending of the Developer's duties and activities hereunder, including, without limitation, the delivery to the CRA of any written reports required hereunder for any period not covered by prior reports at the time of termination. With regard to the originals of all papers and records pertaining to the Project, the possession of which are retained by the Developer after termination, the Developer shall: (i) reproduce and retain copies of such records as it desires; (ii) deliver the originals to the CRA; and (iii) not destroy originals without first offering to deliver the same to the CRA.

(e) Notwithstanding anything herein to the contrary, all representations and warranties of Developer shall survive the termination of this Agreement for a period of one (1) year along with any other obligations of Developer that expressly survive termination or by their nature need to survive termination in order to provide the CRA with ability to enforce its rights and remedies hereunder.

Article 11. Indemnification.

11.1 Indemnification by the Developer. The Developer agrees to indemnify and hold the CRA, its Board members, agents, consultants and employees harmless, to the fullest extent permitted by law, from all liabilities, losses, interest, damages, costs and/or expenses (including, without limitation, reasonable attorneys' fees, whether suit is instituted or not, and if instituted, whether incurred at any trial, appellate or post judgment level), threatened or assessed against, levied upon, or collected from, the CRA arising out of, from, or in any way connected with or arising from the negligence, gross negligence, fraud, and/or breach of trust of the Developer in the performance of this Agreement or from a failure of the Developer to perform its obligations under this Agreement. Notwithstanding the foregoing, the Developer shall not be required to indemnify the CRA with respect to any liability, loss, damages, costs or expenses suffered as a result of the negligence, gross negligence and/or willful misconduct of the CRA. To the extent this indemnification clause or any other indemnification clause in this Agreement is subject to the provisions of Chapter 725, Florida Statutes, and such does not comply with Chapter 725, Florida Statutes, as such may be amended, such provision shall hereby be interpreted as the parties' intention for the indemnification clauses and to comply with Chapter 725, Florida Statutes, as such may be amended.

11.2 Third Party Claim Procedure. If a third party (including, without limitation, a governmental organization) asserts a claim against the CRA and indemnification in respect of such claim is within the scope of indemnification and indemnification is sought under the provisions of this Article 11 by the CRA against the Developer, the CRA shall promptly give written notice to the Developer of such claim. The Developer shall have the right at its election to take over the defense or settlement of such claim by giving prompt written notice to the CRA at least five (5) Business Days prior to the time when an answer or other responsive pleading or notice with respect thereto is required. If the Developer makes such election, it may conduct the defense of such claim through counsel or representative of its choosing (subject to the CRA's approval of such counsel or representative, which approval shall not be unreasonably withheld),

shall be responsible for the expenses of such defense, and shall be bound by the results of its defense or settlement of claim to the extent it produces damage or loss to the CRA. The Developer shall not settle any such claim without prior notice to and consultation with the CRA and no such settlement involving any equitable relief or which might have a material and adverse effect on the CRA may be agreed to without its written consent. So long as the Developer is diligently contesting any such claim in good faith, the CRA may pay or settle such claim only at its own expense without receiving indemnification from Developer. Within twenty (20) Business Days after the receipt by the Developer of written request by the CRA at any time, the Developer shall make financial arrangements reasonably satisfactory to the CRA, such as the posting of a bond or a letter of credit, to secure the payment of its obligations under this Section 11 in respect of such claim. If the Developer does not make such election, or having made such election does not proceed diligently to defend such claim, or does not make the financial arrangements described in the immediately preceding sentence, then the CRA may, upon three (3) Business Days' written notice (or shorter notice if a pleading must be filed prior thereto) and at the expense of the Developer, take over the defense of and proceed to handle such claim in its exclusive discretion and the Developer shall be bound by any defense or settlement that the CRA may make in good faith with respect to such claim. The parties agree to cooperate in defending such third party claims and the defending party shall have access to records, information and personnel in control of the other party or parties which are pertinent to the defense thereof.

11.3 Limitation on Indemnification. Notwithstanding anything in this Article 11 to the contrary, Developer shall not have any obligation to indemnify or defend the CRA against any claims brought against the CRA by any third party challenging: the CRA's legal authority to sell all or any portion of the CRA Property or enter into this Agreement, the CRA's judgment in selling all or any portion of the CRA Property or entering into this Agreement or the terms and provisions of this Agreement, regardless of whether such claim seeks monetary damages or injunctive, declaratory or other relief. In this event of any conflict between this Section 11.3 and any other provision in Article 11, this Section shall control and govern.

11.4 Survival. The provisions of this Article 11 shall survive the expiration or earlier termination of this Agreement.

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

Article 12. Insurance. Prior to any activity by the Developer on any portion of the CRA Property, and at all times during the Term of this Agreement, Developer will be responsible for procuring and maintaining the insurance required by this Agreement, at Developer's sole cost and expense. In addition, if Developer is doing any construction work on any portions of the CRA Property, Developer will ensure that its general contractor maintains the applicable insurance coverages set forth in this Agreement, unless waived or modified by the City's Risk Management Director.

12.1 General Insurance Provisions.

- (a) All policies must be executable in the State of Florida.
- (b) All insurers must maintain an AM Best rating of A or better.
- (c) The terms and conditions of all policies may not be less restrictive than those contained in the most recent edition of the policy forms issued by the Insurance Services Office (ISO) or the National Council on Compensation Insurance (NCCI). If ISO or NCCI issues new policy forms during the policy term of the required insurance, Developer will not be required to comply with the new policy forms until the expiration date of the insurance policy affected by the change.
- (d) Developer's insurance policies will be primary over any and all insurance available to the CRA, whether purchased or not, and must be non-contributory.
- (e) The Developer and its general contractor will be solely responsible for payment of all deductibles and retentions contained in their respective insurance policies. The CRA will be included as an "Additional Insured" on the Commercial General Liability policy and any Umbrella Liability policies, if applicable. The CRA and the City of Margate will also be named as "Loss Payee" on all of the Developer's Property Insurance policies.
- (f) Developer will ensure that each insurance policy obtained by it provides that the insurance company waives all right of recovery by way of subrogation against the CRA and the City of Margate in connection with any damage covered by any policy.

12.2 Evidence of Insurance. Prior to carrying on any development or construction activities on the CRA Property, Developer must provide satisfactory evidence of the required insurance to the CRA. Satisfactory evidence of insurance is either (a) a certificate of insurance, or (b) a certified copy of the actual insurance policy. The CRA, at its sole option, may request a certified copy of any or all insurance policies required by this Agreement.

12.3 Cancellations and Renewals. All insurance policies must specify that they are not subject to cancellation or non-renewal without a minimum of 30 days notification to the Developer, and a minimum of 10 days notification for non-payment of premium. The Developer will provide the CRA a minimum of 30 days written notice if any policies are cancelled or non-renewed, and 10 days written notice of cancellation for non-payment of premium.

12.4 Required Coverages. As a minimum, Developer will procure and maintain the following insurance coverages, in addition to any additional insurance coverage required in the RFP: Commercial General Liability Insurance. During the term of this Agreement, Developer must maintain Commercial General Liability Insurance, in the types and minimum coverage amounts listed in the insurance section of the RFP.

- (a) All Risk Property Insurance. Developer must obtain Property Coverage (Special Form), to cover the "All Other Perils" portion of the policy at the Replacement Cost Valuation as determined by a certified property appraiser acceptable to both the Developer and the CRA. The perils of Windstorm and Flood shall carry sub limits to be determined annually

and acceptable to the CRA. The policy will also provide “Law and Ordinance” coverage, while giving deference to the age of the improvements, with limits acceptable to both the CRA and Developer.

(b) Automobile Liability Insurance. Comprehensive form liability insurance on owned, hired and non-owned automobiles, with minimum limits of coverage listed in the insurance section of the RFP.

(c) Umbrella/Excess Liability Insurance. Bodily injury and property damage combined coverage, with limits of no less than \$1,000,000.00 per occurrence and \$1,000,000.00 in the aggregate.

12.5 Coverage Required During Construction will be as follows:

(a) Builders’ Risk Insurance. During all construction activities conducted on the CRA Property, including infrastructure development, Developer must carry builders’ risk insurance, including the perils of wind and flood, with minimum limits equal to the “Completed Value” of the improvements being constructed or the total value of the modifications being made, to the extent available. If such levels of coverage are not available, Developer must carry the full amount of such insurance currently available. Notwithstanding the foregoing, no builders’ risk coverage will be required on vertical improvements to the Civic and Community Component and Parking Garage.

(b) Professional Liability. Developer must ensure that all architects and engineers performing work on the Project have obtained errors and omissions liability insurance specific to the design and construction activities prior to the commencement of any design and construction activities on the CRA Property. If coverage is provided on a “Claims Made” basis, the policy must provide for the reporting of claims for a period of two years following the completion of all construction activities. The minimum limits acceptable are \$1,000,000.00 per occurrence and \$1,000,000.00 in the aggregate annually.

12.6 Premiums and Renewals. Developer must pay all premiums for the insurance required by this Agreement as they become due. Developer must renew or replace each policy prior to the policy expiration date, and promptly deliver to the CRA all original Certificates of Insurance and copies of all renewal or replacement policies.

12.7 Adequacy of Insurance Coverage. The CRA has the unilateral right to periodically review the adequacy of the insurance coverage required by this Agreement. The CRA may request a change in the insurance coverage if the requested change is commercially reasonable, and the coverage requested is customary and commonly available for properties similar in type, size, use and location to the CRA Property and improvements (including without limitation, environmental liability insurance, fiduciary liability, and directors and officers liability insurance). Developer has the right to contest the request for a change in insurance, but such contest must be commercially reasonable.

12.8 Inadequacy of Insurance Proceeds. In the event that insurance proceeds are not adequate to rebuild and restore damaged improvements to their previous condition before an insurable loss occurred, and the cause of the deficiency in insurance proceeds is the Developer’s

failure to adequately insure the improvements as required by this Agreement, Developer must rebuild and restore the improvements as required by this Agreement and will be responsible for payment of any costs of the rebuilding and restoration not covered by the insurance proceeds.

12.9 CRA May Procure Insurance if Developer Fails To Do So. If Developer refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required by this Agreement, the CRA, at its option, may procure or renew such insurance. In the event, all sums paid by the CRA for insurance will be payable by Developer to the CRA within ten (10) days after written demand from CRA, together with interest at the highest rate permitted by law from the date the sums were paid by the CRA to the date of reimbursement by Developer.

Article 13. Condition of Property.

13.1 CRA's Existing Studies. The CRA has previously provided to Developer copies of all existing engineering studies, surveys, maps, and reports in the CRA's possession pertaining to the CRA Property (the "**Property Reports**"). The CRA consents to Developer's use of the Property Reports in connection with the development of the Project, but the CRA makes no representations or warranties as to the validity, accuracy, or reliability of the Property Reports, and the CRA will not be liable for any errors or omissions in the Property Reports, or for any use of the Property Reports by Developer. Within thirty days after the Effective Date, the CRA will deliver to a Developer a written list describing all Property Reports and copies of any Property Reports not previously delivered to Developer.

13.2 CRA's Representations Regarding Property. Except for the Property Reports the CRA has not made any independent investigation of the condition of the CRA Property. The CRA represents that to the best of its actual knowledge and belief, without independent inquiry, there exists no condition on, about or under the CRA Property which would prevent, delay, or otherwise adversely impact the development of the Project on the CRA Property.

Article 14. Representations and Warranties.

14.1 Developer. The Developer represents and warrants to the CRA as follows:

(a) That (i) it is a limited liability company duly organized, validly existing and in good standing under the laws of Florida; (ii) the execution, delivery and performance of this Agreement and the consummation of the transactions provided for in this Agreement have been duly authorized and upon execution and delivery by the Developer will constitute the valid and binding agreement of the Developer enforceable in accordance with its terms; and (iii) the execution and delivery of this Agreement and the performance by the Developer hereunder, will not conflict with, or breach or result in a default under, any agreement to which it is bound.

(b) That there are no pending, threatened, judicial, municipal or administrative proceedings, consent decrees or judgments against Developer which would materially and adversely affect Developer's ability to perform its obligations hereunder.

14.2 CRA. The CRA represents and warrants to the Developer that it is a public body corporate and politic of the State of Florida duly organized under the laws of the State of Florida; (ii) the execution, delivery and performance of transactions provided for this Agreement have

been duly authorized and upon execution and delivery by the CRA will constitute the valid and binding agreement of the CRA enforceable in accordance with its terms; and (iii) the execution and delivery of this Agreement and the performance by the CRA hereunder, will not conflict with, or breach or result in a default under any agreement to which it is bound.

14.3 Survival. The representative and warranties set forth in this Article 14 shall survive the expiration or earlier termination of this Agreement.

Article 15. Restrictions On Transfer and Assignment of Agreement.

15.1 Transfers. For purposes of this Agreement, a "**Transfer**" is any total or partial sale, assignment, or conveyance of any of the following: (i) Developer's interest in the CRA Property or any portion thereof; (ii) Developer's interest in this Agreement; (iii) the Project or any part thereof; (iv) any interest in the Project, or any part thereof; (v) any ownership interest in Developer; (v) any series of such Transfers, or any contract or agreement to do any of the same, that have the cumulative effect of a sale; or (vi) any other transaction or series of transactions in the nature of a sale. The term "Transfer" shall exclude any collateral assignment of this Agreement in connection with any financing for the Project.

15.2 Restrictions on Transfer. Developer represents and agrees for itself and its successors and assigns (except as so authorized by the provisions of this Agreement) that it shall not make, permit, or suffer to be made or created any Transfer unless it complies with the provisions of this Article. Any Transfer that violates this Agreement will be null and void and of no force or effect.

15.3 Transfers Not Requiring CRA Consent. The following Transfers ("**Permitted Transfers**") are permitted without obtaining the written consent of the CRA:

(a) Foreclosure. Any Transfer directly resulting from the foreclosure of a Mortgage on a Parcel or the granting of a deed in lieu of foreclosure of a Mortgage on a Parcel, or any Transfer made by the purchaser at foreclosure sale of a Mortgage or by the grantee of a deed in lieu of foreclosure of a Mortgage, if such purchaser or grantee is the Lender or a nominee of the Lender;

(b) Estate Planning. Any Transfer of all or any portion of any ownership interest in Developer for estate planning purposes, including without limitation, any Transfer into a charitable trust or a blind trust, provided the transferor, Kevin Rickard, or Timothy Hernandez maintains control over the interest in Developer being transferred;

(c) Transfers To or Among Affiliates. Any Transfer, or series of Transfers, to or among Affiliates of Developer, provided that at all times after such Transfer, either Timothy Hernandez or Kevin Rickard, or a successor individual approved by the CRA, continues to direct the day-to-day management and policies of Developer or the transferee Affiliate(s) by acting as the Manager, Managing Member, President, Managing Director, or Managing Partner, as the case may be depending on the type of entity; or

(d) Transfers of Ownership Interests in Developer. Any Transfer, or series of Transfers, totaling not more than thirty percent (30%) of the direct or indirect ownership interests

in Developer, provided that at all times after such Transfer, either Timothy Hernandez or Kevin Rickard, or a successor individual approved by the CRA, continues to direct the day-to-day management and policies of Developer.

(e) Transfers Resulting from Death or Incapacity. Any Transfer resulting from the death or incapacity of Timothy Hernandez or Kevin Rickard, or from the death or incapacity of a successor individual approved by the CRA to direct the day-to-day management and policies of Developer, provided that the survivor of Timothy Hernandez, Kevin Rickard, or the successor individual approved by the CRA, shall continue to direct the day-to-day management and policies of Developer.

(f) Transfers After Completion. Any Transfer, or series of Transfers, of any Parcel, or portion thereof, after all improvements on that Parcel are completed and certificates of occupancy issued for such improvements.

15.4 Transfers Requiring CRA's Consent. Any Transfer, other than a Permitted Transfer, must receive the prior written approval of the CRA's Executive Director, which approval may be withheld or referred to the CRA Board in the reasonable discretion of the CRA's Executive Director, subject to the provisions of this Article. It is contemplated by the Developer and CRA that: (i) in lieu of taking title to certain Parcels in Developer's own name, Developer may elect to acquire and hold title in the name of an "Acceptable Transferee" (defined below) or an Affiliate; or (ii) certain Parcels may be Transferred by Developer to an Acceptable Transferee following the Developer's Closing on the purchase of the Parcels but before construction of improvements on those Parcels is completed. Such transfers to an Acceptable Transferee will be permitted following the written approval of the CRA.

(a) An "Acceptable Transferee" is an individual or entity meeting the following minimum qualifications:

(i) Development Experience. The proposed transferee, or its management team, must possess development experience in the State of Florida equal to or better than the experience of the Developer as set forth in the Developer's response to the RFQ.

(ii) Financial Resources. The proposed transferee must possess the financial resources equal to or better than the financial resources of the Developer as set forth in the Developer's response to the RFQ.

(iii) Character and Reputation. The proposed transferee must possess a character, reputation and status in the community equal to or better than the character, reputation and status of the Developer as set forth in the Developer's response to the RFQ.

(iv) No Violations. The proposed transferee must have no outstanding material violation of a Governmental Requirement against the proposed transferee or against any property owned or managed by the proposed transferee in the State.

(v) No Convictions or Indictments. The proposed transferee must not be owned, controlled or managed by entities or individuals who have been convicted, or are presently under indictment, for felonies under the laws of any foreign or United States of

America jurisdiction.

(vi) No Bankruptcies. Neither the proposed transferee, nor any of the individuals or entities who own at least a 10% equity interest in the proposed transferee or who are officers, directors, managers or otherwise have the power to direct and control the business and affairs of the proposed transferee, have filed or been discharged from bankruptcy, or have been the subject of an involuntary bankruptcy, reorganization or insolvency proceedings within the past five years.

(b) To request approval of any Transfer, other than a Permitted Transfer, the Developer shall send a written Transfer Application to the CRA which includes information showing that the proposed transferee is an Acceptable Transferee, including, at a minimum, (a) three years of externally reviewed financial statements, if available; (b) a letter from a Florida bank or other financial institution doing business in Florida indicating the creditworthiness of the assignee; (c) three letters of reference from unrelated third parties regarding the proposed Acceptable Transferee's character and business reputation in the community; and (d) a proposed assignment and assumption agreement ("**Assignment Agreement**") [items a-d are collectively referred to as the "Transfer Application"]. Upon request by the CRA, Developer will submit any additional information reasonably requested by the CRA to evaluate the proposed Acceptable Transferee. The CRA will notify the Developer in writing within sixty (60) days after the CRA's receipt of the Transfer Application and additional documentation, if applicable, if the CRA approves the Transfer. If the CRA fails to respond to the Transfer Application within sixty (60) days, the CRA shall be deemed to have approved its consent to the Transfer in question. The CRA may reject a Transfer Application as long as CRA provides reasonable justification, consistent with this Article, explaining why the proposed Transferee is not an Acceptable Transferee. Any consent to a Transfer does not waive any of the CRA's rights to consent to a subsequent Transfer.

(c) The CRA, in its determination of whether to approve a Transfer, shall be entitled to require, as conditions to granting any such prior approval, that:

(i) Any proposed Acceptable Transferee shall have the business experience and reputation, development track record and sufficient financial capacity to carry out the obligations under this Agreement, as determined, in the sole discretion of the CRA.

(ii) Any proposed Acceptable Transferee, by a written Assignment Agreement satisfactory to the CRA, in its reasonable discretion which is subject to the provisions of this Article, and in recordable form, shall, for itself and its successors and assigns: (a) expressly assume all of the obligations of the Developer under this Agreement with respect to the interest assigned and shall agree to abide by and be subject to all of the terms, conditions, obligations, reservations and restrictions to which the transferor Developer is subject with respect to the interest assigned; and (b) expressly acknowledge that the CRA has all rights and remedies under the Agreement against the Acceptable Transferee if there is a default under the Agreement. As part of the Transfer, the Developer and proposed Acceptable Transferee shall deliver a Proposed Assignment Agreement in a form and substance satisfactory to the CRA and its legal counsel which shall contain an indemnification and hold harmless provisions by the Developer and Acceptable Transferee in favor of the CRA, and by the Acceptable Transferee to

Developer, for any liabilities and obligations as the Developer under this Agreement prior to the date of the Assignment Agreement with respect to the interest assigned.

(iii) There shall be submitted to the CRA for review all instruments and other legal documents reasonably necessary to review compliance with this Article 15. A copy of the instruments and other legal documents, including the Assignment Agreement, shall be provided the CRA for review and approval at least sixty (60) days prior to being executed by Developer and the proposed Acceptable Transferee. The CRA agrees to diligently proceed with and complete its review and approval as soon as possible, but in no event later than sixty (60) days after receipt of such instruments and documents.

15.5 Effect on Transfer. Following any Transfer, the Acceptable Transferee is subject to obligations of the “Developer” under this Agreement with respect to the interest assigned and shall agree to abide by and be subject to all of the terms, conditions, obligations, reservations and restrictions to which the transferor Developer is subject relating to the transferred interest. Notwithstanding the foregoing, Developer shall not be released from its remaining liabilities and obligations as the Developer under this Agreement, other than with respect to the interest assigned to the Acceptable Transferee, until the completion of the Project, unless the Transfer was a Transfer of all of Developer’s remaining obligations under this Agreement to an Acceptable Transferee, as approved in writing by the CRA in accordance with this Agreement, in which event the Developer is released from any further obligations.

Article 16. Ownership and Control of Developer.

(a) Developer represents and warrants that:

(i) As of the Effective Date, Kevin E. Rickard owns fifty percent (50%), and Timothy L. Hernandez owns fifty percent (50%), of the membership interests of Developer.

(ii) As of the Effective Date, New Urban Communities Corporation, a Florida corporation, is the Manager of the Developer (the “**Manager**”).

(iii) As of the Effective Date, the following individuals are the officers and directors of Developer: Kevin E. Rickard, President/Treasurer, and Timothy L. Hernandez, Vice President/Secretary.

(iv) As of the Effective Date, the following individuals are the officers and directors of Manager: Kevin E. Rickard, President/Director, and Timothy L. Hernandez, Vice President/Treasurer/Secretary/Director.

(v) Notwithstanding any contrary provision in this Agreement, through the Project Completion Date, Kevin Rickard and Timothy Hernandez shall collectively maintain at least a ten percent (10%) membership interest in the Developer.

(vi) The authorized members, directors and officers of Developer and Manager, as applicable, shall remain the same through the Project Completion Date, provided however, nothing herein shall prevent ownership interests in Developer or Manager being

transferred to third parties as long as Kevin Rickard and Timothy Hernandez collectively maintain at least a ten percent (10%) equity interest in the entity.

Unless otherwise approved by the CRA, Developer shall not substitute any member of the development team on the Project before the Project Completion Date without the prior approval of the CRA. The CRA agrees not to unreasonably withhold its approval to any substitute, provided the qualifications of the substitute are at least equal to or better than those of the team member being substituted.

Article 17. Inspections.

17.1 Upon prior notice (which for purposes hereof may include oral and/or telephone notice) the CRA shall have reasonable access to the Work for inspection thereof provided that CRA's inspections do not interfere with the Work, but CRA shall not be obligated to conduct any such inspection. The Developer shall provide proper and safe facilities for such access and inspection by the CRA. If any of the Work is required to be inspected or approved by any public authority, the CRA shall cause such inspection or approval to be performed.

17.2 No inspection performed or failed to be performed by CRA shall be a waiver of any of the Developer's obligations or be construed as an approval or acceptance by CRA of the Work or any part thereof.

Article 18. No Liens.

18.1 Developer acknowledges and agrees that the CRA Property owned by the CRA upon which the Work or any portion thereof is to be performed is excluded from the definition of "real property" upon which liens may be placed as set forth in Section 713.01(24), Florida Statutes. The Developer shall include a provision substantially similar to this Section 18.1 in each of its contracts and purchase orders, requiring contractors, subcontractors, materialmen, vendors and suppliers to waive any claim or entitlement to a mechanic's or materialmen's lien on the Property owned by the CRA upon which the Work or any portion thereof is to be performed and to look solely to the credit of the Developer or its surety or the credit of the contractor or its surety for payment of any sums due in connection with the Work.

18.2 The Developer shall not voluntarily permit any laborer's, materialmen's, mechanic's, or other similar lien to be filed or otherwise imposed on any part of the Work or the CRA Property on which the Work is performed. If any laborer's, materialmen's, mechanic's, or other similar lien or claim thereof is filed, the Developer shall cause such lien to be released and discharged forthwith, or file a bond in lieu thereof. The Developer hereby indemnifies and holds harmless CRA from all claims, losses, demands, causes of action, expenses including attorneys' fees, or suits of whatever nature arising out of any such lien.

Article 19. Miscellaneous.

19.1 Notices. All notices, requests, consents, demands, approvals or other communications required or permitted under this Agreement shall be in writing, addressed to the appropriate person at the receiving party, and shall be (as elected by the person giving such notice): (a) hand delivered, (b) delivered by overnight courier by a nationally recognized courier,

with all fees prepaid; (c) delivered by Registered or Certified Mail, in each case, return receipt requested and postage prepaid; or (d) delivered by email with “FORMAL NOTICE UNDER DEVELOPMENT AGREEMENT” in the subject line (but only if a party’s email address is included in its notice address and a hard copy is delivered via one of the other methods described in (a) through (c)), addressed to:

(a) If to the CRA:

Margate Community Redevelopment Agency
5790 Margate Blvd
Margate, Florida 33063
Attn: Executive Director
Email: dcolonna@margatefl.com

With copies to:

Frank, Weinberg & Black, PL
1875 N.W. Corporate Blvd., Suite 100
Boca Raton, FL 33431
Attn: Maria P. Spiliopoulos, Esq.
Email: mspil@fwblaw.net

and

Goren, Cherof, Doody and Ezrol, PA
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, FL 33308
Attn: Donald J. Doody, Esq.
Email: ddoody@cityatty.com

(b) If to the Developer:

New Urban Communities
398 Northeast 6th Avenue
Delray Beach, Florida 33483
Attn: Kevin Rickard & Timothy Hernandez
Email: KRickard@newurbancommunities.com and
THernandez@newurbancommunities.com

With a copy to:

John C. Primeau, P.A.
2625 Weston Road
Weston, Florida 33331
Attn: John C. Primeau, Esq.
Email: john@primeaulaw.com

Each such notice shall be deemed delivered: (i) if delivered by hand, the date the receipt is signed; (ii) if sent by overnight courier, on the courier's confirmation of delivery date, (iii) if sent by Registered or Certified Mail, upon receipt as indicated by the date on the signed return receipt; (iv) if sent by email, the date the notice was emailed (but only if a party's email address is included in its notice address and a hard copy is delivered via one of the other methods described in (i) - (iii) above); or (v) if the notice is rejected or refused at a physical notice address shown above, or to such other address as either party may designate by notice to the other party from time to time (as long as such rejection or refusal of delivery occurs on a business day).

19.2 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one and the same instrument.

19.3 Assignment. The Developer may not assign this Agreement or any of its rights and obligations hereunder, in whole or in part, without the prior written consent of the CRA (which may be withheld in the CRA's sole discretion).

19.4 Project Representatives. The CRA hereby appoints the CRA Executive Director to serve as its representative. The CRA Executive Director shall have the right and authority to provide all consents and approvals, and take other actions, required hereunder on behalf of the CRA; provided, however the CRA Executive Director shall obtain the consent of the CRA Board to the extent required by Applicable Laws or where specifically required under this Agreement. The Developer hereby appoints Timothy Hernandez and Kevin Rickard to serve as its representatives. The parties may change their respective designated representative(s) at any time by providing written notice thereof to the other party.

19.5 No Permit. This Agreement is not and shall not be construed as a development agreement under Chapter 163, Florida Statutes, nor a development permit, development approval or authorization to commence development.

19.6 Governing Law. The nature, validity and effect of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida.

19.7 Captions. Captions are for descriptive purposes only and shall not control or alter the meaning of this Agreement as set forth in the text.

19.8 Entire Agreement and Amendment. This Agreement constitutes the entire agreement between the parties hereto related to the development and construction of the Project and no modification hereof shall be effective unless made by a supplemental agreement in writing executed by all of the parties hereto. In the event of any conflict between the terms and provisions of this Agreement and the terms and provisions of the Response to RFP, this Agreement shall control and govern.

19.9 No Joint Venture. The Developer shall not be deemed to be a partner or a joint venturer with the CRA, and the Developer shall not have any obligation or liability, in tort or in contract, with respect to the Property, either by virtue of this Agreement or otherwise, except as may be set forth to the contrary herein.

19.10 Severability. If any provision of this Agreement, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Agreement, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

19.11 Successors. Except as herein otherwise specifically provided, this Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns.

19.12 Pronouns. Whenever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in either the masculine, the feminine or the neuter gender shall include the masculine, feminine and neuter.

19.13 Attorneys' Fees. If any party commences an action against the other party to interpret or enforce any of the terms of this Agreement or as the result of a breach by the other party of any terms hereof, the non-prevailing party shall pay to the prevailing party all reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action, including those incurred in any appellate proceedings, and whether or not the action is prosecuted to a final judgment.

19.14 Further Assurances. The parties to this Agreement have negotiated in good faith. It is the intent and agreement of the parties that they shall cooperate with each other in good faith to effectuate the purposes and intent of, and to satisfy their obligations under, this Agreement in order to secure to themselves the mutual benefits created under this Agreement; and, in that regard, the parties shall execute such further documents as may be reasonably necessary to effectuate the provisions of this Agreement; provided that the foregoing shall in no way be deemed to inhibit, restrict or require the exercise of the City's police power or actions of the City when acting in a quasi-judicial capacity.

19.15 Equitable Remedies. In the event of a breach or threatened breach of this Agreement by any party, the remedy at law in favor of the other party will be inadequate and such other party, in addition to any and all other rights which may be available, shall accordingly have the right of injunction in the event of any threatened breach of this Agreement by any party.

19.16 Intentionally Omitted.

19.17 Third Party Rights. The provisions of this Agreement are for the exclusive benefit of the parties to this Agreement and no other party (including without limitation, any creditor of the CRA or the Developer) shall have any right or claim against the CRA or the Developer by reason of those provisions or be entitled to enforce any of those provisions against the CRA or the Developer.

19.18 Survival. All covenants, agreements, representations and warranties made herein or otherwise made in writing by any party pursuant hereto shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

19.19 Remedies Cumulative; No Waiver. The rights and remedies given in this Agreement and by law to a non-defaulting party shall be deemed cumulative, and the exercise of one of such remedies shall not operate to bar the exercise of any other rights and remedies reserved to a non-defaulting party under the provisions of this Agreement or given to a non-defaulting party by law.

19.20 No Waiver. One or more waivers of the breach of any provision of this Agreement by any party shall not be construed as a waiver of a subsequent breach of the same or any other provision, nor shall any delay or omission by a non-defaulting party to seek a remedy for any breach of this Agreement or to exercise the rights accruing to a non-defaulting party of its remedies and rights with respect to such breach.

19.21 Signage. Subject to the reasonable approval of the CRA and in accordance with Applicable Laws, the Developer shall have the right to place one or more appropriate signs upon the CRA Property.

19.22 Construction. This Agreement shall be interpreted without regard to any presumption or rule requiring construction against the party causing this Agreement to be drafted.

19.23 Venue. This Agreement shall have been deemed to have been executed within the State of Florida. The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida. Any claim, objection or dispute arising out of this Agreement shall be litigated only in the courts of the Seventeenth Judicial Circuit in and for Broward County, Florida or federal court in the Southern District of Florida.

19.24 WAIVER OF JURY TRIAL. THE PARTIES TO THIS AGREEMENT HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY ACTION, PROCEEDING, LAWSUIT OR COUNTERCLAIM BASED UPON THE CONTRACT, ARISING OUT OF, UNDER, OR IN CONNECTION WITH THE MATTERS TO BE ACCOMPLISHED IN THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR THE ACTIONS OR INACTIONS OF ANY PARTY.

Article 20. Safety and Protection.

20.1 Developer shall be responsible for initiating, maintaining and supervising commercially reasonable safety precautions and programs in connection with the Work. Developer shall take all necessary safety precautions (required by Applicable Laws), and shall take commercially reasonable industry practices and precautions, to prevent damage, injury or loss to:

(a) all persons on the CRA Property or who may be affected by the construction;

(b) all Work and materials and equipment to be incorporated in the Project, whether in storage on or off the CRA Property; and

(c) other property at the CRA Property or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadway, structures, utilities and underground facilities (i.e., the Force Main) not designated for removal, relocation or replacement in the course of construction.

20.2 Developer shall comply with Applicable Laws of Governmental Authorities having jurisdiction for safety or persons or property to protect them from damage, injury or loss; and shall erect and maintain commercially reasonable safeguards for such safety and protection, taking into consideration the effect on the Development Budget. Developer shall notify owners of adjacent property regarding the commencement of the Work (and other matters as reasonably determined by Developer), and of underground facilities and utility owners as required by Applicable Laws. All damage, injury or loss to any property including, without limitation, the Force Main caused, directly or indirectly, in whole or in part, by the negligent acts of Developer, any contractor, subcontractor, materialman, supplier, vendor, or any other individual or entity directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by Developer. Developer's duties and responsibilities for safety and for protection of the construction shall continue until Final Completion.

20.3 The Developer shall act in a commercially reasonable manner to protect and prevent damage to all Phases of the Work, and any existing facilities or improvements, including but not limited to the protection thereof from damage by the elements, theft, or vandalism. During the course of the Work, the Developer shall remain responsible for the risk of loss of the Work and shall promptly remedy, repair and replace all damage and loss (other than damage or loss insured under required insurance) to the Work caused in whole or in part by the Developer, the general contractor, a contractor, subcontractor, or anyone directly or indirectly employed or controlled by any of them, or by anyone for whose acts they may be liable and for which the Developer is responsible.

20.4 In connection with the approval of the Construction Contract, the parties may mutually agree to cause the general contractor to designate a qualified and experienced safety representative at the CRA Property whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

20.5 Developer shall cause its general contractor to be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with Applicable Laws.

20.6 In emergencies affecting the safety or protection of persons or the construction or property at the CRA Property Site or adjacent thereto, Developer, without special instruction or authorization from the CRA, is obligated to act to prevent threatened damage, injury or loss. Developer shall give CRA prompt written notice if Developer believes that any significant changes in the construction or variation from the Construction Documents have been caused thereby.

Article 21. CRA's Representative. The parties acknowledge and agree that the CRA may engage in one or more consultants to assist the CRA in the administration of this Agreement and the Project. Any such consultants shall act as an "owner's representative" and shall not have authority to bind the CRA or direct the Developer. Developer agrees to reasonably cooperate with any such consultants engaged by the CRA.

[Signatures Appear on Following Page(s)]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed by their duly authorized officer where applicable and sealed as of the date first above written.

DEVELOPER: NEW URBAN COMMUNITIES, L.L.C.,
a Florida limited liability company

By: New Urban Communities Corporation, a Florida
corporation, as Manager

By: _____

Name: _____

Title: _____

Date: _____

CRA: MARGATE COMMUNITY REDEVELOPMENT
AGENCY, a public body corporate and politic

Attest:

By: _____
Frank B. Talerico, Chair

By: _____
CRA Clerk

Date: _____

Approved as to form and legal sufficiency:

By: _____

CRA Attorney

EXHIBIT A-1

Legal Description of Project Phase 1 Site

<u>Ref.</u>	<u>Folio No.</u>	<u>Approximate Square Footage</u>	<u>Street Address</u>
A	4841 25 03 0010	736,960 sq. ft.	1000 N. State Road 7
<u>Legal Description:</u> Parcel “A” of MARGATE THIRD ADDITION, according to the Plat thereof, recorded in Plat Book 44, Page 48, of the Public Records of Broward County, Florida, and lying within Section 36, Township 48 South, Range 41 East, Broward County, Florida.			

EXHIBIT A-2

Legal Description of Project Phase 2 Site

<u>Ref.</u>	<u>Folio No.</u>	<u>Approximate Square Footage</u>	<u>Street Address</u>
B	4841 25 01 0190	33,256 sq. ft.	1291 N. State Road 7
<u>Legal Description:</u> Lots 11 and 12, in Block 11, MARGATE FIRST ADDITION, according to the Plat thereof, recorded in Plat Book 39, Page 1, of the Public Records of Broward County, Florida.			

<u>Ref.</u>	<u>Folio No.</u>	<u>Approximate Square Footage</u>	<u>Street Address</u>
C	4841 25 03 1343	33,367 sq. ft.	N. State Road 7
<u>Legal Description:</u> A portion of Parcel "Z", Block 11, MARGATE THIRD ADDITION, according to the Plat thereof recorded in Plat Book 44, Page 48, of the Public Records of Broward County, Florida, more fully described as follows: Beginning at the most Northeasterly corner of said Parcel "Z"; thence Southerly along the Easterly line of said Parcel "Z" and along a curve to the right having a radius of 905.37 feet, with a central angle of 10°15'47", an arc distance of 162.17 feet; thence North 44°22'05" West along a line which makes an angle of 68°30'39" with the back tangent of last described curve, a distance of 200 feet thence South 45°37'55" West a distance of 150 feet; thence North 44°22'05" West a distance of 74.16 feet to a point on the boundary line a distance of 170 feet to the most Northerly corner of said Parcel "Z"; thence South 76°07'13" East along the most Northerly boundary of said Parcel "Z" a distance of 237.09 feet to the Point of Beginning.			

<u>Ref.</u>	<u>Folio No.</u>	<u>Approximate Square Footage</u>	<u>Street Address</u>
D	4841 25 03 1340	234,078 sq. ft.	5701 Margate Blvd.
<u>Legal Description:</u>			
Parcel "Z", Block 11, MARGATE THIRD ADDITION, according to the Plat thereof recorded in Plat Book 44, Page 48, of the Public Records of Broward County, Florida;			
LESS the most Northwesterly 181.09 feet,			
AND LESS the following described portion:			
Beginning at the most Northeasterly corner of said Parcel "Z"; thence Southerly along the Easterly line of said Parcel "Z" and along a curve to the right having a radius of 905.37 feet, with a central angle of 10°15'47", an arc distance of 162.17 feet; thence North 44°22'05" West along a line which makes an angle of 68°30'39" with the back tangent of last described curve, a distance of 200 feet thence South 45°37'55" West a distance of 150 feet; thence North 44°22'05" West a distance of 74.16 feet to a point on the boundary line a distance of 170 feet to the most Northerly corner of said Parcel "Z"; thence South 76°07'13" East along the most Northerly boundary of said Parcel "Z" a distance of 237.09 feet to the Point of Beginning.			

<u>Ref.</u>	<u>Folio No.</u>	<u>Approximate Square Footage</u>	<u>Street Address</u>
E	4841 25 03 1280	142,600 sq. ft.	5801-6221 Margate Blvd.
<u>Legal Description:</u> Parcel "V", in Block 10, of MARGATE THIRD ADDITION, according to the Plat thereof recorded in Plat Book 44, Page 48, of the Public Records of Broward County, Florida.			

EXHIBIT A-3

Legal Description of Project Phase 3 Site

<u>Ref.</u>	<u>Folio No.</u>	<u>Approximate Square Footage</u>	<u>Street Address</u>
F	4841 25 03 1085	11,250 sq. ft.	5750 Margate Blvd.
<p><u>Legal Description:</u> A portion of Parcel "Y" in Block 7 of MARGATE THIRD ADDITION, according to the Plat thereof, recorded in Plat Book 44, at Page 48, of the Public Records of Broward County, Florida, more fully described as follows:</p> <p>Commence at the intersection of the Southeasterly extension of the Northeasterly line of said Parcel "Y", and the Northeasterly extension of the Southeasterly line of said Parcel "Y"; thence Northwesterly along the Southeasterly extension of the Northeasterly line and the Northeasterly line of said Parcel "Y", a distance of 472.09 feet to the Point of Beginning; thence continue Northwesterly along the Northeasterly line of said Parcel "Y", a distance of 75 feet; thence Southwesterly along a line, parallel to and 150 feet Southeasterly of the Northwesterly line of said Parcel "Y", with an included angle of 90°, a distance of 160 feet; thence Southeasterly, parallel to the Northeasterly line of said Parcel "Y", with an included angle of 90°, a distance of 75 feet; thence Northeasterly with an included angle of 90°, a distance of 160 feet, to the Northeasterly line of said Parcel "Y", and the Point of Beginning.</p>			

<u>Ref.</u>	<u>Folio No.</u>	<u>Approximate Square Footage</u>	<u>Street Address</u>
G	4841 25 03 1080	222,297 sq. ft.	1021-1051 N. SR 7
<p><u>Legal Description:</u> A portion of Parcel "Y" in Block 7 of MARGATE THIRD ADDITION, according to the Plat thereof, recorded in Plat Book 44, Page 48, of the Public Records of Broward County, Florida, more particularly described as follows:</p> <p>Beginning at the Intersection of the Southeasterly extension of the Northeasterly line of said Parcel "Y", and the Northeasterly extension of the Southeasterly line of Parcel "Y"; thence Southwesterly along the said Northeasterly extension and along the Southeasterly line of said Parcel "Y", a distance of 161.25 feet, to a point of curve: thence continuing Southwesterly along the said Southeasterly line Parcel "Y" and along a curve to the left having a radius of 1482.69 feet, with a central angle of 7°13'16", an arc distance of 186.88 feet; thence Northwesterly making an included angle of 97°07'17" with the back tangent of last described course, a distance of 125 feet; thence Southwesterly making an included angle of 265°46'36"; a distance 49.73 feet to a point on a line being a</p>			

Southeasterly extension of the Southwesterly line of said Parcel "Y"; thence Northwesterly along the said Southeasterly extension and along the Southwesterly line of said Parcel "Y", making an included angle of $94^{\circ}15'03''$, a distance of 291.91 feet; thence Northwesterly making an included angle of $165^{\circ}37'46''$, a distance of 78.69 feet; thence Northeasterly perpendicular to the last described course, a distance of 100 feet; thence Northwesterly and perpendicular to the last described course a distance of 85 feet; thence Northeasterly along a line parallel to and 150 feet Southeasterly of the Northwesterly line of said Parcel "Y", making an included angle of 90° , a distance of 400 feet to a point on the Northeasterly line of said Parcel "Y"; thence Southeasterly along the said Northeasterly line making an included angle of 90° , a distance of 547.09 feet to the Point of Beginning; LESS the external part of a 25 foot radius curve Lying between the tangents, and being located at the most Easterly corner of the herein described property.

LESS AND EXCEPT from the aforesaid parcel of land the following:

Commence at the Intersection of the Southeasterly extension of the Northeasterly line of said Parcel "Y", and the Northeasterly extension of the Southeasterly line of said Parcel "Y"; thence Northwesterly along the Southeasterly extension of the Northeasterly line and the Northeasterly line of said Parcel "Y", a distance of 472.09 feet to the Point of Beginning; thence continue Northwesterly along the Northeasterly line of said Parcel "Y", a distance of 75 feet; thence Southwesterly along a line parallel to and 150 feet Southeasterly of the Northwesterly line of said Parcel "Y" with an included angle of 90° , a distance of 160 feet; thence Southeasterly, parallel to the Northeasterly line of said Parcel "Y", with an included angle of 90° , a distance of 75 feet; thence Northeasterly with an included angle of 90° , a distance of 160 feet, to the Northeasterly line of said Parcel "Y" and the Point of Beginning.

ALSO LESS AND EXCEPT from the aforesaid parcel of land the following:

Beginning at the intersection of the Southeasterly extension of the Northeasterly line of said Parcel "Y", and the Northeasterly extension of the Southeasterly line of said Parcel "Y"; thence Southwesterly along the said Northeasterly extension and along the Southeasterly line of said Parcel "Y", a distance of 125.00 feet; thence Northwesterly perpendicular to the last described course a distance of 125.00 feet; thence Northeasterly perpendicular to the last described course a distance of 125.00 feet to a point on the Northeasterly line of said Parcel "Y"; thence Southeasterly along the said Northeasterly line of Parcel "Y" and the extension thereof, a distance of 125.00 feet to the Point of Beginning, LESS the external part of a 25 foot radius curve lying between the tangents, said curve being located at the Northeasterly corner of the herein described parcel.

<u>Ref.</u>	<u>Folio No.</u>	<u>Approximate Square Footage</u>	<u>Street Address</u>
H	4841 25 03 1084	13,907 sq. ft.	5700 Margate Blvd.
<p><u>Legal Description:</u> A portion of Parcel “Y” in Block 7 of MARGATE THIRD ADDITION, according to the Plat thereof, recorded in Plat Book 44, Page 48, of the Public Records of Broward County, Florida, more particularly described as follows:</p> <p>Beginning at the intersection of the Southeasterly extension of the Northeasterly line of said Parcel “Y”, and the Northeasterly extension of the Southeasterly line of said Parcel “Y”; thence Southwesterly along the said Northeasterly extension and along the Southeasterly line of said Parcel “Y”, a distance of 125.00 feet; thence Northwesterly perpendicular to the last described course a distance of 125.00 feet; thence Northeasterly perpendicular to the last described course a distance of 125.00 feet to a point on the Northeasterly line of said Parcel “Y”; thence Southeasterly along the said Northeasterly line of Parcel “Y” and the extension thereof, a distance of 125.00 feet to the Point of Beginning, LESS the external part of a 25 foot radius curve lying between the tangents, said curve being located at the Northeasterly corner of the herein described parcel.</p>			

<u>Ref.</u>	<u>Folio No.</u>	<u>Approximate Square Footage</u>	<u>Street Address</u>
I	4841 25 03 1081	18,750 sq. ft.	1001 Park Drive
<p><u>Legal Description:</u> That part of Parcel "Y", in Block 7 of MARGATE THIRD ADDITION, according to the Plat thereof, as recorded in Plat Book 44, page 48, of the Public Records of Broward County, Florida, as described as follows:</p> <p>COMMENCING at the Southeast corner of Lot 3, in said Block 7, run Southeasterly along the South line of said Parcel "Y" 135.79 feet to the Point of Beginning; thence run Northeasterly along a line which forms an angle of 85°45'04" to the left with an extension of the last described course 150 feet; thence run Southeasterly along a line which forms an angle of 85°46'45" to the right with an extension of the last described course 125 feet to a point on the East line of Parcel "Y"; thence run Southwesterly along the East line of Parcel "Y" an arc distance of 125.98 feet to a point of compound curvature; thence run Westerly along the South line of Parcel "Y" an arc distance of 38.27 feet to a point of tangency; thence run Northwesterly along the South line of Parcel "Y" 100.78 feet to the Point of Beginning.</p>			

<u>Ref.</u>	<u>Folio No.</u>	<u>Approximate Square Footage</u>	<u>Street Address</u>
J	4841 25 03 0110	132,991 sq. ft.	911 N. State Road 7
<u>Legal Description:</u> Lot 8, Block 1, MARGATE THIRD ADDITION, according to the map or plat thereof, as recorded in Plat Book 44, Page 48, of the Public Records of Broward County, Florida.			

<u>Ref.</u>	<u>Folio No.</u>	<u>Approximate Square Footage</u>	<u>Street Address</u>
K	4841 25 03 0100	8,923 sq. ft.	_____ NW 9th Court
<u>Legal Description:</u> Lot 7, Block 1, MARGATE THIRD ADDITION, according to the map or plat thereof, as recorded in Plat Book 44, Page 48, of the Public Records of Broward County, Florida.			

EXHIBIT A-4

Legal Description of "Park Drive" Properties

<u>Ref.</u>	<u>Folio No.</u>	<u>Approximate Square Footage</u>	<u>Street Address</u>
L	4841 25 03 1090 & 4841 25 03 1100	16,853	5717 – 5721 Park Drive
<u>Legal Description:</u> Lots 1 and 2, Block 7, MARGATE THIRD ADDITION, according to the map or plat thereof as recorded in Plat Book 44, Page 48, Public Records of Broward County, Florida			

EXHIBIT B

Pre-Development Plan

EXHIBIT C

Pre-Development Budget

Exhibit C
Pre-Development Budget

	<u>Phase 1</u>		<u>Phase 2</u>		<u>Phase 3</u>		<u>Total</u>
Vertical Construction	\$	39,968,790	\$	31,859,535	\$	25,801,015	\$ 97,629,340
Land Acquisition	\$	4,065,700	\$	3,319,500	\$	2,656,550	\$ 10,041,750
Land Development	\$	4,253,583	\$	3,847,534	\$	3,481,048	\$ 11,582,165
GC Overhead & Supervision	\$	3,697,790	\$	2,936,565	\$	2,422,565	\$ 9,056,920
Impact Fees	\$	2,874,940	\$	2,475,845	\$	2,015,746	\$ 7,366,531
Architecture	\$	202,500	\$	180,000	\$	180,000	\$ 562,500
Property Taxes	\$	254,405	\$	197,568	\$	175,364	\$ 627,337
	\$	55,317,708	\$	44,816,547	\$	36,732,288	\$ 136,866,543

EXHIBIT D

Critical Path

<u>#</u>	<u>Event</u>	<u>Duration</u>	<u>From</u>
1	Effective Date of Development Agreement	1 day	
2	Inspection Period	120 days	1
3	Site Plan Submittal	120 days	2
4	CRA Site Plan Approval	60 days	3
5	DRC Site Plan Approval	120 days	3
6	Design & Submit Phase 1 Final Plans and Development Permits	120 days	Later of 4,5
7	Obtain Development Permits	90 days	6
8	Closing on Phase 1	30 days	7
9	Begin Phase 1 Construction	30 days	8
10	Phase 1 Substantial Completion	48 months	8
11	Design & Submit Phase 2 Final Plans and Development Permits	180 days	8
12	Closing on Phase 2	24 months	8
13	Begin Phase 2 Construction	30 days	12
14	Phase 2 Substantial Completion	48 months	12
15	Design & Submit Phase 3 Final Plans and Development Permits	180 days	12
16	Closing on Phase 3	48 months	8
17	Begin Phase 3 Construction	30 days	16
18	Phase 3 Substantial Completion	48 months	16

EXHIBIT E

Purchase Price

Project Phase 1	\$4,065,700.00
Project Phase 2	\$3,319,500.00
Project Phase 3	\$2,656.550.00