



REMETERING AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of 11/3/2020, 20____, by and between the City of Margate, a municipal corporation located at 5790 Margate Boulevard, Margate, Florida 33063 (hereinafter "CITY"), and Avalon Toscana, LLC, (hereinafter "OWNER") to provide for remetering of water meters on the property known as Avalon Toscana, with its principal offices located at 3050 Toscana Lane West, Margate, FL 33066 (hereinafter "PROPERTY").

WHEREAS, the City Commission of the City of Margate passed Ordinance No. 2005-06 amending the Chapter 39, Article VII, Section 39-70 of the Code of Ordinances to allow a property owner, pursuant to express written agreement only, to install individual water meters for individual dwelling units in order to separately bill each individual user based upon his/her actual consumption; and

WHEREAS, OWNER is the lawful owner of the PROPERTY described above; and

WHEREAS, OWNER desires to install individual water meters for each individual dwelling unit (hereinafter "SUBMETERS") on the PROPERTY; and

WHEREAS, REMETERING shall mean the resale of water service by use of a SUBMETER by an OWNER at a rate or charge which does not exceed the OWNER's actual purchase price from the CITY.

NOW, THEREFORE, in consideration of the terms and conditions, provisions, covenants and promised hereinafter set forth, the Parties agree that:

1. The foregoing Whereas clauses are true and correct and are incorporated herein by reference.
2. The CITY consents to the use of REMETERING on the subject PROPERTY, subject to the limitations set forth in this Agreement, in Chapter 39, Article VII, Section 39-70 of the City of Margate Code of Ordinances, in any federal, state and local law or administrative rule, the Florida Building Code, all as may be amended from time to time, the American Water Works Association (AWWA), and any applicable developers' agreement for the PROPERTY.
3. OWNER shall submit to the Department of Environmental and Engineering Services (DEES) an initial registration and annual report containing all information as outlined in Section 39-70(7.)(A.)(1.) of the Code of Ordinances. Each annual report is due each year at the time of the initial registration and must contain all information as specified by Code.
4. OWNER is solely responsible for the costs associated with the REMETERING of the water meters on the PROPERTY, including but not limited to the cost of the installation of all water SUBMETERS and associated plumbing, and shall obtain all required permits from the City Building Department prior to the installation of same.



REMETERING AGREEMENT

5. The use of SUBMETERS shall be limited to the purpose of allocating the direct cost of water and sewer service to individual users, and should be billed at a rate consistent with the rate billed by the City, as provided in Chapter 39, Article VII, Section 39-71 of the City Code, as may be amended from time to time. At no time shall the OWNER be permitted to charge an individual user more than the actual direct cost of the water and sewer consumption by that individual dwelling unit.
6. OWNER will read the SUBMETERS on a periodic schedule and use the readings to determine the water use among the individual dwelling units, and others who shall be lawfully entitled to receive same.
7. OWNER shall test and inspect all SUBMETERS within the time intervals recommended by the American Water Works Association (AWWA) and in compliance with AWWA standards. In addition, SUBMETERS shall be tested for accuracy of the flow rates and test flow quantities in accordance with applicable AWWA Standards. No SUBMETER shall be placed into service unless it has been tested by a certified testing facility to comply with AWWA standards for accuracy. OWNER agrees to perform a test of the accuracy of a SUBMETER upon reasonable request by the CITY.
8. OWNER shall provide or make available, upon reasonable request by an individual user, the following for the individual user's inspection:
 - a. The direct billing from the CITY to the OWNER for the current month and the 12 preceding months.
 - b. The calculation for the billing for the current month and the 12 preceding months.
 - c. All SUBMETER readings and user billings for the individual unit for the current month and the 12 preceding months.
 - d. All SUBMETER test results for the individual unit for the current month and the 12 preceding months.
9. OWNER is strictly prohibited from charging rates greater than those charged by the CITY. In addition, all sale/rental agreements between the OWNER and an individual user shall clearly state that the unit is or may be submetered, that the bills for water service will or may be issued on a submetered basis, and that bills shall not include charges for water service for common areas and facilities. The resident shall initial this provision on the sale/lease agreement. Current residents must be notified of the information required in this section 90 days prior to the implementation of the service, unless notice was otherwise provided in the resident's sale/rental agreement. The CITY reserves the right, but not the obligation, to audit the prorated bills



REMETERING AGREEMENT

distributed to the individual users to verify that the aggregate amount charged to the individual users is not greater than the direct amount charged to the OWNER by the CITY. OWNER agrees to supply billing information to the CITY as requested.

10. OWNER shall bill each individual user in a manner consistent with Chapter 39, Article VII, Section 39-70(7.)(B.) 1.-2. and/or B. 5. and provide copies of such formats to the CITY with the initial registration and annual report. Bills to each individual user may not include a deposit, reconnect charge, administrative fee or additional utility late penalty, except as identified in the lease as being considered and charged as a portion of the rent due on the unit.
11. OWNER shall distribute information regarding the REMETERING to all individual users who will receive distributed utility bills. Included in that information will be the name and phone number of the appropriate OWNER's representative to whom all billing inquiries should be directed.
12. OWNER shall abide by all provisions set forth in Chapter 39, Article VII, Section 39-70 of the Margate City Code of Ordinances, any federal, state and local law or administrative rule, and the Florida Building Code, all as may be amended from time to time, the American Water Works Association, and all applicable developer's agreement(s) for the PROPERTY.
13. This AGREEMENT may be revoked at any time by the CITY for failure of the OWNER to comply with any provision of this AGREEMENT, at which time OWNER shall immediately cease and desist all REMETERING activities. In addition, should OWNER fail to comply with any provision of this Agreement, the OWNER may be fined by the Special Magistrate at a rate of one thousand dollars (\$1,000) per day per violation. The CITY shall not be liable for any costs associated with the removal of said REMETERING devices and shall not be responsible for the reconnection or reinstallation of any such devices. OWNER shall reimburse CITY for the actual costs incurred by the CITY to remove said devices. OWNER shall not be permitted to continue REMETERING activities until the CITY has issued a written notice that said violation has been satisfactorily cured.
14. The CITY shall in no way be liable or responsible for any problems with the water or sewer services which are caused by the REMETERING of the PROPERTY; OWNER shall solely bear all related responsibility and costs in order to ensure the prompt provision of water and sewer services to the individual user.
15. The OWNER, its officers, directors, members, employees, volunteers, assistants, agents, and successors, shall be an independent contractor and at no time shall be considered an employee or agent of the CITY. The OWNER agrees at no time to represent or cause to be represented that they are employees or agents of the CITY.



REMETERING AGREEMENT

16. Neither the CITY nor the OWNER intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.
17. In order for a notice to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section.

FOR OWNER:

Avalon Toscana

3050 Toscana Lane West

Margate, FL 33063

Email address: AvalonToscana@avalonbay.com

FOR CITY:

City of Margate

901 NW 66th Ave

Margate, FL 33063

Email address: jearl@margatefl.com

18. Neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by OWNER without the prior written consent of the CITY. Any assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, constitute a breach of this Agreement, and permit the CITY to immediately terminate this Agreement, in addition to any other remedies available to the CITY at law or in equity, all such remedies being cumulative.
19. Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.



REMETERING AGREEMENT

20. This Agreement shall be subject to Florida's Public Records Laws, Chapter 119, Florida Statutes. OWNER understands the broad nature of these laws and agrees to comply with Florida's public records laws and laws relating to records retention. In compliance with section 119.0701, Florida Statutes, OWNER agrees to:
- a. OWNER agrees to keep and maintain public records in OWNER's possession or control in connection with OWNER's performance under this Agreement. OWNER additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes.
 - b. OWNER shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to City.
 - c. Upon request from City custodian of public records, OWNER shall provide City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
 - d. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City.
 - e. Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of OWNER or keep and maintain public records required by City to perform the service. If OWNER transfers all public records to City upon completion of this Agreement, OWNER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If OWNER keeps and maintains public records upon completion of this Agreement, OWNER shall meet all applicable requirements for retaining public records. All records stored electronically by OWNER shall be delivered to City, upon request from the City's Custodian of Records, in a format that is compatible with the City's information technology systems.
 - f. Any compensation due to OWNER shall be withheld until all records are received as provided herein.
 - g. OWNER's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by City.

IF OWNER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO OWNER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.



REMETERING AGREEMENT

Custodian of Public Records: JOSEPH KAVANAGH, CITY CLERK
Mailing address: 5790 Margate Blvd., Margate, FL 33063
Telephone number: 954-935-5327
Email: jjkavanagh@margatefl.com

21. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature; City of Margate, through its City Commission, signing by and through its Mayor and City Manager, authorized to execute same by the City Commission, and the OWNER, signing by and through its _____, duly authorized to execute same.

CITY OF MARGATE

ATTEST:

City Clerk, _____
Resolution No. _____
Date: _____

Mayor, _____
____ day of _____, 20____

City Manager, _____
____ day of _____, 20____

I HEREBY CERTIFY that I have approved this Agreement as to form:

City Attorney, _____
____ day of _____, 20____



REMETERING AGREEMENT

OWNER
FOR CORPORATION:

DocuSigned by:

Mark Delisi

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President

_____ day of 11/3/2020, 20____

(CORPORATE SEAL)

Catherine White

Assistant Secretary

_____ day of 11/3/2020, 20____

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 3rd day of November 2020 year, by Mark Delisi & Catherine White (name of person acknowledging)

Rebecca Jan Ault

Signature of Notary Public

State of ~~Florida~~ Arlington County
Virginia

Print, Type, or Stamp Commissioned

Name of Notary Public



Rebecca Jan Ault
Commonwealth of Virginia
Notary Public
Commission No. 7581998
My Commission Expires 11/30/2022