

Prepared by and Return to:
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DECLARATION OF RESTRICTIVE COVENANTS

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

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

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

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

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

WHEREAS, promptly after the execution and recordation of the Amended and Restated Declaration (as hereinafter defined) and this Restrictive Covenant (i) the City shall convey to the CDD the fee simple title air rights to the portion of the CDD Public Improvements Area, as described on **Exhibit D** attached hereto and made a part hereof ("**CDD Air Rights Parcel**"), subject to the terms and provisions of this Restrictive Covenant (including, but not limited to, the terms of the Reverter (as hereinafter defined) set forth in Section 16 of this Restrictive Covenant) and the Existing Title Documents, to assist the CDD in performing its functions as needed in connection with public improvements constructed within the CDD Air Rights Parcel, and (ii) the Master Tenant shall remit to the City the "**Workforce Education Program Contribution**" (as hereinafter defined); and

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

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

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

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

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

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

WHEREAS, the Parties desire to execute this Restrictive Covenant to provide that the conveyance of the CDD Air Rights Parcel to the CDD will not result in the loss to the City of the revenue and all other obligations, restrictions, covenants, representations and other provisions which benefit the City as contemplated in the Master Lease (as applicable) and any Phased Lease(s) executed as contemplated by the Master Lease all as set forth in this Restrictive Covenant.

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

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

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

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

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

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

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

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

“Amended and Restated Declaration” shall mean that certain Amended and Restated Declaration of Covenants & Restrictions of Bahia Mar Master Association, Inc. being recorded on or about the date of this Restrictive Covenant, which amends and restates the Declaration of Covenants & Restrictions of Bahia Mar Master Association, Inc. recorded in Instrument Number 116096957 of the Public Records of Broward County, Florida, as such Amended and Restated Declaration may be amended from time to time.

“Annual Payment” shall mean the (i) Residential Annual Payment, and (ii) Commercial Annual Payment.

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

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

“Applicable Commencement Date” shall mean the date of the execution of each respective Applicable Phased Lease.

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

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

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

“Applicable Podium Commencement Date” shall mean twenty (20) years following the Effective Date as extended for any delay in Commencement of Construction due to (i) any Force Majeure Event, (ii) delays relating to governmental permitting, (iii) delays relating to availability of conventional financing (using good faith efforts to do so), and/or (iv) delays relating to obtaining presales of at least sixty five percent (65%) of the intended Units in such building(s) to be

constructed within Phase 1 required by the lender providing funding for such portion of the Podium.

“Applicable Terminated Phased Lease” shall have the meaning set forth in Section 5.

“Approved Site Plan” shall mean the Site Plan approved by the City on or about June 20, 2023 in the basic layout attached hereto and made a part hereof as **Exhibit E**.

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

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

“Branded” shall mean each such Branded Apartment Unit or Branded Hotel Unit within each Applicable Air Rights Parcel which shall be partially managed by a four (4) star or higher hotel chain. Such management services provided by such hotel chain shall include access to a centralized rental reservation system for each Unit Owner and may include, at the option of each Association, management of recreation facilities, food & beverage outlets, fitness and/or health care related facilities, etc.

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

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

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

“Branded Residential Unit Owner” shall mean the owner of the Branded Residential Unit.

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

“CDD” shall have the meaning set forth in the preamble.

“CDD Air Rights Parcel” shall have the meaning set forth in the Recitals.

“CDD Public Improvements Area” shall have the meaning set forth in the Recitals.

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

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

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

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

“Commencement of Construction” shall have the meaning set forth in Section 16 of this Restrictive Covenant.

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

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

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

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

“Commercial Unit Owner” shall mean the owner of a Commercial Unit. Any tenant of a Commercial Unit Owner shall be considered a tenant.

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

“Community Trust Entity” shall mean the Community Foundation of Broward, the United Way of Broward, and/or any other organization as mutually agreed to in writing by City and the Applicable Phased Lessee (**“CTE”**) who will receive the Community Trust Sales Fee and split the proceeds of all receipts into separate trust funds for the benefit of the following needs of the residents of the City of Fort Lauderdale: (i) affordable housing/homelessness programs, (ii) inner City parks programs, (iii) environmental/sustainability causes; and (iv) such other causes as mutually agreed to in writing by the City and the Applicable Phased Lessee. The trust funds will be used to support such programs/causes and not for major capital improvements. An advisory board of no more than five residents of the City will be responsible for making recommendations to the CTE on where and how often said trust funds should be disbursed pursuant to these parameters. The Master Lessee and the City hereby agree to work closely together to finalize specific trust fund documents including the makeup of the advisory board, the splitting of contributed funds between the applicable trust funds, and minimum annual distributions of such funds.

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

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

planning purposes of the transferor (as in the case of a transfer to a trustee for the benefit of the transferor or Related Person(s)).

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

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

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

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

“CPI Adjustment” shall mean the Residential Annual Payment then in effect on the day immediately proceeding each Adjustment Date shall be multiplied by the percentage where the numerator is the CPI Index number in effect on October 1st immediately prior to such Adjustment Date and the denominator is the CPI Index number in effect on October 1st of the prior year but in no event shall any such CPI Adjustment be less than an increase of 1% nor more than an increase of 3%.

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

“Cure Period” shall mean, with respect to (a) the failure to pay any monetary obligation required to be paid to the City as set forth in this Restrictive Covenant, a period of thirty (30) days from the date the City shall provide written notice to the applicable defaulting Party Required to Perform in default in such payment, and (b) with respect to non-monetary defaults, a period of sixty (60) days from the date of the City’s written notice to such applicable Party Required to Perform who is in default of such non-monetary default, provided that with respect to any non-monetary defaults if such default is not cured within such sixty (60) days and the defaulting Party

Required to Perform proceeds with diligence to complete same, such Cure Period shall be extended for a reasonable time as appropriate to complete such cure.

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

“Effective Date” shall mean the last day this Restrictive Covenant is executed by the Master Tenant, City, and CDD and has been recorded in the Public Records of Broward County, Florida.

“Estoppel Statements” shall have the meaning set forth in Section 10.

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

“Excluded Revenues” shall have the meaning set forth in the definition of Gross Revenues.

“Existing Title Documents” shall have the meaning set forth in the Recitals.

“Fair Market Value Rent” shall be the amount of rent in effect on the commencement date of such lease representing at least ninety percent (90%) of the amount of rent that a third party tenant would pay a third party landlord for the lease of comparable space then being determined, taking into consideration, the amount of tenant improvement allowance being provided, brokerage commission being paid, age of the premises, location of such premises, term of such lease, and other applicable considerations in determining fair market value. In connection with each lease in which the Fair Market Value Rent needs to be determined, the City and Commercial Party will attempt to agree between themselves as to the Fair Market Value Rent and, to the extent the City and Commercial Party agree to same, such rent agreed to by the City and Commercial Party shall be deemed to be the Fair Market Value Rent for such lease. In the event the City and Commercial Party are unable to reach agreement as to the Fair Market Value Rent for such lease within thirty (30) days after written request by either party to the other, then the determination of the Fair Market Value Rent for such lease shall be determined as follows:

- (i) Within ten (10) business days after the failure of the City and Commercial Party to agree on the Fair Market Value Rent for such lease, the City shall appoint an MAI appraiser having at least ten (10) years’ experience appraising commercial property in the Broward County area that has not performed appraisal services for the City in the last five (5) year period prior to such determination (**“City Appraiser”**) and Commercial Party shall appoint an MAI appraiser having had at least ten (10) years’ experience appraising commercial property in the Broward County area who has not performed appraisal services for Commercial Party within the five (5) year period prior to such determination (**“Commercial Party Appraiser”**). In the event either the City or Commercial Party fails to timely appoint such MAI appraiser, then the MAI appraiser of the party who timely appoints its MAI appraiser shall, acting alone, determine such Fair Market Value Rent. Within thirty (30) days of

the appointment of the City Appraiser and/or Commercial Party Appraiser, the City Appraiser and Commercial Party Appraiser shall each submit their determination of the Fair Market Value Rent in question. In the event either party's MAI appraiser fails to provide its determination of Fair Market Value Rent within such thirty (30) day period, then the Fair Market Value Rent of the MAI appraiser who timely provides its determination of Fair Market Value Rent shall be deemed to be the Fair Market Value Rent. If neither such party timely appoints its MAI appraiser or if both MAI appraisers fail to timely provide its determination of Fair Market Value Rent, then such parties shall again restart the process to determine Fair Market Value Rent. To the extent that the Fair Market Value Rent as determined by the City Appraiser and Commercial Party Appraiser are within ten percent (10%) of each other, the Fair Market Value Rent shall be the average of the Fair Market Value Rent as determined by the City Appraiser and Commercial Party Appraiser.

- (ii) If the Fair Market Value Rent as determined by the City Appraiser and Commercial Party Appraiser are not within ten percent (10%) of each other, then the City Appraiser and Commercial Party Appraiser shall jointly select a third appraiser within ten (10) days of request by the City or Commercial Party to do so. If they fail to agree to such third appraiser within such ten (10) day period, then such third appraiser shall be selected by Commercial Party and the City, and if they fail to agree on a third appraiser, then in accordance with the rules of the American Arbitration Association, a third appraiser shall be selected. The third appraiser in all cases shall be an MAI appraiser having at least ten years' experience appraising commercial property in the Broward County area who has not performed appraisal services for the City or Commercial Party within the five year period immediately prior to the date of such determination ("**Third Appraiser**"). Upon appointment of the Third Appraiser, such Third Appraiser shall make a determination of the Fair Market Value Rent within thirty (30) days of being appointed and which Fair Market Value Rent shall no higher than the highest Fair Market Value Rent and no lower than the lowest Fair Market Value Rent of the City Appraiser and Commercial Party Appraiser. The Fair Market Value Rent shall be the average of the two closest appraised values of Fair Market Value Rent between the City Appraiser, Commercial Party Appraiser, and the Third Appraiser. The Commercial Party shall pay for the Commercial Party Appraiser, the City shall pay for the City Appraiser and the costs of any arbitration and the Third Appraiser shall be split equally between the City and Commercial Party or, to the extent the City desires that Commercial Party pays the full cost of such arbitration and Third Appraiser, then one-half (1/2) of the cost of such arbitration and the Third Appraiser may be offset by Commercial Party against Commercial Annual Payment due under this Lease.

"Force Majeure Event" shall mean any of the following occurring in or directly impacting Broward County, Florida: (a) hurricane, flood, tornado, excessive rain, wind, or other extreme unpredictable weather, natural disaster, meteorological events, seismic event, or other acts of God;

(b) fire or other casualty; (c) earthquake; (d) explosion; (e) war (whether or not formally declared); (f) civil unrest, riot, civil commotion or insurrection, or rebellion; (g) area-wide or industry-wide strike, lockout, or other labor dispute; (h) condemnation; (i) act or threat of terrorism; (j) a regional or national disruption of the delivery of materials, ability to receive services or utilities, or of shipping or transportation services; (k) shortage of any material or commodity, which is not due to the Party Required to Perform's failure to appropriately contract for the same; (l) embargo, quarantine, disease and/or virus outbreak, pandemic, or epidemic; (m) national, regional or local emergency; or (n) any other acts outside the control of the Party Required to Perform. Notwithstanding anything to the contrary herein, failure to secure or retain financing shall not be deemed a Force Majeure Event.

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

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

(a) Notwithstanding anything contained herein to the contrary, with respect to leased space, an amount equal to the base annual rent (excluding taxes, insurance, common area charges and additional rent) paid by the lessee to the Commercial Party (i) if the lessee is not an Affiliate of the Commercial Party, or (ii) if the Sublessee is an Affiliate of the Commercial Party, then the amount of base annual rent (excluding taxes, insurance, common area charges and additional rent) paid by such lessee to the Commercial Party, provided the annual base rent (excluding taxes, insurance, common area charges and additional rent) payable under such lease shall be at a Fair Market Value Rent for such space.

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

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

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

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

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

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

(v) Personal services, laundry services;

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

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

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

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

(i) Gratuities received by employees;

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

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

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

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

(vi) Interest income, if any;

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

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

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

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

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

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

calculation of the Commercial Annual Payment, subject to the other provisions in this definition of Gross Revenue.

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

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

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

“Initial Third Party Branded Residential Unit Owner” shall mean the first Branded Residential Unit Owner of a Conveyed Branded Residential Unit.

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

“Master Tenant” shall have the meaning set forth in the preamble.

“Master Lease” shall have the meaning set forth in the Recitals.

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

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

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

“Original Branded Residential Unit Owner” shall mean the first Branded Residential Unit Owner who recorded the Regime Documents.

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

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

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

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

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

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

“Phased Lease” shall have the meaning set forth in the Master Lease.

“Phased Lessee” shall have the meaning set forth in the Master Lease.

“Phased Lessor” shall have the meaning set forth in the Master Lease.

“Phased Parcel” shall have the meaning set forth in the Master Lease.

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

“Public Parking Area” shall have the meaning set forth in the Recitals.

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

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

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

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

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

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

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

“Reverter” shall mean the terms and provisions upon which the CDD Air Rights Parcel shall revert back to the City to the extent and subject to the terms of Section 16 of this Restrictive Covenant.

“Reverter Event” shall have the meaning set forth in Section 16 of this Restrictive Covenant.

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

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

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

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

“Square Footage” shall mean the aggregate square footage of each Branded Residential Unit (as applicable) located in the Applicable Air Rights Parcel measured from the interior face of

the boundary walls, excluding balconies (i.e. paint to paint) of each such Branded Residential Unit (as applicable).

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

“Subsequent Sale” shall mean the sale of a Commercial Branded Residential Unit.

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

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

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

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

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

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

“Unit Owner” shall mean the owner of a Unit.

“Workforce Education Programs Contribution” shall mean Two Hundred Fifty Thousand Dollars (\$250,000).

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

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

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

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

5. Termination of Applicable Phased Lease.

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

(b) Each Applicable Phased Lessee shall have the right, at its option, to elect in writing to terminate such Applicable Phased Lease upon written notice of such termination to the City (“**Applicable Phased Lease Termination Notice**”), whereupon delivery of such Applicable Phased Lease Termination Notice (a) such Applicable Phased Lease shall terminate (such terminated Phased Lease being the “**Applicable Terminated Phased Lease**”) and the City, CDD and such Applicable Phased Lessee shall promptly execute such documents reasonably requested by the City or the Applicable Phased Lessee to reflect such Applicable Terminated Phased Lease

was terminated and the Applicable Phased Lessee shall have no further obligations under such Applicable Terminated Phased Lease but the Applicable Air Rights Parcel shall continue to be subject to the terms and provisions of this Restrictive Covenant. Notwithstanding anything to the contrary contained in the Applicable Terminated Phased Lease, following the termination of the Applicable Terminated Phased Lease, the ownership of the improvements located within the applicable portion of the CDD Air Rights Parcel and the ownership of the CDD Air Rights Parcel shall remain with the Owner of such portion.

6. Uses.

(a) Permitted Use. Except as stated below, the Applicable Phased Lessee and Owners agree, and the City consents, that the CDD Air Rights Parcel shall include Building(s) which contains mixed use components consistent with zoning applicable to the CDD Air Rights Parcel, from time to time, including the Podium, retail, office, hotel room, residential dwelling units (whether or not any of such hotel room or residential dwelling uses are submitted to Regime form of ownership), landscaping, common areas, parking areas, and other uses defined as permitted uses under applicable zoning and which are not either a prohibited use under such zoning or a Prohibited Use under this Restrictive Covenant (collectively "Permitted Use"); provided, however, without the consent of the City Manager: (i) any Branded Apartment Units hereinafter developed on the CDD Air Rights Parcel will be Branded and any Branded Hotel Units shall be Branded and the Owners will not modify the uses of the Premises in a manner which would result in there being; (i) Branded Apartment Units in excess of three hundred fifty (350) Branded Apartment Units; (ii) Branded Hotel Units in excess of sixty (60) Branded Hotel Units, (iii) two hundred fifty-six (256) hotel rooms, plus (iv) not more than 88,000 square feet of retail/office space. The Permitted Uses also includes uses such as restaurant(s), cocktail lounge(s), liquor package store, food stores, yacht brokerage offices, convention hall, retail stores, marine stores, marine service station, offices, the Boat Show and other kindred and similar businesses, and also includes all uses for the operation of the Boat Show. Except for the Prohibited Uses as set forth in this Sections 6(b), (c) and (d) (unless the City consents to any Party conducting the Prohibited Uses within the CDD Air Rights Parcel, such consent being subject to the City's exclusive and sole discretion, and upon such approval, such uses shall be deemed Permitted Uses), and uses which are prohibited under applicable zoning, it is not the intention of the Parties that the Applicable Phase Lessee and/or Owner(s) shall be unduly restricted in the use of the CDD Air Rights Parcel other than the Applicable Phased Lessee and Owners are required to conduct legal business or businesses within the CDD Air Rights Parcel in conformance with the terms of this Restrictive Covenant (excluding the Prohibited Uses without the consent of the City as aforesaid) in keeping with the purpose for which the improvements thereon were constructed. The Hotel, when operated, shall be maintained and operated so that it achieves and maintains at least a 3 Star Rating (however, upon redevelopment of the Hotel pursuant to the Site Plan, a 4 Star Rating) from a nationally recognized hotel rating system/guide ("Hotel Standards"). In the event that these rating standards are discontinued, the parties shall reasonably agree on a successor standard that is as equivalent as possible to the foregoing ratings. The Branded Apartment Units and Branded Hotel Units shall be Branded.

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

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

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

7. Consideration.

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

(b) Commercial Annual Payment Computation. Within one-hundred twenty (120) days after the end of each calendar year, the Applicable Phased Lessee (until the creation of the Regime) and the Commercial Unit Owner (after the creation of the Regime) shall pay to the City (prior to the creation of the Regime) and each Commercial Unit Owner shall pay to the Association (after the creation of the Regime) as collection agent, to remit to the City, a sum equal to the Commercial Annual Payment from each Commercial Unit Owner for its Commercial Unit within such Applicable Air Rights Parcel for the preceding calendar year. Additionally, the Applicable Phased Lessee (prior to the creation of the Regime) and each Commercial Unit Owner shall further deliver to the City (prior to the creation of the Regime) and to the Association (after the creation of the Regime) for delivery to the City at said time a detailed statement duly signed by a CPA Firm selected by the Applicable Phased Lessee (prior to creation of the Regime) and each such Commercial Unit Owner (after creation of such Regime) certified to the City and the

Association (after creation of the Regime) setting forth an itemization of all Gross Revenue for the preceding calendar year, which statement shall further show and indicate the Gross Revenue, if any, for each of the classifications set forth in the definition of Gross Revenue. Such detailed statement shall be similar in format with the detailed statements provided by the Master Lessee in the lease year under the Master Lease.

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

(d) Additional Consideration. If the City is required or elects to pay any sum or sums or incur any obligations or expense by reason of the failure, neglect or refusal of any Owner, Applicable Phased Lessee, Commercial Party or Association required to pay or perform its obligations under this Restrictive Covenant ("**Party Required to Perform**"), which breach is not cured by the Party Required to Perform within the applicable Cure Period, the Party Required to Perform agrees to pay the reasonable sums so paid or the reasonable expense so incurred by the City to cure such default, including all interest, costs, damages and penalties, and reasonable attorneys' fees and costs, and each and every part of the same shall be and become Additional Consideration payable by the Party Required to Perform within thirty (30) calendar days after written demand therefor (together with reasonable supporting documentation of such sums expended) together with interest thereon at the Default Rate after said thirty (30) day period if not paid within such thirty (30) days period. As to non-monetary defaults, if the applicable Party Required to Perform commences correction of said default within a sixty (60) day period and proceeds with diligence to completion, then the Cure Period shall be extended for a reasonable time as appropriate to complete such cure. This provision shall extend to any mortgagee of all or any part of the CDD Air Rights Parcel with whom the City has executed a Non-Disturbance Agreement in the event such mortgagee elects to exercise its option to cure such default.

Additionally, to the extent of any Consideration that is owed by any Party Required to Perform after the recording of the Regime Documents creating the Regime, the Association shall have an additional Cure Period (not to exceed one hundred eighty (180) days) to enable the Association to levy a special assessment for the amount of such amount of Consideration and the Association shall have thirty (30) days after the imposition of such special assessments to pay such Consideration.

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

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

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

(h) Sales Consideration Fee. The Original Branded Residential Unit Owner agrees that the Association has a lien right on each Branded Residential Unit to secure the payment of the Sales Consideration Fee applicable thereto and a lien may be filed if such Sales Consideration Fee is not paid within thirty (30) days after written notice from the City or Community Trust Entity (as applicable) to the Original Branded Residential Unit Owner and the Association. While the Original Branded Residential Unit Owner (and the Association to the extent not paid by the Original Branded Residential Unit Owner) is responsible for payment of the Sales Consideration Fee, it is the intent of the Parties that at each initial closing, the closing agent handling such closing would collect the Sales Consideration Fee payable for such Branded Residential Unit and remit same to the City, together with a copy of an executed closing statement for such Branded Residential Unit, and that in connection with such closing, the Association, the City and Community Trust Entity (as applicable) would provide a partial release (in a form to be prepared by LESSEE or Original Branded Residential Unit Owner and such form reasonably approved by the City Manager) for such Branded Residential Unit indicating that such Sales Consideration Fee for such Branded Residential Unit has been paid ("**Partial Release**"), which Partial Release would be recorded (at the Original Branded Residential Unit Owner's or its grantee's expense) at such closing simultaneous with the closing agent disbursing such Sales

Consideration Fee to the City and the Community Trust Entity (as applicable). Upon payment of the Sales Consideration Fee for any Branded Residential Unit that is not a Conveyed Branded Residential Unit, such Branded Residential Unit becomes a Conveyed Branded Residential Unit, it shall no longer be obligated to pay the Sales Consideration Fee, and the Association shall not impose any assessment on such Conveyed Branded Residential Unit for the Sales Consideration Fee. If, however, the Sales Consideration Fee for any Branded Residential Unit that is not a Conveyed Branded Residential Unit was not paid when due, thereafter the Original Branded Residential Unit remains obligated to pay the Sales Consideration Fee but with interest at the Default Rate, and the Association shall impose a special assessment on such Branded Residential Unit for such Sales Consideration Fee and interest, collect same, and pay same to the City and Community Trust Entity (as applicable). The Sales Consideration Fee is a separate and different obligation than the Residential Annual Consideration and the Transfer Fee. The City and Community Trust Entity (as applicable) shall be a third-party beneficiary of such lien rights and shall be entitled to enforce same to the extent the Association shall fail to do so.

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

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

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

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

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

Each of the foregoing obligations of the Association and Unit Owners shall be affirmatively set forth in the Regime Documents. The common expense definition in the Regime Documents shall include the Annual Rent due and payable under the Applicable Phased Lease until the termination of the Applicable Terminated Phased Lease and the Annual Payment after the termination of such Applicable Terminated Phased Lease, and shall provide that the provisions hereby relating to the payment of the obligations set forth in this Section 8 and the foregoing

obligations of the Association shall not be amended without the prior written consent of the Applicable Phased Lessee until the Regime is created and the Association thereafter. In the event of a default under this Restrictive Covenant not cured within the applicable Cure Period, then subject to the provisions of this Section 8, the City shall have all other remedies available against the Party Required to Perform, including:

- (a) seeking compensatory damages from the Association;
- (b) seeking a decree of specific performance requiring the Association to impose the assessments and reassessments required by this Lease in an amount sufficient to pay all Rent required by this Lease in the manner so required, enforce same by foreclosure of the lien securing payment of same and judicial sale (i) collect such assessments against the Units who have not paid its applicable Annual Rent attributable to such Unit, and (ii) collect special assessments (which shall be a common law lien and not a lien for common expenses) against any Branded Residential Unit that has failed to pay Sales Consideration Fee to the extent due upon the conveyance of such Branded Residential Unit, and pay same to the City;
- (c) the right to foreclose the annual assessment and special assessment lien rights under the collateral assignment referred to above, and such right shall also be set forth in the Regime Documents.

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

10. Estoppel Statement. Not more than three (3) times a year, upon not less than thirty (30) days prior request by a Party or Party Required to Perform hereto, the Party or Party Required to Perform being requested to provide such estoppel will deliver a statement in writing (“**Estoppel Statements**”) certifying: (a) whether this Restrictive Covenant is unmodified and in full force and effect (or, if there have been modifications, that this Restrictive Covenant as modified is in full force and effect and stating the modifications); (b) the dates to which the Consideration and other charges have been paid by such Party Required to Perform; (c) to the best of the actual knowledge of the signor, whether any facts are known that either Party is in default and, if none, that no facts are known which would cause a Party or Party Required to Perform to be in default under the provisions of this Restrictive Covenant, or, if in default, the nature thereof in detail; and (d) such other information pertaining to this Restrictive Covenant as any Party or Party Required to Perform may reasonably request.

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

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

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

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

transmission at the email address indicated (with confirmation of receipt). Notice sent by counsel for any Party or Owner(s) shall be deemed to be notice sent by such Party or Owner(s).

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

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

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

15. Indemnity.

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

(i) the rights, responsibilities, and obligations of Specified Air Rights Owners under this Restrictive Covenant, the breach or default by Specified Air Rights Owners of any covenant or provision of this Restrictive Covenant, or any Phased Lease in effect or Specified Air Rights Owner's possession, use, or occupancy of the Applicable Air Rights Parcel or the Improvements, or some or all of the foregoing;

(ii) any Regime development on the Applicable Air Rights Parcel owned by such Specified Air Rights Owner, to the extent a Regime is created by such Specified Air Rights Owner upon any portion of the Applicable Air Rights Parcel, that such Regime does

not comply with the Act, or that no Regime was created in connection with the intended Regime, or that this Restricted Covenant does not comply with §718.122, §718.401 or §718.404 of the Act, or that any documents used by Specified Air Rights Owner in the sale or marketing or description of the Regime condominium were inaccurate, misleading, incomplete, or failed to satisfy all legal requirements, or that involve owners or occupants of the Regime Units;

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

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

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

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

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

(b) The City and each Specified Air Rights Owner agree that the prevailing Party shall be entitled to recover from the non-prevailing Party, reasonable attorneys' fees, experts' fees and costs incurred by the prevailing Party in connection with a dispute with respect to the provision of this Article 15.

(c) In any matter asserted against the City by third parties which falls within the scope of this indemnity, neither the provisions of this Restrictive Covenant, nor the Specified Air Rights Owner's indemnification of the City hereunder are intended to waive or affect, and

shall not be construed to waive or affect, the City's sovereign immunity, and at all times the City shall retain its sovereign immunity to the greatest extent as may be provided by law. Furthermore, in defending the City against claims of third parties pursuant to the Indemnity provided in this Section 15, the Specified Air Rights Owner may assert the City's sovereign immunity to the greatest extent as may be provided by law.

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

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

16. Reverter. The City shall convey the CDD Air Rights Parcel to the CDD, subject to the "Reverter" (as hereafter defined). The term "**Reverter**" shall mean that the City shall have the right to request in writing to the Air Rights Owner (with a copy to the CDD and the Master Tenant) that the title to the CDD Air Rights Parcel shall revert back to the City in the event, and only to the extent that, no portion of the Podium containing any portion of Phase 1 has commenced construction prior to the end of the Applicable Podium Commencement Date ("**Reverter Event**"). In the event that there is commencement of construction of any portion of the Podium containing any portion of Phase 1 prior to the end of the Applicable Podium Commencement Date ("**Commencement of Construction**"), then, upon Commencement of Construction, the City agrees that, upon written request of Master Tenant or the CDD, the City shall promptly execute and deliver, and record in the Public Records of Broward County, Florida, such document as may be reasonably requested to evidence that the Reverter no longer exists and is null, void, and of no further force and effect.

In the event that Commencement of Construction does not occur prior to the end of the Applicable Podium Commencement Date, then, and only upon such event, the following shall occur: (i) the City shall have the right to request in writing to the Air Rights Owner (with a copy to the CDD and the Master Tenant) that title to the CDD Air Rights Parcel shall revert back to the City, and upon such request of the City, the Air Rights Owner(s) shall execute and deliver to the City a quit claim deed to the City reflecting such Reverter, (ii) upon the reversion of the CDD Air Rights Parcel back to the City, this Declaration shall terminate and be null, void, and of no further force and effect, (iii) the Master Lease and each Phased Lease shall remain in full force and effect as if the CDD Air Rights Parcel had not been conveyed by the City to the CDD, and (iv) the Master Tenant shall have the right, acting alone (without consent of the City or CDD) to amend the Amended and Restated Declaration to reflect that the CDD Air Rights Parcel has reverted to the City, whereupon the terms CDD Air Rights Parcel, Air Rights Owner, Applicable Air Rights Owner, Parcels owned by the CDD, and Perpetual Easements may be removed from the Amended and Restated Declaration, as they would no longer be applicable.

In the event of a dispute between any of the Parties with respect to whether or not the Reverter has occurred, such dispute shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association in which one arbitrator shall hear the cause and the determination in such arbitration shall be binding upon the Parties hereto. Each Party shall bear its own attorneys' fees and costs in connection with such arbitration and the other costs of the arbitration shall be split fifty percent (50%) payable by the City and fifty percent (50%) payable by the Master Tenant.

17. Miscellaneous Provisions.

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

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

(c) Radon. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the county health department.

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

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

(f) Amendments. Any amendments to this Restrictive Covenant shall be in writing and executed by the following parties (such parties as applicable are an "**Applicable Party**"): (i) prior to the creation of the Regime on the Applicable Air Rights Parcel, the CDD (to the extent its rights or obligations under these Restrictive Covenants are adversely amended), Applicable Phased Lessee or Owners (other than Unit Owners), as applicable (to the extent its rights or obligations under these Restrictive Covenants are adversely amended), and City Commission of the City (to the extent its rights or obligations under these Restrictive Covenants are adversely amended), and (ii) following the creation of the Regime on the Applicable Air Rights

Parcel, the CDD (to the extent its rights or obligations under these Restrictive Covenants are adversely amended), the City Commission of the City (to the extent its rights or obligations under these Restrictive Covenants are adversely amended) and the Association (to the extent its rights or obligations under these Restrictive Covenants are adversely amended). To the extent of a proposed amendment to the Restrictive Covenant, a draft of such amendment shall be sent to the City in order to provide the City a reasonable period of time to advise whether or not it is the City's position that they have the right to reject such amendment, as such amendment adversely effects the rights or obligations of the City and, to the extent the City believes that such amendment adversely effects the City's rights or obligations, it shall in such response advise its basis for such position. If the City does not respond within thirty (30) days of written request, the proposed amendment shall be deemed approved by the City. Any amendments to this Restrictive Covenant shall be recorded in the Public Records of Broward County, Florida. Notwithstanding anything contained herein to the contrary, no amendment to this Restrictive Covenant shall be made which would materially adversely affect the rights or obligations of any Applicable Party without the written consent of such Applicable Party.

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

(h) Severability. If any provision of this Restrictive Covenant, or any paragraph, sentence, clause, phrase, or word, or the application thereof, is held invalid, then, to the extent possible, and provided that none of the substantive rights, obligations or liabilities of any party are altered, the remainder of this Restrictive Covenant shall be construed as if such invalid part were never included herein and this Restrictive Covenant shall be and remain valid and enforceable to the fullest extent permitted by law. If, however, the clause determined to be invalid materially affects the performance of the Party Required to Perform or materially impacts the Parties', Applicable Phased Lessee's, Association's or Owners' expectations or positions with respect to this Restrictive Covenant, the Parties, Applicable Phased Lessee, Association (for itself and/or any Unit Owners) or Owners (other than the Unit Owners) (as applicable) will negotiate in good faith and modify this Restrictive Covenant in some fashion so as to, as near as possible, place the Parties, Association (for itself and/or any Unit Owners) or Owners (other than the Unit Owners) in the same position they were in, viz-a-vie, their intent, performance expectations, and economic position.

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

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

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

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

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

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

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

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

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

(SIGNATURE APPEAR ON FOLLOWING PAGES)

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

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

By: _____
Name: _____
Title: _____

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

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

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

Notary Public, State of Florida

Typed, printed or stamped name of Notary Public

My commission expires:

MASTER TENANT SIGNATURE PAGE

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

CITY OF FORT LAUDERDALE

By: _____, Mayor

By: _____
Name: _____ City Clerk
Title: _____

Attest: _____
City Clerk

Approved as to Form:

City Attorney

STATE OF FLORIDA
COUNTY OF BROWARD

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

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

(SEAL)

Notary Public
Print Name: _____

My Commission Expires:

CITY SIGNATURE PAGE

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

BAHIA MAR COMMUNITY DEVELOPMENT
DISTRICT

By: _____
Name: _____
Title: _____

STATE OF FLORIDA)
)
COUNTY OF)

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

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

Notary Public, State of Florida

Typed, printed or stamped name of Notary Public

My commission expires:

CDD SIGNATURE PAGE

JOINDER

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

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

WITNESSES:

SYNOVUS BANK,
a Georgia banking corporation

Signature

Print Name

Signature

Print Name

By: _____
Name: _____
Title: _____

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

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

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

Notary Public

Typed, printed or stamped name of Notary Public

My Commission Expires:

JOINDER

EXHIBIT A

PROPERTY

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

EXHIBIT A

EXHIBIT B

CDD PUBLIC IMPROVEMENTS AREA

EXHIBIT B



McLAUGHLIN ENGINEERING COMPANY LB 285
A DIVISION OF CONTROL POINT ASSOCIATES, INC. LB 8137

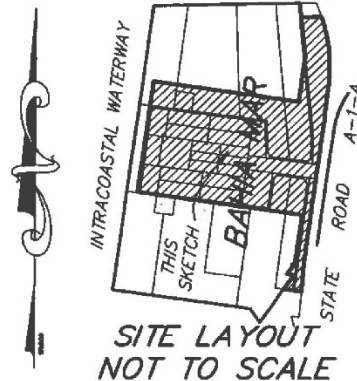
CUTTING EDGE SURVEYING * PLATTING * LAND PLANNING
 1700 N.W. 64th STREET #400, FORT LAUDERDALE, FLORIDA 33309
 PHONE: (954) 763-7611 * EMAIL: JHADDIX@CPASURVEY.COM



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

LEGAL DESCRIPTION:

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



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

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

NOTES:

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

CERTIFICATION

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

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

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

FIELD BOOK NO. _____

DRAWN BY: JMMjr _____

JOB ORDER NO. 230306 (BAHIA MAR) _____

CHECKED BY: _____

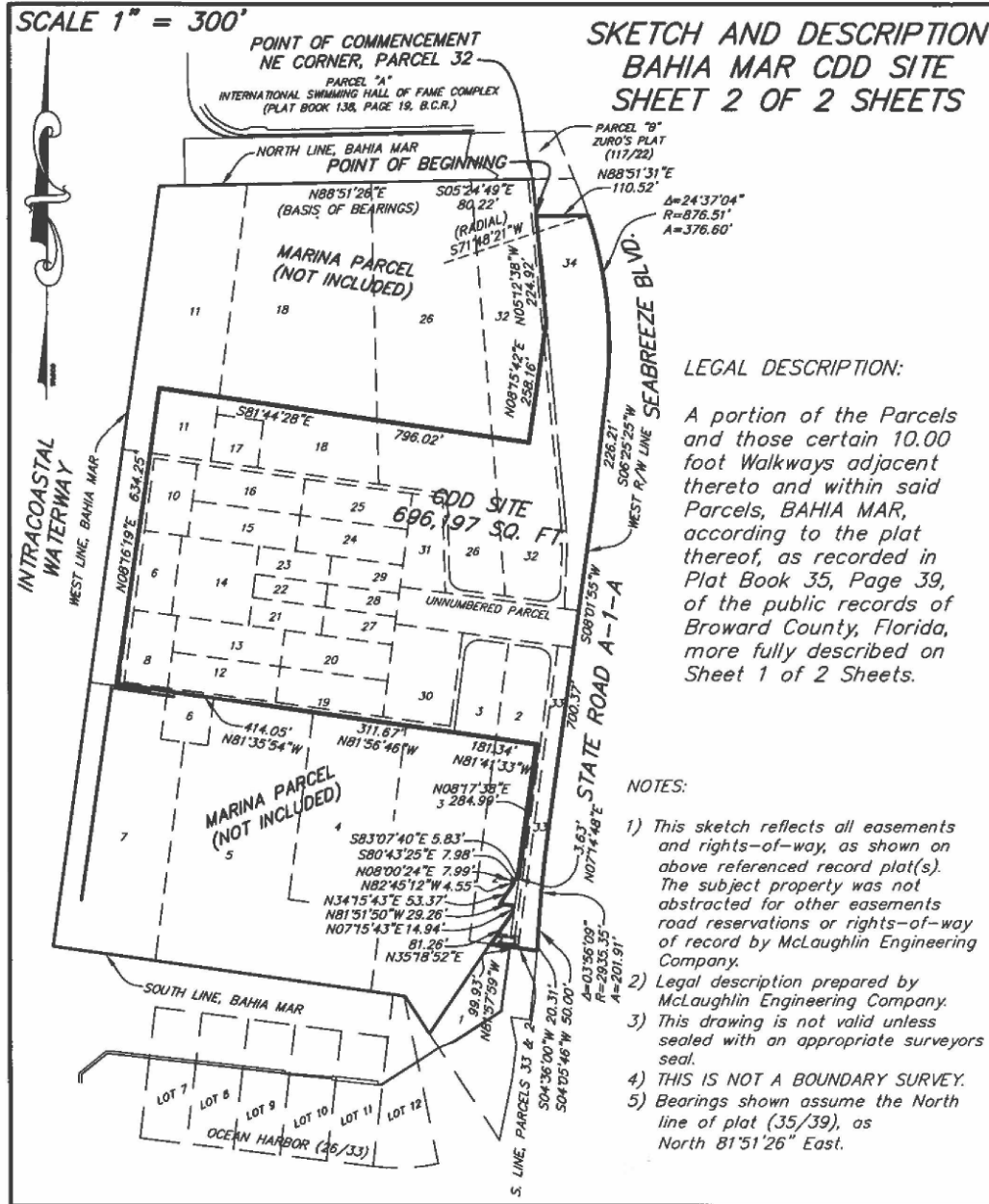
REF. DWG.: A-20(14), 97-3-134

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

EXHIBIT B



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



FIELD BOOK NO. _____
JOB ORDER NO. 230306 (BAHIA MAR)
REF. DWG.: A-20(14), 97-3-134

DRAWN BY: JMMjr
CHECKED BY: _____
C: \JMMjr\2023\ 230306 (BAHIA MAR)

EXHIBIT B

37958.0031
56062734V22
ACTIVE 690221768v3

CAM 24-0109
Exhibit 7
Page 40 of 45

EXHIBIT C

OTHER EXISTING TITLE DOCUMENTS

EXHIBIT C

EXHIBIT D

CDD AIR RIGHTS PARCEL

EXHIBIT D



McLAUGHLIN ENGINEERING COMPANY LB 285
A DIVISION OF CONTROL POINT ASSOCIATES, INC. LB 8137

CUTTING EDGE SURVEYING * PLATTING * LAND PLANNING
1700 N.W. 64th STREET #400, FORT LAUDERDALE, FLORIDA 33309
PHONE: (954) 763-7611 * EMAIL: JHADDIX@CPASURVEY.COM



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

LEGAL DESCRIPTION:

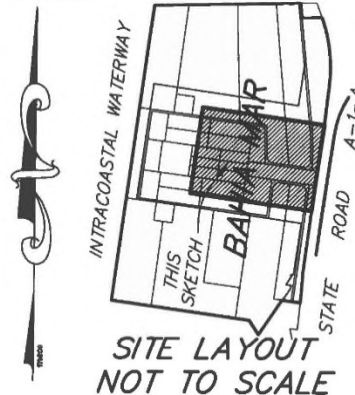
A portion of the Parcels and those certain 10.00 foot Walkways adjacent thereto and within said Parcels, BAHIA MAR, according to the plat thereof, as recorded in Plat Book 35, Page 39, of the public records of Broward County, Florida, above the ground level (preconstruction), Elevation= 3.5 feet, North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

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

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

NOTES:

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



CERTIFICATION

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

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

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

FIELD BOOK NO. _____

DRAWN BY: JMMjr

JOB ORDER NO. 230306 (BAHIA MAR)
REF. DWG.: A-20(14), 97-3-134

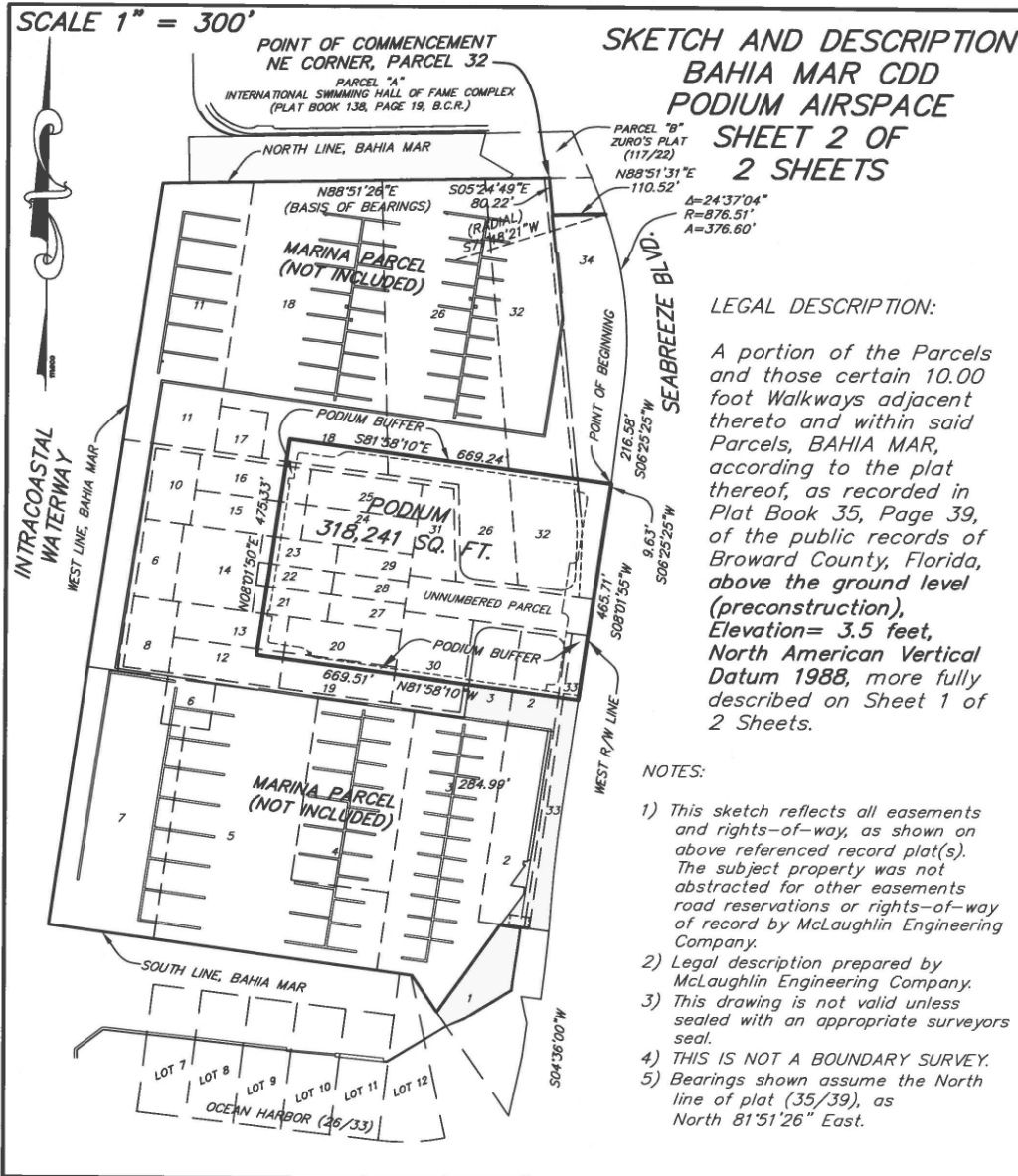
CHECKED BY: _____
C: \JMMjr\2023\ 230306 (BAHIA MAR)

EXHIBIT D



McLAUGHLIN ENGINEERING COMPANY LB 285
A DIVISION OF CONTROL POINT ASSOCIATES, INC. LB 8137

CUTTING EDGE SURVEYING * PLATTING * LAND PLANNING
1700 N.W. 64th STREET #400, FORT LAUDERDALE, FLORIDA 33309
PHONE: (954) 763-7611 * EMAIL: JHADDIX@CPASURVEY.COM



FIELD BOOK NO. _____

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

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

EXHIBIT D

37958.0031
56062734V22
ACTIVE 690221768v3

CAM 24-0109
Exhibit 7
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APPROVED SITE PLAN



EXHIBIT E

37958.0031
56062734V22
ACTIVE 690221768v3