

This instrument prepared by:

(To be RECORDED in the Public Records of Broward County)

Stephanie J. Toothaker, Esq.
Toothaker.org
501 Southwest 2nd Avenue, Suite A
Fort Lauderdale, FL 33301

**PLANNED DEVELOPMENT DISTRICT DEVELOPMENT, OPERATION, AND
MAINTENANCE AGREEMENT BETWEEN
KT SEABREEZE ATLANTIC LLC**

AND

**CITY OF FORT LAUDERDALE,
a municipal corporation of the State of Florida**

This Planned Development District Development Agreement (this "Agreement") is entered this ____ day of _____, 2022 by and between **KT SEABREEZE ATLANTIC LLC**, a Florida limited liability company, formerly known as KT Seabreeze Atlantic, LP ("Owner"), and the **CITY OF FORT LAUDERDALE**, a municipal corporation of the State of Florida (the "CITY"). The Owner and the City are collectively the "Parties" and each individually is a "Party."

BACKGROUND

WHEREAS, Owner holds fee simple title to 2.2695 acres (98,858 square feet) of property located in the CITY, more particularly described in the legal description attached hereto and made a part hereof as **Exhibit "A"** (the "Property"); and

WHEREAS, the Property is subject to the provisions of the Land Swap and Development Agreement ("Land Swap Agreement") entered into on December 20, 2016 which terms are further effectuated by the Declaration of Restrictive Covenants Respecting the Sebastian Site (the "Declaration") recorded under Instrument #114601921 and Amendment to the Declaration of Restrictive Covenants Respecting the Sebastian Site (the "Amendment") recorded under Instrument # 116998303 of the Public Records of Broward County, Florida; and

WHEREAS, the City Commission approved the development plan under DRC Case No. PDD190001 on October 6, 2020 for the project known as "Selene Oceanfront Residences", formerly known as "3000 Alhambra", as part of Owner's rezoning application from A-1-A Beachfront Area District ("ABA") to Planned Development District ("PDD") to develop a mixed use development consisting of 215 units, 5,150 square feet of ground floor restaurant/commercial space, and 497 total parking spaces, including 120 public parking spaces, hereinafter referred to as the "Original PDD Plan", as recorded in Instrument No. 116847769 of the Public Records of Broward County, Florida and incorporated herein as **Exhibit "B"**; and

WHEREAS, Owner subsequently submitted a site plan amendment under Case No. UDP-A21031 that reduced the residential units from 215 to 196 units, increased the restaurant/commercial square footage from 5,150 to 5,615 square feet, and reduced the total parking count from 497 to 480 parking spaces with associated minor architectural, landscape, and civil modifications, hereinafter referred to as the "Amended PDD Plan" and incorporated herein as **Exhibit "C"**, and the conditions placed on the Original PDD Plan have been reassigned to the Amended PDD Plan; and

WHEREAS, the CITY's Unified Land Development Regulations ("ULDR") Section 47-37A.13, Agreements, requires that applicants execute such agreements, easements and other documents necessary with regard to the implementation of any conditions imposed on an approved PDD plan; and

WHEREAS, as a condition of approval of the Amended PDD Plan, the CITY requires the execution of a PDD development agreement consistent with ULDR, Section 47-37A.13, Agreements which shall be recorded in the Public Records of Broward County and provided to the CITY post recordation; and

WHEREAS, Owner wishes to enter into this Agreement to memorialize Owner's obligation to install the PDD required off-site improvements; and

NOW, THEREFORE, it is hereby resolved and agreed by and between the CITY and the Owner that the approved Amended PDD Plan is subject to the Agreement's following terms and conditions:

1. **Recitals.** The foregoing Background information is true, correct, and incorporated herein by reference. All Exhibits to the Agreement are deemed a part hereof.
2. **Development Standards.** Owner shall be permitted to develop the project in accordance with the PDD standards established in the approved Amended PDD Plan, attached hereto as **Exhibit "C"**, or as subsequently amended, modified, and approved pursuant to Section 47-24.2.A.5 – Amendments to Site Plan.
 - 2.1. **Development Uses Permitted on the Land.** Ordinance No. C-20-33, adopted the 6th day of October, 2020 and recorded as Instrument Number 116847769 of the Public Records of Broward County, Florida, approved rezoning of lands described therein subject to the conditions imposed by the Development Review Committee and the Planning Board and a Site Plan Level IV Development Permit for the development of residential and commercial uses. Commercial uses shall meet the list of permitted uses under ULDR, Section 47-12.5.B.5 which are consistent with the Property's underlying Central Beach RAC land use designation of the City's Comprehensive Plan.
 - 2.2. **Dimensional, Parking and Landscape Requirements.** The development shall be permitted to be developed in accordance with the dimensional, parking and landscape standards established in the approved Amended PDD Plan or as may be amended, modified, and approved pursuant to ULDR Section 47-24.2.A.5 – Amendments to Site Plan.
3. **Conditions of Approval.**

The conditions of approval placed on the Original PDD Plan were reassigned to the Amended PDD Plan and are as follows:

- a) Prior to Final DRC, the applicant shall update the architectural elevation drawings with detailed drawings of the rooftop screening material and if necessary, provide additional sheets in the plan set to ensure rooftop screening material is adequate.
 - b) Prior to Final DRC, the applicant shall execute a parking reduction order and a valet parking agreement and record such in public records.
 - c) Prior to Final DRC, the applicant shall execute a development agreement consistent with ULDR, Section 47-37A.13, Agreements, which shall be recorded in public records and provided to the City post recordation.
 - d) Prior to Final DRC, applicant shall provide the final School Capacity Availability Determination (SCADS) letter that confirms that school capacity is available, or if capacity is not available, that mitigation requirements have been satisfied.
 - e) Pursuant to ULDR Section 47-38A, Park Impact Fees, applicant will be required to pay Park Impact Fee for the proposed residential units prior to issuance of building permit.
4. **Required Public Improvements.** Owner shall, at its own cost and expense, construct and at all times

maintain or cause to be maintained the following public improvements as established in the approved Amended PDD Plan, such public improvements hereinafter referred to as the "Improvements". Owner understands and agrees that it is Owner's responsibility to complete the Improvements described in this Section 4 and that all costs relating to the construction and maintenance of the Improvements will be borne by the Owner and in addition to the payment of all impact fees relating to the development of the approved Amended PDD Plan. Said Improvements shall be constructed in accordance with the schedule described in Section 5.

- 4.1. **Triangular Open Space Parcel.** The off-site triangular shaped property bounded on the east by State Road A-1-A and on the west by Seabreeze Boulevard, having a Broward County Property Appraiser's Property ID # 5042 12 10 0440, hereinafter referred to as the "Triangular Open Space Parcel", owned by Owner shall be improved with the landscape, hardscape, and public art intervention improvements in accordance with the approved Amended PDD Plan. Owner shall have full operational and maintenance responsibility relative to the Triangular Open Space Parcel as required by the Declaration.

Owner shall dedicate easements to the CITY and Florida Department of Transportation, as applicable, in form mutually acceptable to the CITY and Owner as the CITY may deem reasonably necessary or appropriate.

- 4.2. **Streetscape Improvements.** Owner shall construct the landscape, hardscape, pedestrian lighting, and on-street drainage Improvements within parts of those certain rights-of-way known as Alhambra Street, Seabreeze Boulevard, Sebastian Street, and Birch Road, all located immediately adjacent to the Property, in accordance with the approved Amended PDD Plan.

Owner shall dedicate easements to and execute a maintenance declaration with the CITY and Florida Department of Transportation, as applicable, in form mutually acceptable to the CITY and Owner as the CITY may deem reasonably necessary or appropriate, attesting that all improvements, including asphalt paving, concrete sidewalks, curb and gutter, specialty hardscaping, landscaping, irrigation, lighting, etc., as provided in the Amended PDD Plan and proposed within the adjacent rights-of-way will be maintained by the Owner throughout the life of the improvements.

- 4.3. **Public Parking.** Owner shall provide 77 public parking spaces and 43 semi-public parking spaces in accordance with the Declaration and the approved Amended PDD Plan. As required by the Declaration, CITY shall be responsible for the cost and expense of the operation and maintenance of the parking meter system and 77 public parking spaces, and Owner shall be responsible for the maintenance, electric, and other utilities and operational features for that portion of the garage set aside for the 77 public parking spaces.

5. **Development Schedule.** Owner agrees that no certificates of occupancy may be issued for any structure constructed in accordance with the approved Amended PDD Plan prior to completion of the Improvements described in Section 4. Failure of Owner to comply with the schedule described in this Section 5 shall constitute a default of this Agreement.
6. **Effective Date.** This Agreement shall be effective upon recordation in the Public Records of Broward County, Florida. City shall record the Agreement, subject to Owner reimbursing City for the cost thereof.
7. **Venue.** Venue of any litigation arising out of this Agreement will be in Broward County, Florida.
8. **Severability.** If any term or provision of this Agreement or the application of it to any person or circumstances is to any extent invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to person or circumstances, other than those as to which it is invalid or enforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and is intended to be enforced to the fullest extent permitted by law.
9. **Successors and Assigns.** This Agreement will inure to the benefit of and be binding upon the Owner, their heirs, personal representatives, successors and assigns, and upon any person acquiring the Property or

any portion thereof, or any interest therein whether by operation of law or otherwise. The new owner(s) of the Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise), will be liable for all obligations arising under this Agreement with respect to such property after the date of sale and conveyance of title.

10. **Modification or Termination.** Except as otherwise provided herein, this Agreement shall not be modified, amended, discharged or terminated, except by an instrument in writing signed by Owner and the City of Fort Lauderdale, or their respective successors or assigns, and recorded in the Public Records of Broward County, Florida. The Owner or its designated successor in interest to a development agreement and the City may amend or cancel a development agreement without securing the consent of other parcel owners whose property was originally subject to the development agreement, unless the amendment or cancellation directly modifies the allowable uses or entitlements of such owners' property.
11. **Compliance with Governing Laws.** The parties shall comply with all applicable laws, ordinances, and codes of the United States of America, the State of Florida and all local governments having jurisdiction, in carrying out the rights and responsibilities provided in this Agreement. If state or federal laws are enacted after the execution of this development agreement which are applicable to and preclude the parties' compliance with the terms of this development agreement, this agreement shall be modified or revoked as is necessary to comply with the relevant state or federal laws. The failure of the agreement to address a particular permit, condition, term, or restriction shall not relieve the Owner of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction.
12. **Periodic Review of Development Agreement.** The city shall review land subject to a development agreement at least once every 12 months to determine if there has been demonstrated good faith compliance with the terms of the development agreement. If the City finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of the development agreement, the agreement may be revoked or modified by the City.
13. **Recording.** This Agreement is not effective until it is properly recorded in the Public Records of Broward County, Florida within 14 days after the City has executed the Agreement. City shall record the Agreement, subject to Owner reimbursing City for the cost thereof. A copy of the recorded Agreement shall be provided to Owner and filed with the City Clerk's Office of the City of Fort Lauderdale.
14. **Third Party Beneficiary Rights.** This Agreement is not intended to create, nor to be interpreted or construed in any way to create any third-party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.
15. **Enforcement.** Any party or aggrieved or adversely affected person as defined in Section 163.3215(2) may file an action for injunctive relief in the circuit court where the local government is located to enforce the terms of a development agreement or to challenge compliance of the agreement.
16. **Duration of the Development Agreement.** The duration of this development agreement shall be 30 years but may be extended by mutual consent of the City Commission and the Owner, subject to a public hearing in accordance with Section 163.3225, Florida Statutes (2021).

This Agreement is executed as of the date first above written.

[Signatures begin on the following page]

IN WITNESS WHEREOF, the Parties hereto, through their duly authorized representatives, have executed this Comprehensive Agreement to be effective as of the day and year first set forth above.

CITY OF FORT LAUDERDALE, a Florida municipal corporation

ATTEST:

David R. Soloman
City Clerk

By: _____
Christopher J. Lagerbloom
City Manager

APPROVED AS TO FORM:

D'Wayne M. Spence
Assistant City Attorney

WITNESSES:

Owner:

KT SEABREEZE ATLANTIC LLC,
a Florida limited liability company

By: The Kolter Group LLC, a Florida limited liability company, its manager

By: _____

By: _____

Print Name: _____

Print Name: _____

By: _____

Title: _____

Print Name: _____

STATE OF FLORIDA:
COUNTY OF PALM BEACH:

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this ____ day of _____, 2022, by _____, as _____ of THE KOLTER GROUP, LLC, the Manager of KT SEABREEZE ATLANTIC LLC, a Florida limited liability company, who is personally known to me or has produced _____ as identification.

Notary Public, State of Florida

(Print, Stamp, or Type as Commissioned)

EXHIBIT "A"

Legal Description

ALL OF LOTS 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20 and a portion of Lots 1, 2, 3, 4, 6, 14 and 15, Block 5, LAUDERDALE MAR, according to the plat thereof, as recorded in Plat Book 7, Page 30, of the public records of Broward County, Florida.

Beginning at the most East Northwest corner of said Lot 13; thence North $88^{\circ}57'10''$ East, on the North line of said Lots 13 to 6 and Lot 1, a distance of 429.52 feet to a point of curve; thence Easterly and Southerly on said curve to the right, with a radius 25.00 feet a central angle of $122^{\circ}00'11''$, an arc distance of 53.23 feet to a point of compound curve; thence Southwesterly on the West right-of-way line of Southbound A-1-A Alignment (50 foot right-of-way, per Right-of-Way Map Book 12, Page 9, of the public records of Broward County, Florida and on said curve to the right, with a radius of 800.00 feet, a central angle of $13^{\circ}36'38''$, an arc distance of 190.04 feet to a point of compound curve; thence Southwesterly and Westerly on said curve to the right, with a radius of 25.00 feet, a central angle of $44^{\circ}23'11''$, an arc distance of 19.37 feet to a point of tangency; thence South $88^{\circ}57'10''$ West, on the South line of said Lots 15 to 20, a distance of 239.98 feet to a point of curve, thence Westerly and Northerly on said curve to the right, with a radius of 25.00 feet, a central angle of $85^{\circ}20'04''$, on arc distance of 37.23 feet to a point of tangency, thence North $05^{\circ}42'46''$ West, on the West line of said Lots 20 and 13, a distance of 200.66 feet to a point of curve; thence Northerly and Easterly on said curve to the right, with a radius of 25.00 feet, a central angle of $94^{\circ}39'56''$, an arc distance of 41.31 feet to the Point of Beginning.

Said lands situate, lying and being in the City of Fort Lauderdale, Broward County, Florida and containing 98,858 square feet or 2.2695 acres more or less.

EXHIBIT "B"

Approved PDD Site Plan

Exhibit "B" are the development plans approved by the City Commission on October 6, 2020 which are maintained in the City of Fort Lauderdale Department of Sustainable Development Department.

Exhibit "C"

Amended PDD Site Plan

Exhibit "C" are the amended development plans approved by the City Commission on July 5, 2022 which are maintained in the City of Fort Lauderdale Department of Sustainable Development Department.