

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

Pioneer Gardens

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (Agreement) is made and entered into as of this 6th day of March, 2008, by and between **URBAN RESIDENTIAL DEVELOPMENT GROUP, LTD.**, a Florida limited partnership, f/k/a North Miami Housing, Ltd., a Florida limited partnership (the **Developer**) and the **NORTH MIAMI COMMUNITY REDEVELOPMENT AGENCY**, a body public and corporate of the State of Florida (the **CRA**). This Amended and Restated Development Agreement amends and restates that certain Development Agreement between the Developer and CRA dated as of October 17, 2006.

WITNESSETH:

WHEREAS, the CRA is the owner of that certain parcel of real property more particularly described on **Exhibit "A"** attached hereto (the **Property**); and

WHEREAS, the Property was conveyed by the City of North Miami (the **City**) to the CRA pursuant to that certain Quit-Claim Deed dated January 24, 2006, and recorded January 27, 2006, in Official Records Book 24185, Page 539, of the Public Records of Miami-Dade County, Florida, which conveyance by the City to CRA was made in accordance with, and subject to, the terms and provisions of that certain Interlocal Agreement between the City and CRA dated January 24, 2006; and

WHEREAS, the City and Biscayne Landing, LLC, a Florida limited liability company, as successor in interest to Preserve Partners, Ltd., a Florida limited partnership through a series of assignments, are parties to that certain Munisport Agreement dated November 26th, 2002 and recorded December 16, 2002 in Official Records Book 20876, Page 4370, as amended by (i) that certain Amendment to Munisport Agreement dated October 26th, 2004 and recorded November 12, 2004 in Official Records Book 22817, Page 292, (ii) that certain Amendment to Munisport Agreement and Ground Lease dated June 10th, 2005 and recorded June 28, 2005 in Official Records Book 23521, Page 1, (iii) that certain Amendment to Munisport Agreement dated October 24th, 2006 and recorded October 31, 2006 in Official Records Book 25058, Page 3567, and (iv) that certain Amendment to Munisport Agreement and Ground Lease dated October 25th, 2006 and recorded November 27, 2006 in Official Records Book 25125, Page 1906, as re-recorded on December 26, 2006 in Official Records Book 25221, Page 1850, all in the Public Records of Miami-Dade County, Florida (collectively, the **Munisport Agreement**); and

WHEREAS, pursuant to that certain Interlocal Agreement between the City and the CRA dated January 24, 2006, the City delegated to the CRA all of the City's rights, obligations and responsibilities set forth in Section 9.4 of the Munisport Agreement including, but not limited to, all necessary land acquisitions, payment of development fees, subsidies, approvals, permits, selection of qualified home buyers and all other matters regarding the construction and/or rehabilitation of the Affordable Housing Units as defined in and required by Section 9.4 of the Munisport Agreement; and

WHEREAS, pursuant to Section 9.4 of the Munisport Agreement, the CRA has requested, and the Developer has agreed, that Developer develop an affordable housing project comprised of approximately one hundred thirty six (136) residential condominium units to be located on the Property (collectively, the **Units** and individually a **Unit**), together with related amenities, utilities, and required parking as generally set forth on the Site Plan attached as **Exhibit "B"** to this Agreement (the **Project**), and otherwise subject to the terms and provisions of this Agreement.

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

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

Section 2. Definitions. As used in this Agreement, the following terms shall have the following meanings:

Agreement shall mean this Development Agreement.

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

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

City shall have the meaning provided in the introductory paragraph hereto.

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

Construction Contract shall have the meaning provided in Section 4.3.

Construction Documents shall have the meaning provided in Section 3.5.

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

Development Approvals shall have the meaning provided in Section 3.2.

Development Budget shall have the meaning provided in Section 4.2.

Development Fee shall have the meaning provided in Section 7.1.

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

Development Plan shall have the meaning provided in Section 4.2.

Environmental Reports shall mean those certain environmental reports listed on Exhibit "C" attached hereto.

Governmental Authorities shall mean the United States Government, the State of Florida, Miami-Dade County, the City or any other governmental agency or any instrumentality of any of them

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

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

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

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

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

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

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

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

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

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

Marketing Plan shall have the meaning provided in Section 3.3.

Pledgee shall have the meaning provided in Section 13.7.

Pre-Development Budget shall have the meaning provided in Section 3.1.

Project shall have the meaning provided in the third recital hereto.

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

Site Plan shall have the meaning provided in Section 3.4.

Section 3. Pre-Development.

3.1 Pre-Development Plan and Pre-Development Budget. The parties acknowledge and agree that the CRA has previously approved a pre-development plan and budget for the Project including a detailed construction cost estimate for the Project prepared by the architect (as approved by the CRA, the **Pre-Development Plan** and the **Pre-Development Budget**). As used in this Agreement, the Pre-Development Plan shall also include the Pre-Development Budget. In the event that the Development Budget exceeds the approved construction cost estimate by more than ten percent (10%) excluding the CRA Project Expenses, the CRA may elect to terminate this Agreement upon written notice to the Developer, in which case the parties shall be relieved of all rights and obligations hereunder, except any rights or obligations that expressly survive termination. The CRA has previously provided the Developer with a schedule of the CRA's expenses to be included in the Pre-Development Budget, which includes, without limitation, all of the marketing and sales expenses for the Project, condominium documents and sales agreement preparation expenses, attorneys fees and other professional fees to be incurred by the CRA in connection with the Project and all expenses related to the operation of the condominium prior to the turnover of control of condominium association to the Unit owners (collectively, the **CRA Project Expenses**). With respect to the Development Budget, the CRA hereby agrees to provide the Developer with a schedule of the CRA Project Expenses to be included in the Development Budget within sixty (60) days following the date of this Agreement.

3.2 Governmental Approvals. The term **Development Approvals** as used in this Agreement, shall mean all City approvals, consents, permits, amendments, rezonings, conditional uses or variances as well as such other official actions of the Governmental Authorities which are necessary to develop the Project. The Developer shall submit to the CRA for its review and approval, all applications and other submittals required to obtain the Development Approvals, such approval not to be unreasonably withheld, unreasonably delayed or unreasonably conditioned provided applications and other submittals are consistent with the Project. Following such review and approval, the CRA hereby agrees to execute and deliver to the Developer in the CRA's capacity as the owner of the Property all applications and other submittals required to obtain the Development Approvals. If any such documents in which CRA's joinder is requested contain material financial obligations binding (or which may become binding) upon CRA, such obligations must be included in the Pre-Development Budget or Development Budget, as applicable. If this Agreement is terminated, then upon CRA's request, Developer shall withdraw all of its pending applications and terminate all agreements which are terminable and/or withdrawable by Developer, with respect to the Development Approvals, which foregoing obligations shall survive termination of this Agreement. The Developer will be responsible for initiating and diligently pursuing the Development Approval applications on behalf of the CRA. The CRA shall cooperate with the Developer in processing all necessary Development Approvals to be issued by the City as well as all other Governmental Authorities. The parties recognize that certain Development Approvals will require the City and/or its boards, departments or agencies, acting in their police power/quasi judicial capacity, to consider certain governmental actions. The parties further recognize that all such considerations and actions shall be undertaken in accordance with established requirements of Applicable Laws in the exercise of the City's jurisdiction under the police power. Nothing in this Agreement is intended to limit or restrict the powers and responsibilities of the City in acting on such applications by virtue of the fact that the CRA may have been required to consent to such applications as the owner of the Property. Nothing in this Agreement shall entitle the Developer and/or the CRA to compel the City to take any action in its police power/quasi-judicial capacity, except to timely process the

applications. The CRA hereby agrees to use good faith and diligent efforts to cause the City to waive all permit fees and impact fees payable to the City with respect to all applications for Development Approvals; provided, however, the Developer acknowledges and agrees that such waiver may not be permissible under Applicable Laws and the CRA makes no representations or warranties to Developer that the City will provide such waiver. Furthermore, the CRA agrees to use its good faith efforts to assist the Developer in expediting the review and approval process with applicable Governmental Authorities. Nothing in this Agreement is intended to, nor shall be construed as, zoning by contract.

3.3 Marketing and Sales. "The Developer shall be solely responsible for the marketing and sale of all of the Units included in the Project, which marketing and sales shall be undertaken by the Developer, which may necessitate the need for real estate brokers, agents and related professionals. The Developer agrees to provide the CRA with the names of real estate brokers, agents and related professionals it intends to utilize for the marketing and sales of the Units, each of which real estate brokers, agents and related professionals shall be subject to the approval of the CRA, such approval not to be unreasonably withheld or delayed. The Developer shall prepare a marketing plan based upon the proposed sales prices of each of the Units as determined by the CRA (the **Marketing Plan**) and the Developer will coordinate with the CRA or its designee with respect to the qualification procedures to be instituted by the CRA for prospective purchasers. The costs and expenses of Developer incurred in preparing and implementing the Marketing Plan shall be the CRA's sole responsibility and shall be considered a CRA Project Expense. Such costs and expenses shall include, but are not limited to, the preparation of marketing materials, a three-dimensional model, boards, sales brochures and a reservation table. The Developer shall provide the Marketing Plan to the CRA within forty-five (45) days following the date of this Agreement for the CRA's review and approval, such approval not to be unreasonably withheld or delayed. The Developer acknowledges and agrees that the CRA's approval of the Marketing Plan shall not be deemed to be a representation or warranty that the Marketing Plan complies with Applicable Laws nor a guaranty that the Marketing Plan will be successful and, except for (x) the information to be provided by the CRA, (y) its approval rights set forth above, and (z) its agreement to pay for the costs and expenses of the Developer in preparing and implementing the Marketing Plan, the CRA shall have no liability or responsibility with respect to said Marketing Plan. Upon completion of the Marketing Plan and approval of the same by the CRA, the Developer shall use its good faith and diligent efforts to sell all of the Units included in the Project and otherwise comply with any pre-sale requirements of the construction lender (the pre-sale requirements of the construction lender including any executed sale and purchase agreements required by the construction lender are collectively, the **Pre-Sale Requirement**). The Developer and CRA shall mutually cooperate with each other in connection with negotiating the Pre-Sale Requirement with the construction lender and the CRA shall have the right to directly communicate with the construction lender on this issue; provided the Developer also participates in such communication. The CRA hereby agrees to convey the Units to the buyers in accordance with the applicable purchase and sale agreements. The CRA shall be responsible for handling the closings of the Units with the buyers including the selection of title insurance agents, preferred lenders and other real estate closing service providers in accordance with Applicable Laws. The CRA acknowledges and agrees that the Developer shall have no liability or responsibility with respect to the closing of the Units. With respect to any brokerage commissions due and payable in connection with the sales of the

Units, the Developer shall have no obligation to fund such commissions, and either the CRA or the buyers shall be obligated to pay any commissions, referral fees or compensation payable to real estate brokers, agents or real estate professionals.

3.4 Site Plan. The Developer has previously provided a site plan and elevations to the CRA for the Project as referenced on **Exhibit "B"** attached hereto (the attached site plan and elevations are collectively, the **Site Plan**). The CRA hereby acknowledges and agrees that the Site Plan is acceptable to the CRA. The foregoing shall in no way constitute or be construed as the approval or issuance of a development order, it being expressly acknowledged and agreed by the Developer that the Site Plan will require separate submission, review, and approval pursuant to the requirements of the City's Code. Except for a Permitted Change (as hereinafter defined), no changes, alterations or modifications shall be made to the Site Plan (either prior to or after approval by the City) without the prior written approval of the CRA, which approval shall not be unreasonably withheld, delayed or conditioned; provided, however such approval may be withheld in the CRA's sole and absolute discretion if the requested change, alteration or modification consists of a Material Change. For purposes of this Agreement, a "Material Change" means and refers to a requested change, alteration or modification that (i) increases or decreases the number of Units, (ii) in the aggregate with all other changes, alterations and modifications increases or decreases the square footage of common areas by ten percent (10%) or more, (iii) changes the number of stories of a building, and/or (iv) deletes any material amenities. Following approval of the Site Plan for the Project by the City staff pursuant to the City's Code, except for Permitted Changes, the Developer shall not initiate or request review by City staff of any changes or alterations to the approved Site Plan for the Project without the prior written approval of the CRA, which approval shall not be unreasonably withheld, conditioned or delayed.

3.5 Plans and Specifications; Construction Documents. Following approval of the Site Plan and prior to commencement of any construction for the Project (other than demolition and site work), Developer shall submit to the CRA for review and its reasonable approval, all design documents prepared or furnished, in connection with the Work (as hereinafter defined), including, without limitation, architectural, structural, mechanical, electrical, plumbing, fire protection and any other engineering documents necessary for the permitting and construction of the Project for and through all phases of design and construction (e.g., schematic, design development, and construction) (collectively referred to as the **Plans and Specifications**). The Plans and Specifications shall comply with all Applicable Laws including, without limitation, the Florida Building Code and all design requirements established by the Florida Accessibility Code and the Americans with Disabilities Act. CRA shall provide its written approval or disapproval (specifying the basis for disapproval and/or comments) to any such Plans and Specifications within ten (10) Business Days of receipt of request for same, it being understood that CRA review and approval of the Plans and Specifications as set forth herein is not the review required by the City, but only a general review for compliance with the terms and conditions of this Agreement and, therefore, such review need not be limited to, governmental requirements; provided, however, if the CRA fails to either approve or disapprove (either with or without conditions) the submitted Plans and Specifications within ten (10) Business Days following submittal by Developer to CRA, the Plans and Specifications in the form submitted shall be deemed approved by CRA. Without limiting the foregoing, the approval of the Plans and

Specifications pursuant to this Agreement shall in no way constitute or be construed as the approval or issuance of a development order, it being expressly acknowledged and agreed by Developer that the Plans and Specifications will require separate submission, review, and approval pursuant to the requirements of the City's Code and/or its applicable rules and regulations. Once any Plans and Specifications receive the written approval of the CRA or are deemed approved pursuant to this Agreement, such Plans and Specifications shall be deemed the **Construction Documents**. The Construction Documents for the Project or any portion thereof shall be signed and sealed by the Developer's design professional and shall consist of: (a) working drawings, (b) technical specifications, (c) schedule for accomplishing improvements, and (d) such other information as may be required by the City in accordance with its Code and as otherwise necessary to confirm compliance with this Agreement. No material changes or alterations (other than Permitted Changes) shall be made to any Construction Documents, without the prior written approval of the CRA, which approval shall not be unreasonably withheld, delayed or conditioned. Developer is hereby authorized to make Permitted Changes without CRA approval. A "Permitted Change" shall mean (i) a change which is required to be made to comply with Applicable Laws; (ii) a change which involves only substituting materials of comparable or better quality; (iii) a change required by the failure of the Construction Documents to satisfy field conditions where the change will not have a material adverse effect on the quality, appearance or function of Project; and (iv) a change which is made to correct inconsistencies in various Construction Documents. The Developer shall provide written notice to the CRA prior to making any Permitted Changes except to the extent such Permitted Change is required in an emergency situation, in which event the Developer shall provide notice to the CRA as soon as reasonable possible thereafter. The approval or deemed approval by the CRA of any Plans and Specifications, site plans, designs or other documents submitted to CRA pursuant to this Agreement shall not constitute a representation or warranty that such comply with all Applicable Laws and/or and procedures of all applicable Governmental Authorities, it being expressly understood that the responsibility therefore shall at all times remain with the Developer.

3.6 Condominium Documents. The CRA shall be responsible for preparing, or causing to be prepared, the condominium documents, including, without limitation, the prospectus, declaration of condominium, purchase and sale agreement and the articles of incorporation and by-laws for the condominium association (collectively, the **Condominium Documents**), and shall submit the same to the Developer for its review and approval, such approval not to be unreasonably withheld, unreasonably conditioned or unreasonably delayed; provided, however, the CRA agrees to clearly state in the Condominium Documents that the Developer is not the "developer" or "declarant" of the condominium under Section 718, Florida Statutes. The CRA acknowledges and agrees that the Developer's approval of the Condominium Documents shall not be deemed a representation or warranty that the Condominium Documents comply with Applicable Laws, and the Developer shall not be liable or responsible with respect to the Condominium Documents. Following approval by the Developer of the Condominium Documents, the CRA shall initiate and diligently pursue the approval of the Condominium Documents by applicable Governmental Authorities. The CRA, as the owner of the Property, shall be the declarant/developer under the Condominium Documents and shall execute the approved form of documents and, as required by the Condominium Documents. In accordance with the terms and provisions of the Munisport Agreement, the Developer shall have the right to

serve as the manager of the condominium association pursuant to a management agreement reasonably acceptable to the CRA and Developer, which management agreement shall be part of, and approved with, the Condominium Documents. If the Developer elects not to serve as the manager of the condominium association, pursuant to its procurement policies the CRA shall select a management company to serve as the manager of the condominium association. Simultaneously with the approval of Condominium Documents by the Developer, the Developer shall advise the CRA as to whether it elects to serve as the manager of the condominium association.

Section 4. Development Services.

4.1 General Obligations. Subject to the terms and provisions of this Agreement, Developer shall be responsible for the design, engineering, permitting and construction of the Project (substantially in accordance with the Construction Documents). In connection therewith, Developer shall provide or cause to be provided and furnish or cause to be furnished, all materials, supplies, apparatus, appliances, equipment, fixtures, tools, implements and all other facilities provided for in the Construction Documents, and shall provide all labor, supervision, transportation, utilities and all other services, as and when required for or in connection with the construction, furnishing or equipping of, or for inclusion or incorporation in the Project (collectively, the **Work**). Developer shall cause the design, engineering, permitting and construction of the Project to be prosecuted with diligence and continuity and will achieve Substantial Completion (as hereinafter defined) of the Work, free and clear of liens or claims for liens for materials supplied and for labor or services performed in connection therewith on or before the Completion Date (as hereinafter defined). The CRA hereby agrees to look solely to the applicable design professional, general contractor and/or subcontractor with respect to any design and/or construction defect claims provided that the warranties in the contracts with the applicable design professional, general contractor and/or subcontractor are expressly stated to be for the benefit of the CRA or such warranties are otherwise assigned to the CRA, such assignment is permitted under the underlying contracts and all conditions for such assignment have been fulfilled by the applicable parties. For the purposes of this Agreement, **Substantial Completion** shall mean (i) the Project architect shall have certified in his/her reasonable discretion that the Project has been completed substantially in accordance with the Construction Documents, (ii) all temporary certificates of occupancy (or their equivalent) and all other certificates, licenses, consents and approvals required for the temporary occupancy, use and operation of all of the Units and common areas in the Project shall have been issued by or obtained from the appropriate Governmental Authorities (provided that in order for the Project to be deemed finally completed based upon the issuance of temporary certificates of occupancy [or their equivalent], following the issuance thereof, Developer shall diligently and in good faith, proceed to obtain the issuance of all permanent certificates of occupancy [or their equivalent] and all other certificates, licenses, consents, and approvals required for the permanent occupancy, use and operation of the Project, all within the time frames required by Applicable Laws including any legally permitted extension periods) and (iii) all construction costs and other costs and expenses incurred in connection with the Work have been paid in full or bonded, other than the costs to complete any punch list work or otherwise necessary to obtain the final certificates of occupancy. For the purposes of this Agreement, **Final Completion** shall mean (a) the Project and all Work shall have been fully completed including all punch list items substantially in accordance with Construction Documents, (b) all final certificates of occupancy

(or their equivalent) all other certificates, licenses, consents and approvals required for the permanent occupancy, use and operation of all of the Units and common areas in the Project shall have been issued or obtained from the appropriate Governmental Authorities, (c) all construction costs and other costs and expenses incurred in connection with the Work including punch list items have been paid in full or bonded, (d) all contractor certificates and final waivers of lien for the Work have been obtained, and (e) all record drawings (other than as-builts to be delivered pursuant to Section 5.7), electronic files, warranties and manuals have been delivered to the CRA. Substantial Completion shall occur not later than the Completion Date (as defined below) and Final Completion shall occur no later than ninety (90) days after the Completion Date, subject to a day for day extension for events of Force Majeure. For purposes of this Agreement, the Completion Date shall be June 1, 2010, subject only to a day for day extension for (x) events of Force Majeure and (y) each day beyond June 1, 2008 that the conditions precedent set forth in Section 5.1 below are not fully satisfied.

4.2 Development Plan and Development Budget. Prior to commencing the Work (other than demolition and site work), Developer shall prepare a proposed development plan and development budget (as approved by the CRA, the **Development Plan**) for the Project and submit the same to the CRA for its approval, which approval may be granted or withheld by the CRA in its sole but reasonable discretion. The Development Plan shall include the following information:

- (a) a description in reasonable detail of the development requirements for the Project;
- (b) a line item budget for the estimated cost of the construction of the Project based upon the one hundred percent (100%) Construction Documents (as approved by the CRA, the **Development Budget**);
- (c) a construction schedule which shall be updated throughout construction and shall encompass design and engineering, and all of the trades necessary for the construction of the Work;
- (d) a description of the financing structure for the Project;
- (e) a list of the anticipated subsidies to be provided by the CRA;
- (f) such other information as the CRA may reasonably request; and
- (g) any relevant information provided by the CRA to the Developer including, but not limited to, information regarding CRA Project Expenses, subsidies from other Governmental Authorities and purchase assistance to be provided to the buyers.

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

4.3 Construction Contract. Following approval of the Development Plan pursuant to Section 4.2, the Developer shall use its good faith and diligent efforts to select a general contractor for the performance of the Work and thereafter enter into a general construction contract for the Project on a guaranteed maximum price basis (the **Construction Contract**). Prior to entering into the Construction Contract, the Developer shall submit the initial and final forms of the Construction Contract to the CRA for its review and approval, such approval not to be unreasonably withheld, unreasonably conditioned or unreasonably delayed; provided, however, to the extent the general contractor was not competitively selected by the Developer in the same manner that Applicable Laws require the CRA to competitively select a general contractor, the Construction Contract shall require the general contractor to competitively select the contractors providing electrical, plumbing, structural and mechanical services (collectively, the **Major Subcontractors**) in the same manner that Applicable Laws require the CRA to competitively select such contractors. Prior to the advertisement of the solicitation document(s) for the general contractor or Major Subcontractors, as applicable, the Developer shall submit the solicitation documents to the CRA for its review and approval. Without limiting the foregoing, the Construction Contract shall provide for customary retainage reasonably acceptable to the CRA. The Developer shall also use its good faith and diligent efforts to include in the Construction Contract and all other direct contracts for the design, engineering, construction, administration, and inspection of the Work (a) an indemnity, release and hold harmless agreements by the general contractor, design professional, consultant, contractor or subcontractor (for themselves and their agents, employees, invitees and licensees) in favor of the CRA; (b) a requirement that the CRA be copied on all notices of default from the Developer to the general contractor, design professional, consultant, contractor or subcontractor, and vice versa, (c) a liquidated damages provision in an amount reasonably acceptable to the CRA for the failure of the general contractor to achieve Substantial Completion by the Completion Date and Final Completion within ninety (90) days thereafter, subject only to the extensions set forth in Section 4.1, (d) the assignment by the general contractor to the CRA of all warranties including the one (1) year warranty by the general contractor set forth in Section 5.8 below, (e) if the Pre-Sale Requirement has not been met, a condition precedent relative thereto, and (f) the consent of the design professional, consultant, contractor or subcontractor to the assignment of the applicable contract by the Developer to the CRA, at the CRA's option, in the event of an uncured default by Developer, and the assumption of the applicable contract by the CRA (subject to lender's rights); provided, however, that as between the CRA and Developer, the Developer shall remain responsible for any loss or damage relating to its default, which loss or damage may be cured by making a claim on the Bonds or completion guaranty, as applicable, following written notice by CRA to Developer and a reasonable opportunity to cure as appropriate in the context of the default. Nothing contained herein shall, however, create any obligation on the CRA to assume the Construction Contract or any contractor contract or consultant contract or make any payment to any contractor or consultant unless City chooses to request contractor or consultant to perform pursuant to this Section 4.3 or as otherwise provided in this Agreement, and nothing contained herein shall create any contractual relationship between the CRA and any contractor, subcontractor, consultant or subconsultant (other than the benefit in favor of the CRA of certain provisions as set forth in the applicable contracts).

4.4 Professional Services. All entities, firms and/or persons providing professional services (as defined in Section 287.055, Florida Statutes, the CCNA) as part of, in connection

with or related to the Work shall be competitively selected in accordance with the requirements of the CCNA. In such case, prior to advertisement of the solicitation document(s), the Developer shall submit the solicitation document(s) for the applicable professional services contract(s) to the CRA for its review and approval. Prior to award of any professional services contract(s) to the entities, firms and/or persons selected by the Developer, the Developer shall submit the professional services contract(s) to the CRA for its review and approval. If, within ten (10) days following the CRA's receipt the professional services contract(s) the CRA and Developer cannot agree upon approval of the professional services contract(s), (i) the parties may mutually agree to extend the time period for negotiation, or (ii) the parties may agree that it is necessary to rebid the professional services contracts.

4.5 Financing. The parties acknowledge and agree that that the Developer has expended or incurred, and shall continue to expend and incur prior to the closing of the Construction Loan, certain costs and expenses for the Project consistent with the Pre-Development Plan (the **Pre-Development Costs**). The Pre-Development Costs shall not exceed the Pre-Development Budget. The CRA acknowledges and agrees that to the extent the conditions precedent set forth in Section 5.1(a), (d), (f) and (g) below are not satisfied and this Agreement is terminated pursuant to the provisions of Section 5.1, the CRA shall reimburse the Developer for the Pre-Development Costs and payment of any incurred, but unpaid, Pre-Development Costs. Except as set forth in the preceding sentence, the Developer shall not be entitled to reimbursement for any Pre-Development Costs and shall be solely responsible for the payment any incurred, but unpaid, Pre-Development Costs, and the Developer shall reimburse the CRA for all third party costs and expenses (including, without limitation, reasonable attorneys' fees and court costs at trial and all appellate levels) incurred by the CRA with respect to the failure of the Developer to pay any incurred, but unpaid, Pre-Development Costs within ten (10) Business Days following receipt of written demand therefor. The foregoing obligations of CRA and Developer relative to the payment of the Pre-Development Costs and reimbursement of third party costs and expenses, as applicable, shall expressly survive termination of this Agreement. Upon approval of the Development Plan, the Developer shall use its good faith and diligent efforts to obtain a term sheet and/or commitment letter for a construction loan for the Project in the amount consistent with the Development Budget and on terms reasonably acceptable to the Developer and CRA (the **Construction Loan**), which Construction Loan may in the form of a revenue bond issued on terms and conditions as mutually agreed to by the CRA and the Developer; the parties acknowledged and agreed that a revenue bond issued on a non-taxable basis may result in significant cost savings for the Project; provided, however, that the parties acknowledge and agree that the costs for the remediation of the Existing Environmental Condition (as defined below) shall not be included within the Construction Budget. To the extent Developer is able to obtain a term sheet and/or commitment letter for the Construction Loan, provided that the Developer has met the Pre-Sale Requirement, all other conditions precedent under Section 5.1 below (other than obtaining the Construction Loan) have been satisfied and any other conditions precedent to the closing of the Construction Loan have been satisfied, the Developer and the CRA shall be obligated to close on the Construction Loan. The CRA shall permit a mortgage to be placed on the Property as collateral for the Construction Loan provided that (a) the lender is an institutional lender which shall mean an established bank, trust company or other such recognized financial institution (or consortium thereof) of good repute and sound financial condition and having assets in excess of One Hundred Million Dollars

(\$100,000,000); (b) the loan or bond documents are in a form and substance reasonably acceptable to the CRA and its legal counsel and shall include at a minimum, requirements that (i) the lender shall, in the manner provided in the loan documents, give notice to the CRA of each notice of default given to Developer under the loan documents and (ii) the CRA shall have the right, for a reasonable period beyond the cure period that is given to Developer, to remedy or cause to be remedied any default which is the basis of a notice and the lender shall accept performance by the CRA as performance by the Developer; (c) the Developer provides the CRA with a guaranty of the Developer's obligations under Section 7.5 of this Agreement, in a form and substance reasonably acceptable to the CRA and its legal counsel, from an entity or individual reasonably acceptable to the CRA, taking into account the combined assets of such entity and/or individual; and (d) the Pre-Development Costs are paid and/or reimbursed to Developer, as applicable, with the first draw of the Construction Loan. Except for the Construction Loan, the CRA shall have no obligation to allow any of its property (real or personal) to be mortgaged, assigned, pledged or hypothecated as security for any obligation of Developer in connection with the Project. To the extent required by the lender making the Construction Loan, the CRA shall join in and execute the loan documents, provided such documents are non-recourse to the CRA. Similarly, the CRA agrees to process for approval by the CRA Board any amendments to this Agreement required by the lender making the Construction Loan; provided, however, such amendments do not result in any financial obligations or recourse to the CRA; provided, further, that nothing in this Agreement is intended to limit or restrict the powers and responsibilities of the CRA Board in approving such amendments. The Developer acknowledges and agrees such amendments are subject to the approval of the CRA Board. At the time of the closing of the Units, the proceeds of the sale shall be used to satisfy the Construction Loan in the manner prescribed by the loan documents. For purposes hereof, the term "lender" and "loan documents" shall apply in the case of a Construction Loan in the form of a revenue bond issuance as the context shall dictate taking into account the intent of the parties under this Section 4.5.

4.6 Subsidies. The CRA shall provide the subsidies required under the Development Plan and Development Budget (the **Subsidies**), which Subsidies are currently intended to be provided by a line of credit (**Line of Credit**), which Line of Credit shall also provide the funding for the Development Fee (as defined below). The CRA may also provide for or arrange for subsidies from other Governmental Authorities. At the time of execution of this Agreement, CRA has previously received approval by the CRA Board and the City Council to apply for the Line of Credit; provided, however, that the County is also required to approve the ability of the CRA to apply for the Line of Credit. The CRA shall diligently pursue the approval of the County for the Line of Credit, which is expected to be considered by the Board of County Commissioners in October 2006. If required by the CRA or other Governmental Authorities, the Developer agrees to cooperate with the completion of any and all applications and other submittals required to obtain the Subsidies as well as subsidies from other Governmental Authorities. If any such documents which the Developer is required to cooperate in completing contain material financial obligations, such obligations must be included in the Pre-Development Budget or Development Budget, as applicable.

4.7 Third Party Services. All third party services to be provided to Unit owners following completion of the Project including telecommunications services (which may include

cable, internet, voice data, video and alarm monitoring) shall be arranged for by the Developer as part of the Pre-Development Plan or Development Plan, as applicable, and shall be provided by independent third party service providers and not by the Developer or its affiliates; provided, however, the CRA hereby acknowledges and agrees that the affiliates listed on **Exhibit "D"** attached hereto may provide such services for the Project without the CRA's approval provided such services are otherwise provided on an arms-length basis and generally in accordance with applicable industry standards. Any Developer affiliates not listed on Exhibit "D" shall require the approval of the CRA, which approval may be withheld in the CRA's sole discretion. Subject to any competitive selection process required by Applicable Laws, all proposed third party service providers (other than Developer affiliates who are set forth on Exhibit "D" or subsequently approved by CRA as set forth above) who are providing services to the Project following the completion thereof (and related service agreements) shall require the approval of the CRA, such approval not to be unreasonably withheld, unreasonably conditioned or unreasonably delayed provided that such company is an established company of good repute and sound financial condition, and such agreements are on terms and conditions (including, but not limited to, price and duration) as generally accepted in such service industry. All agreements for third party services shall be in writing and subject to the prior written approval of the CRA, such approval not to be unreasonably withheld, delayed or conditioned. The CRA, as owner of the Property, shall enter into the agreements with the third party service providers, which agreements, at a minimum, shall require the third party service provider to obtain all Development Approvals necessary to provide its service to the Property and otherwise comply with Applicable Laws. If any such agreements contain material financial obligations binding (or which may become binding) upon CRA, such obligations must be included in the Pre-Development Budget or Development Budget, as applicable; provided, however, the foregoing shall not include any operating expenses typically paid by the Unit owners or the condominium association. The Developer shall reasonably cooperate with such third party service providers including but not limited to, the location and installation of their facilities.

Section 5. Performance of the Work.

5.1 Developer shall commence the pre-development work to be performed hereunder and the site work and demolition promptly following the date hereof, provided (i) Development Plan has been approved by the CRA, (ii) all requisite Development Approvals have been issued therefor, and (iii) the funds required to pay for the pre-development work are available to the Developer, whether from the CRA or any Pre-Development Loan. Developer shall commence the Work (other than the pre-development services and demolition and site work, which are addressed above) as soon as practicable following the satisfaction (or waiver in writing by all of the parties hereto) of the following conditions: (a) approval of the Plans and Specifications, the issuance of all required Development Approvals and the expiration of any and all appeal periods with respect thereto without the filing of any appeals, including, without limitation, issuance by the City of a building permit authorizing the construction of the Work, (b) the closing of the Construction Loan, which is sufficient to fund the costs of the Work remaining to be funded under the Development Budget (other than the Development Fee which is to be funded under the Line of Credit), (c) the satisfaction of the Pre-Sale Requirement, (d) the Development Plan has been approved by the CRA (provided Developer has submitted such to the CRA as required by this Agreement), (e) the Construction Contract consistent with the

requirements of this Agreement and the Development Plan has been fully executed and the Bond or completion guaranty, as applicable, is in place, (f) the Line of Credit (including the Subsidies) has been approved and is available to the CRA, and (g) the completion of the remediation of the Existing Environmental Condition in accordance with the RAP (as hereinafter defined) as evidenced by the issuance of any necessary documentation from the appropriate Governmental Authorities. The Developer and CRA agree to use their respective good faith and diligent efforts to satisfy the foregoing conditions for which each party is responsible and to otherwise cooperate with each other in this regard within the time frame set forth in Section 4.1; provided, however, if any of the foregoing conditions are not satisfied within such timeframe, the parties shall continue to use their good faith and diligent efforts to satisfy such condition(s) for up to an additional ninety (90) days. If following such good faith and diligent efforts to satisfy such conditions the parties cannot do so by the expiration of the ninety (90) day extension period, unless the parties mutually waive in writing the conditions at issue, then either party may terminate this Agreement subject to the obligations of the parties set forth in Section 4.5 regarding the repayment of the Pre-Development Loan and related third party costs and expenses. Following commencement of the Work, Developer shall diligently pursue in good faith the completion of the Work so that Substantial Completion of the Project is achieved no later than the Completion Date, subject to extension as provided in this Agreement.

5.2 Prior to commencement of the Work or any portion thereof (other than pre-development services and demolition and site work), Developer shall obtain and deliver to the CRA, and at all times during the performance of the Work require and obtain either (i) performance bonds and labor and material payment bonds reasonably acceptable to the CRA (collectively referred to herein as the "Bonds"), which Bonds shall be dual obligee bonds in favor of Developer and the CRA, or (ii) a completion guaranty in form and substance reasonably acceptable to the CRA and its legal counsel from an entity or individual reasonably acceptable to the CRA, taking into account the combined assets of such entity and/or individual. The Bonds shall in all respects conform to the requirements of the laws of the State of Florida and shall (a) name the Developer and CRA as obligees; and (b) be in a form and substance reasonably satisfactory to the CRA and its legal counsel. The surety(ies) providing the Bonds must be licensed, duly authorized, and admitted to do business in the State of Florida and must be listed in the Federal Register (Dept. of Treasury, Circular 570). The cost of the premiums for the Bonds shall be included in the Development Budget. Within ten (10) days of issuance, Developer shall record the Bonds in the Public Records of Miami-Dade Beach County, which may be recorded by attaching the same to the notice of commencement.

5.3 Except as may be otherwise expressly set forth in this Agreement and specifically excluding the CRA Project Expenses and all costs and expenses incurred by the CRA to administer this Agreement or otherwise perform its obligations hereunder, Developer shall be responsible for all costs and expenses for the design, engineering, permitting, construction, administration, and inspection of the Work including, but not limited to, the following: (a) all labor and materials for the construction of the Work; (b) all compensation for the design professionals and engineers (and any other consultants) in connection with the preparation of the site plan, Construction Documents, and other documents; (c) except as otherwise waived by this Agreement, all permit, license, connection and impact fees and other fees of Governmental Authorities which are legally required at any time during the Developer's performance of the Work; (d) all costs associated with the installation, connection, removal, replacement, relocation

and protection of all utilities and all related infrastructure including but not limited to water, sewer, stormwater drainage, telephone, cable, or electric, (e) all sales, consumer, use and other similar taxes for the Work, which are legally required at any time during the Developer's performance of the Work; and (f) all royalties and license fees that are legally required at any time during the Developer's performance of the Work. The parties acknowledge and agree that such costs and expenses are to be included in the Pre-Development Budget and/or Development Budget, which is to be funded from the CRA Advance, Pre-Development Loan and/or Construction Loan, subject to the provisions of Section 7.5. The Developer shall defend all suits or claims for infringement of any patent rights related to the Work to be performed by Developer hereunder and shall hold CRA harmless from any loss, liability or expense on account thereof, including reasonable attorneys' fees (at both the trial and appellate levels) unless any claim results from an act of the CRA or arises in connection with the CRA performing its obligations hereunder.

5.4 The Developer agrees that the Work performed under this Agreement shall be performed in accordance with Applicable Laws including the Florida Building Code.

5.5 The Developer agrees and represents that the direct contracts entered into by Developer shall require that (i) its contractors, subcontractors, design professionals, engineers and consultants possess the licenses required by Applicable Laws to cause to be performed the Work, and (ii) the Work shall be executed in a good and workmanlike manner, free from defects, and that all materials shall be new (not used or reconditioned), except as otherwise expressly provided for in the Construction Documents.

5.6 The Developer shall, and shall cause its contractors, consultants, engineers, or subcontractors to use good faith efforts to reasonably cooperate with the CRA in connection with the design, engineering and construction of the Work.

5.7 Within one hundred twenty (120) days after the Final Completion of the Project, Developer shall provide the CRA with a complete set of "as built" plans and specifications, including mylar reproducible "record" drawings, and one set of machine readable disks containing electronic data in a format of the "as-constructed" or "record" plans for the Project.

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

Section 6. Books and Records.

6.1 The Developer shall maintain complete and accurate books, records and accounts of all costs and expenses incurred in connection with the development of the Project. Upon the request of the CRA, all such books and records of the Developer which relate to the Project shall be available for inspection and audit by the CRA or any of its authorized representatives at all

reasonable times during normal business hours. The Developer shall be entitled to retain such copies of the books and records as the Developer deems appropriate.

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

Section 7. Compensation and Reimbursement of the Developer; Project Expenses.

7.1 Development Fee. The Developer shall be entitled to a development fee (the **Development Fee**) for services rendered by the Developer under and pursuant to the terms hereof in an amount equal to fifteen percent (15%) of the those actual costs incurred and paid by the Developer in connection with the performance of the Work (including professional services, engineering and design services as well as the construction work) in accordance with this Agreement, excluding only those items set forth below:

- (a) The CRA Project Expenses.
- (b) All costs reimbursed by the CRA/City to the Developer for services performed and costs incurred or paid by the Developer prior to the date of this Agreement with respect to the original proposal for the development of the Property commonly known as "Ruck's I" and specifically identified as such on the Pre-Development Budget.
- (c) All cost overruns required to be funded by Developer under Section 7.5 of this Agreement.
- (d) Developer's overhead and home office costs generally consisting of salaries and benefits of the Developer's personnel associated with the Developer's home office (e.g., partners, directors, officers, managers, estimating and accounting departments and clerical staff) and not personnel directly assigned to the Project and all other costs (including, but not limited to, telephone, copying, fax and computer charges), services and related expenses required to maintain and operate the Developer's home offices and not any offices located at the Project.
- (e) Federal, state, municipal, sales, use, income, franchise and other taxes, as applicable to the Project, all with respect to services performed or materials furnished for the Work.
- (f) Legal and accounting fees and expenses incurred in preparing and negotiating this Agreement.
- (g) Costs due to the negligence of the Developer, any of its contractors, consultants or suppliers employed by the Developer or anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to the correction of defective work, disposal of materials and equipment wrongfully supplied, or

making good any damage to property but only to the extent such costs exceed the Development Budget, it being understood that Developer may reallocate cost items in the Development Budget to avoid cost overruns.

(h) Governmental fees and assessments for the Work including impact fees, connection fees and building permit fees as well as fees and assessments for other governmental permits, licenses, and inspections.

(i) The use of capital including, but not limited to, financing fees, points, interest, appraisal fees, documentary stamp taxes, intangible taxes, recording fees, title insurance and closing costs.

(j) Any costs associated with compliance of the SBE Program pursuant to the Resolution.

Subject to the requirements and limitations set forth in this Section 7.1, the Development Fee shall be paid by the CRA to the Developer on an installment basis commencing on the closing of the Construction Loan; it being understood and agreed that the first installment of the Development Fee shall include the portion of the Development Fee attributable to the period prior to the closing of the Construction Loan. Simultaneously with the Developer's request to the lender for a disbursement, but not more often than monthly, the Developer shall submit a written request to the CRA for the portion of the Development Fee attributable to the requested Construction Loan disbursement. Such request to the CRA shall show a breakdown of (i) the actual portion of the Work completed and the amount of the Development Fee due, (ii) the share of the Development Budget allocated to that portion of the Work, (iii) such supporting evidence as may be reasonably requested by the CRA, and (iv) if required by the CRA, copies of payment vouchers, vendors' invoices, payrolls and other data substantiating actual expenditures, as well as a partial or final, as applicable, waivers of lien from each contractor, subcontractor, material man, or vendor up through the previous disbursement of funds for those who have filed a Notice to Owner. The Developer's request for an installment of the Development Fee shall constitute a representation to the CRA that (x) the Work has progressed to the point indicated and (y) the quality of the Work is in substantial accordance with the Construction Documents. Provided that the Developer submits all required documentation as required herein and the lender approves the Construction Loan disbursement, CRA shall tender the installment of the Development Fee to the Developer within thirty (30) calendar days of receipt of the written request or sooner if practicable less the retainage required below and minus amounts, if any, for which CRA has withheld funds pursuant to its rights under this Section 7.1 and Section 7.5 of this Agreement.

The Developer agrees that fifty percent (50%) of the amount due for the Development Fee as set forth in each request shall be retained by CRA until fifty percent (50%) of the Work has been completed (as determined on a cost basis pursuant to the Development Budget at which time the amount of the retainage shall be reduced to twenty-five percent (25%) of the amount due for the Development Fee as set forth in the applicable request at which time the CRA shall disburse any portion of the Development Fee previously retained (i.e., any portion of the previously retained fifty percent [50%]); provided the CRA shall not be obligated to reduce the retainage to twenty-five percent (25%) or release any of the previously held retainage if the

CRA, in its good faith judgment, determines that the portion of the Development Fee then remaining unpaid (including the previously held retainage) will not be sufficient to cover the cost of the remaining Work and/or cost overruns for which Developer is responsible under Section 7.5 of this Agreement, in which event the retainage shall be reduced when such cost overrun deficiency is eliminated.

Upon achieving Substantial Completion of the Work, (1) the amount of the retainage (including the previously held retainage) shall be reduced to ten percent (10%) of the amount due for the Development Fee as set forth in the applicable request and (2) the amount of retainage previously withheld in excess of ten percent (10%) shall be paid to Developer within fifteen (15) days following Substantial Completion of the Work; provided the CRA shall not be obligated to reduce the retainage to ten percent (10%) or release any of the previously held retainage if the CRA, in its good faith judgment, determines that the portion of the Development Fee then remaining unpaid (including the previously held retainage) will not be sufficient to cover the cost of the remaining Work and/or cost overruns for which Developer is responsible under Section 7.5 of this Agreement, in which event the retainage shall be reduced when such cost overrun deficiency is eliminated.

Within thirty (30) days after Final Completion or as soon thereafter as possible, the Developer shall submit a final request for any unpaid portion and all retainage of the Development Fee. The final request shall not be made until the Developer delivers to the CRA copies of releases of all liens and claims signed by all contractors, materialmen, suppliers, and vendors and an affidavit that so far as the Developer has knowledge or information, the releases include and cover all Work for which a lien or claim could be filed. In addition, and as a condition precedent to CRA's obligations to pay the final installment of the Development Fee and release all retainage, the Developer shall execute and deliver to the CRA (A) Contractor's final affidavit and final waiver of liens and (B) the written consent of Developer's surety to the extent required under the Bond(s); provided, however, that releases will not be required with respect to any lien which has been transferred to bond. Within thirty (30) days following the CRA's approval of the final request, the CRA shall pay the Developer the amount of the Development Fee due under such final request less any portions thereof necessary to pay any unpaid cost overruns which are the Developer's responsibility hereunder under Section 7.5 of this Agreement.

Any provision hereof to the contrary notwithstanding, CRA shall not be obligated to make any payment to the Developer of any portion of the Development Fee if any one or more of the following conditions exists:

(a) the Developer is in default of any of its obligations under any of this Agreement, the Contract or the Construction Loan; provided, however, upon the cure of such default, the CRA shall promptly bring the Development Fee current subject to the retainage provisions in effect at the time; and/or

(b) any part of such payment is attributable to Work which is defective or not performed in accordance with the Construction Documents and has not yet been corrected (provided that the portion of the Development Fee withheld cannot exceed the amount

attributable to the defective work and such withheld payment shall be made following the correction of such defective Work); and/or

(c) if CRA, in its good faith and reasonable judgment, determines that the portion of the Development Fee then remaining unpaid will not be sufficient to cover any cost overruns for which Developer is responsible under Section 7.5 of this Agreement, whereupon no additional installments of the Development Fee will be due the Developer hereunder unless and until the Developer performs, or causes to be performed, a sufficient portion of the Work so that such portion of the Development Fee then remaining unpaid is not necessary for the payment of any cost overruns for which Developer is responsible under Section 7.5 of this Agreement in connection with the completion of the Work.

7.2 Developer's Expenses and Project Overhead. The Developer shall also be entitled to be reimbursed from the Construction Loan for all expenses (including, without limitation, direct Project overhead expenses) incurred by Developer in accordance with the Pre-Development Budget and/or Development Budget, including, without limitation, costs and expenses which were incurred by the Developer prior to the execution and delivery of this Agreement. For purposes of this paragraph, "Project overhead expenses" shall not include general administrative costs incident to the operation of Developer's home office, including, without limitation, home office utilities, rent, telecopier and photocopier expenses. All equipment and personnel assigned to the Project by Developer, either on or off-site, will be included in the Pre-Development Budget and Development Budget as an expense of the Project.

7.3 Limitation. It is understood that the Development Fee paid by the CRA to the Developer under this Section 7 is intended as full compensation to Developer for developing the Project and performing its obligations under this Agreement. Any net proceeds from the sale of Units which exceed the amount required to fully repay the Construction Loan, fund the Development Fee (to the extent not funded under the Construction Loan or the Line of Credit) and fund all other costs of the Project pursuant to the Pre-Development Budget and/or Development Budget (to the extent not funded under the Construction Loan) shall be paid to the CRA.

7.4 Project Expenses. The expense of any third party independent contractor retained by the CRA or by the Developer on behalf of the CRA and in accordance with the Pre-Development Budget and/or Development Budget or otherwise approved of by the CRA shall be an expense of the Project.

7.5 Cost Overruns. Following the date the Development Budget has been approved by all of the parties to this Agreement and the Construction Contract which is consistent with the Development Budget has been fully executed, the Developer shall be responsible for all costs of the Work, including, but not limited to, labor and materials, in excess of the aggregate amount set forth in the Development Budget, but excluding (a) costs and expenses incurred by the CRA in connection with the performance of the CRA's obligations under this Agreement or the administration of this Agreement by the CRA, including, without limitation, the CRA Project Expenses and any deductibles under the insurance coverages to be provided by the CRA, (b) costs and expenses incurred as a result of a change in the Construction Documents required by Governmental Authorities or the CRA but not including any other Permitted Changes, (c) costs

and expenses incurred as a result of a breach by the CRA of its obligations under this Agreement, (d) costs and expenses incurred as a result of the discovery of Hazardous Materials not included in the Environmental Reports, (e) costs and expenses resulting from any damage to underground facilities (i.e., the 48" force main located under the Property, the **Force Main**) not designated for removal, relocation or replacement in the course of construction which do not result from the negligence of the Developer or its contractors, and (f) costs and expenses incurred as a result of a failure of end buyers to acquire title to the Units within thirty (30) days following the issuance of a temporary certificate of occupancy therefor, including, without limitation, interest expenses under the Construction Loan; it being the intention of the parties that the CRA shall be responsible for all Development Budget overruns and any and all expenses (including reasonable attorneys' fees and court costs at trial and all appellate levels) incurred by Developer (or any affiliate or principal of Developer who has provided a guaranty of the Construction Loan) as a result of items (a) through (f) above, including, without limitation, all soft costs of the Work which exceed the Development Budget as a result of any Units not closing within thirty (30) days following the issuance of a temporary certificate of occupancy therefor. Developer shall have the right to reallocate line items in the Development Budget and allocate contingency as Developer determines in its sole and absolute discretion. In the event of a cost overrun which is the Developer's responsibility hereunder, the CRA shall have the right to withhold any payments of the Development Fee or other amounts due Developer then due or to become due until such time as the Developer has funded its cost overrun obligations under this Section 7.5. In the event Developer fails to pay such excess costs, the CRA may offset such amounts due against the Development Fee or other amounts due Developer which are then due or to become due hereunder.

7.6 CRA Advances. Prior to the date of this Agreement, the CRA has made available to the Developer, and the Developer has reimbursed to the CRA, funds in the amount of Two Hundred Eighty Seven Thousand One Hundred Seventy-Seven and 23/100 Dollars (\$287,177.23) (the **CRA Advance**) for expenses incurred by Developer to commence and continue the pre-development services, demolition and site work of the Project as set forth in the Pre-Development Budget. The CRA hereby further agrees that to the extent the funds available under the CRA Advance are not sufficient to fund the pre-development services, demolition and site work expenses under the Pre-Development Budget, the CRA shall prepare and submit for approval in its budget for Fiscal Year 2007-08 an appropriation for the additional funds necessary for pre-development services, demolition, site work, and payment of impact fees as set forth in the Pre-Development Budget (the **Second CRA Advance**); provided, however, that the Developer acknowledges and agrees that approval of such budget by the City, CRA and County is required. The Developer further recognizes that the budget approval shall be undertaken in accordance with established requirements of state statute and the City and County Codes. Nothing in this Agreement is intended to limit or restrict the powers and responsibilities of the City, CRA and County in approving such budget. If the necessary budget appropriation is not approved and there are no funds available to Developer from the CRA Advance and the Second CRA Advance to continue the predevelopment services, demolition and site work, the Developer shall not be obligated to continue the predevelopment, demolition and site work until such time as funds are available but no later than the closing of the Construction Loan. Any such amounts advanced by the CRA to the Developer under this Section 7.6 shall be reimbursed to the CRA upon the earlier to occur of (a) the closing of the Construction Loan or (b) September 30, 2008.

Section 8. Default; Termination.

8.1 Default.

(a) If there is a material breach by the Developer under this Agreement which is not cured within thirty (30) days following Developer's receipt of written notice thereof (or such longer period of time as may be reasonably required by Developer to cure the breach if such breach is by its nature not reasonably susceptible of being cured within such thirty (30) day period provided that the Developer advises the CRA in writing of such fact and commences cure within the initial thirty [30] day period), the CRA shall be entitled to seek any available legal and equitable remedies including, but not limited to the right to terminate this Agreement, a lawsuit for monetary damages (excluding consequential and punitive damages) and/or specific performance of Developer's obligations hereunder.

(b) If (i) the CRA fails to timely make payments due hereunder and such failure continues for ten (10) days following the CRA's receipt of written notice thereof, or (ii) there is a material breach by the CRA under this Agreement (other than a failure to timely make payments) which is not cured within thirty (30) days following the CRA's receipt of written notice thereof (or such longer period of time as may be reasonably required by the CRA to cure the breach if such breach is by its nature not reasonably susceptible of being cured within such thirty (30) day period provided that the CRA advises the Developer in writing of such fact and commences cure within the initial thirty [30] day period), the Developer shall be entitled to seek to any available legal and equitable remedies including, but not limited to the right to terminate this Agreement, a lawsuit for monetary damages (excluding consequential and punitive damages) and/or specific performance of CRA's obligations hereunder.

8.2. Termination. This Agreement shall terminate upon the occurrence of the earlier of the following events:

(a) A termination under Section 8.1 above; or

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

8.3 Effect of Termination. Upon termination of this Agreement, the Developer shall, as soon as practicable but in no event later than the forty fifth (45th) day after notice is given in accordance with Section 8.1 hereof:

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

(b) Assign such existing contracts relating to the development of the Project as the CRA shall require;

(c) Vacate any portion of the Project then occupied by the Developer as a consequence of this Agreement; and

(d) Furnish all such information and otherwise cooperate in good faith in order to effectuate an orderly and systematic ending of the Developer's duties and activities hereunder. Within ten (10) days after any such termination, the Developer shall deliver to the CRA any written reports required hereunder for any period not covered by prior reports at the time of termination. With regard to the originals of all papers and records pertaining to the Project, the possession of which are retained by the Developer after termination, the Developer shall: (i) reproduce and retain copies of such records as it desires; (ii) deliver the originals to the CRA; and (iii) not destroy originals without first offering to deliver the same to the CRA.

Section 9. Indemnification.

9.1 Indemnification by the CRA. Subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as such may be amended, the CRA agrees to indemnify and hold the Developer, its officers, directors, partners, agents and employees harmless to the fullest extent permitted by law from and against any and all liabilities, losses, interest, damages, costs or expenses (including, without limitation, reasonable attorneys' fees, whether suit is instituted or not, and if instituted, whether incurred at any trial or appellate level or post judgment) threatened or assessed against, levied upon, or collected from, the Developer, arising out of, from, or in any way arising from the gross negligence, (unless this Agreement otherwise provides for responsibility for negligence), fraud, or breach of trust of the CRA or from a failure of the CRA to perform its obligations under this Agreement. Notwithstanding the foregoing, the CRA shall not be required to indemnify the Developer with respect to any liability, loss, damages, cost or expense suffered as a result of the gross negligence or willful misconduct of Developer. The Developer shall be designated as an additional insured on all liability insurance policies maintained by the CRA with respect to the Project.

9.2 Indemnification by the Developer. The Developer agrees to indemnify and hold the CRA, its board members, and employees harmless to the fullest extent permitted by law from all liabilities, losses, interest, damages, costs or expenses (including without limitation, reasonable attorneys' fees, whether suit is instituted or not and if instituted, whether incurred at any trial, appellate or post judgment level), threatened or assessed against, levied upon, or collected from, the CRA arising out of, from, or in any way arising from the gross negligence, (unless this Agreement otherwise provides for responsibility for negligence), fraud, or breach of trust of the Developer or from a failure of the Developer to perform its obligations under this Agreement.

9.3 Notice of Indemnification. A party's duty to indemnify pursuant to the provision of this Section 9 shall be conditioned upon the giving of notice by such party of any suit or proceeding and upon the indemnifying party being permitted to assume in conjunction with the indemnitor the defense of any such action, suit or proceeding in accordance with Section 9.4 hereof.

9.4 Third Party Claim Procedure. If a third party (including, without limitation, a governmental organization) asserts a claim against a party to this Agreement and indemnification in respect of such claim is sought under the provisions of this Section 9 by such party against another party to this Agreement, the party seeking indemnification hereunder (the "Indemnified Party") shall promptly (but in no event later than ten (10) Business Days prior to the time in

which an answer or other responsive pleading or notice with respect to the claim is required) give written notice to the party against whom indemnification is sought (the "Indemnifying Party") of such claim. The Indemnifying Party shall have the right at its election to take over the defense or settlement of such claim by giving prompt written notice to the Indemnified Party at least five (5) Business Days prior to the time when an answer or other responsive pleading or notice with respect thereto is required. If the Indemnifying Party makes such election, it may conduct the defense of such claim through counsel or representative of its choosing (subject to the Indemnified Party's approval of such counsel or representative, which approval shall not be unreasonably withheld), shall be responsible for the expenses of such defense, and shall be bound by the results of its defense or settlement of claim to the extent it produces damage or loss to the Indemnified Party. The Indemnifying Party shall not settle any such claim without prior notice to and consultation with the Indemnified Party, and no such settlement involving any equitable relief or which might have a material and adverse effect on the Indemnified Party may be agreed to without its written consent. So long as the Indemnifying Party is diligently contesting any such claim in good faith, the Indemnified Party may pay or settle such claim only at its own expense. Within twenty (20) Business Days after the receipt by the Indemnifying Party of written request by the Indemnified Party at any time, the Indemnifying Party shall make financial arrangements reasonably satisfactory to the Indemnified Party, such as the posting of a bond or a letter of credit, to secure the payment of its obligations under this Section 9 in respect of such claim. If the Indemnifying Party does not make such election, or having made such election does not proceed diligently to defend such claim, or does not make the financial arrangements described in the immediately preceding sentence, then the Indemnified Party may, upon three (3) Business Days' written notice (or shorter notice if a pleading must be filed prior thereto) and at the expense of the Indemnifying Party, take over the defense of and proceed to handle such claim in its exclusive discretion and the Indemnifying Party shall be bound by any defense or settlement that the Indemnified Party may make in good faith with respect to such claim. The parties agree to cooperate in defending such third party claims and the defending party shall have access to records, information and personnel in control of the other party or parties which are pertinent to the defense thereof.

9.5 Survival. The provisions of this Article 9 shall survive the expiration or earlier termination of this Agreement.

Section 10. Insurance.

10.1 CRA's Insurance.

(a) Commercial general liability insurance coverage with limits of no less than \$1,000,000 combined single limit including personal injury and property damage. The CRA's insurance will include the Developer as an additional insured.

(b) Any insurance required to be maintained by the condominium association prior to turnover of control of the association to the Unit owners.

CRA shall furnish Developer with a certificate of insurance evidencing the coverage described above. Such certificate will provide Developer with no less than

thirty (30) days advance written notice of cancellation of any of the foregoing required policies.

In the event of a loss that might be covered by any of the above insurance policies, the Developer shall:

- (x) notify CRA and the insurance carrier as soon as reasonably possible after Developer receives notice of any such loss, or injury;
- (y) take no action (such as admission of liability) which might bar CRA from obtaining any protection afforded by any policy CRA may hold or which might prejudice CRA in its defense to a claim based on such loss, damage or injury; and
- (z) agree that CRA or its insurance carrier shall have the exclusive right, at its option, to conduct the defense to any claim, demand or suit.

The Developer shall furnish whatever information is requested by the CRA for the purpose of establishing the placement of insurance coverages and shall aid and cooperate in every reasonable way with respect to such insurance and any loss covered thereunder.

10.2 Developer's Insurance. Developer shall maintain the following insurance coverages at all times during the Term and furnish a certificate of insurance to CRA evidencing:

- (a) Worker's Compensation insurance coverage in accordance with Florida statutory requirements.
- (b) Employers' Liability insurance coverage with limits of \$500,000 for bodily injury by accident per accident/\$500,000 for bodily injury by disease per employee/\$500,000 for bodily injury by disease policy limit.
- (c) Commercial general liability insurance coverage with limits of no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, which policy shall include coverage of the contractual liabilities contained in this Agreement.
- (d) Business Auto Liability including hired and non-owned auto coverage with minimum limits of \$1,000,000 combined single limit.
- (e) Builder's risk insurance (including flood insurance) during any period of construction of improvements upon the Property insuring such improvements against all casualties on a progressively insured basis for not less than 100% of the replacement cost.
- (f) Umbrella/excess liability insurance coverage, with limits of no less than \$10,000,000 per occurrence and \$10,000,000 in the aggregate.

The certificate shall provide that CRA will be given at least thirty (30) days prior written notice of cancellation of the policy. The cost of the Developer's insurance shall be included in the Pre-Development Budget and Development Budget as a Project expense.

10.3 Subcontractor's Insurance. The Construction Contract shall require that all Major Subcontractors brought onto the Property have insurance coverage at the subcontractor's expense, in the following minimum amounts:

- (a) Worker's Compensation insurance coverage in accordance with Florida statutory requirements.
- (b) Employers' Liability insurance coverage with limits of \$500,000 for bodily injury by accident per accident/\$500,000 for bodily injury by disease per employee/\$500,000 for bodily injury by disease policy limit.
- (c) Commercial general liability insurance coverage with limits of no less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate.
- (d) Business Auto Liability including hired and non-owned auto coverage with minimum limits of \$1,000,000 combined single limit.

This insurance will be primary and noncontributory with respect to insurance outlined in Section 10.1. Developer shall ensure that Developer and CRA are named as additional insureds on the independent contractor's Commercial General Liability and Umbrella/excess insurance policies. Developer shall require the independent contractor and its insurers to waive all rights of subrogation with respect to the CRA and the Developer.

10.4 Certificates of Insurance. Developer shall obtain and keep on file Certificates of Insurance for any independent contractors performing services on the CRA's premises, Developer must obtain the CRA's permission to waive any of the above requirements. Higher amounts may be required if the work to be performed is sufficiently hazardous.

10.5 Waiver of Subrogation Rights. CRA and Developer, for themselves and anyone claiming through them, hereby waive all rights of their insurers to subrogation against the other to the extent permitted by law. To the extent commercially available at reasonable rates, the CRA and Developer agree that their policies will include such a waiver or an endorsement to that effect. This mutual waiver of subrogation shall apply regardless of the cause or origin of the loss or damage, including negligence of the parties hereto, their respective agents and employees except that it shall not apply to willful conduct.

Section 11.

11.1 CRA's Disclosure; Environmental Condition of Property. CRA agrees to disclose to Developer any and all information which CRA has regarding the condition of the Property, including but not limited to, the presence and location of Hazardous Materials and underground storage tanks in, on, or about the Property. In the event that the Developer discovers any Hazardous Materials on the Property other than as set forth in the Environmental Reports,

Developer shall promptly notify the CRA of such discovery. To the extent that the Work cannot legally proceed until such Hazardous Materials have been remediated, the Developer shall not proceed with any further Work until the remediation is complete to the Developer is otherwise legally permitted to recommence the Work. The cost of remediating such Hazardous Materials shall be the CRA's sole responsibility. The CRA, at the CRA's sole cost and expense, shall diligently proceed to take such actions as may be required by the applicable Governmental Authorities to complete such remediation and to otherwise comply with the requirements under the Construction Loan. The CRA shall pay to Developer (or any affiliate or principal of Developer who has provided a guaranty of the Pre-Development Loan or Construction Loan) any and all costs and expenses, including, without limitation, reasonable attorneys' fees and court costs at trial and all appellate levels, arising from or in connection with the presence of any Hazardous Materials on the Property other than as set forth in the Environmental Reports. The provisions of this paragraph shall survive the termination of this Agreement.

11.2 Without limiting the foregoing, the parties acknowledge the discovery during the pre-development services and demolition and site work of certain Hazardous Materials on the Property (**Existing Environmental Condition**). Said Existing Environmental Condition is more particularly described in that certain Asbestos Remedial Action Plan prepared by HSA Engineers & Scientists dated January 3, 2008, as approved by the Miami-Dade County Department of Environmental Resources Management (**DERM**) on January 25, 2008 (the **RAP**). The parties further acknowledge that the Work cannot legally proceed until such Existing Environmental Condition has been remediated in accordance with the RAP. The CRA, at its sole cost and expense, has engaged the Developer to cause the remediation of the Existing Environmental Condition, and the parties acknowledge and agree that the costs and expenses related to such remediation shall be paid by the CRA and shall not be included within the Development Budget. The parties agree to mutually cooperate with the remediation, as required by DERM and any other affected governmental entities, of the Existing Environmental Condition so that the Work can commence as expeditiously as possible.

Section 12. Representations and Warranties.

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

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

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

12.2 CRA: The CRA represents and warrants to the Developer as follows:

(a) That it is a public body corporate and politic of the State of Florida duly organized under the laws of the State of Florida, (ii) the execution, delivery and performance of transactions provided for this Agreement have been duly authorized and upon execution and delivery by the CRA will constitute the valid and binding agreement of the CRA enforceable in accordance with its terms; and (iii) the execution and delivery of this Agreement and the performance by the CRA hereunder, will not conflict with, or breach or result in a default under any agreement to which it is bound.

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

12.3 Survival. The representative and warranties set forth in this Article 12 shall survive the expiration or earlier termination of this Agreement.

Section 13. Miscellaneous.

13.1 Notices. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) hand delivered, delivered by overnight courier by a nationally recognized courier, delivered by facsimile or mailed (airmail or international) by registered or certified mail (Postage prepaid), return receipt requested, addressed to:

(a) If to the CRA:

North Miami Community Redevelopment Agency
615 N.E. 124th Street
North Miami, Florida 33161
Attn: Tony E. Crapp, Sr., Executive Director

With a copy to:

North Miami Community Redevelopment Agency
P.O. Box 610655
North Miami, FL 33261-0655
Attn: Tony E. Crapp, Sr., Executive Director

Gray Robinson, P.A.
401 East Las Olas Boulevard
Suite 1850
Fort Lauderdale, Florida 33301
Attn: Steven W. Zelkowitz, Esq.

(b) If to the Developer:

2200 NE 143rd Street, Suite 100
North Miami, Florida 33181

Attn: Otis Pitts

With a copy to:

321 E. Hillsborough Blvd.
Deerfield Beach, Florida 33441
Attn: Ted Stotzer, Esq.

With a copy to:

Greenberg, Traurig, P.A.
1221 Brickell Avenue
Miami, Florida 33131
Attn: Kimberly S. LeCompte, Esq.

Each such notice shall be deemed delivered (a) on the date faxed with confirmation of receipt, (b) next business day after deposited with an overnight courier, (c) the date of delivery if delivered by hand, and (d) on the date upon which the return receipt is signed or delivery is refused, as the case may be, if mailed. For purposes of this Agreement, copies of notices shall not constitute notice and may be delivered by means other than as required herein.

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

13.3 Assignment. The Developer may not assign its respective rights and obligations, in whole or in part, without the prior written consent of the CRA (which may be withheld in the CRA's sole discretion); provided, however, the Developer may assign its rights and obligations hereunder to a wholly-owned subsidiary of Developer or an entity which has the same beneficial owners as Developer. In such event, Developer shall remain liable for its obligations hereunder. The CRA shall not assign its respective rights and/or obligations under this Agreement.

13.4 Project Representatives. The CRA hereby appoints the CRA Executive Director to serve as its representative. The CRA Executive Director shall have the right and authority to provide all consents and approvals, and take other actions, required hereunder on behalf of the CRA; provided, however, (i) the CRA Executive Director shall obtain the consent of the CRA Board to the extent required by Applicable Laws, and (ii) the CRA Executive Director may, in the CRA Executive Director's discretion, submit any matter to the CRA Board for their review and approval. The Developer hereby appoints Otis Pitts, Jr. to serve as its representative. The parties may change their respective designated representative at any time by providing written notice thereof to the other party.

13.5 Small Business Enterprise Program. The Developer agrees that in connection with its development of the Project, it will comply with the Small Business Enterprise (SBE) Program adopted by the City on June 28, 2005 pursuant to Resolution No. R-2005-69 (the **Resolution**). The parties acknowledge and agree that any costs associated with compliance of the SBE Program pursuant to the Resolution shall be included in the Development Budget as a cost of the Work but shall be excluded from the calculation of the Development Fee.

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

13.7 Pledgee Protection Provisions. The CRA acknowledges that the equity interests in the Developer have been pledged to Column Financial, Inc. and its participants (including their respective successors and/or assigns or any other future pledgee of such equity interests in Developer, "Pledgee"). Pledgee shall have the right, but not the obligation, at any time prior to the termination of this Agreement, and without any payment or penalty, to do any act or thing required of the Developer; and to do any act or thing which may be necessary or proper to be done in the performance and observance of the agreement, covenants and conditions hereof imposed upon the Developer. All payments so made and all things so done and performed by any Pledgee shall be effective to prevent a default under this Agreement as the same would have been if made, done and performed by Developer instead of by said Pledgee. Any event of default under this Agreement which in the nature thereof cannot be remedied by a Pledgee without completing the foreclosure of the equity interests in Developer shall be deemed to be remedied if: (a) within thirty (30) days after receiving written notice from the CRA setting forth the nature of such event of default, or prior thereto, the Pledgee shall have acquired the equity interests in the Developer or shall have commenced foreclosure or other appropriate proceedings in the nature thereof, (b) the Pledgee diligently prosecutes any such proceedings to completion, (c) the Pledgee shall have fully cured any default in the payment of any monetary obligation owed the CRA hereunder within such thirty (30) day period and shall thereafter continue to perform faithfully all such non-monetary obligations which do not require foreclosure of the equity interests, and (d) after acquiring the equity interests in Developer through foreclosure or otherwise, the Pledgee performs all other obligations of the Developer hereunder as and when the same are due. The CRA shall mail or deliver to any Pledgee who has provided its address to the CRA any and all notices of default which the CRA may from time to time give to or serve upon the Developer pursuant to the provisions of this Agreement and such copies shall be mailed or delivered to such Pledgee simultaneously with the mailing or delivery of the same to the Developer. No violation of this Agreement by, or enforcement of this Agreement against, Developer, shall impair, defeat or render invalid the lien of any pledge of equity interests in Developer. CRA hereby agrees to cooperate reasonably with the Developer in regard to the satisfaction of the requests or requirements by the Pledgee; provided that the CRA shall not be deemed obligated to accede to any request that materially and adversely affects its rights under this Agreement. In the event of any conflict between the provisions of this Section 13.7 and the other provisions of this Agreement, this Section 13.7 shall control.

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

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

13.10 Entire Agreement and Amendment. This Agreement constitutes the entire agreement between the parties hereto related to the development and construction of the Project and no modification hereof shall be effective unless made by a supplemental agreement in writing executed by all of the parties hereto. In the event there is a Pledgee at the time of such

amendment, the consent in writing of such Pledgee to any proposed amendment must be obtained in order for such amendment to be enforceable against or binding upon such Pledgee (or the Developer following the date the Pledgee acquires the equity interests in Developer), provided such Pledgee has provided its address to the CRA and notified them that such consent is required in connection with any amendments of this Agreement.

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

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

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

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

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

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

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

13.18 Force Majeure. For purposes of this Agreement, **Force Majeure** shall mean the inability of either party to commence or complete its obligations hereunder by the dates herein required resulting from delays caused by strikes, picketing, acts of God, war, governmental action or inaction (including, without limitation, any action of inaction by the Miami-Dade County Water and Sewer Department with respect to the Force Main), acts of terrorism, emergencies or other causes beyond either party's reasonable control which shall have been timely communicated to the other party. Events of Force Majeure shall extend the period for the performance of the obligations for the period equal to the period(s) of any such delay(s).

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

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

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

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

13.23 Signage. Subject to the reasonable approval of the CRA and in accordance with Applicable Laws, the Developer shall have the right to place one or more appropriate signs upon the Property indicating that the Developer is providing development services for the Property.

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

13.25 Jurisdiction; Venue; and Waiver of Jury Trial. EACH OF THE PARTIES IRREVOCABLY AND UNCONDITIONALLY (A) AGREES THAT ANY SUIT, ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE BROUGHT IN THE FEDERAL OR STATE COURT SITUATED IN MIAMI-DADE COUNTY, FLORIDA; (B) CONSENTS TO THE JURISDICTION OF EACH SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING; (C) WAIVES ANY OBJECTION WHICH IT MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY OF SUCH COURTS; AND (D) AGREES THAT

SERVICE OF ANY COURT PAPER MAY BE EFFECTED ON SUCH PARTY BY MAIL, AS PROVIDED IN SECTION 13.1 HEREOF, OR IN SUCH OTHER MANNER AS MAY BE PROVIDED UNDER APPLICABLE LAWS OR COURT RULES. EACH PARTY WAIVES ALL RIGHTS TO ANY TRIAL BY JURY IN ALL LITIGATION RELATING TO OR ARISING OUT OF THIS AGREEMENT.

Section 14. Safety and Protection.

14.1 Developer shall be responsible for initiating, maintaining and supervising commercially reasonable safety precautions and programs in connection with the Work taking into consideration the effect on the Development Budget. Developer shall take all necessary precautions required by Applicable Laws and that certain Owner's Safety Manual dated October 8, 2007, as amended from time to time (the **Owner's Safety Manual**) for the safety of, and shall take commercially reasonable precautions, taking into consideration the effect on the Development Budget, to prevent damage, injury or loss to:

- (a) all persons on Property or who may be affected by the construction;
- (b) all Work and materials and equipment to be incorporated in the Project, whether in storage on or off the Property; and
- (c) other property at the Property or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadway, structures, utilities and underground facilities (i.e., the Force Main) not designated for removal, relocation or replacement in the course of construction.

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

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

14.4 Developer shall cause its general contractor to be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to

be made available to or exchanged between or among employers at the site in accordance with Applicable Laws and the Owner's Safety Manual.

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

14.6 In the event of any conflict between the requirements of Applicable Laws and the Owner's Safety Manual, the more restrictive requirements shall control.

15. Use of Property and Other Areas.

15.1 Developer shall confine construction equipment, the storage of materials and equipment and the operations of construction workers to the Property and other land and area permitted by Applicable Laws and regulations, rights-of-way, permits and easements, and shall not unreasonably encumber any such land or area's with construction equipment or other materials or equipment.

15.2 During the performance of the Work, Developer shall keep the Property free from accumulations of waste materials, rubbish, dust and other debris resulting from the construction. Upon Final Completion of the Work, Developer shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment, temporary construction and machinery and surplus materials. Developer shall leave the Property clean and ready for occupancy by the Unit buyers at Substantial Completion except as necessary to achieve Final Completion.

15.3 Regardless of whether such is permitted by Applicable Laws, the Developer shall not allow, or seek to allow, Work to occur outside of the City's designated hours for construction without the prior written consent of the CRA in each instance, which consent shall not be unreasonably withheld, delayed or conditioned.

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

17. Munisport Agreement. The parties acknowledge and agree that the terms and provisions of this Agreement may be inconsistent with the rights, obligations and responsibilities of the parties under Section 9.4 of the Munisport Agreement as a result of certain accommodations made by the parties solely with respect to the Project. The parties further acknowledge and agree that nothing set forth in this Agreement shall constitute a waiver of any

of the rights, obligations and responsibilities of the parties under Section 9.4 of the Munisport Agreement with respect to any future projects subject thereto.


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

DEVELOPER:

URBAN RESIDENTIAL DEVELOPMENT GROUP, LTD.,

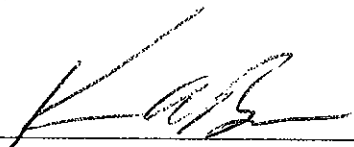
a Florida limited partnership, f/k/a North Miami Housing, Ltd.,
a Florida limited partnership

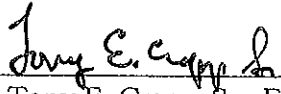
By: URDG-GP, LLC,
a Florida limited liability company, as general partner

By: 
Name: Otis Pitts Jr.
Title: President

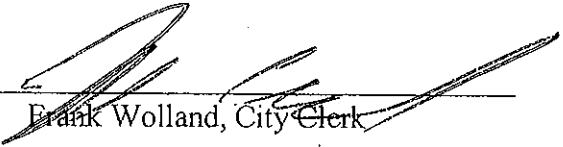
CRA:

NORTH MIAMI COMMUNITY REDEVELOPMENT AGENCY,
a public body corporate and politic


By: 
Kevin A. Burns, Chairman

By: 
Tony E. Crapp, Sr., Executive Director

Attest:

By: 
Frank Wolland, City Clerk

Approved as to form and legal sufficiency:

By: 
Gray Robinson, P.A., CRA Attorney
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