

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR MIAMI-  
DADE COUNTY, FLORIDA

FLAGSTONE ISLAND GARDENS LLC,  
and FLAGSTONE DEVELOPMENT  
CORP.,

COMPLEX BUSINESS LITIGATION

CASE NO.: 2017-013829-CA-01 (44)

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

\_\_\_\_\_ /

**DEFENDANT CITY OF MIAMI'S ANSWER,  
AFFIRMATIVE DEFENSES AND COUNTERCLAIMS**

Defendant City of Miami (the "City") hereby files its Answer, Affirmative Defenses and Counterclaims to the Amended Complaint of Plaintiffs Flagstone Island Gardens LLC and Flagstone Development Corporation (collectively, "Flagstone") and states as follows:

**ANSWER**

1. The City admits that Flagstone was awarded the Project in 2001, but denies Flagstone's characterization of the history of the Project as alleged in paragraph 1.

2. The City admits that Flagstone was awarded the Project in 2001, but denies Flagstone's characterization of the history of the Project as alleged in paragraph 2. Flagstone repeatedly missed deadlines under the agreements and otherwise failed to comply with its contractual obligations.

3. The City denies that Flagstone adhered to the agreements between the parties as alleged in paragraph 3. The City is without knowledge of the amount invested by Flagstone as alleged in paragraph 3 and therefore denies same and demands strict proof thereof.

4. The City admits that it entered into certain agreements with Flagstone and issued certain permits and approvals and that certain public hearings were held. The City otherwise denies Flagstone's characterization of the history of the Project as alleged in paragraph 4.

5. The City denies paragraph 5.

6. The City admits that it adopted Resolution R-17-0263, and pursuant thereto issued letters dated June 7, 2017 and June 19, 2017 to Flagstone. The resolution and the letters speak for themselves. The remainder of paragraph 6 is denied.

7. The City admits that Flagstone purports to sue the City for certain relief but denies that Flagstone is entitled to the relief sought as alleged in paragraph 7.

#### **PARTIES AND JURISDICTION**

8. The City admits that Flagstone purports to sue the City for certain relief but denies that Flagstone is entitled to the relief sought as alleged in paragraph 8.

9. The City admits paragraph 9.

10. The City admits paragraph 10.

11. The City admits that Flagstone Development Corporation is a Delaware corporation. The City is without knowledge of the remainder of paragraph 11 and therefore denies same.

12. The City admits paragraph 12.

13. The City admits that venue is proper as alleged in paragraph 13, but denies that Flagstone is entitled to any of the relief sought.

14. The City denies paragraph 14 for the reasons set forth more fully in its affirmative defenses and counterclaims.

## **GENERAL FACTS**

15. The City admits that Flagstone was awarded the Project in 2001, but denies Flagstone's characterization of the history of the Project as alleged in paragraph 15. Flagstone repeatedly missed deadlines under the agreements and otherwise failed to comply with its contractual obligations.

16. The City is without knowledge of the specific economic impact study to which Flagstone refers in paragraph 16 and therefore denies same.

17. The City admits that Flagstone was awarded the Project in 2001, but denies Flagstone's characterization of the history of the Project as alleged in paragraph 17. Flagstone repeatedly missed deadlines under the agreements and otherwise failed to comply with its contractual obligations.

18. The City is without knowledge of the specific Florida statute to which Flagstone refers in paragraph 18 and therefore denies same.

19. The Deed speaks for itself. To the extent inconsistent therewith, paragraph 19 is denied.

20. The City admits that it issued a Request for Proposals for the Project, which speaks for itself. To the extent inconsistent therewith, paragraph 20 is denied.

21. The City admits that it issued a Request for Proposals for the Project, which speaks for itself. To the extent inconsistent therewith, paragraph 21 is denied.

22. The City admits that it issued a Request for Proposals for the Project and that it selected a proposal. The Request for Proposals speaks for itself. To the extent inconsistent therewith, paragraph 22 is denied.

23. The City is without knowledge and therefore denies paragraph 23 and demands strict proof thereof.

24. The City admits that Flagstone responded to the Request for Proposals. The City is without knowledge and therefore denies the remainder of paragraph 24 and demands strict proof thereof.

25. The City admits that Flagstone submitted a proposal in response to the Request for Proposals. The Flagstone proposal speaks for itself. To the extent inconsistent therewith, paragraph 25 is denied.

26. The City is without knowledge of the first sentence of paragraph 26 and therefore denies same and demands strict proof thereof. The Flagstone proposal speaks for itself. To the extent inconsistent therewith, paragraph 26 is denied.

27. The City admits that the Flagstone proposal was selected. The remainder of paragraph 27 is denied.

28. The resolution speaks for itself. To the extent inconsistent therewith, paragraph 28 is denied.

29. The City admits that a question related to the Project appeared on the ballot on November 6, 2001. The ballot question speaks for itself. To the extent inconsistent therewith, paragraph 29 is denied.

30. The City admits that a question related to the Project appeared on the ballot on November 6, 2001, and that the question was approved. The ballot question speaks for itself. To the extent inconsistent therewith, paragraph 30 is denied.



31. The City admits that a question related to the Project appeared on the ballot on November 6, 2001, and that the question was approved. The ballot question speaks for itself. To the extent inconsistent therewith, paragraph 31 is denied.

32. The resolution speaks for itself. To the extent inconsistent therewith, paragraph 32 is denied.

33. The resolution speaks for itself. To the extent inconsistent therewith, paragraph 33 is denied.

34. The resolution speaks for itself. To the extent inconsistent therewith, paragraph 34 is denied. The City admits it entered into the Original Agreement to Enter.

35. The City admits that the Original Agreement to Enter between the City and Flagstone was amended on multiple occasions at Flagstone's request to accommodate Flagstone's failure to meet contractual deadlines and obligations. The amendments speak for themselves. To the extent inconsistent therewith, paragraph 35 is denied.

36. The Partial Modification speaks for itself. To the extent inconsistent therewith, paragraph 36 is denied.

37. The Amended and Restated Agreement to Enter speaks for itself. To the extent inconsistent therewith, paragraph 37 is denied.

38. The Amended and Restated Agreement to Enter speaks for itself. To the extent inconsistent therewith, paragraph 38 is denied.

39. The resolution speaks for itself. To the extent inconsistent therewith, paragraph 39 is denied.

40. The resolution speaks for itself. To the extent inconsistent therewith, paragraph 40 is denied.

41. The Second Partial Modification speaks for itself. To the extent inconsistent therewith, paragraph 41 is denied.

42. The Marina Lease speaks for itself. To the extent inconsistent therewith, paragraph 42 is denied. The City further denies any liability to Flagstone under the Marina Lease.

43. The Compliance Agreement speaks for itself. To the extent inconsistent therewith, paragraph 43 is denied.

44. The Retail/Parking Lease speaks for itself. To the extent inconsistent therewith, paragraph 44 is denied. The City further denies any liability to Flagstone under the Retail/Parking Lease.

45. The City admits paragraph 45.

46. The City denies Paragraph 46.

47. The City is without knowledge of paragraph 47 and therefore denies same and demands strict proof thereof.

48. The City is without knowledge of paragraph 48 and therefore denies same and demands strict proof thereof.

49. The City denies paragraph 49.

50. The City is without knowledge of paragraph 50 and therefore denies same and demands strict proof thereof.

51. The City is without knowledge of paragraph 51 and therefore denies same and demands strict proof thereof.

52. The City is without knowledge of paragraph 52, and therefore denies same and demands strict proof thereof. However, the City admits that Flagstone provided certain

affidavits to the City whereby Flagstone purported to represent that it was “self-financing” the Marina Component and the Retail/Parking Component.

53. The temporary certificate of occupancy alleged in the first sentence of paragraph 53 speaks for itself. The City is without knowledge of Flagstone’s operations at the Marina and therefore denies same. The City denies that Flagstone has one minor construction item (“extension of a sewer line and connection to a water meter”) to accomplish before it can obtain a certificate of occupancy for the Marina. There is no structure located on the estate created by the Marina Lease – or anywhere on the Property -- to which water and sewer lines can be connected. The City denies the remaining allegations in paragraph 53.

54. The City denies paragraph 54.

55. The phased foundation permit speaks for itself. The City denies that the phase foundation permit was for the Retail/Parking Component and denies all remaining allegations in paragraph 55.

56. The City denies that Flagstone completed any foundation work for the Retail/Parking Component and denies all remaining allegations in paragraph 56.

57. The phased foundation permit speaks for itself. The City denies that the phased foundation permit was for the Retail/Parking Component and denies all remaining allegations in paragraph 57.

58. The City denies paragraph 58.

59. The City denies that permits and approvals listed in paragraph 59 were for the Retail/Parking Component. The permits and approvals alleged in paragraph 59 speak for themselves. To the extent inconsistent therewith, paragraph 59 is denied.

60. The City denies paragraph 60.

61. The City denies paragraph 61.

62. The City denies paragraph 62.

63. The City is without knowledge of paragraph 63 and therefore denies same and demands strict proof thereof.

64. The Amended and Restated Agreement to Enter speaks for itself. To the extent inconsistent therewith, paragraph 64 is denied.

65. The City is without knowledge of the specific administrative department alleged in paragraph 65 and therefore denies the allegations in paragraph 65. The City further states that Flagstone made material misrepresentations to City staff pertaining to Flagstone's satisfaction of the conditions precedent for entry into the Retail/Parking Lease.

66. The City Retail/Parking Lease speaks for itself. To the extent inconsistent therewith, paragraph 66 is denied. The City further states that Flagstone made material misrepresentations to City staff pertaining to Flagstone's satisfaction of the conditions precedent for entry into the Retail/Parking Lease.

67. The City is without knowledge of the unidentified department correspondence alleged in paragraph 67 and therefore denies same and demands strict proof thereof. The City further denies that City staff has the authority to determine whether Flagstone was or was not in default of any lease requirements, and states that Flagstone made material misrepresentations to City staff pertaining to Flagstone's alleged commencement of construction of the Retail/Parking Component.

68. The City is without knowledge of the unidentified internal correspondence alleged in paragraph 68 and therefore denies same and demands strict proof thereof. The City further denies that City staff has the authority to determine whether Flagstone did or did not meet the

requirements of the Amended and Restated Agreement to Enter, and states that Flagstone made material misrepresentations to City staff pertaining to Flagstone's alleged commencement of construction of the Retail/Parking Component.

69. The City is without knowledge of the unidentified communication alleged in paragraph 69 and therefore denies same and demands strict proof thereof. The City further denies that City staff has the authority to determine whether Flagstone was or was not in default of any lease requirements, and states that Flagstone made material misrepresentations to City staff pertaining to Flagstone's alleged commencement of construction of the Retail/Parking Component. The City further specifically denies that Flagstone's "application for a foundation permit" and "excavation work" was "enough to meet [its] contractual obligations."

70. The City is without knowledge of the unidentified communications alleged in paragraph 70 and therefore denies same and demands strict proof thereof. The City denies that either the City Attorney or the City Manager has the authority to determine whether Flagstone was or was not in default, and states that Flagstone made material misrepresentations to City staff pertaining to Flagstone's alleged commencement of construction of the Retail/Parking Component.

71. The papers and pleadings related to the cases concerning the Project speak for themselves. To the extent inconsistent therewith, paragraph 71 is denied.

72. The papers and pleadings related to the cases concerning the Project speak for themselves. To the extent inconsistent therewith, paragraph 72 is denied.

73. The papers and pleadings related to the cases concerning the Project speak for themselves. To the extent inconsistent therewith, paragraph 73 is denied. The City is without

knowledge of Flagstone's alleged funding and therefore denies same and demands strict proof thereof.

74. The papers and pleadings related to the cases concerning the Project speak for themselves. To the extent inconsistent therewith, paragraph 74 is denied. The City further states that it is without knowledge of Flagstone's alleged funding and therefore denies same and demands strict proof thereof.

75. The papers and pleadings related to the cases concerning the Project speak for themselves. To the extent inconsistent therewith, paragraph 75 is denied. The City denies the remaining allegations of paragraph 75.

76. The papers and pleadings related to the cases concerning the Project speak for themselves. To the extent inconsistent therewith, paragraph 76 is denied. The City is without knowledge of the remaining allegations in paragraph 76 and therefore denies same and demands strict proof thereof.

77. The papers and pleadings related to the cases concerning the Project speak for themselves. To the extent inconsistent therewith, paragraph 77 is denied. The City is without knowledge of the remaining allegations in paragraph 77 and therefore denies same and demands strict proof thereof.

78. The papers and pleadings related to the cases concerning the Project speak for themselves. To the extent inconsistent therewith, paragraph 78 is denied.

79. The court decisions related to the cases concerning the Project speak for themselves. To the extent inconsistent therewith, paragraph 79 is denied.

80. The papers and pleadings related to the cases concerning the Project speak for themselves. To the extent inconsistent therewith, paragraph 80 is denied.

81. The papers and pleadings related to the cases concerning the Project speak for themselves. To the extent inconsistent therewith, paragraph 81 is denied.

82. The papers, pleadings and court decisions related to the cases concerning the Project speak for themselves. To the extent inconsistent therewith, paragraph 82 is denied.

83. The papers, pleadings and court decisions related to the cases concerning the Project speak for themselves. To the extent inconsistent therewith, paragraph 83 is denied.

84. The papers, pleadings and court decisions related to the cases concerning the Project speak for themselves. To the extent inconsistent therewith, paragraph 84 is denied.

85. The papers, pleadings and court decisions related to the cases concerning the Project speak for themselves. To the extent inconsistent therewith, paragraph 85 is denied. The City denies the remaining allegations of paragraph 85.

86. The City denies paragraph 86.

87. The papers, pleadings and court decisions related to the cases concerning the Project speak for themselves. To the extent inconsistent therewith, paragraph 87 is denied. The City is without knowledge of the sums allegedly spent by Flagstone and therefore denies the remaining allegations of paragraph 87 and demands strict proof thereof.

88. The papers, pleadings and court decisions related to the cases concerning the Project speak for themselves. To the extent inconsistent therewith, paragraph 88 is denied. The City denies the remaining allegations of paragraph 88.

89. The City denies paragraph 89.

90. The City admits that the City Commission passed Resolution R-17-0263. The resolution speaks for itself. The City denies the remaining allegations of paragraph 90.

91. The transcript of the City Commission meeting speaks for itself. The City denies the remaining allegations of paragraph 91.

92. The City denies paragraph 92.

93. The City denies paragraph 93.

94. The City admits that the City Commission passed Resolution R- 17-0263. The resolution speaks for itself. To the extent inconsistent therewith, paragraph 94 is denied.

95. The notice of default dated June 7, 2017 speaks for itself. To the extent inconsistent therewith, paragraph 95 is denied. The City further denies that the notice of default was “defective” as alleged in paragraph 95.

96. The Letter to Vacate the Premises dated June 19, 2017 speaks for itself. To the extent inconsistent therewith, paragraph 96 is denied.

97. The City denies paragraph 97.

98. The City denies paragraph 98.

99. The City denies paragraph 99.

100. The City admits that the City Commission passed Resolution R- 04-0462, approving a major use special permit development order subject to the conditions stated therein. The resolution speaks for itself. To the extent inconsistent therewith, paragraph 100 is denied.

101. The City admits that the City Commission passed Resolution R- 04-0462, approving a major use special permit development order subject to the conditions stated therein. The resolution speaks for itself. To the extent inconsistent therewith, paragraph 101 is denied.

102. The City admits a modification to the MUSP was approved in 2007. The modification speaks for itself. To the extent inconsistent therewith, paragraph 102 is denied. The City denies the remaining allegations of paragraph 102.



103. The City admits that Flagstone requested a modification to the MUSP in 2013. Flagstone's request speaks for itself. To the extent inconsistent therewith, paragraph 103 is denied. The City is without knowledge of Flagstone's alleged expense and therefore denies same and demands strict proof thereof. The City denies the remaining allegations of paragraph 103.

104. The City admits that a document entitled "Modification Referral" was signed by a zoning administrator in April 2014. The Modification Referral speaks for itself. To the extent inconsistent therewith, paragraph 104 is denied.

105. The City admits that Miami 21 requires a warrant approval process. The code provisions of Miami 21 speak for themselves. To the extent inconsistent therewith, paragraph 105 is denied.

106. The City denies paragraph 106.

107. The City denies paragraph 107.

108. The City admits Flagstone submitted a warrant application seeking to modify the MUSP in 2016. The warrant application speaks for itself. To the extent inconsistent therewith, paragraph 108 is denied. The City denies the remaining allegations of paragraph 108.

109. The City denies paragraph 109.

110. The City is without knowledge of the allegations of paragraph 110 and therefore denies same and demands strict proof thereof.

111. The City denies paragraph 111.

112. The City denies paragraph 112.

113. The City denies paragraph 113.

114. The City is without knowledge of the allegations of paragraph 114 and therefore denies same and demands strict proof thereof.

115. The City denies paragraph 115.

116. The City denies paragraph 116.

117. The City denies paragraph 117.

118. The City denies paragraph 118.

119. The City denies paragraph 119.

120. The City denies paragraph 120.

121. The City denies paragraph 121.

122. The City denies paragraph 122.

123. The City denies paragraph 123.

124. The City denies paragraph 124.

125. The City denies paragraph 125.

126. The City denies paragraph 126.

127. The City denies paragraph 127.

128. The City denies paragraph 128.

129. The City denies paragraph 129.

130. The City denies paragraph 130.

131. The City denies paragraph 131 and states that the Amended and Restated Agreement to Enter and Marina and Retail/Parking Leases contain strict limitations of liability.

132. The City is without knowledge of the allegations in paragraph 132 and therefore denies same and demands strict proof thereof.

**CAUSES OF ACTION**

**COUNT I  
BREACH OF CONTRACT**

**Amended Agreement to Enter & Retail/Parking Lease**

133. The City restates and realleges its responses to paragraphs 1 through 132.

134. The City denies that it is in breach of either the Amended and Restated Agreement to Enter or the Retail/Parking Lease and further denies that Flagstone has an enforceable claim against the City for breach of either the Amended and Restated Agreement to Enter or the Retail/Parking Lease as alleged in paragraph 134. The City further states that the validity and enforceability of the Amended and Restated Agreement to Enter and the Retail/Parking Lease have been challenged in *Liebman v. City of Miami* and that the court in that case has not yet decided the issue.

135. The City denies paragraph 135.

136. The City denies paragraph 136.

137. The Default Resolution, the Notice of Default, and the Amended and Restated Agreement to Enter speak for themselves. To the extent inconsistent therewith, paragraph 137 is denied.

138. The Default Resolution, the Notice of Default, and the Amended and Restated Agreement to Enter speak for themselves. To the extent inconsistent therewith, paragraph 138 is denied.

139. The City is without knowledge of what Flagstone anticipates as alleged in paragraph 139 and therefore denies same and demands strict proof thereof. The City denies the remaining allegations of paragraph 139.

140. The City denies paragraph 140.

- 141. The City denies paragraph 141.
- 142. The City denies paragraph 142 and denies that Flagstone is entitled to any relief.
- 143. The City denies paragraph 143 and denies that Flagstone is entitled to any relief.
- 144. The City denies paragraph 144 and denies that Flagstone is entitled to any relief.

**COUNT II**  
**BREACH OF CONTRACT**  
**Amended Agreement to Enter & Retail/Parking Lease**

- 145. The City restates and realleges its responses to paragraphs 1 through 132.
- 146. The City denies that it is in breach of either the Amended and Restated Agreement to Enter or the Retail/Parking Lease and further denies that Flagstone has an enforceable claim against the City for breach of either the Amended and Restated Agreement to Enter or the Retail/Parking Lease as alleged in paragraph 146. The City further states that the validity and enforceability of the Amended and Restated Agreement to Enter and the Retail/Parking Lease have been challenged in *Liebman v. City of Miami* and that the court in that case has not yet decided the issue.
- 147. The City denies paragraph 147.
- 148. The Amended and Restated Agreement to Enter speaks for itself. To the extent inconsistent therewith, paragraph 148 is denied.
- 149. The Amended and Restated Agreement to Enter speaks for itself. To the extent inconsistent therewith, paragraph 149 is denied.
- 150. The Amended and Restated Agreement to Enter speaks for itself. To the extent inconsistent therewith, paragraph 150 is denied.
- 151. The City denies paragraph 151.
- 152. The City denies paragraph 152.

153. The City denies paragraph 153.
154. The City denies paragraph 154.
155. The City denies paragraph 155.
156. The City denies paragraph 156.
157. The City denies paragraph 157.
158. The City denies paragraph 158.
159. The City denies paragraph 159.
160. The City denies paragraph 160 and denies that Flagstone is entitled to any relief.

**COUNT III  
DECLARATORY JUDGMENT  
Amended Agreement to Enter & Retail/Parking Lease**

161. The City restates and realleges its responses to paragraphs 1 through 132.
162. The City denies paragraph 162.
163. The Amended and Restated Agreement to Enter speaks for itself. To the extent inconsistent therewith, paragraph 163 is denied.
164. The Amended and Restated Agreement to Enter speaks for itself. To the extent inconsistent therewith, paragraph 164 is denied.
165. The Amended and Restated Agreement to Enter speaks for itself. To the extent inconsistent therewith, paragraph 165 is denied.
166. The Amended and Restated Agreement to Enter speaks for itself. To the extent inconsistent therewith, paragraph 166 is denied.
167. The Amended and Restated Agreement to Enter speaks for itself. To the extent inconsistent therewith, paragraph 167 is denied.

168. The Amended and Restated Agreement to Enter speaks for itself. To the extent inconsistent therewith, paragraph 168 is denied.

169. The City admits that Flagstone did not obtain an Initial Construction Loan with respect to both the Marina Lease and the Retail Parking Lease. The remaining allegations of paragraph 169 are denied.

170. The City denies paragraph 170.

171. The City admits that Flagstone provided an affidavit to the City executed May 27, 2014. The affidavit speaks for itself. To the extent inconsistent therewith, paragraph 171 is denied. The City further denies that Flagstone and its affiliates funded or intended to fund the complete development and construction of the Marina Component.

172. The City denies paragraph 172. The City further states that Flagstone made material misrepresentations to City staff pertaining to Flagstone's satisfaction of the conditions precedent to the Marina Lease.

173. The City admits that the City Manager executed the Marina Lease, but denies the remaining allegations of paragraph 173. The City further states that Flagstone made material misrepresentations to City staff pertaining to Flagstone's satisfaction of the conditions precedent to the Marina Lease.

174. The City admits that Flagstone provided an affidavit to the City executed August 30, 2016. The affidavit speaks for itself. To the extent inconsistent therewith, paragraph 174 is denied. The City further denies that Flagstone and its affiliates funded or intended to fund the complete development and construction of the Retail/Parking Component.

175. The City admits that Flagstone provided an affidavit to the City executed August 30, 2016. The affidavit speaks for itself. To the extent inconsistent therewith, paragraph 175 is

denied. The City is without knowledge of the substance of the affidavit as alleged in paragraph 175 and therefore denies same and demands strict proof thereof.

176. The City admits that the City Manager executed the Retail/Parking Lease, but denies the remaining allegations of paragraph 176. The City further states that Flagstone made material misrepresentations to City staff pertaining to Flagstone's satisfaction of the conditions precedent to the Retail/Parking Lease.

177. The City denies paragraph 177.

178. The City denies paragraph 178.

179. The City admits that the City Manager executed the Retail/Parking Lease; the Interim Director, Division of Risk Management, approved as to insurance requirements; the City Attorney approved as to form and correctness; and the City Clerk attested, but denies the remaining allegations of paragraph 179. The City further states that Flagstone made material misrepresentations to City staff pertaining to Flagstone's satisfaction of the conditions precedent to the Retail/Parking Lease.

180. The City denies paragraph 180.

181. The City denies paragraph 181.

182. The City denies paragraph 182.

183. The City denies paragraph 183.

184. The City denies paragraph 184.

185. The City denies paragraph 185.

186. The City admits that the City Commission passed Resolution R-17-0263; and that the City Manager issued the Notice of Default, dated June 7, 2017, and the Letter to Vacate,

dated June 19, 2017. The resolution, the notice and the letter speak for themselves. To the extent inconsistent therewith, paragraph 186 is denied.

187. The City admits that there is a dispute between the City and Flagstone, but denies that Flagstone is entitled to any relief as alleged in paragraph 187.

188. The City admits that there is a dispute between the City and Flagstone, but denies that Flagstone is entitled to any relief as alleged in paragraph 188.

189. The City admits that there is a dispute between the City and Flagstone, but denies that Flagstone is entitled to any relief as alleged in paragraph 189.

190. The City admits that there is a dispute between the City and Flagstone, but denies that Flagstone is entitled to any relief as alleged in paragraph 190.

191. The City is without knowledge of the allegations in paragraph 191 and therefore denies same and demands strict proof thereof.

**COUNT IV  
DECLARATORY JUDGMENT  
Amended Agreement to Enter & Retail/Parking Lease**

192. The City restates and realleges its responses to paragraphs 1 through 132.

193. The Retail/Parking Lease and Composite Attachment 3 to the Retail/Parking Lease speak for themselves. To the extent inconsistent therewith, paragraph 193 is denied. The City further states that Flagstone made material misrepresentations to City staff pertaining to the deadlines set forth in Composite Attachment 3 to the Retail/Parking Lease.

194. The Retail/Parking Lease and Composite Attachment 3 to the Retail/Parking Lease speak for themselves. To the extent inconsistent therewith, paragraph 194 is denied.

195. The Amended and Restated Agreement to Enter speaks for itself. To the extent inconsistent therewith, paragraph 195 is denied.



196. Composite Attachment 3 to the Retail/Parking Lease speaks for itself. To the extent inconsistent therewith, paragraph 196 is denied. The City further states that Flagstone made material misrepresentations to City staff pertaining to the deadlines set forth in Composite Attachment 3 to the Retail/Parking Lease.

197. Composite Attachment 3 to the Retail/Parking Lease speaks for itself. To the extent inconsistent therewith, paragraph 197 is denied. The City further states that Flagstone made material misrepresentations to City staff pertaining to the deadlines set forth in Composite Attachment 3 to the Retail/Parking Lease.

198. The City admits that Flagstone has paid certain amounts in rent to the City, but denies the remaining allegations of paragraph 198.

199. The City denies paragraph 199.

200. The City denies paragraph 200. The City further denies that Flagstone obtained a phased foundation permit for the Retail/Parking Component.

201. The City denies paragraph 201. The City further denies that Flagstone obtained a phased foundation permit for the Retail/Parking Component.

202. The City denies paragraph 202.

203. The City denies paragraph 203. The City further denies that Flagstone obtained a phased foundation permit for the Retail/Parking Component.

204. The City denies paragraph 204.

205. The City admits that the City Commission passed Resolution R-17-0263; and that the City Manager issued the Notice of Default, dated June 7, 2017, and the Letter to Vacate, dated June 19, 2017. The resolution, the notice and the letter speak for themselves. To the extent inconsistent therewith, paragraph 205 is denied.

206. The City admits that there is a dispute between the City and Flagstone, but denies that Flagstone is entitled to any relief as alleged in paragraph 206.

207. The City admits that there is a dispute between the City and Flagstone, but denies that Flagstone is entitled to any relief as alleged in paragraph 207.

208. The City admits that there is a dispute between the City and Flagstone, but denies that Flagstone is entitled to any relief as alleged in paragraph 208.

209. The City admits that there is a dispute between the City and Flagstone, but denies that Flagstone is entitled to any relief as alleged in paragraph 209.

210. The City is without knowledge of the allegations in paragraph 210 and therefore denies same and demands strict proof thereof.

**COUNT V  
INJUNCTION  
Marina Component**

211. The City restates and realleges its responses to paragraphs 1 through 132.

212. The City denies paragraph 212.

213. The City admits paragraph 213.

214. The City denies paragraph 214.

215. The City denies paragraph 215.

216. The City denies paragraph 216 and denies that Flagstone is entitled to any relief.

217. The City denies paragraph 217 and denies that Flagstone is entitled to any relief.

218. The City denies that its non-issuance of a final certificate of occupancy is improper, but admits that it is in the public interest as alleged in paragraph 218.

**COUNT VI  
INJUNCTION  
Marina Lease**

219. The City restates and realleges its responses to paragraphs 1 through 132.

220. The City denies that it is in breach of the Marina Lease and further denies that Flagstone has an enforceable claim against the City for breach of the Marina Lease as alleged in paragraph 220. The City further states that the validity and enforceability of the Marina Lease have been challenged in *Liebman v. City of Miami* and that the court in that case has not yet decided the issue.

221. The City admits that the City Commission passed Resolution No. 17-0263; and that the City Manager issued the Notice of Default, dated June 7, 2017, and the Letter to Vacate, dated June 19, 2017. The resolution, the notice and the letter speak for themselves. To the extent inconsistent therewith, paragraph 221 is denied.

222. The City denies paragraph 222.

223. The City denies paragraph 223 and denies that Flagstone is entitled to any relief.

224. The City denies paragraph 224 and denies that Flagstone is entitled to any relief.

**COUNT VII  
BREACH OF CONTRACT  
Compliance Agreement**

225. The City restates and realleges its responses to paragraphs 1 through 132.

226. The City denies that it is in breach of the Compliance Agreement and further denies that Flagstone has an enforceable claim against the City for breach of the Compliance Agreement as alleged in paragraph 226. The City further states that the validity and enforceability of the Agreements have been challenged in *Liebman v. City of Miami* and that the court in that case has not yet decided that issue.

227. The Compliance Agreement speaks for itself. To the extent inconsistent therewith, paragraph 227 is denied.

228. The Compliance Agreement speaks for itself. To the extent inconsistent therewith, paragraph 228 is denied.

229. The Compliance Agreement speaks for itself. To the extent inconsistent therewith, paragraph 229 is denied.

230. The Second Partial Modification speaks for itself. To the extent inconsistent therewith, paragraph 230 is denied.

231. The City denies paragraph 231.

232. The Agreements speak for themselves. To the extent inconsistent therewith, paragraph 232 is denied.

233. The City denies paragraph 233.

234. The City denies paragraph 234.

235. The City denies paragraph 235.

236. The Agreements speak for themselves. To the extent inconsistent therewith, paragraph 236 is denied..

237. The City denies paragraph 237.

238. The City denies paragraph 238.

239. The City denies paragraph 239 and denies that Flagstone is entitled to any relief.

**COUNT VIII**  
**BREACH OF CONTRACT**  
**Second Modification Agreement**

240. The City restates and realleges its responses to paragraphs 1 through 132.

241. The City denies that it is in breach of the Second Partial Modification and further denies that Flagstone has an enforceable claim against the City for breach of the Second Partial Modification as alleged in paragraph 241. The City further states that the validity and enforceability of the Agreements have been challenged in *Liebman v. City of Miami* and that the court in that case has not yet decided that issue.

242. The Second Partial Modification speaks for itself. To the extent inconsistent therewith, paragraph 242 is denied.

243. The Second Partial Modification speaks for itself. To the extent inconsistent therewith, paragraph 243 is denied.

244. The Compliance Agreement speaks for itself. To the extent inconsistent therewith, paragraph 244 is denied.

245. The City denies paragraph 245.

246. The Second Partial Modification speaks for itself. To the extent inconsistent therewith, paragraph 246 is denied.

247. The Second Partial Modification speaks for itself. To the extent inconsistent therewith, paragraph 247 is denied.

248. The City denies paragraph 248.

249. The City denies paragraph 249.

250. The City denies paragraph 250.

251. The City is without knowledge of the time and resources expended by Flagstone as alleged in paragraph 251 and therefore denies same and demands strict proof thereof.

252. The City denies paragraph 252 and denies that Flagstone is entitled to any relief.

253. The City denies that Flagstone is entitled to trial by jury and has moved to strike Flagstone's demand.

254. The City denies all allegations not expressly admitted herein.

255. The City denies that Flagstone is entitled to any of the relief demanded in its "Wherefore Clauses."

### **DEFENSES AND AFFIRMATIVE DEFENSES**

The City hereby asserts the following defenses and affirmative defenses and incorporates the facts alleged in its Counterclaims in support thereof.

#### **First Affirmative Defense**

Flagstone's claims are barred, in whole or in part, by the doctrines of *in pari delecto*, unclean hands, fraud and estoppel. First, Flagstone failed to satisfy the financial conditions precedent to the Marina Lease and the Retail/Parking Lease as required by the Amended and Restated Agreement to Enter. Instead, to induce the City to enter into the Leases, Flagstone gave the City affidavits representing that Flagstone would self-finance the Marina Component and the Retail/Parking Component, despite the fact that Flagstone lacked the ability and present intent to do so. The City relied to its detriment on Flagstone's misrepresentations, and was prejudiced thereby.

Second, Flagstone did not timely "Start Construction" of the Retail/Parking Component as required by the Amended and Restated Agreement to Enter and the Retail/Parking Lease. To induce the City to believe that Flagstone timely commenced construction of the Retail/Parking Component, Flagstone submitted plans to the City for a phased foundation permit labeled: "Island Gardens Retail & Parking Component Foundation Permit. However, the phased foundation permit was not for the Retail/Parking Component; it was for construction of the

harbor master and fish market facility which comprises a required part of the Marina Component. The City relied on Flagstone's misrepresentation and was prejudiced thereby.

Third, Flagstone did not timely "Complete Construction" of the Marina Component as required by the Amended and Restated Agreement to Enter and the Marina Lease. Flagstone caused the City to issue a temporary certificate of occupancy ("TCO") for the Marina Component despite the fact that Flagstone had not yet begun, much less completed, construction of the harbor master and fish market facility which comprises a required part of the Marina Component and did not have a bathroom facility on the Project property. Instead, Flagstone submitted plans to the City for the Marina which showed a "Marina Ops Center" (with plumbing) located on a temporary easement granted to Flagstone for other purposes. The City relied on Flagstone's misrepresentation and was prejudiced thereby.

#### **Second Affirmative Defense**

Flagstone's claims are barred, in whole or in part, by the doctrine of waiver. First, Flagstone failed to provide written notice to the City of the City's alleged defaults as required by Article 11 of the Amended and Restated Agreement to Enter and Article 25 of the Marina Lease and the Retail/Parking Lease. Second, Flagstone expressly "waive[d] its defenses as to failure to begin construction against the City" pursuant to the Section VI of Composite Attachment 3 of the Amended and Restated Agreement to Enter.

#### **Third Affirmative Defense**

Flagstone's claims are barred, in whole or in part, because it did not satisfy all conditions precedent to entry into the Retail/Parking Lease and the Marina Lease, including but not limited to the financial conditions precedent.

**Fourth Affirmative Defense**

Flagstone’s claims are barred, in whole or in part, because it did not timely “Start Construction” of the Retail/Parking Component as required by the Amended and Restated Agreement to Enter and Retail/Parking Lease.

**Fifth Affirmative Defense**

Flagstone’s claims are barred, in whole or in part, because it did not timely “Complete Construction” of the Marina Component as required by the Amended and Restated Agreement to Enter and Marina Lease.

**Sixth Affirmative Defense**

Flagstone’s claims are barred to the extent the City Manager’s execution of the Marina Lease and/or the Retail/Parking Lease was *ultra vires*.

**Seventh Affirmative Defense**

Flagstone’s damages claims are barred in whole or part to the extent that Flagstone failed to mitigate its damages.

**Eighth Affirmative Defense**

Flagstone’s damages claims are barred in whole or part by the limitation of liability provisions in the Amended and Restated Agreement to Enter and/or the Marina and Retail/Parking Leases.

**Ninth Affirmative Defense**

Flagstone’s damages claims are barred in whole or part by the doctrine of sovereign immunity.



### **Reservation of Right to Assert Additional Affirmative Defenses**

The City reserves the right to amend its defenses and affirmative defenses or add further affirmative defenses as additional facts and information become known.<sup>1</sup>

**WHEREFORE**, the City denies that Flagstone is entitled to the relief sought against the City and prays for judgment in favor of the City, denying Flagstone the declarations, injunctive relief and damages it seeks and awarding the City its reasonable attorneys' fees and costs and such other and further relief as the Court may deem appropriate.

### **COUNTERCLAIMS**

Defendant/Counterclaim Plaintiff, the City of Miami ("City"), by and through undersigned counsel, hereby sues Plaintiffs/Counterclaim Defendants, Flagstone Island Gardens LLC and Flagstone Development Corporation (collectively, "Flagstone"), and states as follows:

#### **PARTIES, JURISDICTION, AND VENUE**

1. This is an action for declaratory relief.
2. This Court has jurisdiction over the subject matter of this case pursuant to Fla. Stat. §86.011.
3. Defendant/Counterclaim Plaintiff, the City of Miami, is a municipal corporation of the State of Florida.
4. Plaintiff/Counterclaim Defendant, Flagstone Island Gardens LLC, is a Delaware limited liability company authorized to do business in the State of Florida with its principal place of business located in Miami-Dade County, Florida.

---

<sup>1</sup> The City further notes that the validity and enforceability of the Amended and Restated Agreement to Enter, the Marina Lease and the Retail/Parking Lease have been challenged in *Liebman v. City of Miami* and that the court in that case has not yet decided the issue. The City reserves and does not waive its right to seek additional affirmative defenses pending disposition of the *Liebman* case.

5. Plaintiff/Counterclaim Defendant, Flagstone Development Corp., is a Delaware corporation authorized to do business in the State of Florida with its principal place of business located in Miami-Dade County, Florida.

6. Venue is appropriate in this Court pursuant to Fla. Stat. § 47.011 because the cause of actions arise in Miami-Dade County, Florida and Flagstone is located in Miami-Dade County, Florida.

7. All conditions precedent to bringing this action have been performed or waived.

### **GENERAL ALLEGATIONS**

8. The City owns certain real property consisting of approximately 10.8 acres of upland property and 13.4 acres of adjacent submerged land in and about the northwest quadrant of Watson Island, located in Miami-Dade County (the “Property”).

9. In February 2001, the City issued a Request for Proposal (“RFP”) for the development of a mixed-use waterfront development at the Property to include a mega-yacht marina and upland facilities (“Project”).

10. Flagstone submitted a winning proposal in response to the RFP (the “Island Gardens Proposal”). Flagstone proposed to develop and construct a mega-yacht marina, two hotels, retail space, and a parking garage on the Property (the “Major Project Components”).

11. On November 6, 2001, the voters of the City of Miami voted in favor of the Island Gardens Proposal and granted Flagstone the right to negotiate with the City the terms of an agreement to develop and lease the Property.

12. Flagstone and the City proceeded to negotiate the terms by which Flagstone would develop and lease the Property.

13. On December 12, 2002, by Resolution R-02-1304, the City Commission approved the Agreement to Enter into a Ground Lease, which set forth terms and conditions for the development of the Project and the execution of a form ground lease that was attached to the agreement (“Agreement to Enter”).

14. In January 2003, the City and Flagstone entered into the Agreement to Enter.

15. From the start, Flagstone encountered delays in obtaining financing and in developing and constructing the Project. As a consequence, the Agreement to Enter was amended multiple times to give Flagstone additional time to meet its deadlines.

16. By 2009 Flagstone still had not obtained financing, had not started construction, and had not paid the City amounts it owed pursuant to the Agreement to Enter and amendments thereto. The City Commission was prepared to declare Flagstone in default and to terminate the Agreement to Enter. However, the City Commission gave Flagstone one last chance.

17. The City Commission gave Flagstone the option to develop and construct the Property all at once or in phases and established deadlines for Flagstone to take possession and construct each of the phases.

***The Amended and Restated Agreement to Enter into Ground Lease  
Dated as of February 1, 2010***

18. On May 11, 2012, the City and Flagstone entered into the Amended and Restated Agreement to Enter into Ground Lease Dated as of February 1, 2010 (“Amended and Restated Agreement to Enter”), which had been approved by the City Commission pursuant to Resolution R-10-0402. A copy of the Amended and Restated Agreement to Enter is attached hereto as **Exhibit A**.

19. A construction schedule for Flagstone to start and complete construction of the “Major Project Components” is attached to the Amended and Restated Agreement to Enter as

“Composite Attachment 3.” The “Major Project Components” include the Marina Component, the Retail/Parking Component, and the Hotel Components.

20. Composite Attachment 3 provides that Flagstone must start and complete construction of the Marina Component by September 1, 2013 and by February 28, 2015, respectively. Further, it provides that Flagstone must start and complete construction of the Retail/Parking Component by September 1, 2016 and August 31, 2019, respectively.

21. Composite Attachment 3 defines start and complete construction as follows:

. . . “Commence(s) Construction” or “Start(s) Construction” shall mean that all material plans and permits are approved and issued and the actual act of physical construction has begun; and (b) “Completion Date” shall mean the date upon which the earlier of the temporary certificate of occupancy (“TCO”) or a certificate of occupancy (“CO”), has been issued for the completion of construction.

22. Section VI of Composite Attachment 3 to the Amended and Restated Agreement to Enter further provides:

If the Marina Component does not Start Construction by 9/01/2013 or both the Parking/Retail Components do not Start Construction by 9/01/2016, then Flagstone’s rights to build any Components expires and ceases, the Agreement to Enter is terminated, City retains all Prepaid Construction/Base Rent (as consideration for the extension of time until 9/1/2013 for the Marina Component and as consideration for the extension of time until 9/1/2016 for both the Parking/Retail Components) and Flagstone must turn over to the City immediately the applicable Ground Lease(s), Flagstone also agrees to waive its defenses as to failure to begin construction against the City, immediately vacate and turn over to the City for the City’s possession all of Flagstone’s rights and interests in the Property and the easement areas, remove from such easement areas and from the Property all of its property of whatever kind as required in writing by the City Manager, and immediately (i) return or sign over, as applicable, to the City all of Flagstone’s rights, directly or indirectly, in the permits, plans, specifications, and all related government approvals, documents, instruments, and agreements as necessary related to the Property, and (ii) deliver to the City all of such permits, plans, specifications, and all related governmental approvals, documents, instruments, and agreements which are in Flagstone’s possession or in Flagstone’s control.

*Conditions Precedent for Entry into Ground Leases*

23. The financial ability of Flagstone to develop and construct the Project was a material condition for the City to enter into the ground leases with Flagstone for the Major Project Components.

24. As a result, the Amended and Restated Agreement to Enter included several financial conditions precedent that Flagstone had to satisfy prior to entry into the component ground leases, as well as strict deadlines for entering into the leases. Specifically, Article 2.1.3 provides:

Before entering into any Ground Lease(s), whether all at once or on a component by component basis, Flagstone must meet any and all conditions precedent, as stated in this Agreement, for construction of the related Major Project Component(s). The last day which can be the **Lease Delivery Date** for each major Project Component shall be as follows: (a) for the **Marina Component, September 1, 2013**, (B) for the **Parking/Retail Components, September 1, 2016**, (c) for any of the Hotel Components (if no option to extend the commencement of construction is exercised), September 1, 2018, (d) for the Hotel Components (if the first five-year option to extend the commencement of construction is exercised), September 1, 2023, and (e) for the second Hotel Component (if the second five-year option to extend the commencement of construction is exercised), September 1, 2018; Construction of any Major Project Component must commence for that Component at the earlier of ninety (90) days after the applicable Lease Delivery Date and the construction commencement dates set forth for each major Project Component in Composite Attachment 3.

(emphasis added).

25. In addition, Article 6.1.2 of the Amended and Restated Agreement to Enter provides:

**Closing of Construction Loan(s); Other.** For each major Project Component, Flagstone shall have closed its Initial Construction Loan(s) with an Approved Initial Construction Lender (as defined in the Ground Lease), which financing thereunder, together the amount of Initial Equity Requirement or more as Flagstone may determine to invest into the same, applicable to the relevant Major Project Component(s), shall be sufficient to complete the development and construction (either all at once or on a component by component basis at Flagstone's option) of the applicable Major Project Component of the Project and

to fund any shortfalls in operations that may exist prior to Project Stabilization for such Major Project Component. For each Major Project Component Flagstone shall provide the Chief Financial Officer with a copy of the closed Initial Construction Loan documents as evidence of such closing.

26. Further, Article 6.1.9 of the Amended and Restated Agreement to Enter provides:

**Bonds/Letters of Credit.** On either an all at once basis, or on a component by component basis, depending upon Flagstone's option in determining whether to enter into one or more Ground Leases, Flagstone shall deliver and the City Manager shall have received and approved in his or her good faith, reasonable discretion a copy of the Payment and Performance Bond and/or Letters of Credit (which shall have been issued at Flagstone's sole cost and expense) in an amount equal to 100% of the hard construction costs of the applicable Major Project Component(s), which shall name City as the owner or dual obligee, as appropriate. The forms of such Payment and Performance Bond and/or Letters of Credit and the surety or institution issuing the same shall be subject to the prior written approval of the City Manager, which shall not be unreasonably withheld (provided that such surety or institution has a credit rating of A or higher with a financial strength to be mutually acceptable to the parties). Any Payment and Performance Bond may be enforced by City in accordance with its terms.

27. In addition, Flagstone was obligated to warrant to the City that it had the financial ability to satisfy the financial conditions precedent. Article 12.1.2 of the Amended and Restated Agreement to Enter provides:

**Financial Resources and Evaluation of Project** At such time as Flagstone enters in to the related Ground Lease(s) for each of the applicable Major Project Component(s), Flagstone shall represent and warrant to the City that, to the best of Flagstone's knowledge: (i) Flagstone has access to sufficient funds to satisfy the Initial Equity Requirement regarding such Major Project Component; (ii) as of the Lease Delivery Date, Flagstone will have closed upon an Initial Construction Loan for the applicable Major Project Component(s); and (iii) the total of such sums will be sufficient to carry out the development and construction of the applicable Major Project Component(s) and to operate the applicable Major Project Component(s) and comply with the terms and conditions of this Agreement and the related Ground Lease(s). . . . Flagstone shall provide to the City at least thirty (30) days in advance of the proposed Lease Delivery Date for each Major Project Component such pro forma, budget, financial, and other commercially reasonable written information necessary for the City's review and to determine the pro rata amount of the Initial Equity Requirement for that Major Project Component and to determine that such Initial Equity Requirement has in fact been met for the particular Major Project Component. This section shall survive any termination of this Agreement.

28. Flagstone failed to close any Initial Construction Loans prior to entering into leases for the Marina Component and the Retail/Parking Component. Instead, to induce the City to enter into those leases, Flagstone misrepresented to the City that it could and would self-finance the construction of those components. However, Flagstone never intended to self-fund either the Marina Component or the Retail/Parking Component and never had the financial ability to do so.

**The Marina Lease**

29. On or about May 30, 2014, the City and Flagstone entered into the Marina Component Amended and Restated Ground Lease (the “Marina Lease”) (attached hereto as **Exhibit B**).

30. The Marina Lease includes Composite Attachment 3 from the Amended and Restated Agreement to Enter with amendments to the deadlines to start and complete construction. The date to start construction of the Marina Component was extended from September 1, 2013 to June 2, 2014, and the date to complete construction was extended from February 28, 2015 to December 1, 2015.

31. Prior to entry of the Marina Lease, Flagstone had failed to close an Initial Construction Loan.

32. To induce the City to enter into the Marina Lease, Flagstone assured the City that Flagstone could and would self-fund the Marina Component. Specifically, Flagstone submitted to the City an affidavit from Mehmet Bayraktar, the President of Flagstone Development Corp., executed on May 27, 2014, that stated:

There is no construction loan for the development and construction of the marina component of the project which is the subject of the [Amended and Restated Agreement to Enter into Ground Lease dates as of February 1, 2010] . . . .

FIG [Flagstone Island Gardens, LLC] and its affiliates are funding the full and complete development and construction of the Marina Component. FIG and its affiliates have sufficient funds to fund the complete development and construction of the Marina Component.

33. However, Flagstone had no intention of self-funding the Marina Component when it entered into the Marina Lease.

34. Flagstone continued to try to secure financing after the Marina Lease was signed.

35. In 2015, Flagstone obtained a \$22,668,000.00 loan from Demir Halk Bank (Nederland) N.V. (“DHB Bank”). DHB Bank is not on the list of pre-approved lenders attached to the Marina Lease.

36. Flagstone gave DHB Bank a mortgage for the loan, which included a security interest and lien on Flagstone’s leasehold estate created by the Marina Lease, the improvements Flagstone makes to the leasehold estate, and the permits and other entitlements Flagstone obtains for the property, among other interests.

37. Flagstone’s lack of financing for the Marina Component has resulted in numerous delays and in Flagstone’s failure to complete the Marina Component.

38. The City relied on the affidavit from Mr. Bayraktar in entering into the Marina Lease. Had Flagstone disclosed at that time that it lacked the required financing and had no intention or ability to self-fund the Marina Component, the City would not have entered into the Marina Lease.

### **Construction of the Marina Component**

39. The Marina Component includes a marina and a fish market and dock master facility. Specifically, the Marina Lease defines the Marina Component as follows:

**Definition of Marina Component:** The "Marina Component" shall be constructed as and shall provide the necessary services as other marinas



accommodating the quality and services of the proposed tenants of the megayacht facility and may include among other things, fractional ownership provided that the same can be structured as an Approved Time Share License in accordance with State law requirements; the Marina Component must include (i) **slips, dockage, or other accommodations** for (in addition to other marine vessels) water taxis, as well as amphibious aircraft, seaplanes, and other air-sea amphibious craft (so long as such amphibious aircraft, seaplanes, and other air-sea amphibious craft are not brought or allowed upon the Upland Parcel of the Property); and (ii) the 100-foot Setback improvements constructed within the 100-foot Setback which shall include only and be limited to a **fish market and dock master facilities**.

Marina Lease, Exhibit H (emphasis added)

40. On October 2, 2015, the City issued a building permit (BD15-0008942-001-B001) to Flagstone for the construction of slips and dockage on the submerged land portion of the Property (the “Building Permit”).

41. Because Flagstone did not have the funds to construct the entire Marina Component, the plans Flagstone submitted to the Building Department did not include the fish market and harbor master facility.

42. Because the Marina Component requires an indoor structure for a fish market and dock master facility, which Flagstone could not deliver, Flagstone included on its plans a pre-existing structure identified as the “Marina Ops Center.”

43. But the Marina Ops Center is not even located within Flagstone’s leasehold estate granted by the Marina Lease or on any portion of the Property. The Marina Ops Center is located on an entirely separate parcel on Watson Island. Flagstone had a temporary and nonexclusive right to use that parcel for the construction of the Project and for a temporary construction and sales office pursuant to a temporary easement the City granted to Flagstone. However, the Marina Ops Center was by no means a substitute for the fish market and harbor master facility required by the Marina Lease and the Amended and Restated Agreement to Enter.

**Flagstone Missed the Completion Date of the Marina Component**

44. By letter dated October 28, 2015, Flagstone notified the City that it was claiming extensions to the construction deadlines pursuant to Fla. Stat. § 252.363 (the “Permit Extension Statute”) and the State of Florida Executive Order No. 15-173, which declared a state of emergency due to the threat of Tropical Storm Erika. Flagstone extended the deadline to complete construction of the Marina Component to September 7, 2016 from December 1, 2015, the deadline to start construction of the Retail/Parking Component from September 1, 2016 to April 30, 2017, and the deadline to complete construction of the Retail/Parking Component from August 31, 2019 to April 30, 2020.

45. However, the Permit Extension Statute does not extend to contract deadlines. Notwithstanding, Flagstone misrepresented to City staff that the Permit Extension Statute did extend the deadlines to start and complete construction under the ground leases.

46. Even using the extended deadline to complete construction of the Marina Component, Flagstone did not meet the “Completion Date” for construction of the Marina Component.

47. On January 7, 2016, Flagstone obtained a temporary certificate of occupancy (“TCO”), which has been extended multiple times since then.

48. However, neither the Building Permit nor the TCO pertain to the complete Marina Component.

49. Further, Flagstone was not legally entitled to a TCO. Flagstone’s building plans for the slips and dockage showed an existing structure (the Marina Ops Center) with bathroom facilities to which water and sewer were connected. However, this building was not on the Property or the estate established by the Marina Lease, much less the Retail/Parking Lease.

Flagstone used the Marina Ops Center, which was outside of the Property, to mislead City staff into issuing building permits and a TCO.

**Retail/Parking Lease**

50. On or about August 31, 2016, the City and Flagstone entered into the Retail/Parking Component Amended and Restated Ground Lease (the “Retail/Parking Lease”) (attached hereto as **Exhibit C**).

51. Prior to entry into the Retail/Parking Lease, Flagstone had failed to obtain an Initial Construction Loan. Faced with a September 1, 2016 deadline to enter into the Retail/Parking Lease, Flagstone provided the City with an affidavit from Mr. Bayraktar dated August 30, 2016 that stated:

There is no construction loan for the development and construction of the Retail/Parking component of the project which is the subject of the [Amended and Restated Agreement to Enter into Ground Lease dates as of February 1, 2010]. . . .

FIG [Flagstone Island Gardens, LLC] and its affiliates are funding the full and complete development and construction of the Retail/Parking Component. FIG and its affiliates have sufficient funds to fund the complete development and construction of the Retail/Parking Component.

52. However, at the time that Flagstone entered into the Retail/Parking Lease, Flagstone did not have the ability or present intent to self-fund the Retail/Parking Component. Since the Retail/Parking Lease was signed, Flagstone has continued to try to secure financing for the Retail/Parking Component, notwithstanding its self-financing representation to the City.

53. Flagstone’s lack of financing for the Retail/Parking Component has resulted in numerous delays and in Flagstone’s failure to complete the Retail/Parking Component.

54. The City relied on the affidavit from Mr. Bayraktar in entering into the Retail/Parking Lease. Had Flagstone disclosed at that time that it lacked the required financing

and had no intention or ability to self-fund the Retail/Parking Component, the City would not have entered into the Retail/Parking Lease.

**Flagstone Has Not Commenced Construction of the Retail/Parking Component**

55. To date, Flagstone has not submitted any building permits for the Retail/Parking Component.

56. On September 1, 2016, the City issued a Class II phased foundation permit (BD16-012274-001-B001) to Flagstone (the “First Phased Foundation Permit”). A copy of the plans for the First Phased Foundation Permit are attached hereto as **Exhibit D**.

57. Flagstone tried to mislead the City that the First Phased Foundation Permit was for the Retail/Parking Component. The cover page for the plans Flagstone submitted for the permit included a large title “Island Gardens Retail & Parking Component Foundation Permit.” However, all of the sheets in the plans were for the fish market and harbor master facility, which the Marina Lease defines as being part of the Marina Component.

58. The First Phased Foundation Permit expired on April 30, 2017 and was automatically revoked on May 1, 2017.

59. On May 1, 2017, the City received an application from Flagstone for a new Class II phased foundation permit for the fish market and harbor master facility. The City issued the permit (BD17-002874-001-B001) on May 4, 2017 (the “Second Phased Foundation Permit”).

60. Again, Flagstone tried to mislead the City that the Second Phased Foundation Permit was for the Retail/Parking Component. The cover page for the plans again included a large title “Island Gardens Retail & Parking Component Foundation Permit.” However, all of the sheets in the plans were for the fish market and harbor master facility.

61. The Second Phased Foundation Permit expired on October 31, 2017 and was automatically revoked on November 1, 2017.

62. To date, Flagstone has not obtained another phased foundation permit.

### **The Termination of Flagstone**

63. At a duly noticed City Commission meeting on May 30, 2017, the City Commission determined that Flagstone had failed to start construction of the Retail/Parking Component. On May 30, 2017, the City Commission adopted Resolution R-17-0263 directing the City Manager to notify Flagstone in writing of its “[f]ailure to commence or start construction of the Retail/Parking components in the manner required pursuant to Attachment 3.”

64. By letter dated June 7, 2017, the City notified Flagstone that it was in breach of the Amended and Restated Agreement to Enter for failing to start construction on the Retail/Parking Component by April 30, 2017 (attached hereto as **Exhibit E**).

65. Subsequently, by letter dated June 19, 2017, the City demanded that Flagstone vacate the Property (attached hereto as **Exhibit F**).

### **Flagstone’s Claim of Entitlement to Extensions**

66. Since the Project began, Flagstone has been unable to meet the Project deadlines and has sought numerous extensions. Flagstone has sought multiple extensions of entitlements, permits, the TCO, and contract deadlines.

67. Although Flagstone alleges in this lawsuit that it previously commenced construction of the Retail/Parking Component, it recently claimed entitlement to a further extension of the “Start Construction” deadline for the Retail/Parking Component from April 30, 2017 to February 28, 2018, pursuant to the Permit Extension Statute and State of Florida

Executive Orders 17-120 and 17-174, which declared a state of emergency due to wildfires in certain Florida counties other than Miami-Dade County.

68. The City has retained the undersigned counsel to represent it in this action and has agreed to pay them reasonable attorneys' fees for their services.

**COUNT I  
DECLARATORY JUDGMENT**

*Failure to Start Construction of the Retail/Parking Component*

69. The City restates and realleges paragraphs 1 through 68 as if fully stated herein.

70. Composite Attachment 3 of the Amended and Restated Agreement and the Retail/Parking Lease defines start construction as follows:

Through this Exhibit A, (a) "Commence(s) Construction" or "Start(s) Construction" shall mean that **all material plans and permits are approved and issued and the actual act of physical construction has begun**; and (b) "Completion Date" shall mean the date upon which the earlier of the temporary certificate of occupancy ("TCO") or a certificate of occupancy ("CO"), has been issued for the completion of construction. (emphasis added).

71. Composite Attachment 3 further provides:

If the Marina Component does not Start Construction by 9/01/2013 or both the Parking/Retail Components do not Start Construction by 9/01/2016, then Flagstone's rights to build any Components expires and ceases, the Agreement to Enter is terminated, City retains all Prepaid Construction/Base Rent (as consideration for the extension of time until 9/1/2013 for the Marina Component and as consideration for the extension of time until 9/1/2016 for both the Parking/Retail Components) and Flagstone must turn over to the City immediately the applicable Ground Lease(s), Flagstone also agrees to waive its defenses as to failure to begin construction against the City, immediately vacate and turn over to the City for the City's possession all of Flagstone's rights and interests in the Property and the easement areas, remove from such easement areas and from the Property all of its property of whatever kind as required in writing by the City Manager, and immediately (i) return or sign over, as applicable, to the City all of Flagstone's rights, directly or indirectly, in the permits, plans, specifications, and all related government approvals, documents, instruments, and agreements as necessary related to the Property, and (ii) deliver to the City all of such permits, plans, specifications, and all related governmental

approvals, documents, instruments, and agreements which are in Flagstone's possession or in Flagstone's control.

72. According to the Retail/Parking Lease, the deadline to start construction of the Retail/Parking Component was April 30, 2017.

73. Flagstone contends that it timely started construction of the Retail/Parking Component.

74. The City contends that Flagstone did not timely start construction of the Retail/Parking Component.

75. Flagstone has not obtained a single building permit for the Retail/Parking Component. Although Flagstone has obtained certain permits for the relocation of utilities, these permits do not constitute "all material plans and permits" for the Retail/Parking Component. In addition, relocation of utilities is not a part of the Retail/Parking Component.

76. Further, Flagstone has not begun "the actual act of physical construction." Although Flagstone may have moved some dirt in connection with the relocation of utilities, it has not performed a single "act of physical construction" to build either the Retail Component or the Parking Component.

77. An actual, justiciable controversy has arisen between Flagstone and the City, warranting the entry of declaratory judgment by this Court.

78. The City is in doubt as to its rights, status, obligations, powers and privileges under the Amended and Restated Agreement to Enter and the Retail/Parking Lease.

79. There is a bona fide, actual, present, and practical need for the Court to issue a declaration as to the interpretation and enforceability of the Amended and Restated Agreement to Enter and the Retail/Parking Lease and the rights of the parties thereunder.

80. The rights, status, obligations, powers, and privileges of the City under the Amended and Restated Agreement to Enter and the Retail/Parking Lease are dependent upon the Court's adjudication of the present controversy.

WHEREFORE, the City respectfully requests this Court to enter judgment in its favor declaring that:

- (a) Flagstone had not started construction of the Retail/Parking Component by the contractual deadline;
- (b) Flagstone's right to build any Components has expired and ceased;
- (c) The Amended and Restated Agreement to Enter, the Retail/Parking Lease, and the Marina Lease are terminated;
- (d) Flagstone has waived all defenses to its failure to start construction of the Retail/Parking Component by the contractual deadline;
- (e) The City has the right to possession of the Property;
- (f) Flagstone must vacate the Property and the easement areas;
- (g) Flagstone must remove all personal property from the Property and the easement areas;
- (h) Flagstone must assign and deliver to the City all of its rights to all permits, plans, specifications, and all related government approvals, documents, instruments, and agreements related to the Property; and

awarding the City its reasonable attorneys' fees and costs and such other, further, and supplemental relief as the Court deems proper.



**COUNT II  
DECLARATORY JUDGMENT**

***Failure to Complete Construction of the Marina Component***

81. The City restates and realleges paragraphs 1 through 68 as if fully stated herein.

82. Composite Attachment 3 of the Amended and Restated Agreement and the

Marina Lease defines completion of construction as follows:

Through this Exhibit A, (a) “Commence(s) Construction” or “Start(s) Construction” shall mean that all material plans and permits are approved and issued and the actual act of physical construction has begun; and (b) “Completion Date” shall mean **the date upon which the earlier of the temporary certificate of occupancy (“TCO”) or a certificate of occupancy (“CO”), has been issued for the completion of construction.** (emphasis added).

83. Composite Attachment 3 further provides:

If the Marina Component does not Start Construction by 9/01/2013 or both the Parking/Retail Components do not Start Construction by 9/01/2016, then Flagstone’s rights to build any Components expires and ceases, the Agreement to Enter is terminated, City retains all Prepaid Construction/Base Rent (as consideration for the extension of time until 9/1/2013 for the Marina Component and as consideration for the extension of time until 9/1/2016 for both the Parking/Retail Components) and Flagstone must turn over to the City immediately the applicable Ground Lease(s), Flagstone also agrees to waive its defenses as to failure to begin construction against the City, immediately vacate and turn over to the City for the City’s possession all of Flagstone’s rights and interests in the Property and the easement areas, remove from such easement areas and from the Property all of its property of whatever kind as required in writing by the City Manager, and immediately (i) return or sign over, as applicable, to the City all of Flagstone’s rights, directly or indirectly, in the permits, plans, specifications, and all related government approvals, documents, instruments, and agreements as necessary related to the Property, and (ii) deliver to the City all of such permits, plans, specifications, and all related governmental approvals, documents, instruments, and agreements which are in Flagstone’s possession or in Flagstone’s control.

84. According to the Marina Lease, the deadline to complete construction of the Marina Component was December 1, 2015. According to the Retail/Parking Lease, the deadline to complete construction of the Marina Component was September 7, 2016.

85. Flagstone contends that it timely completed construction of the Marina Component.

86. The City contends that Flagstone did not timely complete construction of the Marina Component.

87. An actual, justiciable controversy has arisen between Flagstone and the City, warranting the entry of declaratory judgment by this Court.

88. The City is in doubt as to its rights, status, obligations, powers and privileges under the Amended and Restated Agreement to Enter and the Marina Lease.

89. There is a bona fide, actual, present, and practical need for the Court to issue a declaration as to the interpretation and enforceability of the Amended and Restated Agreement to Enter and the Marina Lease and the rights of the parties thereunder.

90. The rights, status, obligations, powers, and privileges of the City under the Amended Agreement to Enter and the Marina Lease are dependent upon the Court's adjudication of the present controversy.

WHEREFORE, the City respectfully requests this Court to enter judgment in its favor declaring that:

- (a) Flagstone did not complete construction of the Marina Component by the contractual deadline;
- (b) Flagstone's right to build any Components has expired and ceased;
- (c) The Amended and Restated Agreement to Enter, the Retail/Parking Lease, and the Marina Lease are terminated;
- (d) Flagstone has waived all defenses to its failure to complete construction of the Marina Component by the contractual deadline;

- (e) The City has the right to possession of the Property;
- (f) Flagstone must vacate the Property and the easement areas;
- (g) Flagstone must remove all personal property from the Property and the easement areas;
- (h) Flagstone must assign and deliver to the City all of its rights to all permits, plans, specifications, and all related government approvals, documents, instruments, and agreements related to the Property; and

awarding the City its reasonable attorneys' fees and costs and such other, further, and supplemental relief as the Court deems proper.

**COUNT III  
DECLARATORY JUDGMENT**

*Failure to Satisfy Conditions Precedent - Marina Lease*

- 91. The City restates and realleges paragraphs 1 through 68 as if fully stated herein.
- 92. Flagstone was required to meet all conditions precedent in Article 6 of the Amended and Restated Agreement to Enter prior to entry of the Marina Lease and the Retail/Parking Lease.
- 93. The conditions precedent are mandatory terms and can only be waived through an express written waiver by the City Manager.
- 94. Flagstone contends that it satisfied all conditions precedent for entry into the Marina Lease.
- 95. The City contends that Flagstone failed to satisfy all conditions precedent for the entry into the Marina Lease.
- 96. Article 6.1.2 of the Amended and Restated Agreement to Enter provides:

**Closing of Construction Loan(s); Other.** For each major Project Component, Flagstone shall have closed its Initial Construction Loan(s) with an Approved Initial Construction Lender (as defined in the Ground Lease), which financing thereunder, together the amount of Initial Equity Requirement or more as Flagstone may determine to invest into the same, applicable to the relevant Major Project Component(s), shall be sufficient to complete the development and construction (either all at once or on a component by component basis at Flagstone's option) of the applicable Major Project Component of the Project and to fund any shortfalls in operations that may exist prior to Project Stabilization for such Major Project Component. For each Major Project Component Flagstone shall provide the Chief Financial Officer with a copy of the closed Initial Construction Loan documents as evidence of such closing.

97. Prior to entering into the Marina Lease, Flagstone had failed to obtain financing. As a result, Flagstone failed to submit evidence of an Initial Construction Loan, as required by Article 6.1.2 of the Amended and Restated Agreement to Enter.

98. Confronted with the deadline to enter into Marina Lease, Flagstone submitted an affidavit that it would self-fund the Marina Component.

99. Prior to entering into the Marina Lease, Flagstone misled City staff regarding its ability to satisfy the financial conditions precedent. Flagstone lacked the funds to self-fund the Marina Component and lacked the present intent to self-fund the Marina Component at the time that it entered into the Marina Lease.

100. Subsequent to the entry of the Marina Lease, Flagstone obtained a \$22,668,000.00 loan from a bank not on the list of pre-approved lenders attached to the Marina Lease.

101. Further, upon information and belief, Flagstone has been searching for additional financing to complete the Marina Component.

102. Article 6.1.9 of the Amended and Restated Agreement to Enter provides:

**Bonds/Letters of Credit.** On either an all at once basis, or on a component by component basis, depending upon Flagstone's option in determining whether to enter into one or more Ground Leases, Flagstone shall deliver and the City Manager shall have received and approved in his or her good faith, reasonable discretion a copy of the Payment and Performance Bond and/or Letters of Credit

(which shall have been issued at Flagstone's sole cost and expense) in an amount equal to 100% of the hard construction costs of the applicable Major Project Component(s), which shall name City as the owner or dual obligee, as appropriate. The forms of such Payment and Performance Bond and/or Letters of Credit and the surety or institution issuing the same shall be subject to the prior written approval of the City Manager, which shall not be unreasonably withheld (provided that such surety or institution has a credit rating of A or higher with a financial strength to be mutually acceptable to the parties). Any Payment and Performance Bond may be enforced by City in accordance with its terms.

103. Flagstone failed to submit evidence of a bond or letter of credit to the City prior to entering into the Marina Lease, as required by Article 6.1.9 of the Amended and Restated Agreement to Enter.

104. Article 6.1.3 of the Amended and Restated Agreement to Enter provides:

**Project Approvals**

(a) The Partial Modification of Restrictions, MUSP Approval, NOPC Approval and **foundation permits for each applicable Major Project Component(s)** (the "**Foundation Permits**") shall have been issued by the applicable Government Authorities for the development and construction of the applicable Major Project Component(s) (collectively, the "**Project Approvals**"). The Project Approvals shall not be deemed to have been issued unless and until any and all appeals periods as provided by law shall have, expired without an appeal, objection or challenge having been filed, or, if filed, when such objection, challenge or appeal has been dismissed or resolved finally and conclusively to the satisfaction of the City Manager in his or her reasonable judgment.

105. Prior to entering into the Marina Lease, Flagstone had not obtained foundation permits for the fish market and harbor master facility of the Marina Component.

106. An actual, justiciable controversy has arisen between Flagstone and the City, warranting the entry of declaratory judgment by this Court.

107. The City is in doubt as to its rights, status, obligations, powers and privileges under the Amended and Restated Agreement to Enter and the Marina Lease.

108. There is a bona fide, actual, present, and practical need for the Court to issue a declaration as to the interpretation and enforceability of the Amended and Restated Agreement to Enter and the Marina Lease and the rights of the parties thereunder.

109. The rights, status, obligations, powers, and privileges of the City under the Amended Agreement to Enter and the Marina Lease are dependent upon the Court's adjudication of the present controversy.

WHEREFORE, the City respectfully requests this Court to enter judgment in its favor declaring that:

- (a) Flagstone misrepresented to the City that it had satisfied conditions precedent to the entry of the Marina Lease.
- (b) Flagstone failed to satisfy conditions precedent to the entry of the Marina Lease.
- (c) Flagstone fraudulently induced the City to enter into the Marina Lease.
- (d) The Marina Lease is invalid and unenforceable
- (e) The City has the right to possession of the Property.
- (f) Flagstone must vacate the Property.
- (g) Flagstone must remove all personal property from the Property and the easement areas;
- (h) Flagstone must assign and deliver to the City all of its rights to all permits, plans, specifications, and all related government approvals, documents, instruments, and agreements related to the Property; and

awarding the City its reasonable attorneys' fees and costs and such other, further, and supplemental relief as the Court deems proper.

**COUNT IV  
DECLARATORY JUDGMENT**

***Failure to Satisfy Conditions Precedent - Retail/Parking Lease***

110. The City restates and realleges paragraphs 1 through 68 as if fully stated herein.

111. Flagstone was required to meet all conditions precedent in Article 6 of the Amended and Restated Agreement to Enter prior to entry of the Retail/Parking Lease.

112. The conditions precedent are mandatory terms and can only be waived through an express written waiver by the City Manager.

113. Flagstone contends that it satisfied all conditions precedent for entry into the Retail/Parking Lease.

114. The City contends that Flagstone failed to satisfy all conditions precedent for the entry into the Retail/Parking Lease.

115. Article 6.1.2 of the Amended and Restated Agreement to Enter provides:

**Closing of Construction Loan(s); Other.** For each major Project Component, Flagstone shall have closed its Initial Construction Loan(s) with an Approved Initial Construction Lender (as defined in the Ground Lease), which financing thereunder, together the amount of Initial Equity Requirement or more as Flagstone may determine to invest into the same, applicable to the relevant Major Project Component(s), shall be sufficient to complete the development and construction (either all at once or on a component by component basis at Flagstone's option) of the applicable Major Project Component of the Project and to fund any shortfalls in operations that may exist prior to Project Stabilization for such Major Project Component. For each Major Project Component Flagstone shall provide the Chief Financial Officer with a copy of the closed Initial Construction Loan documents as evidence of such closing.

116. Prior to entering into the Retail/Parking Lease, Flagstone had failed to obtain financing. As a result, Flagstone failed to submit evidence of an Initial Construction Loan, as required by Article 6.1.2 of the Amended and Restated Agreement to Enter.

117. Confronted with the deadline to enter into the Retail/Parking Lease, Flagstone submitted an affidavit that it would self-fund the Retail/Parking Component.

118. Flagstone misled City staff regarding its ability to satisfy the financial conditions precedent. Flagstone lacked the funds to self-fund the Retail/Parking Component and had no present intent to self-fund the Retail/Parking Component at the time that it entered into that lease. In fact, Flagstone searched for and has continued to search for financing for the Retail/Parking Component for years.

119. Article 6.1.9 of the Amended and Restated Agreement to Enter provides:

**Bonds/Letters of Credit.** On either an all at once basis, or on a component by component basis, depending upon Flagstone’s option in determining whether to enter into one or more Ground Leases, Flagstone shall deliver and the City Manager shall have received and approved in his or her good faith, reasonable discretion a copy of the Payment and Performance Bond and/or Letters of Credit (which shall have been issued at Flagstone’s sole cost and expense) in an amount equal to 100% of the hard construction costs of the applicable Major Project Component(s), which shall name City as the owner or dual obligee, as appropriate. The forms of such Payment and Performance Bond and/or Letters of Credit and the surety or institution issuing the same shall be subject to the prior written approval of the City Manager, which shall not be unreasonably withheld (provided that such surety or institution has a credit rating of A or higher with a financial strength to be mutually acceptable to the parties). Any Payment and Performance Bond may be enforced by City in accordance with its terms.

120. Flagstone failed to submit evidence of a bond or letter of credit to the City prior to entering into the Retail/Parking Lease, as required by Article 6.1.9 of the Amended Agreement to Enter.

121. Article 6.1.3 of the Amended and Restated Agreement to Enter provides:

**Project Approvals**

(a) The Partial Modification of Restrictions, MUSP Approval, NOPC Approval and **foundation permits for each applicable Major Project Component(s)** (the “**Foundation Permits**”) shall have been issued by the applicable Government Authorities for the development and construction of the applicable Major Project Component(s) (collectively, the “**Project Approvals**”). The Project Approvals



shall not be deemed to have been issued unless and until any and all appeals periods as provided by law shall have, expired without an appeal, objection or challenge having been filed, or, if filed, when such objection, challenge or appeal has been dismissed or resolved finally and conclusively to the satisfaction of the City Manager in his or her reasonable judgment.

122. Prior to entering into the Retail/Parking Lease, Flagstone had not obtained foundation permits for the Retail/Parking Component. Rather, the phased foundation permits misleadingly labeled “Retail/Parking Component” by Flagstone were for the fish market and harbor master facility which comprised a required part of the Marina Component.

123. An actual, justiciable controversy has arisen between Flagstone and the City, warranting the entry of declaratory judgment by this Court.

124. The City is in doubt as to its rights, status, obligations, powers and privileges under the Amended and Restated Agreement to Enter and the Retail/Parking Lease.

125. There is a bona fide, actual, present, and practical need for the Court to issue a declaration as to the interpretation and enforceability of the Amended Agreement to Enter and the Retail/Parking Lease and the rights of the parties thereunder.

126. The rights, status, obligations, powers, and privileges of the City under the Amended and Restated Agreement to Enter and the Retail/Parking Lease are dependent upon the Court’s adjudication of the present controversy.

WHEREFORE, the City respectfully requests this Court to enter judgment in its favor declaring that:

- (a) Flagstone misrepresented to the City that it had satisfied conditions precedent to the entry of the Retail/Parking Lease.
- (b) Flagstone actually failed to satisfy conditions precedent to the entry of the Retail/Parking Lease.

- (c) Flagstone fraudulently induced the City into entering into the Retail/Parking Lease.
- (d) The Retail/Parking Lease is invalid and unenforceable
- (e) The City has the right to possession of the Property.
- (f) Flagstone must vacate the Property.
- (g) Flagstone must remove all personal property from the Property and the easement areas;
- (h) Flagstone must assign and deliver to the City all of its rights to all permits, plans, specifications, and all related government approvals, documents, instruments, and agreements related to the Property; and

awarding the City its reasonable attorneys' fees and costs and such other, further, and supplemental relief as the Court deems proper.

Respectfully submitted,

**DORTA LAW**

334 Minorca Avenue  
Coral Gables, Florida 33134  
Telephone: (305) 441-2299  
Facsimile: (305) 441-8849

By: /s/ Gonzalo R. Dorta, Esq.  
Gonzalo R. Dorta, Esq.  
Florida Bar No. 650269  
Matias R. Dorta  
Florida Bar No. 770817  
file@dortalaw.com  
grd@dortalaw.com

**STROOCK & STROOCK & LAVAN, LLP**

200 South Biscayne Blvd., Suite 3100  
Miami, Florida 33131  
Telephone: (305) 358-9900  
Facsimile: (305) 789-9302

By: /s/ Laura Besvinick, Esq.  
Laura Besvinick, Esq.  
Florida Bar No. 391158  
lbesvinick@stroock.com  
mmontesdeoca@stroock.com  
Julie E. Nevins, Esq.  
Florida Bar No. 182206  
jnevins@stroock.com  
Hans H. Hertell, Esq.  
Florida Bar No. 071969  
hhertell@stroock.com  
Christina Himmel, Esq.  
Florida Bar No. 111549  
chimmel@stroock.com

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on November 13, 2017, I electronically filed the foregoing with the Clerk of the Court using the Florida Courts E-Filing Portal. I also certify that the foregoing document is being served this day on all counsel of record identified on the Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by the Florida Courts E-Filing Portal or via electronic mail to all counsel or parties listed in the service list below.

By: /s/ Laura Besvinick

# **EXHIBIT A**

**Amended and Restated Agreement to Enter into  
Ground Lease dated as of February 1, 2010.**

**AMENDED AND RESTATED  
AGREEMENT TO ENTER INTO GROUND LEASE**

**DATED AS OF FEBRUARY 1, 2010**

**(AMENDING AND RESTATING AGREEMENT  
TO ENTER INTO GROUND LEASE**

**BETWEEN**

**THE CITY OF MIAMI, FLORIDA**

**AND**

**FLAGSTONE ISLAND GARDENS, LLC**

**DATED AS OF JANUARY 1, 2003)**

ARTICLE 1	DEFINITIONS; INCORPORATION OF RECITALS, EXHIBITS AND ATTACHMENTS; AND EFFECTIVE DATE.....	6
ARTICLE 2	NATURE OF THIS AGREEMENT; GROUND LEASE ATTACHED; NEW CONSTRUCTION SCHEDULE, OPTIONS TO EXTEND, NEW PAYMENTS SCHEDULE, RELATED DEFAULTS AND NOTES REGARDING CONDITIONS RELATED THERETO.....	6
2.1	Nature of this Agreement; Term .....	6
2.2	Ground Lease(s).....	7
2.3	New Construction Schedule, New Payments Schedule, Options to Extend, Related Defaults, and Notes Regarding Conditions Related Thereto.....	7
ARTICLE 3	INSPECTION PERIOD.....	8
3.1	Termination of Access and Indemnification Agreement.....	8
3.2	Inspections .....	8
3.3	Environmental Inspections.....	9
3.4	Indemnification .....	9
3.5	Insurance.....	10
ARTICLE 4	AGREEMENT CONDITIONS AND DELIVERIES.....	10
4.1	Flagstone's Acknowledgments and Deliveries .....	10
4.2	Other Conditions and Deliveries.....	12
4.3	Outside Date.....	14
ARTICLE 5	SECURITY DEPOSITS .....	15
5.1	Security for the Easements.....	15
5.2	Security Deposit for the Construction Rent/Base Rent .....	15
5.3	Deposits; Letters of Credit.....	16
5.4	Security for Hold Harmless and Indemnification and Security Provisions.....	16
ARTICLE 6	EXECUTION AND DELIVERY OF GROUND LEASE(S) .....	17
6.1	Conditions Precedent to Execution and Delivery of Each of the Ground Leases	17
6.2	Special Additional Conditions Precedent with Respect to Component by Component Development.....	23
6.3	Outside Dates .....	24
ARTICLE 7	DEVELOPMENT OF PROJECT .....	24
7.1	Development Plans .....	24
7.2	Use and Ownership of Development Plans and Permits and Approvals in the event of Termination.....	24
7.3	Platting and Other Development Matters .....	25

7.4	License(s)/Easements for Pre-Development Work.....	25
7.5	Indemnification and Waiver .....	26
7.6	Issuance to Flagstone of Marine Operating Permit for Existing Marina .....	27
7.7	Marina Approvals .....	28
7.8	Water and Sewer Agreement .....	31
ARTICLE 8	COORDINATION WITH CITY; APPROVAL PROCEDURES .....	31
8.1	Coordination with City .....	31
8.2	City Manager Approval Procedures.....	32
8.3	City Manager Approvals; Disclaimer .....	33
ARTICLE 9	DISCHARGE OF LIENS, JUDGMENTS, AND GARNISHMENTS .....	34
9.1	No Liens Judgments and Garnishments.....	34
9.2	Discharging Liens Judgment and Garnishments.....	34
9.3	Hold Harmless and Indemnification Agreement .....	35
ARTICLE 10	CONDEMNATION.....	35
10.1	Material Taking.....	35
10.2	Less than a Material Taking.....	35
10.3	Award.....	36
ARTICLE 11	DEFAULT AND REMEDIES; TERMINATIONS.....	36
11.1	Events of Flagstone's Default.....	36
11.2	Remedies for Flagstone's Default.....	37
11.3	City's Default.....	37
11.4	Terminations.....	38
ARTICLE 12	REPRESENTATIONS BY FLAGSTONE AND CITY; DEFENSE AND RELEASE .....	38
12.1	Flagstone's Representations.....	38
12.2	City's Representations .....	39
12.3	Disclaimer of Representations by Flagstone.....	39
ARTICLE 13	MISCELLANEOUS .....	40
13.1	Assignment .....	40
13.2	Notices .....	41
13.3	Applicable Law .....	41
13.4	Severability .....	41
13.5	Waiver/Deferral .....	41

13.6	No Third-Party Beneficiary .....	41
13.7	Enforcement Costs .....	41
13.8	Entire Agreement .....	42
13.9	Headings .....	42
13.10	References .....	42
13.11	Brokers .....	42
13.12	No Partnership or Joint Venture .....	42
13.13	Counterparts .....	43
13.14	Jurisdiction and Venue .....	43
13.15	Waiver of Jury Trial .....	43
13.16	No Conflicts of Interest .....	43



**AMENDED AND RESTATED**  
**AGREEMENT TO ENTER INTO GROUND LEASE**

**DATED AS OF FEBRUARY 1, 2010**  
**OF**  
**(AMENDING AND RESTATING AGREEMENT TO ENTER INTO GROUND LEASE**  
**DATED AS OF JANUARY 1, 2003)**

The CITY OF MIAMI, FLORIDA, a municipal corporation of the State of Florida ("City"), and FLAGSTONE ISLAND GARDENS, LLC, a Delaware limited liability company, which is successor by merger to Flagstone Properties, LLC, a Florida limited liability company ("Flagstone"), hereby enter into this Amended and Restated Agreement to Enter Into Ground Lease as of February 1, 2010 (the "Effective Date") of the Agreement to Enter Into Ground Lease (the "Original Agreement to Enter"), dated as of January 1, 2003 (the "Original Effective Date") as amended by the subsequent First Amendment, Second Amendment and Third Amendment each as defined below (the Original Agreement to Enter, the First Amendment, Second Amendment, Third Amendment and this Amended and Restated Agreement to Enter Into Ground Lease and all of the exhibits, attachments, and riders to all of the foregoing being collectively amended, restated and superseded by and referred to hereinafter as this "Agreement"), as follows:

**RECITALS:**

WHEREAS, City owns that certain real property consisting of approximately 10.8 acres of upland (the "Upland Parcel") and 13.4 acres of adjacent submerged land (the "Submerged Parcel") in and about the northwest quadrant of Watson Island, located in Miami-Dade County ("County"), Florida, as more particularly described in Exhibit A attached hereto (the "Property"); and

WHEREAS, City desires that the Property be developed as a mixed use waterfront development in accordance with that certain Mega Yacht Marina and Mixed Use Waterfront Development Opportunity — Watson Island Miami, Florida Request for Proposals, dated February, 2001 (as amended and with all addenda thereto, collectively, the "Watson Island RFP"); and

WHEREAS, in response to the Watson Island RFP, Flagstone submitted a proposal to City entitled "Island Gardens at Watson Island RFP" dated July 13, 2001 (the "Island Gardens Proposal") for the development on the Property of a mega-yacht marina and related and other upland facilities (the "Project"), and Flagstone was selected as the most qualified and responsive and responsible bidder; and

WHEREAS, the City Commission pursuant to Resolution No. 01-972, adopted September 17, 2001 and Resolution No. 01-1028, adopted September 25, 2001 (both attached hereto and made a part hereof as part of Composite Attachment 1), polled the electors of the City of Miami regarding leasing the Property to Flagstone Island Gardens, LLC for the Project

and on November 6, 2001, the Island Gardens Proposal was approved by voter referendum by the electorate of the City of Miami (the "Referendum"), which Referendum granted Flagstone the right to negotiate with City the terms and conditions by which Flagstone would develop and ground lease the Property; and

WHEREAS, Flagstone Properties LLC subsequently merged with Flagstone Island Gardens, LLC ("Flagstone") and pursuant to City Commission Resolution No. 02-1304 adopted December 12, 2002, the City and Flagstone previously entered into the Original Agreement to Enter for the development and ground lease of the Property, subject to the terms and conditions contained therein and subsequently amended those terms and conditions (a) pursuant to City Commission Resolution No. 04-0558, adopted September 9, 2004, authorizing the First Amendment to Agreement to Enter Into Ground Lease and Amendment to Form of Ground Lease, dated December 12, 2004 (the "First Amendment"), (b) pursuant to City Commission Resolution No. 06-0674, adopted November 9, 2006, authorizing the Second Amendment to Agreement to Enter Into Ground Lease, dated December 8, 2006 (the "Second Amendment"), and (c) pursuant to City Commission Resolution No. 08-0350, adopted June 12, 2008 authorizing the Third Amendment to Agreement to Enter Into Ground Lease, dated July 30, 2008 (the "Third Amendment"); and

WHEREAS, Flagstone has requested in accordance with the Watson Island RFP and the Island Gardens Proposal, among other things, for the development of the Property to occur at Flagstone's option either on an entire Project basis or on a component by component basis, and the City Commission has authorized pursuant to Resolution No. 10-0402, adopted September 23, 2010 (attached hereto and made a part hereof as part of Composite Attachment 1), certain terms and conditions for, among other things, development of the Property on either an entire basis or on a component basis and related ability for Flagstone to enter into either one ground lease or multiple ground leases for different areas of the Property if and as may become necessary, all in accordance with this Agreement; and

WHEREAS, the execution of this Agreement on behalf of Flagstone has been authorized by Flagstone, which authorization is attached hereto and made a part hereof as Attachment 2, and is consistent with Flagstone's governing documents; and

WHEREAS, this Agreement (a) now amends and restates the Original Agreement to Enter, the First Amendment, the Second Amendment, the Third Amendment, and all exhibits, attachments, and riders to the foregoing, (b) adds certain new terms and conditions, and modifications agreed to by the City and Flagstone which are consistent with the RFP, the Island Gardens Proposal, and the Referendum, and (c) is intended to fully and completely supersede, replace, and restate the Original Agreement to Enter, the First Amendment, the Second Amendment, the Third Amendment, and all exhibits, attachments, and riders to the foregoing including, but not limited to the form of Amended and Restated Ground Lease(s) (hereinafter the "Ground Lease(s)") as set forth below; and

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, City and Flagstone agree as follows:

**ARTICLE 1**  
**DEFINITIONS; INCORPORATION OF RECITALS, EXHIBITS AND**  
**ATTACHMENTS, AND EFFECTIVE DATE**

The foregoing Recitals are true and correct and are incorporated herein by this reference. All attachments and exhibits to this Agreement are incorporated herein and made a part hereof by this reference. This Agreement shall be effective as of the date of execution hereof by the City, as set forth next to the place designated for execution by the City on the last page hereof. The parties hereby agree that the "Effective Date" as used herein shall be deemed to be **February 1, 2010**. All capitalized terms used but not defined in this Agreement shall have the meanings ascribed to such terms in **Exhibit B** attached hereto or in the form of Ground Lease(s) attached hereto as **Exhibit C**.

**ARTICLE 2**  
**NATURE OF THIS AGREEMENT; GROUND LEASE ATTACHED; NEW**  
**CONSTRUCTION SCHEDULE, OPTIONS TO EXTEND, NEW PAYMENTS**  
**SCHEDULE, RELATED DEFAULTS, AND NOTES REGARDING CONDITIONS**  
**RELATED THERETO**

**2.1 Nature of this Agreement; Term.**

**2.1.1** This Agreement constitutes an agreement to enter into one or more ground lease(s) in order for Flagstone to have the option to accomplish the development of the Property all at once or on a component by component basis upon the terms and conditions set forth herein. This Agreement shall not constitute a lease of any portion of the Property and shall not impose any encumbrance on the Property nor entitle Flagstone or any other Person to file a *lis pendens* in connection with this Agreement or any alleged breach or default hereunder.

**2.1.2** Term. The term of this Agreement shall commence upon the Effective Date and, unless sooner terminated by the terms hereof (except for any provisions hereof that expressly survive such earlier termination), continue until (a) the execution of one Ground Lease if Flagstone determines to develop the Project on the Property all at once, or (b) until the execution of the last of all Ground Leases relating to Major Project Components if Flagstone determines to develop the project on a component by component basis.

**2.1.3** Before entering into any Ground Lease(s), whether all at once or on a component by component basis, Flagstone must meet any and all conditions precedent, as stated in this Agreement, for construction of the related Major Project Component(s). The last day which can be the **Lease Delivery Date** for each Major Project Component shall be as follows: (a) for the Marina Component, September 1, 2013, (b) for the Parking/Retail Components, September 1, 2016, (c) for any of the Hotel Components (if no option to extend the commencement of construction is exercised), September 1, 2018, (d) for the Hotel Components (if the first five-year option to extend the commencement of construction is exercised), September 1, 2023, and (e) for the second Hotel Component (if the second five-year option to extend the commencement of construction is exercised), September 1, 2028; Construction of any Major Project Component must commence for that Component at the earlier of ninety (90) days after the applicable Lease

Delivery Date and the construction commencement dates set forth for each Major Project Component in Composite Attachment 3.

2.1.4 In no case shall this Agreement continue beyond August 31, 2018, unless Flagstone has exercised one or both of its five-year options to extend the commencement of construction of one or both of the Hotel Components as set forth in Composite Attachment 3 described in Section 2.3 below and in such event pursuant to Composite Attachment 3, (i) should Flagstone exercise only the first 5-year option to extend, then the term of this Agreement shall expire on August 31, 2023, and (ii) should Flagstone exercise both the first and the second 5-year options to extend, then the term of this Agreement shall expire on August 31, 2028.

2.2 Ground Lease(s). Attached as Exhibit C is the Amended and Restated form of Ground Lease(s) (as such may remain as one ground lease or may be divided into separate ground leases, at Flagstone's option) which (i) the parties have fully negotiated and approved, (ii) has been approved by the City Commission at a regularly scheduled meeting, (iii) has been approved by Flagstone, and (iv) the parties intend to execute and deliver to each other, subject to the satisfaction, waiver, or deferral of the conditions precedent set forth in ARTICLE 4 and ARTICLE 6 of this Agreement in connection with development of the Property all at once or on a component by component basis.

2.3 New Construction Schedule, New Payments Schedule, Options to Extend, Related Defaults, and Notes Regarding Conditions Related Thereto.

2.3.1 Attached as Composite Attachment 3 are the New Construction Schedule, Options to Extend, Defaults, and the New Payments Schedule and Notes Regarding Certain Conditions Related Thereto which (i) the parties have fully negotiated and approved in order to undertake the development of the Property on a component by component basis and to make corresponding required payments to the City on a component by component basis, (ii) has been approved by the City Commission at a regularly scheduled meeting, (iii) has been approved by the authorized representatives of Flagstone as of February 1, 2010, and (iv) which the parties intend to apply to both this Agreement and to each Ground Lease, including the form thereof, unless sooner terminated in accordance with the terms and conditions hereof (except for provisions that expressly survive such termination).

2.3.2 Composite Attachment 3 Serves as Guideline for Business Terms: With reference to Composite Attachment 3 attached and incorporated, the parties intend that as each of the Amended and Restated Ground Lease(s) is prepared for execution, the parties' legal counsels shall (i) utilize the form of Amended and Restated Ground Lease(s) attached hereto and incorporated hereby as Exhibit C, (ii) consistent with the covenant of good faith and fair dealing and consistent with the requirements of the RFP, the Island Gardens Proposal, and the City Commission's authorizing Resolution No.10-0402, tailor such form of Amended and Restated Ground Lease(s) so that it properly applies to the specific Major Project Component then being ground leased, and (iii) incorporate the terms from Composite Attachment 3 as are relevant to such Amended and Restated Ground Lease(s).

**ARTICLE 3**  
**INSPECTION PERIOD**

**3.1 Termination of Access and Indemnification Agreement.** The parties hereby acknowledge and agree that the certain Access and Indemnification Agreement entered into between City and Flagstone was previously terminated in 2003 and is of no further force or effect (except for any indemnification and confidentiality obligations which expressly survive such termination).

**3.2 Inspections.**

**3.2.1** Flagstone has performed, at Flagstone's sole cost and expense, all such investigations and inspections as to the Property, the physical condition thereof, matters of zoning, title, survey and all other matters with respect to the Property, including, without limitation, environmental matters (collectively, the "**Inspections**"), which are in Flagstone's judgment relevant to Flagstone's determination whether to lease the Property (subject to the terms and conditions contained herein) or to terminate this Agreement. Prior to performing any on-site Inspections, or which are necessary for Flagstone's lenders, Flagstone has previously provided for such Inspections conducted before the Effective Date of this Agreement and shall provide, if any further Inspections (including any related access agreements for Inspections to be conducted by Flagstone's lenders) need to be provided or conducted after the Effective Date of this Agreement) at least three (3) business days prior written notice to the Director of Real Estate and Public Facilities, City of Miami, at 444 S.W. 2<sup>nd</sup> Avenue, 3<sup>rd</sup> Floor, Miami, FL 33130, Telephone: 305/416-1436, Facsimile: 305/416-2156 (or to such other City representative as designated by City), which written notice provided or shall provide, as the case may be, reasonable details regarding the type and scope of Inspection(s) performed or to be performed, as the case may be, information for the related access agreement(s), and the scheduled date and time of such Inspection and provided or shall provide, as the case may be, the City Manager with the opportunity to have a representative from the City present at any such Inspections. Any written report, test, analysis, evaluation, appraisal, study or similar item with respect to the physical condition of the Property which is in the possession or control of City, shall, upon written request of Flagstone, be made available to Flagstone at reasonable times for review.

**3.2.2** Following any such Inspections, Flagstone restored or shall promptly restore, as the case may be, the Property to the condition existing immediately prior to such Inspections. Flagstone and its agents, employees, representatives and contractors shall keep the results of any Inspections confidential (provided, however, that Flagstone may disclose all information obtained with respect to the Inspections to its principals, officers, directors, bankers and investors (including potential bankers and investors, attorneys, contractors and advisors as long as such parties agree to keep the information confidential)) and this obligation shall survive the termination of this Agreement. Flagstone shall promptly deliver copies of any of the reports prepared in connection with any of its Inspections directly to the City Manager. The Inspections conducted prior to the Effective Date of this Agreement were conducted and the future Inspections conducted after the Effective Date of this Agreement shall be conducted in accordance with all applicable laws utilizing licensed and insured professionals and Flagstone did cause and shall cause, as the case may be, its inspectors to obtain, at Flagstone's sole cost and expense, any and all licenses and permits required to conduct the Inspections, as applicable.

**3.3 Environmental Inspections.** Notwithstanding anything contained herein to the contrary, with respect to any Inspections regarding environmental matters related to the Property (such Inspections shall be referred to herein as the "Environmental Inspections"), in addition to the requirements set forth in **Section 3.2** above, the following shall apply:

**3.3.1** Any Environmental Inspections were performed and shall be performed, as the case may be, by those certain environmental firm(s) or consultant(s) listed on **Exhibit 3.3.1** attached hereto and no other environmental firm(s) or consultant(s) shall be permitted to perform the Environmental Inspections without the prior written approval of the City Manager, which may be given or withheld in his or her sole and absolute discretion.

**3.3.2** Flagstone did not, and shall not, perform any invasive environmental tests (such as drilling or soil or groundwater testing) unless the City Manager has provided its prior written consent thereto, which consent may be withheld in City's sole and absolute discretion. Flagstone's request for any invasive environmental testing must be accompanied by the inspection report (including all test results and analysis thereof) prepared by a reputable environmental engineering company which recommends such additional testing and sets forth the basis thereof and the protocol for testing in reasonable detail.

**3.3.3** Flagstone agrees that in the event the need arises to notify, under applicable laws, any federal, state or local public agencies of any conditions at the Property as a result of the Environmental Inspections performed by Flagstone, its agents, employees, contractors and/or other representatives, Flagstone shall notify the City Attorney only and such disclosures shall be made directly by the City (if deemed necessary thereby), and not Flagstone, to any such public agency.

**3.4 Indemnification.** Flagstone assumes all risks associated with the Inspections done or to be done in the future and agrees to indemnify and hold harmless City, of, from and against any and all costs, losses, claims, damages, liabilities, expenses and other obligations (including, without limitation, reasonable attorney's fees and court costs) arising from, out of or in connection with or otherwise relating to the Inspections, including, without limitation, the entry by any one or more of Flagstone and its agents, employees, contractors and other representatives in or upon the Property for the purposes of the Inspections. The foregoing shall not apply to any diminution in the value of the land or cost or expenses which might arise due to the uncovering of the existence of adverse conditions (e.g., environmental conditions), provided, however, That the foregoing is not intended to relieve Flagstone from liability if Flagstone, its agents, employees, contractors or other representatives cause(s) such a condition to exist. The foregoing indemnification obligations of Flagstone shall survive any expiration or termination of this Agreement.

**3.5 Insurance.** Flagstone shall provide an updated Certificate of Insurance prior to the execution of this Agreement, to be attached hereto as part of Composite Exhibit 3.5 and shall in the future, prior to entering the Property and performing any Inspections, provide to City evidence of insurance by Flagstone and its contractors, as applicable, as specified in Composite **Exhibit 3.5** attached hereto, insuring against any liability by any one or more of Flagstone and its agents, employees, contractors or other representatives arising from, out of or in connection with or otherwise relating to the entry by any one or more of Flagstone and its agents,



employees, contractors or other representatives in or upon the Property for the purposes of the Inspections. Flagstone shall provide City with a certificate from Flagstone and its contractors, as applicable, evidencing such insurance coverage, naming City as an additional insured thereon and which insurance coverage shall be kept in force until the expiration or earlier termination of this Agreement.

#### **ARTICLE 4** **AGREEMENT CONDITIONS AND DELIVERIES**

#### **4.1 Flagstone's Acknowledgments and Deliveries.**

**4.1.1 Acceptance of Property.** Flagstone acknowledges that it has had adequate opportunity to review and has inspected and reviewed all portions of the Property, including, without limitation, the status of title, survey and the environmental condition of the Property, and, on the basis of its Inspections, Flagstone has determined that the condition of all portions of the Property is satisfactory to Flagstone, and subject to the Amended Partial Modification of Restrictions as defined in Section 4.2.5 below and, and subject to any updates to the Title Commitment (such updates to be paid by Flagstone), upon delivery of possession of the Property by City to Flagstone, Flagstone shall accept every portion of the Property in its "AS-IS, WHERE-IS, WITH ALL FAULTS" condition, without requiring any action, expense or other thing or matter on the part of City to be paid or performed, other than those obligations of City set forth on **Exhibit 4.1.1** or in this subsection.

**4.1.2 Environmental Condition Acceptance Notice.** Flagstone acknowledges that on or before the expiration of the Inspection Period, Flagstone executed and delivered to the City the "Environmental Condition Acceptance Notice", dated March 10, 2006, in form and substance attached hereto as **Exhibit 4.1.2**.

**4.1.3 Investors.** As of the Effective Date, **Exhibit 4.1.3** attached hereto is a true, correct and complete listing (the "**Investor List**") of the name, address and Social Security Number or U.S. Federal Taxpayer Identification Number (or in the case of foreign investors who do not have such Social Security Number or U.S. Federal Taxpayer Identification Number, any similar identification number, if one exists, provided for in the country of their primary residence or domicile) of all of the currently existing Investors in the Project other than those Investors: (a) whose investments in the Project are made through an Existing Investment Fund; or (b) who are or will become Investors on account of a Going Public Transaction. (collectively, the "**Non-Disclosed Investors**") (it being understood and agreed that all Investors other than Non-Disclosed Investors shall be referred to herein as the "**Disclosed Investors**").

**4.1.3.1** As required by the RFP, the Island Gardens Proposal, and as set forth in the form of Ground Lease(s) attached hereto as Exhibit C, Flagstone acknowledges and agrees that Mehmet Bayraktar and/or the qualified members of the Bayraktar Family shall at all times retain voting and beneficial control of Flagstone for the time periods required. The City shall have the right, in its sole discretion, but not the obligation, upon the request of Flagstone, to allow some other disqualified Disclosed Investor to have such voting control. During the term of this Agreement, Flagstone shall cause its Financial Advisor to require each Disclosed Investor (other than Flagstone or Mehmet Bayraktar) to complete the Investment Questionnaire. Based on

the responses to the questions in the Investor Questionnaire and such other due diligence the Financial Advisor may perform in the normal course of its fiduciary duties, the Financial Advisor shall determine, in its good faith, commercially reasonable judgment, whether or not such Disclosed Investor is a Disqualified Person. Financial Advisor shall not propose to the City any Disclosed Investor which it has concluded is a Disqualified Person. Furthermore, the City itself shall have the right to object to any Disclosed Investor if it determines in its good faith commercially reasonable judgment that such Disclosed Investor is a Disqualified Person. The parties acknowledge and agree that no Disqualified Person shall hold a legal or beneficial interest in the Project.

**4.1.4 Organizational Documents.** As of the Effective Date, the documents listed in Exhibit 4.1.4 attached hereto constitute all of the existing organizational documents of Flagstone, including, without limitation, any operating and/or voting agreements among the members thereof (collectively, the "Organizational Documents"), and Flagstone has provided to the City Manager true, correct and complete copies of all such Organizational Documents. Flagstone shall promptly provide City written notice of any amendments, modifications, additions or terminations of the Organizational Documents, together with written copies thereof. The member(s) or other investor(s) of Flagstone shall not enter into any voting agreements the effect of which would cause Mehmet Bayraktar and/or other qualified members of the Bayraktar Family, to become contrary to the form of Ground Lease(s) (which was prepared in accordance with requirements of the RFP and the Island Gardens Proposal), to relinquish voting and beneficial control of Flagstone: provided, however, major or material decisions requiring investor or shareholder consent, agreements among minority shareholders and/or other customary commercial arrangements are not intended to be prohibited by the foregoing.

**4.1.5 Expressions of Interest.** The Original Agreement to Enter had attached to it as Exhibit 4.1.5 a letter to the City from Flagstone's then Financial Advisor and Holiday Fegnolio, which set forth in favor of the City that, based upon the Island Gardens Proposal, the Original Agreement to Enter and the original form of Ground Lease attached thereto as Exhibit C, such parties were highly confident that Flagstone would be able to raise its Initial Equity Requirement, which together with the projected financing would be sufficient to fully fund the development and construction of the Project Components as then contemplated as well as the operation thereof through Project Stabilization as originally defined.

## **4.2 Other Conditions and Deliveries.**

**4.2.1 MUSP Approval.** From and after the Effective Date and at no costs to the City, Flagstone shall use good faith reasonable efforts to maintain in full force and effect the approval of the Major Use Special Permit by the applicable governmental authority(ies) for the Major Project Components. To date, Flagstone has obtained such Major Use Special Permit approval as evidenced by Resolution No. 04-0462, adopted by the City Commission on July 8, 2004. Flagstone has subsequently requested and been granted modifications to said Major Use Special Permit approval through "de minimus" non-substantial changes (such approval, as modified from time to time, shall be referred to herein collectively as the "MUSP Approval"). With reference to the existing MUSP Approval and any future modifications to the MUSP Approval, the City shall reasonably and in good faith cooperate with such efforts, including, without limitation, executing all applications jointly as owner, if necessary. Flagstone shall



obtain written approval of the City Manager to any application for a modification for the Major Use Special Permit which shall include any applications for zoning changes or variances and/or amendments to the Comprehensive Plan currently in effect for the City of Miami (collectively, the "MUSP Application") prior to submission of the MUSP Application to any governmental and/or quasi-governmental agency (it being understood that, notwithstanding anything contained herein to the contrary the City Manager may withhold his or her consent to any zoning changes, variances or Comprehensive Plan amendments included in the MUSP Application in his or her reasonable discretion). The parties agree to use reasonable, good-faith efforts to agree upon any other necessary modifications to the MUSP Approval or the MUSP Application, as applicable, which result from any governmental or quasi-governmental process, provided that in no event shall the City Manager be required to consent to any changes which would violate any material terms of the Watson Island RFP or deviate materially from the Island Gardens Proposal. Prior to the Possession Date for the first Ground Lease, Flagstone shall have submitted to and received approval from the appropriate Governmental Authority for any MUSP Application, including but not limited to any MUSP modification relating to the Major Project Component covered by such Ground Lease.

**4.2.2**        **NOPC Approval.**     Flagstone has obtained a determination dated June 21, 2004 from the State of Florida Department of Community Affairs ("**DCA**"), and shall use good faith reasonable efforts to maintain in full force and effect such determination of the DCA, that a "Notice of Proposed Change" ("**NOPC**") to the Downtown Development of Regional Impact Increment II ("**Downtown DRI**"), which amends the Downtown DRI to: (i) add the Marina as a new use thereunder, including the applicable simultaneous increase and decrease from an existing land use category to account for any impacts of the Marina slips on traffic, if necessary; and (ii) expand the boundaries of the Downtown DRI to include the Project (such approval shall be referred to herein as the "**NOPC Approval**"), would not result in a substantial deviation under Chapter 380 of the Florida Statutes. The City has amended the Downtown DRI in accordance with the NOPC to accommodate the Project. Flagstone has in the past obtained and shall for any future submissions obtain written approval of the City Manager to any application for a NOPC and for any continuation or modification requirements therefor (collectively, "**NOPC Application**") prior to submission thereof to the City of Miami Downtown Development Authority ("**DDA**"). No other development orders or amendments thereto shall be applied for without the express prior written approval of the City Manager. Any future changes to the NOPC Application or any other required approvals or continuations during any future NOPC approval process, including, without limitation, any conditions that may be imposed by DDA or DCA in connection therewith must be approved by the City Manager in advance of the approval of the NOPC. The parties agree to use reasonable, good-faith efforts to agree upon necessary modifications to the NOPC Application or any other required approvals or continuations which result from any governmental or quasi-governmental process, provided that in no event shall the City Manager be required to consent to any changes which would violate any material terms of the Watson Island RFP or deviate materially from the Island Gardens Proposal. Attached hereto as **Exhibit 4.2.2** is a letter from DCA with respect to the vested rights for the existing marina slips at the Property. Flagstone hereby agrees that it submitted the NOPC Application to DCA for approval thereof in a timely manner and that for any future updates, if and as applicable, Flagstone further agrees that it will make any required submissions in a timely manner.

**4.2.3**            **MUSP/NOPC Application Date and Approval Date.**    The date of the latter of the filing of the MUSP Application and the NOPC Application shall be referred to herein as the "**MUSP/NOPC Application Date**". The date of the latter of the MUSP Approval and the NOPC Approval shall be referred to herein as the "**MUSP/NOPC Approval Date**".

**4.2.4**            **First Source Hiring Agreement.**    The parties acknowledge that Flagstone and the City have previously executed four (4) counterpart originals of a "First Source Hiring Agreement" (prepared by Flagstone) for the Project (which is referred to in **Section 34.1** of the Ground Lease), which First Source Hiring Agreement (a) was in form and substance reasonably acceptable to the parties and (b) shall continue to remain in full force and effect as required by the RFP.

**4.2.5**            **Partial Modification of Restrictions; Amended Partial Modification of Restrictions.**

(a)    From and after the Original Effective Date, City used good faith reasonable efforts (which shall in no event be deemed to have included any financial obligation on the part of the City) and obtained from the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (the "**Board of Trustees**") a "Partial Modification of Restrictions" (the "**Partial Modification of Restrictions**") which modifies the restrictions set forth within Deed No. 19447 from the Board of Trustees in favor of the City filed for record April 11, 1949 in Deed Book 3130, Page 257 of the Public Records of Dade County, Florida ("**Board of Trustees Deed**") in order to permit the Project. City's efforts to obtain the Partial Modification of Restrictions for the Project were not inconsistent with other actions and efforts by the City in connection with the City's obtaining of other partial modifications of restrictions from the Board of Trustees. Such Partial Modification of Restrictions was obtained by the City March 2, 2005 and requires the State to approve the amended and restated form of Ground Lease(s) attached to this Agreement.

(b)    On March 25, 2010, the City Commission pursuant to Resolution No. 10-144 authorized the City to discuss the proposed amended and restated form of Ground Lease with the Board of Trustees to determine whether any amendments would be necessary to the Partial Modification of Restrictions. On August 16, 2011, the City obtained the required updated approval (the Amended Partial Modification of Restrictions) from the Board of Trustees for the form of Amended and Restated Ground Lease(s) attached hereto. On September 15, 2011 pursuant to Resolution No. 11-0337, the City Commission authorized the City to enter into the Amended and Restated Partial Modification of Restrictions with the Board of Trustees in accordance with the Amended Partial Modification of Restrictions, Deed 19447-F. The Amended Partial Modification, dated September 15, 2011 is attached hereto as Exhibit 4.2.5.

**4.2.6**            **Removal of Existing Occupants.**    The parties acknowledge that the existing occupants of the Property described on **Exhibit 4.8** attached hereto (the "**Existing Occupants**") have been removed from the Property. The City shall have no responsibility under any agreements negotiated by Flagstone with Existing Occupant(s) (it being understood that: (i) in no event shall Flagstone be permitted to bind the City to any such agreement in the event that Flagstone and the City do not enter into a Ground Lease hereunder or in the event of any termination of such Ground Lease; and (ii) any such agreement between Flagstone and an

Existing Occupant(s) shall contain an acknowledgment by such Existing Occupant(s) that its rights under such agreement relate only to Flagstone's leasehold estate and such Existing Occupant(s) releases City from any and all claims of rights to occupy the Property or entitlement to compensation in lieu thereof in the event of a termination of the Ground Lease for any reason whatsoever).

**4.2.7** Each party hereby agrees to keep the other party regularly apprised in writing as to what actions have been taken by such party in order to satisfy their respective conditions precedent set forth above and the status thereof.

**4.2.8 Labor Peace Agreement.** The parties acknowledge that this Agreement and the Amended and Restated Ground Lease(s) are subject to the requirements of City Commission Resolution No. 09-0263, adopted May 28, 2009 (attached hereto and made a part hereof as Attachment 4).

**4.3 Outside Dates.** As set forth in Section 2.1.3, the parties agree and acknowledge that certain outside dates (collectively, the "Outside Dates") are established for the commencement of construction of each Major Project Component on Composite Attachment 3, so that when adding up all of the time periods for satisfaction of the conditions precedent set forth in this **ARTICLE 4** plus all the applicable extensions therefor (including, without limitation, any extensions or other required time periods set forth in Composite Attachment 3 regarding the New Construction Schedule, the Options to Extend, the New Payment Schedule and the Notes Regarding Conditions Related Thereto) the longest possible term for this Agreement shall not continue beyond August 31, 2028 for both (i) the date for entering into the last Ground Lease(s) for the final Major Project Component(s) (the "Final Possession Date") and (ii) the start of construction for all of the Components (the "Final Construction Commencement Date"). Therefore, the parties acknowledge and agree that notwithstanding anything contained herein to the contrary, either party shall have the absolute right to terminate this Agreement by providing written notice to the other party if the conditions precedent set forth in **Section 4.2** above are not satisfied on or before August 31, 2028.

## **ARTICLE 5** **SECURITY DEPOSIT**

**5.1 Security for the Easements.** The parties acknowledged that the City has previously delivered to Flagstone certain easements or licenses referred to in Section 7.4 hereof as set forth in Exhibit 7.4.1 (collectively, the "Easements"). Prior to the execution and delivery of this Agreement by City to Flagstone, Flagstone shall either (a) deliver the amount of Thirty-Five Thousand and No/100 Dollars (\$35,000.00) (the "Easement Deposit") to Escrow Agent or (b) provide to City, at Flagstone's sole cost and expense, a Letter of Credit in the amount of Thirty-Five Thousand and No/100 (\$35,000.00) (the "Easement Security LOC"). Notwithstanding the foregoing, Flagstone shall be permitted to utilize any combination of cash or Letter of Credit so long as the easement deposit equals Thirty-Five Thousand and No/100 Dollars (\$35,000.00) in the aggregate. The Easement Deposit or the Easement Security LOC, as applicable, shall hereinafter be referred to as the "Easement Security" and shall provide security for the faithful performance by Flagstone of all of the provisions of the Easements to be performed or observed by Flagstone.

**5.2 Security Deposit for the Construction Rent/Base Rent.** Prior to execution of the Agreement to Enter, Flagstone shall either (a) deliver the amount equal to one year's Construction Rent/Base Rent as defined in Section 5.2 to the Escrow Agent, or (b) provide to City, at Flagstone's sole cost and expense, a Letter of Credit in the amount equal to one year's Construction Rent/Base Rent as defined herein. Notwithstanding the foregoing, Flagstone shall be permitted to utilize any combination of cash or Letter of Credit so long as the Security Deposit for the Pre-Paid Construction Rent/Base Rent equals the amounts defined in the aggregate. The Security Deposit for the Construction Rent/Base Rent, shall herein after be referred to as the "Security Rent Deposit" and shall provide security for the faithful performance by Flagstone of all rent payment provisions of this Agreement to be performed or observed by Flagstone. During the periods outlined below, Flagstone shall deliver the Security Rent Deposits as defined below:

Commencing	Annual Amount Required for Rent Security Deposit
October 1, 2010	\$300,000
October 1, 2011	\$500,000
October 1, 2012	\$750,000
October 1, 2013	\$1,000,000
October 1, 2014	\$1,000,000
October 1, 2015	\$1,000,000
October 1, 2016	\$1,500,000
October 1, 2017	\$1,675,000
October 1, 2018	\$2,000,000

Any LOC Deposit held by the Lessor or Cash Deposit held by Escrow Agent, as defined in this Agreement as security under this Agreement to Enter into Ground Lease may be credited toward the following year's Security Rent Deposit. The annual amount due on October 1, 2018 of \$2,000,000 shall remain in effect for the life of the Agreement to Enter and of the Ground Lease(s), in accordance with the schedule listed in this Section 5.2. If an Event of Lessee's Default for non-payment of rent occurs hereunder, Lessor may, at its option and without prejudice to any other right or remedy that Lessor may have hereunder, apply or require distribution of all or any portion of the Security Rent Deposit for the payment of any sum to which Lessor may become entitled by reason of such Event of Lessee's Default, including, without limitation, reasonable attorneys' fees and costs which Lessor may incur in connection therewith. If Lessor so applies or requires the distribution to Lessor of all or any portion of the

Security Rent Deposit, Lessee shall, within thirty (30) days after written demand therefor, deposit cash with Lessor in an amount sufficient to restore any such deficiency or amend or replace any LOC Deposit, whichever is applicable, to the full amount thereof, and Lessee's failure to do so shall, at Lessor's option, constitute an Event of Lessee's Default hereunder. In the event Lessor applies or requires distribution of all or any portion of an LOC Deposit where no Event of Lessee's Default then existed, Lessor shall be deemed to have improperly requested and received such application or distribution, and Lessee shall be entitled to recover from Lessor the amount which was improperly requested and received, or to reduce the Rent Security Deposit by an equivalent amount.

**5.3 Deposits; Letters of Credit.** Any Security Deposit held by Escrow Agent shall be held in accordance with the Escrow Agreement, in form and substance as set forth in Exhibit 5.3 (the "Escrow Agreement"), which Escrow Agreement shall be executed by City, Flagstone and Escrow Agent simultaneously with the execution of the this Agreement in connection with the Easements and shall continue for Additional Security to be deposited under the Escrow Agreement upon the execution of the first Ground Lease and additional security deposits upon the execution of any and all additional Ground Leases. Any Letter of Credit elected by Flagstone pursuant to the provisions of this **ARTICLE 5** (or a replacement thereof satisfactory to City) shall remain in effect throughout the term of the related Ground Lease(s), unless the Easements and the related Ground Lease(s) are otherwise terminated.

**5.4 Security for Hold Harmless and Indemnification and Security Provisions under Attachment 3.** Flagstone shall also comply with the provisions of Section IX of Attachment 3 hereto, and Section 9.3 of this Agreement regarding Security Deposit(s) required regarding any lawsuits, pending against the City relating to any Lien(s) on the subject Property.

## **ARTICLE 6** **EXECUTION AND DELIVERY OF GROUND LEASE(S)**

**6.1 Conditions Precedent to Execution and Delivery of Each of the Ground Leases.** Within fifteen (15) days after the satisfaction of all of the following conditions precedent applicable to a Major Project Component (or the written waiver or deferral by the City Manager in his or her sole and absolute discretion of any such conditions precedent that are not satisfied), the City and Flagstone hereby agree to execute four (4) duplicate original counterparts of each of the Ground Leases for that Major Project Component (or one Ground Lease for all Major Project Components, at Flagstone's election), in form and substance attached hereto as **Exhibit C** for delivery to each party hereunder and in accordance with the Outside Dates for the respective Lease Delivery Dates as set forth in Section 2.1.3 above. The parties acknowledge that the Major Project Components of the Project may be developed and constructed by Flagstone on a Major Project Component by Major Project Component basis (i.e. with the Marina Component alone possibly being the first Major Project Component to be constructed). If Flagstone develops and constructs on a component by component basis, then (a) all of the conditions set forth in this Article 6 shall be satisfied on a component by component basis in full for the applicable Major Project Component being developed or, as applicable, deferred by the City Manager on a component by component basis, and (b) at the election of Flagstone or its lenders one Ground Lease or separate Ground Leases shall be executed and delivered by the City and the form of Ground Lease in Exhibit C shall be revised as necessary to apply only to the Major Project

Component being developed, and (c) the provisions of this Agreement that have not been satisfied with respect to all Major Project Component(s) shall continue to survive until such time as satisfied in order for Flagstone to enter into one or more Ground Leases for the development of such remaining Major Project Component(s). For any Major Project Component for which the conditions precedent have been satisfied in order to enter into one or more Ground Leases, then the provisions of this Amendment shall terminate (except for those provisions expressly surviving) and the applicable Ground Lease shall control. Within a reasonable time after Flagstone believes that it has satisfied each condition precedent of this Article 6, Flagstone shall notify the City in writing and the City shall have thirty (30) calendar days to acknowledge in writing whether the City agrees or disagrees that such condition precedent has been satisfied. Flagstone agrees to use diligent good-faith efforts to cause the satisfaction of the conditions precedent set forth in this Section 6.1 prior to the Lease Delivery Date for the applicable Major Project Component either all at once or on a component by component basis, at Flagstone's option regarding which development course to choose, and Flagstone shall promptly provide to the City Manager, from time to time, such written documentation as may be reasonably requested by the City Manager to evidence the same.

**6.1.1 Construction Plans and Specifications.** The City Manager shall have received and approved in his or her good faith, reasonable discretion plans and specifications for the development and construction of the applicable Major Project Component of the Project (the "Construction Plans and Specifications") which shall be in sufficient detail in order for Flagstone to obtain foundation permits, as applicable, for such Major Project Component(s) being developed which Construction Plans and Specifications shall be in accordance with the Project Approvals. Flagstone shall submit on a component by component basis, for each Major Project Component, such Construction Plans and Specifications that shall contain sufficient detail in order for the City Manager to determine, using the Schedule of Values, the proposed Construction Budget and the GMP Contract(s) described in Section 6.1.6 hereof for each component, that the Project can be completed (either all at once or on a component by component basis, as applicable) in accordance with the MUSP Approval and the Hotels can be constructed as four or five star hotels or better, as defined in the American Automobile Association, Mobil or similar (collectively, "AAA") hotel rating standards, within the Construction Budget. Regarding the items to be included for the Marina Component, see Exhibit E attached to the form of Ground Lease and Composite Attachment 3 attached hereto and made a part hereof.

**6.1.2 Closing of Construction Loan(s); Other.** For each Major Project Component, Flagstone shall have closed its Initial Construction Loan(s) with an Approved Initial Construction Lender (as defined in the Ground Lease), which financing thereunder, together with the amount of Initial Equity Requirement or more as Flagstone may determine to invest into the same, applicable to the relevant Major Project Component(s), shall be sufficient to complete the development and construction (either all at once or on a component by component basis at Flagstone's option) of the applicable Major Project Component of the Project and to fund any shortfalls in operations that may exist prior to Project Stabilization for such Major Project Component. For each Major Project Component Flagstone shall provide the Chief Financial Officer with a copy of the closed Initial Construction Loan documents as evidence of such closing.



**6.1.3 Initial Equity Requirement.** Flagstone shall have provided to the City Manager written evidence satisfactory to the City Manager in his or her reasonable judgment of the availability and/or the expenditure of the Initial Equity Requirement applicable to the relevant Major Project Component(s) (which funds shall be available to Flagstone subject to typical conditions for the funding of equity in similar projects) which, when added to the equity expenditures heretofore made by Flagstone and/or committed to be made by Flagstone or its qualified Disclosed Investors and the loan proceeds to be funded in connection with the Initial Construction Loan(s) for the relevant Major Project Component(s), is sufficient to complete the development and construction) of the applicable Major Project Component and to fund any shortfalls in operations that may exist prior to Project Stabilization for the relevant Major Project Component(s). In connection with the foregoing, Flagstone and the Financial Advisor shall provide to the City an updated Investor List, certified to the City by the president or vice-president of Flagstone and an officer of Financial Advisor, under penalty of perjury, that such Investor List accurately sets forth each and all of the Disclosed Investors as of the execution date of each Amended and Restated Ground Lease for the particular component being financed and constructed at such time, together with a listing, to the best of Flagstone's and the Financial Advisor's knowledge, of the current address and Social Security Number or U.S. Federal Taxpayer Identification Number (or in the case of foreign investors who do not have such Social Security Number or U.S. Federal Taxpayer Identification Number, any similar identification number, if one exists, provided for in the country of their primary residence or domicile) of such Disclosed Investors: it being understood and agreed that the provisions of Section 4.1.3 hereof shall apply to all Investors.

**6.1.4 Development Team.** On either an all at once development basis or on a component by component development basis, at Flagstone's option, Flagstone shall have (a) obtained the prior written approval of the City Manager to the identities of all of the following individuals and/or entities: (i) the lead architect which is coordinating preparation of the conceptual and architectural plans for each of the applicable Major Project Components; (ii) the lead landscape architect which is coordinating preparation of the landscape plans for each of the applicable Major Project Components; and (iii) the construction manager(s) for the Project and/or for each of the applicable Major Project Components, to the extent different (collectively, the "Development Team") and (b) provided written evidence that binding agreements with each of the members of the Development Team have been executed. Each member of the Development Team shall be subject to the prior written approval of the City, which approval shall not be unreasonably withheld and shall include, but not be limited to, the City's ability to withhold its approval of any Disqualified Person. Flagstone shall be permitted to supplement the Development Team with additional members without the prior consent of the City: provided, however, any replacements of an approved member of the Development Team shall be subject to the City's approval in accordance with the foregoing sentence. The City hereby approves the Persons listed on Exhibit 6.1.4 attached hereto.

**6.1.5 Operating Team.** On either an all at once development basis or on a component by component development basis, at Flagstone's option, Flagstone shall have (a) obtained the prior written approval of the City Manager to the identities of the operator for each of the Hotels (when the Hotel(s) Components are being developed and constructed) and the Marina (when the Marina Component is being developed and constructed) within the Project (the foregoing, together with Fairchild Tropical Garden and The Historical Museum of South Florida,

shall be collectively referred to herein as the "Operating Team"), and (b) provided written evidence that at the time of execution of the applicable Ground Lease(s) binding agreements with each of the applicable members of the Operating Team have been executed. Each member of the Operating Team shall be subject to the prior written approval of the City, which approval shall not be unreasonably withheld and shall include, but not be limited to, the City's ability to withhold its approval of any Disqualified Person. City hereby approves those certain hotel operators and/or franchisors set forth on Exhibit 6.1.5 attached hereto. City hereby agrees that, if Flagstone so elects, Flagstone shall be permitted to operate or manage the Hotel(s), Marina, Retail, and/or Parking Garage either directly or through an Affiliate thereof.

**6.1.6**            Construction Contracts.    On either an all at once development basis or on a component by component development basis, at Flagstone's option, Flagstone shall have provided to and the City Manager shall have received and approved in his or her good faith, reasonable discretion one (1) or more binding construction contract(s), whether guaranteed maximum price, cost plus, construction manager at risk, or some other commercially reasonable form (individually or collectively, the "GMP Contract") which individually or in the aggregate provide for the development and construction of the applicable Major Project Component(s) in accordance with the MUSP Approval (at a cost which shall not exceed the aggregate costs for development and construction of the applicable Major Project Component(s) as set forth in the Construction Budget), together with a "Schedule of Values" for the Project to be approved by the City Manager in his or her good faith, reasonable discretion.

**6.1.7**            Construction Budget.    On either an all at once basis or on a component by component basis, at Flagstone's option, Flagstone shall have provided and the City Manager shall have received and approved in his or her good faith, reasonable discretion the budget setting forth in reasonable detail the anticipated costs of development and construction of the applicable Major Project Component(s) (the "Construction Budget"). The Construction Budget shall be submitted no later than 60 days prior to the Commission meeting date for consideration of the respective Ground Lease(s).

**6.1.8**            Construction Schedule.    Prior to the applicable Lease Delivery Date for each Major Project Component, Flagstone shall provide to the City Manager evidence of all necessary Project Approvals as described in Subsection 6.1.13 below, and the City Manager shall receive and approve in his or her good faith, reasonable discretion the detailed schedule for development and construction of the Project Components and related infrastructure, including, without limitation, the anticipated commencement and completion of major components of the work. Flagstone may accelerate all or any portions(s) of such schedule without the City Manager's approval; provided that Flagstone shall provide prompt advance written notice to the City Manager of such acceleration.

**6.1.9**            Bonds/Letters of Credit.    On either an all at once basis, or on a component by component basis, depending upon Flagstone's option in determining whether to enter into one or more Ground Leases, Flagstone shall deliver and the City Manager shall have received and approved in his or her good faith, reasonable discretion a copy of the Payment and Performance Bond and/or Letters of Credit (which shall have been issued at Flagstone's sole cost and expense) in an amount equal to 100% of the hard construction costs of the applicable Major Project Component(s), which shall name City as the owner or dual obligee, as appropriate. The



forms of such Payment and Performance Bond and/or Letters of Credit and the surety or institution issuing the same shall be subject to the prior written approval of the City Manager, which shall not be unreasonably withheld (provided that such surety or institution has a credit rating of A or higher with a financial strength to be mutually acceptable to the parties). Any Payment and Performance Bond may be enforced by City in accordance with its terms.

**6.1.10 Hotel Management Agreements.** On either an all at once basis or on a component by component basis, depending upon Flagstone's option in determining whether to enter into one or more Ground Leases for one or both of the Hotel Components, as applicable, Flagstone shall have delivered and the City Manager shall have received and approved in his or her good faith, reasonable discretion (with appropriate consideration given to the manner in which similar issues are resolved by sophisticated lenders in similar transactions) binding hotel management agreements between Flagstone and the approved operators of each of the Hotels within the Project (unless the Hotel(s) is to be operated directly by Flagstone or an Affiliate, in which case any management agreement between Flagstone and such Affiliate shall not require the prior approval of City but Flagstone shall provide to the City binding franchise or license agreements between Flagstone or its Affiliate and a nationally or an internationally recognized hotel franchisor for such Hotel(s), which franchise or license agreement shall be subject to the City's reasonable approval). Each management agreement (or franchise or license agreement, if applicable) shall provide for, among other things: (i) the operation or management of a four or five star hotel or better, as defined in the AAA hotel rating standards; (ii) that the hotel operator or franchisor shall provide written notice to the City Manager of any default by Flagstone under such hotel management agreement or franchise agreement, together with the reasonable opportunity to cure such default by the City; and (iii) an attornment provision whereby the hotel operator or franchisor agrees to attorn to the City pursuant to a subordination, non-disturbance and attornment agreement acceptable to the City Manager, in his or her reasonable discretion. In no event shall the City be required to provide non-disturbance to any operator or franchisor that is an Affiliate of Flagstone (or the applicable Major Subtenant of the Major Project Component which is subject to such operating or franchise agreement), unless a non-Affiliated minority interest in such Affiliate has the right, and so exercises such right, to take over control over such Affiliated-operator or franchisor, in which event City shall provide a subordination, non-disturbance and attornment agreement thereto acceptable to the City Manager in his or her reasonable discretion. Any such affiliated operator or franchisor shall execute a subordination agreement reasonably acceptable to the City Manager.

**6.1.11 Insurance.** All insurance policies required to be maintained by Flagstone under the Ground Lease(s) (and applicable to the work that is then ongoing) shall have been obtained, as evidenced by the originals of such policies of insurance or certified duplicates thereof issued by the applicable insurance companies, which policies shall name the City as an additional insured thereunder.

**6.1.12 No Default.** There shall be no Event of Flagstone's Default (as defined in Section 11.1 of this Agreement).

**6.1.13 Project Approvals.**

(a) The Partial Modification of Restrictions, MUSP Approval, NOPC Approval and foundation permits for each applicable Major Project Component(s) (the "Foundation Permits") shall have been issued by the applicable Government Authorities for the development and construction of the applicable Major Project Component(s) (collectively, the "Project Approvals"). The Project Approvals shall not be deemed to have been issued unless and until any and all appeals periods as provided by law shall have, expired without an appeal, objection or challenge having been filed, or, if filed, when such objection, challenge or appeal has been dismissed or resolved finally and conclusively to the satisfaction of the City Manager in his or her reasonable judgment.

(b) Flagstone shall (i) obtain and provide to the City Manager the Florida Department of Transportation Approvals ("FDOT Approvals") and City Approvals for site utility work for each of the Major Project Components on a component by component basis as necessary and as approved by the City and as required by the Master Declaration as a condition precedent to executing the first Ground Lease (the utility lines needed for both Hotel Components shall be provided at the same time as the construction of the utility lines for the Parking/Retail Components) to begin site utility work for the applicable Major Project Component(s), and in accordance with Composite Attachment 3 hereto, (ii) apply to the City for Foundation Permits and commence site utility relocation work by such time period as necessary to begin such site utility work for the applicable Major Project Components, (iii) obtain and provide any other necessary governmental approvals for commencement of construction for the applicable Major Project Component(s), and (iv) continue to use good faith efforts to keep active and in full force and effect such FDOT Approvals, City Approvals, Foundation Permits, other necessary governmental approvals, the Miami-Dade County Class I Permit for Marina which has been previously obtained, all in order for the City Manager to review and consider the construction schedule(s) as set forth in Subsection 6.1.8 above. Should any of the FDOT Approvals, the City Approvals, the Foundation Permits, the Miami-Dade County Class I Permit for the Marina, or any other governmental approvals temporarily lapse, (i) such lapse shall not be a reason to extend the Outside Dates for construction commencement of any Major Project Component, and (ii) such temporary lapse shall not constitute an Event of Flagstone's Default as long as Flagstone continues to use good faith efforts to reinstate any such lapsed FDOT Approval(s), City Approval(s), Class I Permit, the Foundation Permits, or any other governmental approval, as applicable.

**6.1.14**            Establishment of Skills Training and Employment Center Program. City Manager shall have approved in its reasonable good-faith judgment sufficient evidence of the establishment of a "Skills Training and Employment Center Program" at a site near the Project in Miami, Florida which shall provide for training of the construction and operations personnel associated with the Project in accordance with the Proposal.

**6.1.15**            Trust Agreement. Flagstone and City shall have executed four (4) counterpart originals of the "Trust Agreement" for the "Civic Arts Endowment Trust" to be created for the Project (which is referred to in Section 26.2 of the Ground Lease), which shall be in form and substance reasonably acceptable to the parties.

**6.1.16.**            Composite Attachment 3. The parties agree that all of the conditions precedent set forth in Composite Attachment 3 for the New Construction Schedule, Options to

Extend, New Payments Schedule, Related Defaults, and Notes Regarding Conditions Related Thereto shall be a part of this Article 6. The parties agree that Composite Attachment 3 provides the option for Flagstone to develop the Property on a component by component basis so that the conditions precedent in Composite Attachment 3 may occur on a component by component basis.

**6.2 Special Additional Conditions Precedent with Respect to Component by Component Development.**

With reference to component by component development, the City Manager shall have received (a) subject to the terms and conditions of Composite Attachment 3 regarding time periods for cross-defaults, a form of subordination, non-disturbance and attornment agreement for such Major Project Component ground lessee, similar to the form attached to the Amended and Restated Ground Lease as Exhibit "C", where the City agrees not to disturb such Major Project Component ground lessee notwithstanding a default hereunder, if applicable for that time period set forth in Composite Attachment 3 or under another Major Project Component ground lease; and (b) the City Manager shall have received a Master Declaration, subject to City Commission approvals as required, which, among other things (i) provides for the necessary rights of ingress, egress, and access so that each Major Project Component (whether developed or not) can be financed, developed and operated independently in the future, (ii) addresses the design, construction and provision of utility lines needed for all Components in connection with Flagstone's construction of each Major Project Component (whether developed or not) on a component by component basis or all at once, as necessary and as approved by the City, and (iii) establishes a Master Association and transfers responsibilities for all common infrastructure utilities and community property so that the entire Project can be financed and developed either all at once or in phases.

**6.2.1 Right of Termination.**

Termination. Flagstone agrees to use diligent good-faith efforts to cause the satisfaction of the conditions precedent set forth in ARTICLE 6 above and Flagstone shall promptly provide to the City Manager, from time to time, such written documentation as may be reasonably requested by the City Manager to evidence the same. In the event the conditions precedent set forth in ARTICLE 6 above are not satisfied (and the City Manager has not waived the same in writing in his or her sole and absolute discretion) on or before the applicable outside dates as described in Section 2.1.3, City or Flagstone, so long as the terminating party is not in default hereunder (which default has not been cured in accordance with any applicable notice and cure periods provided for in ARTICLE 11 hereof), shall have the right to terminate this Agreement, without cost or liability of either party to the other party, by written notice from the terminating party to the non-terminating party delivered within five (5) business days after the Lease Deadline, whereupon this Agreement shall be deemed terminated and of no further force or effect as of the date of such notice and both parties shall be relieved of any and all further liability or obligations hereunder except with respect to any provisions hereof that are intended by the parties to survive such termination.

**6.3 Outside Date(s).** As set forth in Section 2.1.3, the parties agree and acknowledge that certain outside dates (collectively, the "Outside Dates") are established for each Major Project Component on Composite Attachment 3, so that when adding up all of the time periods for satisfaction of the conditions precedent set forth in this ARTICLE 6 plus all the

applicable extensions therefor (including, without limitation, any extensions or other required time periods set forth in Composite Attachment 3 regarding the New Construction Schedule, the Options to Extend, the New Payment Schedule and the Notes Regarding Conditions Related Thereto) the longest possible term for this Agreement shall not continue beyond August 31, 2028 for both (i) the date for entering into the last Ground Lease(s) for the final Major Project Component(s) (the "Final Possession Date") and (ii) the start of construction for all of the Components (the "Final Construction Commencement Date"). Therefore, the parties acknowledge and agree that notwithstanding anything contained herein to the contrary, either party shall have the absolute right to terminate this Agreement by providing written notice to the other party if the conditions precedent set forth in Section 6.1 above are not satisfied on or before August 31, 2028.

## ARTICLE 7 DEVELOPMENT OF PROJECT

**7.1 Development Plans.** Flagstone shall, at its sole cost and expense, design and prepare all plans required or desirable in connection with the design and construction of the applicable Major Project Components, including, without limitation: (i) the Construction Plans and Specifications, (ii) all application materials necessary in connection with any MUSP Application, (iii) all application materials necessary in connection with any NOPC Application, (iv) all materials necessary or required in connection with obtaining the Project Approvals, the Mega-Yacht Marina Permits (as hereinafter defined) and all other permits and approvals necessary for the development and construction of the Project, and (v) any and all other necessary or desirable plans, drawings or renderings, including conceptual layouts and artistic or architectural renderings, elevations or plans (all of the foregoing collectively, the "Development Plans"). The Development Plans shall be materially consistent with the terms and provisions of this Agreement, the requirements of the Watson Island RFP, and the conditions and commitments set forth in the Island Gardens Proposal.

**7.2 Use and Ownership of Development Plans and Permits and Approvals in the event of Termination.** In the event of a termination of this Agreement due to an Event of Flagstone's Default, City shall be entitled to full, complete and unconditional use and ownership of the Development Plans (subject to the rights of the architect(s) and engineer(s) who prepare the same and any Approved Lenders' rights therein and any other persons and entities with rights therein; it being understood that City shall have no obligation to bring current any existing delinquencies but shall be obligated to make payments thereafter as they become due), the Project Approvals, the Mega-Yacht Marina Permits and all other permits and/or approvals obtained by Flagstone in connection with the Project without payment of any consideration therefor by City to Flagstone. Flagstone agrees that any agreement between the architect(s) and engineer(s) with respect to the Project shall provide that the City shall have the right to use such plans with respect to the Project without payment of any additional charge therefor. Attached as Exhibit 7.2 is a list of the Permits and Approvals held by Flagstone as of the Effective Date, which Permits and Approvals Flagstone shall use good faith reasonable efforts to maintain in full force and effect.

**7.3 Platting and Other Development Matters.** The Plat of Watson Island Southwest was approved by both the City and Miami-Dade County and recorded on February 7, 2007, in

Plat Book 166 at Page 11 of the Public Records of Miami-Dade County, Florida (the "Plat"). The Plat includes the Property. City shall have the right from time to time to enter into development related agreements which may impact or otherwise encumber the Property, including, without limitation, easements, water and sewer agreements (including, without limitation, the amendment or modification of such existing agreements), road vacations, etc, and Flagstone shall have no right to object to the same, provided that such agreements do not materially and adversely affect, in Flagstone's reasonable opinion, the use of the Property as contemplated by the Development Plans. Should Flagstone request additional changes that would require a "Re-Plat", then the City will continue to cooperate with Flagstone to complete such replatting processes in an expeditious manner and Flagstone shall be solely responsible for all costs and expenses related to such Re-Plat (which shall in no event be deemed to include any financial obligation on the part of the City).

#### **7.4 License(s)/Easements for Pre-Development Work**

**7.4.1 License(s)/Easements.** Subject to (i) obtaining the City Commission's prior written approval (which shall include, without limitation, approval as to the type and extent of work to be performed), and (ii) compliance with the Board of Trustees Deed (as the same may be modified in connection with Section 4.2.5 hereof) and Applicable Laws (including, without limitation, obtaining the appropriate permits necessary from the applicable Governmental Authority(ies)), City shall grant to Flagstone, for use by its agents, employees and contractors, a license or easement to perform certain pre-approved dredging work on the Submerged Parcel and/or a license or easement to perform certain pre-approved utility relocation and/or other pre-development work on the Uplands Parcel (whether a license or an easement, individually and/or collectively referred to herein as the "License" or "Easement", as applicable), all of which pre-approved work (the "Pre-Development Work") shall be performed at Flagstone's sole cost and expense, and in a good and workmanlike manner in accordance with all applicable Governmental Requirements. Each License shall be for a term not to exceed twelve (12) months (in total for each License) and shall be revocable for any reason by City upon thirty (30) days prior written notice. Any Easement shall be nonexclusive and for a temporary or permanent term as necessary for development of the Project, with security deposit requirements, payment and performance bond requirements, and insurance requirements, all as approved by the City Commission. During the term of any License and any Easement, City, or any of its agents, successors or assigns, shall have the right to enter the Property during all reasonable hours to examine and inspect the same. Except in the event of an issuance of such Licenses or Easements, Flagstone agrees that, Flagstone has no right, title, interest or claim in, or to the use of, the Property, all of which are waived hereby, unless and until the occurrence of the Lease Delivery Date. Notwithstanding anything contained herein to the contrary, in no event shall any License or any Easement granted in accordance with this Section 7.4 hereof be deemed to permit any party other than Flagstone, for use by Flagstone and its agents, contractors and employees, from using the Property as provided for herein. In connection with the Pre-Development Work, City agrees that it shall use good faith reasonable efforts (which shall in no event be deemed to include any financial obligation on the part of the City) to cooperate with Flagstone in coordinating any utility relocation within the Property with the Water and Sewer Department of Miami-Dade County. Attached as Exhibit 7.4.1 is a list of the Licenses/Easements in effect as of the Effective Date.

**7.4.2 No Consideration Except for Required Easement Security Deposit.**

The parties hereby acknowledge and agree that, during the term of the License or Easements, as applicable, except for the required Easement Security Deposit, no consideration (i.e., construction rent or otherwise) will be due from Flagstone to City. In the event that this Agreement is terminated for any reason whatsoever, (i) Flagstone shall not be entitled to reimbursement for any of its costs and expenses incurred in connection with the Pre-Development Work or for the value of any such improvements made by Flagstone to the Property in connection therewith; and (ii) except as specifically set forth in a surviving indemnification section of this Agreement or to the extent necessary to correct any defective work performed by Flagstone or to complete any incomplete work which is necessary in order to provide uninterrupted services to any other property owners (such costs shall be deemed to be "**Reimbursable Expenses**"), City shall not be entitled to reimbursement for any costs or expenses that may be incurred by City in connection with the Pre-Development Work (it being understood that in no event shall the foregoing be deemed to impose any obligation of the part of the City to incur any such cost or expense, but to the extent that City does incur Reimbursable Expenses, Flagstone shall promptly reimburse the same to City within thirty (30) days after receipt of a written invoice, together with reasonable supporting documentation, therefor. Flagstone shall maintain and cause its contractors to maintain the insurance referred to in Article XI of the Ground Lease (which is applicable to the work that is then ongoing) with respect to any Pre-Development Work performed by Flagstone in connection with such License or Easement(s).

**7.5 Indemnification and Waiver.** Flagstone agrees to defend, indemnify and hold City harmless from any and all claims, demands, actions, whether legal, equitable or otherwise, costs, damages (including reasonable attorneys' fees and experts' fees) and any other liability incurred now or in the future as a result of any claim, injury, death or property damage, resulting directly or indirectly from Flagstone's entry upon the Property and performance of the Pre-Development Work thereon. Flagstone agrees that its access to and use of the Property for the Pre-Development Work shall be solely at its own risk and expense. As a material inducement for City to grant the License(s) or the Easement(s), Flagstone does hereby release, waive, discharge, covenant not to sue, acquit, satisfy and forever discharge City and its officers, directors, employees, agents and attorneys and the affiliates and assigns of all of the foregoing of and from any and all liability, claims, counterclaims, defenses, actions, causes of actions, suits, controversies, agreements, promises and demands whatsoever, at law or in equity, which Flagstone or any of its members, officers, directors, employees, attorneys and agents and the affiliates and assigns of all of the foregoing had, now has, or hereafter can, shall or may have against City or its officers, directors, employees, attorneys and agents and the affiliates and assigns of all of the foregoing, for, upon, or by reason of any matter cause or thing whatsoever arising out of the License(s) or the Easement(s), the Pre-Development Work and/ or Flagstone's use of the Property. The foregoing indemnification obligations of Flagstone shall survive any expiration or termination of this Agreement. **Subject to the provisions and limitations of Florida Statutes Section 768.28, this subsection does not apply to the extent of the gross negligence or willful misconduct of the City or of any representative, agent, or independent contractor of the City.**

**7.6 Issuance to Flagstone of Marine Operating Permit for Existing Marina.** The City has transferred Marine Operating Permit No. MOP-000306 for the existing marina on



Watson Island (the "Operating Permit"), from the City to Flagstone. The Operating Permit remains in full force and effect in Flagstone's name through September 30, 2012. The City shall continue to cooperate (which shall not include any obligation for the City to incur any cost or expense) with Flagstone in connection with keeping the Operating Permit in good standing. In the event Flagstone desires to make minor repairs or improvements to the existing marina, and such repairs or minor modifications require the Miami-Dade County Department of Environmental Resources Management's ("DERM") approval, City shall, provided said repairs and renovations are approved by the City Manager, execute whatever documentation may be reasonably required in order to obtain DERM's approval. Any income derived from the operation of the existing Marina prior to the Lease Delivery Date shall belong to the City. Flagstone shall use continuing good faith efforts to maintain the Operating Permit in full force and effect throughout the term of this Agreement as it relates to the Marina Component and throughout the term of the applicable Ground Lease for the Marina Component; any failure to use continuing good faith efforts to maintain the Operating Permit in full force and effect shall constitute an Event of Flagstone's default related to the Marina Component of the Project. In the event that this Agreement is terminated for any reason related to the Marina Component other than the execution and delivery of the Ground Lease for the Marina Component, then, if so requested by City, Flagstone shall take whatever actions are necessary in order to promptly transfer the Operating Permit back to the City. The City shall have the right (but not the obligation), given or withheld in City's sole and absolute discretion, upon written request by Flagstone, prior to the execution of the Ground Lease for the Marina Component by Flagstone and the City, to issue Flagstone a License (in accordance with all provisions of Section 7.4.1 and in accordance with all City requirements for insurance, bonding, financial security, public safety and security for operators of City-owned facilities) to operate the existing marina and some temporary related facilities on terms mutually agreeable between the City and Flagstone. Should any of the approvals for the Marina Operating Permit temporarily lapse, (i) such lapse shall not be a reason to extend the Outside Dates for construction commencement of the Marina Component, and (ii) such temporary lapse shall not constitute an Event of Flagstone's Default as long as Flagstone continues to use good faith efforts to reinstate any such lapsed Marina Operating Permit.

**7.7 Marina Approvals.** Flagstone has obtained its required Marina Approvals from the County and Flagstone shall use its "best efforts" (as such term is defined below) to maintain in full force and effect throughout the term of this Agreement related to the Marina Component and throughout the term of the Ground Lease for the Marina Component all permits and approvals from Governmental Authorities (collectively, the "Mega-Yacht Marina Permits") which are required to construct and operate a marina substantially similar in size and capacity as the marina depicted in the Island Gardens Proposal (a "Mega-Yacht Marina"). If deemed necessary or desirable by the City Manager, any applications for renewals for Mega-Yacht Marina Permits shall be made with the City as the named applicant or co-applicant, as required by law. In the event Flagstone is able to maintain in full force and effect all of the Mega-Yacht Marina Permits as a condition precedent to executing the Ground Lease for the Marina Component, then the term "Marina" as used in the Ground Lease shall mean and refer to such Mega-Yacht Marina, and Flagstone shall develop and operate such Mega-Yacht Marina subject to and in accordance with the terms and conditions of the Ground Lease for the Marina Component.

**7.7.1** Best Efforts. For purposes hereof, the term "best efforts" shall mean that Flagstone shall take all of the following actions:

**7.7.1.1** Flagstone has made and shall continue to make good faith efforts, including expending commercially reasonable amounts of funds, and use all due diligence (including retaining consultants, professionals and experts and taking their advice) in pursuing and in continuing to maintain in full force and effect throughout the term of this Agreement relating to the Marina Component and throughout the term of the Ground Lease related to the Marina Component, all necessary Mega-Yacht Marina Permits (and specifically in taking all of the actions described in subsections 7.7.1.2 through 7.7.1.5 below).

**7.7.1.2** Flagstone has diligently developed and shall continue to diligently develop such detailed plans and specifications, drawings, schematics, sketches and other documentation with respect to a Mega-Yacht Marina (as defined above) as may be necessary or appropriate in connection with its good faith efforts in pursuing and in maintaining in full force and effect the Mega-Yacht Marina Permits (collectively, the "Mega-Yacht Marina Plans"). Should any of the Mega-Yacht Marina Permit for the Marina temporarily lapse, (i) such lapse shall not be a reason to extend the Outside Dates for construction commencement of the Marina Component, and (ii) such temporary lapse shall not constitute an Event of Flagstone's Default as long as Flagstone continues to use good faith efforts to reinstate any such lapsed Mega-Yacht Marina Permit, as applicable.

**7.7.1.3** Flagstone submitted the Mega-Yacht Marina Plans to the City Manager for his or her approval in accordance with the City Manager Approval Procedures and obtained such approval.

**7.7.1.4** After approval of the Mega-Yacht Marina Plans by the City Manager, with whatever modifications as were agreed upon at that time, all subject to and in accordance with the City Manager Approval Procedures, Flagstone submitted the Mega-Yacht Marina Plans to all necessary Governmental Authorities and obtained the Mega-Yacht Permits (it being understood that the applicable Governmental Authorities include, but are not necessarily limited to, the State of Florida Department of Environmental Protection, the Army Corps of Engineers (the "Corps"), the South Florida Water Management District ("SFWMD") and the Miami-Dade County Department of Environmental Resources Management ("DERM"), after responding to and accommodating, in a commercially reasonable manner, any reasonable requests by such Governmental Authorities for modifications to the Mega-Yacht Marina Plans. Flagstone informed the City Manager in writing of such modifications at that time. For any future modifications, the City Manager shall be informed, in writing, of such modifications by Flagstone, which shall include a legend at the top of the first page in a type face larger than that used elsewhere in the notice indicating that City is to provide approval or denial with comments within ten (10) business days pursuant to this Section 7.7.1.4. The City Manager shall have ten (10) business days from the date of receipt of such notice to review the modifications and advise Flagstone in writing that the modifications are disapproved. If notice of disapproval is not delivered within the ten (10) Business Day period, Flagstone shall give a written reminder notice to the City Manager. If notice of disapproval is not delivered within five (5) Business Days after such reminder notice is given, the modifications shall be deemed approved. The notice to review



and the reminder notice shall each contain legends at the top of the first page, in a typeface larger than that used elsewhere in the request, identifying the applicable required response time.

**7.7.1.5** After Flagstone obtained consensus among the staff of the applicable Governmental Authorities for the Mega-Yacht Marina Plans, Flagstone (a) submitted the Mega-Yacht Marina Plans (as same may have been modified as described above) and an application for a Class I Permit for the Mega-Yacht Marina (the "**Class I Permit Application**") to the Miami-Dade County Board of County Commissioners (the "**Board**") for final approval for the construction and operation of the Mega-Yacht Marina substantially in accordance with such Mega-Yacht Marina Plans, and had its representatives attend the hearing before the Board concerning same and persuaded the Board to approve same; and (b) submitted to the other applicable Governmental Authorities, including the SFWMD and the Corps., the Mega Yacht Marina Plans and the appropriate application(s) required for the issuance of the applicable Mega-Yacht Marina Permits and Flagstone thereafter continued to follow up with such application(s) including, but not limited to, appearing before the SFWMD Governing Board, until such Mega-Yacht Marina Permit(s) were issued by such Governmental Authorities.

**7.7.2 Notice and Meetings with City.** Flagstone has in the past provided and from the Effective Date of this Agreement shall continue to provide City with at least seven (7) days prior written notice of any meeting with the staff of applicable Governmental Authorities. City shall have the right to have a representative present (by telephone or in person) at each such meeting. In addition, Flagstone shall provide City with copies of any written correspondence between Flagstone and such Governmental Authorities in connection with the "best efforts" steps described in **Section 7.7.1** above for any future matters regarding the Mega-Yacht Marina.

**7.7.2.1** Flagstone has in the past held and from the Effective Date of this Agreement hereby agrees to continue to have monthly meetings with City's designated representatives to discuss the status of Flagstone's "best efforts" regarding the Mega-Yacht Marina, and to keep City regularly apprised through written updates as to what "best efforts" have been and are being taken by Flagstone in order to satisfy its continuing obligations regarding any future Governmental Approvals in **Section 7.7.1** above and the status thereof. If, after any such monthly meeting or after City receives any such written update, City believes, reasonably and in good faith, that Flagstone is not using its best efforts as described in subparagraph (c) above, City shall, within seven (7) Business Days after receiving any such meeting or written update, give written notice to Flagstone stating with particularity City's belief and the specific basis for such belief. If City fails to give such written notice within such seven (7) Business Day period, the actions by Flagstone which are described in such meeting or written update shall be deemed to constitute best efforts as described in **Section 7.7.1** above up to the last step taken by Flagstone as described in such meeting or written update, and City shall not be entitled to submit to arbitration the question of whether such actions by Flagstone constitute best efforts.

**7.7.2.2.** Notwithstanding the foregoing, Flagstone shall not be required to accept any unreasonable conditions for continued approval(s) or renewal(s) which would compromise the feasibility of the proposed Mega-Yacht Marina or place unreasonable financial or economic burdens on Flagstone (either in terms of increased costs or reduced income) or unreasonable

covenants, conditions and/or restrictions with respect to the development and operation of the proposed Mega-Yacht Marina Component.

**7.7.3 Notice of Failure to Maintain Mega-Yacht Marina Permits.** In the event Flagstone is unable, after using such best efforts, to maintain in full force and effect all of the Mega-Yacht Marina Permits then Flagstone shall provide written notice thereof to City. If City agrees that Flagstone has used such best efforts and the Mega-Yacht Marina Permits cannot be maintained, then, the term "Marina" as used herein and in the Ground Lease related to the Marina Component shall mean such marina as Flagstone is able to construct and operate based on the existing marina permits or such other permits and approvals from Governmental Authorities Flagstone is able to maintain in full force and effect, and Flagstone shall develop and/or operate such Marina subject to and in accordance with the terms and conditions of the Ground Lease related to the Marina Component. If City does not agree that Flagstone has used such best efforts to maintain in full force and effect the Mega-Yacht Marina Permits, then no later than thirty (30) days after City's receipt of written notice from Flagstone, City shall provide written notice to Flagstone that City is submitting the matter to arbitration in accordance with **Section 7.7.4** below; provided, however that City shall not be entitled to submit the matter to arbitration to the extent **Section 7.7.2.2** provides otherwise.

**7.7.4 Arbitration.** If at any time (including, without limitation, at the time Flagstone provides written notice to City that Flagstone is unable to maintain in full force and effect the Mega-Yacht Marina Permits) City believes in its good-faith reasonable judgment that Flagstone has not or is not using "best efforts" to maintain in full force and effect the Mega-Yacht Marina Permits, then City shall refer such dispute to final and binding arbitration, before a single arbitrator (the "**Arbitrator**"), under the commercial arbitration rules of the American Arbitration Association in Miami-Dade County, Florida. In determining whether Flagstone has used its best efforts as described in **Section 7.7.1** above, the Arbitrator may consider whether Flagstone should pursue any administrative appeals. In no event shall Flagstone be required to pursue litigation (although it may, at its option, elect to do so). The Arbitrator shall be selected by the parties and if the parties are unable to reach agreement on selection of the Arbitrator within ten (10) days after the notice of arbitration is served, then the Arbitrator will be selected by the American Arbitration Association. All documents, materials, and information in the possession of a party to this Agreement and in any way relevant to the claims or disputes shall be made available to the other parties for review and copying not later than 30 days after the notice of arbitration is served. To the extent that a party would be required to make confidential information available to any other, an agreement or an order shall be entered in the proceeding protecting the confidentiality of and limiting access to such information before a party is required to produce such information. Information produced by a party shall be used exclusively in the arbitration or litigation that may arise, and shall not otherwise be disclosed. The decision of the Arbitrator shall be final, binding and conclusive upon the parties and their respective administrators, personal representatives, legal representatives, heirs, successors and permitted assigns.

**7.8 Water and Sewer Agreement.** The parties acknowledge that on April 27, 2007, Miami-Dade County, the City and Flagstone entered into an Agreement for Water and Sanitary Sewage Facilities for the Project, which was subsequently amended (the "**WASA Agreement**"). The WASA Agreement expired in September, 2009. The City agrees that with the

approval of this Agreement, the City hereby authorizes the City Manager to approve and execute, after consultation with the City Attorney, a new Agreement for Water and Sanitary Sewage Facilities for the Project so long as such agreement is in substantially the same form as the original WASA Agreement.

**ARTICLE 8**  
**COORDINATION WITH CITY; APPROVAL PROCEDURES**

**8.1 Coordination with City.**

**8.1.1 Ombudsman.** City has appointed Public Facilities Real Estate Manager, Aldo Bustamante, as the City's internal representative who is experienced and qualified to (i) report directly to the City Manager, (ii) have authority to coordinate, expedite and respond for the City on behalf of the City Manager with respect to construction and development issues through the final permitting process; and (iii) have authority to coordinate on behalf of the City tenant-related issues among the various tenants of Watson Island (the "**Ombudsman**"). Among other things, the Ombudsman shall (i) lead and set schedules for the internal City review processes with respect to Construction Plans and Specifications, for at Flagstone's option, either development all at once or development on a component by component basis, (ii) after the Lease Delivery Date(s), for, at Flagstone's option, either development all at once or development on a component by component basis, expedite and help deliver construction inspection approvals (including building and fire department approvals), (iii) after the Lease Delivery Date(s), for at Flagstone's option either development all at once or development on a component by component basis, monitor and inspect the development and construction process on City's behalf, and (iv) otherwise represent and assist the City in coordinating the City's roles and responses and approvals.

**8.1.2 City Consultant.** In addition to the Ombudsman, City, at the request of Flagstone, shall retain on its behalf but at the sole cost and expense of Flagstone (which costs shall be mutually acceptable to the parties), an outside, qualified construction, development and fire and building consultant(s) who shall be mutually agreeable to City and Flagstone (individually or collectively, the "**Consultant**") to coordinate and assist in the development processes, at Flagstone's option either for development all at once or development on a component by component basis, and advise Ombudsman and City Manager. Responsibilities of the Consultant shall include the review of plans and development issues, assistance with permitting and inspection issues during the construction and development process and recommendations directly to City Manager and Ombudsman. Flagstone shall provide on-site desk, telephone and storage space to the Consultant.

**8.1.3 Cooperation.** Flagstone shall cooperate fully with the Ombudsman and Consultant, and shall promptly forward to same complete copies of plans and specifications and other reports and information customarily provided to an institutional mortgage lender, and such other information and materials as may be reasonably requested by the Ombudsman, Consultant or City. No inspection performed by the Ombudsman and Consultant with respect to the Pre-Development Work shall impose upon City any responsibility or liability for any failure by Flagstone to observe any requirements or safety practices in connection with such construction work, or constitute an acceptance of any work which does not comply with the provisions of this

Agreement. Ombudsman and Consultant shall provide copies to Flagstone of all reports and records concerning construction inspections. All matters shall be undertaken by the parties with a covenant of good faith and fair dealing by Flagstone and the City in reasonably complying with their respective obligations hereunder.

**8.2 City Manager Approval Procedures.** Any matter requiring City Manager approval under this Agreement or in connection with the Project (any such matter, an "**Approval-Requiring Matter**") shall be subject to the procedures set forth in this **Section 8.2**. The following shall apply with respect to all approvals requested by Flagstone from the City Manager:

**8.2.1** Except for those instances expressly set forth herein where approval may be withheld by the City Manager his or her "sole discretion" or "sole and absolute discretion", any other approvals to be given by the City Manager hereunder shall not be unreasonably withheld;

**8.2.2** Approval or denial responses shall be given within fourteen (14) days (provided that for submissions which require the review of Construction Plans and Specifications or new modifications thereof which are not merely items that follow from or are consistent with prior approvals already given, thirty (30) days shall be given) of submission to City Manager of the last piece of materially necessary written information; provided, however, that (i) submission of any Approval-Requiring Matter shall be accompanied by a written request for approval which shall include a legend at the top of the first page in a type face larger than that used elsewhere in the request for approval indicating that City is to provide approval or denial with comments within fourteen (14) days (or thirty (30) days, as applicable) pursuant to this **Section 8.2.2**, (ii) Flagstone shall promptly submit to City any additional information or materials requested by City (provided that such request: (a) shall be made by City no later than seven (7) calendar days of receipt by City of Flagstone's initial submission; (b) shall be for information which is materially necessary for the purpose of aiding the City's review of the original submission; and (c) shall be limited to no more than two (2) times for any such request for additional submission), and (iii) the fourteen (14) day approval period (or thirty (30) day, as applicable) shall not commence until such additional information and materials are received by City;

**8.2.3** Notice of denial shall be accompanied by reasonably specific written comments as to the reasons for such denial and what alternatives might be acceptable to City. Denial of approval of any Approval-Requiring Matter may be based on any reasonable grounds; however, denial may not be given with respect to, or materially inconsistent with, any approval previously given to Flagstone;

**8.2.4** Approval or denial with comments of any resubmission of an Approval-Requiring Matter shall be given within seven (7) business days provided that such resubmission of any Approval-Requiring Matter shall be accompanied by a written request for approval which shall include a legend at the top of the first page in a type face larger than that used elsewhere in the request for approval indicating that City is to provide approval or denial with comments within seven (7) business days pursuant to this **Section 8.2.4**;

**8.2.5** In the event that the City has not provided its approval or denial with comments to Flagstone in accordance with the time-frames set forth above, then Flagstone shall provide a

written reminder notice to City which specifies that City has five (5) days to so respond to such submission, which reminder notice shall include a legend at the top of the first page in a type face larger than that used elsewhere in the reminder notice indicating that City is to provide approval or denial with comments within five (5) days pursuant to this Section 8.2.5. In the event that City does not then respond within such five (5) day period, such matter shall be deemed approved by City; and

**8.2.6** If materials resubmitted by Flagstone in connection with any construction related issue, which conform to all written comments, are not subsequently approved, disagreements may be submitted to binding, expedited arbitration.

**8.3 City Manager Approvals; Disclaimer.** Notwithstanding anything to the contrary contained in this Agreement, Flagstone acknowledges that any approvals by the City Manager of any Approval-Requiring Matter shall in no event be deemed to be a guarantee of the City Commission's or any other governmental or quasi-governmental agencies' approval of such Approval-Requiring Matter. Any approval by the City Manager of an Approval-Requiring Matter shall be made solely in City's capacity as the owner of the Property and not in any governmental capacity and Flagstone shall remain responsible for obtaining whatever permits, licenses and approvals may be necessary to improve the Property in accordance with any such Approval-Requiring Matter, as well as all Applicable Laws. In addition, approval by the City Manager of any Approval-Requiring Matter shall not constitute a warranty or representation by City that the Project Components meet all government requirements or building codes nor that such plans will, if followed, result in properly designed or constructed Project Components or that any Project Component built in accordance therewith will be built in a good or workmanlike manner. Notwithstanding anything contained to the contrary in this Agreement, the parties recognize and agree that certain provisions of this Agreement may require the City and/or its boards, departments or agencies, acting in their governmental capacity, to consider certain changes in applicable City codes, ordinances, plans or regulations, as well as to consider other governmental actions. All such considerations and actions shall be undertaken in accordance with established requirements of state statute and City ordinances, 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 applications for Project Approvals and/or other permits and approvals which may be required in connection with the Project by virtue of the fact that the City may have consented to such applications as a property owner hereunder. The parties further recognize and agree that these proceedings shall be conducted openly, fully, freely and fairly in full accordance with law and with both procedural and substantive due process to be accorded the applicant and any member of the public. Nothing contained in this Agreement shall entitle Flagstone to compel the City to take any such actions, save and except the consents to the filing of such applications for MUSP Approvals, land use approvals or other required approvals, as more fully set forth herein, and to timely process such applications. This Section shall not limit the City's obligations under this Agreement in the City's proprietary capacity nor limit the City's rights and responsibilities in its governmental capacities.

**ARTICLE 9**  
**DISCHARGE OF LIENS**

**9.1 No Liens.** Flagstone shall use reasonable efforts to not create or permit to be created any Liens upon the Property or any part thereof.

**9.2 Discharging Liens.**

**9.2.1** With respect to the liens listed on **Exhibit 9.2.1** attached hereto as of the Effective Date of this Agreement (collectively, the "**Existing Liens**"), Flagstone shall either discharge all existing and alleged liens, judgments and garnishments as required by Attachment 3, Section IX and Section 2(c) of the Amended and Partial Modification or deliver to the Miami-Dade County Clerk of Courts Registry, to be held in an escrow account as follows: (a) under Section 2(c) under the Amended Partial Modification an amount not less than one hundred twenty five percent (125%) of all judgments not previously discharged on or before January 17, 2012; and (b) under Section IX of Attachment 3, an amount not less than the total remaining outstanding balance of all liens, garnishments and judgments not previously discharged within one hundred and twenty (120) days from September 15, 2011, as set forth in Composite Attachment 3. If Flagstone elects to discharge all existing and alleged liens, judgments and garnishments prior to the execution of this Agreement, Flagstone shall provide satisfactory evidence of such discharges to the City prior to this Agreement being executed. The escrow amount shall remain until the first Ground Lease is executed. Such escrow deposit amount shall be incremented as and if necessary to cover any alleged additional liens, claims of liens, judgments, and garnishments.

**9.2.2** After the Effective Date of this Agreement (except as provided in 9.2.1 above for Existing Liens) and during the term thereafter of this Agreement, if any Lien shall at any time be filed against the Property, or any part thereof, within forty-five (45) days after notice of filing thereof, Flagstone shall cause the same to be discharged, removed, or transferred to bond in accordance with the requirements of law. If Flagstone fails to cause such Lien to be discharged or transferred to bond within such forty-five (45) day period, then City may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such Lien by deposit or by bonding proceedings, or by any other manner permitted by law (provided, however, that before City pays any amounts on behalf of Flagstone in connection herewith, City shall provide Flagstone five (5) days prior written notice of its intent to so do so hereunder). Any amount so paid by City and all costs and expenses incurred by City in connection with the discharge of such Lien shall be reimbursed to City by Flagstone, together with interest thereon at the highest lawful rate permitted by law from the date of City's making of any such payment or incurring of any such costs and expenses until paid in full. City shall notify Flagstone in writing of the dates and amounts of any such payments and related interest rates thereon, and Flagstone shall reimburse City within seven (7) calendar days following receipt of such notification.

**9.3 Hold Harmless, Indemnification and Security Agreement.** As required by City Commission Resolution No. 10-0144 adopted March 25, 2010, Flagstone has provided the Hold Harmless, Indemnification and Security Agreement attached hereto and incorporated hereby as Exhibit 9.3. Any default by Flagstone under the Hold Harmless, Indemnification and Security Agreement shall be an Event of Flagstone's Default under this Agreement and an Event of



Lessee's Default under the related Ground Lease(s).

**ARTICLE 10**  
**CONDEMNATION**

**10.1 Material Taking.** If at any time prior to the Lease Delivery Date(s) the whole or any portion of the Property which would have a material impact on the Project (as reasonably determined by Flagstone and City) shall be taken by the exercise of the right of condemnation or by agreement between City, Flagstone and those authorized to exercise such right, this Agreement shall, upon the written election of either party, terminate and expire as of the date of such election.

**10.2 Less than a Material Taking.** If at any time prior to the Lease Delivery Date for the applicable Major Project Component a portion of the Property for such Major Project Component which does not have a material impact on the Project (as reasonably determined by Flagstone and City) shall be taken by any lawful power or authority by the exercise of the right of condemnation or by agreement between City, Flagstone and those authorized to exercise such right, this Agreement shall not terminate in connection with the exercise of such right and shall continue in full force and effect.

**10.3 Award.** The award or awards received in consideration of any taking (material or non-material) shall be allocated between the parties based upon the parties' respective interests under this Agreement and the Ground Lease(s). Each party shall bear its own expenses of negotiation and litigation with respect to the award or awards unless the parties agree to share certain expenses, in which event the shared expenses shall be allocated between (and paid from) the proceeds thereof, in the ratio in which the amount of the gross award payable to each party bears to the total thereof.

**ARTICLE 11**  
**DEFAULT AND REMEDIES; TERMINATIONS**

**11.1 Events of Flagstone's Default.** Each of the following events shall be an "Event of Flagstone's Default" hereunder:

**11.1.1** The failure of Flagstone to perform or observe any of the covenants, conditions and agreements on the part of Flagstone to be performed hereunder within thirty (30) days (unless another time period is provided in the Agreement) after written notice of such failure;

**11.1.2** If Flagstone (a) shall suffer or permit to be entered a decree or order of a court or agency or supervisory authority having jurisdiction determining it to be insolvent or providing for the appointment of a conservator, receiver, liquidator, trustee or any similar Person or entity appointed in connection with any insolvency, readjustment of debt, marshaling of assets and liabilities, bankruptcy, reorganization or similar proceedings of or relating to it or of or relating to all, or substantially all, of its property, or for the winding-up or liquidation of its affairs and such proceedings remain undismissed or pending and unstayed for a period of ninety (90) days or (b) shall suffer or permit to be instituted proceedings under any law relating to

bankruptcy, insolvency or the reorganization or relief of debtors to be instituted against it and such proceedings remain undismissed or pending and unstayed for a period of ninety (90) days;

**11.1.3** If Flagstone shall (a) consent to the appointment of a conservator, receiver, trustee, liquidator or custodian in any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings of or relating to it or of or relating to all, or substantially all, of its property or for the winding-up or liquidation of its affairs, (b) admit in writing its inability to pay its debts generally as (they become due, (c) file a petition, or otherwise institute, or consent to the institution against it of, proceedings to take advantage of any law relating to bankruptcy, insolvency or reorganization or the relief of debtors, or (d) make an assignment for the benefit of its creditors;

**11.1.4** If Flagstone shall be dissolved without City having permitted a successor to the rights of Flagstone under this Agreement; or

**11.1.5** Any express, material representation made hereunder shall prove to have been incorrect in any material respect when made.

**11.1.6.** Any failure of Flagstone to make any payment required by Composite Attachment 3 hereto which failure is not cured within ten (10) days of the payment due date.

**11.1.7.** Any failure of Flagstone to make any payment or any deposit required by the Escrow Agreement in **Article V** hereof or by the Hold Harmless and Indemnification Agreement attached hereto as **Exhibit 9.3** which failure is not cured within the cure period set forth in such Escrow Agreement or such Hold Harmless and Indemnification Agreement as applicable.

**11.1.8.** Any failure of Flagstone to make the security deposit(s) required by Article 5 hereof, which failure is not cured within ten (10) days of the required security deposit date.

**11.1.9.** Any Composite Attachment 3 deadline providing for a termination if such deadline is not achieved is not to be considered a default hereunder; provided however, that where failure to perform under Composite Attachment 3 by a certain deadline does not have a termination right, then such type of failure to perform by a certain deadline is a default hereunder

**11.2 Remedies for Flagstone's Default.** If an Event of Flagstone's Default shall occur, City shall have the right to terminate this Agreement and require full distribution of the Article 5 Security Deposits, and the Hold Harmless and Indemnification Agreement Security Deposit(s) to City as liquidated damages as and for its sole remedy hereunder; it being agreed that the Article 5 Security Deposits and the Hold Harmless and Indemnification Agreement Security Deposits represents a reasonable endeavor by the parties to ascertain that said sums would be the minimal damages suffered by City upon the occurrence of an Event of Flagstone's Default hereunder or pursue the remedy of specific performance for any such Event of Flagstone's Default.

**11.3 City's Default.** If City fails to perform or observe any of the covenants, conditions and agreements on the part of City to be performed hereunder within thirty (30) days after



written notice of such failure, then Flagstone may, provided that an Event of Flagstone's Default has not occurred, at its option: (i) terminate this Agreement and require full distribution of the Article 5 Security Deposits to Flagstone as liquidated damages as and for its sole remedy hereunder, it being agreed that the Article 5 Security Deposits represent a reasonable endeavor by the parties to ascertain that said sums would be the minimal damages suffered by Flagstone upon the occurrence of a default by the City; or (ii) pursue the remedy of specific performance. Flagstone waives all other remedies it may have against City at law or in equity. Notwithstanding any default by the City, Flagstone acknowledges that it is not entitled to any security deposit funds under the Hold Harmless and Indemnification Agreement (as the City has had to become involved in lawsuits and use City time, personnel and resources due to the Existing Liens against Flagstone which were wrongly attached to the City's Property).

#### **11.4 Terminations.**

##### **11.4.1 Terminations by Either Party:**

(a) If all of the conditions precedent set forth in Section 4.2 above are not satisfied on or before August 31, 2028, and so long as the terminating party is not in default (which default has not been cured in accordance with any applicable notice and cure periods provided in this ARTICLE 11), either party shall have the absolute right to terminate this Agreement, without cost or liability of either party to the other party, by written notice from the terminating party to the non-terminating party delivered within five (5) business days after the Lease Delivery Date has passed, whereupon this Agreement shall be deemed terminated and of no further force or effect as of the date of such notice and both parties shall be relieved of any and all further liability or obligations hereunder except with respect to any provisions hereof that are intended by the parties to survive such termination.

(b) If all of the conditions precedent set forth in Section 6.1 above are not satisfied on or before August 31, 2028, and so long as the terminating party is not in default (which default has not been cured in accordance with any applicable notice and cure periods provided in this ARTICLE 11), either party shall have the absolute right to terminate this Agreement, without cost or liability of either party to the other party, by written notice from the terminating party to the non-terminating party delivered within five (5) business days after the Lease Delivery Date has passed, whereupon this Agreement shall be deemed terminated and of no further force or effect as of the date of such notice and both parties shall be relieved of any and all further liability or obligations hereunder except with respect to any provisions hereof that are intended by the parties to survive such termination.

(c) Composite Attachment 3 attached hereto and incorporated hereby also provides for certain rights of termination of the parties in certain events as set forth therein.

### **ARTICLE 12** **REPRESENTATIONS BY FLAGSTONE AND CITY; DEFENSE AND RELEASE**

**12.1 Flagstone's Representations.**  
that:

Flagstone hereby represents and warrants to City

**12.1.1**        **Existence and Capacity.**     Flagstone is a duly organized and validly existing limited liability company in good standing under the laws of the State of Delaware, and is in good standing and authorized to transact business as a foreign entity under the laws of the State of Florida. Flagstone has full power and capacity to carry on its business as presently conducted by Flagstone, and to enter into this Agreement and the transactions contemplated by this Agreement.

**12.1.2**        **Financial Resources and Evaluation of Project.**     At such time as Flagstone enters in to the related Ground Lease(s) for each of the applicable Major Project Component(s), Flagstone shall represent and warrant to the City that, to the best of Flagstone's knowledge: (i) Flagstone has access to sufficient funds to satisfy the Initial Equity Requirement regarding such Major Project Component; (ii) as of the Lease Delivery Date, Flagstone will have closed upon an Initial Construction Loan for the applicable Major Project Component(s); and (iii) the total of such sums will be sufficient to carry out the development and construction of the applicable Major Project Component(s) and to operate the applicable Major Project Component(s) and comply with the terms and conditions of this Agreement and the related Ground Lease(s). Flagstone has done such studies and has made such evaluations as it deems appropriate regarding the tourism and local markets in the area surrounding Watson Island and has deemed it desirable to invest in the Project, recognizing the risks inherent therein. Flagstone acknowledges that the City shall not be liable under this Agreement for any actions taken by the City, acting in its municipal capacity, including, without limitation, any actions which may adversely impact tourism, crime, the local economy, the success of this Project, etc., and that in no event shall any actions taken by the City in its municipal capacity be the basis for any cause of action or defense of any obligation by Flagstone hereunder. Flagstone shall provide to the City at least thirty (30) days in advance of the proposed Lease Delivery Date for each Major Project Component such pro forma, budget, financial, and other commercially reasonable written information necessary for the City's review and to determine the pro rata amount of the Initial Equity Requirement for that Major Project Component and to determine that such Initial Equity Requirement has in fact been met for the particular Major Project Component. This section shall survive any termination of this Agreement.

**12.1.3**        **Binding Obligations.**        This Agreement constitutes the valid and binding obligations of Flagstone, enforceable against Flagstone in accordance with its terms.

**12.1.4**        **Insurance.**     Flagstone currently holds the insurance types, amounts and coverages required by the City's Risk Management Department as evidenced by its certificates attached hereto as **Exhibit 12.1.4**, naming the City as an additional insured, and Flagstone will maintain such insurance types, amounts and coverages in full force and effect throughout the term of this Agreement. All information set forth in such Exhibit 12.1.4 is true and correct to the best of Flagstone's knowledge.

**12.2**        **City's Representations.**     City hereby represents and warrants to Flagstone that the Property is free of any encumbrance or restriction other than those disclosed in **Exhibit 12.2** attached hereto, as the same may be updated at Flagstone's request and Flagstone's expense (the "**Permitted Title Exceptions**"). City shall maintain the Property in its present condition, ordinary wear and tear excepted, and except for the matters set forth in **Section 7.3** and the

Permitted Title Exceptions, City shall not permit any liens or other encumbrances to be filed against the Property.

**12.3 Disclaimer of Representations by Flagstone.** Flagstone hereby expressly acknowledges and agrees that, in connection with the Watson Island RFP or otherwise:

**12.3.1** City makes and has made no warranty or representation whatsoever as to the condition or suitability of any portion of the Property for Flagstone's purposes;

**12.3.2** City makes and has made no warranty, express or implied, with regard to the accuracy of any information furnished to Flagstone, and City shall not be bound by any statement of any broker, employee, agent or other representative of City;

**12.3.3** City has made no representations, warranties or promises to Flagstone not explicitly set forth herein.

**12.3.4** City makes and has made no representation or warranty, express or implied, with regard to the likelihood that the remainder of Watson Island will be developed or as to the precise type, or quality of improvements that will be constructed thereon or the timing of the same; and

**12.3.5** City makes and has made no representation or warranty, express or implied, concerning any portion of the Property, their condition or any other thing or matter directly or indirectly related thereto or hereto including, without limitation, no warranty, merchantability, or fitness for any particular purpose or relating to the absence of latent or other defects.

**12.3.6 Defense and Release.** The parties believe that this Agreement and the form of Ground Lease(s) attached hereto are consistent in all material respects with the Watson Island RFP and Island Gardens Proposal. Nevertheless, Flagstone acknowledges and agrees that the Watson Island RFP, the Island Gardens Proposal, this Agreement and/or the Ground Lease(s) may be challenged by private third parties for various reasons. Flagstone agrees to defend City, its officials, employees, agents and representatives against any and all claims arising from, out of or in connection with or otherwise relating to any such challenge. Furthermore, Flagstone acknowledges and agrees that City shall have no liability whatsoever to Flagstone or any Investors in Flagstone and/or the Project in connection with any such challenge or otherwise and notwithstanding that the foregoing acknowledgement that City shall have no such liability, Flagstone hereby forever waives and releases City from any such liability, now or hereafter arising. The foregoing defense obligations of Flagstone and release shall survive any expiration or termination of this Agreement.

## **ARTICLE 13** **MISCELLANEOUS**

### **13.1 Assignment.**

**13.1.1 By Flagstone.** In no event shall Flagstone be permitted to assign its rights and/or obligations under this Agreement (it being understood that in no event shall the

foregoing be deemed to prohibit Flagstone from obtaining equity investments therein, subject to the provisions of Section 6.1.3); provided, however, and subject to the change of control and transfer, only to the extent that such transfer does not decrease the Lessee's Voting and Operational Control less than Fifty Percent (50%) of the ownership interest as further defined under the provisions of the applicable Ground Lease(s) (which were prepared in accordance with the requirements of the RFP and the Island Gardens Proposal), Flagstone shall be permitted to make assignments, enter into subleases for each Major Project Component, obtain equity investments in the Project, and effect other transfers to the extent not in conflict with the requirements of, and the resulting change of control, permitted transfers, and other applicable provisions of the form of Ground Lease(s).

**13.1.2 By City.** In no event shall City be permitted to assign its rights and/or obligations under this Agreement.

**13.2 Notices.** Any notices or communications under this Agreement between the parties shall be in writing and delivered to the persons at the addresses specified for notices to such parties in the Ground Lease. All notices shall be deemed received when actually delivered, if delivered by hand, facsimile transmittal or by a nationally recognized overnight delivery service. Each party may substitute one or more times the persons and the addresses to whom notices and communications shall be sent to, but such change shall not be effective until the other party receives such communication in accordance with this Section 13.2.

**13.3 Applicable Law.** This Agreement shall be governed by the laws of the State of Florida.

**13.4 Severability.** If any term, covenant or condition of this Agreement or the application thereof to any Person or circumstances shall, to any extent, be determined by the appropriate judicial authority to be illegal, invalid, or unenforceable, the remaining terms, covenants and conditions of this Agreement or application of such terms, covenants or conditions to Persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant, or condition of this Agreement shall be bound and enforced to the fullest extent possible by law.

**13.5 Waiver/Deferral.** No waiver or deferral of any term, provision, condition or covenant of this Agreement by any party shall be deemed to imply or constitute a further waiver by such party of any other term, provision, condition or covenant of this Agreement. Any waiver or deferral hereunder must be waived or deferred in writing by the waiving or deferring party.

**13.6 No Third-Party Beneficiary.** Nothing contained in this Agreement shall be construed so as to confer upon any other party the rights of a third party beneficiary.

**13.7 Enforcement Costs.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, court costs and all expenses (including, without limitation, all such fees, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action,

arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs and all other charges billed by the attorney to the prevailing party.

**13.8 Entire Agreement.** This Agreement and the Ground Lease(s) (to the extent in effect) represent the entire agreement between the parties hereto and supersede any and all previous agreements and understandings, whether written or oral, between the parties. No representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied or described in this Agreement and the Ground Lease(s) (to the extent in effect) shall be of any force or effect. No modification or amendment of this Agreement shall be binding upon the parties unless such modification or amendment is in writing and is signed by the party to be bound thereby.

**13.9 Headings.** The titles of the several clauses and parts of this Agreement are inserted for convenience of reference only and shall be disregarded when construing or interpreting any of its provisions.

**13.10 References.** Except as otherwise specifically indicated, all references to Article, Section and Subsection numbers refer to Articles, Sections and Subsections of this Agreement and all references to Exhibits refer to the Exhibits attached hereto, and all references to Attachments refer to Attachments attached hereto, which exhibits and attachments are incorporated herein by this reference. The words "herein", "hereof", "hereunder", "hereinafter" and words of similar import refer to this Agreement as a whole and not to any particular Article, Section or Subsection of this Agreement. Unless expressly stated to the contrary, reference to any Article includes all of the Sections contained therein, and reference to any Section includes the Subsections contained therein. The terms "include" and "including" shall be construed as if followed by the phrase "without being limited to."

**13.11 Brokers.** Each of the parties represents and warrants that such party has dealt with no broker or finder in connection with any of the transactions contemplated by this Agreement, and, insofar as such party knows, no broker or other Person is entitled to any commission or finder's fee in connection with any of these transactions. The parties each agree to indemnify, defend and hold harmless one another against any loss, liability, damage, cost, claim or expense incurred by reason of any brokerage commission or finder's fee alleged to be payable because of any act, omission or statement of the indemnifying party, which indemnification shall survive any termination of this Agreement.

**13.12 No Partnership or Joint Venture.** Nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing a partnership or a joint venture between City and Flagstone, or as constituting Flagstone as the agent or representative of City or City as the agent or representative of Flagstone for any purpose or in any manner whatsoever.

**13.13 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Confirmation of execution by electronic transmission of a facsimile signature page shall have the same effect as original signatures.

**13.14 Venue and Jurisdiction.** The parties acknowledge that a substantial portion of the negotiations, anticipated performance, and execution of this Agreement occurred in Miami-Dade County, Florida. Except for matters to be resolved in accordance with specific Arbitration provisions described herein, the parties agree that any disputes, civil actions, or legal proceedings arising out of or relating to this Agreement shall be brought in the courts of record of the State of Florida in Miami-Dade County, Florida, or in the United States District Court, Southern District of Florida, Miami-Dade County Division. Each Party consents to the jurisdiction of such courts in any such civil actions or legal proceedings and waives any objections to the laying of venue of any such civil action or legal proceeding in such court(s). Service of any court paper may be effected on such party by mail, as provided in the Notice provisions of this Agreement, or in such other manner as may be provided under applicable laws, rules of procedure, or local rules.

**13.15 Waiver of Jury Trial.** The parties hereby knowingly, irrevocably, voluntarily, and intentionally waive any right either may have to a trial by jury in respect of any action, proceeding, or counterclaim, based on, or arising out of, under or in connection with this Agreement or any amendment or modification of this Agreement, or any other agreement executed by and between the parties in connection with this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party hereto. This waiver of jury trial provision is a material inducement for the parties to enter into this Agreement.

**13.16 No Conflicts of Interest.** Flagstone agrees to comply with the applicable conflict of interest provisions of the Code of the City of Miami, the Miami-Dade County Code, and the laws of the State of Florida as such are amended from time to time. No member, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement or the Ground Lease(s), nor shall any member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any other Person (as defined in the form of Ground Lease(s)) in which he or she is, directly or indirectly, interested. No member, official, or employee of the City shall be personally liable to Flagstone, its successors or assigns, or anyone claiming by, through, or under Flagstone or any successor in interest to the Property, in the event of any default or breach by the City or for any amount which may become due to Flagstone, its successors, and assigns, or any successor in interest to the Property, or on any obligation under the terms of this Agreement or under the Ground Lease(s).

[SIGNATURES FOLLOW]

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, City and Flagstone have caused this Agreement to be executed as required by law as of the date set forth beside the parties signatures below.

Attest:

THE CITY OF MIAMI, a municipal corporation  
of the State of Florida

By: \_\_\_\_\_  
Name: Priscilla A. Thompson  
Title: City Clerk  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Johnny Martinez, P.E.  
Title: City Manager  
Date: \_\_\_\_\_

APPROVED AS TO FORM AND  
CORRECTNESS:

APPROVED AS TO INSURANCE  
REQUIREMENTS:

By: \_\_\_\_\_  
Name: Julie O. Bru  
Title: City Attorney

By: \_\_\_\_\_  
Name: Calvin Ellis  
Title: Director of Risk Management

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 2011, by \_\_\_\_\_,  
who ( ) is personally known to me, or ( ) has produced \_\_\_\_\_ as identification.

Notary Public

My commission expires:

FLAGSTONE ISLAND GARDENS LLC, a  
Delaware limited liability company

ATTEST:

By: [Signature]  
Name: DAVID J. COVELLO  
Title: \_\_\_\_\_  
Date: 12/21/11

By: FLAGSTONE DEVELOPMENT  
CORPORATION, a Delaware corporation, its  
Managing Partner

By: [Signature]  
Name: Mehmet Bayraktar  
Its: President  
Date: 12/21/11

Sworn to and subscribed before me this 21<sup>st</sup> day of December, 2011, by Mehmet Bayraktar, who  is personally known to me, or  has produced \_\_\_\_\_ as identification.

[Signature]  
Notary Public

My commission expires:



LINDA HERRERA  
MY COMMISSION # DD 908401  
EXPIRES: July 19, 2013  
Bonded Thru Budget Notary Services



## LIST OF EXHIBITS

Exhibit A	Legal Description of the Property
Exhibit B	Definitions
Exhibit C	Form of Ground Lease(s)
Exhibit 3.3.1	Approved Environmental Consultants
Exhibit 3.5	Insurance
Exhibit 4.1.1	Title Matters
Exhibit 4.1.2	Environmental Condition Acceptance Notice
Exhibit 4.1.3	Investors List
Exhibit 4.1.4	List of Organizational Documents
Exhibit 4.1.5	Expressions of Interest
Exhibit 4.2.2	Binding letter from DCA
Exhibit 4.2.5	Amended Partial Modification and City commission Resolution No. R-11-0337, adopted September 15, 2011
Exhibit 4.2.6	Existing Occupants
Exhibit 5.3	Escrow Agreement
Exhibit 6.1.4	Pre-Approved Candidates for Development Team
Exhibit 6.1.5	Pre-Approved Hotel Operators and/or Franchisors
Exhibit 7.2	List of Permits and Approvals Held by Flagstone
Exhibit 7.4.1	List of Licenses/Easements
Exhibit 7.6	Marine Operating Permit
Exhibit 9.2.1	Existing Liens
Exhibit 9.3	Hold Harmless and Indemnification Agreement
Exhibit 12.2	Permitted Title Exceptions
Exhibit 12.1.14	Existing Insurance Coverages
Composite Attachment 1	Resolutions of the (to be updated City Commission Resolution No R-01-972, adopted September 17, 2011; Resolution No. 01-1028 adopted September 25, 2001; and Resolution No. 10-0402.
Composite Attachment 2	Company Authorization of Flagstone

Composite Attachment 3

Exhibit A to City Commission Resolution No. 10-0402, adopted September 23, 2010, regarding Construction Schedule, Options to Extend, Payment Schedules, and Related Defaults and Notes

Composite Attachment 4

City Commission Resolution No. 09-0263, adopted May 28, 2009, regarding Labor Peace Agreements

Exhibit A

LEGAL DESCRIPTION OF UPLAND PARCEL

Commence at a point shown marked by an 5/8" diameter iron rod and Cap Stamped F.D.O.T., shown as P.T. Sta. 25+50 on the "Official Map of Location and Survey of a portion of Section 8706, designated as part of State Road A-1-A in Dade County, Florida", prepared by the State Road Department of the State of Florida, as recorded in Map Book 56, at Page 71 of the Public Records of Dade County, Florida. Said point being the point of tangency of the original center line of the Douglas MacArthur Causeway running Easterly and South Easterly from the Westerly limits (West Bridge) of Watson Island as shown on Sheet 3 of the State Road Department Right-of-Way Map, Section No. (8706-112) 87060-2117, revised March 25, 1959, said most Northerly curve having a radius of 1432.69 feet and a central angle of 62° 00' 00 seconds"; thence South 59° 51' 26" West departing radially from said centerline a distance of 987.36 feet to a Projected Bulkhead line; thence North 17° 12' 21" West along said bulkhead line, a distance of 238.86 feet to the point and place of beginning; thence North 17° 12' 21" West continuing along said bulkhead line a distance of 924.70 feet to the Southerly right of way line of State Road A-1-A Douglas MacArthur Causeway; thence along said Southerly right of way line the following courses and distances; South 89° 10' 55" East, a distance of 73.08 feet; thence North 86° 44' 00" East, a distance of 67.09 feet to non-tangent curve concave to the Northeast whose radial line bears North 39° 29' 18" East having a radius of 160.00 feet and central angle of 22° 09' 33"; thence along said curve an arc length of 61.88 feet; thence South 72° 40' 15" East continuing along said Southerly right of way line a distance of 276.49 feet; to a curve concave to the Southwest having a radius of 600.00 feet and central angel of 46° 17' 39" thence along said curve an arc length of 484.79 feet to a point of tangency; thence South 26° 22' 36" East continuing along the southwesterly right of way line of State Road A-1-A, a distance of 196.59 feet; thence South 54° 07' 39" West Departing Said right of way line, a distance of 532.16 feet; thence North 35° 54' 03" West, a distance of 132.74 feet; thence South 54° 07' 39" West, a distance of 150.14 feet to the point of beginning.

Exhibit A (Cont.)

LEGAL DESCRIPTION OF SUBMERGED PARCEL

Commence at a point marked by an 5/8" diameter iron rod and Cap Stamped F.D.O.T., shown as P. T. Sta. 25+50 on the "Official Map of Location and Survey of a portion of Section 8708, designated as part of State Road A-1-A in Dade County, Florida", prepared by the State Road Department of the State of Florida, as recorded in Map Book 56, at Page 71 of the Public Records of Dade County, Florida. Said point being the point of tangency of the original center line of the Douglas MacArthur Causeway running Easterly and South Easterly from the Westerly limits (West Bridge) of Watson Island as shown on Sheet 3 of the State Road Department Right-of-Way Map, Section No. (8706-112) 87060-2117, revised March 25, 1959, said most Northerly curve having a radius of 1432.69 feet and a central angle of 62° 00' 00"; thence South 59° 51' 26" West departing radially from said centerline, a distance of 987.36 feet to a projected bulkhead line; thence North 17° 12' 21" West along said bulkhead line, a distance of 238.86 feet to the point and place of beginning; thence South 49° 32' 57" West departing said bulkhead line a distance of 550.92 feet to a point of intersection of lines of turning basin limit as established by U.S. Army Corps of engineers and position by coordinates North 527,878.62 feet, East 926,135.22 feet (based on North American Datum 1983-NAC83); thence North 31° 03' 50" West, along the limits of said turning basin a distance of 428.44 feet to a point of intersection with the East right of way line of the intracoastal waterway; thence North 03° 27' 54" West along said East right of way line a distance of 874.43 feet to a point of intersection with the Southerly right of way line of said Douglas MacArthur Causeway, said point of intersection being a point on a curve concave Southerly and having a radius of 10,716.59 feet, a radial line to said point bears South 01° 15' 15" East; thence run Easterly for 387.46 feet along the arc of said curve and along said Southerly right of way line, through a central angle of 02° 04' 17" to a point of tangency; thence South 89° 10' 55" East continuing Easterly along the said Southerly right of way line, a distance of 31.87 feet more or less to a point of intersection with an existing bulkhead line; thence South 17° 12' 21" East along said bulkhead line a distance of 924.70 feet to the point of beginning.

## Exhibit B

### Definitions

Any capitalized term used but not defined in this Agreement, including, without limitation, this Exhibit B, shall have the meanings assigned to the same in the Ground Lease.

- 1.1 "AAA" shall have the meaning ascribed to such term in Section 6.1.1 of this Agreement.
- 1.2 "Agreement" shall mean and refer to this "Agreement to Enter into Ground Lease" by and between City and Flagstone.
- 1.3 "Agreement Security" shall mean and refer to the Easement Security and the Hold Harmless, Indemnification and Security Deposit and the Security Rent Deposit collectively.
- 1.4 "Amended Partial Modification of Restrictions" shall have the meaning ascribed to such term in Section 4.2.5(a) of this Agreement.
- 1.5 "Approval-Requiring Matter" shall have the meaning ascribed to such term in Section 8.2 of this Agreement.
- 1.6 "Board of Trustees" shall have the meaning ascribed to such term in Section 4.2.5(a) of this Agreement.
- 1.7 "City Manager" means the administrative head of the City's government who is authorized to execute this Agreement and other documents, including notices required hereunder.
- 1.8 "City Manager Approval Procedures" shall mean and refer to the procedures for submittal by Flagstone and review and approval by the Chief Executive Officer of any Approval-Requiring Matter as described in hereof.
- 1.9 "City" shall have the meaning ascribed to such term in the first paragraph of this Agreement.
- 1.10 "Completion Date" shall mean that date upon which the earlier of a temporary certificate of occupancy or a certificate of occupancy has been issued for the completion of construction.
- 1.11 "Commence(s) Construction" shall mean that all material plans and permits are approved and issued and the actual act of physical construction has begun.

- 1.12 "Construction Plans and Specifications" shall have the meaning ascribed to such term in Section 6.1.1 of this Agreement.
- 1.13 "DCA" shall have the meaning ascribed to such term in Section 4.2.2 of this Agreement.
- 1.14 "Development Plans" shall have the meaning ascribed to such term in Section 7.1 of this Agreement.
- 1.15 "Development Team" shall have the meaning ascribed to such term in Section 6.1.4 of this Agreement.
- 1.16 "Disclosed Investors" means all Investors other than Non-Disclosed Investors.
- 1.17 "Disqualified Person" means any Person who: (i) shall have committed a material breach under any lease or other written agreement with City; (ii) has had any criminal felony convictions within the immediately preceding ten (10) years; (iii) has a widespread reputation (as evidenced by newspaper articles or other media reports of the mainstream press which are not subsequently retracted) for corrupt or unlawful business dealings; or (iv) is named on any list issued by a Governmental Authority of individuals and/or entities engaged in terrorist activities, including, but not limited to, the following: (a) list of Specially Designated Terrorists (SDTs) issued by the Office of Foreign Assets Control ("OFAC") pursuant to Executive Order 12947; (b) list of Specially Designated Global Terrorist (SDGTs) issued by OFAC pursuant to Executive Order 13224; and (c) list of Foreign Terrorist Organizations (FTOs) issued by the Secretary of State.
- 1.18 "Downtown DRI" shall have the meaning ascribed to such term in Section 4.2.2 of this Agreement.
- 1.19 "Easement Deposit" shall have the meaning ascribed to such term in Section 5.1 of the Agreement.
- 1.20 "Easement Security LOC" shall have the meaning ascribed to such term in Section 5.1 of the Agreement.
- 1.21 "Easement Security" shall mean and refer to either the Initial Deposit or the Initial LOC as elected by Flagstone pursuant to Section 5.1.
- 1.22 "Effective Date" shall have the meaning ascribed to such term as described in the first paragraph of this Agreement.
- 1.23 "Escrow Agent" shall mean and refer to Shutts & Bowen LLP, whose address is 1500 Miami Center, 201 South Biscayne Boulevard, Miami, Florida 33131, or such other

Escrow Agent determined from time to time by the parties depending upon the circumstances of the Easement Security, the Security Rent Deposit, the Hold Harmless, Indemnification, and Security Deposit, and any other security required under this Agreement and Composite Attachment 3.

- 1.24 "Escrow Agreement" shall have the meaning ascribed to such term in Section 5.3 of this Agreement.
- 1.25 "Event of Closure" shall mean and refer to any time periods that the City of Miami, Miami-Dade County or the State of Florida (or any of its applicable departments or agencies) are closed due to a significant event (such as Acts of God or terrorism, etc.) and such closure has a reasonably demonstrable effect on Flagstone's ability to obtain its Project Approvals hereunder or the City's ability to satisfy its conditions precedent in ARTICLE 6 and ARTICLE 7 hereof; provided, however that in no event shall the term "Event of Closure" as used in this Agreement be deemed to: (i) allow any extensions for more than six (6) months in the aggregate; and/or (ii) include, without limitation, normal and customary closures of such governmental offices for weekends and holidays.
- 1.26 "Event of Flagstone's Default" shall mean and refer to those events which shall constitute a default by Flagstone under this Agreement and which are set forth in Section 11.1 hereof.
- 1.27 "Flagstone" shall have the meaning ascribed to such term in the first paragraph of this Agreement.
- 1.28 "Garnishments" shall have the meaning ascribed to such term in ARTICLE 7 of this Agreement.
- 1.29 "Ground Lease(s)" shall mean and refer to (i) the one ground lease if Flagstone shall determine to develop the Property all at once, and (ii) the multiple ground leases if Flagstone shall determine to develop the Property on a component by component basis, all to be executed by the parties as provided herein and as described in Section 2.2, a form of which shall be attached hereto as Exhibit C.
- 1.30 "Hold Harmless, Indemnification, and Security Deposit(s)" shall mean and refer to the types and amounts of security deposits required by Section IX of Composite Attachment 3 and Section 9.3 of this Agreement.

- 1.31 "Investor(s)" means: (i) all Persons now or hereafter having an equity interest in the Project; (ii) any direct or indirect legal or beneficial owners of interests in all of the equity investors in the Project; and (iii) holders of any note, debenture, mortgage or other security instrument in any Project Component(s) and/or Flagstone, other than an Approved Lender (as defined in the Ground Lease).
- 1.32 "Investor List" shall have the meaning ascribed to such term in Section 4.1.3 of this Agreement
- 1.33 "Investor Questionnaire" means a questionnaire prepared by the Financial Advisor as part of the initial screening process for Disclosed Investors, the form of which shall have been mutually agreed upon by the Financial Advisor, the City Manager and Flagstone.
- 1.34 "Island Gardens Proposal" shall mean and refer to Flagstone's proposal to the City in response to the Watson Island RFP, entitled "Island Gardens at Watson Island RFP" dated July 13, 2001.
- 1.35 "Judgment" shall mean and refer to any and all judgments of any kind, which might be or become an encumbrance upon the assets of Flagstone in relation to the Property and for the project or any part thereof, as referenced in Article 9 hereof.
- 1.36 "Lease Delivery" shall have the meaning ascribed to such term in the first paragraph of this Agreement.
- 1.37 "Lease Delivery Date" shall have the meaning ascribed to such term in Section 2.1.3 of this Agreement
- 1.38 "Lien" shall mean and refer to any and all liens, encumbrances, mortgages, pledges, security interests, collateral assignments or charges of any kind, which might be or become a lien upon the Property or any part thereof.
- 1.39 "Major Project Components" means those certain components and amenities of the Project more particularly set forth on Exhibit E of the Ground Lease.
- 1.40 "Major Use Special Permit" has the meaning ascribed to it in Article 17 of Ordinance 11000, as amended, the Zoning Ordinance of the City of Miami, Florida.
- 1.41 "MUSP Application" means any and all of the information required or otherwise necessary in connection with the obtaining of the Major Use Special Permit.
- 1.42 "MUSP Approval" shall have the meaning ascribed to such term in Section 4.2.1 of this Agreement.



- 1.43 "NOPC" shall have the meaning ascribed to such term in Section 4.2.2 of this Agreement.
- 1.44 "NOPC Application" shall have the meaning ascribed to such term in Section 4.2.2 of this Agreement.
- 1.45 "NOPC Approval" shall have the meaning ascribed to such term in Section 4.2.2 of this Agreement.
- 1.46 "Open for Business" shall mean the earlier of the date that the applicable Major Project Component receives either its temporary certificate of occupancy or its certificate of occupancy.
- 1.47 "Operating Team" shall have the meaning ascribed to such term in Section 6.1.5 of this Agreement.
- 1.48 "Organizational Documents" shall have the meaning ascribed to such term in Section 4.1.4 of this Agreement.
- 1.49 "Partial Modification of Restrictions" shall have the meaning ascribed to such term in Section 4.2.5 of this Agreement.
- 1.50 "Payment and Performance Bond" shall mean and refer to such payment and performance bonds which are required to be obtained, or caused to be obtained, by Flagstone pursuant to Section 6.1.9 hereof prior to issuance of the master building permit for the Property, which payment and performance bonds shall be in favor of City, in amounts acceptable to City with respect to the work to be performed by the general contractor(s) for the Project and such of the subcontractors as shall be required by City, shall be issued by a company approved by City and shall otherwise be in form and substance acceptable to City.
- 1.51 "Person" means any natural person, trust, firm, partnership, corporation, joint venture, association, company, or any other legal or business entity investment enterprise.
- 1.52 "Project" shall mean and refer to the development of the Property and the construction of the Major Project Components (also known as the Project Components) therein.
- 1.53 "Project Approvals" shall have the meaning ascribed to such term in Section 6.1.13(a) of this Agreement.
- 1.54 "Project Components" means those certain components and amenities of the Project more particularly set forth on Exhibit E of the Ground Lease.

- 1.55 "Property" shall have the meaning ascribed to such term in the first recital of this Agreement.
- 1.56 "Security Deposit" shall collectively mean and refer to any of the Easement Deposit, the Security Rent Deposit and the Hold Harmless, Indemnification, and Security Deposit.
- 1.57 "Start(s) Construction" shall mean that all material plans and permits are approved and issued and the actual act of physical construction has begun.
- 1.58 "Total Security" shall mean and refer to the Easement Security, Security Rent Deposit, and the Hold Harmless, Indemnification, and Security Deposit collectively.
- 1.61 "Watson Island RFP" shall mean and refer to that certain Mega Yacht Marina and Mixed Use Waterfront Development Opportunity - Watson Island Miami, Florida Request for Proposals dated February, 2001, as amended.

Exhibit C

Form Ground Lease

[SEE END OF AGREEMENT]

Exhibit 3.3.1

Approved Environmental Consultants

1. PBS & J (Post Buckley) - Contact: William Pitcher
2. Langan Engineering & Environmental Services - Contact: Christina Gonzalez
3. K & B Kaderabek & Barreiro Consultants, Inc. -Contact: Thomas Kaderabek

## Exhibit 3.5

### Insurance

1. Commercial General Liability insurance on a commercial general liability coverage form with "broad form" coverage, or its equivalent, including contractual liability, products and completed operations, personal injury, and premises coverage against those sums that the insured becomes legally obligated to pay as damages in connection with any and all claims, demands or actions, bodily injury, death or property damage occurring in the Property, the limits of which shall not be less than One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage.
2. Pollution/Environmental Impairment Liability insurance coverage to be provided by Flagstone's contractors performing the Inspections on a claims basis (provided that such policy period must be for a minimum of six (6) years from and after the date of the Inspections) with limits of One Million Dollars (\$1,000,000) per occurrence, providing coverage for the damage caused by spillage of any fuel, petroleum, products or any other "hazardous substances", "hazardous materials" or "toxic substances" (as defined in any and all state, local, or federal laws, rules, regulations and orders pertaining to environmental, public health or welfare matters), whether those substances are solid, liquid or gaseous. Said policy of insurance shall also provide coverage for the cost of cleanup of the affected area and for the removal, transportation and safe disposal of any contaminated area.
3. Automobile Liability insurance covering all owned, non-owned, and hired vehicles used in conjunction with Inspections of the Property. The policy or policies of insurance shall contain such limits as may be reasonably requested by the City from time to time but not less than Five Hundred Thousand Dollars (\$500,000). Worker's Compensation insurance in the amounts and types required by Chapter 440, Florida Statutes. Only Flagstone need be named as insured.
4. The limits set forth in paragraphs (1), (2) and (3) above shall be issued by an Insurance Company maintaining an "A" rating and Financial Strength of "7".



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/18/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Marsh Commercial Business Center a Service of Seabury & Smith 9830 Colonnade Blvd. #400 PO Box 659923 San Antonio, TX 78265-9528	<b>INSURER</b> INSURER 1: ESSEX INSURANCE COMPANY (US) INSURER 2: INSURER 3: INSURER 4: INSURER 5:
<b>INSURED</b> Flagstone Development Corp c/o Echeverria Galvo & Associates 7900 SW 57 Ave., Suite 26 South Miami, FL 33143	<b>AGENCY</b> City of Miami 444 SW 2nd Ave. #3 Miami, FL 33130 Tel: 305-375-1111 Fax: 305-375-1112

COVERAGES      CERTIFICATE NUMBER:      REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	AGENCY	POLICY NUMBER	POLICY PERIOD (MM/DD/YYYY)	POLICY PERIOD (MM/DD/YYYY)	LIMITS
<b>A GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> PRODUCTS EXCLUDED GEN. AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PER OCCASION <input type="checkbox"/> LOC <b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> SCHEDULED AUTO <input type="checkbox"/> ALL OWNED AUTO <input type="checkbox"/> NON-OWNED AUTO <input type="checkbox"/> HIRED AUTO <input type="checkbox"/> UMBRELLA LIME <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIME <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> RETENTION <b>WORKERS COMPENSATION AND EMPLOYERS LIABILITY</b> <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED (mandatory in FL) If yes, describe under DESCRIPTION OF OPERATIONS below		3066266	10/18/2011	10/18/2012	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED EQUIPMENT \$50,000 MED EXP (per person) \$1,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMPROP AGG \$ \$ \$ COVERED SINGLE AUTO (per person) \$ BODILY INJURY (per person) \$ BODILY INJURY (per accident) \$ PROPERTY DAMAGE (per occurrence) \$ \$ \$ EACH OCCURRENCE \$ AGGREGATE \$ \$ 1 YEAR LIMITS 10/18/12 EL EACH ACCIDENT \$ EL DISEASE - EA EMPLOYEE \$ EL DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
City of Miami is listed as Additional Insured on the General Liability as required by written contract.

<b>CERTIFICATE HOLDER</b> City of Miami 444 SW 2nd Ave. # 3 Miami FL 33130	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE <i>[Signature]</i>
---	--

Exhibit 4.1.1

Title Matters

For purposes hereof, all references to "Schedules" shall refer to those certain Schedules attached to that certain Chicago Title Insurance Company ("Title Insurer") A.L.T.A. Commitment for Leasehold Owner's Policy with an Effective Date of June 9, 2002 at 11:00 PM (a copy of which is attached hereto).

1. For purposes of deleting Items 3, 4 and 5 of Schedule B-Section 1 and Item 2.e of Schedule B-Section 2 (as well modifying Item 2.g of Schedule B-Section 2), City shall provide Title Insurer confirmation that there are no outstanding taxes and/or municipal liens (i.e., proof of payment or exemption from taxation). Flagstone shall provide Title Insurer and City Commission that there are no outstanding taxes, liens, judgments, or garnishments against the Property and/or against Flagstone as and if applicable (i.e., proof of payments or exemptions).

2. For purposes of deleting Item 7 of Schedule B-Section 1 and Items 1, 2.a, 2.d, 4 and 17 of Schedule B-Section 2, City shall provide Title Insurer a No Lien, Possession and Gap Affidavit executed on behalf of the City (stating, among other things, that there are no parties in possession or having a right to possession of any portion of the Property), in form and content reasonably satisfactory to Title Insurer.

3. Item 9 of Schedule B-Section 1 and Item 8 of Schedule B-Section 2 refer to the 1949 deed from the Board of Trustees of the Internal Improvement Fund (the "Trustees"). City shall use reasonable, good-faith efforts to obtain from the Trustees: (i) a release of the right of entry with respect to the oil, gas and mineral reservations contained in this deed (provided that the same not be deemed to require City to incur any monetary obligation other than normal and customary application fees which may be charged in connection therewith); (ii) a termination and/or release of Items 15 and 16 of Schedule B-Section 1, in form and content reasonably satisfactory to Title Insurer to delete the same; and (iii) the Amended Partial Modification of Restrictions.

4. City shall provide to Title Insurer the resolution and letter described in Item 11 of Schedule B-Section 1, in form and content reasonably satisfactory to Title Insurer so as to delete this item.

5. City shall provide to Title Insurer the affidavit described in Item 13 of Schedule B-Section 1, in form and content reasonably satisfactory to Title Insurer so as to delete this item.

6. As to Items 9 and 10 of Schedule B-Section 2, City shall use reasonable, good-faith efforts to obtain from the Miami-Dade Water and Sewer Authority Department ("WASD"), written confirmation that the water and sewer facilities described in these documents have been properly completed, conveyed and/or dedicated and accepted by WASD, etc. (if such is the case at the time of execution as of the Lease Delivery Date), and that the City has otherwise fully complied with the terms and conditions of these documents. As specifically, Flagstone shall provide to the City written confirmation from WASD that the water and sewer facilities described in the applicable documents have been properly completed, conveyed, and/or dedicated and accepted by WASD, etc. (if such is the case at the time of execution as of the Lease Delivery Date) and that Flagstone has otherwise fully complied with the terms and conditions required of Flagstone under those documents including the Amended and restated Agreement to Enter into Ground Lease and Composite Attachment 3 thereto.

7. All references to "Schedules" in the foregoing shall also refer to those corresponding schedule items in that certain updated title commitment with an Effective Date of November 9, 2011 at 11:40 P.M. (a copy of which is attached hereto) (the "Update").

8. City and Flagstone shall work together to satisfy any other matters which appear on the Update provided that resolution to any other matters are at no costs to the City.



Shutts & Bowen LLP  
201 South Biscayne Boulevard, Suite 1500  
Miami, FL 33131  
305-358-6300  
305-381-9982

Chicago Title Insurance Company

Revised: November 23, 2011

**COMMITMENT FOR TITLE INSURANCE  
SCHEDULE A**

Order No.: 3044159

Customer Reference: 16657-0013

1. Effective Date: November 09, 2011 at 11:40 PM.
2. Policy or Policies to be Issued: Premium: \$TBD
  - A. ALTA Leasehold Owners 2006 with Florida Modifications with ALTA 13-06 Endorsement  
Proposed Insured: Flagstone Island Gardens, LLC, a Delaware limited liability company, f/k/a and successor by merger to Flagstone Properties LLC, a Florida limited liability company  
Proposed Amount of Insurance: To Be Determined
3. The estate or interest in the land described or referred to in this Commitment is:  
Leasehold
4. Title to the Leasehold estate or interest in the land is at the Effective Date vested in:  
City of Miami, a municipal corporation
5. The land referred to in this Commitment is described in Exhibit "A" attached hereto and made part hereof.

Countersigned:

BY: \_\_\_\_\_  
Authorized Officer or Agent

**SCHEDULE B SECTION I  
REQUIREMENTS**

The following are requirements to be complied with:

1. Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.
2. Instrument(s) creating the estate or interest to be insured must be properly executed, delivered and filed for record:
  - A. Recordation of Lease or Memorandum thereof by and between the City of Miami and Flagstone Properties, LLC, a Delaware limited liability company, f/k/a and successor by merger to Flagstone Properties LLC, a Florida limited liability company, and Recordation of the Amended and Restated Lease Agreement or Memorandum thereof between the City of Miami and Flagstone Properties, LLC, a Delaware limited liability company.

NOTE: The Company must be provided with a copy of the proposed Lease Agreement and Memorandum and any Amendments and any Amended and Restated Lease Agreements thereof.

NOTE: The Company reserves the right to review said documents and reserves the right to make any additional requirements and/or exceptions as may be deemed necessary.

3. Proof of payment of any outstanding assessments in favor of Miami-Dade County, Florida, any special taxing district and any municipality. NOTE: If this requirement is not satisfied the following exception will appear on Schedule B:  
Any outstanding assessments in favor of Miami-Dade County, Florida, any special taxing district and any municipality.
4. Proof of payment of taxes and assessments levied by Miami-Dade County for the year 2010 and prior years.
5. Proof that there are no certified or pending liens or liens for water, sewer, solid waste or gas charges.
6. Proof of proper incorporation and continued good standing of the Proposed Insured and a resolution authorizing the execution of the Lease or Memorandum of Lease and Amended and Restated Lease required at Item No. 2.A. above.
7. Resolution from the City of Miami authorizing the Lease and Amended and Restated Lease and a letter from the City of Miami attorney confirming compliance with the City of Miami charter and all other applicable laws regarding the alienation of city property.
8. The amount of requested insurance must be furnished and this Commitment is subject to such further requirements and/or exceptions as may then be deemed necessary.
9. Affidavit from City of Miami that the Lease recorded in Deed Book 2779, Page 390 has expired and is no longer in effect.
10. With regard to Flagstone Island Gardens, LLC, a Delaware limited liability company, the following is required:

ALTA Commitment (6/17/06)  
(with Florida Modifications)



**SCHEDULE B SECTION I  
REQUIREMENTS**

A. Satisfactory evidence must be furnished showing that said limited liability company is currently in good standing.

(Note) Proof of the issuance of the Certificate of Organization by the Secretary of State in the event said company was formed prior to October 1, 1993.

B. A certified copy of the Articles of Organization and Operating Agreement must be furnished and the Company reserves the right to make additional requirements and/or exceptions upon review of same.

- or -

Record in the Public Records of Miami-Dade County, Florida, a Certificate from the keeper of the records of the company certifying:

1. Whether the management of the company is/was vested in the members or in the manager(s);
2. The names and positions, if any, that the managing members have/had or the names of the then active manager(s) of the company, on the date of the deed/mortgage to be insured or of a previously recorded deed.

C. Affidavit from the managing member or the manager(s), whichever is applicable, confirming that there has been no dissolution of the company resulting from transfers of member's interest, or otherwise.

D. Satisfactory evidence must be furnished showing that all of the corporate managing members are in good standing in their state(s) of organization.

11. Termination of that Dedication filed March 20, 1980 in Official Records Book 10695, Page 264 of the Public Records of Miami-Dade County, Florida.

12. Proof that the Lease for the use of the "Asphalt Helicopter Landing Pad" has been terminated and that no party has the right to use said landing pad.

NOTE: Landing Pad is depicted on survey.

13. Intentionally deleted.

14. To terminate the notice(s) of commencement recorded on February 17, 2011 in Official Records Book 27591, Page 1112 and Notice of Commencement recorded August 10, 2011 in Official Records Book 27786, Page 4039, **it is recommended that the issuing agent contact the underwriting department at least 3-5 business days prior to closing to discuss requirements. Each situation is considered on a case-by-case basis. After the construction lien risk has been evaluated in accordance with the guidelines contained in Underwriting Bulletin 2011-04 and approved by the Company, for each notice of commencement referenced above, the issuing agent must:**

- a. Record notice of termination together with a contractor's final payment affidavit pursuant to Section 713.132, Florida Statutes. The notice of termination must be sworn and subscribed to by the appropriate party(ies) and be properly served upon the contractor and each person who gave notice to owner.



**SCHEDULE B SECTION I  
REQUIREMENTS**

- b. Obtain final waivers and releases of lien from any lienors showing as unpaid in the contractor's final payment affidavit.
- c. Provide original, signed copy of the Company's Indemnity agreement to the underwriting department.
- d. Comply with any additional requirements deemed necessary by the Company.

15. Release of the following:

- A. Final Default Judgment between Beach Tower LLC and Starwood Urban Retail XIII, LLC, Plaintiffs, vs Flagstone Island Gardens LLC, a foreign limited liability company authorized to conduct business in the State of Florida d/b/a Flagstone Property Group, Mehmet Bayraktar, Individually, and Juan Carlos Echeverria, Individually, Defendants, Case No. 09-41142-CA-01, recorded July 15, 2009 in Official Records Book 26940, Page 1882; and Amended Final Default Judgment recorded in Official Records Book 26947, Page 592; and Certified Amended Final Default Judgment recorded in Official Records Book 26936, Page 1744.
- B. Intentionally deleted.
- C. Intentionally deleted.

16. The Company will require a Surveyor's Affidavit in recordable form setting out the following:

- A. Surveyor's credentials.
- B. Surveyor's familiarity with the land.
- C. That he/she has reviewed the legal attached as Exhibit "A" (survey legal) and the legal of Tracts A, B and C of the Plat of WATSON ISLAND SOUTHWEST, according to the plat thereof as recorded in Plat Book 166, Page 11 and acknowledges that there are certain discrepancies in the distances calls.
- D. That by using acceptable Florida land surveying techniques and location of the monuments on the ground has determined that the Exhibit A description and the aforementioned Tracts in the Plat are one and the same parcels of land and that there are no gaps, gours, hiatus or overlaps.

17. Surveyor's Affidavit in recordable form setting out the following:

- A. Surveyor's credentials.
- B. Surveyor's familiarity with the lands in question.
- C. That he/she has reviewed the legal description in that certain deed executed by The Trustees of the Internal Improvement Fund of the State of Florida in favor of the City of Miami, Miami-Dade County, Florida, Deed Number 19447, recorded in Deed Book 3130, Page 2570 of the Public Records of Miami - Dade County, Florida.



**SCHEDULE B SECTION I  
REQUIREMENTS**

- D. That the property attached as Exhibit "A" (commitment) survey legal lies entirely within the boundaries of the lands described in the Deed from The Trustees of the Internal Improvement Fund of the State of Florida to City of Miami, Miami-Dade County, Florida, under Deed Number 19447 recorded in Official Records Book 3130, Page 257, Public Records of Miami - Dade County, Florida.

**INFORMATIONAL NOTE:** Of record are the following:

- A. Intentionally deleted.
- B. Final Judgment between Americas Media Group World Wide, LLC and Figone, LLC, Flagstone Island Gardens LLC, and Flagstone Development Corporation, Case No. 09-48389-CA-23, recorded June 8, 2011 in Official Records Book 27721, Page 3358.

In the event a certified judgment relating to the aforementioned judgments is recorded, the Company will require release of same.

**18. INFORMATIONAL NOTE:** Of record is the following:

- A. Settlement Stipulation between MCH Messe Schweiz (Basel) AG, Plaintiff, vs Flagstone Island Gardens, LLC, Defendant, Case No. 10-58586 CA 10, recorded March 23, 2011 in Official Records Book 27635, Page 2309.

In the event a certified judgment relating to the aforementioned Settlement Stipulation becomes a certified final judgment between the effective date of this commitment and the closing date of the contemplated leasehold policy, the Company will require satisfaction of same.

19. Dismissal of litigation with prejudice and discharge of the Lis Pendens filed in Case styled The Sieger Suarez Architectural Partnership, Inc., Plaintiff, vs. Flagstone Island Gardens, LLC, Defendant,, being Case No. 10-17476-CA08 in Miami-Dade County, Florida, as disclosed by Notice of Lis Pendens recorded in Official Records Book 27219, page 2625 on March 18, 2010, as re-recorded Notice of Lis Pendens as Case No. 10-174676A01 in Official Records Book 27246, Page 1724 on April 12, 2010; and Notice of Lis Pendens under Case No. 10-17476 CA-08 recorded in Official Records Book 27721, Page 3053 on June 14, 2011, as re-recorded Notice of Lis Pendens as Case No. 10-17467CA08 in Official Records Book 27732, Page 3489 on June 24, 2011; as affected by Magistrate's Report and Recommendation Denying Defendant's Amended Motion to Dismiss recorded June 6, 2011 in Official Records Book 27712, Page 538, as affected by Magistrate's Report and Recommendation Denying Motion to Discharge recorded in Official Records Book 27861, Page 2203 and Magistrate's Report and Recommendation To Dismiss Amended Complained recorded in Official Records Book 27861, Page 2297.

**NOTE:** The aforementioned case relates to Claim of Lien in favor of The Sieger Suarez Architectural Partnership, Inc. recorded March 20, 2009 in Official Records Book 26796, Page 548.

**END OF SCHEDULE B - SECTION I**



**SCHEDULE B SECTION II  
EXCEPTIONS**

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Taxes and assessments for the year 2011 and subsequent years, which are not yet due and payable.
3. Standard Exceptions:
  - A. Easements, claims of easements, boundary line disputes, overlaps, encroachments or other matters not shown by the public records which would be disclosed by an accurate survey of the Land.
  - B. Rights or claims of parties in possession not shown by the public records.
  - C. Any lien, or right to a lien, for services, labor, or materials heretofore or hereafter furnished, imposed by law and not shown by the public records.
  - D. Taxes or assessments which are not shown as existing liens in the public records.
4. Any claim that any portion of the insured land is sovereign lands of the State of Florida, including submerged, filled or artificially exposed lands accreted to such land.
5. Any lien provided by County Ordinance or by Chapter 159, Florida Statutes, in favor of any city, town, village or port authority for unpaid service charges for service by any water, sewer or gas system supplying the insured land.
6. Bulkhead line as shown on the plat recorded in Plat Book 74, Page 4.
7. The property herein described being artificially filled land in what was formerly navigable water is subject to any and all rights of the United States government arising by reasons of the United States government control over navigable waters in the interest of navigation and commerce.
8. Oil, gas and mineral reservations and deed restrictions set forth in that Deed from The Trustees of the Internal Improvement Fund to the City of Miami, filed April 11, 1949 in Deed Book 3130, page 257 and under Clerk's File No. Y-29610; release of right of entry recorded January 26, 2006 in Official Records Book 24182, Page 1049 and as noted in Surveyor's Affidavit recorded in Official Records Book 19468, page 2496; as affected by Partial Modification of Restrictions recorded April 18, 2000 in Official Records Book 19072, page 4830 and Partial Modifications of Restrictions recorded March 18, 2005 in Official Records Book 23181, Page 775 and Waiver of Deed Restrictions recorded in Official Records Book 10695, Page 267 and Waiver recorded in Official Records Book 10695, Page 270 and Amended and Restated Partial Modification of Restrictions Deed No. 19447-F recorded September 16, 2011, in Official Records Book 27828, Page 3675 and as noted in Surveyor's Affidavit recorded in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_ (see Item No. 17 of Schedule B Section 1).
9. Agreement for Water Facilities filed March 13, 1998, in Official Records Book 18016, Page 2892.



**SCHEDULE B SECTION II  
EXCEPTIONS**

10. Agreement for Sanitary Sewage Facilities filed April 14, 1998, in Official Records Book 18058, Page 112.
11. Resolution No. 98-23, filed January 19, 1999, in Official Records Book 18699, Page 1236.
12. Easement in favor of the United States of America, set forth in that Grant of Easement for Miami Harbor Turning Basin, filed April 22, 1963 in Official Records Book 3622, Page 751.
13. Intentionally deleted.
14. Terms and conditions of that certain unrecorded lease as evidenced by Memorandum of Lease executed by and between the City of Miami and Flagstone Island Gardens LLC, a Delaware limited liability company, dated \_\_\_\_\_, recorded \_\_\_\_\_ in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_, and Amended and Restated Lease dated \_\_\_\_\_, recorded \_\_\_\_\_ in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_, of the Public Records of Miami - Dade County, Florida.
15. Perpetual Easement in favor of the Florida Department of Transportation filed March 13, 1998 in Official Records Book 18018, Page 1181.
16. Terms of Biscayne Bay Management Plan filed May 29, 1981 in Official Records Book 11114, Page 822 and under Clerk's File Number 81R-143810.
17. Riparian rights are neither insured nor guaranteed. Title insured is only to the mean high water line. The right, title or interest, if any, of the public to use any part of the land seaward of the most inland of any of the following:
  - a. The natural line of vegetation.
  - b. The most extreme high water line.
  - c. The bulkhead line.
  - d. Any other line which has been or which hereafter may be legally established as relating to such public use.
18. Intentionally deleted.
19. Intentionally deleted.
20. Intentionally deleted.
21. Intentionally deleted.
22. Intentionally deleted.
23. Intentionally deleted.
24. Intentionally deleted.
25. Intentionally deleted.



**SCHEDULE B SECTION II  
EXCEPTIONS**

26. Terms, conditions, easements and restrictions appearing on the Plat of WATSON ISLAND SOUTHWEST, as recorded in Plat Book 166, Page 11.
27. Intentionally deleted.
28. Notification of an Extension to a Previously Approved Development of Regional Impact (DRI) Pursuant to Subsection 380.06(19)(c), Florida Statutes 2007, recorded September 8, 2008 in Official Records Book 26557, Page 217.
29. Notification of an Extension to a Previously Approved Development of Regional Impact (DRI) Pursuant to Subsection 380.06(19)(c), Florida Statutes 2007, recorded September 8, 2008 in Official Records Book 26557, Page 223.
30. Restrictive Covenant Running With The Land in favor of Miami-Dade County recorded November 6, 2008 in Official Records Book 26641, Page 4960.
31. Intentionally deleted.
32. Intentionally deleted.
33. Intentionally deleted.
34. Intentionally deleted.
35. Intentionally deleted.
36. Temporary Construction Easement Agreement (Parcels A, B & C) between the City of Miami and Flagstone Island Gardens LLC, a Delaware limited liability company, successor by merger to Flagstone Properties LLC, a Florida limited liability company, recorded December 12, 2007 in Official Records Book 26102, page 2922; and First Amendment recorded December 12, 207 in Official Records Book 26102, page 3110; and Second Amendment recorded November 24, 2008 in Official Records Book 26662, Page 355.
37. Amended and Restated Grant of Temporary Easement between City of Miami and Miami-Dade County recorded November 13, 2007 in Official Records Book 26043, page 4535.
38. Amended and Restated Grant of Temporary Easement in favor Miami-Dade County recorded November 13, 2007 in Official Records Book 26043, page 4521.
39. Agreement for Water and Sanitary Sewage Facilities between Miami-Dade County and City of Miami and Flagstone Island Gardens, LLC recorded June 1, 2007 in Official Records Book 25664, page 680; Addendum Number One to Agreement for Water and Sanitary Sewage Facilities recorded November 28, 2007 in Official Records Book 26070, page 268.
40. Intentionally deleted.
41. Intentionally deleted.
42. Intentionally deleted.





**SCHEDULE B SECTION II  
EXCEPTIONS**

- 43. Memorandum of Interlocal Agreement between City of Miami and Miami Sports and Exhibition Authority recorded May 23, 2002 in Official Records Book 20416, Page 718.
- 44. Intentionally deleted.
- 45. Intentionally deleted.
- 46. Intentionally deleted.
- 47. Intentionally deleted.
- 48. Environmental Resource Permit Notice recorded September 10, 2004 in Official Records Book 22645, page 2361.
- 49. Intentionally deleted.
- 50. South Road Permanent Easement Agreement (Parcel D) between City of Miami and Flagstone Island Gardens LLC recorded October 6, 2008 in Official Records Book 26598, Page 1416; and First Amendment South Road Permanent Easement Agreement (Parcel D) and Adding a Temporary Easement thereto recorded in Official Records Book 26598, Page 1439.
- 51. Submerged Area Permanent Maintenance Agreement (Parcel E) between City of Miami and Flagstone Island Gardens LLC recorded October 6, 2008 in Official Records Book 26598, Page 1447.
- 52. Easement Agreement (Parcel G) between City of Miami and Flagstone Island Gardens LLC recorded October 6, 2008 in Official Records Book 26598, Page 1473; First Amendment Entry Road Permanent Easement Agreement (Parcel G) and Adding Temporary Easement thereto recorded in Official Records Book 26598, Page 1498.
- 53. Flagstone Site Temporary Pre-Development Easement Agreement (Parcel H) between City of Miami and Flagstone Island Gardens LLC recorded October 6, 2008 in Official Records Book 16598, Page 1507.
- 54. Intentionally deleted.
- 55. Intentionally deleted.
- 56. Intentionally deleted.

NOTE: The Company reserves the right to make further requirements and/or exceptions upon its review of the proposed documents creating the estate or interest to be insured or otherwise ascertaining details of the transaction.

**NOTES ON STANDARD EXCEPTIONS:**

Item 3A will be deleted from the policy upon receipt of an accurate survey of the land acceptable to the Company. Items 3B, 3C, and 3D will be deleted from the policy upon receipt of an affidavit-indemnity acceptable to the Company, stating (i) who is in possession of the land, (ii) whether improvements to the land have been made or are contemplated to commence prior to the date of closing, which improvements



**SCHEDULE B SECTION II  
EXCEPTIONS**

will not have been paid for in full prior to the closing, and (iii) that there are no taxes or assessments which are not shown as existing liens in the public records.

NOTE: All recording references in this commitment/policy shall refer to the public records of Miami-Dade County, Florida, unless otherwise noted.

NOTE: Section 1 (h) of the Conditions and Stipulations of the ALTA Owner's and Leasehold Loan Policies (10/17/92) (With Florida Modifications), defines leasehold estate as follows:

(h) "Leasehold Estate": The right of possession for the term or terms described in Schedule A hereof subject to any provisions contained in the lease which limit such right of possession.

NOTE: In accordance with Florida Statutes section 627.4131, please be advised that the insured hereunder may present inquiries, obtain information about coverage, or receive assistance in resolving complaints, by contacting Chicago Title Insurance Company, 15951 SW 41st Street, Suite 800, Weston, FL 33331; Telephone 954-217-1744.

Searched By: Mike Riggs

**END OF SCHEDULE B - SECTION II**



## EXHIBIT "A"

PARCEL 1 (LEASEHOLD)  
UPLAND PARCEL:

That certain parcel of land as described in Memorandum of Lease dated \_\_\_\_\_, recorded \_\_\_\_\_ in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_, as amended by Amended and Restated Memorandum of Lease dated \_\_\_\_\_, recorded \_\_\_\_\_ in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_, of the Public Records of Miami - Dade County, Florida, being more particularly described as follows:

Commence at a point shown marked by an 5/8" diameter Iron rod and Cap Stamped F.D.O.T., shown as P.T. Sta. 25+50 on the "Official Map of Location and Survey of a portion of Section 8706, designated as part of State Road A-1-A in Dade County, Florida", prepared by the State Road Department of the State of Florida, as recorded in Map Book 56, at Page 71 of the Public Records of Dade County, Florida. Said point being the point of tangency of the original center line of the Douglas MacArthur Causeway running Easterly and South Easterly from the Westerly limits (West Bridge) of Watson Island as shown on Sheet 3 of the State Road Department Right-of-Way Map, Section No. (8706-112) 87060-2117, revised March 25, 1959, said most Northerly curve having a radius of 1432.69 feet and a central angle of 62° 00' 00"; thence South 59° 51' 26" West departing radially from said centerline a distance of 987.36 feet to a Projected Bulkhead line; thence North 17° 12' 21" West along said bulkhead line, a distance of 238.86 feet to the point and place of beginning; thence North 17° 12' 21" West continuing along said bulkhead line a distance of 924.74 feet to the Southerly right of way line of State Road A-1-A, Douglas MacArthur Causeway; thence along said Southerly right of way line the following courses and distances: South 89° 10' 55" East, a distance of 72.89 feet; thence North 86° 39' 49" East, a distance of 67.31 feet to non-tangent curve concave to the Northeast whose radial line bears North 39° 29' 18" East having a radius of 160.00 feet and central angle of 22° 09' 28"; thence along said curve an arc length of 61.88 feet; thence South 72° 40' 15" East continuing along said Southerly right of way line a distance of 276.49 feet to a curve concave to the Southwest having a radius of 600.00 feet and central angle of 46° 17' 39"; thence along said curve an arc length of 484.79 feet to a point of tangency; thence South 26° 22' 36" East continuing along the Southwesterly right of way line of State Road A-1-A, a distance of 196.59 feet; thence South 54° 07' 39" West departing said right of way line, a distance of 532.16 feet; thence North 35° 54' 03" West, a distance of 132.74 feet; thence South 54° 07' 39" West, a distance of 150.14 feet to the Point of Beginning.

PARCEL 2 (LEASEHOLD)  
SUBMERGED LANDS PARCEL:

Commence at a point shown marked by an 5/8" diameter Iron rod and Cap Stamped F.D.O.T., shown as P.T. Sta. 25+50 on the "Official Map of Location and Survey of a portion of Section 8706, designated as part of State Road A-1-A in Dade County, Florida", prepared by the State Road Department of the State of Florida, as recorded in Map Book 56, at Page 71 of the Public Records of Dade County, Florida. Said point being the point of tangency of the original center line of the Douglas MacArthur Causeway running Easterly and South Easterly from the Westerly limits (West Bridge) of Watson Island as shown on Sheet 3 of the State Road Department Right-of-Way Map, Section No. (8706-112) 87060-2117, revised March 25, 1959, said most Northerly curve having a radius of 1432.69 feet and a central angle of 62° 00' 00"; thence South 59° 51' 26" West departing radially from said centerline a distance of 987.36 feet to a Projected Bulkhead line; thence North 17° 12' 21" West along said bulkhead line, a distance of 238.86 feet to the point and place of beginning; thence South 49° 32' 57" West departing said bulkhead line a distance of 550.92 feet to a point of intersection of lines of turning basin limit as established by U.S. Army Corps of engineers and position by coordinates North 527,878.62 feet East 926,135.22 feet (based on North American Datum



**EXHIBIT "A"**

1983-NAC83) with the Northerly line of the Miami Main Ship Channel; thence North  $31^{\circ} 31' 03.50''$  West, along the limits of said turning basin a distance of 428.44 feet to a point of intersection with the East right of way line of the Intracoastal waterway; thence North  $03^{\circ} 27' 54''$  West along said East right of way line a distance of 874.43 feet to a point of intersection with the Southerly right of way line of said Douglas MacArthur Causeway, said point of intersection being a point on a curve concave Southerly and having a radius of 10,716.59 feet, a radial line to said point bears South  $01^{\circ} 15' 15''$  East; thence run Easterly for 387.46 feet along the arc of said curve and along said Southerly right of way line, through a central angle of  $02^{\circ} 04' 17''$  to a point of tangency; thence South  $89^{\circ} 10' 55''$  East continuing Easterly along the said Southerly right of way line, a distance of 32.06 feet more or less to a point of intersection with an existing bulkhead line; thence South  $17^{\circ} 12' 21''$  East along said bulkhead line a distance of 924.70 feet to the point of beginning.

**PARCEL 1 NOW KNOWN AS:**

Tracts A, B and C of WATSON ISLAND SOUTHWEST, according to the plat thereof as recorded in Plat Book 166, Page 11, of the Public Records of Miami - Dade County, Florida.



**A.L.T.A. COMMITMENT  
CHICAGO TITLE INSURANCE COMPANY  
SCHEDULE A**

Office File Number  
(REV. 12/10/02)

Effective Date  
June 9, 2002  
at 11:00 PM

Commitment Number  
16657.0004

1. Policy or Policies to be issued:

LEASEHOLD OWNER'S POLICY 1992  
with Florida Modifications  
Proposed Insured:

To be determined

Flagstone Island Gardens LLC, a Delaware limited liability company

2. The estate or interest in the land described or referred to in this Commitment and covered herein is Fee Simple, and title thereto is at the effective date hereof vested in:

The City of Miami, a municipal corporation (Fee Titleholder)

3. The Land is described as follows:

PARCEL 1:  
AKA EXHIBIT A-1

Commence at a point shown marked by an 5/8" diameter iron rod and Cap Stamped F.D.O.T., shown as P.T. Sta. 25+50 on the "Official Map of Location and Survey of a portion of Section 8706, designated as part of State Road A-1-A in Dade County, Florida", prepared by the State Road Department of the State of Florida, as recorded in Map Book 56, at Page 71 of the Public Records of Dade County, Florida. Said point being the point of tangency of the original center line of the Douglas MacArthur Causeway running Easterly and South Easterly from the Westerly limits (West Bridge) of Watson Island as shown on Sheet 3 of the State Road Department Right-of-Way Map, Section No. (8706-112) 87060-2117, revised March 25, 1959, said most Northerly curve having a radius of 1432.69 feet and a central angle of 62° 00' 00 seconds"; thence South 59° 51' 26" West departing radially from said centerline a distance of 987.36 feet to a Projected Bulkhead line; thence North 17° 12' 21" West along said bulkhead line, a distance of 238.86 feet to the point and place of beginning; thence North 17° 12' 21" West continuing along said bulkhead line a distance of 924.70 feet to the Southerly right of way line of State Road A-1-A Douglas MacArthur Causeway; thence along said Southerly right of way line the following courses and distances; South 89° 10' 55" East, a distance of 73.08 feet; thence North 86° 44' 00" East, a distance of 67.09 feet to non-tangent curve concave to the Northeast whose radial line bears North 39° 29' 18" East having a radius of 160.00 feet and central angle of 22° 09' 33"; thence along said curve an arc length of 61.88 feet; thence South 72° 40' 15" East continuing along said Southerly right of way line a distance of 276.49 feet; to a curve concave to the Southwest having a radius of 600.00 feet and central angle of 46° 17' 39"

Note: This Commitment consists of insert pages labeled in Schedule A, Schedule B-Section 1, and Schedule B-Section 2. This Commitment is of no force and effect unless all schedules are included, along with any Rider pages incorporated by reference in the insert pages.

**A.L.T.A. COMMITMENT  
CHICAGO TITLE INSURANCE COMPANY  
SCHEDULE A**

thence along said curve an arc length of 484.79 feet to a point of tangency; thence South 26° 22' 36" East continuing along the southwesterly right of way line of State Road A-1-A, a distance of 196.59 feet; thence South 54° 07' 39" West Departing Said right of way line, a distance of 532.16 feet; thence North 35° 54' 03" West, a distance of 132.74 feet; thence South 54° 07' 39" West, a distance of 150.14 feet to the point of beginning.

**PARCEL 2  
AKA EXHIBIT A-2**

Commence at a point marked by an 5/8" diameter iron rod and Cap Stamped F.D.O.T., shown as P. T. Sta. 25+50 on the "Official Map of Location and Survey of a portion of Section 8708, designated as part of State Road A-1-A in Dade County, Florida", prepared by the State Road Department of the State of Florida, as recorded in Map Book 56, at Page 71 of the Public Records of Dade County, Florida. Said point being the point of tangency of the original center line of the Douglas MacArthur Causeway running Easterly and South Easterly from the Westerly limits (West Bridge) of Watson Island as shown on Sheet 3 of the State Road Department Right-of-Way Map, Section No. (8706-112) 87060-2117, revised March 25, 1959, said most Northerly curve having a radius of 1432.69 feet and a central angle of 62° 00' 00"; thence South 59° 51' 26" West departing radially from said centerline, a distance of 987.36 feet to a projected bulkhead line; thence North 17° 12' 21" West along said bulkhead line, a distance of 238.88 feet to the point and place of beginning; thence South 49° 32' 57" West departing said bulkhead line a distance of 550.92 feet to a point of intersection of lines of turning basin limit as established by U.S. Army Corps of engineers and position by coordinates North 527,878.62 feet, East 926,135.22 feet (based on North American Datum 1983-NAC83); thence North 31° 03' 50" West, along the limits of said turning basin a distance of 428.44 feet to a point of intersection with the East right of way line of the intracoastal waterway; thence North 03° 27' 54" West along said East right of way line a distance of 874.43 feet to a point of intersection with the Southerly right of way line of said Douglas MacArthur Causeway, said point of intersection being a point on a curve concave Southerly and having a radius of 10,716.59 feet, a radial line to said point bears South 01° 15' 15" East; thence run Easterly for 387.46 feet along the arc of said curve and along said Southerly right of way line, through a central angle of 02° 04' 17" to a point of tangency; thence South 89° 10' 55" East continuing Easterly along the said Southerly right of way line, a distance of 31.87 feet more or less to a point of intersection with an existing bulkhead line; thence South 17° 12' 21" East along said bulkhead line a distance of 924.70 feet to the point of beginning.

**Note:** This Commitment consists of insert pages labeled in Schedule A, Schedule B-Section 1, and Schedule B-Section 2. This Commitment is of no force and effect unless all schedules are included, along with any Rider pages incorporated by reference in the insert pages.

**A.L.T.A. COMMITMENT  
CHICAGO TITLE INSURANCE COMPANY  
SCHEDULE B - Section 1**

**Commitment Number**

- I. The following are requirements to be complied with:
- 1 Instrument(s) necessary to create the estate or interest to be insured must be properly executed, delivered and duly filed for record.
    - a) Recordation of Lease or Memorandum thereof by and between the City of Miami and Flagstone Island Gardens LLC, a Delaware limited liability company

NOTE: The Company must be provided with a copy of the proposed Lease Agreement and Memorandum thereof and reserves the right to add requirements and/or exceptions.
  - 2 Payment of the full consideration to, or for the account of, the grantors or mortgagors.
  - 3 Payment of all taxes, charges, assessments, levied and assessed against subject premises, which are due and payable.
  - 4 Proof of payment of real property taxes for the year 2001 and all years prior thereto.
  - 5 Proof of payment of any and all municipal liens which may be due and payable, and liens for water, sewer and gas service.
  - 6 INTENTIONALLY DELETED.
  - 7 Upon receipt of a Non-Lien and Possession Affidavit pursuant to Chapter 627.7842 Florida Statutes all exception as to mechanic's liens and persons in possession shall be deleted. The Policies issued hereunder will be subject to a Special Exception for the rights of parties disclosed by said affidavit.
  - 8 Proof of proper incorporation and continued good standing of the Proposed Insured and a resolution authorizing the execution of the lease or memorandum of lease required at Item No. 1(a) above.
  - 9 Waiver of deed restrictions set forth in that deed from The Trustees of the Internal Improvement Fund ("TIIF") Deed No. 190447, filed April 11, 1949 in Deed Book 3130, page 257, Clerk's File No. Y-29610, and release of the right of entry with respect to the oil, gas and mineral reservations set forth in the deed.
  - 10 INTENTIONALLY DELETED.
  - 11 Resolution from the City of Miami authorizing the lease and a letter from the City of Miami attorney confirming compliance with the City of Miami charter and all other applicable laws regarding the alienation of city property.

**A.L.T.A. COMMITMENT  
CHICAGO TITLE INSURANCE COMPANY  
SCHEDULE B - Section 1**

- 12 The amount of requested insurance must be furnished and this Commitment is subject to such further requirements and/or exceptions as may then be deemed necessary.
- 13 Affidavit from City of Miami that the Lease recorded in Deed Book 2779, Page 390 has expired and is no longer in effect.
- 14 LLC requirement for Flagstone Island Gardens LLC, a Delaware limited liability company along with authorization to transact business in Florida.
- 15 Termination of that Dedication filed March 20, 1980 in Official Records Book 10695, Page 264 of the Public Records of Miami - Dade County, Florida.
- 16 Release or termination of Deed Restrictions, conditionally waiving deed restrictions at Deed Book 3130, Page 257, filed March 20, 1980 in Official Records Book 10695, Page 270.
- 17 Proof that the Lease for the use of the "Asphalt Helicopter Landing Pad" has been terminated and that no party has the right to use said landing pad.

Note: Landing Pad depicted on survey.

NOTE: All of the recording information contained herein refers to the Public Records of Miami-Dade County, Florida, unless otherwise indicated.

End of Schedule B - Section 1



**A.L.T.A. COMMITMENT  
CHICAGO TITLE INSURANCE COMPANY  
SCHEDULE B - Section 2**

Commitment Number

- II. Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.
- 1 Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
  - 2 Standard Exceptions:
    - a. Rights or claims of parties in possession not shown by the Public Records.
    - b. INTENTIONALLY DELETED
    - c. INTENTIONALLY DELETED .
    - d. Any lien, or right to a lien, for service, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
    - e. Taxes or special assessments which are not shown as existing liens by the Public Records.
    - f. Any claim that any portion of said lands are sovereign lands of the State of Florida, including submerged, filled or artificially exposed lands and lands accreted to such lands.
    - g. Taxes and assessments for the year 2001 and subsequent years.
  - 3 Standard exceptions (b) and (c) may be removed from the policy when a satisfactory survey and surveyor's report and inspection of the premises is made.
  - 4 Standard exceptions (a) and (d) may be removed upon receipt of a satisfactory affidavit-indemnity from the party shown in title and in possession stating who is in possession of the lands and whether there are improvements being made at date of commitment or contemplated to commence prior to the date of closing which will not have been paid for in full prior to the closing.
  - 5 Bulkhead line as shown on the plat recorded in Plat Book 74, Page 4.
  - 6 The property herein described being artificially filled land in what was formerly navigable water is subject to any and all rights of the United States government arising by reasons of the United States government control over navigable waters in the interest of navigation and commerce.
  - 7 Oil, gas and mineral reservations as set forth in that Deed from The Trustees of the Internal Improvement Fund to the City of Miami, filed April 11, 1949 in Deed Book 3130, page 257 and under Clerk's File No. Y-29610. Note: The right of entry has been released pursuant to [ to be filled in ].
  - 8 Agreement for Water Facilities filed March 13, 1998, in Official Records Book 18016, Page 2892.

NOTE: On loan policies, junior and subordinate matters, if any, will not be reflected in Schedule B.

**A.L.T.A. COMMITMENT  
CHICAGO TITLE INSURANCE COMPANY  
SCHEDULE B - Section 2**

- 9 Agreement for Sanitary Sewage Facilities filed April 14, 1998, in Official Records Book 18058, Page 112.
- 10 Resolution No. 98-23, filed January 19, 1999 in Official Records Book 18699, Page 1236.
- 11 INTENTIONALLY DELETED.
- 12 INTENTIONALLY DELETED.
- 13 INTENTIONALLY DELETED.
- 14 Easement in favor of the United States of America set forth in that Grant of Easement for Miami Harbor Turning Basin, filed April 22, 1963, in Official Records Book 3622, Page 751.
- 15 INTENTIONALLY DELETED.
- 16 INTENTIONALLY DELETED.
- 17 INTENTIONALLY DELETED.
- 18 INTENTIONALLY DELETED.
- 19 INTENTIONALLY DELETED.
- 20 Terms and conditions of that Lease executed by and between the City of Miami and Flagstone Island Gardens LLC, a Delaware limited liability company, dated \_\_\_ and filed \_\_\_ in Official Records Book \_\_\_, Page \_\_\_.
- 21 INTENTIONALLY DELETED.
- 22 Perpetual Easement in favor of the Florida Department of Transportation filed March 13, 1998 in Official Records Book 18018, Page 1181.
- 23 The survey drawn by Weidener Surveying and Mapping PA under Project # 1712, dated July 11, 2002 discloses encroachment of curbing onto that FDOT Easement in Official Records Book 18018, page 1181 at the Northern portion of the property along with any easements arising from those sanitary sewer manholes, sanitary sewer line, overhead utilities, water lines and light poles running throughout the upland paved.

**Informational Note:**

Terms of Biscayne Bay Management Plan filed May 29, 1981 in Official Records Book 11114, page 822 and under Clerk's File No. 81R-143810:

Note: Standard Exception 2(f) of Schedule B - Section 2 is hereby deleted.

Note: The following endorsements will be issued with the final policies:  
LOAN:

NOTE: On loan policies, junior and subordinate matters, if any, will not be reflected in Schedule B.

**A.L.T.A. COMMITMENT  
CHICAGO TITLE INSURANCE COMPANY  
SCHEDULE B - Section 2**

Navigational Servitude  
ALTA 13.1

OWNER:  
ALTA 13  
Navigational Servitude

End of Schedule B - Section 2

NOTE: On loan policies, junior and subordinate matters, if any, will not be reflected in Schedule B.

**CHICAGO TITLE INSURANCE COMPANY**  
**REPORT TO AGENTS ON STATUS OF TITLE**

NUMBER: 300204602

TO: Michelle Vazquez-Pineda  
Shutts & Bowen, LLP  
1500 Miami Center  
201 S Biscayne Blvd  
Miami, Florida 33131

(REV. 12/10/02)

This report on the status of title is being furnished at your request to assist in the preparation of a CHICAGO TITLE INSURANCE COMPANY (the Company) title insurance commitment and policy to be issued by your office. Only the results of an examination of the record title are reflected herein.

After you have reviewed this report, you must still -

- (a) Add requirements to Schedule "B" you find necessary from your analysis of the present transaction.  
surveys, prior title evidence and exceptions to Schedule B reflecting matters you may have actual knowledge of which are not already shown in Schedule "B".
- (b) Review the transaction in accordance with criteria discussed in the Standard Underwriting Risk section of the Underwriting Guide.
- (c) If the amount of the policy(ies) to be issued exceed your agency limits, obtain written authorization to issue the commitment from the Company. This report is NOT authorization to issue the commitment.

This report has been furnished to you in a format that will allow for part of it to be used as the inserts for the title insurance commitment to be issued. You will need to complete Schedule A as well as add any additional requirements you deem necessary as a result of the above. You must keep a copy of the entire report in your file.

This report consists of the following:

- This leader sheet
- Schedule A
- Schedule B - Section 1
- Schedule B - Section 2

NOTE: Personal property tax information has NOT been searched.

THIS REPORT IS PROVIDED FOR THE SOLE PURPOSE OF THE ISSUANCE OF A CHICAGO TITLE INSURANCE COMPANY COMMITMENT AND POLICY BY THE ADDRESSEE AS AUTHORIZED BY THE COMPANY. THE COMPANY DISCLAIMS LIABILITY TO THE ADDRESSEE OR ANY THIRD PARTY IN THE EVENT THIS INFORMATION IS USED FOR A PURPOSE OTHER THAN AS STATED.

CHICAGO TITLE INSURANCE COMPANY

By \_\_\_\_\_

**CHICAGO TITLE INSURANCE COMPANY**  
**REPORT TO AGENTS ON STATUS OF TITLE**

Date: September 12, 2002

\_\_\_\_\_  
Albert V. Roth, Esq.

Exhibit 4.1.2

Environmental Condition Acceptance Notice

Reference to made to that certain Agreement to Enter into Ground Lease between The City of Miami, Florida ("City"), and Flagstone Island Gardens LLC, a Delaware limited liability company ("Flagstone"), having an effective date of January 1, 2003 as the same has been amended and restated by the Amended and Restated Agreement to Enter Into Ground Lease between the City and Flagstone having an effective date of February 1, 2010 (collectively, the "Agreement"). Unless otherwise defined herein, capitalized terms used herein shall have the respective meanings given to them in the Agreement.

Pursuant to Section 4.1.2 of the Agreement, Flagstone hereby gives notice to City as follows:

- (i) Flagstone has inspected the environmental condition of the Property prior to the expiration of the Inspection Period pursuant to Section 4.1.1 of the Agreement; and
- (ii) The environmental condition of the Property is satisfactory to Flagstone.

FLAGSTONE ISLAND GARDENS, LLC,  
a Delaware limited liability company

By: FLAGSTONE DEVELOPMENT  
CORPORATION, a Delaware corporation, its  
Managing Partner

By: \_\_\_\_\_  
Name: Mehmet Bayraktar  
Title: President  
Date: \_\_\_\_\_

Exhibit 4.1.3

Investor List

1. Flagstone Island Gardens, LLC
2. Mehmet Bayraktar
3. Bayraktar Family Members (as defined in the Amended and Restated Ground Lease)

Exhibit 4.1.4

List of Organizational Documents

Flagstone Property Group, LLC, a Delaware Limited Liability Company f/k/a Flagstone Properties, LLC

1. Certified Certificate of formation of flagstone Properties, LLC dated December 9, 2002
2. Certified Certificate of amendment of flagstone Properties, LLC, dated December 11, 2002
3. Written consent of the Managing Member of flagstone Properties, LLC (a Delaware Limited Liability company) dated December 10, 2002
4. Application for Authority of Flagstone Properties, LLC
5. Certified Certificate of Good Standing of Flagstone Properties, LLC dated December 9, 2002
6. Form for filing an application for authority for a foreign limited liability company to conduct business in New York State dated December 10, 2002
7. Certificate of Amendment or Change of application for authority of Flagstone properties, LLC dated December 11, 2002
8. Certificate of amendment or Change of Application for authority of Flagstone Properties, LLC- Filer: Joel J. Goldschmidt, Esq. dated December 11, 2002
9. Certified qualification documents by Flagstone Property Group, LLC dated December 17, 2002
10. Management Agreement dated July 17, 2003
11. Written Consent of the Members of Flagstone Property Group, LLC dated March 1, 2003
12. Limited Liability Company Operating Agreement of Flagstone Property Group, LLC dated January 15, 2003



**Flagstone Miami Holdings, LLC, a Delaware Limited Liability Company**

1. Certified Certificate of Formation of flagstone Miami Holdings, LLC dated December 9, 2002
2. Written consent of the Managing Member of flagstone Miami Holdings, LLC (a Delaware Limited Liability Company) dated December 10, 2002
3. Certificate of Good Standing for Flagstone Miami Holdings, LLC dated December 9, 2002
4. Application for authority of Flagstone Miami Holdings, LLC dated December 10, 2002
5. Certified qualification documents by Flagstone Miami Holdings, LLC dated December 17, 2002
6. Application for authority of Flagstone Miami Holdings, LLC
7. Written Consent of the Members of Flagstone Miami Holdings, LLC dated March 1, 2003
8. Management Agreement dated July 17, 2003
9. Limited Liability Company Operating Agreement of Flagstone Miami Holdings, LLC dated January 15, 2003

**Flagstone Island Gardens, LLC, a Delaware Limited Liability Company**

1. Certified Certificate of formation of flagstone Island Gardens, LLC dated December 9, 2002
2. Consent of the sole Member of flagstone Island Gardens, LLC dated December 11, 2002
3. Certificate of Merger of Flagstone Properties, LLC Properties, LLC (a Florida Limited Liability company) and Flagstone Island Gardens, LLC (a Delaware Limited Liability Company) dated December 11, 2002
4. Plan of Merger of Flagstone Properties, LLC (a Florida Limited Liability company) and Flagstone Island Gardens, LLC (a Delaware Limited Liability company) dated December 10, 2002
5. Certified Articles of Merger for Flagstone Island Gardens, LLC December 11, 2002
6. Articles of Merger of Flagstone Properties, LLC (a Florida Limited Liability Company) and Flagstone Island Gardens, LLC (a Delaware Limited Liability Company) dated December 11, 2002
7. Plan of Merger of Flagstone Properties, LLC (a Florida Limited Liability Company) and Flagstone Island Gardens, LLC (a Delaware Limited Liability Company) dated December 10, 2002
8. Written consent of the Managing Member of Flagstone Island Gardens, LLC (a Delaware Limited Liability Company) December 10, 2002
9. Application for authority of flagstone Island Gardens, LLC
10. Certificate of Good Standing of flagstone Island Gardens, LLC dated December 9, 2002
11. Form for filing an application for authority for a foreign limited liability company to conduct business in New York State dated December 10, 2002
12. Certified qualification documents by Flagstone Island Gardens, LLC dated December 17, 2002
13. Written Consent of the Members of flagstone Island Gardens, LLC dated March 1, 2003
14. Limited Liability Company Operating Agreement of Flagstone Island Gardens, LLC dated January 15, 2003
15. Management Agreement dated July 17, 2003

Exhibit 4.1.5

Expressions of Interest



December 3, 2002

Mr. Mehmet Bayraktar  
Chairman of the Board  
Flagstone Properties LLC  
201 South Biscayne Boulevard  
Suite 2828  
Miami, FL 33131

Dear Mehmet,

HSBC Securities (USA) Inc. has been serving for the past twelve months as Financial Advisor to Flagstone Properties in connection with its Island Garden project at Watson Island. Together with our sub-advisor partner, Holliday Fenoglio Fowler, LP, we have been actively engaged in all aspects of the project including Flagstone's discussions with the City, the company's outside development team and your specialists for this marina, hotel and retail project. Based on the agreements with the City about to be signed, the project's business plan and our market evaluation, we are confident that the Project's debt and equity requirements can be raised within the established timeline (assuming reasonably normal market conditions).

It's been a pleasure working with you and the Flagstone team on this landmark project.

Respectfully,

  
Charles H. Columbus

HSBC Securities (USA) Inc.  
452 Fifth Avenue, New York, NY 10018  
Telephone (212) 523-3000

HSBC Sec. (USA) INC. Fax: 212-825-5894 Dec 4 '02 16:42 P 02/02

Exhibit 4.2.2

Binding Letter from DCA

*Done 11/15/02*



STATE OF FLORIDA  
**DEPARTMENT OF COMMUNITY AFFAIRS**  
*"Dedicated to making Florida a better place to call home"*

JES BUSH  
Governor

STEVEN M. SEIBERT  
Secretary

November 15, 2002

CITY MANAGERS OFFICE  
02 NOV 19 PM 12:09

Judith A. Burke, Esquire  
Shotts and Bowen, LLP  
1500 Miami Center  
201 South Biscayne Boulevard  
Miami, FL 33131

RE: Binding Letter of Vested Rights and Interpretation of Development of Regional Impact  
("DRP") Status  
File No. BLIVR 11003-001  
FINAL ORDER NO: DCA02-BL-288

Dear Ms. Burke:

We have evaluated your Application for a Binding Letter of Vested Rights, dated September 25, 2002 ("Application"), and received on September 27, 2002. Based on the information contained in the application and supporting documentation, we enter the following Findings of Facts, Conclusions of Law, and Order. Per your request, the Binding Letter includes a determination as to the Watson Island Marina ("Marina") site's vested rights.

**FINDINGS OF FACT**

**Preliminary Findings**

1. The applicant is Flagstone Properties, LLC, ("Applicant"), which is represented in its application by Judith A. Burke as its authorized representative. The application describes the project as redevelopment of a forty-two (42) wet slip marina providing mooring for watercraft, encompassing 13.4 acres of submerged land, which is owned by the City of Miami.

2555 SHUMARD OAK BOULEVARD • TALLAHASSEE, FLORIDA 32399-2100  
Phone: 850.488.8469/Suncom 278.8468 FAX: 850.921.0781/Suncom 291.0781  
Internet address: <http://www.dca.state.fl.us>

CRITICAL STATE CONCERN FIELD OFFICE  
2788 Overseas Highway, Suite 312  
Marathon, FL 32953-2227  
(888) 286-3202

COMMUNITY PLANNING  
2555 Shumard Oak Boulevard  
Tallahassee, FL 32399-2100  
(850) 488-2750

EMERGENCY MANAGEMENT  
2555 Shumard Oak Boulevard  
Tallahassee, FL 32399-2100  
(850) 413-8888

HOUSING & COMMUNITY DEVELOPMENT  
2555 Shumard Oak Boulevard  
Tallahassee, FL 32399-2100  
(850) 488-7955

2. All communications made by the applicant, all material submitted by the applicant in the Application, and all other relevant written materials are incorporated herein by reference.

3. On October 11, 2002, a notice of the applicant's request for Binding Letter was published in the Florida Administrative Weekly. In addition, the South Florida Regional Planning Council, the City of Miami, and Miami-Dade County were notified of the application's receipt.

4. The project site is located wholly in the City of Miami ("City"), Miami-Dade County, in Section 31, Township 53, Range 42.

5. The project site consists of 13.4 acres of submerged land. As represented in the Application, the existing improvements will lie wholly within the 13.4 area.

6. A brief summary of the development on the project site is as follows:

The site is comprised of a forty-two (42) wet slip marina, which provides mooring for various watercraft used for sport, pleasure, and/or commercial fishing. The Marina was constructed prior to July 1, 1973. It was constructed in 1956 and has been in continuous operation since that date.

The Marina includes a double row of mooring pilings, but does not include any docks or finger piers.

The Applicant would like to develop a mega-yacht marina ("Project"), a forty-two (42) wet slip marina in the same footprint.

#### Vested Rights

7. For Purposes of identifying the types of uses, which were permitted, the applicant submitted documentation beginning in 1956. There were no City government approvals pertinent to the scope of review as to vested rights as they relate to marinas. The statement was made, however, that the Marina was "completed in accordance with all applicable federal, state, and local statutes, rules regulation's and ordinances in effect as of 1956." In 1967, the City adopted an ordinance that required a permit for any waterfront improvements. As the Marina was constructed prior to 1967, a building permit was not required. Aerial photographs from 1966 along with relevant documentation indicate that the Marina was developed, and had remained in the same condition since prior to July 1, 1973.

8. In 1975, the State of Florida required Dredge and Fill Permits for coastal construction. The Marina was constructed prior to 1973 and thus did not require such a permit.

9. In 1980, the Miami-Dade County adopted an ordinance requiring a Class I Coastal Construction Permit for construction or renovations over any tidal waters, submerged bay bottomland, or wetlands in the County. The Marina did not require such a permit since it was constructed prior to 1980.

10. In 1990, Miami-Dade County instituted a Marine Facilities Operating Permit ("MOP") program. Every year since the inception of the program, the Marina had received an MOP for forty-three (43) commercial vessels.

11. The submerged land is unplatted. No subdivision plats were approved for development between August 1, 1967 and July 1, 1973.

12. There are currently no pending development permits or other authorizations for the Project.

13. There are no development permits or authorizations that have been requested by the Project.

14. There are no development permits or authorizations that have been denied for the Project.

15. There has been no conveyance or agreement to convey property to the state or local government as prerequisite for approval of a zoning change.

16. The Marina has not been registered with the Division of Florida Land Sales and Condominiums.

17. As proposed in the Application, all of the Project will lie within the footprint of the existing Marina.

18. The Project is classified as a marina for purposes of DRI guidelines and standards.

19. The Project has not received any prior binding letters of interpretation from the Department.

#### CONCLUSIONS OF LAW

Pursuant to Section 380.06(4)(f), Florida Statutes, a development with vested rights may demolish and reconstruct within the same approximate footprint of its vested development without divesting this vested rights if the change in the size of the development does not exceed the substantial deviation criteria set forth in Section 380.06(19)(b), Florida Statutes.

Under Section 380.06(4)(f), F.S., the existing Marina on the subject site is vested.

Demolition of the existing Marina and subsequent construction of the Project on the subject site will retain vesting from DRI review.

ORDER

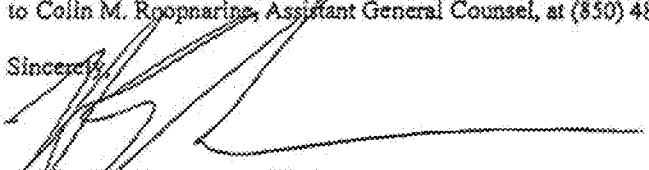
It is hereby ordered that the subject site has vested rights with respect to the forty-two (42) slips for the mega-yacht marina project. The proposed Project, as described in the September 25, 2002, application for binding letter, is deemed to be entitled to vested rights with respect for DRI review.

The development evaluated in this binding letter shall be considered cumulatively with any future development in terms of the guidelines and standards contained in Chapter 28-24, F.A.C., and Section 380.0651, P.S., and its associated regional impacts. Should any of the above representations made in the application be substantially changed, further review of the project may be required.

This letter shall expire and become void as of November 15, 2005, unless the proposed development has been substantially commenced by this date. This date may be extended by mutual agreement of the Department, local government of jurisdiction, and the developer.

This determination does not obviate the need to comply with all other applicable state or local government permitting procedures. Any questions regarding this determination may be directed to Collin M. Roopnarine, Assistant General Counsel, at (850) 488-0410.

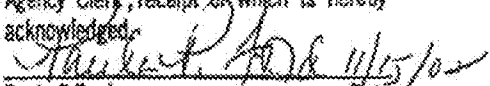
Sincerely,

  
H. "Sonny" Timmerman, Director  
Division of Community Planning

cc: David Dahlstrom, South Florida Regional Planning Council  
Carlos Gimenez, City Manager, City of Miami  
Ruth Ellis Myers, Miami-Dade County

FILING AND ACKNOWLEDGEMENT

FILED, on this date, with the designated Agency Clerk, receipt of which is hereby acknowledged.

  
Paula P. Ford  
Agency Clerk

Date

### NOTICE OF RIGHTS

The applicant has the opportunity for a formal administrative proceeding regarding this binding letter pursuant to Sections 120.569 & 120.569 & 120.57(1), F.S. If you dispute any issue of material fact stated in the binding letter, then you may file a petition requesting a formal administrative hearing before the an administrative law judge of the Division of Administrative Hearings pursuant to Sections 120.569 & 120.57(1), F.S. and Chapter 28-106, Parts I and II, F.A.C. At a formal administrative hearing, you may be represented by counsel or other qualified representative, and you will have the opportunity to present evidence and argument on all the issues involved, to conduct cross examination and submit rebuttal evidence, to submit proposed findings of fact and orders, and to file exceptions to any recommended order.

If you desire a formal administrative hearing, you must file with the agency clerk of the Department of Community Affairs a written pleading entitled 'petition for administrative proceedings' within 30 days of receipt of this notice. A petition is filed when it is received by the Agency Clerk in the Department's Office of General Counsel, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100.

The petition must meet the filing requirements in Rule 28-106.104(2), F.A.C. and must be submitted in accordance with Rule 28-106.201(2), F.A.C. The petition must include the signature of someone authorized to act on your behalf. A petition must specifically request an administrative proceeding, it must admit or deny each material fact contained in the binding letter, and it must state any defenses upon which you rely. You waive the right to an administrative proceeding if you do not file a petition with the agency clerk within the time frames described above.

You may also decide that no formal administrative proceeding is required for this binding letter. If you do not request a formal administrative proceeding, this binding letter constitutes final agency action and is subject to judicial review of the binding letter pursuant o Section 120.68, F.S., and Florida Rules of Appellate Procedure 9.03(b)(1)(c) and 9.110.

To initiate an appeal of this binding letter, a notice of appeal must be filed with the Department's Agency Clerk, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, and with the appropriate district court of appeal within 30 days of the day this binding letter is filed with the agency clerk. The notice of appeal filed with the district court of appeal must be accompanied by the filing fee specified in Section 35.22(3), F.S., and must be substantially in the form prescribed by Florida Rule of Appellate Procedure 9.900(a).

You waive your right to judicial review if the notice of appeal is not timely filed with the agency clerk and the appropriate district court of appeal.

Mediation under Section 120.573, F.S. is available with respect to the issues resolved by this binding letter. A request for mediation must include the information required by Rule 28-106.402, F.A.C. Choosing mediation does not affect the right to an administrative hearing.



Exhibit 4.2.5

Amended and Restated Partial Modification of Restriction Deed No 19447-F



CFN 201100624291 DR BK 27828 Pgs 2473 - 2498 (24pgs)  
RECORDED 07/16/2011 13:46:19  
HARVEY RUVIN, CLERK OF COURT, MIAMI-DADE COUNTY, FLORIDA

**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT  
TRUST FUND OF THE STATE OF FLORIDA**

**AMENDED AND RESTATED PARTIAL MODIFICATION OF RESTRICTIONS**

**DEED NO. 19447-F**

**KNOW ALL MEN BY THESE PRESENTS: That**

WHEREAS, the BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA ("BOARD OF TRUSTEES"), is by Section 253.03, Florida Statutes, authorized and empowered to modify restricted uses for certain lands under the terms and conditions set forth herein; and

WHEREAS, the BOARD OF TRUSTEES conveyed to the City of Miami ("CITY") certain lands more particularly described in Deed No. 19447, recorded in Deed Book 3130, Page 257, Public Records of Miami-Dade County, Florida (the "Deed"); and

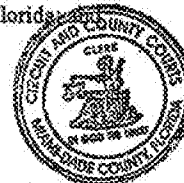
WHEREAS, the Deed contains the following restrictions (the "Original Restrictions"):

PROVIDED, HOWEVER, anything herein to the contrary notwithstanding, this deed is given and granted upon the express condition subsequent that the Grantee herein or its successors and assigns shall never sell or convey or lease the above described land or any part thereof to any private person, firm or corporation for any private use or purpose, it being the intention of this restriction that the said lands shall be used solely for public purposes, including municipal purposes and not otherwise.

PROVIDED, FURTHER, anything herein to the contrary notwithstanding, this deed is given and granted upon the further express condition subsequent that the Grantee herein or its successors or assigns shall not give or grant any license or permit to any private person, firm or corporation to construct or make by any means, any islands, fills, embankments, structures, buildings or other similar things within or upon the above described lands or any part thereof for any private use or purpose, as distinguished from any public or municipal use or purpose.

It is covenanted and agreed that the above conditions subsequent shall run with the land and any violation thereof shall render this deed null and void and the above-described lands shall, in any event, revert to the Grantors or their successors.

WHEREAS, the BOARD OF TRUSTEES approved a modification of the Original Restrictions on June 24, 2004, and executed and delivered an instrument entitled "Partial Modification of Restrictions" on March 2, 2005, and same was recorded on March 18, 2005, in Official Records Book 23181, Page 775, Public Records of Miami-Dade County, Florida;



MIADOCS 5570952 1

WHEREAS, the CITY is still desirous of leasing that portion of the lands conveyed to the CITY by the Deed which is described in Exhibit "A", attached hereto and made a part hereof (the "Property"), to Flagstone Island Gardens, LLC, a Delaware limited liability company ("FLAGSTONE"), to allow for the construction and operation of a public and private commercial, marina, and mixed use, waterfront development, including any and all uses permitted under the Ground Lease, as defined below (as a whole or in phases, the "Development"), and in order to accomplish the same, it is necessary that the Original Restrictions be modified by the BOARD OF TRUSTEES; and

WHEREAS, the Development is still in the public interest because it will convert the Property from a sparse, unimproved field to a location that will contain cultural, scenic, and recreational values that will benefit the public while at the same time retaining 60% of the Development as open space in the form of gardens, walkways, and a waterfront promenade available to residents and visitors for cultural and recreational activities; and

WHEREAS, in furtherance of the public interest, the Development will still also aid tourism, provide training and employment opportunities to residents, and generate significant tax revenue for the CITY, Miami-Dade County and the State of Florida; and

WHEREAS, the BOARD OF TRUSTEES, the CITY and FLAGSTONE desire to amend and restate the Partial Modification of Restrictions on the terms set forth in this Amended and Restated Partial Modification of Restrictions; and

WHEREAS, the BOARD OF TRUSTEES approved this Amended and Restated Partial Modification of Restrictions on August 16, 2011; and

WHEREAS, the CITY approved this Amended and Restated Partial Modification of Restrictions effective as of September 15, 2011.

NOW THEREFORE, for and in consideration of the foregoing recitals and of the mutual covenants, terms, and conditions herein contained, and other good and valuable consideration, the BOARD OF TRUSTEES, the CITY and FLAGSTONE hereby completely amend and restate the Partial Modification of Restrictions as follows:

1. Consent to Development and Ground Lease. Provided that the CITY and FLAGSTONE satisfy their respective obligations set forth in Paragraphs 2 and 3 below and subject to termination in accordance with the provisions of this Amended and Restated Partial Modification of Restrictions, the Original Restrictions and Partial Modification of Restrictions are hereby modified to permit, and the BOARD OF TRUSTEES hereby consents to, the following: (i) the leasing of the Property or parts thereof by the CITY to FLAGSTONE pursuant to the ground lease or leases between the CITY and FLAGSTONE (the "Ground Lease," which term shall include Exhibit "A" to the Ground Lease and any amendments made in accordance with the express terms of the Ground Lease); (ii) FLAGSTONE's use of the Property for the development, construction and operation of the Development; (iii) the grant of any easements and/or license agreements which are necessary or appropriate for pre-development work related to the Development, such as utility relocation and access related to the Development and

which are necessary or appropriate for such construction or operation of the Development, and continued access related to the Development, all upon the Property or within the areas described in Exhibit "B", attached hereto and made a part hereof (the "Easement Areas"), and (iv) that certain Amended and Restated Agreement to Enter into Ground Lease between the CITY and FLAGSTONE effective as of September 15, 2011 (the "Agreement to Enter"), a copy of which has been provided to the Division (defined below). In the event that (i) FLAGSTONE and the CITY are contemplating any material modifications to the Ground Lease and/or the Agreement to Enter, FLAGSTONE and the CITY agree to discuss such proposed modifications with the Division (defined below) contemporaneously with any discussions on the proposed modifications between FLAGSTONE and the CITY, and (ii) any material amendments to the Ground Lease and/or the Agreement to Enter must first receive prior approval by the BOARD OF TRUSTEES at a regularly scheduled meeting.

2. FLAGSTONE's Obligations.

(a) Payments. Until the Development is completed or October 1, 2021, whichever occurs first ("Takeover Date"), FLAGSTONE shall make payments to the BOARD OF TRUSTEES, on a semi-annual basis, in an amount equal to 15% of the amount it pays to the CITY under the Agreement to Enter and the Ground Lease(s) pursuant to the rent schedule set forth on Exhibit "A" to City of Miami Resolution R-10-0402, adopted September 23, 2010 (the "Resolution"). FLAGSTONE shall make these semi-annual payments to the BOARD OF TRUSTEES on January 1 and July 1 of each calendar year. Each payment shall be in an amount equal to 15% of the sums paid by FLAGSTONE to the CITY during the prior six (6) months, except for the first semi-annual payment which may be based on less than six (6) months of payments if less than six (6) months have elapsed since commencement of payments to the CITY. Notwithstanding the foregoing, the first payment by FLAGSTONE to the BOARD OF TRUSTEES under this Amended and Restated Partial Modification of Restrictions shall be in the amount of 15% of the amount of the first payment (the "First Payment") to be made by FLAGSTONE to the CITY on or before September 29, 2011, and shall be made on the same date as the First Payment.

(b) Certification. FLAGSTONE certifies to the BOARD OF TRUSTEES as follows: (i) FLAGSTONE is not the subject of a pending bankruptcy proceeding; (ii) FLAGSTONE is current with regard to all state and local tax payments for which it is responsible; and (iii) FLAGSTONE has executed an affidavit dated August 4, 2011, regarding undischarged judgments. Any breach of a statement in that affidavit or of the certifications in this paragraph shall constitute a default by FLAGSTONE under this Amended and Restated Partial Modification of Restrictions.

(c) Discharge of Judgments. FLAGSTONE shall either discharge all undischarged judgments identified in the affidavit required in Paragraph 2(b)(iii) above or deliver to the Miami-Dade County Clerk of the Courts' Registry on or before January 17, 2012, to be held in an escrow account, an amount not less than 125% of the total remaining outstanding principal balance of all undischarged judgments identified on Exhibit "C" attached hereto and made a part hereof. If FLAGSTONE fails to do the

foregoing, this Amended and Restated Partial Modification of Restrictions shall automatically and immediately terminate and the cure rights provided for in Paragraph 5 below shall not apply. Additionally, FLAGSTONE agrees to comply with the CITY's requirements in Section IX, Indemnification/Hold Harmless for City, Discharge of Existing Liens, Judgments, and Garnishments in Exhibit "A" to the Resolution.

3. CITY's and FLAGSTONE's Obligations.

(a) Payments. From and after the Takeover Date, the CITY shall make payments to the BOARD OF TRUSTEES, on a semi-annual basis, in the amount of 15% of the total gross rental payments received by the CITY under the Ground Lease (including, but not necessarily limited to, Base Rent and Percentage Rent, as defined in the Ground Lease), with the first semi-annual rental payment being made on the 30<sup>th</sup> day of the month in which the CITY receives its sixth month Base Rental payment pursuant to the Ground Lease, and each subsequent semi-annual payment being made on the 30<sup>th</sup> day of each and every sixth month thereafter for as long as the Development remains on the Property. In no event shall the BOARD OF TRUSTEES receive less than \$300,000 during each 12-month period from and after the Takeover Date, regardless of whether the CITY actually collects Base Rent or Percentage Rent under the Ground Lease.

(b) Permits. The CITY shall insure and guarantee the BOARD OF TRUSTEES that the CITY shall require FLAGSTONE to apply for and obtain all permits required by law for the Development.

(c) Financial Audit Reports. Beginning on the date of the CITY's first semi-annual rental payment to the BOARD OF TRUSTEES as required by Paragraph 3(a) above, the CITY shall require FLAGSTONE to submit for each calendar year, annual financial audit reports to the BOARD OF TRUSTEES which have been completed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which certify the accuracy of the semi-annual payments described in Paragraph 3(a) above.

(d) Status Reports Regarding Development. Beginning one year after the Ground Lease Effective Date (defined below) of this Amended and Restated Partial Modification of Restrictions, the CITY shall require FLAGSTONE to submit annual status reports to the Division (defined below) that verify the progress of the proposed Development. The CITY shall be required to submit such information that the CITY receives from FLAGSTONE for these annual status reports to the Division until each phase of the Development has received a certificate of completion. Each such report from FLAGSTONE shall include a list of all then-existing Curing Parties (defined below).

(e) Completion of Development. The CITY shall require FLAGSTONE to insure and guarantee that the Development is completed in the manner contemplated and required by the Ground Lease (including obtaining applicable permits) within the time periods set forth in the Ground Lease.

(f) Improvements to Additional Lands. The CITY shall require FLAGSTONE to insure and guarantee that any staging area located within the Easement Areas used by FLAGSTONE pursuant to any easement or license agreement shall, after its usage by FLAGSTONE, be left in a condition better than its condition when it was delivered to FLAGSTONE. In addition to the foregoing, the CITY shall require FLAGSTONE to insure and guarantee that FLAGSTONE will spend no less than \$1,000,000.00 on improvements to (1) an open space of land on the southeast side of Watson Island known as Southside Park and (2) the Japanese Gardens. Some of these improvements shall include, but not be limited to, the following: master planning of Southside Park, open air pavilion or covered support facility, fencing, removal of invasive trees and plants, underground utilities, park pathways, bicycle and jogging trails, public restroom facilities, security cameras and/or devices, and parking area.

(g) Executed Copy of Ground Lease. The CITY shall insure that the BOARD OF TRUSTEES receives a fully executed copy of the Ground Lease within 30 days of the execution and delivery of the Ground Lease by the parties thereto and all subsequent amendments thereto.

(h) Gambling. During the term of the Ground Lease and any renewals, extensions, modifications or assignments thereof, without the express consent of the BOARD OF TRUSTEES and notwithstanding any contrary provisions that now exist in the Ground Lease, the CITY and FLAGSTONE shall not permit: (1) casino gambling and all other forms of gambling on the Property and the Easement Areas and (2) the operation of or entry onto the Property and the Easement Areas of gambling cruise ships, or vessels that are used principally for the purpose of gambling, when these vessels are engaged in "cruises to nowhere," where the ships leave and return to the state of Florida without an intervening stop within another state or foreign country or waters within the jurisdiction of another state or foreign country, and any watercraft used to carry passengers to and from such gambling cruise ships.

#### 4. Termination of BOARD OF TRUSTEES' Approval.

(a) Default in the CITY's Obligations. Subject to the notice and cure provisions set forth in Paragraph 5 below and the unavoidable delays provision set forth in Paragraph 6(a) below, the BOARD OF TRUSTEES may terminate the approval set forth in Paragraph 1 above if any of the CITY's obligations as set forth above in Paragraph 3 are not performed in a timely manner or FLAGSTONE's obligations set forth above in Paragraphs 2 and 3 are not performed in a timely manner.

(b) Termination of Ground Lease. Subject to the notice and cure provisions set forth in Paragraph 5 below, the BOARD OF TRUSTEES may terminate the approval set forth in Paragraph 1 above if the Ground Lease is terminated in accordance with its terms and it is not replaced with any new replacement lease(s) expressly provided for by the Ground Lease or by any Subordination, Non-Disturbance and Attornment Agreement entered into by any of the Curing Parties; provided, however, this termination right shall not apply if there are separate ground leases for components of the Development and at least one such Ground Lease has not been terminated.

(c) Reimposition of Original Restrictions. If the BOARD OF TRUSTEES terminates this Amended and Restated Partial Modification of Restrictions, the Original Restrictions shall automatically and immediately be reimposed on the Property and Easement Areas.

5. Cure Rights. The BOARD OF TRUSTEES agrees that in the event that the BOARD OF TRUSTEES or the Division of State Lands, State of Florida Department of Environmental Protection (the "Division"), determines that a default (a "Default") described in Paragraph 2(a), 2(b)(ii) or 3(a) above (a "Monetary Default") or Paragraph 2(b)(i), 3(b), 3(c), 3(d), 3(e), 3(f), 3(g) or 3(h) above (a "Non-Monetary Default") has occurred, the following procedures shall apply:

(a) Notice. The BOARD OF TRUSTEES or the Division shall provide notice to the CITY or FLAGSTONE (whichever is believed to have defaulted) of any Default, which notice shall identify the alleged Default. The BOARD OF TRUSTEES or the Division shall send a copy of such notice to each Approved Mortgagee and Major Subtenant and any association formed to administer the applicable regime(s) ("Association(s)") with respect to Approved Time Share Licenses, as such terms are defined in the Ground Lease, and to the CITY or FLAGSTONE (whichever is not believed to be the defaulting party) (the Major Subtenants, the Approved Mortgagees, such Association(s) and the CITY or FLAGSTONE (whichever is not the defaulting party), each a "Curing Party"). Notwithstanding the foregoing, the BOARD OF TRUSTEES or the Division shall be required to send a copy of any such notice only to each party as to which the BOARD OF TRUSTEES or the Division has been notified in writing of such party's status as a Curing Party. In the event the BOARD OF TRUSTEES or the Division fails to send a copy of such notice to any such Curing Party, such failure shall not affect the validity of the Default notice given to any other Curing Party, or the cure period set forth in Paragraph 5(b) below which is afforded to such other Curing Party.

(b) Cure Periods. The BOARD OF TRUSTEES agrees that if the BOARD OF TRUSTEES determines that the CITY or FLAGSTONE (as applicable) has failed to cure the Default after being given the opportunity to do so (which determination of the CITY's or FLAGSTONE's failure to cure the Default may be made in the sole and absolute discretion of the BOARD OF TRUSTEES), any Curing Party shall have the opportunity: (i) to cure any Monetary Default within 60 days from the date the BOARD OF TRUSTEES sends its notice of Default (the "Default Date"); and (ii) to cure any Non-Monetary Default within 120 days from the Default Date; provided, however, that if any Non-Monetary Default cannot, in the exercise of due diligence and good faith, be cured within such 120-day period, any Curing Party shall have such additional reasonable period as will enable such Curing Party, with the exercise of due diligence and in good faith, to cure the Non-Monetary Default; provided further that the cure period for such Non-Monetary Defaults shall not exceed 24 months from the Default Date (except that if possession of the Property by such Curing Party is reasonably necessary for such Curing Party to cure such Non-Monetary Default, the cure period for such Non-Monetary Default shall not exceed 24 months from the date such possession is obtained, so long as such Curing Party is diligently pursuing proceedings to obtain such possession).

6

Amended and Restated Partial Modification of Restrictions  
Deed Restriction No. 19447-F  
MIADOC5 5779952 3

6. Miscellaneous.

(a) Unavoidable Delays. The BOARD OF TRUSTEES recognizes that there may be instances when unavoidable delays may be encountered which are caused by circumstances beyond the reasonable control of the CITY or any Curing Party and could not have been overcome by the CITY'S or such Curing Party's due diligence. A filing of a voluntary petition in bankruptcy or for reorganization or an arrangement pursuant to the Federal Bankruptcy Code or any similar law, federal or state, now or hereinafter in effect, or an assignment for the benefit of creditors shall not be considered an unavoidable delay for purposes of this Paragraph 6(a). In the unlikely event of such an unavoidable delay, the BOARD OF TRUSTEES agrees to the following procedure: (i) upon occurrence of any unavoidable delay, the CITY or any Curing Party shall notify the Director of the Division in writing within 30 days thereafter of the anticipated length and cause of the delay, the measures taken or to be taken to minimize the delay and the timetable by which the CITY and/or such Curing Party intends to implement these measures; (ii) the parties will then enter into discussions to determine the appropriate extension, to allow the CITY or such Curing Party adequate time to meet the delay or anticipated delay. The Division, acting on behalf of the BOARD OF TRUSTEES, shall agree to extend the time for performance hereunder for a period equal to the agreed delay from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize the delay; and (iii) if the parties cannot agree, the Division will provide the CITY or the Curing Party with notice and an opportunity for a hearing before the BOARD OF TRUSTEES to determine the amount of time for extension of performance hereunder. The provisions of this Paragraph 6(a) shall not apply to Paragraphs 2 or 3(a) above.

(b) Application Only to Property and Easement Areas; Ratification. This Amended and Restated Partial Modification of Restrictions applies only to the Property and the Easement Areas, and shall not affect or modify the restrictions imposed upon the other lands described in the Deed which have not previously been waived or modified by the BOARD OF TRUSTEES. Except as expressly modified hereby, the terms of the Original Restrictions and Partial Modification of Restrictions shall remain unchanged in each and every respect, and the same are hereby ratified, approved and confirmed by the BOARD OF TRUSTEES and the CITY as of the date of this Amended and Restated Partial Modification of Restrictions (it being understood that any previous waiver or modification of the Original Restrictions or the Partial Modification of Restrictions made with respect to the Property is hereby superseded).

(c) Effective Date. Except for Paragraphs 1(i) and (ii) above, this Amended and Restated Partial Modification of Restrictions shall be effective upon the mutual execution and delivery hereof. With respect to the BOARD OF TRUSTEES' consent pursuant to Paragraphs 1(i) and (ii) above, this Amended and Restated Partial Modification of Restrictions shall be effective only upon the Division's receipt of a copy of a fully executed Ground Lease and the Division's confirmation that the Ground Lease is in substantially the same form as the copy of the proposed Ground Lease that is attached to the Agreement to Enter ("Ground Lease Effective Date").

IN WITNESS WHEREOF, the BOARD OF TRUSTEES, the CITY and FLAGSTONE have caused this Amended and Restated Partial Modification of Restrictions to be executed on this 15 day of September 2011.

Witnesses:

*Terry Bentley*  
Signature of Witness

Terry Bentley  
Printed/Typed Name of Witness

*Terrant Johnson*  
Signature of Witness

Terrant Johnson  
Printed/Typed Name of Witness

STATE OF FLORIDA  
COUNTY OF LEON

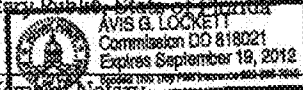
The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of September 2011, by Mike Long, as Assistant Director, Division of State Lands, State of Florida Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. He is personally known to me.

SEAL

BOARD OF TRUSTEES OF THE INTERNAL  
IMPROVEMENT TRUST FUND OF THE  
STATE OF FLORIDA

By: *Mike Long*  
Mike Long, Assistant Director, Division of  
State Lands, State of Florida Department of  
Environmental Protection, as agent for and on  
behalf of the Board of Trustees of the Internal  
Improvement Trust Fund of the State of Florida

*Avis G. Lockett*  
Signature of Notary Public, State of Florida



Printed/Typed Name of Notary

Commission Number: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

Approved as to Form and Legality

By: *Jany L. Hwan*  
DEP Attorney



CITY OF MIAMI, a municipal corporation of the State of Florida

By: Johnny Martinez  
Johnny Martinez, P.E., City Manager  
Pursuant to Resolution No. R-11-0337

ATTEST:

By: Priscilla A. Thompson  
Priscilla A. Thompson  
City Clerk

APPROVED AS TO INSURANCE REQUIREMENTS

(OFFICIAL SEAL)

By: Calvin Ellis  
Calvin Ellis, Director of Risk Management

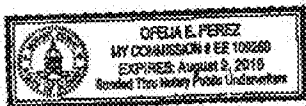
APPROVED AS TO FORM AND CORRECTNESS:

By: Julie O. Bru  
Julie O. Bru, City Attorney *rsb*

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 15 day of September, 2011, by Johnny Martinez, P.E. as City Manager, and Priscilla A. Thompson, as City Clerk, on behalf of the CITY OF MIAMI, FLORIDA. Each of them is personally known to me or produced \_\_\_\_\_ as identification.

Opal E. B.  
Notary Public, State of Florida



Printed/Typed/Stamped Name \_\_\_\_\_

Commission Number: \_\_\_\_\_

Commission Expires: \_\_\_\_\_

Witnesses

[Signature]  
Signature of Witness

Juan Carlos Echeverria  
Printed/Typed Name of Witness

Semir Sarac  
Signature of Witness

SEVILIR SARAC  
Printed/Typed Name of Witness

FLAGSTONE ISLAND GARDENS, LLC, a  
Delaware limited liability company  
By: Flagstone Development Corporation, a  
Delaware corporation, its manager

By: [Signature]  
Mehmet Bayraktar, President

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 9 day of February  
2011, by Mehmet Bayraktar as President of Flagstone Development Corporation, a Delaware  
corporation on behalf of the corporation acting as the manager of FLAGSTONE ISLAND  
GARDENS, LLC, a Delaware limited liability company, on behalf of the company. He is  
personally known to me or produced \_\_\_\_\_ as identification.

NOTARY PUBLIC STATE OF FLORIDA  
Juan Carlos Echeverria  
Commission # EE063267  
Expires: FEB. 09, 2015  
BONDED THIRD ATLANTIC BONDING CO., INC.

[Signature]  
Notary Public, State of Florida

Printed/Typed/Stamped Name

Commission Number: \_\_\_\_\_

Commission Expires: \_\_\_\_\_

Exhibit "A"

Legal Description of Lands Conveyed by Deed No. 19447

LEGAL DESCRIPTION (NW QUADRANT - UPLAND PARCEL):

COMMENCE AT A POINT SHOWN MARKED BY A 5/8" DIAMETER IRON ROD AND CAP STAMPED F.D.O.T., SHOWN AS P.T. STA. 15+30 ON THE OFFICIAL MAP OF LOCATION AND SURVEY OF A PORTION OF SECTION 8706, DESIGNATED AS PART OF STATE ROAD A-1-A IN DADE COUNTY, FLORIDA, PREPARED BY THE STATE ROAD DEPARTMENT OF THE STATE OF FLORIDA, AS RECORDED IN MAP BOOK 56 AT PAGE 71 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA, SAID POINT BEING THE POINT OF TANGENCY OF THE ORIGINAL CENTER LINE OF THE DOUGLAS MACARTHUR CAUSEWAY RUNNING EASTERLY AND SOUTH EASTERLY FROM THE WESTERLY LIMITS (WEST BRIDGE) OF WATSON ISLAND AS SHOWN ON SHEET 3 OF THE STATE ROAD DEPARTMENT RIGHT-OF-WAY MAP SECTION NO. (8706-112) 8706-2117, REVISED MARCH 25, 1959, SAID MOST NORTHERLY CURVE HAVING A RADIUS OF 1432.69 FEET AND A CENTRAL ANGLE OF 62°00'00"; THENCE SOUTH 59°31'26" WEST DEPARTING RADially FROM SAID CENTERLINE A DISTANCE OF 987.36 FEET TO A PROJECTED BULKHEAD LINE; THENCE NORTH 17°12'21" WEST ALONG SAID BULKHEAD LINE A DISTANCE OF 238.86 FEET TO THE POINT AND PLACE OF BEGINNING; THENCE NORTH 17°12'21" WEST CONTINUING ALONG SAID BULKHEAD LINE A DISTANCE OF 924.74 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF STATE ROAD A-1-A - DOUGLAS MACARTHUR CAUSEWAY; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE THE FOLLOWING COURSES AND DISTANCES; SOUTH 89°18'15" EAST A DISTANCE OF 72.89 FEET; THENCE NORTH 86°39'49" EAST A DISTANCE OF 81.31 FEET TO NON-TANGENT CURVE CONCAVE TO THE NORTHEAST WHOSE RADIAL LINE BEARS NORTH 39°29'18" EAST HAVING A RADIUS OF 160.00 FEET AND CENTRAL ANGLE OF 22°09'28"; THENCE ALONG SAID CURVE AN ARC LENGTH OF 81.88 FEET; THENCE SOUTH 72°40'15" EAST CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 276.49 FEET; TO A CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 600.00 FEET AND CENTRAL ANGLE OF 48°17'39"; THENCE ALONG SAID CURVE AN ARC LENGTH OF 484.79 FEET TO A POINT OF TANGENCY; THENCE SOUTH 28°22'36" EAST CONTINUING ALONG THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF STATE ROAD A-1-A A DISTANCE OF 194.59 FEET; THENCE SOUTH 54°07'39" WEST DEPARTING SAID RIGHT-OF-WAY LINE A DISTANCE OF 531.16 FEET; THENCE NORTH 35°54'03" WEST A DISTANCE OF 132.74 FEET; THENCE SOUTH 54°07'39" WEST A DISTANCE OF 130.14 FEET TO THE POINT OF BEGINNING.

LEGAL DESCRIPTION (SUBMERGED PARCEL):

COMMENCE AT A POINT, MARKED BY A 5/8" DIAMETER IRON ROD AND CAP STAMPED F.D.O.T., SHOWN AS P.T. STA. 15+30 ON THE "OFFICIAL MAP OF LOCATION AND SURVEY OF A PORTION OF SECTION 8706, DESIGNATED AS PART OF STATE ROAD A-1-A IN DADE COUNTY, FLORIDA," PREPARED BY THE STATE ROAD DEPARTMENT OF THE STATE OF FLORIDA, AS RECORDED IN MAP BOOK 56 AT PAGE 71 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA SAID POINT BEING THE POINT OF TANGENCY OF THE ORIGINAL CENTER LINE OF THE DOUGLAS MACARTHUR CAUSEWAY RUNNING EASTERLY AND SOUTH EASTERLY FROM THE WESTERLY LIMITS (WEST BRIDGE) OF WATSON ISLAND AS SHOWN ON SHEET 3 OF THE STATE ROAD DEPARTMENT RIGHT-OF-WAY MAP SECTION NO. (8706-112) 8706-2117, REVISED MARCH 25, 1959, SAID MOST NORTHERLY CURVE HAVING A RADIUS OF 1432.69 FEET AND A CENTRAL ANGLE OF 62°00'00"; THENCE SOUTH 59°31'26" WEST DEPARTING RADially FROM SAID CENTERLINE A DISTANCE OF 987.36 FEET TO A PROJECTED BULKHEAD LINE; THENCE NORTH 17°12'21" WEST ALONG SAID BULKHEAD LINE A DISTANCE OF 238.86 FEET TO THE POINT AND PLACE OF BEGINNING; THENCE SOUTH 49°32'47" WEST DEPARTING SAID BULKHEAD LINE A DISTANCE OF 350.92 FEET TO A POINT OF INTERSECTION OF THE TURNING BASIN LIMIT AS ESTABLISHED BY U.S. ARMY CORPS OF ENGINEERS AND POSITIONED BY COORDINATES NORTH 527,878.62 FEET, EAST 926,135.22 FEET (BASED ON NORTH AMERICAN DATUM 1983-MAD83) WITH THE NORTHERLY LINE OF THE MIAMI MAIN SHIP CHANNEL; THENCE NORTH 31°01'59" WEST ALONG THE LIMITS OF SAID TURNING BASIN A DISTANCE OF 428.44 FEET TO A POINT OF INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF THE INTRACOASTAL WATERWAY; THENCE NORTH 01°17'34" WEST ALONG SAID EAST RIGHT-OF-WAY LINE A DISTANCE OF 844.43 FEET TO A POINT OF INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID DOUGLAS MACARTHUR CAUSEWAY, SAID POINT OF INTERSECTION BEING A POINT ON A CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 10,718.59 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 81°15'15" EAST; THENCE RUN EASTERLY FOR 387.46 FEET ALONG THE ARC OF SAID CURVE AND ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, THROUGH A CENTRAL ANGLE OF 62°04'17" TO A POINT OF TANGENCY; THENCE SOUTH 89°18'15" EAST CONTINUING EASTERLY ALONG THE SAID SOUTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 32.06 FEET MORE OR LESS TO A POINT OF INTERSECTION WITH AN EXISTING BULKHEAD LINE; THENCE SOUTH 17°12'21" EAST ALONG SAID BULKHEAD LINE A DISTANCE OF 924.74 FEET TO THE POINT OF BEGINNING.

BSM: *Maylew*

DATE:

3/29/11

Exhibit B

Legal Descriptions of Staging, Access and Dredging Areas

LEGAL DESCRIPTION FOR TEMPORARY EASEMENT "X"

PORTIONS OF WATSON ISLAND, CITY OF MIAMI, 1990S WITHIN SECTION 31, TOWNSHIP 23 SOUTH, RANGE 42 EAST, DRAKE-SHORE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT POINT OF TANGENCY STATION 25+50 ON THE CENTERLINE OF GENERAL DODDAS AND ARTHUR CAUSEWAY (S.R. A-7-A) STATE PROJECT SECTION 30, (8706-112) 87080-2117 RIGHT OF WAY MAP AS RECORDED IN PLAT BOOK 38 AT PAGE 71 OF THE PUBLIC RECORDS OF MIAMI DADE COUNTY, FLORIDA, THENCE S85°11'28"W FOR 222.76 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF GENERAL DODDAS AND ARTHUR CAUSEWAY, (THE NEXT FIVE (5) COURSES ARE ALONG SAID WESTERLY RIGHT OF WAY LINE), THENCE S28°22'30"E FOR 33.52 FEET, THENCE S17°58'22"E FOR 275.81 FEET, THENCE S04°32'47"E FOR 281.48 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE LEFT HAVING A RADIUS OF 190.05 FEET AND A CENTRAL ANGLE OF 79°13'21", THENCE SOUTHERLY AND EASTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 238.32 FEET, THENCE S61°30'02"E FOR 31.56 FEET TO THE POINT OF BEGINNING OF TEMPORARY EASEMENT "X", (THE NEXT FIVE (5) COURSES ARE ALONG SAID WESTERLY RIGHT OF WAY OF GENERAL DODDAS AND ARTHUR CAUSEWAY), THENCE S61°30'02"E FOR 157.26 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE RIGHT HAVING A RADIUS OF 227.28 FEET AND A CENTRAL ANGLE OF 49°28'53", THENCE EASTERLY AND SOUTHERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 192.28 FEET TO THE POINT OF REVERSE CURVATURE OF A CIRCULAR CURVE TO THE LEFT HAVING A RADIUS OF 2723.00 FEET AND A CENTRAL ANGLE OF 10°35'18", THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 512.47 FEET, THENCE N47°54'00"E FOR 25.28 FEET TO A POINT ON A CURVE THAT IS CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 1973.05 FEET, SAID CURVE BEARS N47°54'31"E, THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0°42'45" FOR AN ARC DISTANCE OF 23.14 FEET, THENCE S22°01'24"W FOR 118.22 FEET, THENCE N84°58'38"W FOR 838.43 FEET, THENCE N22°01'24"E FOR 351.11 FEET TO THE POINT OF BEGINNING.

Book23181/Page783 CFN#20050267972

Exhibit B  
Page 1 of 7  
Amended and Restated Partial Modification of Restrictions  
Deed Restriction No. 19447-F  
MIADOCS 5576952 2

Exhibit B

Legal Descriptions of Staging, Access and Dredging Access

LEGAL DESCRIPTION FOR TEMPORARY EASEMENT "B"

PORTMORE OF WATSON ISLAND, CITY OF MIAMI, LYING WITHIN SECTION 31, TOWNSHIP 03 SOUTH, RANGE 42 EAST, MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT POINT OF TANGENCY STATION 25+00 ON THE CENTERLINE OF GENERAL DOUGLAS AND ARTHUR CAUSEWAY (S.R. A-1-A) STATE PROJECT SECTION No. (8704-112) 87080-2117 RIGHT OF WAY MAP AS RECORDED IN PLAT BOOK 28 AT PAGE 71 OF THE PUBLIC RECORDS OF MIAMI DADE COUNTY, FLORIDA THENCE S28°31'28"W FOR 222.78 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF GENERAL DOUGLAS AND ARTHUR CAUSEWAY. (THE NEXT FIVE (5) COURSES ARE ALONG SAID WESTERLY RIGHT OF WAY LINE). THENCE S26°22'38"E FOR 33.52 FEET; THENCE S17°02'E FOR 278.81 FEET; THENCE S04°22'47"E FOR 281.48 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE LEFT HAVING A RADIUS OF 188.00 FEET AND A CENTRAL ANGLE OF 77°12'21". THENCE SOUTHERLY AND EASTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 388.42 FEET; THENCE S23°38'08"E FOR 31.88 FEET; THENCE S27°01'24"W FOR 22.77 FEET TO THE POINT OF BEGINNING OF TEMPORARY EASEMENT "B". THENCE CONTINUE S27°01'24"E FOR 188.34 FEET; THENCE N84°58'38"W FOR 250.00 FEET; THENCE N25°01'24"E FOR 219.10 FEET; THENCE S84°28'38"E FOR 21.98 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 31°08'48". THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 13.89 FEET TO THE POINT OF REVERSE CURVATURE OF A CIRCULAR CURVE TO THE LEFT HAVING A RADIUS OF 240.00 FEET AND A CENTRAL ANGLE OF 48°47'20". THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 208.39 FEET; THENCE S23°38'08"E FOR 15.00 FEET TO THE POINT OF BEGINNING.

Book23181/Page784 CFN#20050267972

Exhibit B  
Page 2 of 7  
Amended and Restated Partial Modification of Restrictions  
Deed Restriction No. 19447-F  
MIADOC5 1570932

Exhibit B

Legal Descriptions of Staging, Access and Driveway Areas

LEGAL DESCRIPTION FOR TEMPORARY EASEMENT "C"

PORTIONS OF WATSON ISLAND, CITY OF MIAMI, LYING WITHIN SECTION 31, TOWNSHIP 25 SOUTH, RANGE 43 EAST, MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT POINT OF DANGEROUS STATION 25+80 ON THE CENTERLINE OF GENERAL DODDGLAS 56<sup>th</sup> ARTHUR CAUSEWAY (S.R. A-1-4) STATE PROJECT SECTION 31, (8708-112) 8708-1117 RIGHT OF WAY MAP AS RECORDED IN PLAT BOOK 28 AS PAGE 31 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; THENCE S82°51'00"W FOR 222.78 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF GENERAL DODDGLAS 56<sup>th</sup> ARTHUR CAUSEWAY; THENCE N15°22'36"W ALONG SAID WESTERLY RIGHT OF WAY LINE FOR 189.21 FEET; THENCE S34°07'30"W FOR 424.18 FEET TO THE POINT OF BEGINNING OF TEMPORARY EASEMENT "C"; THENCE S35°43'21"E FOR 143.31 FEET; THENCE S44°41'14" FOR 189.28 FEET; THENCE S44°32'47" FOR 154.08 FEET; THENCE S52°14'08"E FOR 81.03 FEET; THENCE S84°32'38"E FOR 242.88 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF GENERAL DODDGLAS 56<sup>th</sup> ARTHUR CAUSEWAY; SAID POINT ALSO BEING ON A CURVE THAT IS CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 100.00 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 79°10'21" FOR AN ARC DISTANCE OF 282.82 FEET; THENCE S23°50'28"W ALONG SAID WESTERLY RIGHT OF WAY LINE FOR 31.68 FEET; THENCE S23°03'34"W FOR 52.77 FEET; THENCE N27°08'08"W FOR 18.00 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE RIGHT HAVING A RADIUS OF 348.00 FEET AND A CENTRAL ANGLE OF 49°47'30"; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 208.39 FEET TO THE POINT OF REVERSE CURVATURE OF A CIRCULAR CURVE TO THE LEFT HAVING A RADIUS OF 23.00 FEET AND A CENTRAL ANGLE OF 11°55'48"; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 13.58 FEET; THENCE N54°32'38"W FOR 232.83 FEET; THENCE N52°14'08"W FOR 81.03 FEET; THENCE N44°32'47"W FOR 154.08 FEET; THENCE N42°32'31"W FOR 114.31 FEET; THENCE S47°07'30"W FOR 114.18 FEET; THENCE N17°40'28"W FOR 82.00 FEET; THENCE S77°33'38"W FOR 8.81 FEET; THENCE N15°22'36"W FOR 82.00 FEET; THENCE S70°38'43"W FOR 149.03 FEET; THENCE N17°12'21"W FOR 215.14 FEET; THENCE S84°32'38"E FOR 180.14 FEET; THENCE S32°34'03"E FOR 134.38 FEET; THENCE N54°32'38"E FOR 47.42 FEET TO THE POINT OF BEGINNING.

Book23181/Page785 CFN#20050267972

Exhibit B  
Page 3 of 7  
Amended and Restated Partial Modification of Restrictions  
Deed Restriction No. 19447-F  
MIADDCS 5578952 2

Exhibit B

Legal Descriptions of Staging, Access and Dredging Areas

LEGAL DESCRIPTION FOR PERMANENT EASEMENT "C1"

PORTIONS OF WATSON ISLAND, CITY OF MIAMI LINDA WATSON SECTION 31,  
TOWNSHIP 53 SOUTH, RANGE 42 EAST, MIAMI-DADE COUNTY, FLORIDA,  
BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT POINT OF TRANSFER STATION 23+00 ON THE CENTERLINE  
OF GENERAL DODGAS AND ARTHUR CALISEMAN (S.R. A-1-A) STATE PROJECT  
SECTION No. (8726-112) ST085-2117 POINT OF BEGINNING AS RECORDED IN  
PLAN BOOK 88 AT PAGE 27 OF THE PUBLIC RECORDS OF MIAMI DADE COUNTY,  
FLORIDA THENCE S45°21'28"W FOR 222.72 FEET TO A POINT ON THE  
WESTERLY RIGHT OF WAY LINE OF GENERAL DODGAS AND ARTHUR CALISEMAN  
THENCE S24°21'38"W ALONG SAID WESTERLY RIGHT OF WAY LINE FOR 169.21  
FEET THENCE S24°21'38"W FOR 331.81 FEET TO THE POINT OF BEGINNING OF  
PERMANENT EASEMENT "C1", THENCE N40°20'11"W FOR 137.88 FEET THENCE  
N82°07'22"E FOR 22.06 FEET; THENCE N33°54'02"E FOR 134.28 FEET TO THE  
POINT OF BEGINNING.

Book23181/Page786 CFN#20050267872

Exhibit B  
Page 4 of 7  
Amended and Restated Partial Modification of Restrictions  
Deed Restriction No. 19447-F  
MIADOC5 5578952 2

Exhibit B

Legal Descriptions of Easings, Access and Driveway Areas

LEGAL DESCRIPTION FOR PERMANENT EASEMENT TO:

PORTIONS OF WATSON ISLAND, CITY OF MIAMI, WITHIN SECTION 31,  
TOWNSHIP 31 SOUTH, RANGE 42 EAST, MIAMI-DADE COUNTY, FLORIDA,  
BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT POINT OF TANGENCY SECTION 23-4-50 ON THE CENTERLINE  
OF GENERAL DOUGLAS AND ARTHUR CAUSEWAY (S.E. 4-1-A) STATE HIGHWAY  
SECTION No. (8708-112) 8708-2117 RIGHT OF WAY MAP AS RECORDED IN  
PLAT BOOK 58 AT PAGE 71 OF THE PUBLIC RECORDS OF MIAMI DADE COUNTY,  
FLORIDA, THENCE S89°21'28"W FOR 382.78 FEET TO A POINT ON THE  
WESTERLY RIGHT OF WAY LINE OF GENERAL DOUGLAS AND ARTHUR  
CAUSEWAY THENCE N45°02'38"W ALONG SAID WESTERLY RIGHT OF WAY LINE  
FOR 114.36 FEET TO THE POINT OF BEGINNING OF PERMANENT EASEMENT TO,  
THENCE S84°07'38"E FOR 478.15 FEET THENCE N52°32'21"W FOR 84.00 FEET  
THENCE N04°07'38"E FOR 424.18 FEET TO A POINT ON THE AFORESAID  
WESTERLY RIGHT OF WAY LINE OF GENERAL DOUGLAS AND ARTHUR CAUSEWAY  
THENCE S89°21'28"E ALONG SAID WESTERLY RIGHT OF WAY LINE FOR 84.78  
FEET TO THE POINT OF BEGINNING.

Book23181/Page787 CFN#20050267872

Exhibit B  
Page 5 of 7  
Amended and Restated Partial Modification of Restrictions  
Deed Restriction No. 19447-F  
MIADOCS 5378952 2



Exhibit B

Legal Descriptions of Staging, Access and Driveway Areas

LEGAL DESCRIPTION FOR TEMPORARY EASEMENT "E"

PORTIONS OF SUBMERGED LANDS LYING WESTERLY OF WATSON ISLAND, CITY OF MIAMI, MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT POINT OF URGENCY STATION 35+30 ON THE CENTERLINE OF GENERAL DOUGLAS AND ARTHUR CAUSEWAY (S.R. A-1-3) STATE PROJECT SECTION No. (2702-112) 87089-2117 RIGHT OF WAY MAP AS RECORDED IN PLAT BOOK 28 AT PAGE 71, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, THENCE S89°10'14"W FOR 1394.81 FEET TO THE POINT OF BEGINNING OF TEMPORARY EASEMENT "E", THENCE S44°32'27"W FOR 101.38 FEET TO A POINT ON THE EASTERLY LIMITS OF A FURNISH BASIN, THENCE N 31°03'30"W ALONG SAID EASTERLY LIMITS FOR 508.57 FEET TO A POINT ON THE CENTERLINE OF THE INTERCOASTAL WATERWAY, THENCE N45°17'54"W ALONG SAID CENTERLINE FOR 402.63 FEET TO A POINT ON THE SOUTHWEST RIGHT OF WAY LINE OF STATE ROAD A-1-A SAID POINT ALSO BEING ON A CURVE THAT IS CONCAVE TO THE NORTH HAVING A RADIUS OF 10,718.50 FEET, THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 1°20'14" FOR AN ARC DISTANCE OF 235.10 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF SAID INTERCOASTAL WATERWAY, THENCE S03°23'54"E ALONG SAID EAST RIGHT OF WAY LINE FOR 325.57 FEET TO A POINT ON THE EASTERLY LINE OF AN EASEMENT THAT IS RECORDED IN OFFICIAL RECORDS BOOK 3822 AT PAGE 751 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, THENCE S01°03'20"E ALONG SAID EASTERLY LINE FOR 513.23 FEET TO THE POINT OF BEGINNING.

Book231B1/Page788 CFN#20050267972

Exhibit B  
Page 6 of 7  
Amended and Restated Partial Modification of Restrictions  
Deed Restriction No. 19447-F  
MIADOC5 579822 2

Exhibit B  
Legal Descriptions of Staging, Access and Dredging Areas

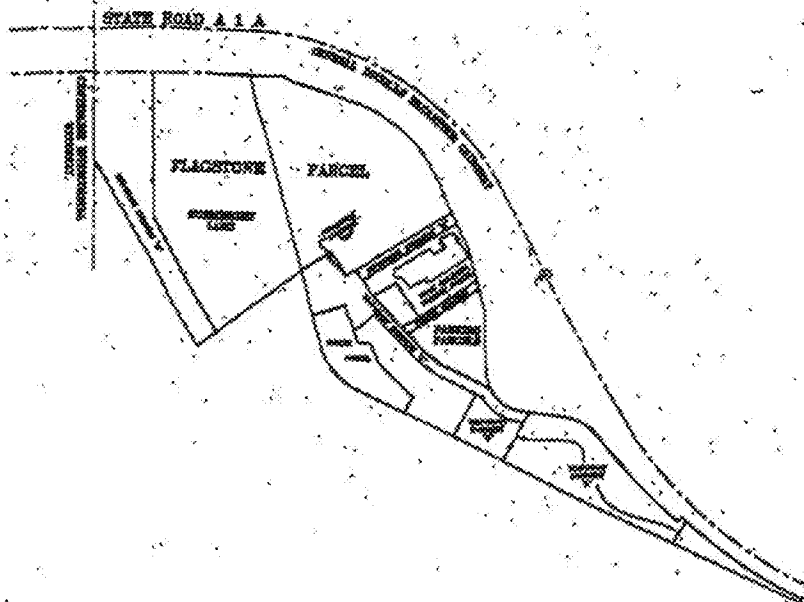


Exhibit "C"

FLAGSTONE JUDGMENTS

*Beach Tower LLC* -- Judgment in amount of \$236,203.95

*Miller Legg* -- Judgment in amount of \$3,989.19

*Lillian Ser* -- Judgment entered in favor of Ser in amount of approximately \$674,000, plus interest. Flagstone currently prosecuting independent action against Ser.

*Stephen James Assoc* -- Judgment in amount of \$33,155.82 (settlement stipulation will be signed shortly by Flagstone)

*Americas Media Group Worldwide* -- Judgment in amount of \$336,924.91 (settlement stipulation will be signed shortly by Flagstone)

*Pandisco (New York judgment)* -- Judgment in amount of \$131,471.18



**City of Miami  
Certified Copy**

City Hall  
3900 Pan American Drive  
Miami, FL 33133  
www.miamigov.com

File Number: 11-00767

Enactment Number: R-11-0337

A RESOLUTION OF THE MIAMI CITY COMMISSION, WITH ATTACHMENT(S), AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDED AND RESTATED PARTIAL MODIFICATION OF RESTRICTIONS TO DEED NO. 19447-F, IN SUBSTANTIALLY THE ATTACHED FORM (THE "AMENDED AND RESTATED STATE PARTIAL WAIVER") WITH THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA (THE "BOARD OF TRUSTEES") AND FLAGSTONE ISLAND GARDENS, LLC ("FLAGSTONE"), WITH (1) ANY FUTURE CONTEMPLATED MATERIAL MODIFICATIONS TO THE REFERENCED AMENDED AND RESTATED GROUND LEASE(S) AND/OR AMENDED AND RESTATED AGREEMENT TO ENTER INTO GROUND LEASE(S) SUBJECT TO PRIOR DISCUSSION AND REVIEW WITH THE DIVISION OF STATE LANDS, STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, AND (2) ANY FUTURE MATERIAL AMENDMENTS TO THE AMENDED AND RESTATED GROUND LEASE(S) AND/OR AMENDED AND RESTATED AGREEMENT TO ENTER INTO GROUND LEASE(S) SUBJECT TO PRIOR APPROVAL BY THE BOARD OF TRUSTEES.

WHEREAS, the City of Miami ("City") is the owner of certain real property located on Watson Island at approximately 1050 MacArthur Causeway, Miami, Florida (the "Property"); and

WHEREAS, pursuant to the processes for the City's Mega Yacht Marina and Mixed Use Waterfront Development Request for Proposal and all addenda thereto (collectively, the "RFP"), for development on the Property of a mega-yacht marina with its ancillary facilities, retail, parking, hotels and all other related facilities (the "Project") Flagstone Properties, LLC submitted a proposal and was selected as the most qualified responsive and responsible bidder; and

WHEREAS, the City Commission pursuant to Resolution No. 01-972, adopted September 17, 2001, and Resolution No. 01-1028, adopted September 25, 2001, polled the electors of the City of Miami regarding leasing the Property to Flagstone Properties, LLC for the Project and pursuant to Referendum on November 6, 2001 (the "Referendum") the voters returned an affirmative vote; and

WHEREAS, Flagstone Properties LLC subsequently merged with Flagstone Island Gardens, LLC (collectively, "Flagstone"), and pursuant to City Commission Resolution No. 02-1304, adopted December 12, 2002, entered into an Agreement to Enter into Ground Lease, with the City, dated January 1, 2003 with exhibits and attachments thereto (the "Agreement to Enter") including the form of proposed Ground Lease (the "Ground Lease"); and

WHEREAS, the Agreement to Enter has certain required conditions precedent that must be met for the future execution of a long-term Ground Lease with Flagstone; and

WHEREAS, the City and Flagstone agreed upon and entered into that certain First Amendment to the Agreement to Enter into Ground Lease and Amendment to Form of Ground Lease dated

December 12, 2004 (the "First Amendment To Agreement To Enter"); and

WHEREAS, the City and Flagstone agreed upon and entered into that certain Second Amendment to Enter into Ground Lease dated December 8, 2006 (the "Second Amendment to Agreement to Enter"); and

WHEREAS, Flagstone experienced delays in obtaining financing due to the downturn in the real estate market requiring adjustments to the Lease Deadline referred to in Section 6.2.1 of the Agreement to Enter and to the Outside Date referred to in Section 6.2.3 of the Agreement to Enter to February 1, 2010; and

WHEREAS, Flagstone and the City agreed upon and entered into a Third Amendment to the Agreement to Enter into Ground Lease and Amendment to Form of Ground Lease dated July 30, 2008 (the "Third Amendment to Agreement to Enter"); and

WHEREAS, the RFP contemplates that the Project may be developed by one developer on a component by component basis; and

WHEREAS, Flagstone has requested additional modifications to the Agreement to Enter and to the Ground Lease to allow them sufficient time to secure financing and begin and complete construction on the Project; and

WHEREAS, in connection with the cooperation provisions of the Agreement to Enter, Flagstone has agreed to allow the City to use the Property, without prior notice to Flagstone, for the City's and other user's benefit, as the City may deem appropriate, prior to the City's issuance of Flagstone's building permit, or September 1, 2013, whichever comes earlier; and

WHEREAS, the parties have negotiated and desire to enter into the terms and conditions of Exhibit A ("Exhibit A"), the Amended and Restated Agreement to Enter into Ground Lease ("Amended and Restated Agreement to Enter") and the Amended and Restated Ground Lease(s) ("Amended and Restated Ground Lease(s)"), each of which was authorized by the City Commission, subject to subsequent State of Florida required approval, on September 23, 2010 pursuant to Resolution No. R-10-0402 (the "Authorizing Resolution"), each of which was attached to the Authorizing Resolution and incorporated thereby, providing for, inter alia, (1) Flagstone's option to develop the Project in its entirety all at once, or on a component by component basis as described in Exhibit A attached to the Authorizing Resolution; (2) extending the possession date from February 1, 2010 to September 1, 2013, or sooner, at Flagstone's option; (3) establishing an annual payment schedule based upon all components commencing with three hundred thousand dollars (\$300,000) and increasing to two million dollars (\$2,000,000) by year 2018, subject to certain credits and certain conditions related to development on a component by component basis, as described in Exhibit A to the Authorizing Resolution; (4) extending certain milestone dates in the timelines for construction commencement, completion, and other development matters as set forth in Exhibit A to the Authorizing Resolution; and (5) providing for security deposit(s); and

WHEREAS, the proposed changes in the Amended and Restated Ground Lease(s) required approval by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida ("Board of Trustees") as required by the Partial Modification of Restrictions for the Property, filed for record March 18, 2005 in Deed Book 23181, Page 775 of the Public Records of Miami-Dade County, Florida (the "Partial Modification of Restrictions") which modifies the restrictions set forth within Deed No. 19447 from the Board of Trustees in favor of the City filed for record April 11, 1949 in Deed Book 3130, Page 257 of the Public Records of Dade County, Florida; and

WHEREAS, the Board of Trustees at its August 18, 2011 meeting authorized the execution and delivery of a new Amended and Restated Partial Modification of Restrictions to Deed No. 19447-F with the City and Flagstone (the "Amended and Restated State Partial Waiver") incorporating the new terms and conditions of Exhibit A, the Amended and Restate Agreement to Enter, and the Amended and Restated Ground Lease(s), and required that: (1) in the event that Flagstone and the City contemplate in the future any material modifications to the Amended and Restated Ground Lease(s) and/or the Amended and Restated Agreement to Enter, Flagstone and the City must discuss such proposed modifications with the Division of State Lands, State of Florida Department of Environmental Protection, and (2) any future material amendments to the Amended and Restated Ground Lease(s) and/or the Amended and Restated Agreement to Enter must first receive prior approval by the Board of Trustees at a regularly scheduled meeting; and

WHEREAS, the Authorizing Resolution and Exhibit A thereto also required upon approval by the Board of Trustees of the Amended and Restated State Partial Waiver, that (1) the City Manager return to the City Commission for approval of the Amended and Restated State Partial Waiver, and (2) Flagstone provide a \$300,000.00 certified check to the City for time extension Consideration for Use payments, now for the time period from October 1, 2010 through September 30, 2011 as a required condition precedent to approval of the Amended and Restated State Partial Waiver, which certified check has been provided to the City prior to consideration of this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. The recitals and findings contained in the Preamble to this Resolution are adopted by reference and incorporated as if fully set forth in this Section.


Section 2. The City Manager is authorized{1} to execute the Amended and Restated Partial Modification of Restrictions to Deed No. 19447-F, in substantially the attached form, with the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (the "Board of Trustees") and Flagstone Island Gardens, LLC ("Flagstone"), with (1) any future contemplated material modifications to the referenced Amended and Restated Ground Lease(s) and/or the Amended and Restated Agreement to Enter into Ground Lease(s) subject to prior discussion and review with the Division of State Lands, State of Florida Department of Environmental Protection, and (2) any future material amendments to the Amended and Restated Ground Lease(s) and/or Amended and Restated Agreement to Enter into Ground Lease(s) subject to prior approval of the Board of Trustees.

Section 3. This Resolution shall become effective immediately upon its adoption and signature of the Mayor {2}

Date: SEPTEMBER 15, 2011  
Mover: COMMISSIONER SUAREZ  
Second: COMMISSIONER SARNOFF  
Vote: AYES: 4 - COMMISSIONER(S) GORT, SARNOFF, CAROLLO AND SUAREZ  
NOES: 1 - COMMISSIONER(S) SPENCE-JONES  
Action: ADOPTED

Date: SEPTEMBER 15, 2011  
Action: SIGNED BY THE MAYOR

I, Priscilla A. Thompson, City Clerk of the City of Miami, Florida, and keeper of the records thereof, do hereby certify that this constitutes a true and correct copy of Resolution No. R-11-0337, with attachments, passed by the City Commission on 8/15/2011.

  
Deputy Clerk (for P. A. Thompson, City Clerk)

September 15, 2011

Date Certified

- (1) The herein authorization is further subject to compliance with all requirements that may be imposed by the City Attorney, including but not limited to those prescribed by applicable City Charter and Code provisions.
- (2) If the Mayor does not sign this Resolution, it shall become effective at the end of ten calendar days from the date it was passed and adopted. If the Mayor vetoes this Resolution, it shall become effective immediately upon override of the veto by the City Commission.



**City of Miami**  
**Master Report**

BOOK 27828 PAGE 3698  
LAST PAGE

City Hall  
3500 Pan American Drive  
Miami, FL 33133  
www.miamigov.com

Enactment Number: R-11-0337

File Number: 11-00767 File Type: Resolution Status: Passed  
Version: 1 Reference: Controlling Body: Office of the City Clerk  
File Name: Auth. Amend & Restated Partial Modification - Flagstone Introduced: 8/16/2011  
Requester: Department of Public Facilities Cost: Final Action: 9/15/2011

**Title:** A RESOLUTION OF THE MIAMI CITY COMMISSION, WITH ATTACHMENT(S), AUTHORIZING THE CITY MANAGER TO EXHIBIT THE AMENDED AND RESTATED PARTIAL MODIFICATION OF RESTRICTIONS TO DEED NO. 19447-F, IN SUBSTANTIALLY THE ATTACHED FORM (THE "AMENDED AND RESTATED STATE PARTIAL WAIVER") WITH THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA (THE "BOARD OF TRUSTEES") AND FLAGSTONE ISLAND GARDENS, LLC ("FLAGSTONE"), WITH (1) ANY FUTURE CONTEMPLATED MATERIAL MODIFICATIONS TO THE REFERENCED AMENDED AND RESTATED GROUND LEASE(S) AND/OR AMENDED AND RESTATED AGREEMENT TO ENTER INTO GROUND LEASE(S) SUBJECT TO PRIOR DISCUSSION AND REVIEW WITH THE DIVISION OF STATE LANDS, STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, AND (2) ANY FUTURE MATERIAL AMENDMENTS TO THE AMENDED AND RESTATED GROUND LEASE(S) AND/OR AMENDED AND RESTATED AGREEMENT TO ENTER INTO GROUND LEASE(S) SUBJECT TO PRIOR APPROVAL BY THE BOARD OF TRUSTEES.

Sponsors:

Notes:

Indexes:

Attachments: 11-00767 Summary Form.pdf, 11-00767 Pre-Legislation.pdf, 11-00767 Legislation.pdf, 11-00767 Exhibit 1.pdf

History of Legislative File

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Office of the City Attorney	8/30/2011	Reviewed and Approved				
1	City Commission	9/15/2011	ADOPTED				Pass
1	City Commission	9/15/2011	ADOPTED				Pass
1	Office of the Mayor	9/15/2011	Signed by the Mayor	Office of the City Clerk			
1	Office of the City Clerk	9/15/2011	Signed and Attested by City Clerk				

STATE OF FLORIDA, COUNTY OF DADE  
I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE  
original filed in this office on \_\_\_\_\_ day of  
SEP 16 2011 A.D. 2011  
WITNESS my hand and Official Seal  
HARVEY RUMBAUGH, Clerk of the County Courts  
D.C.





Exhibit 4.2.6

Existing Occupants

1. John J. Waterman ("Blue Sea II" - 2 vessels) - slips 36 & 37
2. Lazaro Sanchez (Casablanca Seafood - 5 vessels) - slips 23, 25, 26, 27 & 28 – "Fish Market"
3. Inelda deArmas (De Armas Seafood - 3 vessels) - slips 32, 33, 34 – "Fish Market"
4. Bruce Purdy (Blackbeard Charters - 3 vessels) - slips 38, 40, and 42

## EXHIBIT 5.3

### ESCROW AGREEMENT

(To be further revised)

THIS ESCROW AGREEMENT ("Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and among THE CITY OF MIAMI, FLORIDA, a municipal corporation of the State of Florida ("City"); FLAGSTONE ISLAND GARDENS, LLC, a Delaware limited liability company ("Flagstone") (City and Flagstone are sometimes collectively referred to herein as "Principals"); and SHUTTS & BOWEN LLP ("Escrow Agent").

#### RECITALS:

A. City and Flagstone have entered into that certain Agreement to Enter Into Ground Lease having an effective date of January 1, 2003 (the "Agreement to Enter into Ground Lease") as amended and restated by that certain Amended and Restated Agreement to Enter Into Ground Lease having an effective date of February 1, 2010 (collectively, the "Agreement to Enter Into Ground Lease"). Unless otherwise defined herein, all capitalized terms used herein shall have the respective meanings given to them in the Agreement to Enter Into Ground Lease.

B. Pursuant to Section 5.1 of the Agreement to Enter Into Ground Lease, Flagstone has delivered to Escrow Agent (subject to clearance of funds) the Easement Deposit (in the amount of Thirty-Five Thousand Dollars and No/100 (\$35,000.00)) or such portion thereof which, in combination with the amount of any Easement LOC delivered to City pursuant to Section 5.1 of the Agreement to Enter into Ground Lease, is equal to Thirty-Five Thousand Dollars and No/100 (\$35,000.00).

C. Pursuant to:

(i) Section 5.2 of the Agreement to Enter Into Ground Lease Flagstone is required to make certain Security Rent Deposits such amounts to increase in accordance with **Article 5 Security Deposit**.

(ii) the Hold Harmless, Indemnification, and Security Deposits required by **Section IX** of Composite Attachment 3 to the Agreement to Enter into Ground Lease, Flagstone is required to make certain Hold Harmless Indemnification and Security Deposits (with the Escrow Agent and the Courts in such applicable amounts.)

(iii) The Easement Deposit, together with the Security Rent Deposit(s), and the Hold Harmless, Indemnification and Security Deposit(s) to the extent hereafter so delivered by Flagstone to Escrow Agent, is hereinafter referred to as the "Escrowed Funds".

D. This Agreement is intended to be the Escrow Agreement referenced in Section 5.3 of the Agreement to Enter Into Ground Lease and referenced in Section IX of Composite Attachment 3.

NOW, THEREFORE, in consideration of the amount of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing recitals are true and are hereby affirmed, agreed to and made a part of this Agreement.

2. Escrowed Funds. Escrow Agent shall cause the Escrowed Funds to be placed in a money market account, savings account or other similar interest bearing account in a banking institution duly licensed under the federal or state banking laws and located in Miami-Dade County, Florida. As used herein, the term "Escrowed Funds" shall include any interest earned thereon. Escrow Agent shall hold and disburse the Escrowed Funds only in accordance with the provisions of this Agreement.

3. Disbursement.

(a) To City In Case of Default without Dispute. If and only if City is entitled to receive the Escrowed Funds pursuant to Section 11.2 of the Agreement to Enter into Ground Lease, City shall give written notice to Escrow Agent and Flagstone thereof. Such notice shall state with specificity the nature of the uncured Event of Flagstone's Default giving rise to City's right to so receive the Escrowed Funds. Unless Flagstone, within fifteen (15) days after City gives such written notice to both Flagstone and Escrow Agent, gives written notice to Escrow Agent and City disputing City's right to receive the Escrowed Funds (a "Disbursement Dispute Notice"), Escrow Agent shall distribute the Escrowed Funds pursuant to Section 11.2 of the Agreement to Enter into Ground Lease, whereupon this Agreement and Escrow Agent's duties hereunder shall be deemed terminated.

(b) In Case of Dispute. If Flagstone gives a Disbursement Dispute Notice to City and Escrow Agent within such fifteen (15) day period, there shall be deemed to be a dispute concerning the Escrowed Funds, which dispute shall be handled in the manner provided by Paragraph 5 below.

(c) Ground Lease(s). If any Ground Lease is or any Ground Leases are mutually executed and delivered pursuant to the provisions of the Agreement to Enter into Ground Lease, the Escrowed Funds shall be disbursed in the manner provided by Section 5.4(b) of each Ground Lease.

4. Escrow Agent.

(a) The duties of Escrow Agent are purely ministerial in nature and shall be expressly limited to the safekeeping of the Escrowed Funds, and for the disposition of same in accordance with this Agreement. Each of the parties to this Agreement shall and do jointly and severally indemnify Escrow Agent and hold Escrow Agent harmless from and against any and all claims, liabilities, damages, costs, penalties, losses, actions, suits, or proceedings at law or in equity, or any other expenses, fees, or charges of any character or nature, which Escrow Agent may incur or with which Escrow Agent may be threatened directly or indirectly arising from or

in any way connected with this Agreement or which may result from Escrow Agent's following of instructions from the parties, whether or not litigation is instituted, unless caused by the gross negligence or willful misconduct of Escrow Agent.

(b) Escrow Agent shall not be liable, with respect to its role as Escrow Agent, (i) to any of the parties for any act or omission to act except for Escrow Agent's own gross negligence or willful misconduct, (ii) for any legal effect, insufficiency, or undesirability of any instrument deposited with or delivered by Escrow Agent or exchanged by the parties under this Agreement, (iii) for any loss or impairment of funds that have been deposited in escrow while those funds are in the course of collection, or while those funds are on deposit in a financial institution, if such loss or impairment results from the failure, insolvency, or suspension of a financial institution, (v) for the expiration of any time limit or other consequence of delay, unless a properly executed written instruction, accepted by Escrow Agent, has instructed Escrow Agent to comply with such time limit, (vi) for the default, error, action, or omission of any party to this Agreement other than Escrow Agent, or (vii) for Escrow Agent's compliance with any legal process, subpoena, writs, orders, judgments, and decrees of any court, whether issued with or without jurisdiction, and whether or not subsequently vacated, modified, set aside, or reversed. Escrow Agent may consult with counsel of its own choice.

(c) Escrow Agent may (i) act in reliance upon any writing or instrument or signature which it, in good faith, believes to be bona fide and genuine, (ii) assume the validity and accuracy of any statement contained in such a writing or instrument, and (iii) assume, unless it has actual knowledge to the contrary, that any person purporting to give any writing, notice, advice, or instructions in connection with the provisions of this Agreement has been duly authorized to do so. Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner, and execution, or validity, of any instrument deposited in escrow, or as to the identity, authority, or right of any person executing same. Escrow Agent's duties under this Agreement shall be limited solely to those provided in this Agreement. Each party to this Agreement acknowledges and agrees that nothing in this Agreement shall prohibit Escrow Agent from serving in a similar capacity on behalf of others.

(d) The parties hereby acknowledge and agree that (i) Flagstone is a client of Escrow Agent, and has an on-going attorney/client relationships with Escrow Agent, and (ii) Escrow Agent's performance of its duties under this Agreement may require Escrow Agent to take actions or positions which might otherwise be in conflict with its role and duties in connection with such ongoing attorney/client relationship. Accordingly, except for acts of gross negligence or willful misconduct by Escrow Agent, and except for matters involving the attorney/client privilege between Escrow Agent and Flagstone, the parties hereby voluntarily and knowingly, fully, finally, completely and irrevocably (i) waive any such actual, apparent or alleged conflict between Escrow Agent's duties under this Agreement and any other duties which Escrow Agent may have to Flagstone, and (ii) remise, release, discharge and forever free Escrow Agent and each of its partners, employees and agents, of and from any and all liability, claims, debts, obligations, demands, judgments, actions, causes of action, suits, sums of money, accounts, covenants, agreements, promises, damages, liabilities and charges of every kind and nature, at law or in equity, and whether in tort, contract, or otherwise, that the parties now or in the future have, may have or may claim to have against Escrow Agent or any of its partners,

employees or agents based on, arising out of, in connection with, or in any way pertaining to, any such actual, apparent or alleged conflict, unless the same is caused by the gross negligence or willful misconduct of Escrow Agent, and agree that Escrow Agent may continue to act as attorney for Flagstone throughout the transactions contemplated hereby.

5. Disputes. If, in Escrow Agent's sole opinion, any dispute arises among any of the parties to this Agreement and/or any third parties (whether concerning this Escrow Agreement, Escrow Agent's duties hereunder, the disposition of the items held in escrow, or any other matters pertaining to the escrow), or if Escrow Agent shall be uncertain as to its duties or rights under this Agreement or shall receive instructions, claims, or demands from any of the other parties to this Agreement and/or any third parties with respect to the Escrowed Funds which in Escrow Agent's sole opinion, are in conflict with any provision of this Agreement, or if Escrow Agent is joined as a party to a lawsuit by virtue of the fact that it is holding the Documents:

(a) Escrow Agent, upon giving written notice to all other parties to this Agreement, may (but shall not be obligated to) refrain from performing any further duties under this Agreement, hold the Escrowed Funds in escrow, and/or continue to hold any items then being held in escrow by Escrow Agent, until such time as such dispute, uncertainty or lawsuit shall have been resolved to Escrow Agent's satisfaction, or by a final order or judgment of a court of competent jurisdiction; and/or

(b) Escrow Agent may interplead the Escrowed Funds by filing an interpleader action in the Circuit Court in and for Miami-Dade County, Florida (to the jurisdiction of which all parties do hereby consent) and depositing the Escrowed Funds into the registry of the court, whereupon Escrow Agent shall be relieved and released from any further liability as Escrow Agent under this Agreement.

6. Term of Agreement

(a) This Escrow Agreement shall remain in effect unless and until it is canceled in any of the following manners:

(a) Upon written notice given by all Principal(s) of cancellation of designation of Escrow Agent to act and serve in said capacity, in which event cancellation shall take effect no earlier than twenty (20) days after notice to Escrow Agent of such cancellation; or

2. Escrow Agent may resign as escrow agent at any time upon giving notice to Principal(s) of its desire to so resign; provided, however, that resignation of Escrow Agent shall take effect no earlier than ten (10) days after the giving of notice of resignation; or

3. Upon compliance with all escrow provisions as set forth in this Escrow Agreement.

(b) In the event Principal(s) fail to agree to a successor escrow agent within the period described hereinabove, Escrow Agent shall have the right to deposit the Escrowed

Funds into the registry of an appropriate court and request judicial determination of the rights between Principal(s), by interpleader or other appropriate action, and Principal(s) hereby, jointly and severally, indemnify, defend and hold Escrow Agent harmless from and against any damages or losses in connection therewith including, but not limited to, reasonable attorneys' and paralegals' fees and court costs at all trial and appellate levels, except for acts of gross negligence of willful misconduct of Escrow Agent.

(c) Upon termination of the duties of Escrow Agent in either manner set forth in subparagraphs 6(a)(i) or 6(a)(ii), Escrow Agent shall deliver the Escrowed Funds to the newly appointed escrow agent designated by the Principal(s), and Escrow Agent shall not otherwise have the right to withhold the Deposit from said newly appointed escrow agent.

(d) Escrow Agent shall not be bound by any modification, cancellation or rescission of this Escrow Agreement unless in writing and signed by all Principal(s) and Escrow Agent. In no event shall any modification of this Escrow Agreement, which shall affect the rights or duties of Escrow Agent, be binding on Escrow Agent unless it shall have given its prior written consent.

7. Notices. Any and all notices required or permitted to be served pursuant to the terms of this Agreement shall given in the manner required by the Agreement to Enter into Ground Lease; provided, however, that notices to Escrow Agent shall be sent to the following address:

Shutts & Bowen LLP  
201 South Biscayne Blvd.  
1500 Miami Center  
Miami, Florida 33131

Attn: Kevin D. Cowan, Esq. and Alexander I. Tachmes, Esq.

8. Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without application of conflict of law principles. In the event any action, suit, or proceeding is instituted as a result of any matter or thing affecting this Agreement, the parties hereby designate Miami-Dade County, Florida, as the proper jurisdiction and the venue in which same is to be instituted.

9. Binding; Assignment. This Agreement shall be binding upon the parties and their respective successors and permitted assigns. Neither City nor Flagstone may assign this Agreement except to the same party as the Agreement to Enter into Ground Lease may be assigned in accordance with its terms.

10. Waiver; Modification. The waiver of any terms, provision or condition of this Agreement shall be effective only if in writing and signed by all the parties to this Agreement, and then only in the specific instance and for the particular purpose for which it was given. No failure to exercise and no delay in exercising any right or power under this Agreement shall operate as a waiver thereof. No modification, amendment, cancellation or rescission hereof shall be valid and binding, unless it is in writing and signed by all parties to this Agreement.

11. Counterparts. This Agreement may be executed in any number of counterparts. Each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement. This Agreement may be executed via facsimile transmission, and facsimile counterparts shall have the same force and effect as original signatures.

12. Enforcement Costs. If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, court costs and all expenses (including, without limitation, all such fees, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs and all other charges billed by the attorney to the prevailing party.

IN WITNESS WHEREOF, the parties have caused this Escrow Agreement to be executed as of the date first above written.

Attest:

**THE CITY OF MIAMI, a municipal  
corporation of the State of Florida**

By: \_\_\_\_\_  
Priscilla A. Thompson, City Clerk

By: \_\_\_\_\_  
Johnny Martinez, P.E.  
City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO INSURANCE  
REQUIREMENTS:**

By: \_\_\_\_\_  
Calvin Ellis  
Risk Management Director

**APPROVED AS TO FORM  
AND CORRECTNESS:**

By: \_\_\_\_\_  
Julie O. Bru, City Attorney

**FLAGSTONE ISLAND GARDENS LLC, a  
Delaware limited liability company**

By: **FLAGSTONE DEVELOPMENT  
CORPORATION, a Delaware  
corporation, its Managing Partner**

By: \_\_\_\_\_  
Name: Mehmet Bayraktar  
Title: President  
Date: \_\_\_\_\_

**SHUTTS & BOWEN LLP**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



Exhibit 6.1.4

Pre-Approved Candidates for Development Team

- Eric Kuhne & Associates
- Spillis Candella

## Exhibit 6.1.5

### Pre-Approved Hotel Operators and/or Franchisors

- Hilton group, including, but not limited to, Conrad Hotels
- Starwood group, including, but not limited to, W Hotels, St. Regis Hotels, Starwood Luxury Collection
- Rosewood Hotels
- Hyatt group, including, but not limited to, Park Hyatt
- Raffles Group, including, but not limited to, Raffles Hotels
- Marriott group, including, but not limited to, Bulgari Hotels
- The Peninsula Group
- Four Seasons Group, including, but not limited to, The Regent hotels
- The Rocco Forte group, including, but not limited to, RF Hotels
- Kempinski Hotels & Resorts
- Six Continents Hotels
- Mandarin Oriental
- Fairmont Hotels & Resorts
- Orient Express Hotels
- Shangri-La Hotels & Resorts
- Kimpton Hotels
- Morgans Hotel Group
- Aman Resort
- Rixos

Exhibit 7.2

List of Permits and Approvals Held by Flagstone

- Major Use Special Permit approved pursuant to Miami City Commission Resolution No. R-04-0462, as amended.
- Class I Permit No. CC 06-259 approved pursuant to Miami-Dade County Board of County Commission Resolution No. R-1278-06
- South Florida Water Management District Environmental Resource Permit No. 13-02353-P, as modified.
- U.S. Army Corps of engineers, Department of Army Permit No. SAJ-2003-6823 (IP-PLC), as modified.

Exhibit 7.4.1

List of Licenses/Easements

1. Temporary Construction Easement Agreement (Parcels A, B, and C). OR Book 26102, Page 2922; Recorded December 12, 2007.
2. First Amendment Temporary Construction Easement Agreement (Parcels A, B, and C). OR Book 26102, Page 3110; Recorded December 12, 2007.
3. Second Amendment Temporary Construction Easement Agreement (Parcels A, B, and C). OR Book 26662, Page 0355; Recorded November 24, 2008.
4. South Road Permanent Easement Agreement (Parcel D). OR Book 26598, Page 1416; Recorded October 6, 2008.
5. First Amendment South Road Permanent Easement Agreement (Parcel D) and Adding a Temporary Easement Thereto. OR Book 26598, Page 1439; Recorded October 6, 2008.
6. Submerged Area Permanent Maintenance Agreement (Parcel E). OR Book 26598, Page 1447; Recorded October 6, 2008.
7. Easement Agreement (Parcel G). OR Book 26598, Page 1473; Recorded October 6, 2008.
8. First Amendment Entry Road Permanent Easement Agreement (Parcel G) and Adding a Temporary Easement Thereto. OR Book 26598, Page 1498; Recorded October 6, 2008.
9. Flagstone Site temporary Pre-Development Easement Agreement (Parcel H). OR Book 26598, Page 1507; Recorded October 6, 2008.

Exhibit 7.6

Existing Marine Operating Permit

2011100412090748



miamidade.gov

Department of Environmental Resources Management  
Natural Resources Regulation and Restoration Division  
701 NW 1st Court, 6th Floor  
Miami, Florida 33136-3912  
T 305-372-6567 F 305-372-6407

PERMIT NO: RSP-082306-1011/2011 (A)-OEM  
WATSON ISLAND MARINA  
1220 MAC ARTHUR CSWY  
MIAMI, FL 33132-

PERMITTEE:  
MR. Mehmet Bayraktar  
FLAGSTONE ISLAND GARDENS, LLC  
888 MACARTHUR CSWY  
MIAMI, FL 33132-

**MARINE FACILITIES  
ANNUAL OPERATING PERMIT**

**DESCRIPTION OF FACILITY/EQUIPMENT**

This document, issued under the provisions of Chapter 24, Miami-Dade County Code (Ordinance Number 89-104), shall be valid from 01-OCT-2011 through 30-SEP-2012. The above named permittee, is hereby authorized to operate the marine facility at the above location which consists of the following:

**Commercial Boat Docking Facility.**

- Total wet slips: 43
- Total dry slips: 0
- Total commercial vessels: 40
- Total recreational vessels: 3
- Number of liveaboards: 0
- Days of week in operation: 7

This facility is subject to conditions listed below and in the following pages (if any) of this permit.

**SPECIFIC CONDITIONS**

1. This facility must be operated in accordance with the "Marine Facilities Best Management Practices" attached hereto and incorporated herein by reference as part of this permit.
2. All applicable conditions from previously executed local, state, and federal permits issued for this above-referenced marine facility shall be enforced.
3. All fixed or floating non-water dependent structures in, on, over, or upon tidal waters, unless previously approved by a Class I permit, are prohibited.
4. All permanent sewage pumpout systems and portable pumpout systems required at this facility pursuant to DERM, state, or federal permits shall be maintained on site and in fully operable condition at all times in order to convey sewage to the sanitary sewer system. Designated slips for pumpout stations shall be kept open at all times except while a vessel is discharging sewage to the pumpout system. There shall be no overboard discharge of sewage to tidal waters from vessels at this facility. This prohibition also includes discharges from approved Coast Guard Type 1 or 2 flow-through marine sanitation devices. All vessel occupants shall use shore-side facilities unless the vessel is equipped with a Coast Guard approved holding tank system or is directly connected to the facility's sewage pumpout system.
5. The facility owner/operator is required to maintain a submerged land lease from the state of Florida if any vessels or structures are located over state-owned submerged lands. Use of state-owned submerged lands without a lease or other form of consent from the State of Florida is prohibited.
6. Unless otherwise approved by DERM, fueling of vessels at this facility shall be prohibited.

Miami-Dade County  
Department of Environmental Resources Management

Matthew Davis

Page 1 of 2

Facilities approved for fueling operations shall maintain on-site spill prevention, containment, and recovery equipment and materials including, but not limited to, absorbent pads, booms, and sweeps and shall maintain staff trained in the deployment and operation of said equipment at all times. Fueling at approved facilities shall be conducted only at the designated fueling location in order to contain any spills that may occur. A floating containment boom large enough to enclose the area of the vessel being fueled, but with a minimum length of fifty (50) feet, shall be available at all times during fueling operations. Said equipment shall be deployed and operated in the most effective manner possible when spills occur.

7. The maximum number of vessels that may be stored, docked or moored at this facility may not exceed the number of slips as referenced above in this Operating Permit. This condition shall not apply to spurtament vessels such as dinghies and tenders that are associated, by ownership, design and common usage, with a primary vessel docked, moored or stored at the facility, and therefore, are affixed to/carried by and stored on the primary vessel.
8. Harassment of manatees is prohibited. Harassment includes, but is not limited to, feeding, watering, physical contact, and/or any interference in their normal behavior or movements.

#### GENERAL CONDITIONS

9. The applicant, by acceptance of this document, agrees to operate and maintain the subject operation so as to comply with the requirements of Chapter 24 of the Code of Miami-Dade County.
10. If for any reason, the applicant does not comply with or will be unable to comply with any condition or limitation specified on this document the applicant shall immediately notify and provide the department with the following information: (a) a description of and cause of non-compliance; and (b) the period of non-compliance including start dates and times, as if not corrected, the anticipated time the non-compliance is expected to continue, and steps taken to reduce, eliminate, and prevent recurrence of the non-compliance. The applicant shall be responsible for any and all damages which may result and may be subject to enforcement action by the department for penalties or revocation of this document.
11. As provided in Section 24-15 of the Code of Miami-Dade County, the prior written approval of the Department of Environmental Resources Management shall be obtained for any alteration to this facility.
12. The issuance of this document does not convey any vested rights or any exclusive privileges. Nor does it authorize any injury to public or private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations. Nor does it relieve the applicant from liability for harm or injury to human health or welfare or property.
13. This document is required to be posted in a conspicuous location at the facility site during the entire period of operation.
14. This document is not transferable. Upon sale or legal transfer of the property or facility covered by this document, the applicant shall notify the department within thirty (30) days. The new owner must apply for a permit within thirty (30) days. The applicant shall be liable for any non-compliance of the source until the transferee applies for and receives a transfer of this document.
15. The applicant, by acceptance of this document, specifically agrees to allow access to the named source at reasonable times by department personnel presenting credentials for the purposes of inspection and testing to determine compliance with this document and department rules.
16. This document does not indicate a waiver of or approval of any other department permit that may be required for other aspects of this facility.
17. This document does not constitute an approval by DERM or certification that the applicant is in compliance with applicable laws, ordinances, rules or regulations. The applicant acknowledges that separate enforcement actions may be initiated by DERM and that this document does not constitute compliance with orders issued in conjunction with enforcement actions for correction of violations.
18. Failure to comply with any condition of this document, or the requirements of Chapter 24, Code of Miami-Dade County may subject the applicant to the penalty provisions of said Chapter including civil penalties up to \$25,000 per day per offense and/or criminal penalties of \$500 per day or not less than \$1000 per day for violations of Section 24-42.4, Sanitary Sewer Discharge Limitations and Pretreatment Standards and/or sixty (60) days in jail.



# City of Miami Master Report

City Hall  
3500 Pen American Drive  
Miami, FL 33133  
www.miamigov.com

Enactment Number: R-04-0702

File Number: 04-01046	File Type: Resolution	Status: Passed
Version: 1	Reference:	Controlling Body: City Commission
File Name: Flagstone Island Gardens Covenant		Introduced: 9/1/2004
Requester:	Cost:	Final Action: 10/28/2004

**Title:** A RESOLUTION OF THE MIAMI CITY COMMISSION, WITH ATTACHMENT(S), AUTHORIZING THE CITY MANAGER TO EXECUTE A COVENANT RUNNING WITH THE LAND IN FAVOR OF MIAMI-DADE COUNTY ("COVENANT"), IN SUBSTANTIALLY THE ATTACHED FORM, TO PROVIDE FOR: (1) LIMITATIONS ON FUELING TO LESSEES OF THE DOCKING FACILITIES AND PUBLIC AGENCY VESSELS; (2) RESTRICTION ON THE NUMBER OF POWERBOATS LESS THAN ONE HUNDRED FEET IN LENGTH THAT CAN BE MOORED AT THE FLAGSTONE ISLAND GARDENS MARINA FACILITY CONCURRENTLY; (3) RESTRICTION ON THE NUMBER OF VESSELS MOORED AT THE FACILITY TO FIFTY (50) CONCURRENTLY; AND (4) RESTRICTION THAT SERVICE VESSELS CAN ONLY OPERATE WITHIN THE IMMEDIATE VICINITY OF THE DOCKING FACILITY, WITH TERMS AND CONDITIONS AS MORE PARTICULARLY SET FORTH IN SAID COVENANT.

Sponsors:

Notes:

Indexes:

**Attachments:** 04-01046-cover  
memo.pdf,04-01046-exhibitA.pdf,04-01046-exhibitB.pdf,04-01046-exhibitC.pdf,04-01046-exhibit  
agenda review form.pdf,04-01046-exhibit attachmentA.pdf,04-01046-exhibit  
attachmentB.pdf,04-01046-exhibit attachmentC.pdf,04-01046-exhibit attachmentD.pdf,04-01046-exhibit  
attachmentE.pdf,04-01046-exhibit attachmentG.pdf,04-01046-exhibit attachmentH.pdf,04-01046-exhibit  
attachmentI.pdf,04-01046-Substitute Cover Memo.pdf

### History of Legislative File

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Commission	10/28/2004	ADOPTED WITH MODIFICATIONS				Pass
1	Office of the Mayor	11/13/2004	Signed by the Mayor				
1	Office of the City Clerk	11/16/2004	Signed and Attested by City Clerk				
1	Office of the City Attorney	12/9/2004	Reviewed and Approved				
		Action Note:	Modifications made by Law.				

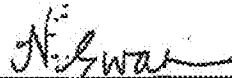
Island Gardens Marine facility concurrently; (3) restriction on the number of vessels moored at the facility to fifty (50) concurrently; and (4) restriction that service vessels can only operate within the immediate vicinity of the docking facility, with terms and conditions as more particularly set forth in said Covenant.

Section 3. This Resolution shall become effective immediately upon its adoption and signature of the Mayor.(2)

Date: OCTOBER 28, 2004  
Mover: COMMISSIONER WINTON  
Seconded: VICE CHAIRMAN GONZÁLEZ  
Voter: AYES: 4 - COMMISSIONER GONZÁLEZ, WINTON, SANCHEZ AND ALLEN  
ABSENT: 1 - COMMISSIONER REGALADO  
Action: ADOPTED WITH MODIFICATIONS

Date: NOVEMBER 13, 2004  
Action: SIGNED BY THE MAYOR

I, Priscilla A. Thompson, City Clerk of the City of Miami, Florida, and keeper of the records thereof, do hereby certify that this constitutes a true and correct copy of Resolution No. R-04-0702, with attachments, passed by the City Commission on 10/28/2004.

  
\_\_\_\_\_  
City Clerk, Deputy Clerk (for P. A. Thompson,  
City Clerk)

November 03, 2008

\_\_\_\_\_  
Date Certified

(1) The herein authorization is further subject to compliance with all requirements that may be imposed by the City Attorney, including but not limited to those prescribed by applicable City Charter and Code provisions.

(2) If the Mayor does not sign this Resolution, it shall become effective at the end of ten calendar days from the date it was passed and adopted. If the Mayor vetoes this Resolution, it shall become effective immediately upon override of the veto by the City Commission.



EXHIBIT A

A. LEGAL DESCRIPTION (SUBMERGED AREA)

COMMENCE AT A POINT MARKED BY A 3/8" DIAMETER IRON ROD AND CAP STAMPED P.D.C.L. SHOWN AS P.T. 204-20 ON THE "OFFICIAL MAP OF LOCATION AND SURVEY OF A PORTION OF SECTION 2708, DESIGNATED AS PART OF STATE ROAD A-1-A IN DADE COUNTY, FLORIDA", PREPARED BY THE STATE ROAD DEPARTMENT OF THE STATE OF FLORIDA, AS RECORDED IN MAP BOOK 38 AT PAGE 71 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA SAID POINT BEING THE POINT OF TANGENCY OF THE ORIGINAL CENTER LINE OF THE DOUGLAS MACARTHUR CAUSEWAY RUNNING EASTERLY AND SOUTH SOUTHWESTERLY FROM THE WESTERLY LIMITS (WEST BRIDGE) OF WATSON ISLAND AS SHOWN ON SHEET 2 OF THE STATE ROAD DEPARTMENT RIGHT-OF-WAY MAP SECTION NO. (8708-112) 8708-2117, REVISED MARCH 23, 1959, SAID MOST NORTHERLY CURVE HAVING A RADIUS OF 1432.68 FEET AND A CENTRAL ANGLE OF 82°07'00" THENCE SOUTH 32°51'28" WEST DEPARTING PARALLEL FROM SAID CENTERLINE A DISTANCE OF 887.38 FEET TO A PROJECTED BULKHEAD LINE THENCE NORTH 17°12'21" WEST ALONG SAID BULKHEAD LINE A DISTANCE OF 2388 FEET TO THE POINT AND PLACE OF BEGINNING THENCE SOUTH 49°32'37" WEST DEPARTING SAID BULKHEAD LINE A DISTANCE OF 255.62 FEET TO A POINT OF INTERSECTION OF THE TURNING BASIN LIMIT AS DEMONSTRATED BY U.S. ARMY CORPS OF ENGINEERS AND POINTED BY COORDINATES NORTH 227,276.22 FEET, EAST 226,125.22 FEET (BASED ON NORTH AMERICAN DATUM 1983-MADDS) WITH THE NORTHERLY LINE OF THE MIAMI MAIN SHIP CHANNEL THENCE NORTH 31°03'50" WEST ALONG THE LIMITS OF SAID TURNING BASIN A DISTANCE OF 458.48 FEET TO A POINT OF INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF THE INTERCOASTAL WATERWAY THENCE NORTH 02°27'54" WEST ALONG SAID EAST RIGHT-OF-WAY LINE A DISTANCE OF 224.43 FEET TO A POINT OF INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID DOUGLAS MACARTHUR CAUSEWAY SAID POINT OF INTERSECTION BEING A POINT ON A CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 10,712.89 FEET A RADIAL LINE TO SAID POINT BEARS SOUTH 81°32'02" EAST THENCE RUN EASTERLY FOR 322.48 FEET ALONG THE ARC OF SAID CURVE AND ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE THROUGH A CENTRAL ANGLE OF 12°04'17" TO A POINT OF INTERSECTION THENCE SOUTH 27°19'28" EAST CONTINUING EASTERLY ALONG THE SAID SOUTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 28.66 FEET MORE OR LESS TO A POINT OF INTERSECTION WITH AN EXISTING BULKHEAD LINE THENCE SOUTH 17°12'21" EAST ALONG SAID BULKHEAD LINE A DISTANCE OF 234.74 FEET TO THE POINT OF BEGINNING.

CONTAINING 12.85 ACRES OF SUBMERGED LAND MORE OR LESS.

B. LEGAL DESCRIPTION (ADDITIONAL SUBMERGED AREA 2)

PORTIONS OF SUBMERGED LANDS LYING WESTERLY OF WATSON ISLAND, CITY OF MIAMI, MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT POINT OF TANGENCY STATION 204-20 ON THE CENTERLINE OF GENERAL DOUGLAS MacARTHUR CAUSEWAY (S.R. A-1-A) STATE PROJECT SECTION No. (8708-112) 8708-2117 RIGHT OF WAY MAP AS RECORDED IN PLAT BOOK 38 AT PAGE 71 OF THE PUBLIC RECORDS OF MIAMI DADE COUNTY, FLORIDA THENCE S88°10'14"W FOR 1384.51 FEET TO THE POINT OF BEGINNING OF TEMPORARY EASEMENT "E" THENCE S49°32'37"W FOR 101.38 FEET TO A POINT ON THE EASTERLY LIMITS OF A TURNING BASIN THENCE N 31°03'50"W ALONG SAID EASTERLY LIMITS FOR 808.27 FEET TO A POINT ON THE CENTERLINE OF THE INTERCOASTAL WATERWAY THENCE N03°27'54"W ALONG SAID CENTERLINE FOR 402.93 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF STATE ROAD A-1-A SAID POINT ALSO BEING ON A CURVE THAT IS CONCAVE TO THE NORTH HAVING A RADIUS OF 10,712.89 FEET THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 1°20'14" FOR AN ARC DISTANCE OF 250.10 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF SAID INTERCOASTAL WATERWAY THENCE S03°27'54"E ALONG SAID EAST RIGHT OF WAY LINE FOR 159.57 FEET TO A POINT ON THE EASTERLY LINE OF AN EASEMENT THAT IS RECORDED IN OFFICIAL RECORDS BOOK 3825 AT PAGE 751 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA THENCE S31°03'50"E ALONG SAID EASTERLY LINE FOR 803.25 FEET TO THE POINT OF BEGINNING.

CONTAINING 4.85 ACRES MORE OR LESS (211,373 SQUARE FEET)

EXHIBIT A

A. LEGAL DESCRIPTION (SUBMERGED AREA)

COMMENCE AT A POINT MARKED BY A 3/8" DIAMETER IRON ROD AND CAP STAMPED F.L.O.T., SHOWN AS P.T. 254-20 ON THE "OFFICIAL MAP OF LOCATION AND SURVEY OF A PORTION OF SECTION 2708, DESIGNATED AS PART OF STATE ROAD A-1-A IN DADE COUNTY, FLORIDA", PREPARED BY THE STATE ROAD DEPARTMENT OF THE STATE OF FLORIDA, AS RECORDED IN MAP BOOK 28 AT PAGE 71 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA SAID POINT BEING THE POINT OF TANGENCY OF THE ORIGINAL CENTER LINE OF THE DOUGLAS WASHINGTON CALSBERG WIRHING EASTERN AND SOUTH EASTERN FROM THE WESTERLY LIMB (WEST BERGE) OF WINDY ISLAND AS SHOWN ON SHEET 2 OF THE STATE ROAD DEPARTMENT ROAD-OF-WAY MAP SECTION NO. 2708-112) 2708-2117, RECORDED MARCH 25, 1928, SAID WEST NORTHERLY CURVE HAVING A RADIUS OF 1422.88 FEET AND A CENTRAL ANGLE OF 22°02'00" THENCE SOUTH 22°02'00" WEST DEPARTING PARALLEL FROM SAID CENTERLINE A DISTANCE OF 871.35 FEET TO A PROJECTED BILLOWHEAD LINE THENCE NORTH 17°12'00" WEST ALONG SAID BILLOWHEAD LINE A DISTANCE OF 2388 FEET TO THE POINT AND PLACE OF BEGINNING THENCE SOUTH 42°12'00" WEST DEPARTING SAID BILLOWHEAD LINE A DISTANCE OF 2628 FEET TO A POINT OF INTERSECTION OF THE TURNING BARRIERS AS ESTABLISHED BY U.S. ARMY CORPS OF ENGINEERS AND POSITIONED BY COMMISSIONER NORTH 227,275.00 FEET EAST 222,222.22 FEET (BASED ON NORTH AMERICAN DATUM 1928-1948) WITH THE NORTHERLY LINE OF THE WINDY ISLAND WEST CHANNEL THENCE NORTH 21°02'00" WEST ALONG THE LINE OF SAID TURNING BARRIERS A DISTANCE OF 422.44 FEET TO A POINT OF INTERSECTION WITH THE EAST ROAD-OF-WAY LINE OF THE SUBMERGED WINDY ISLAND THENCE NORTH 22°02'00" WEST ALONG SAID EAST ROAD-OF-WAY LINE A DISTANCE OF 222.44 FEET TO A POINT OF INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID DOUGLAS WASHINGTON CALSBERG WIRHING EAST EASTERN BEING A POINT ON A CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 10,714.28 FEET, A BARGE LINE TO SAID POINT BEING SOUTH 07°42'00" EAST THENCE SOUTH EASTERLY FOR 222.44 FEET ALONG THE ARC OF SAID CURVE AND ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE THROUGH A CENTRAL ANGLE OF 22°02'00" TO A POINT OF TANGENCY THENCE SOUTH 22°02'00" WEST CONTINUING EASTERLY ALONG THE SAID SOUTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 22.22 FEET MORE OR LESS TO A POINT OF INTERSECTION WITH AN EXISTING BILLOWHEAD LINE THENCE SOUTH 17°12'00" EAST ALONG SAID BILLOWHEAD LINE A DISTANCE OF 222.44 FEET TO THE POINT OF BEGINNING.

CONTAINING 4.33 ACRES OF SUBMERGED LAND MORE OR LESS.

B. LEGAL DESCRIPTION (ADDITIONAL SUBMERGED AREA E)

PORTIONS OF SUBMERGED LAND LYING WESTERLY OF WINDY ISLAND, CITY OF MIAMI, MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT POINT OF TANGENCY STATION 254-20 ON THE CENTERLINE OF GENERAL DOUGLAS WASHINGTON CALSBERG (S.R. A-1-A) STATE PROJECT SECTION NO. 2708-112) 2708-2117 RIGHT OF WAY MAP AS RECORDED IN MAP BOOK 28 AT PAGE 71 OF THE PUBLIC RECORDS OF MIAMI DADE COUNTY, FLORIDA THENCE 222°12'14"W FOR 1384.81 FEET TO THE POINT OF BEGINNING OF TEMPORARY EASEMENT "E", THENCE 242°22'00"W FOR 101.38 FEET TO A POINT ON THE EASTERN LIMB OF A TURNING BARRIERS THENCE N 21°02'00"W ALONG SAID EASTERN LIMB FOR 262.27 FEET TO A POINT ON THE CENTERLINE OF THE INTERCOASTAL WATERWAY, THENCE N02°12'54"W ALONG SAID CENTERLINE FOR 422.44 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF STATE ROAD A-1-A SAID POINT ALSO BEING ON A CURVE THAT IS CONCAVE TO THE NORTH HAVING A RADIUS OF 10,714.28 FEET, THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 1°22'14" FOR AN ARC DISTANCE OF 222.10 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF SAID INTERCOASTAL WATERWAY, THENCE S02°27'54"E ALONG SAID EAST RIGHT OF WAY LINE FOR 222.27 FEET TO A POINT ON THE EASTERN LINE OF AN EASEMENT THAT IS RECORDED IN OFFICIAL RECORDS BOOK 3822 AT PAGE 151 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA THENCE S21°02'50"E ALONG SAID EASTERN LINE FOR 222.22 FEET TO THE POINT OF BEGINNING.

CONTAINING 4.33 ACRES MORE OR LESS (211,573 SQUARE FEET)

EXHIBIT A

A. LEGAL DESCRIPTION (SUBMERGED AREA)

COMMENCE AT A POINT, MARKED BY A 3/8" DIAMETER IRON ROD AND CAP STRAPPED P.O.D.T., SHOWN AS P.T. STA. 25+30 ON THE "OFFICIAL MAP OF LOCATION AND SURVEY OF A PORTION OF SECTION 2708, DESIGNATED AS PART OF STATE ROAD A-1-A IN DADE COUNTY, FLORIDA", PREPARED BY THE STATE ROAD DEPARTMENT OF THE STATE OF FLORIDA, AS RECORDED IN MAP BOOK 88 AT PAGE 71 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA SAID POINT BEING THE POINT OF TANGENCY OF THE ORIGINAL CENTER LINE OF THE DOUGLAS MACARTHUR CAUSEWAY RUNNING EASTERLY AND SOUTH EASTERLY FROM THE WESTERN LIMIT (WEST BRIDGE) OF WATSON ISLAND AS SHOWN ON SHEET 3 OF THE STATE ROAD DEPARTMENT RIGHT-OF-WAY MAP SECTION NO. (8708-112) 8708-2117, REVISED MARCH 23, 1958, SAID WEST NORTHERLY CURVE HAVING A RADIUS OF 1432.89 FEET AND A CENTRAL ANGLE OF 82°0'00" THENCE SOUTH 35°51'28" WEST DEPARTING PARALLEL FROM SAID CENTERLINE A DISTANCE OF 687.38 FEET TO A PROJECTED BULKHEAD LINE THENCE NORTH 17°12'01" WEST ALONG SAID BULKHEAD LINE A DISTANCE OF 2368 FEET TO THE POINT AND PLACE OF BEGINNING THENCE SOUTH 45°13'57" WEST DEPARTING SAID BULKHEAD LINE A DISTANCE OF 652.62 FEET TO A POINT OF INTERSECTION OF THE TURNING BASH AS ESTABLISHED BY U.S. ARMY CORPS OF ENGINEERS AND PORTIONED BY COORDINATE NORTH 827,878.88 FEET, EAST 684,838.22 FEET (BASED ON NORTH AMERICAN DATUM 1983-84000) WITH THE NORTHERLY LINE OF THE MIAMI LAGOON STOP CHANNEL, THENCE NORTH 31°05'00" WEST ALONG THE LIMITS OF SAID TURNING BASH A DISTANCE OF 428.44 FEET TO A POINT OF INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF THE INTERCOASTAL WATERWAY THENCE NORTH 32°27'04" WEST ALONG SAID EAST RIGHT-OF-WAY LINE A DISTANCE OF 824.43 FEET TO A POINT OF INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID DOUGLAS MACARTHUR CAUSEWAY SAID POINT OF INTERSECTION BEING A POINT ON A CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 10,775.58 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 01°15'13" EAST THENCE RUN EASTERLY FOR 267.48 FEET ALONG THE ARC OF SAID CURVE AND ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE THROUGH A CENTRAL ANGLE OF 02°04'17" TO A POINT OF TANGENCY THENCE SOUTH 28°10'00" EAST CONTINUING EASTERLY ALONG THE SAID SOUTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 32.08 FEET MORE OR LESS TO A POINT OF INTERSECTION WITH AN EXISTING BULKHEAD LINE THENCE SOUTH 17°23'21" EAST ALONG SAID BULKHEAD LINE A DISTANCE OF 824.74 FEET TO THE POINT OF BEGINNING.

CONTAINING 12.35 ACRES OF SUBMERGED LAND MORE OR LESS.

B. LEGAL DESCRIPTION (ADDITIONAL SUBMERGED AREA E)

PORTIONS OF SUBMERGED LANDS LYING WESTERLY OF WATSON ISLAND, CITY OF MIAMI, MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT POINT OF TANGENCY STATION 25+30 ON THE CENTERLINE OF GENERAL DOUGLAS MACARTHUR CAUSEWAY (S.R. A-1-A) STATE PROJECT SECTION NO. (8708-112) 8708-2117 RIGHT OF WAY MAP AS RECORDED IN PLAT BOOK 88 AT PAGE 71 OF THE PUBLIC RECORDS OF MIAMI DADE COUNTY, FLORIDA; THENCE 88°10'14" W FOR 1384.81 FEET TO THE POINT OF BEGINNING OF TEMPORARY EASEMENT "T"; THENCE 64°32'07" W FOR 181.36 FEET TO A POINT ON THE EASTERLY LIMITS OF A TURNING BASH; THENCE N 31°05'00" W ALONG SAID EASTERLY LIMITS FOR 988.57 FEET TO A POINT ON THE CENTERLINE OF THE INTERCOASTAL WATERWAY; THENCE N03°27'04" W ALONG SAID CENTERLINE FOR 422.53 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF STATE ROAD A-1-A SAID POINT ALSO BEING ON A CURVE THAT IS CONCAVE TO THE NORTH HAVING A RADIUS OF 10,775.58 FEET, THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 1°23'14" FOR AN ARC DISTANCE OF 130.18 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF SAID INTERCOASTAL WATERWAY; THENCE S03°27'04" E ALONG SAID EAST RIGHT OF WAY LINE FOR 858.37 FEET TO A POINT ON THE EASTERLY LINE OF AN EASEMENT THAT IS RECORDED BY OFFICIAL RECORDS BOOK 3822 AT PAGE 751 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; THENCE S21°03'50" E ALONG SAID EASTERLY LINE FOR 803.25 FEET TO THE POINT OF BEGINNING.

CONTAINING 4.88 ACRES MORE OR LESS (211,323 SQUARE FEET)

EXHIBIT A

A. LEGAL DESCRIPTION (SUBMERGED AREA)

COMMENCE AT A POINT, MARKED BY A 3/8" DIAMETER IRON ROD AND CAP STAMPED F.S.A.L. SHOWN AS P.T. 2A, 23-688 ON THE "OFFICIAL MAP OF LOCKROB AND SURVEY OF A PORTION OF SECTION 3708, DESIGNATED AS PART OF STATE ROAD A-1-A IN DADE COUNTY, FLORIDA", PREPARED BY THE STATE ROAD DEPARTMENT OF THE STATE OF FLORIDA, AS RECORDED IN MAP BOOK 88 AT PAGE 71 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA SAID POINT BEING THE POINT OF TANGENCY OF THE ORIGINAL CENTER LINE OF THE DOUGLAS MACARTHUR CAUSEWAY RUNNING WESTERLY AND SOUTH WESTERLY FROM THE WESTERLY LIMIT (WEST BRIDGE) OF WATSON ISLAND AS SHOWN ON SHEET 3 OF THE STATE ROAD DEPARTMENT RIGHT-OF-WAY MAP SECTION 82, (8708-112) 8708-2117, DATED MARCH 25, 1939, SAID WEST WESTERLY CURVE HAVING A RADIUS OF 1433.89 FEET, AND A CENTRAL ANGLE OF 82°00'00" THENCE SOUTH 89°12'00" WEST DEPARTING PARALLEL FROM SAID CENTERLINE A DISTANCE OF 287.38 FEET TO A PROJECTED BULKHEAD LINE THENCE NORTH 17°02'11" WEST ALONG SAID BULKHEAD LINE A DISTANCE OF 2088 FEET TO THE POINT AND PLACE OF BEGINNING THENCE SOUTH 57°22'00" WEST DEPARTING SAID BULKHEAD LINE A DISTANCE OF 2088 FEET TO A POINT OF INTERSECTION OF THE TUBING BATH LIGHT AS DEMONSTRATED BY U.S. ARMY CORPS OF ENGINEERS AND POSITIONED BY COORDINATE MARK 820-078-00 FEET EAST 880-022 FEET NORTH ON NORTH AMERICAN DATUM 1983 (NAD83) WITH THE WESTERLY LINE OF THE STATE ROAD A-1-A, THENCE NORTH 81°02'00" WEST ALONG THE LIMITS OF SAID TUBING BATH A DISTANCE OF 488.44 FEET TO A POINT OF INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF THE INTERCOASTAL WATERWAY, THENCE NORTH 02°27'04" WEST ALONG SAID EAST RIGHT-OF-WAY LINE A DISTANCE OF 874.43 FEET TO A POINT OF INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID DOUGLAS MACARTHUR CAUSEWAY, SAID POINT OF INTERSECTION BEING A POINT ON A CURVE TOWARD CENTERLINE AND HAVING A RADIUS OF 157.45 FEET, A RADIAL LINE TO SAID POINT BEING SOUTH 87°18'00" EAST THENCE RUN EASTERLY FOR 257.26 FEET ALONG THE ARC OF SAID CURVE, AND ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE THROUGH A CENTRAL ANGLE OF 120°11' TO A POINT OF TANGENCY THENCE SOUTH 87°18'00" EAST CONTINUING EASTERLY ALONG THE SAID SOUTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 26.58 FEET MORE OR LESS TO A POINT OF INTERSECTION WITH AN EXISTING BULKHEAD LINE THENCE SOUTH 87°22'11" EAST ALONG SAID BULKHEAD LINE A DISTANCE OF 204.74 FEET TO THE POINT OF BEGINNING.

CONTAINING 15.38 ACRES OF SUBMERGED LAND MORE OR LESS.

B. LEGAL DESCRIPTION (ADDITIONAL SUBMERGED AREA E)

PORTIONS OF SUBMERGED LANDS LYING WESTERLY OF WATSON ISLAND, CITY OF MIAMI, MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT POINT OF TANGENCY STATION 284-90 ON THE CENTERLINE OF GENERAL DOUGLAS Mac ARTHUR CAUSEWAY (S.R. A-1-A) STATE PROJECT SECTION No. (8708-112) 8708-2117 RIGHT OF WAY MAP AS RECORDED IN PLAT BOOK 88 AT PAGE 71 OF THE PUBLIC RECORDS OF MIAMI DADE COUNTY, FLORIDA; THENCE 89°12'14" W FOR 1324.81 FEET TO THE POINT OF BEGINNING OF TEMPORARY EASEMENTS "B", THENCE 89°32'07" W FOR 101.58 FEET TO A POINT ON THE EASTERLY LIMITS OF A TUBING BATH; THENCE N 31°02'50" W ALONG SAID EASTERLY LIMITS FOR 888.87 FEET TO A POINT ON THE CENTERLINE OF THE INTERCOASTAL WATERWAY, THENCE NORTH 02°27'04" W ALONG SAID CENTERLINE FOR 488.87 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF STATE ROAD A-1-A SAID POINT ALSO BEING ON A CURVE THAT IS CONGRUE TO THE NORTH HAVING A RADIUS OF 107716.89 FEET, THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 1°20'14" FOR AN ARC DISTANCE OF 282.10 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF SAID INTERCOASTAL WATERWAY, THENCE SOUTH 87°04" E ALONG SAID EAST RIGHT OF WAY LINE FOR 888.87 FEET TO A POINT ON THE EASTERLY LINE OF AN EASEMENT THAT IS RECORDED IN OFFICIAL RECORDS BOOK 3822 AT PAGE 751 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; THENCE 87°03'00" E ALONG SAID EASTERLY LINE FOR 203.20 FEET TO THE POINT OF BEGINNING.

CONTAINING 4.83 ACRES MORE OR LESS (211,373 SQUARE FEET)

Exhibit C

**Memorandum**



Date: September 12, 2005

To: Honorable Chairman Joe A. Martinez and Members,  
Board of County Commissioners

Agenda Item No. 5(BB)

From: George M. Burgess  
County Manager

Subject: Class I Permit Application by Flagstone Island Gardens, LLC and the City of Miami to Dredge 15.81 Acres of Submerged Bay Bottom for the Creation of a 60-Slip Mega Yacht Marina, Request for a Variance from Section 24-48.24 of the Code of Miami-Dade County for the Placement of Non-Water Dependent Fixed Structures Over Tidal Waters, and Acceptance of a Restrictive Covenant Running With the Land in Favor of Miami-Dade County

Attached, please find for your consideration an application by Flagstone Island Gardens, LLC and the City of Miami for a Class I Permit, a Request for Variance from Section 24-48.24 of the Code of Miami-Dade County, and acceptance of a Restrictive Covenant Running With the Land in favor of Miami-Dade County. Also, attached is the recommendation of the Director of the Department of Environmental Resources Management and a Resolution seeking the Board's approval of the aforesaid application, variance request, and acceptance of the restrictive covenant.

Assistant County Manager

## Memorandum



Date: August 31, 2008

To: George M. Burgess  
County Manager

From: Carlos Lopez, P.E., Acting Director  
Environmental Resources Management

Subject: Class I Permit Application by Flagstone Island Gardens, LLC and the City of Miami to Dredge 15.81 Acres of Submerged Bay Bottom for the Creation of a 50-Slip Mega Yacht Marina, Request for a Variance from Section 24-48.24 of the Code of Miami-Dade County for the Placement of Non-Water Dependent Fixed Structures Over Tidal Waters and Acceptance of a Restrictive Covenant Running With the Land in Favor of Miami-Dade County

### RECOMMENDATION

I have reviewed the application for a Class I Permit, the Request for Variance from Section 24-48.24 of the Code of Miami-Dade County, and the Restrictive Covenant Running with the Land proffered by Flagstone Island Gardens, LLC and the City of Miami. Based upon the applicable evaluation factors set forth in Section 24-48.3 and 24-48.25 of the Code of Miami-Dade County, I recommend that the Board approve this application, grant the variance request, and accept the Restrictive Covenant for the reasons set forth below.

### BACKGROUND

The proposed project was previously approved by the Board on November 30, 2004, via Resolution No. R-1343-04. Pursuant to Section 24-48.19 of the Code of Miami-Dade County, Class I permit approvals by the Board shall only be valid for a period of 18 months from the date of approval unless another time period is stated in the approving Resolution. The applicants have stated that due to the complexity of design and the time required to obtain the United States Army Corps of Engineers permit for the proposed project, the final construction plans have not yet been completed. Therefore, the Class I permit could not be obtained within the originally allowed 18-month period, which expired on May 30, 2006. Pursuant to the requirements in Section 24-48.19 of the Code, the applicants have filed a new Class I permit application for the construction of the same project as previously approved. In addition, the applicants have requested that Board approval for this application be valid for 24 months rather than the typical 18 months.

The project area is located on Watson Island in the City of Miami. The project site was previously a municipal marina owned and operated by the City of Miami. The proposed project involves the construction of a 50-slip mega yacht marina with two main access piers. The two main access piers will make an inward turn at 470 linear feet from the seawall forming the marina basin. A portion of the proposed piers will be bi-level to provide a separate public access area to view Biscayne Bay. In addition, stairs are proposed to provide non-public access to the lower service level of the dock. The proposed project also includes the dredging of 15.81 acres of submerged Bay bottom to depths of minus eighteen (-18) feet and minus twenty-five (-25) feet with one foot of allowable over-dredge. The applicants have stated that dredging to these depths is necessary to accommodate the deeper drafts of mega yachts (vessels greater than 100 feet in length) that could not be moored at the previously existing marina. As proposed, the completed marina will be able to accommodate mega yachts with a maximum length not to exceed 485 feet.

George M. Burgess  
County Manager  
Page 2

Section 24-48.3 of the Code of Miami-Dade County requires that the Department of Environmental Resources Management (DERM) base its recommendation for approval, denial, or approval subject to conditions, limitations or restrictions, for Class I Permits on the applicable evaluation factors. One of these factors is consistency with recommendations of Miami-Dade County's Manatee Protection Plan (MDCMPP). The MDCMPP identifies the area of Biscayne Bay where this project is proposed as suitable for construction or expansion of large vessel docking facilities.

As the applicants have stated that the purpose of this project is to create a mega yacht marina, the applicants have agreed to limit the total number of non-mega yacht power vessels (less than 100 feet in length) moored at this facility. In order to maintain consistency with the MDCMPP, and considering the existing historic use of the site, the Class I permit shall require that the maximum number of powerboats that are less than 100 feet in length, as measured at the water line, that will be moored at the proposed docking facilities located at the marina, shall not exceed a total of 23 powerboats at any one time. Of the maximum allowable powerboats, not more than two shall be water taxis to be used by the guests of the marina, not more than four shall be commercial fishing or diving charter boats, and not more than three shall be marina service vessels. In order to ensure compliance with this condition, the City of Miami has proffered the attached Restrictive Covenant Running with the Land as part of the Class I Permit requirements.

In addition, this project was evaluated to identify any potential conflicts with the proposed future construction of the Port of Miami Tunnel. Staff discussed details of this project with consultants and representatives from the Florida Department of Transportation (FDOT) and the Miami-Dade County Seaport Department. No conflicts were identified. However, if approved, the Class I Permit for this project will require that the applicant coordinate construction activities with FDOT regarding work on the Port of Miami Tunnel.

As part of this project, the applicants propose to dredge 15.51 acres of submerged Bay bottom to achieve the targeted water depths. The proposed dredging will impact various marine resources within the project footprint, including seagrass habitat, hard bottom/sponge communities, macro algal communities, and several acres of benthic infaunal habitat. In order to mitigate for impacts to seagrass areas and to the hard bottom/sponge habitat, the applicants propose to create additional replacement habitat. Restoration of the lost seagrass habitat will be accomplished by filling a previously dredged area of Biscayne Bay near the Julia Tuttle Causeway to a shallower depth and then capping it with clean sand to support seagrass growth. Replacement of the lost hard bottom/sponge habitat will be accomplished by filling a previously dredged deep depression in the same area and capping it with a coarse material suitable for the growth of a hard bottom/sponge community. To offset the other project-related impacts the applicants propose to place 2,429 cubic yards of limestone riprap boulders under the proposed dock structures and to place 25,870 cubic yards of limestone riprap boulders at a DERM-approved artificial reef site in Biscayne Bay.

In addition to requesting approval for the proposed dredging and construction of the marina, the applicants are requesting a variance from Section 24-48.24 of the Code of Miami-Dade County, which prohibits non-water dependent, fixed structures over tidal waters of the County. The applicants propose to construct planters, roof structures, storage closets, security fences, vessel fueling service lines, and two pylons with staircases, all of which are proposed for placement on the piers over tidal waters. Specifically, the applicants propose to construct planters along each edge of the second level piers. Said planters will border the two piers for approximately 470 linear feet, resulting in approximately 940 linear feet of planters on each of the piers. In addition, the applicants propose to install two covered structures at the end of the second level on each of the main piers. The applicants have indicated that due to the overall length of the pier structures, the covered structures are necessary to provide refuge from the elements at the far end of the pier. On the terminus of the main piers (i.e. harbor entrance) the applicants propose to install poles that will be

3

George M. Burgess  
County Manager  
Page 3

approximately 70 feet in height with 10-foot high statues on the top. Lastly, the applicants propose to install fuel lines running along the piers to provide in-slip fuel services to vessels moored at the docking facility.

The proposed project has been designed in accordance with all relevant Miami-Dade County coastal construction criteria and is also consistent with all other Miami-Dade County coastal protection provisions, with the exception of the proposed non-water dependent fixed structures for which the applicants are seeking a variance. Please find attached two Project Reports from the DERM Coastal Resources Section, which set forth in more detail the reasons why the request for a variance and project are recommended for approval by DERM pursuant to the applicable evaluation factors set forth in Section 24-48.3 and in Section 24-48.25 of the Code of Miami-Dade County, Florida. The conditions, limitations, and restrictions set forth in the Project Report attached hereto are incorporated herein by reference hereto.

**Attachments**

- Attachment A: Class I Permit Applications
- Attachment B: Affidavit of Ownership
- Attachment C: Applicants/Agents Letter, Engineer Certification Letter and Project Sketches
- Attachment D: Names and Addresses of Owners of All Riparian or Wetland Property  
Within Three Hundred (300) Feet of the Proposed Work
- Attachment E: Seagrass Mitigation Plan
- Attachment F: Benthic Mitigation Plan
- Attachment G: Harbor Operations Plan
- Attachment H: Manatee Protection Plan
- Attachment I: Restrictive Covenant Running with the Land
- Attachment J: Zoning Memorandum
- Attachment K: Project Report for Proposed Work - Class I Permit
- Attachment L: Project Report for Variance Request - Fixed Non-Water Dependent Structures



NOTICE OF PUBLIC HEARING RELATING TO AN APPLICATION BY FLAGSTONE ISLAND GARDENS, LLC AND THE CITY OF MIAMI FOR A CLASS I PERMIT TO DREDGE 15.81 ACRES OF SUBMERGED BAY BOTTOM FOR THE CREATION OF A 50-SLIP MEGA YACHT MARINA LOCATED ON WATSON ISLAND IN THE CITY OF MIAMI, A REQUEST FOR A VARIANCE FROM SECTION 24-48.24 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, TO ALLOW THE PLACEMENT OF NON-WATER DEPENDENT FIXED STRUCTURES OVER TIDAL WATERS, AND ACCEPTANCE OF A RESTRICTIVE COVENANT RUNNING WITH THE LAND IN FAVOR OF MIAMI-DADE COUNTY

BOARD OF COUNTY COMMISSIONERS  
MIAMI-DADE COUNTY, FLORIDA

NOTICE IS HEREBY GIVEN pursuant to Article IV, Division 1 of Chapter 24 of the Code of Miami-Dade County that the Board of County Commissioners of Miami-Dade County will hold and conduct a Public Hearing on a request by Flagstone Island Gardens, LLC and the City of Miami for a Class I Permit to dredge 15.81 acres of submerged bay bottom for the creation of a 50-slip mega yacht marina, a request for a variance from Section 24-48.24 of the Code of Miami-Dade County, Florida to allow the placement of non-water dependent fixed structures over tidal waters, and acceptance of a restrictive covenant running with the land in favor of Miami-Dade County. Such Public Hearing will be held on the 12th day of September, 2006, at 9:30 am o'clock, at the County Commission Chambers on the 2nd Floor of the Stephen F. Clark Center in Miami, Florida.

Plans and details concerning the work requested in the application may be reviewed by interested persons at the office of the Miami-Dade County Department of

Environmental Resource Management, 4th Floor, 33 S.W. 2nd Avenue, Miami,  
Florida, 33130.

Oral statements will be heard and appropriate records made. For accuracy of records all important facts and arguments should be prepared in writing in triplicate, with two copies being submitted to the Deputy Clerk of the County Commission at the hearing or mailed to her beforehand (Kay Sullivan, Deputy Clerk), 111 N.W. 1st Street, Stephen P. Clark Center, Suite 17-202, Miami, Florida 33128; and with one copy being submitted beforehand to the Miami-Dade County Department of Environmental Resources Management, 33 S.W. 2nd Avenue, Miami, Florida, 33130.

A person who decides to appeal any decision made by any Board, Agency, or Commission with respect to any matter considered at its meeting or hearing, will need a record of proceedings. Such person may need to ensure that a verbatim record of the proceedings is made, including the testimony and evidence upon which the appeal is to be based.

BOARD OF COUNTY COMMISSIONERS  
MIAMI-DADE COUNTY, FLORIDA

HARVEY RUVIN, CLERK

BY: \_\_\_\_\_  
Kay Sullivan, Deputy Clerk

6



**MEMORANDUM**

(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners DATE: September 12, 2008

FROM: *Murray A. Greenberg*  
Murray A. Greenberg  
County Attorney

SUBJECT: Agenda Item No. 5(C)

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

7

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 3(I)  
09-12-06

RESOLUTION NO. \_\_\_\_\_

RESOLUTION RELATING TO AN APPLICATION BY FLAGSTONE ISLAND GARDENS, LLC AND THE CITY OF MIAMI FOR A CLASS I PERMIT TO DREDGE 15.81 ACRES OF SUBMERGED BAY BOTTOM FOR THE CREATION OF A 50-SLIP MEGA YACHT MARINA LOCATED ON WATSON ISLAND IN THE CITY OF MIAMI, A REQUEST FOR A VARIANCE FROM SECTION 24-48.24 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, TO ALLOW THE PLACEMENT OF NON-WATER DEPENDENT FIXED STRUCTURES OVER TIDAL WATERS, AND ACCEPTANCE OF A RESTRICTIVE COVENANT RUNNING WITH THE LAND IN FAVOR OF MIAMI-DADE COUNTY.

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board having considered all the applicable factors contained within Section 24-48.3 and Section 24-48.25 of the Code of Miami-Dade County, hereby approves the application by Flagstone Island Gardens, LLC and the City of Miami for a Class I Permit to dredge 15.81 acres of submerged bay bottom for the creation of a 50-slip mega yacht marina, a request for a variance from Section 24-48.24 of the Code of Miami-Dade County, Florida, to allow the placement of non-water dependent fixed structures over tidal waters, and acceptance of a restrictive covenant running with the land in favor of Miami-Dade County, subject to the conditions set forth in the memorandum from

Agenda Item No. 5(I)  
Page No. 2

the Director of the Miami-Dade County Department of Environmental Resources Management, a copy of which is attached hereto and made a part hereof. The issuance of this approval does not relieve the applicants from obtaining all applicable Federal, State, and local permits. The approval of the Class I permit herein granted shall be valid for 24 months from the date of this approval.

The foregoing resolution was offered by Commissioner who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	
Dennis C. Moss, Vice-Chairman	
Bruno A. Barreiro	Jose "Pope" Diaz
Audrey M. Edmonson	Carlos A. Gimenez
Sally A. Heyman	Barbara J. Jordan
Darrin D. Kells	Narasha Saffar
Katy Strossman	Robert Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 12th day of September, 2006. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency. PSI

Peter S. Fall

Exhibit 9.2.1

Existing Liens

<u>FLAGSTONE LAWSUITS</u>					
<u>Company Claiming Lien</u>	<u>Amount</u>	<u>Filing Date</u>	<u>Judgment Date</u>	<u>Local Case Number</u>	<u>Comments</u>
<u>Coastal Building Maintenance</u>	<u>\$4,612.50</u>	<u>April 23, 2010</u>	<u>June 6, 2010</u>	<u>2010-3441-SP-25</u>	<u>Voluntary Dismissal 6/10/2010</u>
<u>Sieger Suarez Architects</u>	<u>:</u>	<u>March 18, 2010</u>	<u>:</u>	<u>2010-17467-CA-01</u>	<u>Lis Pendens - No Hearing Scheduled</u>
<u>Stephen James Associates</u>	<u>:</u>	<u>January 26, 2010</u>	<u>:</u>	<u>2010-4951-CA-01</u>	<u>Hearing 9/29/2010</u>
<u>Daniel Edelman Inc.</u>	<u>?</u>	<u>October 23, 2009</u>	<u>:</u>	<u>2009-78233-CA-01</u>	<u>Hearing 8/11/2010</u>
<u>Beach Tower LLC</u>	<u>\$236,203.95</u>	<u>July 21, 2009</u>	<u>:</u>	<u>2009-41142-CA-01</u>	<u>Hearing 8/5/2010</u>
<u>Lillian A. Ser</u>	<u>\$674,031.78</u>	<u>July 1, 2009</u>	<u>October 22, 2009</u>	<u>2009-49662-CA-01</u>	<u>Hearing 9/3/2010</u>
<u>Miller Leg and Associates Inc.</u>	<u>\$3,340.00</u>	<u>August 25, 2009</u>	<u>October 20, 2009</u>	<u>2009-11179-SP-05</u>	<u>FINAL JUDGMENT</u>
<u>Spillis Candela &amp; Partners, Inc.</u>	<u>?</u>	<u>November 11, 2009</u>	<u>:</u>	<u>2008-69458-CA-01</u>	<u>Hearing 10/18/2010</u>
	<u>\$913,575.73</u>				

**FLAGSTONE LIENS**

<u>Company Claiming Lien</u>	<u>Amount</u>	<u>Filing Date</u>	<u>Judgment Date</u>	<u>Local Case Number</u>	<u>Comments</u>
<u>Lillian A. Ser</u>	:	<u>April 29, 2010</u>	<u>N/A</u>	<u>N/A</u>	<u>Writ of Garnishment</u>
<u>BICON Inc, d/b/a S&amp;S National Waste</u>	<u>\$1,416.94</u>	<u>January 22, 2009</u>	<u>N/A</u>	<u>N/A</u>	:
<u>PHA Lighting Design, Inc.</u>	<u>\$75,650.00</u>	<u>March 4, 2009</u>	<u>N/A</u>	<u>N/A</u>	:
<u>PHA Lighting Design, Inc.</u>	<u>\$4,467.19</u>	<u>March 4, 2009</u>	<u>N/A</u>	<u>N/A</u>	:
<u>Sieger Suarez Architects</u>	<u>\$1,777,990.79</u>	<u>March 20, 2009</u>	<u>N/A</u>	<u>N/A</u>	:
<u>Ardaman &amp; Associates</u>	<u>\$27,500.00</u>	<u>April 24, 2009</u>	<u>N/A</u>	<u>N/A</u>	:
<u>Coastal Systems International Inc.</u>	<u>\$188,415.83</u>	<u>July 10, 2009</u>	<u>N/A</u>	<u>N/A</u>	:
<u>Langan Engineering &amp; Environmental Services</u>	<u>\$61,708.51</u>	<u>August 10, 2009</u>	<u>N/A</u>	<u>N/A</u>	:
	<u>\$2,137,149.26</u>				

**FLAGSTONE CLAIM OF LIEN**

<u>Company Claiming Lien</u>	<u>Amount</u>	<u>Filing Date</u>	<u>Judgment Date</u>	<u>Local Case Number</u>	<u>Comments</u>
<u>Construction Protective Services Inc./Boca Development and Construction Corporation</u>	<u>\$8,125.15</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	
<u>Landscaping Associates, Inc.</u>	<u>\$39,056.64</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	
<u>TBE Group, Inc.</u>	<u>\$46,593.00</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	
<u>Eagle SWS First Response (Langan Engineering)</u>	<u>\$23,307.77</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	
<u>Miami Awning Company</u>	<u>\$11,360.00</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	
	<u>\$128,442.56</u>				

<u>SUBTOTAL</u>	<u>\$3,179,167.55</u>	
	<u>-\$4,612.50</u>	<u>Voluntary Dismissal</u>
<u>TOTAL</u>	<u>\$3,175,005.05</u>	



Exhibit 9.3

Hold Harmless, Indemnification and Security Agreement

**KNOW ALL MEN BY THESE PRESENT:**

That Flagstone Island Gardens, LLC, a limited liability company ("Flagstone"), for and in consideration of the approval by the City of Miami (the "City") of the Amended and Restated Agreement to Enter into Ground Lease between the City and Flagstone pursuant to Resolution No. R-10-0402 dated September 23, 2010 and the sum of Ten and No/100 (\$10.00) Dollars, receipt of which is hereby acknowledged, on behalf of itself, its successors and assigns, agrees to indemnify, hold harmless and defend the City from and against any and all liabilities, penalties, fines, suits, claims, demands, actions, losses, expenses, investigation and remediation costs, causes of action, proceedings, judgments, executions and reasonable costs of any kind or nature whatsoever (including reasonable attorneys' fees at trial, administrative proceeding or appeal) in connection with, arising out of, or related to items listed on Exhibit "A" attached hereto and by this reference incorporated herein.

IN WITNESS WHEREOF, Flagstone has caused this Indemnification and Hold Harmless Agreement to be executed this \_\_\_\_ day of \_\_\_\_\_, 2011.

**FLAGSTONE ISLAND GARDENS, LLC**, a  
Delaware limited liability company, by Flagstone  
Miami Holdings, LLC, by Flagstone Property  
Group, LLC

By: \_\_\_\_\_  
Mehmet Bayraktar, Managing Member

STATE OF FLORIDA        )  
  )  
COUNTY OF DADE        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011, by Mehmet Bayraktar on behalf of and Managing Member of Flagstone Property Group, LLC, Managing Member of Flagstone Miami Holdings, LLC, Managing Member of Flagstone Island Gardens, LLC, who is personally known to me or has produced \_\_\_\_\_ as identification, and he did \_\_\_/ did not \_\_\_\_ take an oath.

[NOTARY SEAL]

\_\_\_\_\_  
Print Name:  
Notary Public

My Commission Expires:

Exhibit 12.2

Permitted Title Exceptions

1. Bulkhead line as shown on the plat recorded in Plat Book 74, Page 4.
2. Oil, gas and mineral reservations as set forth in that Deed from the Trustees of the Internal Improvement Fund to the City of Miami, filed April 11, 1949 in Deed Book 3130, Page 257 under Clerk's File No. Y-29610. Note: The right of entry has been released pursuant to that certain release or rights of entry recorded January 26, 2006 in Official Record Book 24182, Page 1049.
3. Agreement for Water Facilities recorded March 13, 1998, in Official Records Book 18016, Page 2892.
4. Agreement for Sanitary Sewage Facilities recorded April 14, 1998, in Official Records Book 18058, Page 112.
5. Resolution No. 98-23, recorded January 19, 1999, in Official Records Book 18699, Page 1236.
6. Easement in favor of the United States of America set forth in that Grant of Easement for Miami Harbor Turning Basin, recorded April 22, 1963, in Official Records Book 3622, Page 751.
7. Perpetual Easement in favor of Florida Department of Transportation recorded March 13, 1998 in Official Records Book 18018, Page 1181.
8. Such other items as are shown on the Update which are acceptable to Flagstone and Title Insurer.

NOTE: All recording references are as to the Public Records of Miami-Dade County, Florida.

Exhibit 12.1.4

Existing Insurance Coverages

ERROR: undefined  
OFFENDING COMMAND:

STACK:

Composite Attachment 1

Resolutions of City

J-01-826  
9/25/01

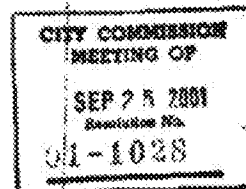
RESOLUTION NO. 01-1028

A RESOLUTION OF THE MIAMI CITY COMMISSION REQUESTING THAT DAVID LEAHY, THE MIAMI-DADE COUNTY SUPERVISOR OF ELECTIONS, PRINT THE PROPOSED CHARTER AMENDMENTS AND BALLOT QUESTIONS ON THE NOVEMBER 6, 2001 CITY OF MIAMI ELECTION BALLOT IN A SPECIFIC ORDER AS SET FORTH HEREIN.

BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. David Leahy, the Miami-Dade County Supervisor of Elections, is requested to print the proposed Charter Amendments and Ballot Questions on the November 6, 2001 City of Miami Election Ballot in the following order:

<u>ORDER ON BALLOT</u>	<u>DESIGNATION AS ADOPTED BY CITY COMMISSION</u>	<u>RESOLUTION NO.</u>
1.	Charter Amendment Civilian Investigative Panel	Resolution No. 01-844
2.	Charter Amendment Global amendments	Resolution No. 01-843
3.	Charter Amendment Amending Charter Sections 29A, 29B, and 29C	Resolution No. 01-841
4.	Charter Amendment Commissioners Salaries	Resolution No. 01-842



ORDER ON  
BALLOT

DESIGNATION AS ADOPTED  
BY CITY COMMISSION

RESOLUTION NO.

- |    |  |                       |
|----|--|-----------------------|
| 3. | Ballot Question<br>Watson Island Proposal  | Resolution No. 01-972 |
| 4. | Ballot Question<br>Exempting business in<br>Empowerment Zones from<br>Ad valorem taxes | Resolution No. 01-535 |

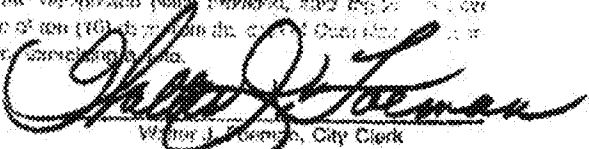
Section 2. This Resolution shall become effective immediately upon its adoption and signature of the Mayor.<sup>4/</sup>

PASSED AND ADOPTED this 25th day of September, 2001.

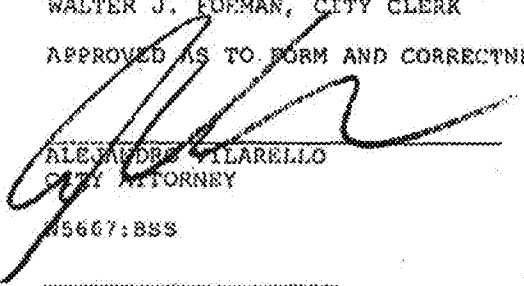
\_\_\_\_\_  
JOE CAROLLO, MAYOR

In accordance with Miami Code Sec. 2-08, since the Mayor did not indicate approval of this legislation by signing it in the designated space provided, said legislation shall become effective with the date of passage (10) days after the date of passage of this Resolution regarding same, without the Mayor's signature.

ATTEST:

  
Walter J. Forman, City Clerk

\_\_\_\_\_  
WALTER J. FORMAN, CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS: 

\_\_\_\_\_  
ALEXANDER FILARELLO  
CITY ATTORNEY

45667:BSS

<sup>4/</sup> If the Mayor does not sign this Resolution, it shall become effective at the end of ten calendar days from the date it was passed and adopted. If the Mayor vetoes this Resolution, it shall become effective immediately upon override of the veto by the City Commission.



City of Miami

City Hall  
3500 Pan American Drive  
Miami, FL 33133  
www.miamigov.com

Master Report

Resolution R-10-0402

File ID #: 10-01115a

Enactment Date: 9/23/10

Version: 2

Controlling Office of the City  
Body: Clerk

Status: Passed

**Title:** A RESOLUTION OF THE MIAMI CITY COMMISSION, WITH ATTACHMENT(S), APPROVING EXHIBIT A HERETO ("EXHIBIT A"), THE AMENDED AND RESTATED AGREEMENT TO ENTER INTO GROUND LEASE ("AMENDED AND RESTATED AGREEMENT TO ENTER"), AND THE AMENDED AND RESTATED GROUND LEASE(S) ("AMENDED AND RESTATED GROUND LEASE(S)") (EACH IN SUBSTANTIALLY THE ATTACHED FORM(S)), BETWEEN THE CITY OF MIAMI ("CITY") AND FLAGSTONE ISLAND GARDENS, LLC ("FLAGSTONE"), AND AUTHORIZING AND DIRECTING THE CITY MANAGER AND THE CITY ATTORNEY TO EXECUTE THE AMENDED AND RESTATED AGREEMENT TO ENTER, AND THE AMENDED AND RESTATED GROUND LEASE PROVIDING FOR, INTER ALIA: (1) FLAGSTONE'S OPTION TO DEVELOP THE MEGA-YACHT MARINA WITH ITS ANCILLARY FACILITIES, RETAIL, PARKING, HOTELS AND ALL OTHER RELATED FACILITIES (THE "PROJECT") IN ITS ENTIRETY ALL AT ONCE OR THROUGH PHASED DEVELOPMENT ON A COMPONENT BY COMPONENT BASIS; (2) EXTENDING THE POSSESSION DATE FROM FEBRUARY 1, 2010 TO SEPTEMBER 1, 2013, OR SOONER, AT FLAGSTONE'S OPTION; (3) ESTABLISHING AN ANNUAL PAYMENT SCHEDULE FOR ALL COMPONENTS COMMENCING WITH THREE HUNDRED THOUSAND DOLLARS (\$300,000) AND INCREASING TO TWO MILLION DOLLARS (\$2,000,000) NO LATER THAN THE YEAR 2018, SUBJECT TO CERTAIN CREDITS AND OTHER CONDITIONS RELATED TO DEVELOPMENT ON A COMPONENT BY COMPONENT BASIS; (4) EXTENDING CERTAIN MILESTONE DATES IN THE TIMELINES FOR CONSTRUCTION COMMENCEMENT, COMPLETION, AND OTHER DEVELOPMENT MATTERS AS SET FORTH IN EXHIBIT A; AND (5) PROVIDING FOR SECURITY DEPOSIT(S), PROVIDED, HOWEVER THAT SUCH APPROVAL, AUTHORIZATION AND DIRECTION ARE ALL SUBJECT TO AND CONDITIONED UPON A SATISFACTORY DETERMINATION OF SECTION VII, ENTITLED "STATE WAIVER" OF EXHIBIT A REGARDING PAYMENTS TO THE STATE OF FLORIDA ("STATE"); FURTHER DIRECTING THE CITY MANAGER TO RETURN TO THE CITY COMMISSION FOR APPROVAL REGARDING THE STATE WAIVER; FURTHER AUTHORIZING AND DIRECTING THE CITY MANAGER AND THE CITY ATTORNEY TO MAKE NON-SUBSTANTIVE REVISIONS AS NECESSARY TO EXHIBIT A, THE AMENDED AND RESTATED AGREEMENT TO ENTER, THE AMENDED AND RESTATED GROUND LEASE(S) ALL DOCUMENTS RELATING TO THE STATE WAIVER.

Reference:

Introduced: 9/16/10

Name: Flagstone

Requester: Honorable Mayor  
Tomás Regalado

Cost:

Final Action: 9/23/10

Notes: Please include all attachments when certifying this resolution.



---

**Sections:**

**Indexes:**

**Attachments:** 10-01116a Flagstone Resolution.pdf, 10-01116a Flagstone Exhibit A.pdf, 10-01116a Flagstone Liens and State Waiver Modification.pdf, 10-01116a Flagstone Agreement to Enter.pdf, 10-01116a Flagstone Ground Lease Part 1.pdf, 10-01116a Flagstone Ground Lease Part 2.pdf, 10-01116a Attachment 4 of the Flagstone Ground Lease.pdf

---

**Action History**

---

Ver.	Acting Body	Date	Action	Sent To	Due Date	Returned	Result
2	Office of the City Attorney	9/22/10	Review Pending				
1	City Commission	9/23/10	ADOPTED				1

---

A motion was made by Francis Suarez, seconded by Richard Dunn II, that this matter be ADOPTED. Chair Samoff: I think we can now move -- I think the best way to proceed, gentlemen, is to start with the supplemental agenda, and I know the Mayor wants to be recognized for that. So Mr. Mayor, you are now recognized for the record. We are in the supplemental agenda, gentlemen.

Mayor Tomás Regalado: Thank you very much, Mr. Chairman, Commissioners. On the supplemental agenda, you will find a SL5, which -- it's sponsored by me. It's what you defer last week, which is the Flagstone lease. I have to tell you that I -- I'm a little confused because I remember -- it's on the record -- that this Commission said that you will have the same agreement with no changes at all, and you gave the principals one week to come up with the check, the cashier's check. My understanding is that they have, in the past two days, requested some changes. And I can't say if that's their position today, this morning, or if they have brought the check, to my knowledge and to the Administration knowledge. I think the Manager and the Attorney will say that we have no knowledge of -- if they did bring [sic] the check or why they were asking for some changes within the framework of what you approve. So I would defer to the Manager to give us a brief history of this week. It's -- it -- actually, nothing happened this week because you didn't want to. You just -- we just waited for one week for this to come back to the City Commission. And so, Mr. Manager, I think that everything is okay, but my understanding and your understanding is that they have requested some changes.

Brian May: No.

Carlos A. Migoya (City Manager): Mr. Chair, Mr. Mayor, during the last several days, they have been requesting some changes and, frankly, my position with both our staff and the City Attorney staff is that we're not to have any conversations. And anything at all that needs to be brought up will be brought up here, and that's been the official position of the Administration and of the City Attorney's. Not trying to speak on behalf of the City Attorney, but that's basically our combined approach.

Chair Samoff: Mr. Manager, my understanding is, I have the document that was hand-delivered to my office at the end of the last Commission meeting, and that's -- that is the document that we're here to vote on.

Mr. Migoya: Nothing has been discussed to be changed further than what you have in front of you.

Chair Samoff: Okay. You want to be recognized for the record?

Mr. May: Yeah. Just for the record, Mr. Chairman, Brian May, representing Flagstone, offices at 235 Catalonia Avenue, in Coral Gables. We're not requesting any changes to the documents whatsoever. We did forward some comments to the City Attorney with regard to the resolution on some drafting issues that we had, but we're not here today requesting any change whatsoever to the resolution. We do have a \$200,000 cashier's check, as we told you we would. And we'd just appreciate the Commission's consideration this morning. And we're here to answer any questions, if you have them.

Chair Samoff: All right.

Mr. May: Thank you.

Chair Samoff: Does anybody --?

Mayor Regalado: If I may, Mr. Chairman.

Chair Samoff: Yes, sir.

Mayor Regalado: There is the question -- and maybe that the City Attorney can answer -- whether that check needs to be presented to the Administration even before the item is discussed and voted on it because the understanding was that this is money owed to the City of Miami and that it wasn't predicated on the Commission approving the deal. So maybe the City Attorney can help --

---

Chair Sarroff: You understand what he's requesting?

City of Mendocino

Page 4

Printed on 10/21/2011



Commissioner Gort: My understanding -- and I want everybody to understand that my -- I'm not too knowledgeable in real estate, but my understanding is when you put a down payment on a property and you have "K" amount to close and if you can't close within those time given to you, you have the right to put some additional funds. Because this property's been holding out for 12 years or 10 years, something like that. So I want to make sure that they can comply with all of the regulations and all the documents and all the agreements that we have to and to -- they understand that this Commissioners -- I think previous Commissioner (self), we've been very patient [sic] 'cause during the boom times, nothing took place. Meantime, that land sat there by itself with no use to us. They've been paying for the options to continue to have the option. That's what they've been paying for. But I want to make sure they know that

No: 1 - Frank Carollo

2	Office of the City Attorney	9/23/10	Reviewed and Approved	
2	Office of the Mayor	9/23/10	Signed by the Mayor	Office of the City Clerk
2	Office of the City Clerk	9/23/10	Signed and Attested by City Clerk	

Attachment 2

Company Authorization of Flagstone

**UNANIMOUS WRITTEN CONSENT OF THE MEMBERS  
OF  
FLAGSTONE ISLAND GARDENS, LLC**

The undersigned, being all of the members of Flagstone Island Gardens, LLC, a Delaware limited liability company (the "Company"), hereby consents to the adoption of the following resolutions:

**RESOLVED**, that the Company shall enter into an Amended and Restated Agreement To Enter Into Ground Lease with the City of Miami, as approved by the Miami City Commission, via Resolution No. R-10-0402, on September 23, 2010, for the purpose of amending and restating the Agreement to Enter into Ground Lease and the exhibits thereto including, but not limited to, the Amended and Restated form of Ground Lease attached thereto as Exhibit C;

be it further

**RESOLVED**, that Flagstone Development corporation, the managing member of the Company, through its officers, is hereby authorized and directed to execute and deliver, in the name and on behalf of the Company, any and all agreements, certificates, instruments, documents and plans, and to take any and all action and to do any all things, as may be necessary or desirable to carry out the intent and accomplish the purposes of the foregoing resolutions; and

be it further

**Resolved**, that all previous resolutions previously adopted by the company that may be inconsistent with the foregoing resolutions are hereby superseded or modified by these resolutions.

**Dated as of February 1, 2010**

**Flagstone Miami Holdings, LLC**  
By: Flagstone Development Corporation

By: \_\_\_\_\_  
Mehmet Bayraktar, President

Flagstone Development Corporation

By: \_\_\_\_\_  
Mehmet Bayraktar, President



Composite Attachment 3

Exhibit A to City Commission Resolution No. 10-0402, adopted September 23, 2010  
Construction Schedule, Options to Extend, Payments Schedule, Related Defaults and Notes

EXHIBIT A

This Exhibit A is an attachment to City Commission Resolution No. 10-0402, adopted September 23, 2010, contains material business terms, and becomes Composite Attachment 3 to the Amended and Restated Agreement to Enter Into Ground Lease (hereinafter, the "Agreement to Enter") and to the form of Amended and Restated Ground Lease(s) (hereinafter the "Ground Lease(s)"). All terms used herein but not defined herein shall have the definitions given to them in the Agreement to Enter or in the form of Ground Lease(s).

**I. GENERAL CONSTRUCTION SCHEDULE FOR ALL MAJOR PROJECT COMPONENTS.**

Flagstone/Ground Lessee shall have the time periods set forth below to commence and complete construction of the various Major Project Components, as such Major Project Components are approved in accordance with the Major Use Special Permit and as such are defined in Section \_\_\_ of the form of Ground Lease(s). Throughout this Exhibit A, (a) "Commence(s) Construction" or "Start(s) Construction" shall mean that all material plans and permits are approved and issued and the actual act of physical construction has begun; and (b) "Completion Date" shall mean the date upon which the earlier of the temporary certificate of occupancy ("TCO") or a certificate of occupancy ("CO"), has been issued for the completion of construction.

Until 9/1/2013            36 months from 9/1/2010 to Start Construction of the Marina Component.

- (a) As described in Section VI(c) below, Marina Component construction may be started earlier and separately from the Parking/Retail Components once applicable conditions precedent for Marina Component have been met.

Until 2/28/2015            54 months from 9/1/2010 to the Completion Date of the Marina Component.

- (b) If Marina Component Starts Construction earlier than 9/1/2013, then Flagstone shall have 18 months from such earlier start date to the Completion Date of the Marina Component.

Until 9/1/2016            72 months from 9/1/2010 to Start Construction of both the Retail/Parking Components

Until 8/31/2019 108 months from 9/1/2010 to the Completion Date of Retail/Parking Components.

- (a) Parking spaces for Hotels may be completed separately with construction of Hotels Components.
- (c) Flagstone agrees to design, construct and provide utility lines needed for each of the Major Project Components on a component by component basis as necessary and as approved by the City and as required by the Master Declaration as a condition precedent to executing the first Ground Lease. Flagstone shall design, construct and provide utility lines needed for both Hotel Components in connection with the construction of utility lines for the Parking/Retail Components.

Until 9/1/2018 96 months from 9/1/2010 to Start Construction of both Hotels Components, if the two (2) 5-year Options to extend described below are not exercised, therefore until 8/31/2020 (being twenty-four (24) months) to the Completion Date. Flagstone cannot exercise the second Option if no hotel construction has commenced by 8/31/2023.

Until 9/1/2023 156 months from 9/1/2010 to Start Construction of a Hotel Component, if only the first 5-year Option to extend is exercised. Accordingly, the first Option period ends on 8/31/2023.

- (a) During the first Option period, a Hotel Component must be completed within twenty-four (24) months after Construction Commencement, therefore until 8/31/2025 to the Completion Date of at least one Hotel Component. Accordingly, both the Rent(s) payments schedule and the Option payments schedule in this Exhibit A would apply throughout the entire period of construction, even if the Completion Date of such construction period runs beyond the Option period.
- (b) The first 5-year Option period runs from 9/01/2018 through 8/31/2023. The first Option period payment is \$250,000 per annum (\$125,000 per Hotel Component per annum) with monthly payments beginning 9/01/2018 for the first Option period ending 8/31/2023.
- (c) All Option payments are to be paid monthly in advance beginning on the first day of the month. The first Option is exercised by Flagstone's giving not less than thirty (30) days advance written notice prior to 8/31/2018 to the City for the first Option period to begin.

Until 9/1/2028 216 months from 9/1/2010 to Start Construction of the second Hotel Component if Flagstone exercises the second 5-year Option to extend; accordingly, the second Option period ends on 8/31/2028:

- (a) The second 5-year Option period runs from 9/01/2023 through 8/31/2028. The second 5-year Option period payment is \$315,000

per annum (\$157,500 per Hotel Component per annum) with monthly payments beginning 9/01/2023 for the second Option period ending 8/31/2028, but second 5-year Option is not available unless the first Hotel Component Starts Construction before the end of the first 5-year Option period on 8/31/2023.

- (b) All Option payments are to be paid monthly in advance beginning on the first day of the month. The second Option is exercised by Flagstone's giving not less than thirty (30) days advance written notice prior to 8/31/2023 to the City for the second Option period to begin.
- (c) During the second Option period, the second Hotel Component must be completed within twenty-four (24) months after Flagstone Commences Construction, therefore until 8/31/2030 to reach the Completion Date of the second Hotel Component that commenced construction during the second Option period. Accordingly, both the Rent(s) payments schedule and the Section IV Option payments schedule in this Exhibit A would apply throughout the entire period of construction, even if such construction period runs beyond the Option period.

**II. GENERAL RENT(S) PAYMENT SCHEDULE FOR ALL MAJOR PROJECT COMPONENTS.**

During the periods outlined below, Flagstone/Ground Lessee shall pay to the City the amounts outlined below.

<b>Beginning</b>	<b>Annual Amount</b>	
2/1/2010 through 9/30/2010	\$200,000	Consideration for Extension Period. This amount shall not be applied as a credit.
10/1/2010	\$300,000	\$300,000 is a Pre-Payment of Construction Rent/Base Rent to City
10/1/2011	\$500,000	\$500,000 is a Pre-payment of Construction Rent/Base Rent to City
10/1/2012	\$750,000	\$750,000 is a Pre-payment of Construction Rent/Base Rent to City
10/1/2013	\$1,000,000	\$1,000,000 Construction Rent, subject to II(h) below
10/1/2014	\$1,000,000	\$1,000,000 Construction Rent, subject to II(h) below
10/1/2015	\$1,000,000	\$1,000,000 Construction Rent, subject to II(h) below
10/1/2016	\$1,140,000*	\$1,500,000 Construction Rent is the amount actually received by City since \$360,000 was pre-

Beginning	Annual Amount	
		paid for this year per above schedule and Section II below, unless there is no credit pursuant to Section VI(a) below.
10/1/2017	\$1,315,000*	\$1,675,000 Construction Rent is the amount actually received by City since \$360,000 was pre-paid pursuant to the above schedule and Sections II below, unless there is no credit pursuant to Section VI(a) below.
10/1/2018 and annually thereafter	\$1,640,000*	\$2,000,000 Base Rent is the amount actually received by City since \$360,000 was pre-paid pursuant to the above schedule and Section II below, unless there is no credit pursuant to Section VI(a) below. Base Rent continues until termination of Ground Lease(s). Additionally, Percentage Rent payments begin as described in (d) below.
10/1/2019	\$1,640,000*	\$2,000,000 Base Rent is the amount actually received by City since \$360,000 was pre-paid pursuant to the above schedule and Section II below, unless there is no credit pursuant to Section VI(a) below. Additionally, Percentage Rent payments continue as described in (d) below.
10/1/2020	\$1,890,000*	\$2,000,000 Base Rent is the amount actually received by City since \$110,000 was pre-paid pursuant to the above schedule and Section II below, unless there is no credit pursuant to Section VI(a) below. Additionally, Percentage Rent payments continue as described in (d) below until the termination of Ground Lease(s).

**\*Notwithstanding the Annual Amounts set forth above and pursuant to Section II(g) below, credits of the Pre-Payment of Construction/Base Rent cannot be given until the Marina Component Starts Construction prior to 9/1/2013 and both of the Parking/Retail Components Start Construction prior to 9/1/2016 pursuant to the above General Construction Schedule for All Major Project Components. As stated in Section II(g) below, when all (i) of the Marina Component Starts Construction prior to 9/1/2013 and (ii) the Retail/Parking Components Start Construction prior to 9/1/2016, then credit of the Pre-Paid Construction/Base Rent begins the month following the date upon which all of those three (3) specific Components have started construction.**

- (a) As set forth in the State Waiver (as defined in Section VII below) until the development is completed or October 1, 2021, whichever occurs first ("Takeover

Date”), Flagstone shall make payments to the Board of Trustees. From and after the Takeover Date, the City shall make payments to the Board of Trustees pursuant to the Amended and Restate Partial Modification of Restrictions Deed No. 19447-F OR Book 27828 Page 3675 recorded on September 16, 2011.

- (b) During the thirty-six (36) months after 9/01/2010 to 8/31/2013, Flagstone has a 10-day grace period beyond the first of each month to make each “Pre-Paid Construction Rent” payment, and agrees to not require any notice from the City in the event of non-payment of any “Pre-Paid Construction Rent” payment. In the event that Flagstone defaults for non-payment, Flagstone also agrees to waive its defenses as to non-payment against the City, immediately vacate and turn over to the City for the City’s possession all of Flagstone’s rights, and interests in the Property and the easement areas, remove from such easement areas and from the Property all of its property of whatever kind as requested in writing by the City Manager, and immediately (i) return or sign over, as applicable, to the City all of Flagstone’s rights, directly or indirectly, in the permits, plans, specifications, and all related governmental approvals, documents, instruments, and agreements as necessary related to the Property, and (ii) deliver to the City all of such permits, plans, specifications, and all related governmental approvals, documents, instruments, and agreements which are in Flagstone’s possession or in Flagstone’s control.
- (c) All payments to the City (for various Rents and for Option payments) are to be paid monthly in advance beginning on the first day of the month, except for the lump sum payment Flagstone shall pay to the City upon the date of City Commission Approval of the Agreement to Enter and the Ground Lease, for the Consideration of Extension Period amount from February 1, 2010 through September 30, 2010.
- (d) Additionally, if the Agreement to Enter is not signed in the same month of City Commission Approval, then Flagstone shall also pay a lump sum payment amount of \$25,000 per month for each month from October 1, 2010 until the Agreement to Enter is executed.
- (e) Additional provisions regarding Percentage Rent payments are included in the form of each Amended and Restated Ground Lease(s). As stated therein, Percentage Rent on the Gross Revenues of each Component begins on the third anniversary after each Major Project Component is Open for Business. “Open for Business” means the earlier of the date that the applicable Major Project Component receives either its TCO or CO. Base Rent may begin sooner than 02/01/2018 (i.e., if both Hotels are Open for Business prior to that time as set forth in the Amended and Restated Hotel Ground Lease).
- (f) As stated in the applicable Amended and Restated Ground Leases, once Base Rent begins, it continues each year for the remaining term of the applicable Ground Lease(s). On the first anniversary of the commencement of the Base Rent for each Major Project Component, the Base Rent thereafter becomes subject to

an annual Consumer Price Index ("CPI") adjustment as set forth in the Ground Lease(s). Percentage Rent on the Gross Revenues of each Major Project Component begins on the third anniversary after each Major Project Component is Open for Business.

- (g) If the Marina Component Starts Construction prior to 9/1/2013 and the Retail/Parking Component(s) both Start Construction prior to 9/1/2016, then on the first day of the month following the date when the Marina Component and the Retail/Parking Component(s) (all 3 such Components) have started construction, the Construction Rent payment (subject to credits described in (g) below) becomes at least \$1,000,000 per year, as opposed to the lesser Prepaid Construction/Base Rent payment amounts shown on the above Section II General Rents Payment Schedule for All Major Project Components.
- (h) If the Marina Component Starts Construction prior to 9/1/2013 and the Retail/Parking Component(s) (all 3 such Components) Start Construction by 9/1/2016, then as shown on the above Section II General Rent(s) Payment Schedule for All Major Project Components, Flagstone is entitled to a credit back of Pre-Paid Construction Rent/Base Rent each year beginning in the month following the date upon which construction has started on all 3 such Components in the amount of \$30,000 per month for fifty-one (51) months and of \$20,000 for the 52<sup>nd</sup> month until Flagstone has received a total aggregate credit of \$1,550,000. This monthly credit is a return of Pre-Paid Construction/Base Rent paid by Flagstone between 9/1/2010 and 8/31/2013. If Flagstone Starts Construction of all three (3) of the Marina Component and the Retail/Parking Components prior to 9/1/2013, then the total credit back amount is reduced by 1/36<sup>th</sup> for each month prior to 2/1/2013 that all such Components have commenced. Conversely, if Flagstone does not Commence Construction of all three (3) of the Marina Component and the Retail/Parking Components by 8/31/2016, then no credit of Prepaid Construction Rent is allowed and the City keeps all of the Prepaid Construction Rent amount received.
- (i) If no construction begins by 9/1/2013 on any Major Project Component, then the City keeps all Prepaid Construction/Base Rent, Flagstone agrees to not require any notice from the City to terminate for failure to begin construction, and Flagstone also agrees to waive its defenses against the City, immediately vacate and turn over to the City for the City's possession all of Flagstone's rights and interests in the Property and the easement areas, remove from such easement areas and from the Property all of its property of whatever kind as requested in writing by the City Manager, and immediately (i) return or sign over, as applicable, to the City all of Flagstone's rights, directly or indirectly, in the permits, plans, specifications, and all related governmental approvals, documents, instruments, and agreements as necessary related to the Property, and (ii) deliver to the City all of such permits, plans, specifications, and all related governmental approvals, documents, instruments, and agreements which are in Flagstone's possession or in Flagstone's control.

**III. OPTION PAYMENT SCHEDULE (FIRST OPTION).**

Flagstone has two (2) 5-year Options ("Option(s)") to extend the date to Commence Construction of the Hotels Components, and Flagstone has the choice to build either one Hotel Component or two Hotel Components; that choice triggers Option payments for one Hotel Component or two Hotels Components accordingly.

If Flagstone exercises the first Hotel Option period for only one Hotel Component, Flagstone must also pay to the City the following additional Option payment amounts.

<b>Beginning</b>	<b>Annual Option payment (for One Hotel)</b>	<b>Annual Base Rent</b>	<b>Annual Amounts to the City</b>
9/1/2018	\$125,000	\$2,000,000	\$2,125,000 (Base Rent plus Option payment)
9/1/2019	\$125,000	\$2,000,000	\$2,125,000 (Base Rent plus Option payment)
9/1/2020	\$125,000	\$2,000,000	\$2,125,000 (Base Rent plus Option payment)
9/1/2021	\$125,000	\$2,000,000	\$2,125,000 (Base Rent plus Option payment)
9/1/2022	\$125,000	\$2,000,000	\$2,125,000 (Base Rent plus Option payment)

If Flagstone exercises the first Hotel Option period for two (2) Hotel(s) Components, Flagstone must also pay to the City the following additional Option payment amounts.

<b>Beginning</b>	<b>Annual Option payments (for 2<sup>nd</sup> Hotel)</b>	<b>Annual Base Rent</b>	<b>Annual Amounts to the City</b>
9/1/2018	\$250,000	\$2,000,000	\$2,250,000 (Base Rent plus Option payments)
9/1/2019	\$250,000	\$2,000,000	\$2,250,000 (Base Rent plus Option payments)
9/1/2020	\$250,000	\$2,000,000	\$2,250,000 (Base Rent plus Option payments)
9/1/2021	\$250,000	\$2,000,000	\$2,250,000 (Base Rent plus Option payments)
9/1/2022	\$250,000	\$2,000,000	\$2,250,000 (Base Rent plus Option payments)

- (a) As set forth in the State Waiver (as defined in Section VII below) until the development is completed or October 1, 2021, whichever occurs first ("Takeover



Date”), Flagstone shall make payments to the Board of Trustees. From and after the Takeover Date, the City shall make payments to the Board of Trustees pursuant to the Amended and Restate Partial Modification of Restrictions Deed No. 19447-F OR Book 27828 Page 3675 recorded on September 16, 2011.

- (b) Flagstone can exercise the Option for only one Hotel Component or for both Hotel Components, or stop Option payments at any time by giving written notice to the City at least thirty (30) days before the date that the next Option payment is due, but if Flagstone elects not to exercise the Option for one or both Hotel Component(s), or fails to make any Option payment(s), then Flagstone must turn over to the City immediately any applicable Hotel Ground Lease(s), Flagstone also agrees to waive its defenses as to failure to pay the required Option payments, immediately vacate and turn over to the City for the City’s possession all of Flagstone’s rights and interests in the Hotel Component(s), any Hotel Ground Lease, and the applicable easement areas, remove from such easement areas all of its property of whatever kind as requested in writing by the City Manager, and immediately (i) return or sign over, as applicable, to the City all of Flagstone’s rights, directly or indirectly, in the permits, plans, specifications, and all related governmental approvals, documents, instruments, and agreements as necessary related to the applicable Hotel Component(s), and (ii) deliver to the City all of such permits, plans, specifications, and all related governmental approvals, documents, instruments, and agreements relating to the applicable Hotel Component(s) which are in Flagstone’s possession or in Flagstone’s control, and City has the rights to seek a new developer for the applicable Hotel Component(s).
- (c) For Any Hotel(s) Component(s) that Start(s) Construction during the first Option period and continue construction into the second Option period, the Option payments shall increase on 9/01/2023 to the second Option period Option payment amount(s) set forth below in Section IV, and shall continue at such second Option payment amount(s) until the Completion Date. Such Option payments for the Hotel(s) Component(s) are in addition to the required Construction Rent, Base Rent, Percentage Rent, CPI Adjustments, Marina Rent, and any other Rents for the Hotels and any other Major Project Components.

**IV. OPTION PAYMENTS SCHEDULE (SECOND OPTION).**

If Flagstone exercises its second Hotel Option period for one Hotel Component only, Flagstone must pay to the City the following additional amounts:

<b>Beginning</b>	<b>Annual Option payment (For One Hotel Only)</b>	<b>Annual Base Rent</b>	<b>Annual Amounts to the City</b>
9/1/2023	\$157,500	\$2,000,000	\$ 2,157,500
9/1/2024	\$157,500	\$2,000,000	\$ 2,157,500



<b>Beginning</b>	<b>Annual Option payment (For One Hotel Only)</b>	<b>Annual Base Rent</b>	<b>Annual Amounts to the City</b>
9/1/2025	\$157,500	\$2,000,000	\$ 2,157,500
9/1/2026	\$157,500	\$2,000,000	\$ 2,157,500
9/1/2027	\$157,500	\$2,000,000	\$ 2,157,500

If Flagstone exercises its second Hotel Option period for two Hotel Components, Flagstone must pay to the City the following additional amounts:

<b>Beginning</b>	<b>Annual Option payments (For 2<sup>nd</sup> Hotel)</b>	<b>Annual Base Rent</b>	<b>Annual Amounts to the City</b>
9/1/2023	\$315,000	\$2,000,000	\$ 2,315,000
9/1/2024	\$315,000	\$2,000,000	\$ 2,315,000
9/1/2025	\$315,000	\$2,000,000	\$ 2,315,000
9/1/2026	\$315,000	\$2,000,000	\$ 2,315,000
9/1/2027	\$315,000	\$2,000,000	\$ 2,315,000

- (a) As set forth in the State Waiver (as defined in Section VII below) until the development is completed or October 1, 2021, whichever occurs first ("Takeover Date"), Flagstone shall make payments to the Board of Trustees. From and after the Takeover Date, the City shall make payments to the Board of Trustees pursuant to the Amended and Restate Partial Modification of Restrictions Deed No. 19447-F OR Book 27828 Page 3675 recorded on September 16, 2011.
- (b) Because Flagstone has twenty-four (24) months to complete construction of any Hotel(s) Component, Flagstone shall continue to make Option payments to the City beyond 8/31/2028 until such time that the final Hotel(s) Component(s) construction has reached the final Completion Date. Flagstone can stop Option payments at any time by giving written notice to the City at least thirty (30) days before the date that the next Option payment is due, but if Flagstone elects not to or fails to make any Option payment(s), then Flagstone must turn over to the City immediately the Hotel Ground Lease(s) for the Hotel which is not to be constructed, Flagstone also agrees to waive its defenses as to failure to pay the required Option payments, immediately vacate and turn over to the City for the City's possession all of Flagstone's rights and interests in the Hotel Component(s), any Hotel Ground Lease, and the applicable easement areas, remove from such easement areas all of its property of whatever kind as requested in writing by the City Manager, and immediately (i) return or sign over, as applicable, to the City all of Flagstone's rights, directly or indirectly, in the permits, plans, specifications, and all related governmental approvals, documents, instruments, and agreements as necessary related to the applicable Hotel, and (ii) deliver to the City all of such permits, plans, specifications, and all related governmental approvals, documents, instruments, and agreements relating to the

applicable Hotel Component(s) which are in Flagstone's possession or in Flagstone's control, and City has the rights to seek a new developer for the applicable Hotel Component(s).

- (c) If Flagstone does not Start Construction of the second Hotel Component by 9/1/2028, then both the City and Flagstone have their separate rights to terminate the Agreement to Enter and Flagstone must immediately vacate and turn over to the City for the City's possession all of Flagstone's rights and interests in the Property related to the second Hotel Component and the easement areas, remove from such easement areas and from the Property related to the second Hotel Component all of its property of whatever kind as requested in writing by the City Manager, and (i) return or sign over, as applicable, to the City all of Flagstone's rights, directly or indirectly, in the permits, plans, specifications, and all related governmental approvals, documents, instruments, and agreements as necessary related to the applicable Hotel, and (ii) deliver to the City all of such permits, plans, specifications, and all related governmental approvals, documents, instruments, and agreements relating to the applicable Hotel Component(s) which are in Flagstone's possession or in Flagstone's control, and City has the rights to seek a new developer for the applicable Hotel Component(s).
- (d) Flagstone has a 10-day grace period beyond the first of each month to make each Option payment, and agrees to not require any notice from the City in the event of non-payment of any Option payment. In the event that Flagstone defaults for non-payment, Flagstone also agrees to waive its defenses as to non-payment against the City, immediately vacate and turn over to the City for the City's possession all of Flagstone's rights and interests in the Second Hotel Component and the easement areas, remove from such easement areas and from the Second Hotel Component all of its property of whatever kind as requested in writing by the City Manager, and immediately (i) return or sign over, as applicable, to the City all of Flagstone's rights, directly or indirectly, in the permits, plans, specifications, and all related governmental approvals, documents, instruments, and agreements as necessary related to the Second Hotel Component, and (ii) deliver to the City all of such permits, plans, specifications, and all related governmental approvals, documents, instruments, and agreements which are in Flagstone's possession or in Flagstone's control.

**V. ADDITIONAL AGREEMENTS CONCERNING HOTEL COMPONENTS.**

- (a) No Hotel Component can Start Construction until both the Marina Component and the Parking/Retail Components Start Construction.
- (b) Once a Hotel Component reaches its Completion Date, the Option payments for that Hotel Component stop. For the portion of any construction period that extends into the Option period, all applicable Option payment(s) (and all ongoing Construction Rent payments) shall continue until the Completion Date. (Pursuant to the applicable Ground Lease(s), the "Percentage Rent Payment Beginning Anniversary Date" starts running for any Hotel on the date when it is Open for

Business and Percentage Rent payments begin on the third anniversary of the Percentage Rent Payment Beginning Anniversary Date in order to give that Hotel a Stabilization Period).

- (c) The second Option period cannot be exercised unless one Hotel Component has started construction before the end of the first Option period. If one Hotel Component does not Start Construction before the end of the first Option period, then the Option period terminates and no second Option exists. If the second Hotel Starts Construction before the end of the first Option period and continues construction into the second Option period, then the Option payments applicable to the second Option period shall be due upon commencement of the second Option period until the second Hotel Component reaches its Completion Date.
- (d) Upon entering into the Ground Lease for any Hotel Component(s) and prior to Starting Construction for any such Hotel Component(s), Flagstone shall provide a Construction Bond to the City for the full amount of the construction cost of any such Hotel Component(s).

**VI. ADDITIONAL AGREEMENTS CONCERNING FLAGSTONE FORFEITURE / CITY TERMINATION RIGHTS.**

- (a) If the Marina Component does not Start Construction by 9/01/2013 or both the Parking/Retail Components do not Start Construction by 9/01/2016, then Flagstone's rights to build any Components expires and ceases, the Agreement to Enter is terminated, City retains all Prepaid Construction/Base Rent (as consideration for the extension of time until 9/1/2013 for the Marina Component and as consideration for the extension of time until 9/1/2016 for both the Parking/Retail Components) and Flagstone must turn over to the City immediately the applicable Ground Lease(s), Flagstone also agrees to waive its defenses as to failure to begin construction against the City, immediately vacate and turn over to the City for the City's possession all of Flagstone's rights and interests in the Property and the easement areas, remove from such easement areas and from the Property all of its property of whatever kind as requested in writing by the City Manager, and immediately (i) return or sign over, as applicable, to the City all of Flagstone's rights, directly or indirectly, in the permits, plans, specifications, and all related governmental approvals, documents, instruments, and agreements as necessary related to the Property, and (ii) deliver to the City all of such permits, plans, specifications, and all related governmental approvals, documents, instruments, and agreements which are in Flagstone's possession or in Flagstone's control.
- (b) If any Hotel Component does not Start Construction according to the applicable deadline under the construction schedule and the Option schedule(s) (as applicable), then Flagstone's rights to build the applicable Hotel Component expires (but Flagstone's obligations under the payment schedule for the Marina Component, the Parking/Retail Component, and any Hotel Component that is/are

complying continues to the end of the applicable Ground Lease(s)). Any time Flagstone loses the right to construct a Hotel(s) Component, then Flagstone must turn over to the City immediately the applicable Ground Lease(s), Flagstone also agrees to waive its defenses as to failure to begin construction against the City, immediately vacate and turn over to the City for the City's possession all of Flagstone's rights and interests in the applicable Hotel Component, any Hotel Ground Lease, and the related easement areas, remove from such easement areas and from the Property all of its property of whatever kind as requested in writing by the City Manager, and immediately (i) return or sign over, as applicable, to the City all of Flagstone's rights, directly or indirectly, in the permits, plans, specifications, and all related governmental approvals, documents, instruments, and agreements as necessary related to the applicable Hotel Component, and (ii) deliver to the City all of such permits, plans, specifications, and all related governmental approvals, documents, instruments, and agreements which are in Flagstone's possession or in Flagstone's control.

- (c) Subject to Section VII(a), Flagstone may separately ground lease and separately construct the Marina Component prior to 9/1/2013 if the conditions precedent for the Marina Component are met
- (d) If construction is continuing during the Option period(s), then Flagstone shall pay both, Construction Rent or Base Rent in accordance with the General Rent Schedule in Section II above, and the applicable Option payments related to its choice to construct either one or two Hotel Components.

#### **VII. CROSS DEFAULTS; SEPARATE DEFAULTS.**

- (a) During the period prior to the earlier of 96 months from 9/01/2010 (being 8/31/2018) or the date upon which the first Hotel is Open for Business, Ground Leases for the separate Major Project Components shall be cross-defaulted for any Base Rent payment defaults, Prepaid Construction/Base Rent payment defaults, and any Construction Rent payment defaults.
- (b) After the earlier of 96 months from 9/01/2010 (being 8/31/2018) or the date upon which the first Hotel is Open for Business, (i) the Base Rent, Percentage Rent, and all other payments to the City each year thereafter shall be apportioned to each separate Major Project Component Ground Lease for direct payments to the City by each separate Ground Lease lessee in an amount reflecting each separate Major Project Component's respective percentage share of the total Project Development Costs to that point in time, and (ii) the Ground Leases for the separate Major Project Components shall not be cross-defaulted for any defaults, including but not limited to any defaults in payments of Base Rent, Prepaid Construction Rent/Base Rent, Construction Rent, Percentage Rent, or any other Rent, with each separate lessee being solely responsible for any payment default(s) to the City.

- (c) Notwithstanding anything to the contrary in this Exhibit A, if the Retail/Parking Components do not Commence Construction by the 72<sup>nd</sup> month from 9/01/2010 (being 8/31/2016), then (i) there will be no crediting of Prepaid Construction/Base Rent, the City shall keep all Prepaid Construction/Base Rent received, (ii) the City can terminate the Agreement to Enter, all Ground Lease(s), and (iii) the City can take back the Marina Component, the Retail/Parking Components, any Hotel Components and the balance of the Project and the Property..

#### **VIII. STATE WAIVER.**

Upon approval of this Exhibit A by City Commission Resolution, the City will have forty-five (45) days to perform due diligence on the State Partial Waiver of Deed Restriction (the "State Waiver"). If the State conditions approval in any manner unacceptable to the City, and the City advises Flagstone that it intends to terminate due to such unacceptable conditions, then the City must send notice of such State action to Flagstone within such forty-five (45) days. Upon receipt of such notice, Flagstone will have thirty (30) days to resolve the dispute satisfactorily. If the dispute concerning such unacceptable conditions is not resolved, then the City, may cancel the current Agreement to Enter Into Ground Lease without executing a new Amended and Restated Agreement to Enter Into Ground Lease. The parties intend to execute the Agreement to Enter at such time as the State Waiver is executed and delivered and recorded.

#### **IX. INDEMNIFICATION/HOLD HARMLESS FOR CITY; DISCHARGE OF EXISTING LIENS, JUDGMENTS, AND GARNISHMENTS.**

The City Commission in connection with Resolution No. 10-0144 of March 25, 2010 directed, and Flagstone agreed (a) that Flagstone will enter into a Hold Harmless, Indemnification, and Security Agreement (the "Hold Harmless, Indemnification, and Security Agreement") within thirty (30) days of the City's determination in Section X below to proceed under the new State Waiver, protecting the City against any and all lawsuits and related costs, (b) that Flagstone shall assist the City in defending against any and all lawsuits involving liens, judgments, garnishments and any other matters against Flagstone related to the Property and the easement areas, (c) to the extent any lawsuit is pending against the City relating to any lien(s) on the subject Property, that Flagstone shall provide to the City not less than \$200,000 in security in such form(s) as satisfactory to the City Manager at such time as the parties enter into the Hold Harmless, Indemnification and Security Agreement, and (d) Flagstone shall provide to the City Manager audited financial statements as soon as the same are completed, and any other information needed in connection with the Hold Harmless, Indemnification and Security Agreement. Additionally, Flagstone shall have up to one hundred and twenty (120) days from the date of City Commission approval of the Amended and Restated Agreement to Enter Into Ground Lease (the "City Commission Approval Date") to clear and discharge as many liens, garnishments, and judgments as possible, prior to making a deposit with the Miami-Dade County Clerk of Courts Registry for all remaining outstanding liens, garnishments, and judgments at the end of that one hundred and twenty (120) day period from September 15, 2011. Upon the one hundred and twenty first (121<sup>st</sup>) day after the City Commission Approval Date, Flagstone shall deliver to the Miami-Dade County Clerk of Courts Registry to be held in an escrow account, an amount not less than the total remaining outstanding balance of all liens, garnishments, and judgments not previously discharged during the one hundred and twenty (120) day period from

the City Commission Approval Date (and update such deposit amount as and if necessary from time to time and at the time of execution of the Amended and Restated Agreement to Enter into Ground Lease, (and update such deposit amount as and if necessary at time of execution of the Amended and Restated Ground Lease). If Flagstone does not provide the foregoing, then the City shall terminate the existing Agreement to Enter with Flagstone, terminate all easements with Flagstone, and the City shall not enter into the contemplated new Amended and Restated Agreement to Enter Into Ground Lease and the Amended and Restated Ground Lease, as applicable at such time.

**X. SECURITY DEPOSITS.**

The Amended and Restated Agreement to Enter Into Ground Lease and the form of Ground Lease(s) provide for security deposits in connection with the easement areas, the Pre-paid Construction Rent/Base Rent, and the Ground Lease(s).

(a) **Security for the Easements.** Prior to the execution and delivery of the new Amended and Restated Agreement to Enter by City to Flagstone, Flagstone shall either (a) deliver the amount of Thirty-Five Thousand and No/100 Dollars (\$35,000.00) (the "Easement Deposit") to Escrow Agent or (b) provide to City, at Flagstone's sole cost and expense, a Letter of Credit in the amount of Thirty-Five Thousand and No/100 (\$35,000.00) (the "Easement Security LOC"). Notwithstanding the foregoing, Flagstone shall be permitted to utilize any combination of cash or Letter of Credit so long as the easement deposit equals Thirty-Five Thousand and No/100 Dollars (\$35,000.00) in the aggregate. The Easement Deposit or the Easement Security LOC, as applicable, shall hereinafter be referred to as the "Easement Security" and shall provide security for the faithful performance by Flagstone of all of the provisions of the Easements to be performed or observed by Flagstone.

(b) **Security Deposit for the Construction Rent/Base Rent:** Prior to execution of the new and Amended and Restated Agreement to Enter, Flagstone shall either (a) deliver the amount equal to one year's Construction Rent/Base Rent to the Escrow Agent, or (b) provide to City, at Flagstone's sole cost and expense, a Letter of Credit in the amount equal to one year's Construction Rent/Base Rent as defined herein. Notwithstanding the foregoing, Flagstone shall be permitted to utilize any combination of cash or Letter of Credit so long as the Security Deposit for the Pre-Paid Construction Rent/Base Rent equals the amounts defined in the aggregate. The Security Deposit for the Construction Rent/Base Rent, shall herein after be referred to as the "**Security Rent Deposit**" and shall provide security for the faithful performance by Flagstone of all rent payment provisions of this Agreement to be performed or observed by Flagstone. During the periods outlined below, Flagstone shall deliver the Security

Rent                                  Deposits                                  as                                  defined                                  below:

Commencing	Annual Amount Required for Rent
------------	---------------------------------



	<b>Security Deposit</b>
October 1, 2010	\$300,000
October 1, 2011	\$500,000
October 1, 2012	\$750,000
October 1, 2013	\$1,000,000
October 1, 2014	\$1,000,000
October 1, 2015	\$1,000,000
October 1, 2016	\$1,500,000
October 1, 2017	\$1,675,000
October 1, 2018	\$2,000,000

Any LOC Deposit held by the Lessor or Cash Deposit held by Escrow Agent, as defined in the Agreement to Enter between the Parties (having an effective date of February 1, 2010) as security under such Agreement to Enter into Ground Lease to begin being deposited as of October 1, 2010 may be credited toward the following year's Security Rent Deposit. The annual amount due on September 1, 2018 of \$2,000,000 shall remain in effect for the life of the Agreement to Enter and of the Ground Lease(s), in accordance with the schedule listed in this section and in Section 5.2 of the Agreement to Enter. If an Event of Lessee's Default for non-payment of rent occurs hereunder, Lessor may, at its option and without prejudice to any other right or remedy that Lessor may have hereunder, apply or require distribution of all or any portion of the Security Rent Deposit for the payment of any sum to which Lessor may become entitled by reason of such Event of Lessee's Default, including, without limitation, reasonable attorneys' fees and costs which Lessor may incur in connection therewith. If Lessor so applies or requires the distribution to Lessor of all or any portion of the Security Rent Deposit, Lessee shall, within thirty (30) days after written demand therefor, deposit cash with Lessor in an amount sufficient to restore any such deficiency or amend or replace any LOC Deposit, whichever is applicable, to the full amount thereof, and Lessee's failure to do so shall, at Lessor's option, constitute an Event of Lessee's Default hereunder. In the event Lessor applies or requires distribution of all or any portion of an LOC Deposit where no Event of Lessee's Default then existed, Lessor shall be deemed to have improperly requested and received such application or distribution, and Lessee shall be entitled to recover from Lessor the amount which was improperly requested and received, or to reduce the Rent Security Deposit by an equivalent amount.

**XI. LABOR PEACE AGREEMENTS.**

The parties acknowledge that the City Commission by Resolution No. 10-0144, adopted on March 25, 2010, has directed that the Project is subject to the provisions of earlier City Commission Resolution No. 09-0263, adopted May 28, 2009, regarding the establishment of labor peace agreements prior to and during the operation of hospitality operations on the Property.

**XII. COVENANT OF GOOD FAITH AND FAIR DEALING.**

All matters in this Exhibit A contain a covenant of good faith and fair dealing by Flagstone and the City in reasonably complying with their respective obligations.

{Remainder of this page intentionally left blank}





City of Miami

City Hall
3500 Pan American Drive
Miami, FL 33133
www.miamigov.com

Master Report

Resolution R-18-0462

File ID #: 18-01116a

Enactment Date: 9/23/18

Version: 2

Controlling Office of the City
Body: Clerk

Status: Passed

Title: A RESOLUTION OF THE MIAMI CITY COMMISSION, WITH ATTACHMENT(S), APPROVING EXHIBIT A HERETO ("EXHIBIT A"), THE AMENDED AND RESTATED AGREEMENT TO ENTER INTO GROUND LEASE ("AMENDED AND RESTATED AGREEMENT TO ENTER"), AND THE AMENDED AND RESTATED GROUND LEASE(S) ("AMENDED AND RESTATED GROUND LEASE(S)") (EACH IN SUBSTANTIALLY THE ATTACHED FORM(S)), BETWEEN THE CITY OF MIAMI ("CITY") AND FLAGSTONE ISLAND GARDENS, LLC ("FLAGSTONE"), AND AUTHORIZING AND DIRECTING THE CITY MANAGER AND THE CITY ATTORNEY TO EXECUTE THE AMENDED AND RESTATED AGREEMENT TO ENTER, AND THE AMENDED AND RESTATED GROUND LEASE PROVIDING FOR, INTER ALIA: (1) FLAGSTONE'S OPTION TO DEVELOP THE MEGA-YACHT MARINA WITH ITS ANCILLARY FACILITIES, RETAIL, PARKING, HOTELS AND ALL OTHER RELATED FACILITIES (THE "PROJECT") IN ITS ENTIRETY ALL AT ONCE OR THROUGH PHASED DEVELOPMENT ON A COMPONENT BY COMPONENT BASIS; (2) EXTENDING THE POSSESSION DATE FROM FEBRUARY 1, 2015 TO SEPTEMBER 1, 2013, OR SOONER, AT FLAGSTONE'S OPTION; (3) ESTABLISHING AN ANNUAL PAYMENT SCHEDULE FOR ALL COMPONENTS COMMENCING WITH THREE HUNDRED THOUSAND DOLLARS (\$300,000) AND INCREASING TO TWO MILLION DOLLARS (\$2,000,000) NO LATER THAN THE YEAR 2018, SUBJECT TO CERTAIN CREDITS AND OTHER CONDITIONS RELATED TO DEVELOPMENT ON A COMPONENT BY COMPONENT BASIS; (4) EXTENDING CERTAIN MILESTONE DATES IN THE TIMELINES FOR CONSTRUCTION COMMENCEMENT, COMPLETION, AND OTHER DEVELOPMENT MATTERS AS SET FORTH IN EXHIBIT A; AND (5) PROVIDING FOR SECURITY DEPOSIT(S), PROVIDED, HOWEVER THAT SUCH APPROVAL, AUTHORIZATION AND DIRECTION ARE ALL SUBJECT TO AND CONDITIONED UPON A SATISFACTORY DETERMINATION OF SECTION VIII, ENTITLED "STATE WAIVER" OF EXHIBIT A REGARDING PAYMENTS TO THE STATE OF FLORIDA ("STATE"); FURTHER DIRECTING THE CITY MANAGER TO RETURN TO THE CITY COMMISSION FOR APPROVAL REGARDING THE STATE WAIVER, FURTHER AUTHORIZING AND DIRECTING THE CITY MANAGER AND THE CITY ATTORNEY TO MAKE NON-SUBSTANTIVE REVISIONS AS NECESSARY TO EXHIBIT A, THE AMENDED AND RESTATED AGREEMENT TO ENTER, THE AMENDED AND RESTATED GROUND LEASE(S) ALL DOCUMENTS RELATING TO THE STATE WAIVER.

Reference:

introduced: 9/16/18

Name: Flagstone

Requester: Honorable Mayor
Tomás Regalado

Cost:

Final Action: 9/23/18

Notes: Please include all attachments when certifying this resolution.

---

**Sections:**

**Indexes:**

**Attachments:** 10-01116a Flagstone Resolution.pdf, 10-01116a Flagstone Exhibit A.pdf, 10-01116a Flagstone Liens and State Waiver Modification.pdf, 10-01116a Flagstone Agreement to Enter.pdf, 10-01116a Flagstone Ground Lease Part 1.pdf, 10-01116a Flagstone Ground Lease Part 2.pdf, 10-01116a Attachment 4 of the Flagstone Ground Lease.pdf

---

**Action History**

---

Ver.	Acting Body	Date	Action	Sent To	Due Date	Returned	Result
1	Office of the City Attorney	9/22/10	Review Pending				
2	City Commission	9/23/10	ADOPTED				1

---

A motion was made by Francis Suarez, seconded by Richard Dum II, that this matter be ADOPTED. Chair Sarnoff: I think we can now move -- I think the best way to proceed, gentlemen, is to start with the supplemental agenda, and I know the Mayor wants to be recognized for that. So Mr. Mayor, you are now recognized for the record. We are in the supplemental agenda, gentlemen.

Mayor Tomás Regalado: Thank you very much, Mr. Chairman, Commissioners. On the supplemental agenda, you will find a SL5, which -- it's sponsored by me. It's what you defer last week, which is the Flagstone lease. I have to tell you that I -- I'm a little confused because I remember -- it's on the record -- that this Commission said that you will have the same agreement with no changes at all, and you gave the principals one week to come up with the check, the cashier's check. My understanding is that they have, in the past two days, requested some changes. And I can't say if that's their position today, this morning, or if they have brought the check, to my knowledge and to the Administration knowledge. I think the Manager and the Attorney will say that we have no knowledge of -- if they did brought [sic] the check or why they were asking for some changes within the framework of what you approve. So I would defer to the Manager to give us a brief history of this week. It's -- it -- actually, nothing happened this week because you didn't want to. You just -- we just waited for one week for this to come back to the City Commission. And so, Mr. Manager, I think that everything is okay, but my understanding and your understanding is that they have requested some changes.

Brian May: No.

Carlos A. Migoya (City Manager): Mr. Chair, Mr. Mayor, during the last several days, they have been requesting some changes and, frankly, my position with both our staff and the City Attorney staff is that we're not to have any conversations. And anything at all that needs to be brought up will be brought up here, and that's been the official position of the Administration and of the City Attorney's. Not trying to speak on behalf of the City Attorney, but that's basically our combined approach.

Chair Sarnoff: Mr. Manager, my understanding is, I have the document that was hand-delivered to my office at the end of the last Commission meeting, and that's -- that is the document that we're here to vote on.

Mr. Migoya: Nothing has been discussed to be changed further than what you have in front of you.

Chair Sarnoff: Okay. You want to be recognized for the record?

Mr. May: Yeah. Just for the record, Mr. Chairman, Brian May, representing Flagstone, offices at 235 Catalonia Avenue, in Coral Gables. We're not requesting any changes to the documents whatsoever. We did forward some comments to the City Attorney with regard to the resolution on some drafting issues that we had, but we're not here today requesting any change whatsoever to the resolution. We do have a \$200,000 cashier's check, as we told you we would. And we'd just appreciate the Commission's consideration this morning. And we're here to answer any questions, if you have them.

Chair Sarnoff: All right.

Mr. May: Thank you.

Chair Sarnoff: Does anybody --?

Mayor Regalado: If I may, Mr. Chairman.

Chair Sarnoff: Yes, sir.

Mayor Regalado: There is the question -- and maybe that the City Attorney can answer -- whether that check needs to be presented to the Administration even before the item is discussed and voted on it because the understanding was that this is money owed to the City of Miami and that it wasn't predicated on the Commission approving the deal. So maybe the City Attorney can help --

Chair Samoff: You understand what he's requesting?



Commissioner Gort: My understanding -- and I want everybody to understand that my -- I'm not too knowledge in real estate, but my understanding is when you put a down payment on a property and you have "X" amount to close and if you don't close within those time given to you, you have the right to put some additional funds. Because this property's been holding out for 12 years or 10 years, something like that. So I want to make sure that they can comply with all of the regulations and all the documents and all the agreements that we have to and to -- they understand that this Commissioners -- I think previous Commissioner itself, we've been very patient [sic] 'cause during the boom times, nothing took place. Meantime, that land sat there by itself with no use to us. They've been paying for the options to continue to have the option. That's what they've been paying for. But I want to make sure they know that

No: 1 - Frank Carollo

2	Office of the City Attorney	9/23/10	Reviewed and Approved	
2	Office of the Mayor	9/23/10	Signed by the Mayor	Office of the City Clerk
2	Office of the City Clerk	9/23/10	Signed and Attested by City Clerk	

Attachment 4

City Commission Resolution No. 09-0263, adopted May 28, 2009  
Regarding  
Labor Peace Agreements



City of Miami

City Hall  
3500 Pan American Drive  
Miami, FL 33133  
www.miamigov.com

Master Report

Resolution R-09-0263

File ID #: 09-00450

Enactment Date: 5/28/09

Version: 1

Controlling Office of the City  
Body: Clerk

Status: Passed

**Title:** A RESOLUTION OF THE MIAMI CITY COMMISSION DIRECTING THE CITY MANAGER TO REQUIRE "LABOR PEACE AGREEMENTS" AS A CONDITION PRECEDENT TO THE ISSUANCE OR EXECUTION OF CERTAIN CONTRACTS DEPENDENT UPON REVENUES FROM HOSPITALITY OPERATIONS.

**Reference:**

Introduced: 4/23/09

**Name:** Labor Peace Agmt

**Requester:** District 3-  
Commissioner Joe  
Sanchez

**Cost:**

**Final Action:** 5/28/09

**Notes:**

**Sections:**

**Indexes:**

**Attachments:** 09-00450 Legislation.pdf

**Action History**

Ver.	Acting Body	Date	Action	Sent To	Due Date	Returned	Result
1	Office of the City Attorney	5/19/09	Reviewed and Approved				
1	City Commission	5/28/09	ADOPTED				1



A motion was made by Joe Sanchez, seconded by Tomas Regalado, that this matter be ADOPTED. Vice Chair Spence-Jones: RE.11

Chair Sanchez: All right. RE.11, we're going to take up. RE.11 is a resolution sponsored by the Chair. It's a resolution of the City of Miami Commission directing the City Manager to require labor peace agreements as a condition precedent to the insurance of [sic] execution of certain contracts. All right. Why don't we -- let's do something. Let's table this for now and we'll bring it up next, okay? All right. Let's try to get the ones that are not going to be controversial out of the way and get some -- all right.

Vice Chair Spence-Jones: RE.137

Chair Sanchez: No.

[Later...]

Chair Sanchez: All right. We move on. Let's take RE.11, and then we're going to break for lunch. We'll be back at 2. Okay. So, RE.11. Now on RE.11, it's a resolution. We usually don't allow the public. We'll allow one individual to address this. Who's going to be that individual to address this?

Brian May: I am.

Chair Sanchez: Okay. Let me pass the gavel to the Vice Chair and make a motion on RE.11.

Vice Chair Spence-Jones: We have a motion on the item. Do we have a second?

Commissioner Regalado: Second.

Chair Sanchez: Okay.

Vice Chair Spence-Jones: Okay. First of all, do we want to --? Mr. May, I see you here. You want to at least officially put something on the record?

Mr. May: Yes. We'd love to, actually.

Vice Chair Spence-Jones: Okay. State your name for the record.

Mr. May: Brian May, at office 235 Catalina Avenue, in Coral Gables, here representing Unisa Here Local 353. I want to, you know, first of all, thank Chairman Sanchez, but also thank all of you. We've had an opportunity to meet with each one of you and your respective staffs, and we have, over really the course of the last few months, worked on -- continuously worked on language with the City Attorney's Office to provide, you know, the ample amount of security for those who wish to organize hospitality facilities in the City, as well as take into account, you know, some of the concerns and some issues that, you know, could provide for some exceptions that the City might want to undertake. So that being said, you know, this resolution is very similar to the labor peace language that is in the baseball stadium management agreement that you're a party to. It is also actually very close to the exact language of a County resolution that was passed at Miami International Airport, which provides for the same provision, which simply says that, you know, for the City's sake to protect its revenue streams with regards to its proprietary interest in the City that relate to hospitality facilities, that the City's going to require any vendor or leaseholder manager of such proprietary interest to sign a labor peace agreement with the recognized organizing entity so that there are no work stoppages, disruption of business as it relates to any organizing activities for workers that might take place on the City's premises. So

Chair Sanchez: On City-owned property.

Mr. May: On City premises, yes.

Vice Chair Spence-Jones: Okay, so we have --

City of Miami

Page 3

Printed on 10/21/2011

Account 1- Angel Gonzalez and Marc David Bennett

1. Office of the Mayor 67309 Signed by the Mayor Office of the City Clerk

1. Office of the City Clerk 67309 Signed and Answered by City Clerk

City of Miami

Page 4

Printed on 06/15/11

# **EXHIBIT B**

**The Marina Component Amended and Restated  
Ground Lease Dated as of May 30, 2014.**

This Exhibit has been filed separately due to the size  
limitations on the Florida Courts E- Portal

# **EXHIBIT C**

**The Retail/Parking Component Amended and  
Restated Ground Lease Dated as of August 31, 2016.**

This Exhibit has been filed separately due to the size  
limitations on the Florida Courts E- Portal

# **EXHIBIT D**

**The First Phased Foundation  
Permit BD16-012274-001-B001**

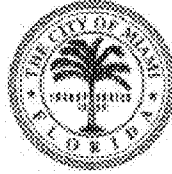
This Exhibit has been filed separately due to the size limitations on the Florida Courts E- Portal

# **EXHIBIT E**

**Letter Dated June 7, 2017.**

# City of Miami, Florida

DANIEL J. ALFONSO  
CITY MANAGER



P.O. BOX 330708  
MIAMI, FLORIDA 33233-0708  
(305) 255-5400  
FAX (305) 350-5400

June 7, 2017

Via Certified Mail/ Return Receipt Requested

Mr. Mehmet Bayraktar  
Flagstone Island Gardens, LLC/Flagstone Development Corporation  
888 McArthur Causeway  
Miami, FL 33132

Certified Mail # 7013 [REDACTED]

Re: **Notice of Defaults** – Amended and Restated Agreement to Enter into the Ground Lease dated February 1, 2010, between the City of Miami (“City”) and Flagstone Island Gardens LLC, (“Agreement to Enter”), and pursuant to the Retail/Parking Component Amended and Restated Ground Lease dated August 31, 2016 (“Ground Lease”), 888 McArthur Causeway, Miami, Florida (“Property”).

Dear Mr. Bayraktar:

At a Special Meeting of the City Commission held on May 30, 2017 the City Commission passed Resolution R-17-0263, a copy of which is attached, that directs this Notice be issued to you. Be advised that Flagstone Island Gardens, LLC., and its Managing Partner, Flagstone Development Corporation (collectively, “Flagstone”) are in default of the aforementioned Agreement to Enter for failure to comply with the terms and conditions of Article 6 Section 6.1.2, entitled Closing of Construction Loan(s): Other which states:

*“For each Major Project Component, Flagstone shall have closed its Initial Construction Loan(s) with an Approved Initial Construction Lender (as defined in the Ground Lease), which financing thereunder, together with the amount of Initial Equity Requirement or more as Flagstone may determine to invest into the same, applicable to the relevant Major Project Component(s), shall be sufficient to complete the development and construction (either all at once or on a component by component basis at Flagstone’s option) of the applicable Major Project Component of the Project and to fund any shortfalls in operations that may exist prior to Project Stabilization for such Major Project Component. For each Major Project Component Flagstone shall provide the Chief Financial Officer with a copy of the closed Initial Construction Loan documents as evidence of such closings.”*



In addition, Article 12 Section 12.1.2 Financial Resources and Evaluation of Project of the Agreement to Enter states that the following:

*"At such time as Flagstone enters in to the related Ground Lease(s) for each of the applicable Major Project Component(s), Flagstone shall represent and warrant to the City that, to the best of Flagstone's knowledge: (i) Flagstone has access to sufficient funds to satisfy the Initial Equity Requirement regarding such Major Project Component; (ii) as of the Lease Delivery Date, Flagstone will have closed upon an Initial Construction Loan for the applicable Major Project Component(s); and (iii) the total of such sums will be sufficient to carry out the development and construction of the applicable Major Project Component(s) and to operate the applicable Major project Component(s) and comply with the terms and conditions of this Agreement and the related Ground Lease(s). Flagstone has done such studies and has made such evaluating as it deems appropriate regarding the tourism and local markets in the area surrounding Watson Island and has deemed it desirable to invest in the project, recognizing the risks inherent therein. Flagstone acknowledges that the City shall not be liable under this Agreement for any actions taken by the City, acting in its municipal capacity, including, without limitation, any actions which may adversely impact tourism, crime, the local economy, the success of this Project, etc., and that in no event shall any actions taken by the City in its municipal capacity be the basis for any cause of action or defense of any obligation by Flagstone hereunder. Flagstone shall provide to the City at least thirty (30) days in advance of the proposed Lease Delivery Date for each Major Project Component such pro forma, budget, financial, and other commercially reasonable written information necessary for the City's review and to determine the pro rata amount of the Initial Equity Requirements for that Major Project Component and to determine that such Initial Equity Requirement has in fact been met for the particular Major Project Component. This section shall survive any termination of this Agreement."*

Furthermore, pursuant to Composite Attachment 3, Section VI(a), if the Parking/Retail Components do not commence construction by April 30, 2017, Flagstone's rights to build any Components expire and the Agreement to Enter is terminated. More specifically:

*"...the Parking/Retail Components do not Start Construction by 4/30/2017, then Flagstone's rights to build any Components expires and ceases, the Agreement to Enter is terminated, City retains all Prepaid Construction/Base Rent (as consideration for the extension of time until 6/2/2014 for the Marina Component and as consideration for the extension of time until 4/30/2017 for both the Parking/Retail Components) and Flagstone must turn over to the City immediately the applicable Ground Lease(s), Flagstone also agrees to waive its defenses as to failure to begin construction against the city, immediately vacate and turn over to the City for the City's possession all of Flagstone's rights and interest in the property and the easement areas, ...."*

Therefore, as directed by City of Miami Commission Resolution R-17-0263, this letter serves as notice that Flagstone is in breach of the Agreement to Enter and the Ground Lease. Please govern yourselves accordingly.

If you have any questions, please feel free to contact Daniel Rotenberg at (305) 416-1458.

Sincerely,



Daniel J. Alfonso  
City Manager

cc: Victoria Méndez, City Attorney  
Rafael Suarez-Rivas, Assistant City Attorney  
Daniel Rotenberg, Director  
Erica T. Paschal, Finance Director  
Kevin D. Cowan Shutts & Bowen LLP  
Alexander I. Tachmes, Shutts & Bowen LLP  
Richard L. Chadakoff, Latham & Watkins

DA/AP/DR/AB/rsr



# City of Miami

## Legislation

### Resolution R-17-0263

City Hall  
3500 Pan American Drive  
Miami, FL 33133  
www.miamigov.com

File Number: 2334

Final Action Date: 5/30/2017

A RESOLUTION OF THE MIAMI CITY COMMISSION, WITH ATTACHMENT(S), DIRECTING THE CITY MANAGER TO ISSUE A NOTICE OF DEFAULT TO FLAGSTONE ISLAND GARDENS, LLC ("FLAGSTONE") OF THE AMENDED AND RESTATED AGREEMENT TO ENTER INTO GROUND LEASE ("AMENDED AND RESTATED AGREEMENT TO ENTER") AND THE AMENDED AND RESTATED GROUND LEASE(S) ("AMENDED AND RESTATED GROUND LEASES") AS APPLICABLE, DUE TO FAILURE TO COMMENCE CONSTRUCTION AS REQUIRED BY THESE AGREEMENTS AND OTHER GROUNDS STATED HEREIN; AND FURTHER DIRECTING THAT THE CITY ATTORNEY AND INDEPENDENT AUDITOR GENERAL CONDUCT AN ANALYSIS OF THESE AND ANY OTHER RELATED AGREEMENTS WITH FLAGSTONE TO DETERMINE IF THERE ARE OTHER BREACHES.

WHEREAS, the City of Miami ("City") owns certain real property at approximately 1050 MacArthur Causeway, Miami, Florida ("Property"); and

WHEREAS, pursuant to applicable competitive solicitation processes, Flagstone Island Gardens, LLC ("Flagstone") was selected as the most qualified, responsive, and responsible bidder to develop and lease a mega-yacht marina and ancillary facilities such as retail, parking, hotels, and other related facilities on the Property ("Project"); and

WHEREAS, the Miami City Commission, pursuant to Resolution No. 01-972, adopted on September 17, 2001, and Resolution No. 01-1028, adopted September 25, 2001, polled the electors of the City regarding leasing the Property to Flagstone for the Project and the voters approved the Project by an affirmative vote; and

WHEREAS, pursuant to Resolution No. 02-1304, adopted on December 12, 2002, the City and Flagstone entered into an Agreement to Enter into a Ground Lease ("Agreement to Enter") and a form of proposed Ground Lease ("Ground Lease") dated January 1, 2003, with exhibits and attachments; and

WHEREAS, subsequently, the City and Flagstone entered into certain Amendments to the above referenced Agreements; and

WHEREAS, the parties thereafter, by Resolution No. 10-0402, adopted on September 23, 2010, entered into an Amended and Restated Agreement to Enter into Ground Lease ("Amended and Restated Agreement to Enter") and an Amended and Restated Ground Lease(s) ("Amended and Restated Ground Leases") dated February 1, 2010; and

WHEREAS, the Project is a phased project consisting of Phase 1 - the Marina; Phase 2 -- Retail/Parking; Phase 3 - Hotel 1; and Phase 4 - Hotel 4; and

WHEREAS, Flagstone and the City entered into the Amended and Restated Ground Lease for the Retail/Parking Phase in August, 2016; and

WHEREAS, the deadline to commence construction of the Retail/Parking Phase [as extended by Force Majeure and State of Florida Executive Order 15-173, which tolled all Development Permits for sixty (60) days and six (6) months], was May 1, 2017; and

WHEREAS, Composite Attachment 3 approved by Resolution No. 10-0402, adopted September 23, 2010, and incorporated by reference in the Amended and Restated Ground Lease for the Retail/Parking Phase, defines "Commence Construction" or "Starts Construction" to mean that "all material plans and permits are approved and the act of physical construction has begun," as depicted in Exhibit "A," an excerpt from Composite Attachment 3, attached and incorporated; and

WHEREAS, the Agreement to Enter continues in effect and supercedes the contrary provisions in the Ground Lease;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. The recitals and findings contained in the Preamble to this Resolution are adopted by reference and incorporated as if fully set forth in this Section.

Section 2. The City Manager is directed to issue a Notice of Default to Flagstone as to Flagstone's failure to perform any covenants, conditions, or agreements of the Amended and Restated Ground Lease, including, without limitation, the Agreement to Enter, the Amended and Restated Ground Lease for Retail/Parking and Composite Attachment 3, as applicable. These include the following:

- (a) Failure to commence or start construction of the Retail/Parking components in the manner required pursuant to Attachment 3;
- (b) Failure to close on construction loans, as required pursuant to Section 6.1.2 of the Agreement to Enter; and
- (c) Failure to comply with the Financial Resources and evaluation of Project requirements pursuant to Section 12.1.2 of the Agreement to Enter.

Section 3. The City Manager is further directed to issue a Notice of Default stating, with particularity, the respects in which the City, as the Lessor, contends that Flagstone, as the Lessee, has failed to perform.


Section 4. The Office of the City Attorney and the Office of the Independent Auditor General, with the assistance of the City Administration, are directed to review the Amended and Restated Ground Lease, the Amended and Restated Ground Lease for Retail/ Parking, and any other pending Agreements with Flagstone related thereto, to determine if there are any other current breaches.

Section 5. This Resolution shall become effective immediately upon its adoption and signature of the Mayor.<sup>1</sup>

---

<sup>1</sup> If the Mayor does not sign this Resolution, it shall become effective at the end of ten (10) calendar days from the date it was passed and adopted. If the Mayor vetoes this Resolution, it shall become effective immediately upon override of the veto by the City Commission.

APPROVED AS TO FORM AND CORRECTNESS:

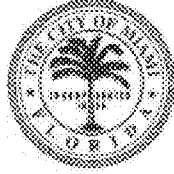
  
Victoria Mendez, City Attorney 6/7/2017

# **EXHIBIT F**

**Letter Dated June 19, 2017.**

# City of Miami, Florida

DANIEL J. ALFONSO  
CITY MANAGER



P.O. BOX 322708  
MIAMI, FLORIDA 33233-0708  
(305) 250-8400  
FAX (305) 250-6410

June 19, 2017

Certified Mail/ Return Receipt Requested

Mr. Mehmet Bayraktar, Chairman  
Flagstone Island Gardens, LLC/Flagstone Development Corporation  
888 McArthur Causeway  
Miami, FL 33132

Certified Mail # 7013 2630 0002 0544 0962

Re: **Letter to Vacate the Premises (the Property and Easement Area) – Re:** Amended and Restated Agreement to Enter into the Ground Lease dated February 1, 2010, between the City of Miami (“City”) and Flagstone Island Gardens LLC, (“Agreement to Enter”), and pursuant to the Retail/Parking Component Amended and Restated Ground Lease dated August 31, 2016 (“Ground Lease”), 888 McArthur Causeway, Miami, Florida (“Property”).

Dear Mr. Bayraktar:

During a Special Meeting of the City Commission held on May 30, 2017 the City Commission passed Resolution No. R-17-0263, refer to copy attached, which directed that a Notice of Default be issued. Pursuant to the direction given the City Administration during the May 30, 2017 meeting, a Notice of Default letter was mailed on or about June 7, 2017. The City reiterates the points and grounds stated in that letter and incorporates them by reference herein. We have not received the favor of a reply to that June 7, 2017 letter.

Please recall and reflect that pursuant to Composite Attachment 3, Section VI(a), if the Parking/Retail Components do not commence construction by April 30, 2017, Flagstone’s rights to build any Components expires, and the Agreement to Enter is terminated. More specifically:

*“...the Parking/Retail Components do not Start Construction by 4/30/2017, then Flagstone’s rights to build any Components expires and ceases, the Agreement to Enter is terminated. City retains all Prepaid Construction/Base Rent (as consideration for the extension of time until 6/2/2014 for the Marina Component and as consideration for the extension of time until 4/30/2017 for both the Parking/Retail Components) and Flagstone must turn over to the City immediately the applicable Ground Lease(s), Flagstone also agrees to waive its defenses as to failure to begin construction against the City, immediately vacate and turn over to the City for the City’s possession all of Flagstone’s rights and interest in the property and the easement areas, remove from such Easement and from the Property all of its property of whatever kind as requested in writing from*

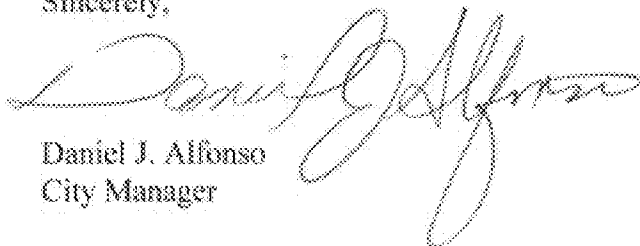
*the City Manager , and immediately (i) return or sign over , as applicable, to the City all of Flagstone's rights, directly or indirectly, in the permits, plans, specifications, and all related governmental approvals, documents, instruments and agreements as necessary related to the property , and (ii) deliver to the City all of such permits, plans, specifications, and all related governmental approvals, documents, instruments, and agreements which are in Flagstone's possession or in Flagstone's control. "*

The City of Miami hereby officially demand that Flagstone immediately vacate the property and the easement area and turn over to the City for the City's possession all of Flagstone's rights, and interest in the property and the easement area. In addition, please remove from the Property the following items: supplies, inventory, furnishings, communication devices, furniture, keys, locks, electronic entrance cards, passes, and their equivalent, and all other items of property belonging to Flagstone situated on the property or the easement area that can be removed without damaging or destroying the property or the easement area. The keys, locks, electronic entrance cards, passes, and their equivalent should be immediately tendered to the City of Miami.

In closing, please surrender the property and the easement area to the City of Miami, who will act through City agents and representatives, and kindly give possession of the property and the easement area to the City. If you would like to set a specific date and time within the next week to peaceably surrender the property and the easement area under the terms stated herein, please contact Mr. Daniel Rotenberg, Director of the Department of Real Estate and Asset Management. Should you have any questions, please feel free to contact Mr. Rotenberg at (305) 416-1458.

Please be governed accordingly.

Sincerely,



Daniel J. Alfonso  
City Manager

Enclosure: Resolution

cc: Victoria Méndez, City Attorney  
Rafael Suarez-Rivas, Assistant City Attorney  
Daniel Rotenberg, Director  
Erica T. Paschal, Finance Director  
Kevin D. Cowan Shutts & Bowen LLP  
Alexander I. Tachmes, Shutts & Bowen LLP  
Richard L. Chadakoff, Latham & Watkins  
Maria Gralia, Stearns Weaver

DA/AP/DR/AB/rsr

17-1360/8796973\_2