

RESOLUTION NO. R-1-2006-4

A RESOLUTION OF THE CHAIRMAN AND BOARDMEMBERS OF THE NORTH MIAMI COMMUNITY REDEVELOPMENT AGENCY, APPROVING THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF NORTH MIAMI, FLORIDA AND THE NORTH MIAMI COMMUNITY REDEVELOPMENT AGENCY RELATING TO THE DELEGATION BY THE CITY OF NORTH MIAMI TO THE NORTH MIAMI COMMUNITY REDEVELOPMENT AGENCY OF THE CITY'S AFFORDABLE HOUSING OBLIGATIONS SET FORTH IN SECTION 9.4 OF THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF NORTH MIAMI AND BISCAYNE LANDING LLC; AUTHORIZING THE CHAIRMAN AND EXECUTIVE DIRECTOR TO EXECUTE THE INTERLOCAL AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of North Miami, Florida (the "City") and Biscayne Landing LLC, a Florida limited liability company (f/k/a Preserve Partners Limited) (the "Developer") entered into that Development Agreement dated November 13, 2002, as amended (the "Development Agreement"); and

WHEREAS, Section 9.4 of the Development Agreement generally provides for the construction and/or rehabilitation of Affordable Housing Units (as defined in the Development Agreement) by the Developer subject to the fulfillment of certain conditions precedent by the City and the North Miami Community Redevelopment Agency (the "CRA"); and

WHEREAS, the City and the CRA desire to assist each other in connection with their obligations set forth in Section 9.4 of the Development Agreement, subject to the terms and provisions of the Interlocal Agreement attached hereto as Exhibit "A" and by this reference made a part hereof.

NOW, THEREFORE, BE IT RESOLVED BY THE CHAIRMAN AND BOARDMEMBERS OF THE NORTH MIAMI COMMUNITY REDEVELOPMENT AGENCY:

Section 1. The recitals in the whereas clauses are true and correct, and incorporated into this Resolution.

Section 2. The Interlocal Agreement as attached hereto as Exhibit "A" is hereby approved together with such non-material changes as may be requested by the City and acceptable to the Executive Director and approved as to form and legality by the CRA Attorney.

Section 3. The Chairman and Executive Director of the CRA are hereby authorized to execute the Interlocal Agreement.

Section 4. This resolution shall take effect immediately upon approval.

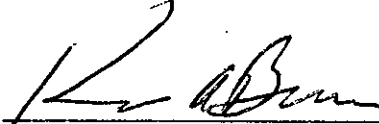
PASSED AND ADOPTED by a 5-0 vote of the Board of the North Miami Community Redevelopment Agency, this 24th day of January, 2006.

ATTEST:

NORTH MIAMI COMMUNITY
REDEVELOPMENT AGENCY

Disputed for

FRANK WOLLAND, CITY CLERK


KEVIN A. BURNS, CHAIR

APPROVED AS TO FORM:


GRAY ROBINSON, P.A.
CRA ATTORNEY

SPONSORED BY: ADMINISTRATION

Moved by: Jacques Despinosse

Seconded by: Michael R. Blynn

Vote:

Chair Kevin A. Burns	<u> X </u> (Yes) <u> </u> (No)
Boardmember Michael R. Blynn	<u> X </u> (Yes) <u> </u> (No)
Boardmember Jacques A. Despinosse	<u> X </u> (Yes) <u> </u> (No)
Boardmember Scott Galvin	<u> X </u> (Yes) <u> </u> (No)
Boardmember Marie Erlande Steril	<u> X </u> (Yes) <u> </u> (No)

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (this "Agreement") is entered into this 24th day of January, 2006 between the **CITY OF NORTH MIAMI, FLORIDA**, a Florida municipal corporation (the "City") and the **NORTH MIAMI COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic (the "CRA") (the City and CRA are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties").

RECITALS

1. The City and Biscayne Landing, LLC, a Florida limited liability company (f/k/a Preserve Partners Limited) (the "Developer") entered into that Development Agreement dated November 13, 2002, as amended (the "Development Agreement").

2. Section 9.4 of the Development Agreement (a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof) generally provides for the construction and/or rehabilitation of Affordable Housing Units by the Developer subject to the fulfillment of certain conditions precedent by the City and CRA.

3. The Parties desire to assist each other in connection with their obligations set forth in Section 9.4 of the Development Agreement, subject to the terms and provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the CRA agree as follows:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated in this Agreement by reference.

Section 2. Authority. This Agreement is entered into by the Parties pursuant to Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969," and Section 163.400, Florida Statutes, entitled "Cooperation by Public Bodies."

Section 3. Defined Terms. Any defined terms not defined in this Agreement shall have the meaning ascribed to them in the Development Agreement.

Section 4. Delegation of City Obligations to CRA. The City hereby delegates to the CRA, and the CRA hereby accepts the delegation from the City, all of the City's rights, obligations and responsibilities set forth in Section 9.4 of the Development Agreement including, but not limited to, all necessary land acquisitions, subsidies, approvals, permits, selection of qualified home buyers and all other matters regarding the construction and/or rehabilitation of the Affordable Housing Unit as required by Section 9.4 of the Development Agreement. In furtherance of the foregoing delegation, the City authorizes the CRA to take all action and do all things necessary on the part of the City in connection with, related to or arising from the City's rights, obligations and responsibilities set forth in Section 9.4 of the Development Agreement

The Parties acknowledge and agree the CRA possesses the necessary skills, resources and powers to be responsible for the successful implementation of the affordable housing program as contemplated by Section 9.4 of the Development Agreement. Notwithstanding the foregoing delegation by the City to the CRA, and acceptance by the CRA of such delegation by the City, the City shall remain responsible for its obligations and responsibilities set forth in Section 9.4 of the Development Agreement including all obligations and responsibilities, financial or otherwise, incurred prior to the date of this Agreement.

Section 5. Limited Joinder of CRA in Development Agreement. The CRA acknowledges and agrees that, although the CRA is not a party to the Development Agreement, Section 9.4 of the Development Agreement sets forth certain express rights, obligations, and responsibilities on the part of the CRA. The Parties acknowledge and agree that the Development Agreement was entered into by the City and the Developer prior to the creation of the CRA with the express intention that the CRA, if and when created, would recognize its express rights, obligations, and responsibilities as set forth in Section 9.4 of the Development Agreement. In furtherance of such intention, the CRA hereby joins in the Development Agreement for the sole limited purpose of recognizing its express rights, obligations, and responsibilities as set forth in Section 9.4 of the Development Agreement. The CRA agrees that the foregoing limited joinder may be relied upon by the Developer and its successors and assigns.

Section 6. Miscellaneous.

6.1 Headings. The headings of the sections of this Agreement are for convenience only and do not affect meanings of any provisions hereof.

6.2 Amendment. The terms, covenants, conditions and provisions of this Agreement cannot be altered, changed, modified or added to, except in writing signed by the City and the CRA.

6.3 Third Party Beneficiaries. Neither of the Parties intend to directly or substantially benefit any third party by this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

6.4 Construction. Both Parties have substantially contributed to the drafting and negotiation of this Agreement and this Agreement shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

6.5 Governing Law; Venue. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for litigation concerning this Agreement shall be in Miami-Dade County, Florida.

6.6 Invalidity. If any term or provision of this Agreement, or the application thereof to any person or circumstance is determined to be invalid or unenforceable, then to the extent that the invalidity or unenforceability thereof does not deprive a Party of a material benefit afforded by this Agreement, the remainder of this Agreement or the application of such term or

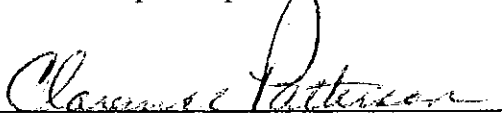
provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and will be enforced to the full extent permitted by law.

6.7 Waiver. No express or implied consent or waiver by a Party to or of any breach or dealt by the other Party in the performance by such other Party of its obligations under this Agreement will be deemed or construed to be a consent or waiver to or of any other breach or dealt in the performance by such other Party of the same or any other obligations of such other Party hereunder. Failure by a Party to complain of any act or failure to act of the other Party or to declare the other Party in default, irrespective of how long such failure continues will not constitute a waiver by such Party of its rights hereunder. The giving of consent by a Party in any one instance will not limit or waive the necessity to obtain such Party's consent in any future instance.


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IN WITNESS WHEREOF, the City and the CRA hereto have caused this Agreement to be executed as of the day and year first above written.

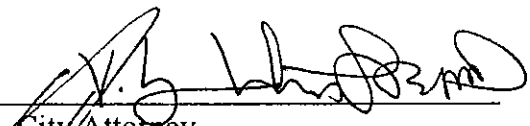
CITY OF NORTH MIAMI, FLORIDA,
a Florida municipal corporation

By: 
Clarence Patterson, City Manager

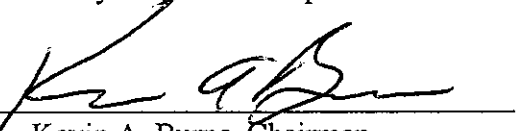
ATTEST:

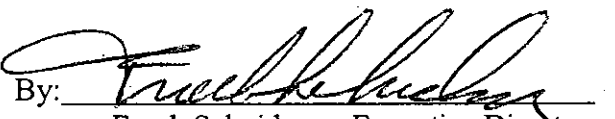
By: 
Frank Wolland, City Clerk

Approved as to form and legal sufficiency


By: 
City Attorney

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

By: 
Kevin A. Burns, Chairman

By: 
Frank Schnidman, Executive Director

Attest:

By: 
Frank Wolland, City Clerk

Approved as to form and legal sufficiency:

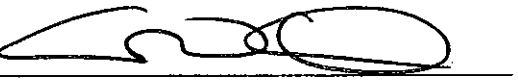
By: 
Gray Robinson, P.A., CRA Attorney

EXHIBIT "A"

Section 9.3, Developer agrees to provide to the City on or before a date which is five (5) years following the execution and delivery of the Lease by the City and Developer personal guarantees reasonably acceptable to the City totaling \$10,000,000. The obligations under such guarantees shall terminate upon the earlier to occur of (i) the funding of the Developer's obligations under this Section 9.3 or (ii) the termination of this Agreement and/or the Lease. To the extent said \$10,000,000.00 is not used or fully used as provided in the preceding sentence, the remaining funds shall be used to provide the subsidies or grants or to acquire the property necessary for the City to meet the conditions precedent to the development of Affordable Housing units pursuant to Section 9.4(ii) of this Agreement and shall be funded by Developer in installments as construction of such improvements progresses.

9.4 Affordable Housing. Provided that the conditions precedent set forth below are satisfied, Developer agrees to develop at least the same number of Affordable Housing Units within the City as residential units developed upon the Preserve Parcel by Developer.

(i) Establishment of Housing Enterprise. Developer agrees to establish an enterprise which is to be forty nine percent (49%) minority owned with at least thirty percent (30%) of the forty nine percent (49%) of the minority owners of the enterprise to be minority residents of the City (the Housing Enterprise) for the purpose of (i) developing new rental and "for sale" Affordable Housing Units within the City, (ii) completing the renovation and rehabilitation of existing residential units and converting the same into Affordable Housing Units, (iii) providing management services with respect to Affordable Housing Units constructed within the City, (iv) providing management services with respect to the residential units constructed upon the Preserve Parcel, and (v) assisting any City Community Redevelopment Agency (CRA) in the creation and implementation of subsidy programs for the renovation of existing residential units and single family homes within the City. The Developer shall (i) act as an advisor to the Housing Enterprise and shall have representation on its board of directors,

(ii) provide all necessary administrative and overhead support to the Housing Enterprise, and (iii) provide the initial capital reasonably required by the Housing Enterprise to establish its operations. The CRA, to the extent formed and to the extent permitted by law, shall utilize the Housing Enterprise to develop and manage all of the Affordable Housing Units within the boundaries of the CRA, and the Housing Enterprise shall develop and manage all of the Affordable Housing Units within the City but outside of the boundaries of the CRA to the extent requested by the City, all in accordance with the terms of this Section 9.4. The Developer's obligations to provide Affordable Housing under this Section 9.4 shall survive the termination of this Agreement for a period of fifteen (15) years.

(ii) Conditions Precedent. The City agrees that the following shall be conditions precedent to Developer's obligations to develop Affordable Housing Units (on an Affordable Housing project by Affordable Housing project basis) within the City: (1) the City shall be responsible for making the land and/or existing residential units available to the Housing Enterprise with appropriate zoning to permit the development, and/or rehabilitation and conversion of, Affordable Housing Units, and (2) tax credit programs, subsidies, grants and/or other similar governmental programs or CRA programs are made available to the Housing Enterprise in amounts sufficient for the Housing Enterprise to receive a developer's fee equal to fifteen percent (15%) of the costs to complete the Affordable Housing Units (or such lower amount to the extent required by the applicable requirements of the agency (other than requirements adopted in the discretion of the City and/or CRA) providing the grant, provided such fee is sufficient to pay the Developer's reasonable overhead costs for the applicable project), with all project costs being funded through the subsidies and available mortgage financing (taking into account the rental rates and/or sales prices established by the City as provided below). The Developer, through the Housing Enterprise, shall use its good faith and

diligent efforts to attempt to obtain such subsidies from third party sources other than the City. The City and/or CRA shall be entitled to establish the rental rates and/or sales prices for the Affordable Housing Units.

- (iii) Letter of Credit. To secure the Developer's obligations under this Section 9.4, within sixty (60) days following the execution and delivery of the Lease by the City and Developer, Developer shall deliver to the City a letter of credit (the Letter of Credit) in the amount of Two Million Dollars (\$2,000,000) issued by a financial institution, and in form and substance, reasonably acceptable to the City. In the event that the Developer fails to comply with its obligations under this Section to develop Affordable Housing Units (on a project by project basis) upon the satisfaction of the conditions precedent by the City and such failure continues for a period of ninety (90) days following Developer's receipt of written notice from the City, the City shall be entitled to draw upon the Letter of Credit in the full amount as its sole and exclusive remedy as to the applicable project (on a project by project basis). In such event, the Developer shall be required to deliver to the City a new Letter of Credit in the amount of Two Million Dollars (\$2,000,000) within thirty (30) days following the date the City has drawn upon the initial Letter of Credit. The City agrees that any proceeds it receives under a Letter of Credit (or any replacement thereof) shall be used by the City exclusively for the development of Affordable Housing. At the time the Developer delivers the initial Letter of Credit to the City, the Developer shall provide personal guaranties reasonably acceptable to the City guarantying the obligation of Developer to replace the initial Letter of Credit as provided in the preceding sentence, for so long as this Agreement and the Lease remain in full force and effect. In the event Developer fails to replace the Letter of Credit as required under this paragraph, the City's sole and exclusive remedy under this Agreement and the Lease shall be to seek specific performance against the Developer (its successors and/or

assigns) and/or guarantors under the personal guaranties and the City shall not have the right to terminate this Agreement or the Lease as a result of such failure. At such time as the Developer, through the Housing Enterprise or otherwise, has delivered an equal number of Affordable Housing Units as the number of residential units actually developed upon the Preserve Parcel when the entire Project is complete, the City shall release the Letter of Credit to the Developer and the personal guaranties shall be terminated and returned to the Developer.

(iv) Affordable Housing Units. For purposes of this paragraph, "Affordable Housing Units" shall mean (i) residential rental units constructed (or rehabilitated and renovated) upon land provided by the City and/or the CRA with the rental rates established by the City and/or CRA, (ii) residential "for sale" units constructed (or rehabilitated and renovated) on land provided by the City and/or the CRA with the sales price established by the City and/or CRA, and (iii) existing residential units and/or single family homes located in the City which are rehabilitated and renovated through grants, subsidies and other programs funded by the City, CRA and/or other governmental entities and/or housing authorities.

(v) Establishment of City Housing and Improvement Fund. In the event a CRA is not formed or approved by all governmental agencies exercising jurisdiction regarding the CRA within five (5) years following the execution and delivery of the Lease by the City and Developer, until such time as the Developer, through the Housing Enterprise or otherwise, has delivered an equal number of Affordable Housing Units as the number of residential units actually developed upon the Preserve Parcel when the entire Project is complete as required by the City, the City shall utilize Non-Ad Valorem Funds (as hereinafter defined) to fund an amount equal to ninety percent (90%) of all ad valorem tax revenues received by the City for any improvements constructed on the Preserve Parcel in an irrevocable trust utilized solely to (i) satisfy the conditions precedent to the development of

Affordable Housing Units by the Developer as set forth in this Section 9.4 as if the CRA had been established, or (ii) fund other community improvements as determined by the City.

10. Insurance.

10.1 Developer's Insurance. Developer shall obtain and at all times prior to the execution of the Lease, maintain or cause to be obtained and maintained the following insurance with respect to the Preserve Parcel, and as otherwise required in this Article 10:

- (i) Comprehensive general and public liability insurance including contractual liability, shall be obtained providing liability insurance against claims for personal injury, death or property damage, occurring on or about the Preserve Parcel, for at least a combined single limit for bodily injury, death and property damage liability of twenty million dollars (\$20,000,000.00) per occurrence.
- (ii) If required by the City, an indemnity liability insurance policy with limits reasonably acceptable to the City insuring the City against any third party claims made against the City arising from the Developer's closure of the landfill and remediation of the Preserve Parcel, provided such insurance policy is available for a one-time premium not to exceed \$200,000.00.
- (iii) Comprehensive automobile liability insurance for all owned, non-owned and hired automobiles and other vehicles used by Developer in the performance of any work on the Preserve Parcel for at least a combined single limit for bodily injury, death and property damage of ten million dollars (\$10,000,000.00) per occurrence.
- (iv) Worker's compensation insurance for statutory obligations imposed by worker's compensation or occupational disease laws.
- (v) With respect to any vertical construction on the Preserve Parcel, builder's risk insurance in an amount not less than the replacement

9.2, 9.3 and/or 2.2(vii) of the Agreement until the amounts funded under the Loan Commitment have been repaid in full (not to exceed Ten Million Dollars in the aggregate and, unless the Developer's development obligations under Section 9.3 have been waived as set forth in this Section 21 below, in which event Developer shall be permitted to offset any amount paid to the Principals in repayment of the loan under the Loan Commitment against any of Developer's funding obligations under Sections 9.2, 9.3 and/or 2.2(vii) in excess of \$10,000,000 in the aggregate, only to the extent such amounts have been funded by the City to Developer to be applied to the satisfaction of Developer's obligations under Section 2.2(vii) (in respect of the City library) and 9.3). To the extent the Loan Commitment has been fully funded and the Developer is then owned and/or controlled by the Principals, the Developer shall not be obligated to provide the personal guaranties required under Section 9.3 of the Agreement, and to the extent the Loan Commitment has been partially funded and the Developer is then owned and/or controlled by the Principals, the personal guaranties required under Section 9.3 of the Agreement shall be reduced by the amount funded under the Loan Commitment. The City further agrees that the Developer shall be the party who develops the NGB Training Facility pursuant to Section 9.2 of the Agreement. To the extent the City enters into a contract for construction of the City library and/or expansion of the existing City library with a party other than Developer, the development obligations of Developer under Section 9.3 of the Agreement shall be automatically deemed waived by the City, however, the Developer shall remain responsible for its Ten Million and No/100 Dollar (\$10,000,000.00) (less any amounts funded under Section 20 of this Amendment in respect of the City library) funding obligation thereunder following the expiration of the five (5) year period following the execution and delivery of the Lease (subject to the offset rights pertaining to amounts funded under the Loan Commitment as set forth above), and the Developer shall no longer be responsible for funding any cost overruns notwithstanding the provisions of Section 2.2(vii). The Developer's Ten Million and No/100 Dollar (\$10,000,000.00) (less any amounts funded under Section 20 of this Amendment in respect of the City library) funding obligation under Section 9.3 of the Agreement shall be paid as follows: (i) to the extent funds have already been expended and/or incurred by or on behalf of the City with respect to the City library as such development and construction is completed (other than amounts funded by Developer under Section 20 of this Amendment), such amount will be paid by the Developer semi-annually in four (4) equal installments commencing six months following the 5th anniversary of the Lease and every six (6) months thereafter until paid; (ii) the difference between the amount expended and/or incurred under clause (i) above and Ten Million and No/100 Dollars (\$10,000,000.00) (less any amounts funded under Section 20 of this Amendment in respect of the City library) shall be funded monthly as required to fund the development and construction of the City library as such development and construction is completed until the date that is the earlier of (x) the date the City library is complete, or (y) the date the entire balance of the Ten Million and No/100 Dollars (including any amounts funded under Section 20 of this Amendment in respect of the City library) has been funded. Any funds remaining following the completion of the City library, as evidenced by the City's written waiver of any further obligations with respect thereto, shall be funded to the City within ten (10) days following the City's delivery of such written waiver to the Developer; provided that, if the City library has been developed by the City and/or a third party other than Developer, Developer shall not be required to fund any amount pursuant to this sentence prior to the date that is two (2) years following the fifth anniversary of the Lease.

22. The first six (6) lines of Section 9.4(i) of the Agreement are hereby amended and restated as follows:

"Developer agrees to establish an enterprise which is to be forty nine percent (49%) minority owned (and shall use its best efforts to have at least thirty (30%) of the forty nine percent (49%) of the minority owners of the enterprise be minority residents of the City or business owners within the City) (the **Housing**)"

23. Section 9.4(i) is hereby amended to clarify that all management services performed by the Housing Enterprise with respect to the Affordable Housing Units shall be at market rate fees not to exceed four percent (4%) of gross revenues for the applicable project plus reimbursement of pre-approved expenses.

24. Section 9.4(i) is hereby further amended to replace the clause "(ii) provide all necessary administrative and overhead support to the Housing Enterprise" with the following: "(ii) provide all necessary administrative and overhead services to the Housing Enterprise".

25. Section 9.4(ii) is hereby amended to clarify that all mortgage financing must be non-recourse to the Developer and the Housing Enterprise and any affiliate of either of the foregoing.

26. Section 9.4(iii) is hereby amended to provide that in lieu of the Letter of Credit, the Developer, at Developer's option, may provide the City with a non-interest bearing promissory note in the principal amount of \$2,000,000 executed by certain individual beneficial owners of the Developer reasonably acceptable to the City (the **Two Million Dollar Note**). Furthermore, the second sentence in Section 9.4(iii) is hereby amended and restated in its entirety as follows:

"In the event the Developer (a) fails to comply with any of its obligations under this Section 9.4 to develop Affordable Housing units, on a project by project basis, the City shall be entitled, if such default continues for ninety (90) days following Developer's receipt of written notice from the City, to draw upon the Letter of Credit in the full amount or enforce the Two Million Dollar Note, as applicable, as its sole and exclusive remedy, or (b) fails to comply with any of its other obligations under this Section 9.4, the City shall be entitled, if such default continues for ninety (90) days following Developer's receipt of written notice from the City, to draw upon the Letter of Credit or enforce the Two Million Dollar Note, as applicable, as its sole and exclusive remedy, in such amount equal to the City's actual damages (excluding any punitive damages resulting from such default), as certified by the City Manager; provided, however, that in the event of a default under this subpart (b) that cannot reasonably be quantified in a liquidated amount, the Letter of Credit can only be drawn upon or the Two Million Dollar Note can only be enforced, as applicable, in an amount equal to \$100,000 per default; provided, further, that the City shall not have the right to terminate this Agreement or the Lease, or pursue any other remedy against Developer or otherwise, as a result of any such failure or any other failure of the Developer, the Housing Enterprise or any other party under Section 9.4 or any other provision of this Agreement relating to the Affordable Housing Units."

The third sentence in Section 9.4(iii) is hereby amended and restated in its entirety as follows:

"In the event (a) the full amount of the Letter of Credit is drawn upon or the entire Two Million Dollar Note is enforced, as set forth in subpart (a) of the preceding sentence, the Developer shall be required to deliver to the City a new Letter of Credit in the amount of Two Million Dollars or deliver a new Two Million Dollar Note, or (b) a portion of the Letter of Credit is drawn upon or a portion of the Two Million Dollar Note is enforced, as set forth in subpart (b) of the preceding sentence, the Developer shall be required to deliver to the City a new Letter of Credit in an amount equal to the portion drawn upon or deliver a new note (on the same terms and conditions set forth in the Two Million Dollar Note) in an amount equal to the portion of the Two Million Dollar Note enforced, in either event, within thirty (30) days following the date the City has drawn upon the initial Letter of Credit or the date the City notified Developer that payment under the initial Two Million Dollar Note was due."

The sixth sentence in Section 9.4(iii) is hereby amended and restated in its entirety as follows:

"In the event Developer fails to replace or provide an additional Letter of Credit as required under this paragraph, make payment on the Two Million Dollar Note within ten (10) days following the date payment is due, and/or issue a new promissory note, the City's sole and exclusive remedy under this Agreement and the Lease shall be to seek specific performance and all other available remedies against the guarantors under the personal guarantees and the makers of the Two Million Dollar Note, as applicable, and the City shall not have the right to terminate this Agreement or the Lease or to pursue any remedy against Developer or otherwise, as a result of such failure."

The last sentence in Section 9.4(iii) is hereby amended and restated in its entirety as follows:

" ... the City shall release the Letter(s) of Credit to the Developer, return the original Two Million Dollar Note (or additional notes provided) marked paid to the makers thereunder and the personal guaranties shall be terminated and returned to the guarantors thereunder."

Notwithstanding anything to the contrary contained in Section 9.4(iii), no Leasehold Mortgagee, Qualified Subsidiary, Institutional Lender, Qualified Developer or other Permitted Assignee (as such terms are defined in the Lease) or any other successor in interest to the Developer who is not an affiliate of Biscayne Landing, LLC, shall have the right to provide a Two Million Dollar Note in lieu of providing the Letter of Credit.

27. Exhibit "I" to the Agreement is hereby amended and replaced in its entirety by Exhibit "F" attached to this Amendment.

28. Section 12.10 of the Agreement is hereby modified to (i) redefine the **Grant Agreement** as that certain Second Amended Grant Agreement dated March 26, 2004 by and between the County and the City, (ii) redefine **Grant** as the Thirty One Million Twenty Seven