

SEWER IMPROVEMENT AGREEMENT

THIS SEWER IMPROVEMENT AGREEMENT (the “**Agreement**”) is made and entered into as of _____ day of June, 2023, by and between DRI/MAPLE CORAL GABLES, LLC, a Delaware limited liability company, whose mailing address is 3715 Northside Parkway, Building 200, Suite 800, Atlanta, Georgia 30327 (the “**Developer**”), the City of Coral Gables, a Florida municipal corporation (the “**City**”), whose mailing address is 405 Biltmore Way, Coral Gables, Florida 33134; and Chicago Title (“**Escrow Agent**”), whose address is 333 S.E. 2nd Avenue, 44th Floor, (“**Escrow Agent**”).

W I T N E S S E T H:

WHEREAS, the Developer is the owner of that certain property located in the City of Coral Gables, Florida, which is more particularly described in **Exhibit “A”** attached hereto and made a part hereof (the “**Property**”); and

WHEREAS, it has now become necessary to construct the proposed sewer infrastructure improvement described in the attached **Exhibit “B”** (the “**Sewer Improvements**”) in order to adequately serve the Property and to provide the necessary capacity to the City sewer infrastructure in the area; and

WHEREAS, the Developer has agreed, for the benefit of the Developer’s Property and its respective project on the Property known as “Alexan Crafts” (the “**Project**”), to fund the design, construction, installation and conveyance of the Sewer Improvement further described on **Exhibit “C”** (the “**Sewer Improvement Work**”); and

WHEREAS, the sewer system which serves the Property is owned by the City; and

WHEREAS, Developer requires improvements to the sewer system in this Sanitary Sewer Basin for its development at the Property; and

WHEREAS, Developer has entered into a contract with Kimley-Horn (“**KH**”) for the design of the Developer’s Sewer Improvement Work and entered into a contract with Maple Multi-Family Contractor SE, LLC (“**MMFSE**”) for the construction of the Developer’s Sewer Improvement Work (the “**MMFSE Agreement**”). KH and MMFSE are collectively referred to herein as the “**Contractors**”; and

WHEREAS, a copy of the contracts between Developer, KH and MMFSE are attached hereto as Exhibit “A1” and Exhibit “A2” respectively (the “**Contractor Agreements**”); and

WHEREAS, the City wishes to grant permission to the Developer and Contractors to facilitate the design and construction of the Sewer Improvement at the sole cost of the Developer, with the understanding that the Developer shall have a right of reimbursement pursuant to Section 78-103 of the City’s Code of Ordinances (the “**City Code**”); and

WHEREAS, the City shall provide signed a Sewer Capacity Certification Letter for the Project to be located on the Property within seven (7) days of the execution of this Agreement; and

WHEREAS, the City has agreed to assume ownership and maintenance of the Sewer Improvements completed by the Developer once all of the Sewer Improvement Work has been performed in accordance with all applicable laws, codes and requirements and the Developer has paid all amounts due to the Contractors in accordance with the Contractor Agreements; and

WHEREAS, Escrow Agent is willing to act as the holder of the funds deposited to an account to be maintained by Escrow Agent pursuant to this Agreement and an escrow agreement signed by the parties in the form attached as **Exhibit “E”** hereto (the “**Escrow Agreement**”), and to distribute those funds as set forth herein and in the Escrow Agreement.

NOW, THEREFORE, in consideration of the mutual covenants entered into between the parties hereto to be made and performed and in consideration for the benefits to accrue to each of the respective parties, it is covenanted and agreed to as follows:

1. Recitals. The above recitals and representations are true and correct and shall be incorporated in this Agreement and be a part hereof.

2. Proposed Sewer Improvement.

(a) The City has reviewed the construction plans for the Sewer Improvement Work, attached as **Exhibit “C”**, subject to the submittal, review, and approval of the necessary construction drawings by both the City and Miami-Dade County.

(b) The Sewer Improvement Work shall be substantially completed in accordance with the schedule attached hereto as **Exhibit “D”** and subject to Paragraph 17 herein. The City authorizes the construction of the Sewer Improvement Work in accordance therewith.

(c) All Sewer Improvement Work shall be constructed and completed at the Developer’s sole cost and expense in conformity with the City of Coral Gables Code of Ordinances and other applicable County, State, and Federal codes and requirements.

(d) The City and the Developer agree that the improvements required to be made under this Agreement to the existing pump station are as provided in the plans attached hereto as **Exhibit “C”**.

(e) The parties acknowledge and agree that the Developer is entering into this Agreement for the sole purpose of developing its Project, and the issuance of building permits for the Project shall be a condition precedent for the Developer’s obligations under this Agreement, except in the event the building permit(s) is/are not issued due to an act or omission of the Developer.

3. Contractor Agreements. Contractors and Developer have entered into the Contractor Agreements for the Contractors to perform the Sewer Improvement Work as called for by the Contractor Agreements, respectively.

(a) The Developer represents that to the best of Developer’s respective knowledge the Contractors meet the following criteria: (i) are financially capable of performing the Sewer Improvement Work; (ii) have sufficient equipment, workers, and work experience in

performing sewer improvements similar to the Sewer Improvement; (iii) have not been declared in default or terminated on any project with any other municipality, county or other governmental entity in the state of Florida; and (iv) have demonstrated management competency, labor compliance, and safety record required for the completion of the Sewer Improvement Work.

(b) The Contractor Agreement shall provide that the City shall have third party beneficiary rights in the Contractor Agreements and the City shall be listed as an additional Obligee under the Payment and Performance Bond to be furnished by Contractor. However, the City has no direct obligations to the Contractors under the Contractor Agreements or this Agreement. Further, the Contractor Agreements shall provide that upon the default of the Developer under this Agreement, the City, at its sole discretion, may take assignment of the Contractor Agreements and Contractor shall be obligated to continue performance for the City.

(c) Further, to the extent requested by the City, the Developer shall provide all back-up documentation evidencing the total final cost of the Sewer Improvement Work for determination of the amount of repayment due to the Developer pursuant to Section 78-103(b) of the City Code.

(d) The Contractor Agreements shall contain a provision requiring the Contractors to provide written notice to the City of any defaults of the Developer under the terms of the Contractor Agreements. In the event Contractors declare Developer to be in default under the terms of the Contractor Agreements, and the Developer fails to remedy the default within the notice and cure period provided in the Contractor Agreements, then the City, in its sole discretion, shall have the right to take an assignment of the Developer's rights and obligations under the Contractor Agreements. Developer shall be responsible for all costs incurred by the City in completing the Sewer Improvement Work pursuant to the Contractor Agreements. All such costs shall be satisfied by first applying the escrow funds held by Escrow Agent, with the Developer responsible for any shortfall costs after the escrow funds and contingency funds are exhausted. All monies remaining in escrow shall be immediately returned to the Developer upon completion of the Sewer Improvement Work.

(e) The Developer shall deposit the entire Contract Sum of the Contractor Agreements plus a contingency of 10% of the Contract Sums into escrow (the "**Construction Escrow Funds**"). The Construction Escrow Funds may be used during the performance of the Sewer Improvement Work to pay amounts due to Contractors under the terms of the Contractor Agreements. There shall never be less than the amount necessary to fund the unpaid balance of the Contract Sums, respectively, plus a contingency of 10% of such amount, in the Construction Escrow Account. At any time, the City may request and the Developer shall provide to the City a statement of the Construction Escrow Funds, copies of the Contractors' Applications for Payment and any other or further information requested by the City with respect to amounts due, paid and remaining to be paid to Contractors. If, at any time, the City reasonably determines that the Construction Escrow Funds contain less than the amount necessary to fund the unpaid balance of the Contract Sums, respectively, plus a contingency of 10% of such amount, the Developer shall promptly fund any deficiency by depositing additional Construction Escrow Funds upon request of City. Failure to do so shall be a material breach of this Agreement.

(f) In the event either of the Contractors declares the Developer to be in default under the terms of either or both of the Contractor Agreements, and the Developer fails to remedy the default within the notice and cure period provided in the Contractor Agreements, then the City, in its sole discretion, shall have the right to use the Construction Escrow Funds to complete the Sewer Improvement Work, as consideration to the City for taking an assignment of the Developer's rights and obligations under one or both of the Contractor Agreements, in which case Developer can only be liable for obligations incurred pursuant to the Contractor Agreements during such time when Developer was a party to the Contractor Agreements, and the City shall defend, indemnify and hold harmless the Developer and its employees, officers, agents, and affiliates from any and all liability, claims losses, expenses, or damages, including, but not limited to direct and indirect damages and attorney fees and costs of defense, which the Developer may incur as a result of claims, demands, suits, and causes of action arising out of or relating to the City's administration of the Contractor Agreements.

(g) Nothing in the foregoing paragraphs shall require the City to take an assignment of the Contractor Agreements. Furthermore, should the City elect to take an assignment, the Developer shall be liable to the City for all damages the City may sustain as the result of either a default by the Developer or by the Contractors under the Contractor Agreements as a result of Developer's negligence. It being understood that the use of the Construction Escrow Funds by the City is for the sole purpose of completing the Sewer Improvement Work, guaranteeing performance and mitigating the City's risk in the event of a default by the Developer or the Contractors under the terms of the Contractor Agreements, and is not to be construed as an alternative remedy. All rights and remedies of the City pursuant to this Agreement and the Contractor Agreements are cumulative. Also, to the extent the Performance Bond Surety calls upon the City as an obligee under the Performance Bond to make payment of any balance due under the Contractor Agreements, the City may use the Construction Escrow Funds for such purpose.

4. Warranty by Contractors.

(a) The Developer shall require that the Contractors provide a written warranty in a form attached as **Exhibit "F"** in favor of the Developer and the City which warrants that the Sewer Improvement Work to be owned/operated by the City as part of the Developer's Sewer Improvement Work shall, when complete, be from a design perspective as to KH and from a construction perspective as to MMFSE, as applicable: (1) fit for its intended purpose and be free from defects in the work performed and materials furnished; (2) perform for its intended purpose; and (3) free from any design defects, errors or omissions. The Contractors' warranty shall be for a period of three (3) years following final completion of the Sewer Improvement Work ("the **Warranty Period**"). Completion for the purpose of commencement of the Contractors' warranty to the City as set forth herein shall commence when all conditions of the Contractor Agreements have been met, and the Sewer Improvement Work has received all necessary approvals from all governmental authorities having jurisdiction of the work. The Contractors are required, as a condition of final payment under the Contractor Agreements, to execute and deliver to the Developer and the City the warranty, as applicable, identified in **Exhibit "G"** hereto. As a condition of this Agreement, the Developer agrees to have the Contractors deliver all warranties required by this Agreement and the Contractor Agreements and shall also deliver to the City any and all material

or equipment manufacturer warranties which shall be issued to and enforceable directly by the City.

(b) If it becomes necessary to repair and/or replace any of the Sewer Improvement facilities constructed as part of the Developer's Sewer Improvement Work during the Warranty Period, the warranty as to those items shall continue to remain in effect for an additional three (3) years from the date of final repairs and/or replacement has been completed. Simultaneously with the conveyance of the Sewer Improvements to the City and as condition of Acceptance of Sewer Improvements (as defined in Paragraph 15 below) by the City, the Developer shall cause MMFSE to deliver to the City an executed Maintenance Bond in a form to be approved by the City Attorney for legal sufficiency. The Maintenance Bond shall be in the amount of 100% of the construction cost of the Sewer Improvements and shall guarantee MMFSE's work for the three (3) year Warranty Period.

(c) The Developer warrants that upon completion of construction and conveyance of the Sewer Improvement to the City and Acceptance of Sewer Improvements by the City, the City will own such Sewer Improvements free and clear of any construction or other liens. Inspections

5. Inspections. The City shall have the duty to make timely engineering inspections of the Sewer Improvements under construction in the manner set forth in the City Code. Any inspections by the City shall not be construed to constitute any guarantee or representation on the part of the City as to the quality and condition of materials and workmanship. Any inspections by the City shall be for the City's benefit, and shall not relieve the Developer or the Contractors of any responsibility for proper design and construction of said facilities in accordance with approved plans and specifications or waive any warranties. The Developer and the Contractors shall not rely on any inspections to relieve themselves of any responsibility for the performance of the Sewer Improvement Work. Furthermore, any inspections by the City shall not relieve the Developer or the Contractors of responsibility for the quality and condition of materials and workmanship.

6. Indemnification.

(a) Indemnification by the Developer. From the date of execution of this Agreement until three (3) years from conveyance of the Sewer Improvement, and to the extent of the Developer's recoverable maximum insurance limits (inclusive of all insurance under the Developer's own insurance policies and as an additional insured under the Contractors' insurance policies), the Developer shall defend, indemnify and hold harmless the City and its elected and appointed officials, attorneys, administrators, consultants, employees, officers, agents, and instrumentalities from any and all liability, claims losses, expenses, or damages, including, but not limited to direct and indirect damages and attorney fees and costs of defense, which the City may incur as a result of claims, demands, suits, and causes of action arising out of or relating to the performance of this Agreement to the extent caused by the negligence, recklessness, or intentional wrongful misconduct by the Developer and/or their respective employees, agents, partners or principals, contractors, and/or subcontractors. The Developer shall pay all claims and losses in connection therewith to the extent of the recoverable limits of the insurance coverage and shall investigate and defend to the extent provided by the applicable insurance carrier all claims, suits or actions of any kind or nature in the name of the City, where applicable, including appellate

proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon up to the extent of the recoverable insurance proceeds. The provisions in this clause shall survive the termination or expiration of this Agreement. Subject to the foregoing, and this Agreement generally, the indemnification and hold harmless obligations shall include, but not be limited to, all of the following:

- i. Damages awarded to any person or party at either the trial or appellate level of litigation.
- ii. Reasonable attorney's fees and costs incurred in defending such claims. The City may use the attorney or law firm of its choice in which event the Developer will pay such firm the fees it charges the City, provided such fees are reasonable in light of the prevailing market rate for similar legal services. Such fees shall be deemed reasonable if they are no greater than the fees that City pays other counsel for representation in similar cases. If the City Attorney's Office provides the defense, the Developer will reimburse the City at the prevailing market rate for similar legal services. If counsel provide by the Developer's insurance carrier is deemed acceptable by the City Attorney, the City shall submit to its representation by said counsel.
- iii. Reasonable attorney's fees and cost of any party that a court orders the City to pay.
- iv. Reasonable expenses incurred by City in complying with any administrative or court order that may arise from such claims.
- v. Reasonable miscellaneous expenses relating to such claims including expenses of hotels and transportation in trips relating to such claims.
- vi. Any other direct or indirect expense that City would not have incurred but for a claim that arises out of this Agreement.

Nothing contained herein shall be construed to limit the Developer's other contractual obligations to the City pursuant to this Agreement or limit the Developer's liability to the City for breach of contract. In the event that any portion of this Paragraph 6(a) is held to be unenforceable or void, such portion shall be deemed severable and shall in no way affect the validity of the remaining terms and conditions of this Paragraph or this Agreement.

(b) Indemnification by Contractor. Developer shall include in its agreements with the Contractors the obligation for each Contractor to indemnify and hold harmless the City, the City's elected or appointed officials, attorneys, administrators, employees, agents, contractors, and consultants, from all liabilities, damages, losses and costs, including, but not limited to reasonable attorney's fees and costs, to the extent caused by the negligence, gross negligence, recklessness, or intentional wrongful misconduct of the Contractors, their employees, agents, contractors, subcontractors, and consultants, with respect to the design, construction, installation, and conveyance of the Sewer Improvement Work identified in **Exhibit "C"**.

(c) No Waiver of Sovereign Immunity. Nothing contained in this Paragraph 6 or in this Agreement shall be construed to be a waiver of the Sovereign Immunity of the City or otherwise modify any provision of Section 768.28, Florida Statutes.

7. Payment and Performance Bonds. Prior to commencement of the Sewer Improvement Work, the Developer shall cause MMFSE to furnish in favor of the City and the Developer a Payment and Performance Bond in compliance with Section 255.05 and Section 713.23, Florida Statutes in the full amount of the Contractor Agreements (including all increases to the contract sum of the Contractor Agreements) securing the full payment and completion of the Sewer Improvement Work. The form of the bond is to be approved by the City Attorney for legal sufficiency. The Bond shall be with a surety company that is qualified and authorized to do business in the State of Florida as surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years (the “Surety”). The Payment and Performance Bond will be active until one (1) year after completion of the Sewer Improvement Work. The City and the Developer must be listed as an Obligee and have the rights to enforce the Payment and Performance Bond. The Developer shall ensure that the bond referenced above is recorded in the public records of Miami-Dade County and provide the City with evidence of such recording prior to the commencement of any Sewer Improvement Work. In addition to the security provided by the Payment and Performance Bond, the Contractors, as provided for in Paragraph 4 of this Agreement, shall provide a warranty for a period of three (3) years following final completion of the Sewer Improvement Work.

8. Insurance. The Developer shall provide, and maintain for the following insurance which shall be placed with such insurance company or companies and in such form and in such coverages as are acceptable to City, which insurance includes but is not limited to the following minimum liability coverages:

Commercial General Liability Insurance protecting the Developer, the City, and their respective servants, agents or employees against damages arising from bodily injury (including death) and from claims for property damage which may arise directly or indirectly out of the operations of the Developer, its subcontractors, servants, agents or employees under this Agreement. Developer shall maintain completed operations coverage for at least ten (10) years after completion of the Work. Such insurance shall be for an amount acceptable to the City and shall in any event be not less than One Million (\$1,000,000) Dollars inclusive of any one Occurrence and Two Million (\$2,000,000.) Dollars in the Aggregate and also in the aggregate for Products & Completed Operations and shall include a standard form of cross liability clause.

Pollution Liability. Developer hereby agrees to maintain Pollution Legal & Remediation Liability coverage at a minimum limit not less than One Million (\$1,000,000) Dollars per occurrence and per annual aggregate providing coverage for damages against, but not limited to, third party liability, environmental clean-up, corrective action including assessment, remediation and defense costs. In the event the policy includes a self-insured retention or deductible in excess of \$10,000, the City reserves the

right to review and request a copy of the Developer's most recent annual report or audited financial statements. This coverage shall be endorsed to include the "City of Coral Gables" as an Additional Insured.

Automobile Liability Insurance on the Developer's owned, non-owned and hired vehicles, protecting the Developer against damages arising from bodily injury (including death) and from claims for property damage arising out of their use or the operations of the Developer, its subcontractors or of agents under this Agreement. This insurance shall be for an amount acceptable to the City and shall in any event be not less than One Million (\$1,000,000) Dollars Combined Single Limit per accident.

Professional Liability with a limit of liability not less than One Million (\$1,000,000) Dollars per claim, with a deductible per claim not to exceed 5% of the limit of liability providing for all sums which the Contractor shall become legally obligated to pay as damages for claims arising out of the services performed by the Contractor or any person employed in connection with this agreement. Contractor shall maintain Professional Liability coverage for at least five (5) years after completion of the work.

Workers Compensation and Employers Liability Insurance Prior to commencing the Work and prior to receiving payment, the Developer shall provide evidence of compliance with the requirements of the State of Florida with respect to workers' compensation insurance including payments due thereunder and including Employers Liability with minimum Limits of \$1,000,000.00 per each accident, per disease each employee and per disease policy limit.

The City (and such other parties designated by City) is to be evidenced as Additional Insured on the Commercial General Liability Policy and Excess/Umbrella Policy. The additional insured status shall be evidenced by the ISO form CG20101185 or via both of the following ISO forms: CG2010 and CG2037 (07/04 Editions), or broader. Developer is to provide forty-five (45) days' notice of cancellation or non-renewal of coverage and/or changes in limits of coverage on any policy. All policies of Developer shall contain an endorsement whereby the insurance carriers agree that its insurance is primary and not contributory with or in excess of any coverage which the City has purchased. The Developer shall be responsible for all deductibles under the Developer's insurance policies. The Developer shall be responsible for all loss or damage to the Work, including the Developer's materials delivered to site for incorporation therein and all property issued to the Developer by the City for use or incorporation in the Work. The Developer shall waive all rights against the City for recovery of damages to the extent that these damages are covered by insurance maintained pursuant to the above requirements, and the Developer shall provide all waivers of subrogation in the endorsements and forms required by the City. The City shall be named as an Additional Insured and Loss Payee on all Property and/or Inland Marine Policies as their interest may appear.

Additional Insured Endorsements. The Developer agrees to endorse the City as an Additional Insured on the Commercial General Liability coverage with the following, or similar

endorsement providing equal or broader Additional Insured coverage, the CG 2010 10 01 Additional Insured - Owners, Lessees, or Contractors or the CG2010 07 04 Additional Insured - Owners, Lessees, or Contractors - Scheduled Person or Organization endorsement, including the additional endorsement of GC2037 10 01 Additional Insured - Owners, Lessees, or Contractors - Completed Operations shall be required to provide back coverage for the Developer's "your work" as defined in the policy and liability arising out of the products-completed operations hazard. Additionally, the Developer agrees to endorse the City as an Additional Insured under the Commercial Umbrella/Excess Liability, and Builder's Risk Insurance when it is required coverage. The name of the organization endorsed as Additional Insured for all endorsement shall read "City of Coral Gables."

Notwithstanding the availability of any insurance listed hereunder, the Developer shall bear the risk of loss for its acts or omissions pursuant to this Agreement. The Developer bears all liability for losses and damages arising from any acts, errors, omissions, or negligence on the part of the Developer and its subcontractors, including without limitation damages for defective and nonconforming work, and the Developer and all applicable Subcontractors shall bear the risk and pay for such losses regardless of whether the Developer should be covered for such losses by the Developer's general liability or other insurance policies stated in this Article 13. In the event Developer should fail to pay the insurance premiums, the City, at its option, may pay the premiums and deduct said amount from the Contract Sum. The Developer's failure to maintain the insurance required by this agreement shall be grounds for the termination of this Agreement, and Developer shall be liable for all losses, damages, costs and expenses of every nature and kind associated with the failure to maintain the required insurance.

Waiver of Subrogation. The Developer agrees by entering into this written Agreement to a Waiver of Subrogation in favor of the City. When required by the insurer or should a policy condition not permit the Developer to enter into a pre-loss agreement to waive subrogation without an endorsement, the Developer agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent endorsement. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition that specifically prohibits such an endorsement, or voids coverage should the Developer enter into such an agreement on a pre-loss basis.

Right to Revise or Reject. The Developer agrees the City reserves the right, but not the obligation, to review or revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work / specifications affecting the applicability of coverage. Additionally, the City reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein, or any insurer(s) providing coverage due of its poor financial condition or failure to operating legally in the State of Florida. In such events, City shall provide Developer written notice of such revisions or rejections.

No Representation of Coverage Adequacy. The coverages, limits or endorsements required herein protect the primary interests of the City, and the Developer agrees in no way should these coverages, limits or endorsements that are required be entirely relied upon when assessing

the extent or determining appropriate types and limits of coverage to protect the Developer against any loss exposures, whether as a result of the Project or otherwise.

Certificate of Insurance. The Developer agrees to provide City with Certificate(s) of Insurance that clearly evidence the Developer's insurance contains the minimum coverages, limits, and endorsements set forth herein. A minimum thirty (30) day notice of cancellation or non-renewal of coverage shall be identified on each Certificate(s) of Insurance.

In the event the City is notified that a required insurance coverage will cancel or expire during the period of this Agreement, the Developer agrees to furnish City prior to the expiration of such insurance, a new Certificate of Insurance evidencing replacement coverage. When notified by City, the Developer agrees not continue work pursuant to this Agreement, unless all required insurance remains in effect.

The City shall have the right, but not the obligation, of prohibiting Developer from entering the Project site until a new Certificate of Insurance is provided to the City evidencing the replacement coverage. The Developer agrees the City reserves the right to withhold payment to Developer until evidence of reinstated or replacement coverage is provided to the City. If the Developer fails to maintain the insurance as set forth herein, the Developer agrees the City shall have the right, but not the obligation, to purchase replacement insurance, which the Developer agrees to reimburse any premiums or expenses incurred by the City.

The Developer agrees the Certificate(s) of Insurance shall include but is not limited to:

Clearly indicate the City has been endorsed on the Commercial General Liability with a CG 2010 Additional Insured - Owners, Lessees, or Contractors, or similar endorsement providing equal or greater Additional Insured coverage. (Attach an actual copy of the endorsement, contact your insurance agent).

Clearly indicate the City is endorsed as an Additional Insured on all required liability coverages except Professional Liability..

Clearly indicate the project name and project number.

Clearly identify each policy's limits, flat & percentage deductibles, sub-limits, or self-insured retentions, which exceed the amounts or percentages set forth herein.

Clearly indicate a minimum thirty (30) day endeavor to notify requirement in the event of cancellation or non-renewal of coverage.

Clearly indicated Certificate Holder(s) as follows:

Original to:

Copy to:

**City of Coral Gables
Insurance Compliance
P.O. Box 100085-CE
Duluth, GA 30096**

City of Coral Gables
Risk Management Division
2151 Salzedo Street
Coral Gables, FL 33134

Clearly indicate a Waiver of Subrogation for all required liability coverages and workers compensation except Professional Liability.

Clearly indicate that the coverages are Primary and Non-contributory on all required liability coverages except Professional Liability.

9. Connection by Others and Right to Reimbursement. Parties other than the Developer, who own property, other than the Developer's Property, within the Sewer Improvement Area indicated in **Exhibit "J"** and which connect to the Sewer Improvements constructed by the Developer (the "**Subsequent Connectors**") shall reimburse the Developer for their share of the cost of the Sewer Improvements pursuant to Section 78-103 of the City Code. In the event of any inconsistency between Section 78-103 of the Code and this Agreement, the terms of this Agreement shall govern.

(a) The City and the Developer agree that the Developer shall be entitled to receive said reimbursement from the City pursuant to Section 78-103 of the City Code. The City shall impose a construction connection charge to be collected from subsequent connections equal to the rate per gallon per day of flow as established by the formula summarized in Section 78-103 of the City Code along with an additional payment of per annum simple interest at the rate authorized from time to time by Fla. Stat. § 687.02 from the date of conveyance of the Sewer Improvements to the City ("**Subsequent Connector Charge**"). The Developer shall be exempt from this charge.

(b) In addition to the Subsequent Connector Charge, the City shall charge and collect from Subsequent Connectors a Repayment Administration Fee ("**RAF**") in the amount of five percent (5%) of the Subsequent Connector Charge (which in no event shall be less than \$2,500) in accordance with Section 78-103(b)(11) of the City Code. The RAF amounts shall be retained by the City.

(c) The City shall transfer 100% of the Subsequent Connector Charge to the Developer, as applicable, within ninety (90) days of receipt of same and agrees to not issue any sewer connection permit to any of the Subsequent Connectors until receipt of payment of the appropriate Subsequent Connector Charge. However, the City's liability shall be limited to those amounts actually collected from the Subsequent Connectors and City agrees that it will, in no way, lessen or adjust the reimbursement formula, unless otherwise required by law.

(d) This reimbursement provision shall remain in effect until the earlier of (i) a complete reimbursement of the total cost of the Sewer Improvements constructed by Developer with interest, less the Developer's share of such cost, calculated based on the proportionate share of capacity usage, and (ii) a period of ten (10) years from the date of the acceptance by the City of

the Sewer Improvements. The Developer shall provide and update the City with a current mailing address during the ten (10) year period. The City shall use normal, reasonable efforts to collect the Subsequent Connector Charges and acknowledges its obligations under the Section 78-103 of the City Code to collect and convey the Subsequent Connector Charges to the Developer. The City will notify the Developer at the time of application for building permit of any other project proposing to connect to the Sewer Improvements. The Developer agrees that the City's only obligation is to transfer the Subsequent Connector Charge to the Developer.

10. Conveyance of Sewer Improvement to the City. Within sixty (60) days of completion of construction of the Sewer Improvement in accordance with all applicable laws, codes and ordinances and the Contractor Agreements, the Developer shall convey the Sewer Improvement to the City in accordance with and subject to the requirements set forth in Paragraph 15 of this Agreement. Upon conveyance of the Sewer Improvement to the City, the City shall be responsible for maintenance of the Sewer Improvement and Developer shall bear no such responsibility.

11. Certificates of Occupancy. Developer acknowledges and agrees that Temporary Certificates of Occupancy (TCOs) shall not be issued for proposed projects within the Sanitary Sewer Area serviced by the Sewer Improvements until such time as the Sewer Improvements are substantially complete, as evidenced by an approved final City inspection. Additionally, a final Certificate of Occupancy for such projects within the Sanitary Sewer Basin serviced by the Sewer Improvements shall not be issued until the Sewer Improvements are conveyed to the City in accordance with the provisions of this Agreement.

12. Timeline for Sewer Improvement. It is anticipated that the Sewer Improvement Work will be completed according to the general timeline attached as **Exhibit "D"**, subject to delays caused by force majeure and delays encountered during the normal course of the Sewer Improvement Work. This timeline establishes the expectations of the City and the Developer. Prior to the commencement of any construction of the Sewer Improvement Work, the Developer shall deliver to the City a detailed, critical path schedule for the performance of the Sewer Improvement Work by MMFSE ("**Sewer Improvement Construction Schedule**"). In the event that MMFSE fails to perform the Sewer Improvement Work in substantial accordance with **Exhibit "E"**, subject to extensions of time authorized by the MMFSE Agreement or events of Force Majeure (as defined in Paragraph 17 of this Agreement), City may declare a default by the Developer under this Agreement, subject to the expiration of a reasonable time period to cure which shall, in no event, be less than thirty (30) days after delivery by City of a notice of default to Developer.

13. Expedited Review of Plans. The City shall provide an expedited review for all building permits or other construction related applications as are required to construct the Sewer Improvement and the proposed development at the Property and shall, to the extent possible, request expedited review of plans from all other government entities involved in the review of said plans. The City shall also provide expedited inspections to the extent available for the Sewer Improvement Work. The Developer shall be responsible for any costs imposed by the City for such expedited inspections.

14. Compliance with other Applicable Laws. It shall be the City's responsibility to ensure that the City's entering into of this Agreement, the incorporation of the Sewer Improvements into the City's public sewer system, and its operation complies with all applicable County, State of Florida, and United States Federal laws and regulations, and the Developer has no such responsibilities, or to ensure that the City is in compliance with any applicable law or regulations in the City's performance of its official functions.

15. Conveyance Documents. Following completion of the Sewer Improvement Work, the Developer shall cause the Contractors, as applicable, to provide the City with (i) a bill of sale for the Sewer Improvement, (ii) copies of all paid bills and lien waivers, releases, or satisfactions from all persons who performed work on or provided materials for the Sewer Improvements, (iii) delivery of the Maintenance Bond called for in Paragraph 4(b) and certificates of insurance from the Contractors evidencing completed operations coverage, (iv) as-built drawings of the Sewer Improvements; (v) all warranty documents required by this Agreement; (vi) confirmation that all inspections for the Sewer Improvement Work have been completed and receipt of the certificate from the Department of Environmental Resources Management ("**DERM**") stating that the Sewer Improvements have been approved for main clearance as required by 78-103 of the City Code; as well as (vii) any other instrument which may be reasonably required for the conveyance of the Sewer Improvements to the City. Acceptance by the City of these documents and satisfaction of all requirements of this Agreement and applicable laws with respect to the Sewer Improvement Work shall constitute final acceptance by the City of the Sewer Improvements constructed by the Developer ("**Acceptance of Sewer Improvement**") subject to the warranties provided for in this Agreement. Acceptance of Sewer Improvement shall not be unreasonably withheld. However, Acceptance of Sewer Improvement shall not constitute an acceptance of any defect or deficiency in the Sewer Improvement Work.

16. Unforeseen Site Conditions. In the area of the Sewer Improvements, there may be concealed or latent physical conditions or subsurface conditions that materially differ from the initial site investigation reports ("**Differing Site Conditions**"). All parties acknowledge that, if Differing Site Conditions are encountered, it may result in increased costs for the Developer and an increased timeframe for the Sewer Improvements to be completed. Such increased costs or timeframe shall not constitute a default of this Agreement.

17. Force Majeure. Should either the City, the Contractors, or the Developer be prevented from timely performing any obligations herein, including but not limited to sewer service, due to or resulting from a force majeure or inevitable accident or occurrence, such party shall be excused from timely performance of said obligation but the obligations of both parties to complete, accept, and operate the Sewer Improvements will remain in place and can only be released by a written termination of this Agreement signed by both parties. As used herein, force majeure shall mean an act of God which includes but is not limited to sudden, unexpected or extraordinary forces of nature such as floods, washouts, storms, hurricanes, fires, earthquakes, landslides, epidemics, pandemics, explosions or other forces of nature. Inevitable accidents or occurrences shall mean those which are unpreventable by either party and shall include but not be limited to strikes, lockouts, other industrial disturbances, wars, blockades, acts of public enemies, insurrections, riots, federal, state, county and local governmental restraints and restrictions, military action, civil disturbances, explosions, conditions in federal, state, county and local permits, bid protests, manufacturing and deliver delays, unknown or unanticipated soil, unexpected

and exceptional delays in permitting, water or ground conditions and cave-ins, or otherwise, and other causes reasonably beyond the control of either party, whether or not specifically enumerated herein.

18. Default.

(a) The City shall have no liability, obligation, or responsibility to the Contractors for payment for any Sewer Improvement Work or performance of any of the obligations under the Contractor Agreements unless the City has taken an assignment of a Contractor Agreement pursuant to this Agreement. Subject to the foregoing, and Paragraph 3 of the Agreement, the Developer shall defend, indemnify and hold harmless the City from any and all claims, liabilities or damages for claims of non-payment by the Contractors, their subcontractors, consultants, and any person or entity working through or under the Contractors for the Developer's Sewer Improvement Work during Developer's administration of the Contractor Agreements. The Developer's failure to timely pay the Contractors' undisputed amounts in accordance with the Contractor Agreements, after proper notice and reasonable opportunity to cure, shall constitute a default of this Agreement during the Developer's administration of the Contractor Agreements.

(b) Proper Notice and Right to Cure. Developer, upon receipt of written notice of default by the City or the Contractors, shall have thirty (30) days to cure any outstanding obligations that may be cured within said time or if diligently pursuing a cure a reasonable extension of time to do so prior to City or the Contractors enforcing default remedies under this Agreement.

19. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all other agreements, whether written or verbal, which may exist between the parties.

20. Applicable Law and Proper Venue. In the event of a dispute between the parties regarding the terms hereof, which terms shall be construed pursuant to Florida law, the same shall be resolved in the courts of Miami-Dade County, Florida, which courts shall have exclusive jurisdiction.

21. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

22. Notice. All notices, demands, requests and other communications required under this Agreement must be given in writing and may be delivered (a) by hand, or (b) by certified mail, return receipt requested, or (c) by a nationally recognized overnight delivery service such as Federal Express. Notice shall be deemed to have been given upon receipt of notice. All notices, demands, requests and other communications required under this Agreement may be sent by electronic mail provided that the electronic communication is followed up by notice given pursuant to one of the three methods in the proceeding sentence. Any party may designate a change of address by written notice to the other party, received by such party at least ten (10) days before the change of address is to become effective.

- (i) Developer. In the case of a notice or communication to Developer if addressed as follows:

To: DRI/MAPLE CORAL GABLES, LLC.
3715 Northside Parkway, Building 200, Suite 800,
Atlanta, Georgia 30327
Attn: Jim Berardinelli

cc: Greenberg Traurig, P.A.
333 SE 2 Avenue, Suite 4400
Miami, Florida 33131
Attn: Jorge L. Navarro, Esq.

- (ii) City. In the case of a notice or communication to the City if addressed as follows:

To: City of Coral Gables
405 Biltmore Way
P.O. Drawer 141549
Coral Gables, Florida 33134
Attn: City Manager

cc: City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Attn: City Attorney

A party may unilaterally change its address or addressee by giving notice in writing to other parties as provided in this Section. Thereafter, notices, demands and other pertinent correspondence shall be addressed and transmitted to the new address.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned have set their hands and seals to this Agreement on the date above.

WITNESS:

DRI/MAPLE CORAL GABLES, LLC, a
Delaware limited liability company

Print Name: _____

By: _____

Name:

Title:

Print Name: _____

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2022, by _____, _____ of DRI/MAPLE CORAL GABLES, LLC, who [] is personally known to me or [] who has produced _____ as identification.

Notary Public, State of Florida at Large

Print Name: _____

My commission expires: _____

WITNESS:

Print Name: _____

City of Coral Gables, a municipal
corporation of the State of Florida

Print Name: _____

By: _____
Name: _____
Title: _____

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2022, by _____ the _____ on behalf of the City of Coral Gables, who is personally known to me or who produced _____ as identification.

Notary Public, State of Florida at Large

Print Name: _____

My commission expires: _____

Approved as to form and legal sufficiency:

Miriam S. Ramos, City Attorney, City of Coral Gables
Cristina M. Suarez, Deputy City Attorney
Stephanie M Throckmorton, Assistant City Attorney
Gustavo J. Ceballos, Assistant City Attorney

JOINDER TO SEWER IMPROVEMENT AGREEMENT

The undersigned hereby executes this Joinder for the purpose of consenting to the terms of the Sewer Improvement Agreement to which this Joinder is attached.

WITNESS:

_____ Print Name: _____ _____ Print Name: _____	Escrow Agent , a Florida professional association By: _____ Name: _____ Title: _____
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STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2022, by **Escrow Agent**, the _____ of _____, on behalf of the corporation/limited liability company/partnership, who is personally known to me or who produced _____ as identification.

Notary Public, State of Florida at Large
Print Name: _____
My commission expires: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

LOT 5, 6, 7, 8, 9, 10, 11, 12, 13 AND THE WEST 1/2 OF LOT 14, LOT 15 AND THE EAST 1/2 OF LOT 14, LOTS 16, 17, 18 AND THE EAST 1/2 OF LOT 19, LOT 20 AND THE WEST 1/2 OF LOT 19, LOT 21 AND THE EAST 1/2 OF LOT 22, LOT 23 AND THE WEST 1/2 OF LOT 22, LOTS 24, 25, 26 AND 27, BLOCK 28, CORAL GABLES, CRAFTS SECTION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 10 AT PAGE 40 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY FLORIDA. LYING IN BEING IN SECTION 17, TOWNSHIP 54 SOUTH RANGE 41 EAST, CITY OF CORAL GABLES, MIAMI-DADE COUNTY, FLORIDA.