

SEWER IMPROVEMENT AGREEMENT

THIS SEWER IMPROVEMENT AGREEMENT (the “**Agreement**”) is made and entered into as of 21 day of September 2022, by and between Alliance Starlight I LLC, a Florida limited liability company, whose mailing address is 340 Minorca Avenue, Suite 9, Coral Gables, Florida 33134 (“**Alliance**”), Sunrise of Coral Gables PropCo, LLC, a Delaware limited liability company, whose mailing address is 7902 Westpark Drive, McLean, VA 22102 (“**Sunrise**”) (Alliance and Sunrise are collectively referred to as “**Joint Users**”), and the City of Coral Gables, a Florida municipal corporation (the “**City**”), whose mailing address is 405 Biltmore Way, Coral Gables, Florida 33134; and Gunster, Yoakley & Stewart, P.A., a Florida professional association, whose mailing address is 600 Brickell Avenue, Suite 3500, Miami, Florida 33131 (“**Escrow Agent**”).

W I T N E S S E T H:

WHEREAS, Joint Users are the developers and owners, , of certain properties located in the City of Coral Gables, Florida, which are more particularly described in Exhibit "A" attached hereto and made a part hereof (the "**Joint Users' Properties**"); and

WHEREAS, to accommodate the development of the Joint Users' Properties by Alliance and Sunrise and future development in and around the properties located within the Sanitary Sewer Basin City 2 area, as more particularly described in Exhibit "B", the City is in need of additional sewer infrastructure (the "**Sewer Improvements**"); and

WHEREAS, the Joint Users have agreed, for the benefit of their respective Joint Users' Properties and their respective projects on their Joint Users' Properties known as Regency on the Park and 1000 Ponce (the "**Projects**"), to fund the design, construction, installation and conveyance of Sewer Improvements as further described on Exhibit "C" (the "**Joint Users' Sewer Improvement Work**"); and

WHEREAS, the City has been awarded a grant for financial assistance from the Florida Division of Emergency Management (“**FDEM**”) for Engineering Services related to the City’s sewer system and anticipates further grant funds from FDEM for construction work related to the City’s sewer system (collectively referred to as “**FDEM Grant Funds**”);

WHEREAS, the City intends, for the benefit of the public and to provide the necessary capacity to the City sewer infrastructure for properties in the area, to fund utilizing the FDEM Grant Funds and contribution from the City of 25 percent (25%) of the FDEM Grant Funds (“**City Contribution**”), the design, construction and installation of certain Sewer Improvements, preliminarily anticipated as shown and set forth in Exhibit "D" (“**Anticipated City Sewer Improvement Work**"); and

WHEREAS, Sunrise has agreed to take the leading role in overseeing and managing the Joint Users' Sewer Improvement Work which is required in order to provide sewer service to the

Projects proposed to be built by each of the Joint Users, as well as to enhance the capacity of the City's sewer infrastructure; and

WHEREAS, Sunrise has agreed to serve as the Joint Users' owner representative and the Joint Users and City are willing to have Sunrise serve as the Joint Users' representative, subject to the terms hereof, in connection with the Joint Users' Sewer Improvement Work; and

WHEREAS, the sewer system which serves the Joint Users' Properties is owned by the City; and

WHEREAS, the Joint Users require additional sewer capacity in Sanitary Sewer Basin City 2; and

WHEREAS, the Joint Users are entering into this Sewer Improvement Agreement with the understanding that the City intends to perform the Anticipated City Sewer Improvement Work utilizing the FDEM Grant Funds and City Contribution as more particularly provided for herein; and

WHEREAS, Alliance has entered into a contract with Kimley-Horn ("**KH**") for the design of the Joint Users' Sewer Improvement Work and entered into a contract with Maestre Construction Inc. ("**Maestre**") for the construction of the Joint Users' Sewer Improvement Work. KH and Maestre are collectively referred to herein as the "**Contractors**"; and

WHEREAS, a copy of the contracts between Alliance and KH and Sunrise and Maestre are attached hereto as **Exhibit "E1"** and **Exhibit "E2"** respectively (the "**Contractor Agreements**"); and

WHEREAS, the City wishes to grant permission to Sunrise and the Contractors to facilitate the design and construction of the Joint Users' Sewer Improvement Work at the sole cost of the Joint Users, with the understanding that the Joint Users shall have a right of reimbursement pursuant to Section 78-103 of the City's Code of Ordinances (the "**Code**") and Paragraph 9 herein. The City shall reimburse the Joint Users from Subsequent Connector Charges (as defined in Paragraph 9 below) in accordance with City Code Section 78-103(b); and

WHEREAS, the City shall provide signed Conditional Sewer Capacity Certification Letters for the Projects to be located on the Joint Users' Properties within three (3) days of execution of this Agreement; and

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

WHEREAS, Section 78-103 of the City’s Code provides a process by which future users that connect to the Sewer Improvements constructed by the Joint Users will reimburse the Joint Users for their proportionate share of the cost of the Joint Users’ Sewer Improvement Work; 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 “L”** 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 part thereof.

2. **Proposed Sewer Improvements**. The City intends to perform the Anticipated City Sewer Improvement Work utilizing the FDEM Grant Funds and City Contribution and the Joint Users shall conduct the Joint Users’ Sewer Improvement Work. The parties acknowledge and agree that the Anticipated City Sewer Improvement Work and Joint Users’ Sewer Improvement Work are adjacent and require interconnection and cooperation and that, should the FDEM Grant Funds not be available to the City, the City is under no obligation to complete the Anticipated City Sewer Improvement Work, and in accordance with Paragraph 20 below, the scope of the Anticipated City Improvement Work may change. The parties also acknowledge and agree that the Joint Users are entering into this Agreement for the sole purpose of developing their Projects, and the issuance of the building permits for the Projects shall be a condition precedent for the Joint Users’ obligations under this Agreement, except in the event the building permit(s) is/are not issued due to an act or omission of either or both Joint Users.

(a) The City has reviewed the construction plans for the Joint Users’ 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. The City has issued signed Conditional Sewer Capacity Certification Letters for the proposed Projects to be located on the Joint Users’ Properties, attached hereto as **Exhibit “F”**.

(b) The Joint Users’ Sewer Improvement Work shall be performed pursuant to the Joint Users’ Timeline for Sewer Improvement schedule attached as **Exhibit “G1”**, and the Anticipated City Sewer Improvement Work shall be performed pursuant to the City Timeline for Sewer Improvement schedule attached as **Exhibit “G2”**, and subject to Paragraph 12 herein. The City authorizes the construction of the Joint Users’ Sewer Improvement Work in accordance therewith.

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

(d) The City and the Joint Users agree that no upgrades or modifications to an existing sewer pump station are required for the Joint Users' Properties or for the Projects.

3. Design and Construction Agreements. The Contractors and Sunrise have entered into the Contractor Agreements to perform the Joint Users' Sewer Improvement Work.

(a) Joint Users represent that to the best of Joint Users' respective knowledge the Contractors meet the following criteria: (i) are financially capable of performing the Joint Users' Sewer Improvement Work; (ii) have sufficient equipment, workers, and work experience in performing sewer improvements similar to the Sewer Improvements; (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 Joint Users' Sewer Improvement Work.

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

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

(d) The Contractor Agreements contain a provision requiring the Contractors to provide written notice to the City of any defaults of Sunrise under the terms of the Contractor Agreements, not cured after proper notice. In the event the Contractors declare Sunrise to be in default under the terms of the Contractor Agreements, and Sunrise 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 Sunrise's rights and obligations under the Contractor Agreements. Joint Users shall be jointly and severally responsible for all costs incurred by the City in completing the Joint Users' 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 Joint Users continuing to be jointly and severally responsible for any shortfall costs after the Escrow funds and the contingency funds are exhausted. All monies remaining shall be immediately refunded in accordance with that certain Joint Users' Cost Sharing Agreement, entered into by and between the Joint Users (the "JUCSA").

(e) The Joint Users shall deposit the entire Contract Sum of the Contractor Agreements plus a contingency of 10% of the Contract Sum into escrow (the "**Construction**

Escrow Funds”). The Construction Escrow Funds may be used during the performance of the Joint Users’ Sewer Improvement Work to pay amounts due to the Contractors under the terms of the Contractor Agreements. There shall never be less than the amount necessary to complete performance of the Joint Users’ Sewer Improvement Work plus a contingency of 20% of such amount in the Construction Escrow Funds. At any time, the City may request and Sunrise 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 the Contractors. If, at any time, the City reasonably determines that the Construction Escrow Funds contain less than the amount necessary to complete the performance of the Joint Users’ Sewer Improvement Work plus a contingency of 10% of such amount, Joint Users 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 declare Sunrise to be in default under the terms of either or both Contractor Agreements, and Sunrise fails to remedy the default within the notice and cure period provided in the Contractor Agreements or if either of the Contractors are in default under the terms of either of the Contractor Agreements and the Contractors fail to remedy the default, then the City, in its sole discretion, shall have the right to use the Construction Escrow Funds to complete the Joint Users’ Sewer Improvement Work, as consideration to the City for taking an assignment of Sunrise’s rights and obligations under one or both of the Contractor Agreements, in which case, Sunrise can only be liable for obligations incurred pursuant to the Construction Agreement during such time when Sunrise was a party to 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, Joint Users shall be jointly and severally liable to the City for all damages the City may sustain as result of either a default by Sunrise or by the Contractors under the Contractor Agreements as a result of Sunrise’s or the Contractors’ negligence. It being understood that the use of the Construction Escrow Funds by the City is for the sole purpose of completing the Joint Users’ Sewer Improvement Work, guaranteeing performance and mitigating the City’s risk in the event of a default by Sunrise 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 shall use the Construction Escrow Funds for such purpose.

4. Warranty by Contractors.

(a) Sunrise shall require that the Contractors provide a written warranty in a form attached as **Exhibit “H”** in favor of Sunrise and the City which warrants that the Joint Users’ Sewer Improvement Work to be owned/operated by the City as part of the Joint Users’ Sewer Improvement Work, when complete: (1) shall be fit for its intended purpose and be free from defects in the work performed and materials furnished; (2) shall perform for its intended

purpose; and (3) shall be free from any design defects, errors or omissions. The Contractors' warranty shall be for a period of three (3) years following Acceptance of Sewer Improvement (as defined in Paragraph 16, below) by the City (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 Joint Users' 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 Sunrise and the City the warranty identified in **Exhibit "H"**, attached hereto. As a condition of this Agreement, Sunrise 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 Joint Users' Sewer Improvement Work during the Warranty Period, the warranty as to those items shall continue to remain in effect for additional three (3) years from the date of final repairs and/or replacement has been completed. Simultaneously with the conveyance of the Sewer Improvements constructed by the Joint Users to the City and as condition of Acceptance of Sewer Improvement by the City, Sunrise shall cause MAESTRE to deliver to the City an executed Maintenance Bond utilizing the form attached hereto as **Exhibit "I"**. The Maintenance Bond shall be in the amount of 100% of the construction cost of the Sewer Improvements constructed by the Joint Users and shall guarantee MAESTRE's work for three (3) year Warranty Period.

(c) Joint Users each respectively warrant that upon completion of construction and conveyance of the Sewer Improvements to the City and Acceptance of Sewer Improvement by the City, the City will own such Sewer Improvements free and clear of any construction or other liens.

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's Code. Any inspections by the City shall be for the City's benefit and shall not relieve the Joint Users 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 Joint Users and the Contractors shall not rely on any inspections to relieve themselves of any responsibility for the performance of the Joint Users' Sewer Improvement Work. Furthermore, any inspections by the City shall not relieve the Joint Users or the Contractors of responsibility for the quality and condition of materials and workmanship.

6. Indemnification.

(a) Indemnification by Joint Users. From the date of execution of this Agreement until three (3) years from conveyance of the Sewer Improvement, and to the extent of Joint Users' recoverable maximum insurance limits (inclusive of all insurance under Joint Users' own insurance policies and as an additional insured under the Contractors' insurance policies), Joint Users 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 any one or more of Joint Users' and/or their respective employees, agents, partners or principals, contractors, and/or subcontractors. Joint Users 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. 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 Joint Users 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, Joint Users will reimburse the City at the prevailing market rate for similar legal services. If counsel provided by Joint Users' insurance carrier is deemed acceptable by the City Attorney in the City Attorney's sole discretion, 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 Joint Users' other contractual obligations to the City pursuant to this Agreement or limit Joint Users' liability to the City for breach of contract. If 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 Contractors. Joint Users 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 Joint Users' 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 Joint User Sewer Improvement Work, Sunrise shall cause Maestre to furnish in favor of the City and Sunrise 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 Joint Users' Sewer Improvement Work. The form of the bond is attached hereto as **Exhibit "J"**. 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 Joint Users' Sewer Improvement Work. The City and Sunrise must be listed as Obligees and have the rights to enforce the Payment and Performance Bond. Sunrise 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 Joint Users' Sewer Improvement Work. In addition to the security provided by the Payment and Performance Bond, the Contractors, as provided for in Paragraph 3 of this Agreement, shall provide a warranty for a period of three (3) years following final completion of the Joint Users' Sewer Improvement Work.

8. Insurance. Sunrise shall cause the Contractors to obtain and maintain insurance acceptable to the City and in compliance with the City's requirements for similar work, including but not limited to Commercial General Liability Insurance (including underground, collapse, and explosion coverage), Automobile Liability, Excess or Umbrella Coverage, Pollution liability, Professional Liability Insurance and Worker's Compensation and Employer's Liability. The City and Joint Users shall be named as an additional insured on the Contractors' liability policies which shall be evidenced by endorsements showing such coverage. The insurance coverages and limits shall be not less than that which is contained in **Exhibit "K"** (which are the insurance requirements set forth in the Contractor Agreements) and shall be maintained until expiration and completion of the Contractors' warranty obligations. Sunrise shall require the Contractors to deliver updated Certificates of Insurance to the City evidencing current coverages. Further, the City of Coral Gables and Joint Users shall be named by endorsement as an Additional Insured on

Contractor's Commercial General Liability and excess and umbrella policies through completion of the Contractors' warranty obligations.

9. Connection by Others and Right to Reimbursement. Parties other than the Joint Users, who own property, other than the Joint Users' Properties, within the City of Coral Gables Sanitary Sewer Basin City 2 area as depicted on Exhibit "B" and which connect to the Sewer Improvements constructed by the Joint Users (the "**Subsequent Connectors**") shall reimburse Joint Users for their share of the cost of the Sewer Improvements pursuant to Section 78-103 of the City's Code. A copy of the current version of the Code is attached as Exhibit "M". In the event of any inconsistency between Section 78-103 of the Code and this Agreement, the terms of this Sewer Improvement Agreement shall govern.

(a) The City and Joint Users agree that as of the date of execution of this Agreement until sixty (60) days after completion of the Sewer Improvements, Escrow Agent shall be entitled to receive said reimbursement from the City so that Escrow Agent can then distribute the appropriate amount to each Joint User. Thereafter, the City and Joint Users agree that Sunrise shall be entitled to receive said reimbursement pursuant to Section 78-103 of the Code from the City, so that Sunrise can then distribute the appropriate amount to each Joint User. 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(b)(9) of the 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 Joint Users shall be exempt from this charge. Notwithstanding, Joint Users shall not be entitled to reimbursement which exceeds the amounts set forth in Section 78-103(b)(12).

(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's Code. The RAF amounts shall be retained by the City.

(c) The City shall transfer 100% of the Subsequent Connector Charge to the Escrow Agent or Sunrise, 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 Joint Users, with interest, less Joint Users' shares 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. Sunrise 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 City Code

Section 78-103(b)11, to collect and convey the Subsequent Connector Charges to Sunrise. The City will notify Joint Users and Escrow Agent, or Sunrise, as applicable, at the time of application for building permit of any other project proposing to connect to the Sewer Improvements. The City shall transfer the Subsequent Connector Charge to Escrow Agent or Sunrise, as applicable. The Joint Users agree that the City's only obligation is to transfer the Subsequent Connector Charge to Escrow Agent or Sunrise, as applicable, and Escrow Agent or Sunrise, as applicable, shall be solely liable for distribution to the Joint Users.

10. Conveyance of Sewer Improvement to the City. Within sixty (60) days of completion of construction of the Joint Users' Sewer Improvement Work in accordance with all applicable laws, codes and ordinances and the Contractor Agreements, Sunrise shall convey the Sewer Improvements to the City in accordance with and subject to the requirements set forth in Paragraph 16 of this Agreement. Upon conveyance of the Sewer Improvements to the City, the City shall be responsible for maintenance of the Sewer Improvements.

11. Certificates of Occupancy. Sunrise acknowledges and agrees that Temporary Certificates of Occupancy (TCOs) shall not be issued for proposed projects within the Sanitary Sewer Basin City 2, serviced by the Sewer Improvements, until such time as the Sewer Improvements are substantially completed, as evidenced by an approved final City inspection. Additionally, a final Certificate of Occupancy for such projects within the Sanitary Sewer Basin City 2, 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. The City shall have no liability or responsibility for any reasonable delays in the issuance of a TCO or final Certificate of Occupancy for the Projects or other delays to Sunrise or Alliance or Projects, in any way related to or arising out of the Anticipated City Sewer Improvement Work or this Agreement. Additionally, in accordance with Paragraph 20 below, if the City does not perform or complete the Anticipated City Sewer Improvement Work and Sunrise or the Joint Users conduct the Anticipated City Sewer Improvement Work, this Agreement shall be amended so as to include an increased scope of work as part of what is to be reimbursed by Subsequent Connectors.

12. Timeline for Sewer Improvements. It is anticipated that the Joint Users' Sewer Improvement Work and the Anticipated City Sewer Improvement Work will be completed according to the general timeline attached as **Exhibit "G1"** and **Exhibit "G2"**, respectively, 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 Sunrise. At least two weeks before the commencement of any construction of the Joint Users' Sewer Improvement Work, Sunrise shall deliver to the City a detailed, critical path schedule for the performance of the Joint Users' Sewer Improvement Work by Maestre for review by the City ("**Sewer Improvement Construction Schedule**"). In the event that Maestre fails to perform the Joint Users' Sewer Improvement Work in accordance with the Sewer Improvement Construction Schedule, subject to extensions of time authorized by the Maestre Agreement or events of Force Majeure, City may declare a default by Sunrise 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 Sunrise.

13. Not used.

14. 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 Improvements as well as to develop the Joint Users' Properties as proposed by the Joint Users and shall, to the extent possible, request expedited review of plans from all other government entities involved in the review of said plans.

15. 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 Sunrise has no responsibility to ensure that the City is in compliance with all applicable law in the City's performance of its official functions.

16. Conveyance Documents. Following completion of the Joint Users' Sewer Improvement Work, Joint Users shall cause the Contractors, as applicable, to provide the City with (i) a bill of sale for the Sewer Improvements, (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 Maintenance Bond 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 Joint Users' 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's Code; as well as (vii) any other instrument which may reasonably be 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 Joint Users' Sewer Improvement Work shall constitute final acceptance by the City of the Sewer Improvements constructed by Joint Users ("**Acceptance of Sewer Improvement**") subject to the warranties provided for in this Agreement. Acceptance of Sewer Improvements shall not be unreasonably withheld. However, Acceptance of Sewer Improvements shall not constitute an acceptance of any defect or deficiency in the Joint Users' Sewer Improvement Work.

17. 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 Sunrise and an increased timeframe for the Sewer Improvements to be completed. Such increased costs or timeframe shall not constitute a default of this Agreement.

18. Force Majeure. Should either the City, the Contractors, or Joint Users 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.

19. Default.

(a) The City shall have no liability, obligation, or responsibility to the Contractors for payment for any Joint Users' Sewer Improvement Work or performance of any of the obligations under the Contractor Agreements. Joint Users 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 Joint Users' Sewer Improvement Work. Further, the City shall have no obligation to Joint Users if Sunrise fails to pay amounts due to the Contractors. Failure of Sunrise or Alliance to contribute its financial obligations to the Sewer Improvements shall not be a basis for delays in completing the Joint Users' Sewer Improvement Work or the basis for any relief by City. Sunrise's failure to timely pay the Contractors' undisputed amounts in accordance with the Contractor Agreements, after proper notice and opportunity to cure shall constitute a default of this Agreement.

(b) Proper Notice and Right to Cure. Joint Users, upon receipt of written notice of default by 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.

(c) It shall not be considered a default by the City in the event City does not perform due to lack of FDEM Grant Funds or otherwise, or does not timely perform the Anticipated City Sewer Improvement Work. Joint Users acknowledge that City is relying on the FDEM Grant Funds to perform the Anticipated City Sewer Improvement Work and the timing and amount of such FDEM Grant Funds is not now known by the City. Moreover, the City is unsure of the exact scope of work which can be included as part of the Anticipated City Sewer Improvement Work, which must be funded through the FDEM Grant Funds. Thus, the City shall not be considered in default if the City does not timely complete the Anticipated City Sewer Improvement Work, does not design or construct all or a portion of the Anticipated City Sewer Improvement Work, modifies the scope of the Anticipated City Sewer Improvement Work, or does not otherwise perform the Anticipated City Sewer Improvement Work, due to lack of funding of the FDEM Grant Funds or for any reason whatsoever. However, in accordance with

Paragraph 20 below, if the City does not complete the Anticipated City Sewer Improvement Work and Sunrise or the Joint Users conduct the Anticipated City Sewer Improvement Work, this Agreement shall be amended so as to include an increased scope of work as part of what is to be reimbursed by Subsequent Connectors.

20. Modification to Scope of Anticipated City Sewer Improvement Work. In the event the Anticipated City Sewer Improvement Work has not commenced by July 1, 2023, with active fieldwork or is not completed in whole or in part by the City due to the FDEM Grant Funds or otherwise, Joint Users or Sunrise shall complete the Anticipated City Sewer Improvement Work not performed by the City and the Joint Users' Sewer Improvement Work under this Agreement (collectively, the "**Sewer Improvement Work**") and Sunrise and the Joint Users shall pay all costs and expenses for design and construction of the Sewer Improvement Work. All Sewer Improvement Work performed by Sunrise shall be considered Joint Users' Sewer Improvement Work, subject to all terms and conditions of this Agreement related to Joint Users' Sewer Improvement Work including, but not limited to the right to reimbursement by Subsequent Connectors set forth in Paragraph 9. Within five (5) days of the request of one party, the other party shall provide and execute any further documentation that may be required to reflect such agreement including but not limited to modification to the bonds required by this Agreement to ensure such bonds cover all obligations related to Joint Users' Sewer Improvement Work.

21. Joint and Several Liability. Joint Users have authorized Sunrise to act on their behalf with respect to the construction of the Sewer Improvement as outlined herein and in the agreement with Maestre. The City shall be entitled to rely upon the actions and statements of Sunrise as binding upon each and all Joint Users. Joint Users are each jointly and severally liable to the City for the obligations of Sunrise and Joint Users and under this Agreement.

22. 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.

23. 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.

24. 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.

25. 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 preceding sentence. Any party may designate a

change of address by written notice to the other party, received by such other party at least ten days before the change of address is to become effective.

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

To: Alliance Starlight I, LLC
340 Minorca Avenue, Suite 9
Coral Gables, Florida 33134
Attn: Tito Trapaga

cc: Aspuru Caraballo Faria P.A.
135 San Lorenzo Ave | Suite 760
Coral Gables, Florida | 33146
Attn: Leonardo J. Caraballo

cc: Gunster, Yoakley & Stewart, P.A.
Brickell World Plaza, Suite 3500
600 Brickell Avenue
Miami, Florida 33131
Attn: Mario Garcia-Serra, Esq.

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

To: Sunrise of Coral Gables PropCo, LLC
7902 Westpark Drive
McLean, VA 22102
Attn: Andy Coelho

cc: Gunster, Yoakley & Stewart, P.A.
Brickell World Plaza, Suite 3500
600 Brickell Avenue
Miami, Florida 33131
Attn: Mario Garcia-Serra, Esq.

and: Any Mortgagee of the Owner whose address has been provided to the City in writing and, in the case of a Notice of Default sent to the Owner, a copy shall be sent to any Lender as registered with the City as required hereunder. NOTICE OF DEFAULT TO THE OWNER IS NOT EFFECTIVE UNTIL A NOTICE IS SENT TO ALL LENDER(S) SO REGISTERED WITH THE CITY.

(iii) 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:

CA
Print Name: Christian Amaya

Margarita F. de Tripego
Print Name: Margarita F. Tripego

Alliance Starlight I, LLC, a Florida limited liability company

By: [Signature]
Name: ROBERTO TRAPAGA CATALA
Title: MANAGER

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 21st day of September, 2022, by **Alliance Starlight I, LLC**, the Manager of Alliance Starlight I, LLC, a Roberto Trapaga Catala, on behalf of the corporation/limited liability company/partnership, who is personally known to me or who has produced Puerto Rico Driver's License as identification.



CA
Notary Public – State of Florida
Christian Amaya

Notary Seal: _____

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

WITNESS:

Veronika Ruf

Sunrise of Coral Gables PropCo, LLC, a Delaware limited liability company

Print Name: VERONIKA RUF

Jewel Minor
Print Name: Jewel Minor

By: Andrew Coelho
Name: Andrew Coelho
Title: VP

STATE OF Virginia

COUNTY OF Fairfax

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 15th day of September, 2022, by **Sunrise of Coral Gables PropCo, LLC**, the VP of Sunrise of Coral Gables PropCo, LLC, a Andrew Coelho, on behalf of the corporation/limited liability company/partnership, who is personally known to me or who has produced _____ as identification.

Lindsey Bush
Notary Public - State of Florida

Notary Seal: _____



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

WITNESS:

[Signature]
Print Name: Imely Sanvres Chiril
Ausan DaCosta
Print Name: SUSAN DACOSTA

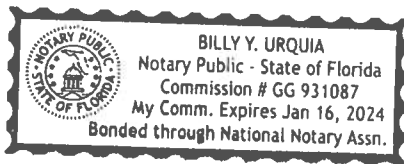
City of Coral Gables, a municipal corporation of the State of Florida

By: [Signature]
Name: Peter [Signature]
Title: City Manager

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 21st day of September, 2022, by City of Coral Gables, the City Manager of the corporation, a Municipality on behalf of the corporation/limited liability company/partnership, who is personally known to me or who has produced _____ as identification.



[Signature]
Notary Public - State of Florida

Notary Seal: _____

Approved as to form and legal sufficiency:

[Signature]
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:

[Signature]
Print Name: Maria V. Lindner-Lopez
[Signature]
Print Name: Maria E. Reyes

Gunster, Yoakley & Stewart, P.A., a Florida professional association

By: *[Signature]*
Name: Mario Garcia-Seiva
Title: Shareholder

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 21st day of September, 2022, by **Gunster, Yoakley & Stewart, P.A.**, the Shareholder of Gunster, Yoakley & Stewart, P.A., a FL professional association, on behalf of the corporation/limited liability company/partnership, who is personally known to me or who has produced _____ as identification.

Mario Garcia-Seiva

[Signature]
Notary Public – State of Florida

Notary Seal: _____

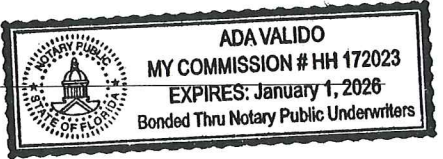


EXHIBIT "A"

JOINT USERS' PROPERTIES

ALLIANCE:

LEGAL DESCRIPTION OF ALLIANCE'S PROPERTY

Lots 5 to 12 in Block 12 of the "REVISED PLAT OF CORAL GABLES DOUGLAS SECTION" according to the plat thereof, as recorded in Plat Book 25 at Page 69 of the Public Records of Miami-Dade County, Florida.

SUNRISE:

LEGAL DESCRIPTION OF SUNRISE'S PROPERTY

Lots 8, 9, 10, and 11, in Block 17 of the "REVISED PLAT OF CORAL GABLES DOUGLAS SECTION", according to the Plat thereof, as recorded in Plat Book 25, at Page 69, of the Public Records of Miami-Dade County, Florida.

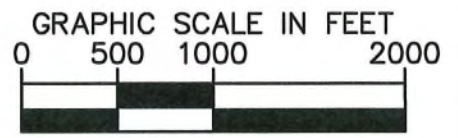
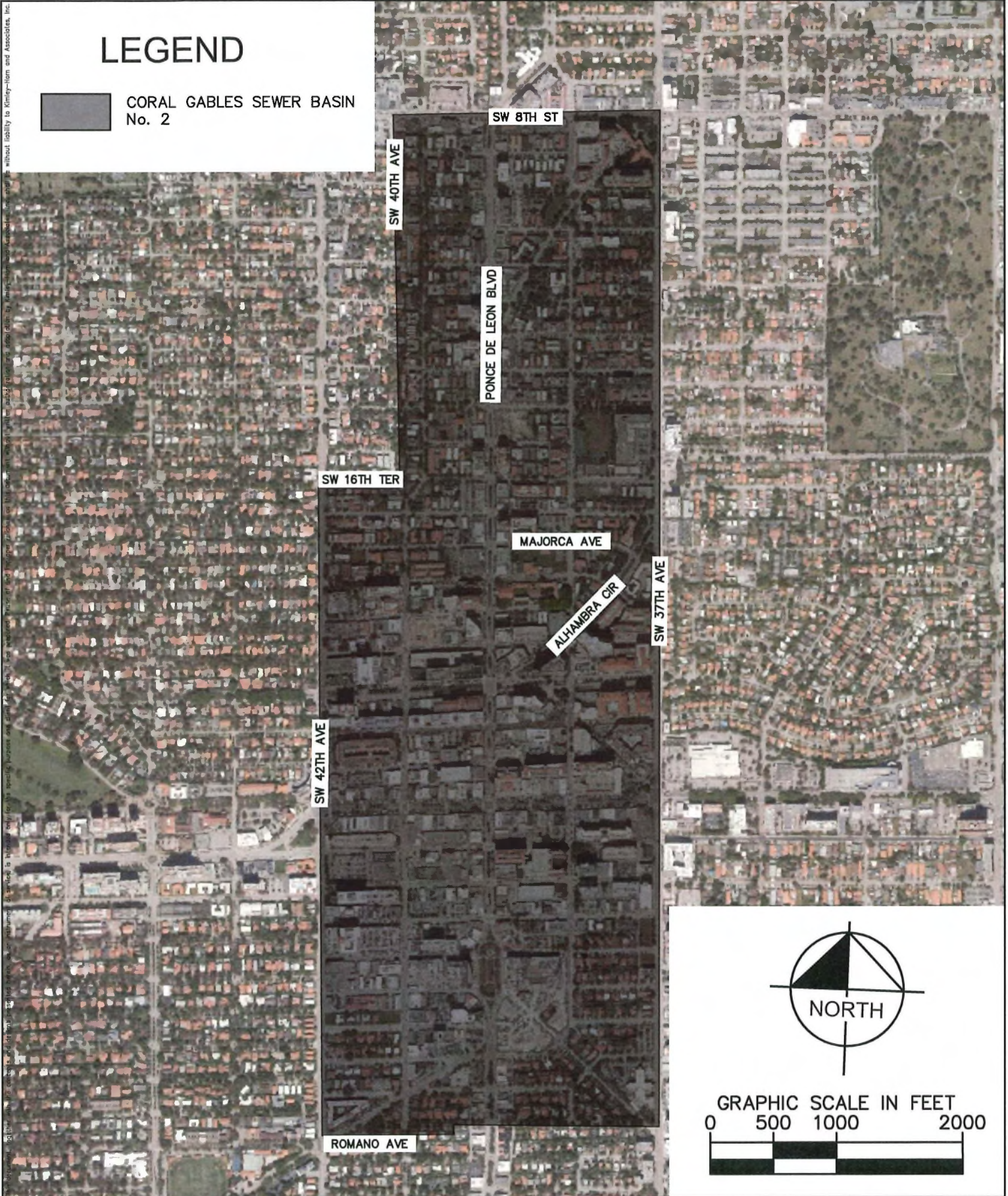
EXHIBIT "B"

**CITY OF CORAL GABLES
SANITARY SEWER BASIN CITY 2 AREA MAP**

LEGEND



CORAL GABLES SEWER BASIN
No. 2



Plotted By: Rijo, Jairo
 Sheet Set: Kha
 Layout: Layout1
 June 28, 2022
 08:17:54am
 K:\MIB_Civil\042089001 - Regency on the Park\KHA_admin\ByOthers\Hazen\Basin AND BENEFIT AREA.dwg
 without liability to Kimley-Horn and Associates, Inc.

Kimley»Horn

© 2019 KIMLEY-HORN AND ASSOCIATES, INC.
 355 ALHAMBRA CIRCLE, SUITE 1400, CORAL GABLES, FL 33134
 PHONE: 305-673-2025
 WWW.KIMLEY-HORN.COM REGISTRY 35106

SEWER IMPROVEMENTS

SANITARY SEWER BASIN CITY 2
 AREA MAP

EXHIBIT




B

EXHIBIT "C"

JOINT USERS' SEWER IMPROVEMENT WORK

Plotted By: Hevia, Fernando Sheet Set: Kha Layout: EXHIBIT C September 06, 2022 03:30:55pm K:\MIB_Civil\043069001 - Regency on the Park\KHA_admin\ByOthers\Hazen\CITY LED SEWER IMPROVEMENTS.dwg
 This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

LEGEND

-  CORAL GABLES SEWER BASIN No. 2
-  DEVELOPER-PERFORMED SEWER PIPE LINING
-  DEVELOPER-PERFORMED SEWER PIPE REPLACEMENT/ UPSIZING



CITY-PERFORMED SEWER UPGRADES - PIPE UPSIZING FROM PONCE DE LEON TO ALHAMBRA PLAZA (EXISTING LIFT STATION) UNDER GRANT FUNDING

OF THE ENTIRE SEGMENT SHOWN IN PINK, THE GREEN LINE IS THE PORTION THEREOF REPRESENTING SEWER UPGRADES TO BE PERFORMED BY CITY UNDER GRANT FUNDING (NOT REQUIRED TO SERVE JOINT-USERS)

OF THE ENTIRE SEGMENT SHOWN IN PINK, THE YELLOW LINE IS THE PORTION THEREOF REPRESENTING SEWER UPGRADES TO BE PERFORMED BY JOINT-USERS ONLY IF CITY GRANT FUNDS ARE NOT RECEIVED PER SCHEDULE. (FROM ALHAMBRA CIRCLE TO ALHAMBRA PLAZA (EXISTING LIFT STATION)

JOINT USERS-PERFORMED SEWER PIPE LINING FROM MENORES AVE NORTH TO CALABRIA AVE AND WEST ON CALABRIA AVE (APPROX. 1,050 LF OF 8" DIA. AND 1,114 LF OF 10" DIA.)

JOINT USERS-PERFORMED SEWER PIPE UPSIZING FROM MAJORCA AVE NORTH TO MENORES AVE (REPLACE APPROX. 1,090 LF OF 10" DIA. WITH 12" DIA.)

NO SEWER UPGRADES REQUIRED FROM ALHAMBRA CIRCLE TO MAJORCA AVE

Kimley»Horn
 © 2019 KIMLEY-HORN AND ASSOCIATES, INC.
 2 ALHAMBRA PLAZA, SUITE 500, CORAL GABLES, FL 33134
 PHONE: 305-673-2025
 WWW.KIMLEY-HORN.COM REGISTRY 35106

SEWER IMPROVEMENTS

JOINT USERS' SEWER IMPROVEMENT WORK

EXHIBIT




C

EXHIBIT "D"

ANTICIPATED CITY SEWER IMPROVEMENT WORK

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 This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

LEGEND

-  CORAL GABLES SEWER BASIN No. 2
-  DEVELOPER-PERFORMED SEWER PIPE LINING
-  DEVELOPER-PERFORMED SEWER PIPE REPLACEMENT/ UPSIZING



CITY-PERFORMED SEWER UPGRADES - PIPE UPSIZING FROM PONCE DE LEON TO ALHAMBRA PLAZA (EXISTING LIFT STATION) UNDER GRANT FUNDING

OF THE ENTIRE SEGMENT SHOWN IN PINK, THE GREEN LINE IS THE PORTION THEREOF REPRESENTING SEWER UPGRADES TO BE PERFORMED BY CITY UNDER GRANT FUNDING (NOT REQUIRED TO SERVE JOINT-USERS)

OF THE ENTIRE SEGMENT SHOWN IN PINK, THE YELLOW LINE IS THE PORTION THEREOF REPRESENTING SEWER UPGRADES TO BE PERFORMED BY JOINT-USERS ONLY IF CITY GRANT FUNDS ARE NOT RECEIVED PER SCHEDULE. (FROM ALHAMBRA CIRCLE TO ALHAMBRA PLAZA (EXISTING LIFT STATION)

JOINT USERS-PERFORMED SEWER PIPE LINING FROM MENORES AVE NORTH TO CALABRIA AVE AND WEST ON CALABRIA AVE (APPROX. 1,050 LF OF 8" DIA. AND 1,114 LF OF 10" DIA.)

JOINT USERS-PERFORMED SEWER PIPE UPSIZING FROM MAJORCA AVE NORTH TO MENORES AVE (REPLACE APPROX. 1,090 LF OF 10" DIA. WITH 12" DIA.)

NO SEWER UPGRADES REQUIRED FROM ALHAMBRA CIRCLE TO MAJORCA AVE

Kimley»Horn
 © 2019 KIMLEY-HORN AND ASSOCIATES, INC.
 2 ALHAMBRA PLAZA, SUITE 500, CORAL GABLES, FL 33134
 PHONE: 305-673-2025
 WWW.KIMLEY-HORN.COM REGISTRY 35106

SEWER IMPROVEMENTS
ANTICIPATED CITY SEWER IMPROVEMENT WORK

EXHIBIT
D

EXHIBIT "E1"

KIMLEY-HORN CONTRACTOR AGREEMENT

Kimley»»Horn

April 6, 2020

Mr. Henry Paper
Alliance Starlight I, LLC
340 Minorca Ave, Suite 9
Coral Gables, FL 33134

Re: Civil Engineering Design, Permitting, and Construction Phase Services for Sewer Service Upgrade in City of Coral Gables

Dear Mr. Paper:

Kimley Horn and Associates, Inc., (hereinafter referred to as "Consultant" or "We") is pleased to submit this proposal for professional consulting services to Alliance Starlight I, LLC, (hereinafter referred to as "the Client") to provide professional civil engineering services associated with the above referenced project located along Galiano Street in the City of Coral Gables.

PROJECT UNDERSTANDING

Our proposed scope of services and fee proposal is based on the Client's request for Civil Engineering Design, Permitting, and Construction Phase Services for the Project, located in Coral Gables, Florida. The purpose of the Project is to design, permit, and provide construction phase services for public sanitary sewer main reconstruction and rehabilitation as outlined below and shown in the attached Exhibit.

Scope of Proposed Sewer Upgrades:

- Line 1,050 LF of Exist. 8" VCP
- Line 1,114 LF of Exist. 10" VCP
- Replace 1,090 LF of Exist. 10" VCP with 12"

SCOPE OF SERVICES

Kimley-Horn will provide the services specifically set forth below.

TASK 1 – COORINATION AND DATA COLLECTION

Under this task, Kimley-Horn will:

- Meet with the City's Staff and the property owner's staff to review available information on the existing public sewer systems as may be reasonably needed to gather information on the City's existing facilities and the required scope of work;
- Coordinate with City staff to obtain addition available records regarding existing conditions;
- Contact Sunshine State One Call of Florida (SSOCOF) and request a design ticket to determine the utility owners who may have facilities within the project area;
- Contact utility owners who are listed in the SSOCOF design ticket to request facility as-built drawings/records available;
- Coordinate with the Client's surveyor to obtain a topographic survey for the Project for use in design;

- If necessary, coordinate with the Client's Subsurface Utility Engineering (SUE) consultant to obtain utility designations, test hole results, etc. for the Project for use in design;
- Coordinate with the Client's geotechnical engineer to obtain a geotechnical report for the Project.

TASK 2 – CONSTRUCTION DOCUMENTS

Under this task, Kimley-Horn shall:

- Prepare Construction Documents for the Project showing the proposed sanitary sewer extension, required easements, profile of proposed sanitary main, and other pertinent information for use in the permitting and construction of the sewer main;
- Provide the draft Construction Documents to the Client and address up to two (2) rounds (or as may be otherwise reasonably required) of consolidated comments on the plans;
- Based upon feedback received, prepare final design plans for the Project for transmittal to regulatory agencies.

DELIVERABLES:

- Draft Construction Documents in electronic (.pdf) format for review
- Final Construction Documents in electronic (.pdf) and hard copy signed and sealed for regulatory reviews.

TASK 3 – REGULATORY ASSISTANCE

Under this task, Kimley-Horn shall prepare permit applications and supporting documents and submit for permit to all required regulatory agencies for the reviews below. Any revisions to the construction documents after submission to regulatory agencies that are the result of Client requests will be addressed as additional services. Regulatory submissions shall be to the following authorities:

- City of Coral Gables Public Works Department
 - Plan Review for Utility Approval
- City of Coral Gables Public Works Department
 - Utilities in Right-of-Way Dry Run
- Miami-Dade Division of Environmental and Regulatory Compliance (DERM)
 - Sanitary Sewer Environmental Permit (FDEP Permit)

HR Kimley-Horn will address up to two (2) rounds of comments from the regulatory agencies above after the initial submittal. After Consultant has received comments from the above agencies the Construction Documents will be updated to reflect any required changes and provided to the Client for construction.

TASK 4 – LIMITED CONSTRUCTION PHASE SERVICES

Under this task, Kimley-Horn shall:

- Attend one (1) pre-construction conference between the City, Client, and Contractor prior to mobilization of Contractor;
- Review up to three (3) consolidated submittal packages (shop drawings and/or product specifications) from the Contractor;
- Perform up to twenty (20) site visits, or otherwise as may be reasonably required during construction to observe and document work in progress;
- Respond to up to ten (10) requests for information ("RFIs") from Contractor during construction;
- Review as-built survey prepared by Contractor upon substantial completion of work;
- Review additional closeout documentation provided by the Contractor at the end of work (Release of Lien, Warranty Letter, etc.).

The Consultant shall not be responsible for the testing of materials during the Project, this effort will be completed by a firm hired by the Contractor. Kimley-Horn will coordinate with this testing firm for close-out documents required to verify substantial completion.

Consultant may require special inspections or tests of Contractor's work as Consultant deems appropriate and may receive and review certificates of inspections within Consultant's area of responsibility or of tests and approvals required by laws and regulations or the Contract Documents. Consultant's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Consultant shall be entitled to rely on the results of such tests and the facts being certified.

The Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to advise Client as to its observations so as to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of _____ ^{HR} contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and for its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents not attributable to acts or omissions of either; and that the Client and the Consultant shall be made additional insurers under the contractor's general liability insurance policy.

ADDITIONAL SERVICES

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates.

RESPONSIBILITIES OF CLIENT

In addition to other responsibilities set out in this Agreement, the Client shall:

- Respond in a timely manner to all requests for information from Consultant
- Provide all required information related to the Project requested by the Consultant, including, but not limited to:
 - A topographic survey of the subject property prepared, signed and sealed by a Florida licensed surveyor in hard copy and electronic AutoCAD format.
 - Geotechnical Engineering Report(s) as requested by Consultant, prepared by a Florida licensed engineer

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives.

SCHEDULE

We will provide our services as expeditiously as practicable with the goal of meeting the mutually agreed-upon schedule.

FEE AND EXPENSES

Kimley-Horn will perform the services in Tasks 1, 2, & 3 for the lump sum labor fees below. Individual task amounts are informational only. In addition to the lump sum labor fee, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at cost. All permitting, application, and similar project fees will be paid directly by the Client or billed as reimbursable expenses.

LUMP SUM		
<u>Task</u>	<u>Description</u>	<u>Lump Sum Fees</u>
01	Coordination and Data Collection	\$ 6,500
02	Construction Documents	\$49,000
03	Regulatory Assistance	\$12,500

Kimley-Horn will perform the services in Task 4 on a labor fee plus expense basis. Kimley-Horn will not exceed these budgeted amounts without authorization from the Client. Labor fee will be billed on an hourly basis according to the attached rate schedule, which is subject to annual adjustment.

HOURLY NOT TO EXCEED SERVICES		
<u>Task</u>	<u>Description</u>	<u>Hourly "Not to Exceed" Fees</u>
04	Limited Construction Phase Services	\$18,000

Direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at cost. All permitting, application, and similar project fees will be paid directly by the Client or billed as reimbursable expenses. Any fee projections in this Agreement are for general budgeting purposes only. Actual fees may be less or more than the projections. Payment will be due within 30 days of your receipt of the invoice. Fees are payable and monthly billing based

HG
4/20/20

upon the percentage of services completed on lump sum elements and for the actual amount of service performed for hourly rate elements. Billing is due and payable within 30 days from date of invoice.

CLOSURE

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to Alliance Starlight I, LLC.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

- ✓ Please email all invoices to M E benlopeza@Associates.com
- ✓ Please copy Hency + PAPER @ Yahoo.com

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute both copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. We will commence services only after we have received a fully-executed agreement and retainer in the amount of \$10,000. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

To ensure proper set up of your projects so that we can get started, please complete and return with the signed copy of this Agreement the attached Request for Information. Failure to supply this information could result in delay in starting work on your project.

We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.



Barton J. Fye, PE, ENV SP
Project Manager

Attachment – Standard Provisions

WR
4/20/20

ALLIANCE STARLIGHT I, LLC
A Limited Liability Company

By: Henry Lopez

4/20/20
(Date)

Henry Lopez
(Print or Type Name)

Title: Authorized Representative
(Member or Manager, as authorized)

hlopez11c@gmail.com
(Email Address)

, Witness
(Print or Type Name)

Request for Information

Please return this information with your signed contract; failure to provide this information could result in delay in starting your project

Client Identification

Full, Legal Name of Client	Alliance Starlight I LLC		
Mailing Address for Invoices	340 Minorca Ave, Ste 9, Coral Gables, FL		
Contact for Billing Inquiries	M. Lopez		
Contact's Phone and e-mail	305-445-1030		
Client is (check one)	<input checked="" type="checkbox"/> Owner	<input type="checkbox"/> Agent for Owner	<input type="checkbox"/> Unrelated to Owner

Property Identification

	Parcel 1	Parcel 2	Parcel 3	Parcel 4
Street Address				
County in which Property is Located	ON File			
Tax Assessor's Number(s)				

Property Owner Identification

	Owner 1	Owner 2	Owner 3	Owner 4
Owner(s) Name				
Owner(s) Mailing Address	ON File			
Owner's Phone No.				
Owner of Which Parcel #?				

Project Funding Identification – List Funding Sources for the Project

N/A

Attach additional sheets if there are more than 4 parcels or more than 4 owners

HS
4/20/20

KIMLEY-HORN AND ASSOCIATES, INC.

STANDARD PROVISIONS

(1) **Consultant's Scope of Services and Additional Services.** The Consultant's undertaking to perform professional services extends only to the services specifically described in this Agreement. However, if requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. ~~Other direct expenses will be billed at 1.15 times cost.~~

(2) **Client's Responsibilities.** In addition to other responsibilities described herein or imposed by law, the Client shall:

(a) Designate in writing a person to act as its representative with respect to this Agreement, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.

(b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project including all numerical criteria that are to be met and all standards of development, design, or construction.

(c) Provide to the Consultant all previous studies, plans, or other documents pertaining to the project and all new data reasonably necessary in the Consultant's opinion, such as site survey and engineering data, environmental impact assessments or statements, upon all of which the Consultant may rely.

(d) Arrange for access to the site and other private or public property as required for the Consultant to provide its services.

(e) Review all documents or oral reports presented by the Consultant and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Consultant.

(f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary for completion of the Consultant's services.

(g) Cause to be provided such independent accounting, legal, insurance, cost estimating and overall feasibility services as the Client may require.

(h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the scope, timing, or payment of the Consultant's services or any defect or noncompliance in any aspect of the project.

(i) Bear all costs incidental to the responsibilities of the Client.

(3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work timely after receipt of a properly executed copy of this Agreement and any required retainer amount. This Agreement is made in anticipation of conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months (cumulatively), Consultant's compensation shall be renegotiated.

(4) **Method of Payment.** Compensation shall be paid to the Consultant in accordance with the following provisions:

(a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant for the duration of the project and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due to the Consultant under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid in full and may commence proceedings, including filing liens, to secure its right to payment under this Agreement.

(b) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.

(c) If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due within 25 days of receipt.

(d) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(5) **Use of Documents.** All documents, including but not limited to drawings, specifications, reports, and data or programs stored electronically, prepared by the Consultant are related exclusively to the services described in this Agreement, and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use, partial use or reuse by the Client or others on extensions of this project or on any other project. Any modifications made by the Client to any of the Consultant's documents, or any use, partial use or reuse of the documents without written authorization or adaptation by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from

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all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code developed in the development of application code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern. Because data stored in electronic media format can deteriorate or be modified without the Consultant's authorization, the Client has 60 days to perform acceptance tests, after which it shall be deemed to have accepted the data.

(6) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(7) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, or upon thirty days' written notice for the convenience of the terminating party. If any change occurs in the ownership of the Client, the Consultant shall have the right to immediately terminate this Agreement. In the event of any termination, the Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination. If the Consultant's compensation is a fixed fee, the amount payable for services will be a proportional amount of the total fee based on the ratio of the amount of the services performed, as reasonably determined by the Consultant, to the total amount of services which were to have been performed.

(8) **Insurance.** The Consultant carries Workers' Compensation insurance, professional liability insurance in the amount of \$2,000,000 per claim, and general liability insurance. If the Client directs the Consultant to obtain increased insurance coverage, the Consultant will take out such additional insurance, if obtainable, at the Client's expense.

(9) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's undertaking herein or its performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent of the law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the services under this Agreement from any cause or causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or ~~\$50,000~~, whichever is greater. Higher limits of liability may be negotiated for additional fee. Under no circumstances shall the Consultant be liable for extra costs or other consequences due to changed conditions, or for costs related to the failure of contractors to perform work in accordance with the plans and specifications. This Section 10 is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section 10 shall require the Client to indemnify the Consultant. *\$300,000 HK

(11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.

(12) **Certifications.** The Consultant shall not be required to execute certifications or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

(13) **Dispute Resolution.** All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association as a condition precedent to litigation.

(14) **Hazardous Substances and Conditions.** In no event shall Consultant be a custodian, transporter, handler,

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arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to professional analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant shall notify the Client of hazardous substances or conditions not contemplated in the scope of services of which the Consultant actually becomes aware. Upon such notice by the Consultant, the Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

(15) Construction Phase Services.

(a) If the Consultant's services include the preparation of documents to be used for construction and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

(b) If the Consultant provides construction phase services, the Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Consultant is not responsible for any duties assigned to the design professional in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and for its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

(16) No Third-Party Beneficiaries; Assignment and Subcontracting. This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

(17) Confidentiality. The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

(18) Miscellaneous Provisions. This Agreement is to be governed by the law of the State of Florida. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Provided, however, that any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision.

(19) PURSUANT TO FS 558.0035, EMPLOYEES OF CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE UNDER THIS AGREEMENT.

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EXHIBIT "E2"

MAESTRE CONTRACTOR AGREEMENT

AIA[®] Document A104[™] – 2017

Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the 12th day of « July » in the year « 2022 »
(In words, indicate day, month and year.)

BETWEEN the Owner / Developer:
(Name, legal status, address and other information)

Sunrise Coral Gables PropCo, LLC
Sunrise Senior Living
7902 Westpark Drive
McLean, VA 22102

Sunrise Development, Inc.
7902 Westpark Drive
McLean, VA 22102
Sunrise Development Inc., and its parent, affiliates, subsidiaries, officers, and directors, and its parent's officers and directors shall be referred to as "Sunrise"

and the Contractor:
(Name, legal status, address and other information)

Maestre Construction Inc.
610 West 53rd Street
Hialeah, Florida 33012

for the following Project:
(Name, location and detailed description)

Regency on the Park – Sewer Extension
Calabria Avenue to Galiano Street, along Galiano Street to Majorca Avenue

The Architect:
(Name, legal status, address and other information)

Kimley Horn and Associates Inc.
355 Alhambra Circle, Suite 1400
Coral Gables, FL 33134

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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TABLE OF ARTICLES

1	THE WORK OF THIS CONTRACT
2	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
3	CONTRACT SUM
4	PAYMENT
5	DISPUTE RESOLUTION
6	ENUMERATION OF CONTRACT DOCUMENTS
7	GENERAL PROVISIONS
8	OWNER
9	CONTRACTOR
10	ARCHITECT
11	SUBCONTRACTORS
12	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
13	CHANGES IN THE WORK
14	TIME
15	PAYMENTS AND COMPLETION
16	PROTECTION OF PERSONS AND PROPERTY
17	INSURANCE
18	CORRECTION OF WORK
19	MISCELLANEOUS PROVISIONS
20	TERMINATION OF THE CONTRACT
21	CLAIMS AND DISPUTES
22	RESOLUTION OF CLAIMS AND DISPUTES

ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. The scope of Work is set forth in the Contractor's Proposal attached hereto. If any part, term or condition of Contractor's Proposal conflicts with any part, term or condition of the Contract Documents, those terms of the Proposal shall control.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be the date set forth in a notice to proceed issued by the Owner.

§ 2.1.1 The Owner, in its sole discretion, may issue a limited notice to proceed for a limited component of the Work. The Commencement Date from which the Contract Time shall be measured shall not be established by a limited notice to proceed. There shall be no additional fee, markups, or General Conditions/Requirements Costs because of or related to the issuance of a limited notice to proceed.

§ 2.2 The Contract Time shall be measured from the date of commencement in the notice to proceed issued by the Owner.

§ 2.3 Substantial Completion

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work not later than Three Hundred Sixty (360) calendar days from the date of commencement of the Work in the notice to proceed issued by the Owner.

§ 2.3.2 Contractor may provide a monthly report to Owner for any calendar days Contractor is claiming it was prevented from performing Work pursuant to force majeure during the preceding month. If the Contractor is delayed at any time in the progress of the repair Work by changes ordered in the Work, wind, storm, fire, material shortages, unavoidable casualties, causes beyond the Contractor's reasonable control, or by any cause, which Owner may determine justifies the delay, the time for completion of all such repair Work shall be extended in writing for such reasonable time as Architect may determine.

§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be a stipulated lump sum.

§ 3.2 The Contract Sum shall be **Nine Hundred Thirty Five Thousand Two Hundred Forty Six (\$935,246.00)**, subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Contract Sum is based upon the alternates, if any, which are described in the Contract Documents and have been accepted by the Owner in writing, and identified in Exhibit 5 :

§ 3.2.2 Unit prices, if any, shall be listed in an exhibit and identify the allowance item and price.

§ 3.2.3 Allowances, if any, shall be included in the Contract Sum and listed in an exhibit and identify the allowance item and price:

§ 3.3 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 3.3, the Contract Time shall be extended appropriately.

§ 3.4 Contractor agrees to purchase all of its materials for the Project within thirty (30) days of the Notice to Proceed ("NTP"), excepting asphalt, and shall submit an Application for Payment to Owner for all such materials within ten (10) days of the NTP. Contractor's asphalt price is based on material prices at the time of bid and if said asphalt prices increase after the bid date, Owner has agreed to pay the difference between the price at bid time and the price at the time of purchase.

§ 3.5 Liquidated damages, if any: The Contractor understands and agrees that time is of the essence in completing the Work required under the Contract Documents, and that the Owner will suffer substantial hardship and incur substantial damages if the Work is not completed on time, or if the Contractor fails to achieve Substantial Completion on or before the scheduled Substantial Completion date set forth above, as such date may be modified under the Contract Documents. The parties agree that such damages are difficult or impossible to determine with certainty, and therefore have in good faith estimated as fair compensation (and not as a penalty) the liquidated damages as set forth below. If the Contractor fails to achieve Substantial Completion on or before the scheduled date of Substantial Completion as set forth above, as such date may be modified in accordance with the Contract Documents, the Contractor shall be liable to the Owner for liquidated damages, and not as a penalty, in accordance with the following schedule. Liquidated Damages shall be assessed at \$1,000.00 per calendar day beyond the Substantial Completion Date. Until substantial completion of the Project is achieved. Owner may deduct liquidated damages due from amount otherwise due to Contractor. Contractor hereby expressly agrees to waive its right to challenge the enforceability of this provision, and agrees that the liquidated damages amounts represent a reasonable measurement of damages, and not as a penalty, that Owner will sustain in the event of late performance.

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

§ 4.1.1 Based upon Applications for Payment submitted to the Owner and Architect by the Contractor and Certificates for Payment issued by the Owner or Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 4.1.3 Provided that an Application for Payment is received by the Owner and Architect not later than the 25th day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 25th day of the following month. If an Application for Payment is received by the Owner and Architect after the date fixed above, payment shall be made by the Owner not later than thirty (30) days after it is received.

§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold retainage from the payment as provided elsewhere in the Contract Documents.

§ 4.2 Final Payment

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided under the Contract Documents, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 a final Certificate for Payment has been issued by the Owner or Architect in accordance with Section 15.7.1;
- .3 the Contractor has fully performed its responsibilities under § 15.7.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than twenty (20) days after the issuance of the Architect's or Owner's issuance of the final Certificate for Payment, which issuance shall not be unreasonably withheld.

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 Dispute Resolution provisions are provided in Article 22.

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Agreement Documents are defined in Article 7 and, except for Modifications issued after execution of this Contract, are enumerated as follows:

§ 6.1.1 The Agreement, AIA A104-2017, as amended.

§ 6.1.2 The Specifications, if any.

§ 6.1.3 The Drawings, if any.

§ 6.1.4 The Addenda, if any.

§ 6.1.5 Other documents, if any, forming part of the Contract Documents are as follows:

EXHIBIT 1: Contractor's Proposal dated February 25, 2022
EXHIBIT 2: Assumptions, Exclusions and Clarifications
EXHIBIT 3: Construction Schedule
EXHIBIT 4a-h: Form of Lien Waivers
EXHIBIT 5: Unit Prices & Alternates
EXHIBIT 6: Allowances
EXHIBIT 7: Not Used
EXHIBIT 8: Hourly Rates
EXHIBIT 9: Construction Budget
EXHIBIT 10: General Conditions and Requirements Cost Breakdown
EXHIBIT 11: Insurance Conditions
EXHIBIT 12: Not Used
EXHIBIT 13: Not Used EXHIBIT 14: Not Used EXHIBIT 15: Not Used

§ 6.2 In the event of any conflict, ambiguity, or inconsistency among any provisions within the Contract Documents, the more stringent or higher quality shall apply.

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, (4) a written order for a minor change in the Work issued by the Owner, or (5) ASI (Architect's Supplemental Instruction). The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Addenda relating to bidding requirements) or geotechnical reports.

§ 7.1.1 By executing the Agreement, the Contractor acknowledges, represents and warrants (i) that the Contract Sum is reasonable compensation for all the Work except as otherwise set forth herein, (ii) that the Contract Time is adequate for the performance of the Work, (iii) that prior to the date of the Agreement, Contractor has become familiar with the Project site as a result thereof, (iv) that the labor and supervision provided to the Project by Contractor and all Subcontractors at any tier will be sufficient to complete the Work within the Contract Time and for the Contract Sum; that includes the Contract Sum and all escalation for costs for labor, material, equipment, tolls, supplies, and services anticipated for the duration of the project as scheduled, except for the asphalt costs as indicated in 3.4 of the Agreement ; and (v) that it has carefully examined the Contract Documents and the Project site, including any existing buildings, and that it has satisfied itself as to the nature, location, character, quality and quantity of the Work required by the Contract Documents, , the labor, materials, equipment, goods, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as the surface conditions and other matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof. The failure of the Contractor to acquaint itself fully with any of the above-described conditions or matters shall not in any way relieve the Contractor from the responsibility for performing the Work in accordance with the Contract Documents and within the Contract Time and the Contract Sum, except for such conditions as are not reasonably discoverable by reasonably diligent inspection

§ 7.2 The Contract

The Contract Documents form the Contract for Construction (hereinafter the “Contract” or “Contract Documents”). The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

§ 7.3 The Work

The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

§ 7.4 [Not Used]

§ 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service

§ 7.5.1 The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective instruments of service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their instruments of service, including copyrights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the instruments of service provided to them, solely and exclusively for execution of the Work.

§ 7.6 [Not Used]

§ 7.7 [Not Used]

§ 7.8 Severability

The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties’ intentions and purposes in executing the Contract.

§ 7.9 Notice

§ 7.9.1 Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by U.S. mail, by FedEx or similar courier. . Notice may also be delivered by electronic mail to the email address of each party’s representative.

§ 7.9.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by FedEx or similar courier providing proof of delivery. Notices of Claims may also be delivered by electronic mail to the email address of each party’s representative.

§ 7.10 Relationship of the Parties

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Owner and Architect and exercise the Contractor’s skill and judgment in furthering the interests of the Owner; The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents and applicable law.

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

§ 8.1.1 The Owner is the person or entity identified as such in the Agreement. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the

Owner's approval or authorization. Except as otherwise provided in the Contract Documents, the Architect does not have such authority to bind the Owner. The term "Owner" means the Owner or the Owner's authorized representative.

§ 8.1.2 The Owner shall furnish site surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall exercise reasonable diligence and verify the information that it receives from Owner but is entitled to rely on the accuracy of information furnished by the Owner directly or through its Architect.

§ 8.1.3 [Not used]

§ 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

§ 8.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by the Contract Documents or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's rights otherwise in this Agreement. The Owner's right to stop the Work shall not relieve Contractor of any of its responsibilities or obligations under or pursuant to the Contract Documents.

§ 8.3 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have against the Contractor, correct such deficiencies at Contractor's cost. In the event that the Owner, in its reasonable discretion, determines that such deficiency is considered a "life safety event," hazard, emergency or for any other reason needs to be corrected immediately, the Owner may correct such deficiency immediately at Contractor's cost, without giving written or verbal notice to the Contractor. In such cases, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the costs of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services, if any, made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner upon demand. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

ARTICLE 9 CONTRACTOR

§ 9.1 Review of Contract Documents and Field Conditions by Contractor

§ 9.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. The Contractor shall immediately report to the Owner and Architect, in writing, any errors, omissions, inconsistencies or problems in the Contract Documents. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

§ 9.1.3 If the Contractor believes that the Contract Documents are not in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall promptly report to the Owner and Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner or Architect may require.

§ 9.1.4 The Contractor shall not proceed with any Work not clearly and consistently defined in the Contract Documents, but shall request additional drawings or instructions from the Architect and Owner. If the Contractor proceeds with such Work without obtaining further drawings or instructions, Contractor shall correct Work incorrectly done at its own expense and waives any rights to recovery.

§ 9.2 Supervision and Construction Procedures

§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

§ 9.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 9.3 Labor and Materials

§ 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Owner and Architect and in accordance with a Modification.

§ 9.4 Warranty

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3.

§ 9.4.1 Contractor shall be responsible for determining that all materials and labor furnished by Contractor or its Subcontractors (of any tier), suppliers or materialmen for the Work reasonably comply with the requirements of the Contract Documents.

§ 9.4.3 If the Contractor proposes to use a material which, while suitable for the intended use, deviates in any way from the detailed requirements of the Contract Documents, Contractor shall inform the Architect and the Owner in writing of the nature of such deviation at the time the material is submitted for approval, and shall request written approval of the deviation from the requirements of the Contract Documents.

§ 9.4.5 Any additional cost, or any loss, impact or damage arising from the substitution of any material or any method by Contractor from those originally specified, and not formally accepted by the Owner and the Architect, shall be borne by the Contractor.

§ 9.4.6 The warranty provided by the Contractor in this Article 9.4 shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law.

§ 9.4.7 The Contractor shall procure and deliver to the Owner and Architect, no later than the date claimed by the Contractor as the date of Substantial Completion of the Work, all special warranties required by the Contract Documents. Delivery by the Contractor shall constitute the Contractor's guarantee to the Owner that the warranty will be performed in accordance with its terms and conditions. All warranties applicable to the Work begin as of the date of Substantial Completion of the Work.

§ 9.4.8 The Contractor agrees to assign to the Owner at the time of Substantial Completion of the Project Work any and all manufacturer's warranties relating to materials and labor used in the Work and, to the extent not otherwise required by the Contract Documents, further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. Such assignment does not relieve the Contractor of its responsibility to correct all work during the warranty period.

§ 9.4.9 The Contractor warrants that all manufacturers' or other warranties on all materials and equipment furnished by the Contractor shall run directly to or be specifically assigned to the Owner on demand or upon final completion of the Project.

§ 9.5 Taxes

The Contractor shall pay sales, consumer, use, and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 9.6 Permits, Fees, Notices, and Compliance with Laws

§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall secure and pay for all trade permits and associated fees.

§ 9.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 9.7 Allowances

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance. Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The Contractor must reconcile all allowances into the Contract Sum via a Change Order within 120 days of receipt of design documents and specification information pertaining to the allowance, and prior to commencing work associated with the allowances. Otherwise, the Contractor shall be responsible for all costs exceeding the allowances.

§ 9.8 Contractor's Construction Schedules

§ 9.8.1 The Contractor shall prepare and include with its proposal or submission to the Owner for approval prior to Contract execution a construction schedule for the entire Project. The construction schedule shall be accepted by the Owner. The Contract Schedule shall not exceed time limits current under the Contract Documents and shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Construction Schedule shall provide for the most expeditious and practicable execution of the Work. The Contractor shall maintain regular

communications with the Owner to confirm that the Construction Schedule accurately reflects the status of the Project.

§ 9.8.2 With each Payment Application, the Contractor shall submit an updated construction schedule to the Owner as necessary.

§ 9.8.3 The Contractor shall furnish sufficient forces, plant and equipment and shall work such hours, including night shifts and lawful overtime operations as may be necessary to ensure the prosecution of the work in accordance with the contract schedule. It shall be the responsibility of the Contractor to maintain its schedule so as not to delay the progress of the Work or the scheduled work of other persons. If Contractor delays the progress of the Work, in order to regain the time lost and to maintain the Contract Schedule, it shall be the responsibility of the Contractor to increase the number of shifts, days of Work, and/or to the extent permitted by law, to institute or increase overtime operations, all without additional cost to the Owner. If, in the opinion of the Owner, it becomes apparent from the updated Contract Schedule, or observation of the Owner or Architect that the Contractor has fallen behind schedule or that Substantial Completion Date, or other critical date previously established may not be met, the Contractor must take such steps as may be necessary to improve its progress, and must submit its plans demonstrating the manner in which the desired rate of progress may be regained.

If the Contractor fails to take appropriate action within seventy-two (72) hours after receiving notice from the Owner, the Owner may, in addition to its other rights and remedies (i) take action to attempt to return the Project to schedule, and (ii) deduct the cost of such actions from the monies due or to become due to the Contractor. The Owner may exercise the rights furnished pursuant to this Article as frequently as the Owner deems necessary to facilitate the Contractor's performance of the Work's compliance to meet the substantial Completion Date, and other critical dates set forth in the Contract Documents or accepted Contract Schedule.

§ 9.8.4 The Contractor shall perform the Work in accordance with the most recent schedule submitted to, and approved by the Owner and Architect.

§ 9.9 Submittals

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Owner and Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Owner and Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 9.9.2.1 Within 2 weeks after being awarded the Contract, Contractor is required to submit for the Owner's and Architect's approval a schedule for the submission of all shop drawings, product data and samples required on the Project.

§ 9.9.2.2 All submissions involving visible components of the Project, including roofing, siding, brick, paints, etc., shall be submitted within 30 days of the execution of the Agreement.

§ 9.9.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. The Owner or Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Owner's or Architect's review of Shop

Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Owner or Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 9.10 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 9.11 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 9.12 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

§ 9.13 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 9.14 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for which Contractor is responsible for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof.

§ 9.15 Indemnification

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Owner's affiliates, Lender, Lender's construction consultant, Architect, consulting engineers, and their respective officers, representatives, agents and employees (the "Indemnified Parties" and each an "Indemnified Party") from and against any and all claims, damages, fines, penalties, losses and expenses, including reasonable attorneys' fees and expert witness fees ("Indemnified Claims" and each an "Indemnified Claim"), arising from the performance of the Work, provided that such Indemnified Claim is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself). Nothing in this Section shall be construed to require the Contractor to indemnify an Indemnified Party (a) for an Indemnified Claim caused by or resulting from that Indemnified Party's own negligence or (b) for an Indemnified Claim resulting in whole or in part from the gross negligence, or willful, wanton, or intentional misconduct of the Indemnified Party or its officers, directors, agents, or employees, or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of a Contractor Party.

§ 9.15.2 In claims against any person or entity indemnified under this § 9.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under § 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 9.15.3 The Contractor's indemnity obligations under this § 9.15 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, or (iii) failure to secure

and pay for permits, fees, approvals, licenses, and inspections as required of Contractor under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

§ 9.15.4 The Contractor shall indemnify and hold harmless all of the Indemnified Parties from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnified Parties in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Contract.

ARTICLE 10 ARCHITECT

§ 10.1 The provisions of Article 10 shall only apply to projects where the Owner has designated an Architect to provide services on the Project and has advised the Contractor thereof.

§ 10.2 The Architect will provide administration of the Contract as described in the Contract Documents and if named so will be an Owner's representative during construction. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. Except for the approval of Applications for Payment, no decision, approval, commitment or certification of the Architect is binding on the Owner unless specifically approved by the Owner.

§ 10.3 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 10.4 The Architect will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 10.5 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report issues to the Owner. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 10.6 Based on the Architect's evaluations of the Work and of the Contractor's Applications for Payment, the Architect and Owner will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 10.7 The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.8 The Architect will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents.

§ 10.9 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

§ 10.10 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

ARTICLE 11 SUBCONTRACTORS

§ 11.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 11.2 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable, and no later than fifteen (15) days after award of the Contract, shall furnish in writing to the Owner and the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written timely objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect...

§ 11.4 To the extent that Contractor has received payment from Owner, Contractor shall promptly pay (and secure the discharge of any liens asserted by) all persons properly furnishing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited to, any Subcontractors of any tier and suppliers). The Contractor shall furnish to the Owner such releases of claims and other documents as may be requested by the Owner from time to time to evidence such payment (and discharge). The Owner may, at its option, withhold payment, in whole or in part, to the Contractor until such documents are furnished. The Contractor shall defend, indemnify and hold harmless the Owner against any liability, costs, expenses or fees arising from or relating to the discharge of any such liens and clearing the title of the property associated with the Project.

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 21.

§ 12.2 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. If part of the Contractor's Work depends on proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner and Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 12.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors.

ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and, if applicable, the Architect, or by written Construction Change Directive (also known as Architect's Supplemental Instruction (ASIs)) signed by the Owner. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Owner may make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Owner or Architect will prepare a Change Order.

§ 13.3 The Owner and Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Owner and Architect and shall not proceed to implement the change in the Work.

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed.

§ 13.5 Markup for Contractor on change orders shall be 6% fee for self perform work, with General Condition costs included in the Change Order, and 4% fee on work performed by subcontractors. Markups on changes in the Work performed by subcontractors, suppliers and materialmen actually performing the Work subject to the change shall be 10% for overhead and 5% for profit. Markup for subcontractors that are not actually performing the work, but have contracted other subcontractors to actually perform the work, shall be 5%, at any tier level. Markup for the Contractor shall be the same amount as the Contractor's Fee amount for this Project as agreed upon in Article 3 of the Agreement. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 13.5 shall be limited to the following:

- .1 actual costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 actual costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 actual rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others; and
- .4 actual costs of premiums for payment and performance bonds for general contractor only, (if required by the Owner at the start of the project, not for subcontractor bonds) and insurance, permit fees, and sales, use or similar taxes related to the Work.

§ 13.6 Any reservation of rights that is executed in a Change Order contrary to the terms and conditions of the Contract shall have no force and effect, unless such reservations of rights are contained within the Change Order signed by the parties.

§ 13.7 Should adverse conditions such as severe storms or hurricanes be forecasted, upon receipt of written notice from Architect or Owner, Contractor shall take all necessary precautions to secure its own equipment and materials, remove any object that could be moved by the winds and become projectiles, and take such precautionary measures and removal of such equipment and apparatus as necessary. As directed by Owner or Architect, Contractor shall also initiate reasonable measures in the event of such severe storms or hurricanes to avoid damage to other areas of the Owner's property and surrounding area. The Owner shall also be responsible for the reasonable re-mobilization charges of Contractor after an order to secure all Work for weather.

ARTICLE 14 TIME

§ 14.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing this Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work and that TIME IS OF THE ESSENCE. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined. The term "working day" shall mean any calendar day except Saturdays, Sundays and Legal Holidays at the place of the Project. The date of Substantial Completion is the date certified by the Owner or Architect in accordance with Section 15.6.3.

§ 14.2 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes among entities not under contract to the Contractor, fire, unusual delay in deliveries, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine, subject to dispute under the provisions of Article 21.

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

§ 15.1.1 The Contractor shall submit a schedule of values to the Owner and Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Owner or Architect. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment and must be approved and accepted by the Owner.

§ 15.1.2 The allocation of the Contract Sum under this Section 15.1 shall not constitute a separate stipulated or Contract sum for each individual line item in the schedule of values.

§ 15.2 Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.3 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner and permitted by Owner's lender, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. The Contractor shall be responsible for any loss or damage to unincorporated materials or equipment stored offsite not covered by insurance.

§ 15.4 In addition to the conditions set forth in § 15.3, payment for any stored materials and equipment shall be conditioned upon the materials and equipment being clearly labeled and identified as property of the Project and/or Owner and Contractor's provision to the Owner of the following pertaining to such materials and equipment, to the Owner's satisfaction:

- .1 access to the stored materials and equipment for physical inspection and photographic or other inventory;

- .2 original vendor invoice;
- .3 Bill of Sale and Transfer of Title;
- .4
- .5 evidence of secure storage facility and property insurance covering the materials and equipment from theft or damage and naming the Owner as an additional insured; and
- .6 any other reasonable requirement by Owner.

§ 15.5 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 15.3 Applications for Payment

§ 15.3.1 On or before the 25th day of each month, the Contractor shall submit to the Architect and Owner a pencil draw of its itemized Application for Payment for operations completed in accordance with the schedule of values, projected to the end of the month. The actual Application for Payment should be submitted by the 25th day of the month. Prior to submission of each Application for Payment, the Contractor, Owner and Architect, if any, shall meet to discuss the preliminary version of the Application. Each Application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

§ 15.3.2 Commencing with the first Application for Payment submitted by the Contractor and for each Application for Payment thereafter, duly executed conditional partial construction lien releases dated through the end of the current draw period from Contractor and each Subcontractor, sub-subcontractor, supplier and other lower tier who has provided labor, materials, equipment or services to the Project, including but not limited to those who have provided a Notice to Owner in the form conforming to § 713.20, Fla. Stat., and, commencing with the second Application for Payment submitted by the Contractor and for each Application for Payment thereafter, duly executed unconditional partial construction lien releases dated through the end of the prior draw period from Contractor and each Subcontractor, sub-subcontractor, supplier and other lower tier for whom payment was received by Contractor in the preceding Application for Payment in the form conforming to § 713.20, Fla. Stat.

§ 15.3.2.1 Applications for Payment may not include requests for payment on account of changes in the Work not yet included in Change Orders. Owner shall not unreasonably withhold approval of a Change Order.

§ 15.3.2.2 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 15.3.3 [Not Used].

§ 15.3.4 [Not Used].

§ 15.3.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment and agreed to by the Owner. The percentage of completion shall be the percentage of that portion of the Work which has actually been completed as verified by the Architect.

§ 15.3.5.1 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the

Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 15.3.5.2 Each Application for Payment shall be accompanied by (i) Contractor's schedule of values, (ii) the waiver and release forms attached hereto, executed by Contractor, entitled (1) "Contractor's Certificate and Conditional Waiver and Release Upon Progress Payment," (2) "Contractor's Certificate And Unconditional Waiver and Release Upon Progress Payment," (3) "Conditional Waiver and Release Upon Progress Payment" and (4) "Unconditional Waiver And Release Upon Progress Payment," (iii) the waiver and release forms attached hereto, executed by each of Contractor's Subcontractors and Suppliers, entitled (1) "Subcontractor's Certificate And Conditional Waiver and Release Upon Progress Payment," (2) "Subcontractor's Certificate And Unconditional Waiver And Release Upon Progress Payment," (3) "Conditional Waiver and Release Upon Progress Payment" and (4) "Unconditional Waiver And Release Upon Progress Payment, and (iv) an updated schedule. No payment shall be made unless the accompanying documents support the Application for Payment and the Project Substantial Completion Date. Contractor agrees that it will obtain the agreement of each of its subcontractors and suppliers with whom it enters into a contract that such Subcontractor or Supplier will execute the foregoing Releases.

§ 15.3.6 In the event liens of any kind are recorded or filed, or any actions are filed to establish or enforce liens of any kind, by the Contractor's subcontractors, at any tier, or any other person entitled to a lien under applicable law for whom Contractor is responsible, the Contractor shall promptly cause said lien(s) to be released or discharged, by bond or otherwise, or in the event of the filing of an action to establish or enforce a lien, take all steps to cause such action to be dismissed with prejudice. Within 24 hours of receipt of the notice by Contractor of the recording or filing of the lien, or the filing of an action to establish or enforce a lien, Contractor shall either obtain and record a full release of such lien and claim against the Owner or shall furnish a bond reasonably acceptable to the Owner that releases such lien (or claim for a lien) against the property and fully indemnifies the Owner from any personal liability arising therefrom and that fully complies with applicable law. The cost of any premiums incurred in connection with such bonds shall be the responsibility of the Contractor and shall not be part of or cause any increase in the Contract Sum. The Contractor agrees to defend, indemnify and hold the Owner and Owner's Lender harmless against all claims, damages, losses and expenses, including attorneys' fees, resulting from any breach of the Contractor's obligations under this Subparagraph, including but not limited to the costs (including attorneys' fees) of defending against lien establishment and/or lien enforcement actions. The foregoing paragraph shall only apply to the extent that Owner has made payment to Contractor.

§ 15.4 Certificates for Payment

§ 15.4.1 The Owner or Architect will, promptly after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Owner or Architect determines is properly due, or notify the Contractor of the Owner's or the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Owner or Architect, based on the Owner's and Architect's evaluations of the Work and the data in the Application for Payment, that, to the best of the Owner's and Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Owner and Architect. However, the issuance of a Certificate for Payment will not be a representation that the Owner and Architect have (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. If the Owner declines to make payment upon a Certificate of Payment issued and approved by the Owner or Architect, the Owner shall promptly notify the Contractor of the reasons therefor and shall approve payment to the Contractor for that portion of the payment Application to which Owner has no legitimate objection.

§ 15.4.3 The Architect or Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner's or Architect's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Architect or Owner is unable to certify payment in the amount of the Application, the Owner or Architect will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the Owner or Architect cannot agree on a revised amount, the Architect or Owner will promptly issue a Certificate for Payment for the amount for which the Owner or Architect is able to make such representations to the Owner. The Architect or Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Owner's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of:

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 substantive and repeated failure to carry out the Work in accordance with the Contract Documents;
- .8 and/or
- .9 failure to correct Work rejected by any governmental authority having jurisdiction of the Project due to the Contractor's failure to perform the Work in accordance with the Contract Documents.

§ 15.4.4 When either party disputes the Architect's or Owner's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

§ 15.5 Progress Payments

§ 15.5.1 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of 10%. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided herein;
- .2 add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing, less retainage of 10%;
- .3 subtract the aggregate of previous payments made by the Owner;
- .4 subtract the shortfall, if any, indicated by the Contractor in the documentation required to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- .5 subtract amounts, if any, for which the Architect, Owner, or Owner's Lender has withheld or nullified a Certificate for Payment as provided in the General Conditions.

§ 15.5.2 The Owner shall withhold as retainage 10% of each approved progress payment through Substantial completion of the Project. This retainage shall be withheld until Substantial Completion as defined in the Contract Documents. Upon Substantial Completion of the Work by the Contractor, the Contractor shall be paid a sum sufficient to increase the total payments to the Contractor to 100% of the Contract Sum, but less an amount equal to 250% of the costs of the Work for incomplete Work or punch list Work.

§ 15.5.3 The Contractor expressly assumes the risk of the Lender's delay in payment.

§ 15.5.4 The Contractor shall pay each Subcontractor, no later than five days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. In the event the Owner reasonably believes that Contractor is not paying its subcontractors as required herein, the Owner reserves the right to pay the Contractor by joint checks, made payable to the Contractor and its Subcontractors and/or Suppliers, but has no obligation to do so.

§ 15.5.5 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

§ 15.5.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 15.5.7 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. Contractor shall immediately have said lien removed or discharged by substituting a surety bond or other security satisfactory to the Owner and Court for the property against which the lien or other claim for payment has been asserted.

§ 15.6 Substantial Completion

§ 15.6.1 The Contract Documents (§2.3.1) establish the Substantial Completion Date for the Project. Substantial Completion is the stage in the progress of the Work when all of the Work is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy and utilize the Work for its intended use. However, in no event will Substantial Completion be reached within the meaning of this Contract until: (1) all as-built drawings, Operations and Maintenance manuals and warranties have been provided to the Owner, and (2) the Owner and Architect has issued a Certificate of Substantial Completion.

§ 15.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and Owner (1) a list of items to be completed or corrected and (2) all special warranties required by the Contract Documents endorsed by the Contractor and in a form reasonably acceptable to the Owner or Architect. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 15.6.3 Upon receipt of the Contractor's list, the Architect and/or Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect and Owner determine that the Work or designated portion thereof is substantially complete, the Owner or Architect will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. The Contractor shall schedule the Architect's and Owner's punch list review when the building (or Work) meets the required state of completion. The Owner or Architect may establish the date that Substantial Completion was reached, using the Owner's representative or other party to verify items of completion listed above.

§ 15.7 Final Completion and Final Payment

§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and/or the Owner will promptly make such inspection and, when the Owner and the Architect find the Work acceptable under the Contract Documents and the Contract fully performed, the Owner or Architect will promptly issue a final Certificate for Payment stating that to the best of the Owner's or Architect's knowledge, information and belief, and on the basis of the Owner's or Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Owner may participate with the Architect in the final inspection, which must be satisfactory to the Owner. The Owner's or Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Contractor must notify the Owner and Architect that the Work is ready for final inspection and acceptance on or before the expiration of forty-five (45) days from the date of Substantial Completion. If the Contractor fails to notify the Owner and Architect on or before the expiration of forty-five (45) days from the date of Substantial Completion, or the Owner and/or Architect finds that the Work, including punch list and corrective work, upon the expiration of forty-five (45) days from such date of Substantial Completion, is not finally completed, the Owner shall have the absolute right to supplement the Contractor's forces to finally complete the Work or finally complete the Work with its own forces at the expense of the Contractor. Submission of Operation and Maintenance manuals and training documents shall be part of the required punch list items. Owner shall be entitled to deduct from Contractor's final payment any and all expenses incurred by the Owner in achieving Final Completion of the Work, including but not limited to any damages the Owner has sustained for the Contractor's failure to achieve Final Completion of the Work within forty-five (45) days after Substantial Completion.

§ 15.7.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner and Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) the waiver and release forms attached hereto, executed by Contractor, entitled (a) "Contractor's Certificate And Conditional Waiver And Release – Upon Final Payment," (b) "Contractor's Certificate And Unconditional Waiver And Release Upon Final Payment," (c) "Conditional Waiver And Release Upon Final Payment," and (d) "Unconditional Waiver And Release Upon Final Payment" (waiver and releases (a) and (b) shall be known as the "Owner Contractor Final Payment Releases"); (6) the waiver and release forms attached hereto, executed by each of Contractor's Subcontractors and suppliers, entitled (a) "Subcontractor's Certificate And Conditional Waiver And Release Upon Final Payment," (b) "Subcontractor's Certificate And Unconditional Waiver And Release Upon Final Payment," (c) "Conditional Waiver And Release Upon Final Payment," and (d) "Unconditional Waiver And Release Upon Final Payment, and (7) a letter copied to the Owner, stating that close out operations and maintenance manuals and warranties, if any, have been submitted per Contract Document requirements. If the Contractor fails to furnish such releases or waivers as noted in items (5) and (6) as the Owner reasonably requires to satisfy the Owner that there are no outstanding liens, including outstanding liens by Subcontractors at any tier level, the Owner may require the Contractor, as a condition of final payment, to furnish a bond satisfactory to the Owner if a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

Contractor agrees that it will obtain the agreement of each of its Subcontractors and Suppliers in its contracts with such parties that its Subcontractors and Suppliers will execute the Releases. Contractor agrees that it will execute the Owner Contractor Final Payment Release within 15 days of final payment by the Owner. Receipt of final payment by the Owner shall constitute a waiver by Contractor of all claims by Contractor against the Owner relating to the Work, the Contract Documents and/or the Project.

§ 15.7.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from

- .1 liens, Claims previously made in writing and identified by Owner as unsettled at the time of final payment, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of general or special warranties required by the Contract Documents;
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; or
- .5 latent defects.

§ 15.7.4 Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment.

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities having jurisdiction bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

§ 16.1.4 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible for all reasonable measures necessary to protect any property adjacent to the Project and improvements thereon. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 16.1.5 During the progress of the Work and at all times prior to the date of Substantial Completion or occupancy of the Work by the Owner, whichever is earlier, the Contractor shall, if necessary, provide temporary heat, ventilation, and enclosure, adequate to prevent damage to completed Work or Work in progress, or to materials stored on the premises. The permanent heating and ventilation systems may be used for these purposes (but at the Contractor's sole cost and expense) when available unless otherwise provided in the Contract Documents.

§ 16.1.6 The Contractor shall provide and maintain in good operating condition suitable and adequate fire protection equipment and services, and shall comply with all reasonable recommendations regarding fire protection made by the representatives of the fire insurance company carrying insurance on the Work and/or by the local fire chief for fire marshal or other authorities having jurisdiction. The area within the site limits shall be kept orderly and clean, and all combustible rubbish shall be promptly removed from the site.

§ 16.1.7 The Contractor shall at all times protect the site, excavations, trenches, buildings and materials from rainwater, groundwater, backup or leakage of sewers, drains and other piping, and from water due to the Contractor's and/or Subcontractor's negligence and shall remove promptly the accumulation of water. Contractor shall provide and operate all pumps, piping and other equipment necessary to this end at its sole risk and expense

provided such is required because of Contractor's Work or due to the Contractor's negligent acts or omissions. The Contractor shall also keep the site free of accumulation of snow and ice.

§ 16.1.8 Contractor shall take all precautions necessary to prevent loss or damage caused by vandalism, theft, burglary, pilferage, or unexplained disappearance of property of the Owner located within the Project area, whether or not forming part of the Work. Contractor shall have full responsibility for the security of such property of the Owner located in such areas and shall reimburse the Owner for any such loss, damage or injury, except as may be directly caused by agents or employees of the Owner.

§ 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 16.2.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, its Subcontractors, and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 16.2.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

§ 16.2.3 The Owner shall not be responsible under Section 16.2.2 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents and were obtained, handled and delivered in accordance with the Contract Documents.

ARTICLE 17 INSURANCE AND BONDS

As required in Exhibit 11, Insurance Conditions.

§ 17.3 Performance Bond and Payment Bond

§ 17.3.1 At any time prior to Final Completion, the Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and/or payment of obligations arising thereunder.

§ 17.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Owner or Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, if any, shall be at the Contractor's expense.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special or general warranty required by the Contract Documents, whichever is later, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner

has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3. If any latent defect or deficiency arises or is discovered which was not active or apparent by reasonable inspection during the course of construction or before Substantial Completion is achieved, then the applicable period shall be extended by one year after the discovery of the latent defect, subject to any applicable statute of repose.

§ 18.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Assignment of Contract

Anti-Assignment Clause: The Contractor shall not assign the Contract without written consent of the Owner. The Owner may, without consent of the Contractor, assign the Contract to any party it deems appropriate. To the extent that the assignee reasonably demonstrates to Contractor that it has made financial arrangements to fulfill the Owner's obligations under the Contract, the Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 19.2 Law and Codes

The Contractor shall comply with all laws, codes, ordinances and regulations of the state, county, city, and/or municipality and state where the Project is located and all applicable local jurisdictions therein that pertain to the physical performance of the Work.

§ 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, codes, rules, regulations or orders of public authorities having jurisdiction or by the requirements of any construction lender, permanent lender or other party with whom the Owner has a relationship (provided that such requirement have been disclosed to the Contractor) shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Owner and Architect timely notice of when and where tests and inspections are to be made so that the Owner or Architect may be present for such procedures. The Contractor shall bear all responsibility for expressly notifying the Owner and the Architect of any adverse testing or inspection results or reports that indicate lack of compliance with the Contract Documents, by indicating such lack of compliance clearly and expressly in such communications to the Owner and the Architect; mere transmission of testing and inspection reports to the Owner or the Architect without such express notification does not satisfy this contractual requirement. Any tests or inspections performed by the Owner are for the Owner's benefit only, and the results of any such tests shall not relieve the Contractor from strictly complying with the Contract Documents.

§ 19.3.1 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 19.3, the Owner or Architect will instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Owner and Architect of when and where tests and inspections are to be made so that the Owner or Architect may be present for such procedures. Such costs, except as provided in Section 19.3, shall be at the Owner's expense.

§ 19.3.2 If such procedures for testing, inspection or approval under Sections 19.3 and 19.3.1 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary

by such failure including those of repeated procedures and compensation for the Architect's services and expenses, if any, shall be at the Contractor's expense.

§ 19.4 The Owner's representative: Andy Coelho
Sunrise Coral Gables Propco LLC
Sunrise Senior Living
7902 Westpark Drive
McLean VA 22102

§ 19.5 The Contractor's representative: Angel Maestre
Maestre Construction Inc.
610 West 53rd Street
Hialeah, Florida 33012

§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 19.7

§ 19.8 The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be reasonably satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded reasonable access to, and shall be permitted to audit and copy upon reasonable advance notice, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law. Contractor shall keep complete all proposals received or prepared by Contractor for changed Work and permit Owner to inspect and copy all proposals so that Owner may fully understand the cost basis of each proposed change. A like Accounting Records provision shall be included in all subcontracts so that Owner may inspect Subcontractor's books and records.

§ 19.9 Contractor and Architect shall each retain a full and complete copy of all books and records pertaining to the Project for not less than the period of time set forth in the statute of repose under the law of the state where the Project is located.

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 Termination by the Contractor

The Contractor may terminate the Contract upon thirty (30) days' written notice to the Owner if the Work has been stopped for a period of ninety (90) consecutive days following the issuance of NTP, or if Owner fails to make payment as required herein for a period of forty-five (45) days after delivery of Contractor's Application for Payment to Owner or Architect, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, or for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped; or
- .2 an act of government, such as a declaration of national emergency which requires all Work to be stopped.

§ 20.1.1 If the Contract is terminated by Contractor under Section 20.1, the Contractor shall only recover from the Owner such amount that would be recoverable from the Owner in the event of the Owner's termination for convenience under Section 20.3 below.

§ 20.1.2 Notwithstanding any provision here, Contractor shall not stop performance in the event there is a bona fide dispute with the Owner regarding any of the reasons set forth in Section 20.1, except if the Work has been stopped for more than 90 days or if Contractor remains unpaid 45 days after delivery of its Application for Payment as set forth above. The performance of the Work shall proceed without delay, but subject to Contractor's right to assert a Claim in accordance with Article 21.

§ 20.2 Termination by the Owner for Cause

§ 20.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial violation of a provision of the Contract Documents.

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. If the Contractor's employment is terminated with respect to a portion of the Work only, Contractor shall continue to perform the balance of the Work, subject to offsets for work within the terminated portion that has been paid for but not yet performed.

§ 20.2.4 In the event of a complete or partial termination, the Contract Sum for the portion of the Work affected shall be reduced by the cost of finishing such portion of the Work, including compensation for the Architect's services made necessary thereby and any overhead and all other direct costs incurred by the Owner, including, without limitation, all reasonable attorney's fees, additional title costs, insurance, and additional interest because of any delay in completing the Work. If the reduction exceeds the unpaid balance of such Contract Sum, the Contractor shall pay the difference to the Owner. The Owner may at its option withhold and retain the difference from any other sums payable to the Contractor in respect of any portion of the Work. If such unpaid balance exceeds the reduction, the excess shall be applied as provided in the Agreement.

§ 20.2.5 In the event that the termination by the Owner for cause is deemed to be wrongful, such termination shall automatically be converted to a termination by the Owner for convenience.

§ 20.3 Termination by the Owner for Convenience

§ 20.3.1 Notwithstanding the provisions contained in prior subsections of Section 20 herein, the Owner may terminate this Contract for its own convenience and without cause for any reason whatsoever at any time, even though the Contractor is not in violation of a provision under the Contract Documents. If the Owner elects to terminate this Contract for its own convenience, the Owner shall notify the Contractor that the Owner has terminated the Work under the Contract and shall set the effective date of such termination. Upon receipt of any notice of such termination, the Contractor shall (a) immediately cancel all existing orders and subcontractors, (b) take all necessary measures for the protection and preservation of the property and Work performed hereunder, (c) immediately deliver to the Owner all plans, drawings, specifications and other information that was necessary for the performance of the Work, and (d) take all necessary actions to prevent further costs from being incurred by any person and/or entity performing work or supplying materials pursuant to the Contract Documents subsequent to the effective date of termination.

§ 20.3.2 In the event the Owner terminates this Contract or a portion thereof pursuant to Section 20.3.1 above, the Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts...

§ 20.3.3.

§ 20.3.4 All obligations of the Contractor under the Contract Documents with respect to completed Work shall remain in full force and effect.

§ 20.3.5 Any termination by the Owner or payments made to the Contractor shall be without prejudice to any claim or legal remedies which the Owner may have against the Contractor for any cause pursuant to the Contract Documents or otherwise.

§ 20.3.6 All subcontracts and/or purchase orders entered into by the Contractor shall include a similar termination for convenience clause.

ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 **Definition.** A Claim is a demand or assertion by Contractor seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 21.1.1 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 21.2 **Time Limits on Claims.** Claims Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes, or should have recognized upon the exercise of due diligence, the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the other party. Written notice of claim, in accordance with provisions of Article 21, is a condition precedent to obtaining any relief pursuant to such claim. Failure to comply with the written notice provision shall constitute a waiver of such claim. Within 21 days following initiation of a Claim, the Contractor shall provide the Owner and the Architect: (1) a detailed description of the facts underlying the claim; (2) written documentation substantiating the claim; and (3) a detailed explanation of the effects of the event giving rise to the Claim on the Contract Sum and/or Contract Time. Failure to adhere to the terms of this provision shall constitute a waiver of the Claim.

§ 21.3 **Continuing Contract Performance.** Pending final resolution of any dispute, including but not limited to any Claim, and a final decision by the Owner or final judicial action, including all appeals on any lawsuit filed by the Owner or the Contractor against the other party, except as otherwise agreed in writing or as provided in Article 20, the Contractor shall proceed diligently and timely with performance of all obligations of the Contract and the Owner shall continue to pay amounts due to the Contractor that are not in dispute in accordance with the Contract Documents.

§ 21.4 **Concealed or Unknown Conditions.** Contractor acknowledges that it bid this Project as an unclassified subsurface project. The Contractor acknowledges that it has performed all reasonable investigations, excluding subsurface explorations of the site, which it deemed necessary to determine its bid for performing and furnishing the Work in accordance with the time, price, and all other terms and conditions of the Contract Documents.

§ 21.5 **Claims for Additional Cost.** If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property.

§ 21.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Owner or Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect or Owner, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, a Claim shall be filed in accordance with this Article 21.

§ 21.6.1 If the Contractor claims that any instructions or orders, whether oral, written, by drawings, or otherwise, involve extra cost or time, and such instructions or orders are not accompanied by a written acknowledgement by the Owner that extra payment will be made or time extended, Contractor shall promptly so notify the Owner and the Architect in writing. Contractor shall not proceed with the work until it has received a further written order to proceed, except in the case of an emergency affecting life or property. No Claim for extra cost or time on account of

such instructions or orders shall be valid unless the Contractor has so notified the Owner and Architect, before proceeding, that Contractor claims extra cost and time and has received the further written order to proceed.

§ 21.6.2 Upon receipt from the Contractor of a written notice of a Claim as provided in Section 21.6.1, the Owner shall review such Claim and, if Owner determines that any work in dispute should proceed, Owner shall issue to the Contractor a written order to proceed in which Owner shall approve or deny the Contractor's Claim, in whole or in part, or shall instruct the Contractor to proceed with the work subject to a later determination by the Owner of the Contractor's right to extra payment.

§ 21.6.3 To the extent that the Owner when issuing the written order to proceed described in Section 21.6.2 approves the Contractor's Claim, the Contract Sum and/or Contract Time, if applicable, shall be adjusted by Change Order. If a fully executed ASI form or written order to proceed, approves or denies, in whole or in part, the Contractor's claim, or instructs the Contractor to proceed with the work subject to a later determination by the Owner of the Contractor's right to extra time or payment, the Contractor shall proceed with the work without delay, in any case.

§ 21.7 Claims for Additional Time

§ 21.7.1.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided in this Article 21 shall be given. The Contractor's Claim shall include an estimate of the probable effect of delay on the progress of the Work. Written notice of Claim is a condition precedent to obtaining any relief pursuant to such Claim. Failure to comply with the written notice provision shall constitute a waiver of such Claim. Time Extension: Should Contractor be obstructed or delayed in the commencement, prosecution or completion of any portion of the Work on the critical path of the Project schedule, without fault on its part or its subcontractors/suppliers/materialmen at any tier level, by reason of: failure to act, direction, order, neglect, delay or default of the Owner, the Architect/Engineer, or any other contractor employed upon the Project; by changes in the Work; fire, lightning, earthquake, enemy action, act of God or similar catastrophe; by Government restrictions in respect to materials or labor or lockdowns arising from Government pandemic or similar restrictions; or by labor disputes beyond Contractor's reasonable control, then Contractor shall be entitled to an extension of time to perform the Work, which shall be equal to the actual time lost on the critical path of the Project schedule by reason of any or all of the causes foresaid. Except for the causes specifically listed above in this clause or as otherwise provided in the Contract Documents, no other cause or causes of delay shall give rise to an extension of time to perform the Work. The granting of an extension is conditioned upon Contractor's timely submission of the aforesaid written notice.

§ 21.7.1.2 NO DAMAGES FOR DELAY: CONTRACTOR EXPRESSLY AGREES NOT TO MAKE, AND HEREBY WAIVES, ANY CLAIM FOR DAMAGES (INCLUDING BUT NOT LIMITED TO THOSE RESULTING FROM INCREASED LABOR OR MATERIAL COSTS, DISRUPTION, INEFFICIENCY, LOSS OF PRODUCTIVITY, IMPACTS, INCREASED OVERHEAD, EXTENDED GENERAL CONDITIONS COSTS, ETC.) ON ACCOUNT OF ANY DELAY, OBSTRUCTION OR HINDRANCE FOR ANY CAUSE WHATSOEVER, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT ANTICIPATED, AND AGREES THAT THE SOLE RIGHT AND REMEDY FOR ANY SUCH DELAYS AND IMPACTS OF ANY KIND SHALL BE AN EXTENSION OF TIME, PROVIDED THE REQUISITE WRITTEN NOTICE OF CLAIM HAS BEEN MET. THE CONTRACTOR EXPRESSLY ACKNOWLEDGES THAT, SHOULD THE OWNER, IN ITS SOLE DISCRETION, NONETHELESS GRANT ADDITIONAL COSTS VIA A CHANGE ORDER IN CONJUNCTION WITH ADJUSTMENTS TO THE PROJECT SCHEDULE, SUCH SHALL NOT CONSTITUTE A BLANKET WAIVER OF THIS PROVISION, NOR SHALL OTHER PROVISIONS OF THIS CONTRACT IN ANY WAY BE CONSTRUED AS CONFLICTING WITH OR CREATING AN AMBIGUITY IN THE INTERPRETATION OF THIS NO DAMAGES FOR DELAY CLAUSE.

Notwithstanding the above, should the Project be delayed as a result of active Owner interference or delays outside the Contractor's contractual obligations, Contractor shall be entitled to apply for an extension of time and reasonable general conditions costs.

§ 21.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal in the geographical area for the period of time, could not have been reasonably anticipated, and had an adverse effect on the Project Schedule. Under no circumstances shall a tropical storm or hurricane be deemed normal or reasonably anticipated. The Contractor assumes the risks of

the normal weather patterns of the local area in which the Project is located. All provisions required and necessary to work during inclement conditions, so as to complete the Work including, but not limited to, temporary protection and waterproofing, temporary heat and lighting, and other measures necessary or prudent shall be provided by the Contractor as part of the Contract Sum.

§ 21.7.3 No claim for a time extension shall be allowed on account of a failure of the Architect to furnish interpretations, instructions or drawings or to return Shop Drawings or samples until fifteen (15) days after receipt by the Architect of a written request for such instructions, drawings, or samples and only if such delay impacts the Project's critical path and Contractor has complied with the notice and proof provisions set forth in Article 21.

§ 21.7.4 Contractor shall not be allowed an extension of time unless Contractor has established to the Owner's satisfaction that the delay claimed by the Contractor is to a portion of the Work on the critical path of the Project schedule, and the Project is currently behind or will fall behind the current Project Schedule.

§ 21.8 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 21.9 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 21.10 Claims for Consequential Damages. The Contractor and Owner waive Claims against each other for consequential, special, indirect, exemplary, or punitive damages arising out of or relating to this Contract. This mutual waiver includes, without limitation:

- .1 damages incurred by the Owner for additional interest, penalties, taxes, insurance, additional marketing or management costs, rental expenses, for losses of use, income, profit, financing, business and reputation to Owner or to the Project, and for loss of management or employee productivity or of the services of such persons and for lost or deferred sales, rents or use of property including the Project or portions thereof or reduced sales or rent prices or diminution in value, and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of the Contract as provided in the Contract Documents. Nothing contained in this § 21.10 shall be deemed to preclude an award of agreed liquidated damages in accordance with the requirements of the Agreement.

§ 21.11

§ 22 RESOLUTION OF CLAIMS AND DISPUTES

§ 22.1 Claim Meeting. In the event either party makes a Claim, the parties shall meet in person or via videoconference within ten (10) days after the making of the Claim for the purpose of resolving the Claim. Either party may request that the Architect attend this meeting. Such meeting shall be a condition precedent to proceeding with litigation of the claim.

§ 22.2 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 22.3 Governing Law and Venue. The substantive and procedural laws of the State where the Project is located shall apply in all respects to any and all disputes arising from or relating to interpretation or performance of this Contract, except as otherwise specifically provided herein. Any dispute between the parties shall be exclusively brought in the courts located in the County where the Project is located.

§ 22.4 Attorneys' Fees and Costs: The prevailing party in any litigation shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party.

§ 22.5 WAIVER OF JURY TRIAL. THE OWNER AND CONTRACTOR SPECIFICALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY COURT WITH RESPECT TO ANY CONTRACTUAL, TORTIOUS, OR STATUTORY CLAIM, COUNTERCLAIM OR CROSS-CLAIM AGAINST THE OTHER ARISING OUT OF OR RELATED IN ANY WAY TO THE PROJECT OR THE CONTRACT DOCUMENTS BECAUSE THE PARTIES HERETO, BOTH OF WHOM ARE REPRESENTED BY COUNSEL, BELIEVE THAT THE COMPLEX COMMERCIAL AND PROFESSIONAL ASPECTS OF THEIR DEALINGS WITH ONE ANOTHER MAKE A JURY DETERMINATION NEITHER DESIRABLE NOR APPROPRIATE .

This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*

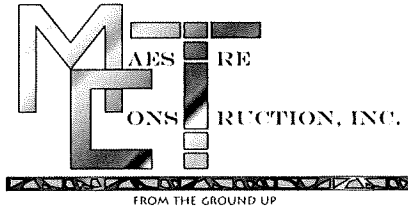
« »« »

(Printed name and title)

CONTRACTOR *(Signature)*

« »« » **Angel Maestre, President**

(Printed name and title) 7-21-22



Maestre Construction Inc.
610 West 53rd Street
Hialeah, Florida 33012
Phone: (305) 557-4440
Fax: (305) 557-4489

EXHIBIT 1

February 25, 2022
Karim Hafez
Email: khafez@pwccompanies.com

RE: Regency on the Park – Sewer Extension

Dear Karim,

Thank you for the opportunity to offer our services for the above referenced project. Please review the attached quotation for a complete summarization of this offer.

This offer is based on the Regency on the Park – Sewer Extension dated 10/23/2020.

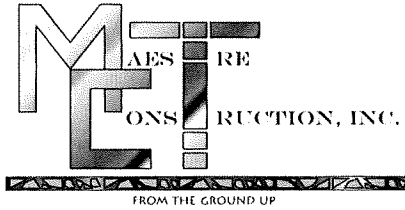
Should you have any questions or comments, please contact me at 305-720-0022.

Sincerely,

Maestre Construction Inc.
Angel Maestre, MSCE, PE, CGC, CUC
President
Email: maestreconstruction@gmail.com

Notes:

1. We will not be held liable for any site conditions differing from the plans requiring re-design.
2. Any unmarked utilities will not be our responsibility.
3. Any unforeseen objects encountered will not be our responsibility and will be reviewed with the contractor for additional costs.
4. Sewer bypass is not included, if necessary will be additional.
5. We will not perform a GPR.



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SCOPE OF WORK

Services included in this proposal include material and labor, Base Scope of Work:

Civil on-site

- (2,361 SY) 8" Limerock Base LBR 100 for Proposed Asphalt
- No separate mobilization for the building pad is included.

Drainage

- N/A

Sewer

- (1,068 LF) 10" Line Grouting
- (837 LF) 10" VCP CIPP Lining
- (20 LF) 10" VCP Remove/Replace with PVC
- (1,074 LF) 12" PVC C-900
- (9 EA) 12"x6" Wye
- (1,229 LF) 8" VCP CIPP Lining
- (160 LF) 8" VCP Remove/Replace with PVC
- (2 EA) Drainage Sewer Conflict Structure
- (4 EA) Proposed Manhole
- (6 EA) Manhole Remove Existing
- (10 EA) Manhole Minor Restoration
- Manhole restoration included is minor with items as per restoration notes and less than 10 SF of wall repairs.
- Line terminates at proposed manholes.

Water

- N/A

Irrigation

- N/A

Fire

- N/A

Concrete

- No concrete sidewalk repairs included in proposal.

Erosion Control

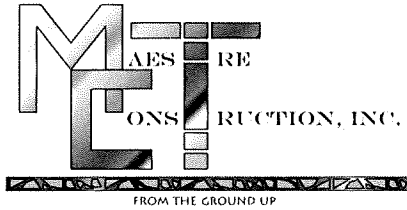
- No dust control included in proposal.
- No silt fence or inlet protection included in proposal.

Site Work

- No topsoil haul away included. If necessary, will be \$500/truck load.

Pavement marking and road work

- (1,800 SY) Asphaltic Concrete, 2" Average Depth, applied in one (2") lifts for proposed asphalt trench repairs
- Thermoplastic striping to match existing only.



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- Milling and resurfacing is not included.
- No temporary striping included in proposal.

General

- Survey, layout, and As-builts for our work. Layout for building pad by others.
- Any piping conflicts will be reviewed with a representative from GC and dealt with accordingly.
- One mobilization included.
- If the nature of the bank material does not allow for a 15' deep exfiltration trench, then the wide trench shall be installed as per details
- Fire line certification not included.
- Backflow certifications is included.
- We are not a licensed fire contractor.
- Density testing by others.

Options

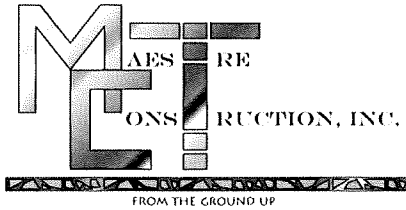
Reference Exhibit 9 for Final Contract Amount & Options Included

1. Vibration Monitoring – \$2,500/Day
2. Vacuum Truck and CCTV Sewer Line - \$675/Hr
3. GPR - \$2,500/Day
4. Temporary toilet and water using a meter - \$9,500.00
5. Water truck - Will include for no cost on an as needed basis. Will not keep the water truck on-site 24/7 but when needed will bring it to the site. If it is needed on site 24/7 then the cost will be \$30,000.00
6. Unsuitable Soil Removal - \$750/truck (does not include contaminated materials)
7. Suitable Spoils Removal - \$8,900.00
8. Mill and resurface - \$30/SF 1" thick with a minimum \$10,000.00
9. Concrete sidewalk restoration 4" no color regular broom finish non-reinforced - \$11.5/SF with a \$3,000 minimum
10. Sod - \$22.00/SY
11. 4" Bypass and attendant - \$50,000.00
12. Tree removal or replacement/relocation not included. - \$11,000.00 Allowance
13. Recoating manhole - \$6,750.00 per manhole
14. No night time work, if needed - \$55,000.00
15. Sidewalk repairs 4" regular 3000 psi broom finish - \$10,000.00 allowance
16. If prices escalate more than 5% from the original bid prices then readjustment of material costs will be requested.

Reference Exhibit 3 for Final Exclusions & Quals

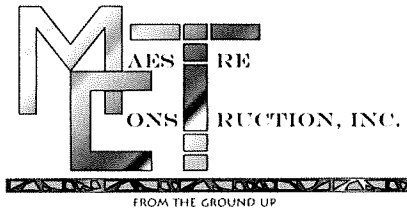
Exclusions from this proposal/Notes:

- Top soil to be deposited on-site. ~~No spoil removal included.~~
- Any signage/signalization attached to the building is not included.
- No geotechnical provided. Soil conditions unknown. Once provided modifications to pricing may be necessary.
- Material pricing is very volatile, we reserve our right to adjust pricing at the time of contract execution.



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- No muck removal.
- Soil import for landscaping not included.
- Public Works permits fees from Miami Dade County, WASD fees, including permits, connections fees, meter fees or any other fees required by Miami Dade Water & Sewer excluded for proposal.
- Soil removal of fill generated by others is not included. We will only move the fill that we generate.
- Any conflicts due to inverts and sloping for the sewer or water will be treated as a CO.
- ~~Bypass of existing sewer system or water is not included. If any bypassing must be completed to accommodate the phasing it will be treated as a CO.~~
- Any discrepancies with plumbing plans will be adjusted with a add/deduct CO. Plans are based on civil drawings.
- ~~Sub-grade stabilization not included.~~
- Any utilities not identified by Florida 811 or the owner/GC and the associated repair costs should they be damaged.
- Footers/footings not included for walkway or any other footing.
- Walls for any planters or similar are not included.
- Roof drain piping/rainwater leader not included. We will leave all piping 5' from the building, the connection is not included.
- ~~Televising.~~
- ~~Bypass.~~
- Testing beyond what is included.
- Plumbing work will be by others.
- Dewatering.
- Portolet.
- Vacuum Truck
- Temporary Construction Fence.
- Milling and resurfacing, if required will be additional. Unless otherwise stated.
- ~~Any extra fill if existing fill is bad or contaminated (unsuitable fill removal not included)~~
- Any inspector or engineering fees are not included.
- MCT will not be held responsible for delays due to permitting. Unless direct fault of MCT.
- Asphalt removed is bid utilizing a depth of 2".
- Concrete Sidewalk removed is bid utilizing a depth of 4".
- ~~Sod restoration is not included. (If required will be billed at \$22.00/SY)~~
- Permits will be paid by the resident/GC at cost +20% administrative cost.
- ~~Bond cost has not been included, if required a modification will be necessary. The rate will be 2.1% of the TOTAL FINAL project cost.~~
- Replacement and/or repair of concrete, stucco, gypsum board, asphalt, sod, landscaping, or soil/rock material other than that specified.



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- No engineering support, calculations or documentation are included. GC will be responsible for obtaining any engineering required. Only shop drawings are included.
- Sheet piling if necessary, will be an additional cost. This is to be determined by MCT if required for completion of the work.
- Any fees not specifically included.
- ~~Water will be provided by GC.~~
- Permitting process not included, GC has self-performed.
- For water conveyance Maestre must be paid in full including retainage to sign final release.
- Maestre shall not be responsible for any damages to asphalt caused by automobile or equipment power steering, tire marks, peeling of asphalt, heavy truck or equipment traffic, leakage of gasoline, oil, or detergent placed upon the asphalt.
- This proposal is based on the work being completed within 1 year from executed contract, with the exception of the phasing as per the schedule.
- If a police officer is required for MOT, they will be billed to contractor at an additional cost.
- Retainage Release:
 - Mobilization – 50% Deposit
 - Balance of contract – Upon final inspection and prior to water and sewer conveyance, no later than 30 days after civil scope project acceptance.

Reference Exhibit 9 for Final Contract Amount

This quotation for the “Base Scope of Work” totals **\$801,386.91**. This quote will be honored for 90 days. **This price is based upon all resources being available and no wasted time. If “responsibility by others” work is not completed the below actions will be enforced.**

Please note that MCT will submit an invoice for each activity and payment schedule as follows (or as otherwise negotiated):

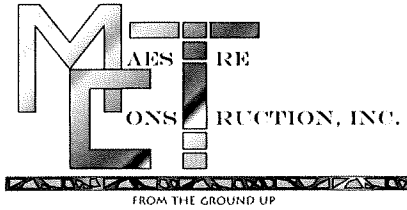
TBD

Payment terms are Net 30. A finance charge of 1.5% per month (Annual percentage rate 18%) will be charged on invoices unpaid 30 days from billing date in any action.

The quotation is based on performing the complete scope listed.

Maestre's Surveyor and layout are for the sole use of Maestre. If another company uses our layout to perform their work, they do so at their own risk. Any damage caused to Maestre's layout will be back-charged to that company.

No individual has the authorization to verbally change any prices or terms of this quotation. Any changes must be in writing, in the form of a Quotation Revision from Maestre Construction Inc.



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No services, other than those described in the “Base Scope of Work” and “Contingent Items” are included in this quotation.

It must be noted that if MCT personnel arrive at the job site as scheduled, and the “responsibility of others” work has not been completed, and a direct delay occurs without prior notice then the following may be enforced.

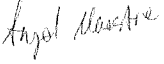
- a. The contractor/customer will be invoiced for additional time & materials required (\$185.00 per hour labor rate, minimum 1 hour including travel time).

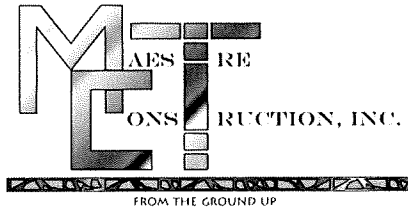
All Work to be completed in a substantial and workmanlike manner according to standard practices. Any alteration or deviation from the above specifications involving extra cost of material or labor will only be executed upon written orders and will become an extra charge over the estimate.

MCT reserves the right to void and withdraw this Quotation and replace it with an amended quotation which contemplates and provides for the recovery of the cost associated with analyzing and complying with the terms of a contract other than Maestre Construction Inc.’s Agreement of Sale or Services.

This quotation requires that MCTs’ existing insurance provider(s) and the coverage afforded by MCT’s existing insurance policies are acceptable. In the event that you require that we change insurance provider(s), acquire additional coverage, and/or amend the terms of our existing policies, MCT reserves the right to void and withdraw this Quotation and replace it with an amended quote which contemplates and provides for the recovery of the cost associated with analyzing and complying with your insurance requirements. Policy information may be provided as requested.

The Terms and Conditions of Sale or Services, following, are a part of this quotation.

 _____ SIGNATURE	_____ Angel Maestre PRINT NAME	_____ 5-20-22 DATE
_____ SIGNATURE	_____ PRINT NAME	_____ DATE



Maestre Construction Inc.
610 West 53rd Street
Hialeah, Florida 330123
Phone: (305) 557-4440
Fax: (305) 557-4489

Terms and Conditions of Sale or Services

Governing Terms: These terms and conditions are an offer by us to you, subject to the approval of our credit department, and may be accepted only on these exact terms and conditions. The contract formed by your acceptance of this quotation, or by your request that we enter a sales order for you, or by your acceptance of a shipment from Maestre Construction Inc. will constitute the exclusive, complete and final agreement between Maestre Construction Inc. and you; and, there are no other agreements, representations, promises, or statements between us either expressed or implied. If you issue a document of your own, this document shall supersede the terms and conditions of your document. Any dispute with regard to the interpretation, execution, enforcement or following the terms of this agreement, or any other legal activities, shall be resolved by submitting such dispute to binding arbitration, pursuant to the Commercial Arbitration Rules of the American Arbitration Association ("AAA"); and, This Agreement shall be governed by the laws of the State of Florida and any negotiable actions will be conducted in Miami, Miami-Dade County, Florida.

Shipment: Deliveries shall be made in accordance with a delivery schedule, which may be revised by mutual agreement to adjust to manufacturing requirements. We cannot guarantee precise delivery dates and shall not be responsible for delays in deliveries, nor liable for any losses, expenses or damages, including liquidated damages or penalties of any kind, which you or others may incur. Acceptance of delivery by you constitutes confirmation of your acceptance of the delivery schedule against which the delivery was made.

Prices, Payment and Taxes: Price does not include any state, federal, or local taxes, tariffs or duties. Terms of payment are stated on the quotation/sales order. Our terms of sale do not permit or allow the withholding from payment of any percentage of dollar amount due and payable to Maestre Construction Inc. because your customer or other entity withholds funds as retention, or for some other reason, until some future condition is fulfilled. All funds received by you or payable to you for satisfaction of the amount due Maestre Construction Inc. hereunder shall be held as a trust fund for payment of your obligations to Maestre Construction Inc., and shall not be applied to other purposes until your obligation to Maestre Construction Inc. is satisfied. Payment shall be in United States of America dollars. No back-charges, withholding or deducts of any kind are allowed, unless specifically stated in this agreement. Prices are subject to increase to compensate for any increase in our costs due to new or increased taxes or governmental regulatory measures. Prices on the quotation are based on the quantities given. Any quantity changes or other order modifications may result in price changes. Except as above noted, prices on the quotation are valid for a period of thirty days after the date of the quotation unless a specific variance is granted on the attached quotation.

Indemnity: Following delivery, you expressly agree to indemnify and hold Maestre Construction Inc. harmless from any and all loss, cost, liability or expense, including attorney's fees relating to or in connection with any proceeding, cause for action, or any damage to persons or property involving the use, application, transportation, storage, disposal, or yours or other's installation of the items on this quotation, or sales order, or shipment.

Force Majeure: Maestre Construction Inc. is not responsible or liable for any delays or nonperformance in the event of earth movement, fire, flood, explosion, the elements, or other catastrophe, acts of god, war, riot, civil disturbance, strike, lockout, refusal of employees to work, labor disputes, shortage, or inability to obtain raw materials, including energy requirements, failure of carriers to deliver, in the event of any legislative, executive or judicial act of any governmental authority substantially affecting Maestre Construction Inc.'s operations, or in the event Maestre Construction Inc. suspends or discontinues business for any reason, or any other reason beyond the control of Maestre Construction Inc..

Limited Warranty: Services provided by Maestre Construction Inc. are warranted free from defects in workmanship for a period of 1 year from the date of installation. The warranty on items not installed by Maestre Construction Inc. or subcontracted services shall not exceed the warranty of our subcontractor or supplier or his manufacturer. If defect under this warranty appears, Maestre Construction Inc., at its option, will rework or replace that item, supplied by Maestre Construction Inc., or refund the purchase price of the defective portion, less an allowance for services rendered by the product prior to the claim, but in no event will Maestre Construction Inc. be responsible for consequential or incidental damages. This warranty shall not apply to any product which has been altered by anyone other than Maestre Construction Inc., or which has become defective due in total or in part due to miss-storage, misuse, mishandling, negligence or casualty, or which has become defective in total or in part due to natural or man-made exposure damage (e.g., pollution contact damage) or any seismic or other motions of the installation or any pressure/thermal cycling or has been applied/used contrary to manufacturer's instructions. Remedies available to a purchaser for breach of warranty are expressly limited to an action to recover for the value of the purchase or replacements due hereunder of our product only and Maestre Construction Inc.'s liability for incidental or consequential damages are hereby expressly excluded to the full extent permitted by applicable law. Any shortages, shipping, or installation damage must be reported in writing or fax to Maestre Construction Inc. within three business days of knowledge. Maestre Construction Inc. makes no warranty that the goods supplied under this contract are fit for any particular purpose. There are no warranties that extend beyond those set forth herein.

Other Specific Warranty Exclusions: (1). Any product failures or damage due to chemical or thermal exposure. (2). The finish on the product.

ASSUMPTIONS, EXCLUSIONS, & CLARIFICATIONS:

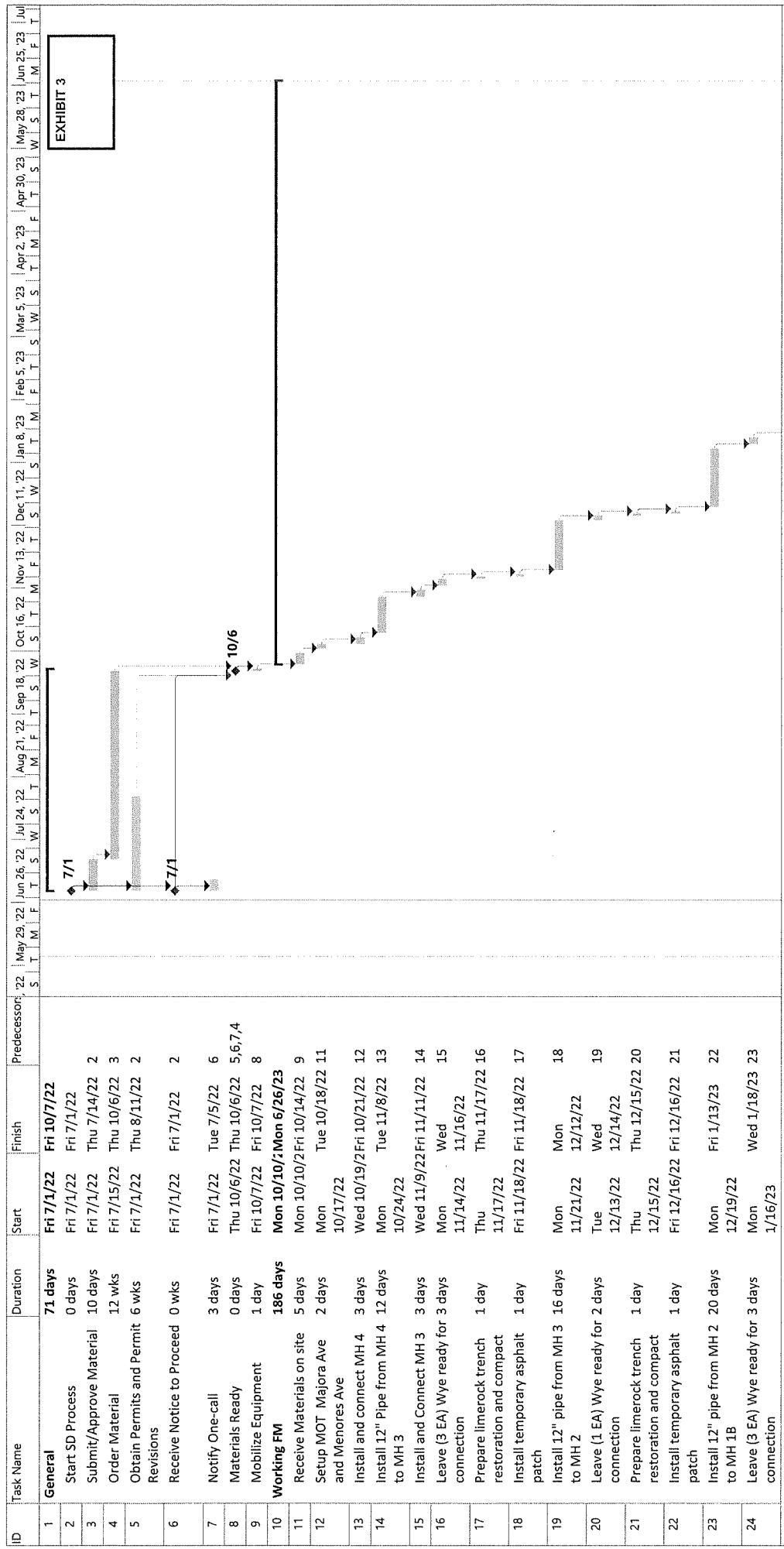
General

- Survey, layout, and As-builts for our work. Layout for building pad by others.
- Any piping conflicts will be reviewed with a representative from GC and dealt with accordingly.
- One mobilization included.
- If the nature of the bank material does not allow for a 15' deep exfiltration trench, then the wide trench shall be installed as per details
- Fire line certification not included.
- Backflow certifications is included.
- We are not a licensed fire contractor.
- Density testing by others.

Exclusions from this proposal/Notes:

- Top soil to be deposited on-site. No spoil removal included.
- Any signage/signalization attached to the building is not included.
- No geotechnical provided. Soil conditions unknown. Once provided modifications to pricing may be necessary.
- Material pricing is very volatile, we reserve our right to adjust pricing at the time of contract execution.
- No muck removal.
- Soil import for landscaping not included.
- Public Works permits fees from Miami Dade County, WASD fees, including permits, connections fees, meter fees or any other fees required by Miami Dade Water & Sewer excluded for proposal.
- Soil removal of fill generated by others is not included. We will only move the fill that we generate.
- Any conflicts due to inverts and sloping for the sewer or water will be treated as a CO.
- ~~Bypass of existing sewer system or water is not included. If any bypassing must be completed to accommodate the phasing it will be treated as a CO.~~
- Any discrepancies with plumbing plans will be adjusted with a add/deduct CO. Plans are based on civil drawings.
- ~~Sub-grade stabilization not included.~~
- Any utilities not identified by Florida 811 or the owner/GC and the associated repair costs should they be damaged.
- Footers/footings not included for walkway or any other footing.
- Walls for any planters or similar are not included.
- Roof drain piping/rainwater leader not included. We will leave all piping 5' from the building, the connection is not included.
- ~~Televising.~~
- ~~Bypass.~~
- Testing beyond what is included.
- Plumbing work will be by others.
- Dewatering.
- Portolet.
- Vacuum Truck
- Temporary Construction Fence.
- Milling and resurfacing, if required will be additional. Unless otherwise stated.
- ~~Any extra fill if existing fill is bad or contaminated (unsuitable fill removal not included)~~
- Any inspector or engineering fees are not included.
- MCT will not be held responsible for delays due to permitting. Unless direct fault of MCT.
- Asphalt removed is bid utilizing a depth of 2".
- Concrete Sidewalk removed is bid utilizing a depth of 4".
- ~~Sod restoration is not included. (If required will be billed at \$22.00/SY)~~
- Permits will be paid by the resident/GC at cost +20% administrative cost.
- ~~Bond cost has not been included, if required a modification will be necessary. The rate will be 2.1% of the TOTAL FINAL project cost.~~
- Replacement and/or repair of concrete, stucco, gypsum board, asphalt, sod, landscaping, or soil/rock material other than that specified.

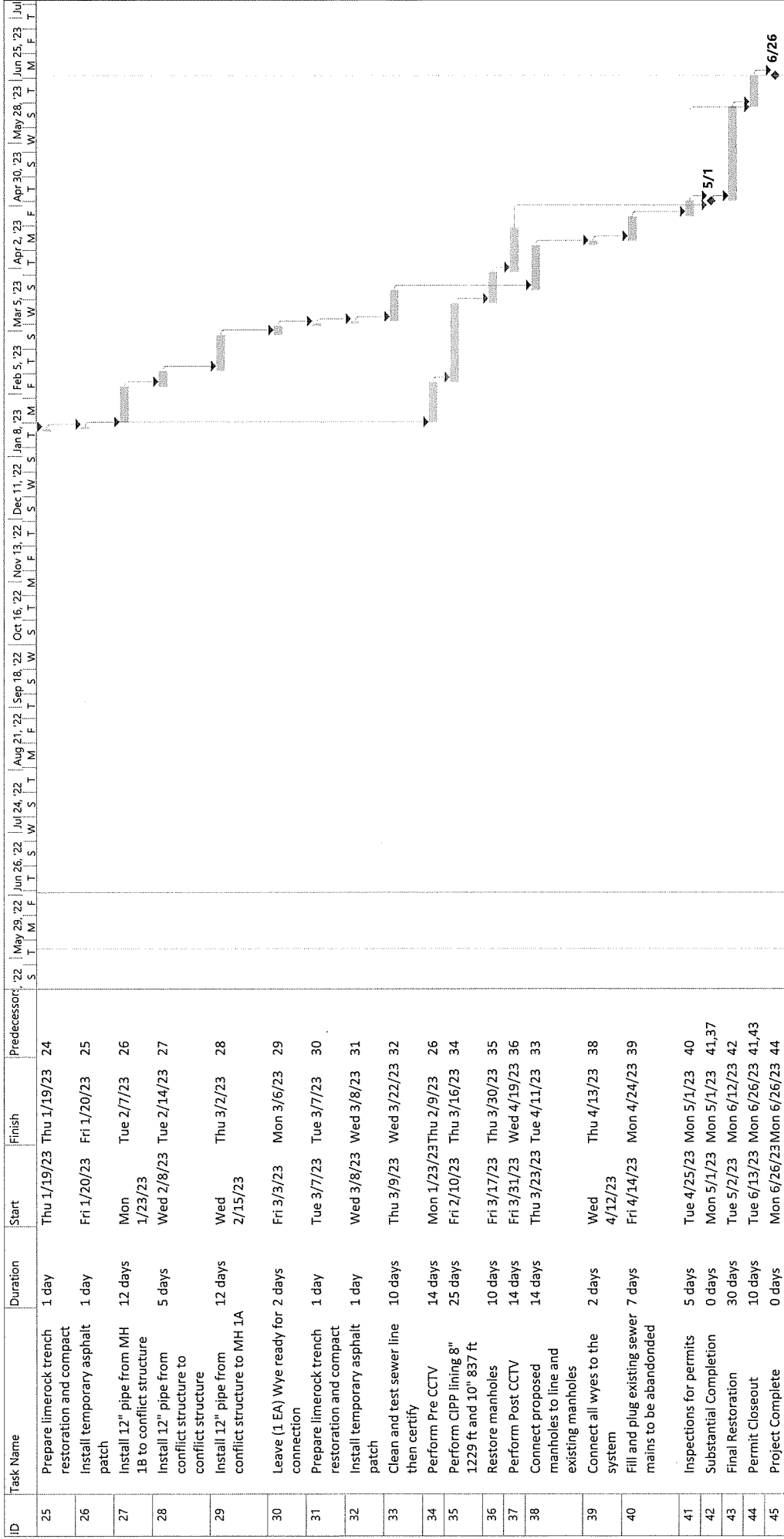
- No engineering support, calculations or documentation are included. GC will be responsible for obtaining any engineering required. Only shop drawings are included.
- Sheet piling if necessary, will be an additional cost. This is to be determined by MCT if required for completion of the work.
- Any fees not specifically included.
- ~~Water will be provided by GC.~~
- Permitting process not included, GC has self-performed.
- For water conveyance Maestre must be paid in full including retainage to sign final release.
- Maestre shall not be responsible for any damages to asphalt caused by automobile or equipment power steering, tire marks, peeling of asphalt, heavy truck or equipment traffic, leakage of gasoline, oil, or detergent placed upon the asphalt.
- This proposal is based on the work being completed within 1 year from executed contract, with the exception of the phasing as per the schedule.
- If a police officer is required for MOT, they will be billed to contractor at an additional cost.
- Retainage Release:
 - Mobilization – 50% Deposit
 - Balance of contract – Upon final inspection and prior to water and sewer conveyance, no later than 30 days after civil scope project acceptance.



Project: Regency Gravity Sewer
Date: Mon 6/27/22

Task Legend:

- Task
- Split
- Milestone
- Summary
- Project Summary
- Inactive Task
- Inactive Milestone
- Inactive Summary
- Manual Task
- Duration-only
- Manual Summary Rollup
- Manual Summary
- Start-only
- Finish-only
- External Tasks
- External Milestone
- Deadline
- Critical
- Critical Split
- Baseline
- Baseline Milestone
- Baseline Summary
- Progress
- Manual Progress



Task	Inactive Task	Manual Summary Rollup	External Milestone	Baseline Milestone
Split	Inactive Milestone	Manual Summary	Deadline	Baseline Summary
Milestone	Inactive Summary	Start-only	Critical	Progress
Summary	Manual Task	Finish-only	Critical Split	Manual Progress
Project Summary	Duration-only	External Tasks	Baseline	

Project: Regency Gravity Sewer
Date: Mon 6/27/22

EXHIBIT- 4(a)
CONTRACTOR'S CERTIFICATE AND
UNCONDITIONAL WAIVER AND RELEASE
UPON FINAL PAYMENT

Contractor:

Date:

Owner:

Project:

1. This is to certify that I am duly authorized to sign a Waiver and Release of Lien, either full or partial, for _____ (Name of Contractor) hereinafter called "Contractor".

2. Contractor heretofore entered into a contract (the "Agreement") with _____ (Name of Owner) hereinafter called "Owner" to furnish materials or to perform labor necessary for the construction of buildings and/or repair or alterations of buildings or structures and/or construction or installation or erection of facilities as more specifically described in the Agreement for the above described project located on real property in the State of _____ County of _____ more particularly described in the legal description located in the contract documents.

3. It is hereby certified that all work, labor, material, machinery and equipment furnished by Contractor or Contractor's subcontractors, sub-subcontractors, laborers and material suppliers shall have been fully paid by the Contractor and that there are no amounts unpaid in favor of any subcontractor, sub-subcontractor, laborer or material supplier or any other person furnishing labor and materials to said Contractor and utilized in the performance of the obligation of the Contractor under the aforementioned Contract on the basis of which any lien has been or can be filed for work done or materials furnished to said building structure, property or facilities or any part thereof.

4. To the extent that Contractor has received payment for the work that is the subject of a claim of lien, the Contractor does hereby agree to indemnify and hold harmless the Owner against any loss or damage, including reasonable attorneys' fees, which Owner may sustain by reason of the placing or filing of liens against said real estate and the buildings thereon by any subcontractors, sub-subcontractors, laborers, or material suppliers whether his own or those of any subcontractor, whether such labor, service, or materials were furnished by the Contractor, any subcontractor, sub-subcontractor or material suppliers or employees of any subcontractor.

5. It is further certified that all applicable federal, state and local tax laws have been complied with, and that all applicable federal, state and local taxes required to be withheld from employees have been withheld in the manner provided by law.

6. For and in consideration of the receipt of \$ _____ (amount of this payment), in payment on the Contract for all materials and labor furnished to the date of this Waiver and Release of Lien, the receipt and sufficiency of which is hereby acknowledged, Contractor does hereby waive, release and relinquish any and all claims, demands and rights of lien of Contractor under the Contract. This waiver shall constitute a complete discharge and release by Contractor to the Owner for all labor and materials furnished and work performed on the above referenced project.

7. The Contractor acknowledges receipt of final payment under the aforementioned Contract and provides herewith a full release and discharge to the Owner of any and all claims of the Contractor arising out of and connected with and resulting from performance of the obligations of the Contractor pursuant to the Contract Documents.

**EXHIBIT- 4(a) -
(Cont.)**

8. The Contractor ratifies, confirms and restates in full all warranties and guaranties by the undersigned to and in favor of Owner that are set forth in the Agreement and in any and all changes therein and amendments thereto. Such warranties and guaranties shall be assignable by Owner. Contractor further guaranties, in accordance with the Specifications, all labor and material furnished on said job, and Work performed under the Agreement for construction of the Project, to be free from defects resulting from faulty workmanship and/or materials for a period of one year from the date of final payment by Owner, or, if later, from the date of completion by Contractor of any punch list items or repairs required under the agreement.

9. Attached hereto are (1) the separate Subcontractor's Certificate and Waiver and Release of Lien Final Payment from all Subcontractors and material and equipment suppliers in the form of Exhibit 4(e) to the Agreement, and (2) the consent of Contractor's surety to final payment (if Payment and/or Performance Bonds are required under the Agreement).

10. Contractor covenants and warrants that Contractor has in all respects completely performed all of the conditions in the Agreement and in any and all changes therein and amendments thereto and that there has been complete compliance by it with all written or oral commitments, agreements and undertakings in connection therewith.

11. Contractor acknowledges that there has been in all respects a complete performance by Owner of all conditions in the Agreement and in any and all changes therein and amendments thereto and complete compliance by it with all written or oral commitments, agreements and undertakings in connection therewith.

CONTRACT AND PAYMENT SUMMARY

Original Contract	_____	Billing to Date	_____
Change Orders, Net	_____	Less Retention	_____
Total Contract	_____	Net Payable	_____
		Previous Payments	_____
		This Payment	_____
		Contract Remaining Unpaid	_____

Contractor:

Dated: _____

(Name)

By: _____

(Signature)

Name: _____

(Print Name)

Title: _____

EXHIBIT-4(b)-

**CONTRACTOR'S CERTIFICATE AND CONDITIONAL WAIVER AND RELEASE
UPON PROGRESS PAYMENT**

Contractor:

Date:

Owner:

Project:

State of

County of:

I. This is to certify that I am duly authorized to sign a Waiver and Release of Lien, either full or partial, for _____ ("Contractor").

2. Contractor heretofore entered into a contract (the "Agreement") with _____ (Name of Owner) hereinafter called "Owner" to furnish materials or to perform labor necessary for the construction of buildings and/or repair or alterations of buildings or structures and/or construction or installation or erection of facilities as more specifically described in the Agreement for the above described project located on real property in the State of _____, County of _____ more particularly described in the contract documents.

3. Pursuant to the Agreement and in connection with the request of the Contractor for payment (described below and further detailed in the Contract and Payment Summary on page 2 herein), it is hereby certified that all work, labor, material, machinery and equipment furnished by Contractor or Contractor's subcontractors, sub-subcontractors, laborers and material suppliers shall be fully paid by the Contractor through _____ (date of current month's release) and that there shall be no amounts unpaid in favor of any subcontractor, sub-subcontractor, laborer or material supplier or any other person furnishing labor and materials to the Contractor and utilized in the performance of the obligation of the Contractor under the aforementioned contract on the basis of which any lien has been or can be filed for work done or materials furnished to said building structure, property or facilities or any part thereof.

4. To the extent that Contractor has received payment for the work that is the subject of a claim of lien, the Contractor does hereby agree to indemnify and hold harmless the Owner against any loss or damage, including reasonable attorney fees, which it may sustain by reason of the placing or filing of liens against said real estate and the buildings thereon by any subcontractors, sub-subcontractors, laborers, or material suppliers whether his own or those of any subcontractor, whether such labor, service, or materials were furnished by the Contractor, any subcontractor, sub-subcontractor or material suppliers or employees of any subcontractor.

5. It is further certified that all applicable federal, state and local tax laws have been complied with and that all applicable federal, state and local taxes required to be withheld from employees have been withheld in the manner provided by law.

6. Subject to and in consideration of the receipt of \$ _____ (amount of this payment), in payment on the Contract for all materials and labor furnished to the date of this Waiver and Release, Contractor does hereby waive, release and relinquish any and all claims, demands, rights of lien and stop notice rights of Contractor under the contract through _____ (date of current month's release), except for unpaid retention and unresolved change order proposals listed below. Except for retention and unresolved change orders listed below, this waiver shall constitute a complete discharge and release by Contractor of the Owner for all labor and materials furnished and work performed on the above referenced project to the date hereof and for all claims for additional costs incurred, including, but not limited to, claims for extra work, lost productivity, inefficiencies, delays or acceleration.

7. Attached hereto are the separate Subcontractor's Certificate and Waiver and Release of Lien from all subcontractors and material and equipment suppliers in the form of Exhibit 4(f) to the Agreement.

Unresolved Change Order Proposals: _____

CONTRACT AND PAYMENT SUMMARY

Original Contract	_____	Billing to Date	_____
Change Orders, Net	_____	Less Retention	_____
Total Contract	_____	Net Payable	_____
		Previous Payments	_____
		This Payment	_____
		Contract Remaining Unpaid	_____

Dated: _____ Contractor: _____
(Name)

By: _____
(Signature)

Name: _____
(Print Name)

Title: _____

**EXHIBIT-4(c)-
CONTRACTOR'S CERTIFICATE AND UNCONDITIONAL WAIVER AND RELEASE UPON
PROGRESS PAYMENT**

Contractor:

Date:

Owner:

Project:

State of

County of

1. This is to certify that I am duly authorized to sign a Waiver and Release of Lien, either full or partial, for _____ ("Contractor").

2. Contractor heretofore entered into a contract (the "Agreement") with _____ (Name of Owner) hereinafter called "Owner" to furnish materials or to perform labor necessary for the construction of buildings and/or repair or alterations of buildings or structures and/or construction or installation or erection of facilities as more specifically described in the Agreement for the above described project located on real property in the State of _____, County of _____ more particularly described in the contract documents.

3. Pursuant to the Agreement and in connection with the request of the Contractor for payment (described below and further detailed in the Contract and Payment Summary on page 2 herein) it is hereby certified that all work, labor, material, machinery and equipment furnished by Contractor or Contractor's subcontractors, sub-subcontractors, laborers and material suppliers have been fully paid by the Contractor through _____ (date of prior month's release) and that there are no amounts unpaid in favor of any subcontractor, sub-subcontractor, laborer or material supplier or any other person furnishing labor and materials to the Contractor and utilized in the performance of the obligation of the Contractor under the aforementioned contract on the basis of which any lien has been or can be filed for work done or materials furnished to said building structure, property or facilities or any part thereof.

4. To the extent that Contractor has received payment for the work that is the subject of a claim of lien, the Contractor does hereby agree to indemnify and hold harmless the Owner against any loss or damage, including reasonable attorney fees, which it may sustain by reason of the placing or filing of liens against said real estate and the buildings thereon by any subcontractors, sub-subcontractors, laborers, or material suppliers whether his own or those of any subcontractor, whether such labor, service, or materials were furnished by the Contractor, any subcontractor, sub-subcontractor or material suppliers or employees of any subcontractor.

5. It is further certified that all applicable federal, state and local tax laws have been complied with, and that all applicable federal, state and local taxes required to be withheld from employees have been withheld in the manner provided by law.

6. Contractor does hereby waive, release and relinquish any and all claims, demands, rights of lien and stop notice rights of Contractor under the contract through _____ (date of prior month's release), except for unpaid retention and unresolved change order proposals listed below. Except for retention and unresolved change order proposals listed below, this waiver shall constitute a complete discharge and release by Contractor of the Owner for all labor and materials furnished and work performed on the above referenced project to the date hereof and for all claims for additional costs incurred, including, but not limited to, claims for extra work, lost productivity, inefficiencies, delays or acceleration.

Exhibit 4(c) (Cont.)

7. Attached hereto are the separate Subcontractor's Certificate and Waiver and Release of Lien from all subcontractors and material and equipment suppliers in the form of Exhibit 4(h) to the Agreement.

Unresolved Change Order Proposals: _____

Contract and Payment Summary:

Original Contract	_____	Billing to Date	_____
Change Orders, Net	_____	Less Retention	_____
Total Contract	_____	Net Payable	_____
		Previous Payments	_____
		This Payment	_____
		Contract Remaining Unpaid	_____

Contractor:

Dated: _____

(Name)

By: _____
(Signature)

Name: _____
(Print Name)

Title: _____

**EXHIBIT- 4(d) -
CONTRACTOR'S CERTIFICATE AND CONDITIONAL WAIVER AND RELEASE
UPON FINAL PAYMENT**

Contractor:

Date:

Owner:

Project:

1. This is to certify that I am duly authorized to sign a Waiver and Release of Lien, either full or partial, for _____ (Name of Contractor) hereinafter called "Contractor".

2. Contractor heretofore entered into a contract (the "Agreement") with _____ (Name of Owner) hereinafter called "Owner" to furnish materials or to perform labor necessary for the construction of buildings and/or repair or alterations of buildings or structures and/or construction or installation or erection of facilities as more specifically described in the Agreement for the above described project located on real propeliy in the State of _____ County of _____ more particularly described in the legal description located in the contract documents..

3. Pursuant to the Agreement and in connection with the request of the Contractor for payment (described below and further detailed in the Contract and Payment Summary on page 2-3 herein), and for and in consideration of the receipt of \$ _____ (amount of this payment), it is hereby certified that all work, labor, material, machinery and equipment furnished by Contractor or Contractor's subcontractors, sub-subcontractors, laborers and material suppliers shall be fully paid by the Contractor and that there shall be no amounts unpaid in favor of any subcontractor, laborer or material supplier or any other person furnishing labor and materials to said Contractor and utilized in the performance of the obligation of the Contractor under the aforementioned Contract on the basis of which any lien has been or can be filed for work done or materials furnished to said building structure, property or facilities or any part thereof.

4. To the extent that Contractor has received payment for the work that is the subject of a claim of lien, the Contractor does hereby agree to indemnify and hold harmless the Owner against any loss or damage, including reasonable attorneys' fees, which Owner may sustain by reason of the placing or filing of liens against said real estate and the buildings thereon by any subcontractors, sub-subcontractors, laborers, or material suppliers whether his own or those of any subcontractor, whether such labor, service, or materials were furnished by the Contractor, any subcontractor, sub-subcontractor or material suppliers or employees of any subcontractor.

5. It is further certified that all applicable federal, state and local tax laws have been complied with, and that all applicable federal, state and local taxes required to be withheld from employees have been withheld in the manner provided by law.

6. For and in consideration of the receipt of \$ _____ (amount of this payment), in payment on the Contract for all materials and labor furnished to the date of this Waiver and Release of Lien, the receipt and sufficiency of which is hereby acknowledged, Contractor does hereby waive, release and relinquish any and all claims, demands and rights of lien of Contractor under the Contract. This waiver shall constitute a complete discharge and release by Contractor to the Owner for all labor and materials furnished and work performed on the above referenced project.

EXHIBIT-4(d)- (Cont.)

7. For and in consideration of the receipt of \$ _____ (amount of this payment), the Contractor provides herewith a full release and discharge to the Owner of any and all claims of the Contractor arising out of and connected with and resulting from performance of the obligations of the Contractor pursuant to the Contract Documents.

8. The Contractor ratifies, confirms and restates in full all warranties and guaranties by the undersigned to and in favor of Owner that are set forth in the Agreement and in any and all changes therein and amendments thereto. Such warranties and guaranties shall be assignable by Owner. Contractor further guaranties, in accordance with the Specifications, all labor and material furnished on said job, and Work performed under the Agreement for construction of the Project, to be free from defects resulting from faulty workmanship and/or materials for a period of one year from the date of final payment by Owner, or, if later, from the date of completion by Contractor of any punch list items or repairs required under the agreement.

9. Attached hereto are (1) the separate Subcontractor's Certificate and Waiver and Release of Lien Final Payment from all Subcontractors and material and equipment suppliers in the form of Exhibit 4(g) to the Agreement, and (2) the consent of Contractor's surety to final payment (if Payment and/or Performance Bonds are required under the Agreement).

10. Contractor covenants and warrants that Contractor has in all respects completely performed all of the conditions in the Agreement and in any and all changes therein and amendments thereto and that there has been complete compliance by it with all written or oral commitments, agreements and undertakings in connection therewith.

11. Contractor acknowledges that there has been in all respects a complete performance by Owner of all conditions in the Agreement and in any and all changes therein and amendments thereto and complete compliance by it with all written or oral commitments, agreements and undertakings in connection therewith.

CONTRACT AND PAYMENT SUMMARY

Original Contract	_____	Billing to Date	_____
Change Orders, Net	_____	Less Retention	_____
Total Contract	_____	Net Payable	_____
		Previous Payments	_____
		This Payment	_____
		Contract Remaining Unpaid	_____

EXHIBIT- 4(d) - (CONT.)

Contractor:

Dated: _____

(Name)

By: _____
(Signature)

Name: _____
(Print Name)

Title: _____

EXHIBIT-4(e) -

SUBCONTRACTOR'S CERTIFICATE AND UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

Contractor:

Date:

Owner:

Project:

State of

1. This is to certify that I am duly authorized to sign a Waiver and Release of Lien, either full or partial, for _____(Name of Subcontractor) hereinafter called "Subcontractor".

2. _____("Contractor") heretofore entered into a contract (the "Agreement") with _____(Name of Owner) hereinafter called "Owner" to furnish materials or to perform labor necessary for the construction of buildings and/or repair or alterations of buildings or structures and/or construction or installation or erection of facilities as more specifically described in the Agreement for the above described project located on real property in the State of _____ County of _____ more particularly described in the legal description located in the contract documents (the "Project"). Contractor subsequently entered into a contract (the "Subcontract") with _____ ("Subcontractor") to furnish materials or to perform labor necessary for the construction of the Project.

3. It is hereby certified that all work, labor, material, machinery and equipment furnished by Subcontractor or Subcontractor's subcontractors, sub-subcontractors, laborers and material suppliers has been fully paid by the Subcontractor and that there are no amounts unpaid in favor of any subcontractor or material supplier or any other person furnishing labor and materials to said Subcontractor and utilized in the performance of the obligation of the Subcontractor under the aforementioned Subcontract on the basis of which any lien has been or can be filed for work done or materials furnished to said building structure, property or facilities or any part thereof.

4. To the extent that Subcontractor has received payment for the work that is the subject of a claim of lien, Subcontractor does hereby agree to indemnify and hold harmless the Contractor and the Owner against any loss or damage, including reasonable attorneys' fees, which Contractor or Owner may sustain by reason of the placing or filing of liens against said real estate and the buildings thereon by Subcontractor or any of Subcontractor's subcontractors, sub-subcontractors, laborers, or material suppliers.
Subcontractor:

5. It is further certified that all applicable federal, state and local tax laws have been complied with, and that all applicable federal, state and local taxes required to be withheld from employees have been withheld in the manner provided by law.

6. Subcontractor does hereby waive, release and relinquish any and all claims, demands and rights of lien of Subcontractor under the Subcontract. This waiver shall constitute a complete discharge and release by Subcontractor of the Contractor and the Owner for all labor and materials furnished and work performed on the above referenced Project.

7. Subcontractor acknowledges receipt of final payment under the aforementioned Subcontract and provides herewith a full release and discharge to the Contractor and the Owner of any and all claims of the Subcontractor arising out of and connected with and resulting from the performance of the obligations of the Subcontractor pursuant to the Subcontract and Contract Documents.

EXHIBIT-4(e)- (Cont.)

8. Subcontractor ratifies, confirms and restates in full all warranties and guaranties by the undersigned to and in favor of the Contractor and Owner that are set forth in the Subcontract and the Agreement and in any and all changes therein and amendments thereto. Such warranties and guaranties shall be assignable by Owner. Subcontractor further guaranties, in accordance with the Specifications, all labor and material furnished on said job, and Work performed under the Subcontract and the Agreement for construction of the Project, to be free from defects resulting from faulty workmanship and/or materials for a period of one year from the date of final payment by Owner to Contractor, or, if later, from the date of completion by Subcontractor of any punch list items or repairs required under the Agreement.

9. Attached hereto are (1) the separate Subcontractor's Certificate and Unconditional Waiver and Release Upon Final Payment from all of Subcontractor's subcontractors, sub-subcontractors and material and equipment suppliers in the form of Exhibit 4(e) to the Agreement, and (2) the consent of Subcontractor's surety to final payment (if Payment and/or Performance Bonds are required under the Subcontract).

10. Subcontractor covenants and warrants that Subcontractor has in all respects completely performed all of the conditions in the Subcontract and the Agreement and in any and all changes therein and amendments thereto and that there has been complete compliance by it with all written or oral commitments, agreements and undertakings in connection therewith.

11. Subcontractor acknowledges that there has been in all respects a complete performance by the Contractor and the Owner of all conditions in the Subcontract and the Agreement and in any and all changes therein and amendments thereto and complete compliance by it with all written or oral commitments, agreements and undertakings in connection therewith.

Date: _____

Subcontractor: _____

By: _____

Its: _____

EXHIBIT-4(f)-

**SUBCONTRACTOR'S CERTIFICATE AND CONDITIONAL WAIVER AND RELEASE UPON
PROGRESS PAYMENT**

Subcontractor:

Date:

Contractor:

Owner:

State Of:

County Of:

1. This is to certify that I am duly authorized to sign a Waiver and Release of Lien, either full or partial, for _____ ("Subcontractor").

2. _____ ("Contractor") heretofore entered into a contract (the "Agreement") with _____ (Name of Owner) hereinafter called "Owner" to furnish materials or to perform labor necessary for the construction of buildings and/or repair or alterations of buildings or structures and/or construction or installation or erection of facilities as more specifically described in the Agreement for the above described project located on real property in the State of _____, County of _____ more particularly located in the contract documents (the "Project"). Contractor subsequently entered into a contract (the "Subcontract") with _____ ("Subcontractor") to furnish materials or to perform labor necessary for the construction of the Project.

3. Pursuant to the Subcontract and the Agreement and in connection with the request of the Subcontractor for payment (described below and further detailed in the Subcontract and Payment Summary on page 2 herein), it is hereby certified that all work, labor, material, machinery and equipment furnished by Subcontractor or Subcontractor's subcontractors, sub-subcontractors, laborers and material suppliers shall be fully paid by the Subcontractor through _____ (date of current month's release) and that there shall be no amounts unpaid in favor of any subcontractor, sub-subcontractor, laborer or material supplier or any other person furnishing labor and materials to the Subcontractor and utilized in the performance of the obligation of the Subcontractor under the aforementioned Subcontract on the basis of which any lien has been or can be filed for work done or materials furnished to said building structure, property or facilities or any part thereof.

4. To the extent that Subcontractor has received payment for the work that is the subject of a claim of lien, Subcontractor does hereby agree to indemnify and hold harmless the Contractor and the Owner against any loss or damage, including reasonable attorneys' fees, which it may sustain by reason of the placing or filing of liens against said real estate and the buildings thereon by any of Subcontractor's subcontractors, sub-subcontractors, laborers, or material suppliers, whether such labor, service, or materials were furnished by the Subcontractor, or by any subcontractor, sub-subcontractor, material supplier, or employee of Subcontractor.

5. It is further certified that all applicable federal, state and local tax laws have been complied with, and that all applicable federal, state and local taxes required to be withheld from employees have been withheld in the manner provided by law.

6. Subject to and in consideration of the receipt of \$ _____ (amount of this payment), in payment on the Subcontract for all materials and labor furnished to the date of this Waiver and Release, Subcontractor does hereby waive, release and relinquish any and all claims, demands, rights of lien, bond rights and stop notice rights of Subcontractor under the Subcontract through _____ (date of current month's release), except for unpaid retention and unresolved change order proposals listed below. Except for retention and unresolved change order proposals listed below, this waiver shall constitute a complete discharge and release by Subcontractor of the Contractor and the Owner for all labor and materials furnished and work performed on the above referenced project to the date hereof and for all claims for additional costs incurred, including, but not limited to, claims for extra work, lost productivity, inefficiencies, delays or acceleration.

EXHIBIT 4(f) (Cont.)

7. Attached hereto are the separate Subcontractor's Certificate and Waiver and Release of Lien from all of Subcontractor's subcontractors and material and equipment suppliers in the form of Exhibit 4(f) to the Agreement.

Unresolved Change Order Proposals: _____

Date: _____

Subcontractor: _____

By: _____

Its: _____

EXHIBIT-4(g)-

SUBCONTRACTOR'S CERTIFICATE AND CONDITIONAL WAIVER AND RELEASE UPON
FINAL PAYMENT

Subcontractor:

Date:

Contractor:

Owner:

Project:

State of:

County of:

1. This is to certify that I am duly authorized to sign a Waiver and Release of Lien, either full or partial, for _____ (Name of Subcontractor) hereinafter called "Subcontractor".

2. _____ ("Contractor") heretofore entered into a contract (the "Agreement") with _____ (hereinafter called "Owner") to furnish materials or to perform labor necessary for the construction of buildings and/or repair or alterations of buildings or structures and/or construction or installation or erection of facilities as more specifically described in the Agreement for the above described project located on real property in the State of _____, County of _____ as more particularly described in the legal description located in the contract documents (the "Project"). Contractor subsequently entered into a contract (the "Subcontract") with _____ ("Subcontractor") to furnish materials or to perform labor necessary for the construction of the Project.

3. Pursuant to the Subcontract and the Agreement and in connection with the request of the Subcontractor for payment (described below and further detailed in the Subcontract and Payment Summary on page F-3 herein), and for and in consideration of the receipt of \$ _____ (amount of this payment), it is hereby certified that all work, labor, material, machinery and equipment furnished by Subcontractor or Subcontractor's subcontractors, sub-subcontractors, laborers and material suppliers shall be fully paid by the Subcontractor and that there shall be no amounts unpaid in favor of any subcontractor, sub-contractor, laborer or material supplier or any other person furnishing labor and materials to said Subcontractor and utilized in the performance of the obligation of the Subcontractor under the aforementioned Subcontract on the basis of which any lien has been or can be filed for work done or materials furnished to said building structure, property or facilities or any part thereof.

4. To the extent that Subcontractor has received payment for the work that is the subject of a claim of lien, Subcontractor does hereby agree to indemnify and hold harmless the Contractor and the Owner against any loss or damage, including reasonable attorneys' fees, which Contractor or Owner may sustain by reason of the placing or filing of liens against said real estate and the buildings thereon by Subcontractor or any of Subcontractor's subcontractors, laborers, or material suppliers.

5. It is further certified that all applicable federal, state and local tax laws have been complied with, and that all applicable federal, state and local taxes required to be withheld from employees have been withheld in the manner provided by law.

6. For and in consideration of the receipt of \$ _____ (amount of this payment), in payment on the Subcontract for all materials and labor furnished to the date of this Waiver and Release of Lien, the receipt and sufficiency of which is hereby acknowledged, Subcontractor does hereby waive, release and relinquish any and all claims, demands and rights of lien of Subcontractor under the Subcontract. This waiver shall constitute a complete discharge and release by Subcontractor of the Contractor and the Owner for all labor and materials furnished and work performed on the above referenced Project.

EXHIBIT-4(g)-(Cont.)

7. For and in consideration of the receipt of \$ _____ (amount of this payment), the Subcontractor provides herewith a full release and discharge to the Contractor and the Owner of any and all claims of the Subcontractor arising out of and connected with and resulting from the performance of the obligations of the Subcontractor pursuant to the Subcontract and the Contract Documents.

8. Subcontractor ratifies, confirms and restates in full all warranties and guaranties by the undersigned to and in favor of the Contractor and Owner that are set forth in the Subcontract and the Agreement and in any and all changes therein and amendments thereto. Such warranties and guaranties shall be assignable by Owner. Subcontractor further guaranties, in accordance with the Specifications, all labor and material furnished on said job, and Work performed under the Subcontract and the Agreement for construction of the Project, to be free from defects resulting from faulty workmanship and/or materials for a period of one year from the date of final payment by Owner to Contractor, or, if later, from the date of completion by Subcontractor of any punch list items or repairs required under the agreement.

9. Attached hereto are (1) the separate Subcontractor's Certificate and Conditional Waiver and Release Upon Final Payment from all of Subcontractor's subcontractors, sub-subcontractors and material and equipment suppliers in the form of Exhibit 4(g) to the Agreement, and (2) the consent of Subcontractor's surety to final payment (if Payment and/or Performance Bonds are required under the Subcontract).

10. Subcontractor covenants and warrants that Subcontractor has in all respects completely performed all of the conditions in the Subcontract and the Agreement and in any and all changes therein and amendments thereto and that there has been complete compliance by it with all written or oral commitments, agreements and undertakings in connection therewith.

11. Subcontractor acknowledges that there has been in all respects a complete performance by the Contractor and the Owner of all conditions in the Subcontract and the Agreement and in any and all changes therein and amendments thereto and complete compliance by it with all written or oral commitments, agreements and undertakings in connection therewith.

Date: _____

Subcontractor: _____

By: _____

Its: _____

EXHIBIT-4(h)-

**SUBCONTRACTOR'S CERTIFICATE AND UNCONDITIONAL WAIVER AND RELEASE UPON
PROGRESS PAYMENT**

Subcontractor:

Date:

Contractor:

Owner:

Project:

State of:

1. This is to certify that I am duly authorized to sign a Waiver and Release of Lien, either full or partial, for _____ (“Subcontractor”).
2. _____ (“Contractor”) heretofore entered into a contract (the “Agreement”) with _____ (Name of Owner) hereinafter called “Owner” to furnish materials or to perform labor necessary for the construction of buildings and/or repair or alterations of buildings or structures and/or construction or installation or erection of facilities as more specifically described in the Agreement for the above described project located on real property in the State of _____ County of _____ more particularly described in the contract documents (the “Project”). Contractor subsequently entered into a contract (the “Subcontract”) with _____ (“Subcontractor”) to furnish materials or to perform labor necessary for the construction of the Project.
3. Pursuant to the Subcontract and the Agreement and in connection with the request of the Subcontractor for payment (described below and further detailed in the Subcontract and Payment Summary on page 2 herein), it is hereby certified that all work, labor, material, machinery and equipment furnished by Subcontractor or Subcontractor's subcontractors, sub-subcontractors, laborers and material suppliers have been fully paid by the Subcontractor through _____ (date of prior month's release) and that there are no amounts unpaid in favor of any subcontractor, sub-subcontractor, laborer or material supplier or any other person furnishing labor and materials to the Subcontractor and utilized in the performance of the obligation of the Subcontractor under the aforementioned Subcontract on the basis of which any lien has been or can be filed for work done or materials furnished to said building structure, property or facilities or any part thereof.
4. To the extent that Subcontractor has received payment for the work that is the subject of a claim of lien, Subcontractor does hereby agree to indemnify and hold harmless the Contractor and the Owner against any loss or damage, including reasonable attorneys' fees, which it may sustain by reason of the placing or filing of liens against said real estate and the buildings thereon by any of Subcontractor's subcontractors, sub-subcontractors, laborers, or material suppliers, whether such labor, service, or materials were furnished by the Subcontractor, or by any subcontractor, sub-subcontractor, material supplier or employee of Subcontractor.
5. It is further certified that all applicable federal, state and local tax laws have been complied with, and that all applicable federal, state and local taxes required to be withheld from employees have been withheld in the manner provided by law.
6. Subcontractor does hereby waive, release and relinquish any and all claims, demands, rights of lien, bond rights and stop notice rights of Subcontractor under the Subcontract through _____ (date of prior month's release), except for unpaid retention and unresolved change order proposals listed below. Except for retention and unresolved change order proposals listed below, this waiver shall constitute a complete discharge and release by Subcontractor of the Contractor and the Owner for all labor and materials furnished and work performed on the above referenced project to the date hereof and for all claims for additional costs included, including, but not limited to, claims for extra work, lost productivity, inefficiencies, delays or acceleration.

EXHIBIT-14(h) Cont.

7. Attached hereto are the separate Subcontractor's Certificate and Waiver and Release of Lien from all subcontractors and material and equipment suppliers in the form of Exhibit 4(h) to the Agreement.

Unresolved Change Order Proposals: _____

Date: _____

Subcontractor: _____

By: _____

Its: _____

UNIT PRICES & ALTERNATES**UNIT PRICES:**

1. The current cost of asphalt - \$71.69/ton
2. Current cost of concrete – \$130.11/CY
3. Current cost of flowable fil – \$79.66/CY
4. Sidewalk and curb Restoration - \$10,000.00 @ \$14/SF for sidewalk \$28/LF for curb
5. Landscaping/Sod Allowance - \$10,000.00 @ \$18/SF
6. Structures - \$18,917.00 before taxes
7. Pipe - \$75,687.04

ALTERNATES:**Add Alternates :**

Mill and Resurface Existing Asphalt with Permanent Pavement Markings	\$105,000.00	3,500 SF including pavement markings
Vibration Monitoring	\$2,500/Day	
GPR if required	\$2,500/Day	
Unsuitable Soils Removal if required	\$750/Truck	
Off Hours Work Alternate	\$55,000.00	
Recoating of Existing Manholes at Conclusion of Rehabilitation	\$6,750/manhole	
24/7 Water Truck, if required	\$ 30,000.00	

ALLOWANCES

Concrete Sidewalk Restoration	\$	10,000.00
Landscaping Restoration	\$	10,000.00

Hourly Rates

1. Project Manager - \$85/hr
2. Superintendent - \$75/hr
3. Foreman - \$68/hr
4. Project Administrator - \$40/hr
5. Operator - \$40/hr
6. Pipe layer - \$28.50/hr
7. Laborer - \$25.50/hr
8. Commercial Diver - \$350/hr

Sitework / Sewer Package		EXHIBIT #9	
Subcontractor Name	Maestre Construction		Comments
Original Bid Amount	\$	801,387.00	
Schedule Duration:	6 Months	Upon receipt of material	
Scope of Work:			
<i>General Conditions Requirements</i>			
Project Management Full Time Supervision	included		
Survey and Layout	included		
As Built Drawings	included		
Daily Clean	included		See alternates if Water Truck is required on site 24/7.
Final Clean	included		
Trench Safety and Shoring	included		
Traffic Control Certified MOT	included		
Temporary Water Electrical for the Work	\$	9,500.00	\$9,500 included in final
Temporary Toilets During Construction	included		
Dumpsters Trash Hauling	Not Required		Dumpsters not required, any trash to be removed by Maestre
<i>Sediment and Erosion Controls Storm Water Management</i>			
Compliance with and execution of sediment and erosion controls per SS-004 and SS-005	included		
Construction Entrance	Not Included		Assumed not required
Dust Control	included		
Protection of Existing Conditions	included		
Bypass Line Pumping	\$	50,000.00	\$750/day + \$35/hr (24/7) - \$50,000 included in final
<i>Site Demolition</i>			
Sawcut and Remove Existing Asphalt and Base	included		
Remove Existing Sewer Piping and Manholes	included		
Unsuitable Soils Removal Replacement	Excluded		Assumed Not Required
Spoils Removal	\$	8,900.00	\$8,900 included in final
<i>Site Utilities</i>			
Compliance with the General Notes and Specifications and Health Department Requirements on Sheet SS-002	included		
Excavation and Backfill for the Work	included		
Cut and Cap Existing Lateral Lines	included		
Coring of existing structures for the Work	included		
Grouting of Existing Sanitary Sewer Main	included		
12", 8", 6" Gravity Sanitary Sewer Line	included		
10" & 8" CIPP Lining	included		
Connections of New Sanitary Sewer System to Existing Lateral Lines Structures	included		
New Precast Sanitary Manhole Assemblies			
48" Round Drainage Conflict Structure with Doghouse Structure - 2 each	included		
48" Round Sanitary - MH-1A	included		
48" Round Sanitary - MH-1B	included		
48" Round Sanitary - MH-2	included		
48" Round Sanitary - MH-3	included		
48" Round Sanitary - MH-4	included		
Rehabilitate Existing Manhole Assembly per Sheet Note Requirements	included		
CCTV Existing (before and after) and New System (after)	\$	27,000.00	1 Week per MCT - \$27,000 included in final
Testing and Inspections of the Work	included		
<i>Site Restoration</i>			
Temporary Painted Pavement Markings	included		
Subgrade Preparation for Trench Repair	included		
Limerock Base	included		
1.5" Asphalt for Trench Repair	included		
1" Mill and Resurface Existing Asphalt with Permanent Pavement Markings	Excluded		See alternates
Concrete Sidewalk Restoration - If Required	\$	10,000.00	Allowance included in final
Landscaping Restoration - If Required	\$	10,000.00	Allowance included in final
<i>Other</i>			
Exfiltration Testing	included		
Material Testing and Inspections	Excluded		By Owner
Off Hours Work	Excluded		
Off Duty Officer for Off Hours Work	Excluded		
Permit Fees	Excluded		By Owner
Material Escalation	Excluded		Reference contract language
Required City Bonds (Maintenance & P&P)	\$	14,894.00	Included in final
Pollution Insurance	\$	3,565.00	Included in final. 1 year policy
FINAL CONTRACT :	\$	935,246.00	

Add Alternates :

Mill and Resurface Existing Asphalt with Permanent Pavement Markings	\$	105,000.00	3,500 SF including pavement markings
Vibration Monitoring	\$2,500/Day		
GPR if required	\$2,500/Day		Not Required - Owner Decision
Unsuitable Soils Removal if required	\$750/Truck		
Spoils Removal if required	in base contract		
Sidewalk Restoration	allowance in base contract		
Off Hours Work Alternate	\$	55,000.00	
Recoating of Existing Manholes at Conclusion of Rehabilitation	\$6,750/manhole		
Bond Rate	Reimbursible at Cost		1.0 - 2.0%
24/7 Water Truck, if required	\$	30,000.00	

**EXHIBIT '11 '
TO CONTRACTOR AGREEMENT**

Prior to the commencement of any work or the delivery of materials to the Project, Contractor shall purchase and maintain, at its own expense, the following types of insurance coverage and limits of liability and provide to Owner, or their designee, certificates of insurance evidencing coverage acceptable to Owner in amounts required in the prime contract, or as follows whichever is greater. These insurance requirements and the obligations of the indemnification agreement that is part of this contract shall also apply to anyone hired by you to work under this Agreement except as specifically noted otherwise below.

A. Commercial General Liability (Occurrence Form with defense cost outside the limits):

Combined Bodily Injury and Property Damage Liability:

General Aggregate	\$ 5,000,000	Limit of Liability
Products - Completed Operations Aggregate	\$ 5,000,000	Limit of Liability
Each Occurrence	\$ 1,000,000	Limit of Liability
Personal Injury	\$ 1,000,000	Limit of Liability

The following coverages must be included:

- Premises/Operations
- Contingent liability for work performed by subcontractor
- Explosion, Collapse, and Underground
- Broad Form Property Damage (including Completed Operations)
- Personal Injury liability (with contractual excess policies exclusion deleted)
- Contractual liability (including construction contracts)
- The policy shall include an Aggregate Limits per Project Endorsement.
- Waiver of Subrogation in favor of Owner, Developer and Sunrise

The following endorsements are required under Contractor's policy:

- Additional insured for ongoing operations (Form CG 2210) **and** completed operations (Form CG 2037) or their equivalent naming the Lender, Owner, Developer, Sunrise and their respective subsidiaries, members, partners, shareholders, directors, officers, employees, consultants and agents. The policy shall state that it is primary and non-contributory with any insurance maintained by the additional insureds. Such additional insured protection shall continue in full force and effect through the statute of repose in the state in which the work is performed and Contractor's full available limits, not merely the limits shown above, shall be available to the additional insureds.

General liability coverage must be maintained through the Statute of Repose in the state where the work is performed.

No exclusions may be attached for: assisted living construction projects, subsidence, work performed by subcontractors, underground work, EIFS if project includes EIFS work.

B. Workers' Compensation and Employer's Liability:

Coverage A:

Statutory Coverage: As required by the state in which the project is located

Coverage B:

Employers Liability Coverage:	\$ 1,000,000 Each Accident
	\$ 1,000,000 Disease, Policy Limit
	\$ 1,000,000 Disease, Each Employee

Policy shall provide a waiver of subrogation in favor of the Owner, Developer, and Sunrise.

C. Business Automobile Policy:

Combined Bodily Injury and Property Damage Liability
(Combined Single Limit):

\$1,000,000 each accident and aggregate

Liability Coverage for the following must be included:

Any Automobile **OR**

Owned, Non-Owned and Hired
Automobiles

- D. Contractor's Pollution/Environmental Liability (Requirement of General Contractor)**
Contractor shall maintain a CPL policy including coverage for mold with limits of \$2,000,000 each occurrence. The policy must name as Additional Insureds, Lender, Owner Developer, and Sunrise and those entities defined in A. above and be primary and not in excess of, or contributing with, any other insurance carried by or for the benefit of the Additional Insureds.
- E. Professional Liability (Errors and Omissions):**
If Contractor has design or engineering responsibility of any nature on this project, Contractor shall provide Professional Liability coverage with limited contractual liability coverage in favor of Owner with a limit of not less than \$2,000,000 per claim, \$2,000,000 annual aggregate and a self-insured retention no greater than \$100,000 per claim of which design professional shall have the sole responsibility to pay. Any self-insured retention ("SIR") must be clearly identified on the Certificate of Insurance and is subject to Owner's approval. This insurance shall be maintained for not less than the duration of the Project and through the Statute of Repose in the state where the project is located. The retroactive date of such policy must be on or before the date Contractor or Contractor's Agents began professional services for the project.
- F. Watercraft or Aircraft Liability Coverage** if applicable, with limits of \$10,000,000, naming Owner Lender, Developer, Sunrise and their respective subsidiaries, members, partners, shareholders, directors, officers, employees, consultants and agents as additional insured.
- G. Umbrella (Excess) Liability: (Requirement of General Contractor)**
Contractor agrees to obtain, maintain and pay for umbrella and/or excess liability insurance over the general liability, auto liability and employer's liability policies with the following limits of liability:

\$25,000,000 Each Occurrence Limit
\$25,000,000 Annual Aggregate Limit

The umbrella liability policy shall provide the same additional insured and primary and noncontributory coverage as required in this Agreement as respects the underlying insurance policies of general liability, automobile liability, and employers liability.

Contractor agrees if the aggregate limits are eroded Contractor will purchase additional coverage so that the limits that are required in this contract are available.

- H. Property Insurance/Builder's Risk:**
Owner shall purchase and maintain builders risk insurance on a completed value special perils ("All Risk") policy form including sublimits for flood, earthquake, transit and off-site storage to protect the interests of the Owner, Contractor and Subcontractors, against the risk of loss or damage to the work during construction at the project site. Such policy will include a waiver of subrogation in favor of Contractor and Subcontractor.

Coverage will include all materials, supplies and equipment that are intended for specific installation in the project when such materials, supplies and equipment are located at the project site, in transit or while temporarily located at agreed upon locations away from the Project Site for the purpose of repair, adjustment or storage at the risk of one of the insured parties.

This insurance will not include any tools or clothing of workers or any tools, equipment, protective fencing, scaffolding, and equipment owned, rented or used by Contractor or Subcontractors and used in the performance of the work, and Contractor and Subcontractors waives any rights of recovery from Owner and/or the Contractor's policies.

Contractor shall be responsible for repayment of a deductible amount up to \$50,000 per occurrence, but not to exceed the policy deductible, for loss or damage incurred to the work provided the loss or damage is caused by the work.

Owner and Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by property insurance provided under the Contract or other property insurance applicable to the Work. Contractor shall require of its Subcontractors, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

NOTE: The builders risk policy terms vary from policy to policy, and such insurance provided by Owner shall be subject to such limits liability, exclusions and deductibles as Owner may negotiate in its discretion. Contractor is advised to consult the terms of the policy to ascertain its terms.

- I. Certificates of Insurance:**

Contractor agrees that no less than ten (10) days before beginning any work under this contract and at each policy renewal, Contractor shall provide Owner with an original Certificate of Insurance demonstrating that the insurance required by this Agreement was purchased and is in effect. Contractor shall also provide Owner with a copy of the Additional Insured, Waiver of Subrogation and Primary and Noncontributory endorsements or such other policy language demonstrating that the insurance policies comply with this Agreement. The COI should include language that specifically identifies the coverages identified in A. of this Exhibit and indicate there are no exclusions as also noted in A. Contractor shall not receive payment until Certificates comply with the requirements of this Exhibit.

J. Special Provisions:

Unless provided otherwise in the Contract, Contractor shall be responsible for any deductibles or self-insured retentions for the insurance coverages it is contractually obligated to provide under this Agreement. Upon request by Owner, or their designee, Contractor shall deliver copies of the insurance policies as required under this Agreement. Unless higher limits or additional coverage requirements are imposed by the Contract Documents or law, the Contractor shall obtain the minimum coverage and limits of insurance for the Project set forth herein. It is further agreed that in the event of cancellation or reduction of the limit of liability and of any material change reduction in coverage, the Contractor shall promptly notify the Owner and Developer. Prompt notice shall consist of at least thirty (30) days' notice unless the Contractor is provided less notice by the insurance carrier; in such case, prompt notice shall consist of immediate notice to the Owner and Developer.

All insurance policies are to be written through companies duly entered and authorized to transact that class of insurance in the state in which the project is located. The insurance companies must have an A.M. Best rating of A-, VIII or better in the most recent Best's Key Rating Guide.

Approval, disapproval or failure to act by Owner regarding any insurance supplied by the Contractor shall not relieve the Contractor of full responsibility or liability for damages and accidents. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate the Contractor from liability.

Owner shall make no special payments for any insurance that the Contractor may be required to carry; all are included in the contract price and in the contract unit prices.

EXHIBIT "F"

SEWER CAPACITY CERTIFICATION LETTERS



Miami-Dade County

Department of Regulatory & Economic Resources

Division of Environmental Resources Management DERM #: _____

Sewer Capacity Certification Letter Application

dermplnreview@miamidade.gov

West Office (PIC) 786-315-2800

Downtown Office (OTV) 305-372-6899

Instructions: You must fill out this application to obtain a sewer certification allocation letter which is a required step in obtaining your building permit. Step 1: Completely fill out sections 1a, 1b, and 1c, and complete the affidavit on the reverse side of this application including the notarized signature of the property owner or the authorized representative. Please note: Assignment of the authorized representative must be in the form of a notarized authorization letter from the property owner.

Step 2: Have your utility (if not part of the MDWASD utility service area) certify the pump station information for your project in Section 2.

Step 3: Once your application has been certified by your utility, bring the completed application to one of the DERM Plan Review offices for processing

RESIDENTIAL (SINGLE FAMILY & DUPLEX) FEE up to 5 building sites: \$90.00 plus \$10 per additional building site. COMMERCIAL FEE: \$120 for the first site plus \$10 for each additional building site. All fees subject to a 7.5% surcharge.

Please make checks payable to: Miami-Dade County

APPLICATIONS WILL NOT BE ACCEPTED IF THE NECESSARY INFORMATION AND SIGNATURES ARE NOT PROVIDED.

Section 1a

Contact Name: Phone: Email:

Applicant Information

Name (title): Andrew Coelho (Vice President)
Company name: Sunrise of Coral Gables Propco, LLC
Address: 7902 Westpark Drive
City: Mc Lean State: VA Zip: 22102
Phone: 703-273-7500
Email: Andy.Coelho@sunriseseniorliving.com

Property Owner Information

Name (title): Andrew Coelho (Vice President)
Company name: Sunrise of Coral Gables Propco, LLC
Address: 7902 Westpark Drive
City: Mc Lean State: VA Zip: 22102
Phone: 703-273-7500
Email: Andy.Coelho@sunriseseniorliving.com

Section 1b

Property Information

Project/Business Name: Sunrise of Coral Gables
Address: 1000 Ponce de Leon Boulevard City: Coral Gables Zip: 33134
of units: Type of units: 118 beds Folio: 03-4108-009-1540
Lot & Block # (s): 8 thru 11 / 17 Subdivision: Coral Gables Douglas SEC

Be sure to include a Lot & Block # for each unit to be developed. You may attach an additional list if necessary. If Lot & Block are unavailable, submit a track number, survey, site plan or sketch that includes all property boundaries. For undeveloped land, you may submit a master folio number for the entire property.

Section 1c

Project Details

Proposed Flow: 8850 GPD Previous Flow: 1251 GPD Estimated Completion Date: 2023
Process #: 30399 City: Coral Gables Sewer Extension #:
Previous Use: Office Building
Proposed Use/Project Description (including SQ FT): Assisted Living Facility with 118 Beds

Section 2

To be completed by utility company only

Utility Providing Service: City of Coral Gables Date: 03/29/2022
Pump Station Receiving Flow: 03-City 2 Located at: 99 Alhambra Plaza
Sewer abutting the Property (YES / NO) (FORCEMAIN / GRAY)
Lateral Connection (NEW / EXISTING) Point of Connection: Main
Utility Official Name: Jorge Acevedo, P.E. Signature: Jorge Acevedo Phone #: 305-460-5000

SEWER SERVICE CONNECTION AFFIDAVIT

I/we, the undersigned, being first duly sworn, depose and say that I/we have applied for a sewer service connection for (project description) 1000 Ponce Assisted Living Facility in accordance with the provisions of Appendix A of the Consent Decree (CASE No. 1:12-CV-24400-FAM) between the United States of America and Miami-Dade County. I/we understand and attest that we are ready, willing and able to initiate construction as required below:

1. Apply for a building permit with the appropriate building official(s) within ninety (90) days from the date of issuance of written approval of the newly authorized sewer service connection. If I/we fail to apply for a building permit as specified above, pursuant to the provisions of Appendix A of the Consent Decree (CASE No. 1:12-CV-24400-FAM) between the United States of America and Miami-Dade County the newly authorized sewer service connection shall automatically be null and void on no further force and effect.
2. Obtain the approved building permit within one hundred and eighty (180) days of having filed the application of a building permit pursuant to the current Florida Building Code or as it may be amended from time to time. If I/we fail to obtain the approved building permit as specified above, and fail to obtain an extension of time from the appropriate building official(s) the newly authorized sewer system connection and building permit approval shall automatically be null and void and of no further force and effect and
3. Commence construction of the project within one hundred eight (180) days of issuance of the building permit pursuant to the current Florida Building Code or as it may be amended from time to time. If I/we fail to commence such construction as specified above, the building permit and the newly authorized sewer system connection shall automatically be null and void and be of no further force and effect.

Once work has commenced and the permit is revoked or becomes null and void, the newly authorized sewer service connection shall automatically be null and void and be of no further force and effect. If the building permit expires the newly authorized sewer service connection shall expire within 150 days of the expiration date of the building permit.

Similarly, I/we understand and attest that we are ready, willing and able to obtain a Certificate of Use or Municipal Occupational License for any changes in a facility's use that results in an increase of wastewater flows within ninety (90) days from the date of issuance of written approval of the newly authorized sewer service connection. If I/we fail to obtain a Certificate of Use or Municipal Occupational License as specified above, the newly authorized sewer service connection automatically shall be null and void of no further force and effect.

Furthermore, I/we hereby acknowledge and recognize that the newly authorized sewer service connection does not constitute the approval of a building permit application, Certificate of Use or Municipal Occupational License by the Department, but rather only a certification that adequate capacity exists in the sanitary sewer collection, transmission, and treatment system for the proposed project in accordance with the provisions of Appendix A of the Consent Decree (CASE No. 1:12-CV-24400-FAM) between the United States of America and Miami-Dade County. I/we are hereby duly informed that the building permit application, building construction plans, Certificate of Use application, Municipal Occupational License application and/or any supporting or required documentation may require the review and approval of the Division of Environmental Resources Management in accordance with the requirements of Chapter 24 of the Miami-Dade County Code, as may be amended from time to time.

<u>Applicant</u>	
_____ Name in Print and Title	
_____ Company Name	
_____ Signature	
State of Florida County of Miami-Dade	
Sworn to and subscribed before me this ____ day of _____, 20__ by _____	
<input type="checkbox"/> Personally known or <input type="checkbox"/> Produced Identification	
_____ Notary Public (SEAL)	

<u>Property Owner</u>	
Andrew Coelho (Vice President) Name in Print and Title	
Sunrise of Coral Gables Propco, LLC Company Name	
_____ Signature	
State of Virginia County of Fairfax	
Sworn to and subscribed before me this <u>22</u> day of <u>March</u> , 20 <u>22</u> by <u>Andrew Coelho</u>	
<input checked="" type="checkbox"/> Personally known or <input type="checkbox"/> Produced Identification	
_____ Notary Public <u>Monica Sandra Herry</u> (SEAL)	

MONICA SANDRA HERRITY
 NOTARY PUBLIC
 REGISTRATION # 7731288
 COMMONWEALTH OF VIRGINIA
 MY COMMISSION EXPIRES
 APRIL 30, 2025



Miami-Dade County

Department of Regulatory & Economic Resources

Division of Environmental Resources Management DERM #: _____

Sewer Capacity Certification Letter Application

dermplanreview@miamidade.gov

West Office (PIC) 786-315-2800

Downtown Office (OTV) 305-372-6899

Instructions: You must fill out this application to obtain a sewer certification allocation letter which is a required step in obtaining your building permit.

Step 1: Completely fill out sections 1a, 1b, and 1c, and complete the affidavit on the reverse side of this application including the notarized signature of the property owner or the authorized representative. Please note: Assignment of the authorized representative must be in the form of a notarized authorization letter from the property owner.

Step 2: Have your utility (if not part of the MDWASD utility service area) certify the pump station information for your project in Section 2.

Step 3: Once your application has been certified by your utility, bring the completed application to one of the DERM Plan Review offices for processing

RESIDENTIAL (SINGLE FAMILY & DUPLEX) FEE up to 5 building sites: \$90.00 plus \$10 per additional building site.

COMMERCIAL FEE: \$120 for the first site plus \$10 for each additional building site. All fees subject to a 7.5% surcharge.

Please make checks payable to: Miami-Dade County

APPLICATIONS WILL NOT BE ACCEPTED IF THE NECESSARY INFORMATION AND SIGNATURES ARE NOT PROVIDED.

Section 1a

Contact Name: _____ Phone: _____ Email: _____

Applicant Information

Name (title): ROBERTO TRADAGA, MBR
Company name: ALLIANCE STARLIGHT 1, LLC
Address: 1431 PONCE DE LEON BLVD.
City: CORAL GABLES, State: FL Zip: 33134
Phone: 305-491-3302
Email: lrpaperllc@gmail.com

Property Owner Information

Name (title): ROBERTO TRADAGA, MBR
Company name: ALLIANCE STARLIGHT 1, LLC
Address: 1431 PONCE DE LEON BLVD
City: CORAL GABLES, State: FL Zip: 33134
Phone: 305-491-3302
Email: lrpaperllc@gmail.com

Section 1b

Property Information

Project/Business Name: ReGENCY ON THE PARK
Address: 912-921 E. PONCE City: CORAL GABLES Zip: 33134
of units: 162 Type of units: APARTMENT Folio: 0341080091010
Lot & Block # (s): S-12 / 12 Subdivision: DOUGLAS SECTION

Be sure to include a Lot & Block # for each unit to be developed. You may attach an additional list if necessary. If Lot & Block are unavailable, submit a track number, survey, site plan or sketch that includes all property boundaries. For undeveloped land, you may submit a master folio number for the entire property.

Section 1c

Project Details

Proposed Flow: 21,870 GPD Previous Flow: 9,860 GPD Estimated Completion Date: 12/2020
Process #: M2020003574 City: CORAL GABLES Sewer Extension #: Required
Previous Use: 16 APARTMENT UNITS
Proposed Use/Project Description (including SQ FT): PROPOSED 162 RESIDENTIAL APARTMENT UNITS AND 420 SF OF LEASING OFFICE.

Section 2

City of Coral Gables

Utilities Division To be completed by utility company only

Utility Providing Service: _____ Date: AUG 25 2020
Pump Station Receiving Flow: 03-CITY 2 Located at: _____
Sewer abutting the Property (YES / NO) (FORCEMAIN / GRAVITY) _____
Lateral Connection (NEW / EXISTING) _____ Point of Connection: Main
Utility Official Name: Jorge Acevedo Signature: [Signature] Phone #: 305 460 5000

EXHIBIT "G1"

JOINT USERS' TIMELINE FOR SEWER IMPROVEMENT

Exhibit G1

Developer Anticipated Timeline for Sewer Improvement *

Description	Date
Sewer Improvement Permit Issued	September 24, 2021
Contractor Notice to Proceed	July 2022
Obtain Contractor Permits & City Requirements	September 2022
Material Procurement Completion	October 2022
Contractor Mobilization	October-November 2022
Sewer Improvements Construction	October/November 2022 – May/June 2023
Sewer Improvement Certification / City Approval	June/July 2023

***This timeline is only an estimate and does not take into account unexpected issues or delays and is contingent upon expedited City permitting and approvals.**

EXHIBIT "G2"

ANTICIPATED CITY TIMELINE FOR SEWER IMPROVEMENT

City will provide timeline for its Sewer Improvement Work at a later date.

EXHIBIT "H"

CONTRACTOR WARRANTY

PROJECT: Regency on the Park and 1000 Ponce Sewer Improvement as per Contractor Agreement dated 7/28/2022 between Maestre Construction Inc. and Sunrise of Coral Gables PropCo, LLC, ("Contractor Agreement")

OWNER: The City of Coral Gables ("Owner")

DEVELOPER: Sunrise of Coral Gables PropCo, LLC, ("Developer")

CONTRACTOR: Maestre Construction Inc. ("Contractor")

Contractor warrants to the City and Developer for a period of three (3) years from the final completion of the Work (the "Warranty Period") required by the Contractor Agreement ("Sewer Improvement Work"), that the Sewer Improvement Work, and all related improvements to be owned/operated by the City as part of the Sewer Improvement Work pursuant to the Sewer Improvement Agreement dated 7/28/2022 ("Sewer Improvement Agreement"): (1) are fit for their intended purpose and are free from defects in the work performed and materials furnished; (2) shall perform for their intended purpose; and (3) shall be free from any design or construction defects, errors or omissions. Final completion for the purpose of commencement of Contractor's warranty as set forth herein shall commence when all conditions of the Contractor Agreement have been met, and the Sewer Improvement Work has received all necessary approvals from all governmental authorities having jurisdiction of the Sewer Improvement Work

The consideration for this warranty is the amount paid to Contractor for the performance of the Sewer Improvement Work. Should any defect or deficiency occur during the Warranty Period due to improper labor, materials, workmanship, services or otherwise, the same, including adjacent Sewer Improvement Work displaced, shall be made good by the Contractor at no expense to the Owner or Developer. Contractor shall be responsible for coordinating any and all subcontractors required to meet Contractor's warranty obligations to Owner and Developer.

Contractor expressly agrees that this Warranty and all warranty obligations set forth in the Contractor Agreement shall be fully enforceable by Owner and Developer.

CONTRACTOR:

By: Angel Maestre 
Title: President
Date: 7/28/2022
Address: 610 W 53 St, Hialeah FL 33012
Phone: (305) 720-0022
Email: MaestreConstruction@gmail.com

EXHIBIT "I"

MAINTENANCE BOND

Bond Number # 800079856

KNOW ALL MEN BY THESE PRESENTS, that we, Maestre Construction, Inc., as Principal, and Atlantic Specialty Insurance Company, as Surety, are held and firmly bound unto, the City of Coral Gables, a municipal corporation of the State of Florida as Obligee, in the penal sum of \$916,787.00 to which payment well and truly to be made we do bind ourselves, our and each of our heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, the said Principal has entered an agreement with Sunrise of Coral Gables PropCo, LLC, , dated _____ (“Contractor Agreement”) for the design and/or construction of certain sewer improvement work as described in the Contractor Agreement (“Sewer Improvement Work”).

WHEREAS, the Principal will furnish a bond conditioned to guarantee for the period of three (3) year(s) from final completion of the Sewer Improvement Work (“Warranty Period”) against all defects in workmanship, services, labor, and materials during the Warranty Period.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that, if the Principal shall indemnify the Obligee for all loss, damages, costs, claims, expenses, and attorney’s fees that the Obligee may sustain by reason of any defective materials, services, labor, design, or workmanship or by the Sewer Improvement Work not complying with the Contractor Agreement, then this obligation shall be void otherwise to remain in full force and effect. Neither Surety nor Principal may assert the failure to comply with the terms of or seek relief under the Performance Bond or the Contractor Agreement as a defense to their obligations under this Bond.

Principal and Surety release and waive the following defenses to any claim by the Obligee against this Bond: (1) Acceptance of the Work by Obligee or Sunrise of Coral Gables PropCo, LLC; (2) Release of liability for the Work by the Obligee or Sunrise of Coral Gables PropCo, LLC; (3) Non-performance by Obligee or Sunrise of Coral Gables PropCo, LLC; (4) Failure to maintain the Work by the Obligee or Sunrise of Coral Gables PropCo, LLC; and (5) Failure of the Obligee or Sunrise of Coral Gables PropCo, LLC, to pursue or exhaust remedies against the Principal.

The aggregate liability of the Surety shall not exceed the penal sum of this bond irrespective of the number of years it is in effect and irrespective of the number of claims instituted by the Obligee.

SIGNED, SEALED AND DATED THIS 27 DAY OF July, 2022

Maestre Construction, Inc. (“Principal”)

By: [Signature]
Print Name:

SURETY Atlantic Specialty Insurance Company

By: [Signature]
Print Name: Jonathan A. Bursevich, Attorney-in-Fact





Power of Attorney

KNOW ALL MEN BY THESE PRESENTS, that ATLANTIC SPECIALTY INSURANCE COMPANY, a New York corporation with its principal office in Plymouth, Minnesota, does hereby constitute and appoint: **Warren M. Alter, Jonathan Anthony Bursevich, David T. Satine**, each individually if there be more than one named, its true and lawful Attorney-in-Fact, to make, execute, seal and deliver, for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof; provided that no bond or undertaking executed under this authority shall exceed in amount the sum of: **unlimited** and the execution of such bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof in pursuance of these presents, shall be as binding upon said Company as if they had been fully signed by an authorized officer of the Company and sealed with the Company seal. This Power of Attorney is made and executed by authority of the following resolutions adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the President, any Senior Vice President or Vice-President (each an "Authorized Officer") may execute for and in behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and affix the seal of the Company thereto; and that the Authorized Officer may appoint and authorize an Attorney-in-Fact to execute on behalf of the Company any and all such instruments and to affix the Company seal thereto; and that the Authorized Officer may at any time remove any such Attorney-in-Fact and revoke all power and authority given to any such Attorney-in-Fact.

Resolved: That the Attorney-in-Fact may be given full power and authority to execute for and in the name and on behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and any such instrument executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed and sealed by an Authorized Officer and, further, the Attorney-in-Fact is hereby authorized to verify any affidavit required to be attached to bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof.

This power of attorney is signed and sealed by facsimile under the authority of the following Resolution adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the signature of an Authorized Officer, the signature of the Secretary or the Assistant Secretary, and the Company seal may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing an Attorney-in-Fact for purposes only of executing and sealing any bond, undertaking, recognizance or other written obligation in the nature thereof, and any such signature and seal where so used, being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

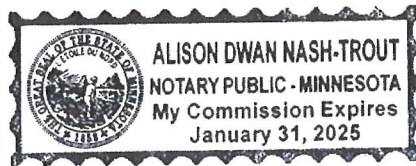
IN WITNESS WHEREOF, ATLANTIC SPECIALTY INSURANCE COMPANY has caused these presents to be signed by an Authorized Officer and the seal of the Company to be affixed this twenty-seventh day of April, 2020.



By 
Paul J. Brehm, Senior Vice President

STATE OF MINNESOTA
HENNEPIN COUNTY

On this twenty-seventh day of April, 2020, before me personally came Paul J. Brehm, Senior Vice President of ATLANTIC SPECIALTY INSURANCE COMPANY, to me personally known to be the individual and officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, that he is the said officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the seal of said Company and that the said seal and the signature as such officer was duly affixed and subscribed to the said instrument by the authority and at the direction of the Company.




Notary Public

I, the undersigned, Secretary of ATLANTIC SPECIALTY INSURANCE COMPANY, a New York Corporation, do hereby certify that the foregoing power of attorney is in full force and has not been revoked, and the resolutions set forth above are now in force.

Signed and sealed. Dated _____ day of _____, _____.



This Power of Attorney expires
January 31, 2025


Kara Barrow, Secretary

EXHIBIT "J"

PAYMENT AND PERFORMANCE BONDS

BOND NO: 800079856

PAYMENT BOND

BY THIS BOND, we, **Maestre Construction Inc.**, having a principal place of business at 610 West 53rd Street, Hialeah, Florida 33012, Phone: 305-557-4440, as Principal, hereinafter called BUILDER, and Atlantic Specialty Insurance Company, having a principal place of business at 605 Highway 169 North, Suite 800, Plymouth, MN 55441, Phone: (952) 852-2431 as Surety, are bound to Sunrise of Coral Gables PropCo, LLC, whose mailing address is 7902 Westpark Drive, McLean, VA 22102, Owner as Obligee, hereinafter called Owner; in the amount of Nine Hundred Sixteen Thousand Seven Hundred Eighty Seven and 00/100 Dollars (\$916,787.00) for the payment whereof BUILDER and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, BUILDER has by written agreement entered into an Agreement dated _____ ("Contractor Agreement") for the Sewer Improvement Work described in the Build Agreement ("Project") with the Owner which is by reference incorporated herein and made a part hereof, and specifically includes provision for liquidated damages and other damages;

THE CONDITION OF THIS BOND is that if the BUILDER:

1. Pays OWNER all losses, liquidated damages, expenses, costs and attorney's fees including appellate proceedings, that OWNER sustains because of default by BUILDER under the Contractor Agreement; and
2. Promptly makes payments to all claimants as defined by Florida Statute 255.05(1) including professional liens as defined in § 713.03, Architect and Consultants (as such terms are defined in the Contractor Agreement) for all design and construction services, labor, materials and supplies used directly or indirectly by BUILDER in the performance of the Contractor Agreement;

THEN BUILDER'S OBLIGATION SHALL BE VOID; OTHERWISE, IT SHALL REMAIN IN FULL FORCE AND EFFECT SUBJECT, HOWEVER, TO THE FOLLOWING CONDITIONS:

- 2.1. A claimant, except a laborer, who is not in privity with BUILDER or a professional lienor as defined in Fla. Stat. §713.03 shall, within forty-five (45) days after beginning to furnish labor, materials, or supplies for the prosecution of the work, furnish to BUILDER a notice that he intends to look to the bond for protection.
- 2.2. A claimant who has not received payment for its professional services, labor, materials, or supplies shall, within ninety (90) days after performance of the services, labor or after complete delivery of the materials or supplies, deliver to BUILDER and to the Surety, written notice of the performance of the services, labor or delivery of the materials or supplies and of the nonpayment.
- 2.3. Any action under this Bond must be instituted in accordance with the Notice and Time Limitations provisions prescribed in Section 255.05(2), Florida Statutes and Chapter 713, Florida Statutes.

This payment bond shall be construed and deemed statutory payment bonds and shall not under any circumstances be converted into common law bonds. Any changes in or under the Contractor Documents and compliance or noncompliance with any formalities connected with the Contractor Agreement or the changes does not affect the Surety's obligation under this Bond.

DEFINITIONS

Contractor Agreement: For purposes of this Bond, the Contractor Agreement is the entire integrated agreement between the Owner and the Builder, which includes the Agreement and other documents incorporated therein and all Contractor Agreement Documents and the changes thereto.

Signed and sealed this _____ day of _____, 20____.

ATTEST:

(Secretary)

CORPORATE SEAL

BUILDER

Maestre Construction, Inc.

(Name of Corporation)

By:

(Signature)

Angel Maestre, President
(Print Name and Title)

27 day of July, 2022



IN THE PRESENCE OF:

Ellie Kugler

Dawn Auspitz

Lilia Rafford



INSURANCE COMPANY: Atlantic Specialty Insurance Company

By: _____

Print Name: Jonathan Anthony Bursevich

Address: 605 Highway 169 North, Suite 800,

(Street)

Plymouth, MN 55441

(City, State and Zip Code)

Telephone No: (952) 852-2431

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, Angel Maestro, certify that I am the Secretary of the corporation named as Principal in the foregoing Performance and Payment Bonds; that Angel Maestro, who signed the Bond(s) on behalf of the Principal, was then President of said corporation; that I know his/her signature; and his/her signature thereto is genuine; and that said Bond(s) was (were) duly signed, sealed and attested to on behalf of said corporation by authority of its governing body.

Angel Maestro
Secretary (on behalf of)
Maestro Construction Inc.
Corporation

(SEAL)



STATE OF FLORIDA)
) ss.
COUNTY OF MIAMI DADE)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 27 day of July, 2022, by **Builder**, the President of Maestro Construction a corp., on behalf of the corporation/limited liability company/partnership, who is personally known to me or who has produced _____ as identification.

Notary Public _____
Notary Seal: _____

PERFORMANCE BOND

BOND NO: 800079856

AMOUNT: \$916,787.00

KNOW ALL MEN BY THESE PRESENTS, that we, **Maestre Construction Inc.**, as Principal (hereinafter called Builder), whose principal business address and telephone number is 610 West 53rd Street, Hialeah, Florida 33012, and 305-557-4440 and Atlantic Specialty Insurance Company, organized and existing under and virtue of the laws of the State of Florida, as Surety (hereinafter called Surety), and authorized to transact business within the State of Florida, whose principal business address and telephone number is 605 Highway 169 North, Suite 800, Plymouth, MN 55441, are held and firmly bound unto Sunrise of Coral Gables PropCo, LLC (hereinafter called the "Owner"), in the sum of Nine Hundred Sixteen Thousand Seven Hundred Eighty Seven and 00/100 Dollars (\$916,787.00), lawful money of the United States of America, for the payment of which, well and truly be made to OWNER, the Contractor and the Surety bind themselves and each of their heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents as follows:

WHEREAS, the BUILDER has executed and entered into an Agreement, with OWNER dated _____, ("Contractor Agreement") which is by reference incorporated herein and made a part of this Bond as fully and completely as if set forth herein, for Sewer Improvement Work described in the Contractor Agreement ("Project");

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT IF BUILDER:

1. In all respects fully, promptly and faithfully complies with the terms and conditions of the Contractor Agreement for the design and construction of the Project; and
2. Indemnifies and saves harmless OWNER against and from all costs, expenses, damages including liquidated damages, attorney's fees, including appellate proceedings, injury, or loss to which OWNER may be subject by reason of any wrong doing, misconduct, want of care or skill, negligence, failure to complete the design services or Work as defined in the Contractor Agreement, within the prescribed time, failure to petition within the prescribed time, or default, including patent infringements, on the part of said BUILDER, its agents or employees, in the execution or performance of said Contractor Agreement; and
3. Performs the guarantee and warranty of all design and construction work and materials furnished under the Contractor Agreement for the time specified in the Agreement;

THEN THIS BOND IS VOID; OTHERWISE IT WILL REMAIN IN FULL FORCE AND EFFECT for the term of the Contract Agreement, including any and all warranty periods as specifically mentioned in said Contract Agreement.

By incorporating the Contractor Agreement into its Performance Bond, the Surety consents to the provisions of the Contractor Agreement wherein Builder's and Surety's obligations are mentioned and further agrees that if the Builder or any party for whom the Builder is responsible fails to perform any of its obligations pursuant to the Contractor Agreement, then Surety will be liable to OWNER for all damages OWNER may sustain and be entitled to in law and pursuant to the Contractor Agreement including, but not limited to, all damages to correct defects or deficiencies in Builder's Work as that term is defined in the Contractor Agreement, to cure defaults and breaches of the Contractor Agreement, to add manpower, for all delay damages including Liquidated Damages, to perform the Builder's warranty or guarantee obligations pursuant to the Contractor Agreement, and pay OWNER all damages OWNER may be entitled to. The OWNER shall simply give the Surety the same notices that OWNER shall be required to give to Builder pursuant to the Contractor Agreement to trigger Surety's liability. The OWNER will not be required to terminate the Builder to trigger the Surety's liability for the Builder's defaults.

The Surety is also obligated to the OWNER without duplication for:

1. The responsibilities of the Builder for correction of defective or deficient work, materials, and completion of the Contractor Agreement, including all punch list work, the performance of all warranty and guarantee obligations, including those which arise subsequent to substantial and final completion of the Contractor Agreement,
2. Additional legal, design professional and delay costs resulting from the Builder's Default, and resulting from the actions or failure to act pursuant to this Bond, and
3. Liquidated damages, or if no liquidated damages are specified in the Contractor Agreement, all damages caused by delayed performance or non-performance by the Builder.

Surety for value received hereby stipulates and specifically agrees that no change involving any extension of time, or alteration or addition to the terms of the Contractor Agreement or to the Work to be performed, or materials, equipment or supplies to be furnished thereunder, or in the plans, drawings and specifications accompanying the said Contractor Agreement shall affect the said Surety's obligation under this Bond and the said Surety does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Contractor Agreement or to the Work, or to the plans, drawings and specifications or any other changes, compliance or noncompliance to the terms of the Contractor Agreement or to the work or to the specifications.

DEFINITIONS

Contractor Agreement: For purposes of this Bond, the Contractor Agreement is the entire integrated agreement between the OWNER and the Builder, which includes the Contractor Agreement and other documents incorporated therein and all Contractor Agreement Documents and the changes thereto.

Builder Default: Failure of the Builder, which has not been remedied, to perform or otherwise to comply with the Contractor Agreement.

IN WITNESS WHEREOF, the above parties bound together have executed this instrument this ___ day of July _____, 20___, with the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative, pursuant to the authority of its governing body.

BUILDER (Principal)

Maestre Construction, Inc.

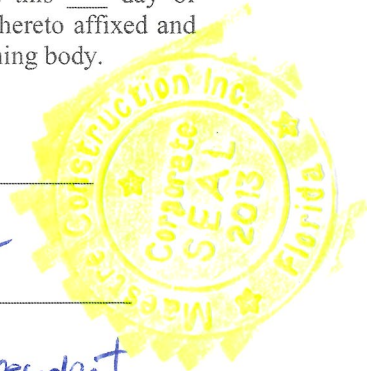
(Typed Name of Builder)

By: *Angel Maestre*

(Signature of Officer)

Angel Maestre, President

(Typed Name and Title)



ATTEST:

(SEAL)



J A B

(Florida Resident Agent)

Jonathan A. Bursevich

SURETY

Atlantic Specialty Insurance Company

(Typed Name of Surety)

By: *J A B*

(Signature of Attorney-in-fact. Attach

Power of Attorney)

Jonathan A. Bursevich

STATE OF FLORIDA)
) ss.
COUNTY OF Miami-Dade)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 25th day of July, 2022, by _____, as attorney-in-fact, who is personally known to me or who has produced _____ as identification, on behalf of _____ (name of principal).



Notary Public – State of Florida



Notary Seal: _____

IMPORTANT: Surety companies executing this Bond must appear on and have sufficient bonding capacity per the Treasury Department's most current list (circular 570 as amended) and be authorized to transact business in the State of Florida.

**RIDER ADDING
ADDITIONAL OBLIGEE**

This Rider is to be attached to and form a part of Bond Number 800079856, dated the _____ day of _____, 20~~19~~²² executed by Atlantic Specialty Insurance Company (the "Surety") on behalf of **Maestre Construction Inc.** (the "Principal") in favor of Sunrise of Coral Gables PropCo, LLC (the "Obligee") ("Bond").

WHEREAS, the Principal has by written agreement dated _____, _____, entered into a contract (the "Contract") with the Obligee for Sewer Improvement Work described therein; and

WHEREAS, upon the request of the Principal and Obligee the attached bond is hereby amended to add **The City of Coral Gables**, a Florida Municipal Corporation whose mailing address is 405 Biltmore Way, Coral Gables, FL 33134 as additional Obligee,

PROVIDED, HOWEVER, there shall be no liability under this bond to the Obligees, or either of them unless the said Obligees, or either of them, shall make payments to the Principal or to the Surety, should the Surety arrange for or undertake the completion of the Contract upon the default of the Principal, strictly in accordance with the terms of the Contract; and otherwise satisfy all terms and conditions and perform all of the other obligations to be performed under the Contract at the time and in the manner therein set forth; all of the acts of one Obligee being binding on the other. Surety acknowledges that the City of Coral Gables is the ultimate owner of the Project. The Surety acknowledges that the City of Coral Gables as additional Obligee shall have all of the rights of Owner (as defined in the Bond) under the attached Bond.

In no event shall the aggregate liability of the Surety to either or to both Obligees exceed the liability set forth in the attached Bond. At the Surety's election, any payment due to either Obligee shall be made by its check issued solely to the City of Coral Gables, and the Surety shall accept and comply with any direction, communication, or notice on behalf of all Obligees exclusively from the City of Coral Gables.

This change is effective this 27 day of July, 2022

The attached Bond shall be subject to all of its terms, conditions and limitations except as herein modified.

DATED as of this _____ day of _____, 20__.

WITNESS/ATTEST:

Name: _____

As Per Attached Power of Attorney

Name: _____

Maestre Construction, Inc.
By: Angel Maestre
Name: Angel Maestre
Title: President

Atlantic Specialty Insurance Company
By: JOL

Jonathan A. Bursevich, Attorney-in-Fact





Power of Attorney

KNOW ALL MEN BY THESE PRESENTS, that ATLANTIC SPECIALTY INSURANCE COMPANY, a New York corporation with its principal office in Plymouth, Minnesota, does hereby constitute and appoint: **Warren M. Alter, Jonathan Anthony Bursevich, David T. Satine**, each individually if there be more than one named, its true and lawful Attorney-in-Fact, to make, execute, seal and deliver, for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof; provided that no bond or undertaking executed under this authority shall exceed in amount the sum of: **unlimited** and the execution of such bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof in pursuance of these presents, shall be as binding upon said Company as if they had been fully signed by an authorized officer of the Company and sealed with the Company seal. This Power of Attorney is made and executed by authority of the following resolutions adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the President, any Senior Vice President or Vice-President (each an "Authorized Officer") may execute for and in behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and affix the seal of the Company thereto; and that the Authorized Officer may appoint and authorize an Attorney-in-Fact to execute on behalf of the Company any and all such instruments and to affix the Company seal thereto; and that the Authorized Officer may at any time remove any such Attorney-in-Fact and revoke all power and authority given to any such Attorney-in-Fact.

Resolved: That the Attorney-in-Fact may be given full power and authority to execute for and in the name and on behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and any such instrument executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed and sealed by an Authorized Officer and, further, the Attorney-in-Fact is hereby authorized to verify any affidavit required to be attached to bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof.

This power of attorney is signed and sealed by facsimile under the authority of the following Resolution adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the signature of an Authorized Officer, the signature of the Secretary or the Assistant Secretary, and the Company seal may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing an Attorney-in-Fact for purposes only of executing and sealing any bond, undertaking, recognizance or other written obligation in the nature thereof, and any such signature and seal where so used, being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

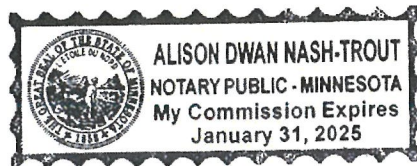
IN WITNESS WHEREOF, ATLANTIC SPECIALTY INSURANCE COMPANY has caused these presents to be signed by an Authorized Officer and the seal of the Company to be affixed this twenty-seventh day of April, 2020.

STATE OF MINNESOTA
HENNEPIN COUNTY



By *Paul J. Brehm*
Paul J. Brehm, Senior Vice President

On this twenty-seventh day of April, 2020, before me personally came Paul J. Brehm, Senior Vice President of ATLANTIC SPECIALTY INSURANCE COMPANY, to me personally known to be the individual and officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, that he is the said officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the seal of said Company and that the said seal and the signature as such officer was duly affixed and subscribed to the said instrument by the authority and at the direction of the Company.



Alison Nash-Trout
Notary Public

I, the undersigned, Secretary of ATLANTIC SPECIALTY INSURANCE COMPANY, a New York Corporation, do hereby certify that the foregoing power of attorney is in full force and has not been revoked, and the resolutions set forth above are now in force.

Signed and sealed. Dated _____ day of _____, ____.



This Power of Attorney expires
January 31, 2025

Kara Barrow
Kara Barrow, Secretary

EXHIBIT "K"

INSURANCE REQUIREMENTS

EXHIBIT "L"

ESCROW AGREEMENT

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this “Agreement”) is made and entered into on this ____ day of _____, 20 __, (the “Effective Date”) by and between **SUNRISE OF CORAL GABLES PROPCO, LLC**, a Delaware limited liability company, whose mailing address is 7902 Westpark Drive, McLean, VA 22102 (the “Developer”), **ALLIANCE STARLIGHT I, LLC**, a Florida limited liability company, whose mailing address is 340 Minorca Avenue, Suite 9, Coral Gables, Florida, 33134, (the “Joint User”), **KIMLEY HORN AND ASSOCIATES**, a Florida corporation whose mailing address is 355 Alhambra Circle, Suite 1400, Coral Gables, FL 33134, (“Project Engineer”), and **GUNSTER, YOAKLEY & STEWART, P.A.**, a Florida professional association whose mailing address is 777 S. Flagler Drive, 500 East Tower, West Palm Beach, Florida 33401, (“Escrow Agent”).

RECITALS

A. The Developer and Joint User are parties to that certain Sewer Improvement Agreement (the “Sewer Improvement Agreement”) dated _____, 20 __, and to that certain Joint Users Cost Sharing Agreement (the “JUCSA”; and together with the Sewer Improvement Agreement, the “Sewer Agreements”) dated _____, 20 __, to fund and manage the design, construction, installation and conveyance of the Sewer Improvements (unless otherwise defined herein, all capitalized terms used in this Agreement shall have the meanings assigned to the same in the Sewer Improvement Agreement).

B. The Sewer Improvements are required in order to provide sewer service to the new buildings proposed to be built by the Developer and Joint User as well as to enhance the capacity of the City of Coral Gables (the “City”) sewer infrastructure.

C. The Developer has entered into contracts with the Project Engineer to design and Maestre Construction Inc. (the “Contractor”) to construct the Sewer Improvement Work (the “Contractor Agreements”).

D. The Developer and Joint User desire that the Escrow Funds (as defined herein) be held in escrow by Escrow Agent, subject to the terms and conditions set forth herein and the Sewer Agreements.

E. Escrow Agent is willing to act as the holder of the funds deposited to an account to be maintained by Escrow Agent according to this Agreement and the Sewer Agreements and to distribute those funds as set forth herein and therein (the “Escrow Funds”).

In consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated into this Agreement.

2. **Escrow Funds.** The Developer and Joint User shall deposit their respective shares of the Escrow Funds as required by the JUCSA with Escrow Agent. Escrow Agent shall deposit the Escrow Funds in a non-interest bearing account at _____ subject to the terms and conditions contained in this Agreement and the JUCSA.

3. **Disbursement of Escrow Funds.** Consistent with any of the applicable Contractor Agreements, the Developer agrees that the Escrow Funds shall be disbursed to the Project Engineer and Contractor and other parties in accordance with the Sewer Improvement Agreement, the JUCSA, and the following terms:

a. The Developer and Joint User acknowledge that the sole purpose of the deposits with Escrow Agent shall be to pay reimbursement requests for the design, permitting, administration and construction of the Sewer Improvements in accordance with the Sewer Agreements.

b. The Developer and Joint User acknowledge that the Escrow Funds administered by the Escrow Agent shall be so managed that all reimbursement/pay requests from the Project Engineer and Contractor and other parties shall be forwarded to the Developer and to the Project Engineer.

c. The Project Engineer shall review AIA or EJCDC-format pay requests (“Pay Requests”) from the Contractor (or any parties other than the Project Engineer) and will certify as complete (i) the portion of the Sewer Improvements that has been constructed subsequent to receiving each Pay Request, and (ii) each Pay Request, and shall confirm that such Pay Request conforms to the payment terms of the Contractor Agreements in that the work being indicated as complete on the Pay Request is indeed complete, that the invoices provided by the Contractor or other parties supporting such Pay Request adequately support such Pay Request, and that the lien waivers provided by the Contractor or other parties conform to Escrow Funds released for the preceding Pay Request.

d. The Project Engineer shall provide written certification to the Developer prior to the disbursement for any Pay Request to the Contractor (or any parties other than the Project Engineer) that (i) the Pay Request for the Sewer Improvements is fair and reasonable and that it matches the work progress through the date of the Pay Request in accordance with the applicable payment terms of the Contractor Agreements, this Agreement, the JUCSA, the Sewer Improvement Agreement, and any other applicable agreement, (ii) the Pay Request conforms to the terms of the Contractor Agreements, and (iii) the invoices provided by the requestor/invoicing party supporting such Pay Request adequately support such Pay Request (“Invoice Approval”).

e. Within five (5) business days after receipt of a Pay Request, the Project Engineer shall provide such written certification to the Developer, provided that the Pay Request is complete and accurate. If the Pay Request is not accurate or cannot be substantiated, it shall be returned to the appropriate requestor/invoicing party for adjustment.

f. Escrow Agent shall, upon written notice from the Developer, pay the Pay Request pursuant to the terms of the Contractor Agreements, copies of which are attached to the Sewer Improvement Agreement as Exhibits "E1" and "E2", by withdrawing the certified amount from the Escrow Funds and issuing a check made payable to the requestor/invoicing party, as necessary, to be delivered by overnight mail.

g. After final payments have been made to the requestor/invoicing party, any surplus remaining in the Escrow Funds Account shall be refunded to the Developer and Joint User in equal shares. Within thirty (30) days of receipt by the Developer of written certification from the Project Engineer that the Sewer Improvements have been completed and accepted and conveyed to the City of Coral Gables, the Developer shall issue written notice to Escrow Agent to refund the surplus remaining in the Escrow Funds Account to the Developer and Joint User.

4. **Duties of Escrow Agent in the Event of Uncertainty.** In the event Escrow Agent is uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from the Developer or Joint User or from third persons with respect to the Escrow Funds or any other sums or things which may be held hereunder, which, in its sole opinion, are in conflict with any provisions of this Agreement, Escrow Agent shall be entitled to refrain from taking any action until it shall be directed otherwise in writing by the Developer and said third persons, or by a final order or judgment of a court of competent jurisdiction.

5. **Liability of Escrow Agent.**

a. Escrow Agent shall have no liability or responsibility to any party regarding the financial failure or bankruptcy of such institution; provided, however, that such institution is a banking institution duly licensed under the federal or state banking laws.

b. Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and accuracy of any statements or assertion contained in such writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof 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 of execution, or validity of any written instructions delivered to it; nor as to the identity, authority, or rights of any person executing the same and shall otherwise not be liable for any mistakes of fact or error of judgment, or for any acts or omissions of any kind unless caused by its willful misconduct or gross negligence.

c. It is agreed that the duties of Escrow Agent are purely ministerial in nature and shall be expressly limited to the safekeeping of the Escrow Funds and for the disposition of same in accordance with this Agreement. The Developer hereby agrees to indemnify, defend 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 changes of any character or nature (including, without limitation, reasonable attorneys' fees, paralegals' fees and costs incurred in all trial and appellate proceedings or otherwise if no litigation is instituted) which it may incur or with which it may be threatened directly or

indirectly arising from or in any way connected with Escrow Agent's performance of its duties hereunder unless caused by its willful misconduct or gross negligence.

6. **Default.** In the event either the Project Engineer or the Contractor declares the 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 use the 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 the Contractor Agreements. 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 Escrow Funds for such purpose. In the event of a default, and upon written notice of the default from the Developer or City to Escrow Agent, Escrow Agent shall acknowledge the City's rights to the escrowed funds for the reasons set forth above and Escrow Agent's obligation to tender the funds to the City at the City's written request.

7. **Disputes.** In the event Escrow Agent is joined as a party to a lawsuit by virtue of the fact that it is holding the Escrow Funds, Escrow Agent shall, at its option, either: (1) tender the Escrow Funds to the registry of the appropriate court; or (2) disburse the Escrow Funds in accordance with the court's ultimate disposition of the case, and the Developer hereby indemnifies, defends and holds 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. In the event Escrow Agent tenders the Escrow Funds to the registry of an appropriate court and files an action of interpleader naming the Developer and any affected third parties of whom Escrow Agent has received actual notice, Escrow Agent shall be released and relieved from any and all further obligation and liability hereunder or in connection herewith and the Developer hereby indemnifies, defends and holds Escrow Agent harmless from and against any damages or losses arising in connection therewith, including, but not limited to, all costs and expenses incurred by Escrow Agent in connection with the filing of such action, including, but not limited to, attorneys' and paralegals' fees and court costs at all trial and appellate levels.

8. **Binding Agreement.** This Agreement shall be binding upon thereto and their respective successors and assigns. This Agreement may be executed in counterparts, all of which counterparts shall be deemed to be a single document. Signature pages received by facsimile transmission or electronic mail shall be deemed to be an original document.

9. **Notice.** Each notice or communication under this Agreement shall be delivered and deemed received in accordance with the Sewer Improvement Agreement.

10. **Term of Agreement.** This Agreement shall remain in effect unless and until it is canceled in any of the following manners: (a) upon written notice given by the Developer 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) business days after notice to Escrow Agent of such cancellation; or (b) Escrow Agent may resign at any time upon giving notice to the Developer of its desire to so resign; provided, however, that resignation of Escrow Agent

shall take effect no earlier than twenty (20) business days after the giving of notice of resignation; or (c) upon compliance with all provisions as set forth in this Agreement.

11. **Cancellation of Designation of Escrow Agent or Resignation of Escrow Agent.** In the event the Developer fails to agree to a successor escrow agent within the period described hereinabove, Escrow Agent shall have the right to deposit the Escrow Funds into the registry of an appropriate court and request judicial determination of the rights of the Developer, by interpleader or other appropriate action, and the Developer indemnifies, defends and holds 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. Upon termination of the duties of Escrow Agent in either manner set forth above, Escrow Agent shall deliver the Escrow Funds to the newly appointed escrow agent designated by the Developer, and, Escrow Agent shall not otherwise have the right to withhold the Escrow Funds from said newly appointed escrow agent.

12. **Effect of Modification, Cancellation or Rescission of this Agreement.** Escrow Agent shall not be bound by any modification, cancellation or rescission of this Agreement unless in writing and signed by the Developer and Escrow Agent. In no event shall any modification of this 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.

13. **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.

14. **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.

[SIGNATURE PAGES TO FOLLOW]

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

WITNESS:

Print Name: _____

Sunrise of Coral Gables PropCo, LLC,
a Delaware limited liability company

Print Name: _____

By: _____
Name:
Title:

STATE OF FLORIDA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 202__, by _____ the _____ of **Sunrise of Coral Gables PropCo, LLC**, on behalf of the corporation/limited liability company/partnership, who is personally known to me or who has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

WITNESS:

Print Name: _____

Print Name: _____

Alliance Starlight I, LLC,
a Florida limited liability company

By: _____
Name:
Title:

STATE OF FLORIDA)
) ss.
COUNTY OF _MIAMI-DADE_____)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 202__, by the _____ of Alliance Starlight I, LLC, on behalf of the limited liability company, who is personally known to me or who has produced _____ as identification.

Notary Public – State of Florida

Notary

Seal: _____

WITNESS:

Print Name: _____

Print Name: _____

Gunster, Yoakley & Stewart, P.A., a
Florida professional association

By: _____

Name: _____

Title: _____

STATE OF FLORIDA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 202__, by _____ the _____ of **Gunster, Yoakley & Stewart, P.A.**, a Florida professional association on behalf of the professional association, who is personally known to me or who has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

EXHIBIT "M"

SECTION 78-103 OF THE CITY'S CODE

Sec. 78-103. Sanitary sewer extensions.

- (a) *Construction.* If a sewer connection is required that is outside an existing sewer district the sewer extension shall be constructed by the entity requesting the extension (original applicant) and at their expense. Design and construction shall be in accordance with city standards and all applicable codes. The city shall have the right to inspect the new sanitary sewer improvements at any time during construction. The city shall have final approval and acceptance of work. Upon completion of construction, and certification of acceptance by the health department, the city and any other appropriate entities, the original applicant shall convey to the city clear and clean title to the improvements, including any and all rights-of-way and easements. All expenses shall be the responsibility of the original applicant, including, but not limited to, design, construction, and recording of ownership transfer.
- (b) *Refunds.* The original applicant of an extension of sanitary sewer service dedicated to the city shall be entitled to repayment from subsequent connectors served by the lines installed by the original applicant. Repayments shall be paid for gravity sewers, wastewater lift/pumping stations, force mains and other facilities which service a subsequent connector's property. The original applicant shall be entitled to refunds for a period of ten years for gravity sewers, wastewater lift/pumping stations and for mains from the date commencing with the date of the date of transfer of ownership of the sewer facilities to the city and after a certificate from the department of environmental resources management (DERM), stating that the improvements have been approved for main clearance, and as further described below. All references in this section to the original applicant shall be deemed to include the lawful successors or assigns of the original applicant unless expressly provided otherwise herein.
- (1) Repayment shall be made from subsequent connector to the original applicant. Refunds shall be computed based on a fixed dollar amount per gallon per day (on an annual average day basis) of capacity required by the subsequent connector's property. The computation of a repayment shall be based upon the actual size, capacity and cost of the facilities installed. The city shall review the computation of all repayments and shall act as intermediary only in the event of a dispute over the amount of the refund arises.
 - (2) Repayments must be paid to the original applicant by subsequent connector before physically connecting to the existing mains. The city shall not issue a permit for the connection until such time as good and sufficient proof that the reimbursement has been made is submitted.
 - (3) Per annum simple interest will accrue on all construction connection charges from the date of the original applicant's bill of sale for the sewer facilities at the rate authorized from time to time by F.S. § 687.02.
 - a. An original applicant shall not be repaid sums in excess of his or her original investment, less his or her use, in the sewer facilities.
 - b. Such payment shall only be made during a ten-year period commencing with the date of transfer of ownership of the sewer facilities to the city and after a certificate from the department of environmental resources management (DERM) stating that the improvements have been approved for main clearance. It shall be the original applicant's responsibility to provide the city with a current mailing address during the ten-year period.
 - (4) Should a subsequent connector connect to the existing main without a refund payment, the city, within 30 days of receipt of written notice of same, requires the subsequent connector to pay the full amount due or, at that time, the city may elect to terminate service to the subsequent connector.
 - (5) The city shall maintain records to show which original applicant constructed and paid originally for the wastewater facility improvements. These records will be complete, to include engineering drawings, actual costs, date completed, materials used, etc.

-
- (6) It will be the original applicant's responsibility to inform the city of any changes in name, address, phone number or ownership status.
 - (7) The original applicant and all subsequent connectors shall provide without cost to the city any right-of-way easements required to furnish the service requested by the original applicant.
 - (8) When sewer mains are to be extended within the public right-of-way or when a public utility easement is used for such purposes, the original applicant must extend the main the entire length in accordance with sizes/capacities established by the city. Such length shall originate from the terminus of existing service to a point designated by the city for effective and efficient system operation.
 - (9) The following is an example of the above-stated refund policy. In this example, to service his or her property, the original applicant requires an eight-inch gravity sewer line in this location. The city identifies a 16-inch gravity sewer line as necessary to accommodate the total average annual daily flow (AADF) of properties generating wastewater tributary to the sewer line in this area. The AADF capacity of a 16-inch gravity sewer in this location is designated F16 GPD. The original applicant is required to construct the 16-inch gravity sewer line in this location. Unless the city agrees to participate in the initial cost-sharing of the 16-inch gravity sewer line, the original applicant must initially bear the entire cost of the 16-inch gravity sewer line, which is designated C16. The fixed dollar amount of refund per gallon per day described in subsection (b)(1) of this section is represented in this example as C16/F16. When connector #1, the flow of whose parcel is designated FCA#1, wishes to connect to the 16-inch line, connector #1 must pay a refund to the city equal to $FCA\#1 \times (C16/F16)$. Subsequent connectors/applicants must also pay refunds to the city computed in the same manner. The city shall, in turn, repay the appropriate amounts within the durations set forth in subsections (b)(1) and (3) of this section.
 - (10) The city may require that an original applicant oversize facilities to service the subject property in order that the city may service future developers or to improve its service.
 - (11) In order to offset the city's expense of maintaining records of repayment to be paid, subsequent connectors shall pay the city a repayment administration fee (RAF), which shall be in addition to the refund designated for payment to the original applicant. The RAF amount shall be five percent of the refund to the original applicant, but the RAF shall not be less than the amount established in section 1-8. The original applicant and those subsequent connectors not required to pay refunds designated for payment to an original applicant shall not pay a RAF.
 - (12) Total amount of refunds to the original applicant shall not exceed the cost of the facilities less the cost of that portion of the facilities hydraulically required by the original applicant on annual average daily flow basis. In the event that the city has contributed to the over-sizing of the facilities, total amount of refunds to the original applicant shall be reduced by the amount contributed by the city.
 - (13) The original applicant will be required to submit a cost estimate for all improvements prior to obtaining a city permit and approval to commence construction. If costs appear to be unusually excessive for market conditions at the time of application, the city may reject the project.
 - (14) The city, or its agents, shall have the right to audit any records and books of the original applicant or any contractors or any sub-contractors to the extent such books and records related to the performance of this agreement or any subcontract to this agreement. Such records and books shall be maintained by the original applicant, contractor or any subcontractor for a period of three years from the date the transfer of ownership is recorded.
 - a. Such records and books shall reflect control accounts and detail accounts prepared in accordance with generally accepted accounting principles. Such books and records shall be made available to the city, or its agents, within the Miami-Dade County area.

b. If the city, or its agents' audit discloses a cumulative actual variance of three percent or more from amounts reported to the city the original applicant, contractor or subcontractor, such audit shall be at the original applicant's expense, in which case such audit costs and any overbilling shall be immediately paid to the city by the contractor.

- (15) Should unusual circumstances arise whereby a subsequent connector would be required to make excessive refunds designated for payment to one or more original applicants or insufficient refunds, the city may be requested to review and resolve such a case individually, upon written application to the city.
- (16) Refunds for gravity sewers, wastewater lift/pumping stations and force mains shall be due the original applicant from the date of transfer of ownership of the sewer facilities to the city is recorded and after the DERM "Final Construction Report" signed by a professional engineer who designed the system, stating that the system is ready for its intended use.
- (17) In those situations in which sanitary sewer improvements within the scope of this section have been made by a community development district (CDD) as authorized by F.S. ch. 190, any repayment which is due from the subsequent connector to the original applicant shall be payable to the CDD unless otherwise provided by the Miami-Dade County ordinance which created the CDD. Any such refund made to the CDD shall be administered by the city pursuant to an agreement (the "Refund Agreement") entered into between the subsequent connector, CDD and the city. The refund agreement shall be subject to the approval of the city manager and shall be approved as to form and legal sufficiency by the city attorney. It is intended that the refund agreement provides for the owners of the specially assessed property within the CDD to benefit from the authorized refund to the extent consistent with this section and F.S. ch. 190.

(Code 2006, § 78-107; Ord. No. 2007-29, 9-25-2007)