

COMMUNITY BENEFITS AGREEMENT

by and between

CITY OF MIAMI,

a municipal corporation of the State of Florida

and

MIAMI FREEDOM PARK, LLC,

a Delaware limited liability company

COMMUNITY BENEFITS AGREEMENT

THIS COMMUNITY BENEFITS AGREEMENT (this “**Agreement**”), dated and entered into as of this ___ day of _____, 2019, is made by and between **CITY OF MIAMI**, a municipal corporation of the State of Florida, having its principal office and place of business at 3500 Pan American Drive, Miami, Florida 33133 (“**City**”) and **MIAMI FREEDOM PARK, LLC**, a Delaware limited liability company, having its principal office and place of business at 800 Douglas Road, 12th Floor, Coral Gables, Florida 33134 (hereinafter called “**MFP**” and together with the City, collectively, referred to herein, as the “**Parties**” and each, individually, as a “**Party**”). Capitalized terms used in this Agreement, without being defined elsewhere herein, shall have the meanings set forth in **Article 1** hereof.

WITNESSETH:

A. MFP, its principals and affiliates are active members of the City of Miami community and, as part of their continued commitment to the City, seek to contribute to the City’s beautification, utility and community-spirit by pledging funds to public parks and projects and making available recreational opportunities for City residents.

B. In furtherance of the foregoing, MFP seeks to voluntarily establish a (i) \$20,000,000.00 maintenance and preservation fund for the benefit of the Public Park Parcel (the “**Park Fund Contribution**”), (ii) \$5,000,000.00 fund for the benefit of the Baywalk-Riverwalk Project, (the “**Baywalk Contribution**”), and (iii) a process to make soccer fields available to the City’s youth (collectively, the “**Community Benefits**”).

C. The City and MFP recognize the public benefits attained from the Community Benefits and thereby wish to enter into the agreements, terms, covenants and conditions hereinafter set forth.

ARTICLE 1 DEFINITION OF CERTAIN TERMS

Section 1.1. Terms Defined. Capitalized terms used in this Agreement without definition shall have the meanings given to them in the Ground Lease. The terms set forth below, when used anywhere in this Agreement, shall be defined as follows:

(a) “**Baywalk Contribution**” shall have the meaning ascribed to such term in the Recitals.

(b) “**Baywalk-Riverwalk Project**” shall mean [_____]

(c) “**City**” shall have the meaning ascribed to such term in the introductory paragraph of this Agreement.

(d) “**City Commission**” shall mean the City Commission of the City of Miami, Florida.

(e) “**Community Benefits**” shall have the meaning ascribed to such term in the Recitals.

(f) “**Effective Date**” shall be first day of the first month after the later of (i) ten (10) days after the date that the City Commission approves the Agreement, and (ii) the date this Agreement is last executed by MFP and City.

(g) “**Escrow Agent**” shall have the meaning ascribed to such term in the in **Section 2.2**.

(h) “**Escrow Agreement**” shall have the meaning ascribed to such term in **Section 2.2**.

(i) “**Event(s) of Default**” shall have the meaning ascribed to such term in **Section 3.1**.

(j) “**Final Payment**” shall mean MFP’s payment of the final required payment pursuant the Park Fund Contribution Schedule.

(k) “**Ground Lease**” shall mean that certain Ground Lease and Master Development Agreement, dated of even date herewith, pursuant to which the City, as landlord, has agreed to lease to MFP, as tenant, that certain real property more particularly described in the Ground Lease, in connection with, amongst other things, the construction and use of a professional soccer facility on such real property.

(l) “**MFP**” shall have the meaning ascribed to such term in the introductory paragraph of this Agreement.

(m) “**Notice**” shall have the meaning ascribed to such term in **Section 4.2**.

(n) “**Party**” or “**Parties**” shall have the meaning ascribed to such term in the introductory paragraph of this Agreement.

(o) “**Park Fund Contribution**” shall have the meaning ascribed to such term in the Recitals.

(p) “**Park Fund Contribution Schedule**” shall have the meaning ascribed to such term in **Section 2.2(a)**.

(q) “**Park Maintenance Obligation**” shall have the meaning ascribed to such term in **Section 2.2(c)**.

(r) “**Public Park Parcel**” shall have the meaning ascribed to such term in the Recitals.

(s) “**Public Park Parcel**” shall mean that certain real property owned by the City and located in Miami-Dade County, Florida comprised of approximately [58 acres] of public park land, as more particularly described in Schedule “A” attached hereto (the “**Public Park Land**”), together with all rights, privileges and access appurtenant to said Public Park Land, and all right, title and interest of the City, if any, in and to any land lying in the bed of any street, road, alley or right-of-way, open or closed, adjacent to or abutting said Public Park Land, as needed for the improvements.

(t) “**Step-In-Rights**” shall have the meaning ascribed to such term in **Section 2.2(d)**.

(u) “**Term**” shall have the meaning ascribed to such term in **Section 2.5**.

(v) “**Unavoidable Delays**” shall mean delays beyond the control of a Party required to perform, such as delays due to strikes; a natural catastrophe, such as an earthquake, hurricane, flood or tornado, that could not have been prevented; fires; enemy action; civil disturbance; sabotage; restraint by court or public authority; litigation or formal administrative challenges by third parties to the execution or performance of this Agreement or the procedures leading to its execution or to the process of entitlement for the Demised Property; or moratoriums.

ARTICLE 2 GENERAL TERMS OF AGREEMENT

Section 2.1. Agreement. For and in consideration of the covenants and agreements specified herein, the Parties agree to the terms and conditions set forth in this Agreement. The Parties hereby agree that the consideration and obligations recited and provided under this Agreement constitute substantial benefits to the Parties and thus adequate consideration for this Agreement.

Section 2.2. Contributions.

(a) *Park Fund Contribution.* MFP agrees to deposit the Park Fund Contribution into an escrow account with [_____] (the “**Escrow Agent**”). MFP will pay the Park Fund Contribution over thirty (30) years in equal annual installments in accordance with Schedule “B” attached hereto (the “**Park Fund Contribution Schedule**”). The form of the escrow agreement for the Park Fund Contribution is attached hereto in Schedule “C” (the “**Escrow Agreement**”), which Escrow Agreement, upon execution, shall be incorporated herein by reference.

(b) *Baywalk Contribution.* MFP agrees to deposit the Baywalk Contribution into an escrow account with the Escrow Agent pursuant to the Escrow Agreement upon receipt by MFP of a Certificate of Occupancy (as defined in the Ground Lease) for the Soccer Stadium Development (as defined in the Ground Lease).

(c) *Use of Contributions.* The City shall only use: (i) the Park Fund Contribution for the repair, operation, and maintenance of the Public Park Parcel in a manner consistent with the maintenance standards set forth in **Section 10.2** of the Ground Lease and the standards set forth in attached Exhibit A (the “**Park Maintenance Obligation**”), and (ii) the Baywalk Contribution for capital expenditures and improvements necessary to complete the Baywalk-Riverwalk Project.

(d) *Step-In-Rights.* If the City fails to maintain the Public Park Parcel in the manner contemplated by the Park Maintenance Obligation, then MFP shall have the right, but not the obligation, to utilize the Park Fund Contributions to perform, or cause to be performed, all or any portion of maintenance to the Public Park Parcel, and MFP may (the “**Step-In-Rights**”):

(1) Spend such sums as MFP deems necessary and reasonable to employ and pay such contractors and obtain materials and equipment as may be required for the purpose of completing the Park Maintenance Obligation;

(2) Draw on and use proceeds from the Park Fund Contribution(s) to pay such sums;

(3) Execute all applications, certificates and other documents as may be required for completing the Park Maintenance Obligations;

(4) Make decisions respecting, assume control over and continue Park Maintenance Obligation as MFP determines appropriate; and

(5) Take any and all other actions which it may in its sole discretion consider necessary to complete the Park Maintenance Obligation.

Section 2.3. Youth Soccer Field Commitment. Upon completion of the public use soccer fields contemplated by the Ground Lease, MFP agrees to establish a registration system for the use of the public use soccer fields, which will permit all registered users that are both residents of the City and sixteen (16) years of age or younger to use the public use soccer fields without charge, subject to such reasonable validation, access, and use restrictions as established by MFP from time-to-time.

Section 2.4. Use of Union Labor. With respect to the initial construction of the Improvements on the Demised Property (as such terms are defined in the Ground Lease), MFP agrees to use good faith efforts, through its prime contractors and their subcontractors, to have twenty percent (20%) of its construction labor force comprising of union employees.

Section 2.5. Term of Agreement. The term of this Agreement (the “**Term**”) shall commence on the Effective Date and shall terminate upon the Final Payment, unless sooner terminated pursuant to the terms hereof. The expiration or earlier termination of the Ground Lease in its entirety shall also constitute a termination of this Agreement. Notwithstanding anything to the contrary herein, in the event that this Agreement is terminated early for any reason whatsoever, then, any funds paid by MFP into trust for the Park Fund Contribution that, as of the date of such termination, have not yet been disbursed from trust, pursuant to the Escrow Agreement, shall be returned to MFP within seven (7) business days after such termination.

ARTICLE 3 DEFAULT BY MFP OR CITY

Section 3.1. Events of Default. It shall be an “**Event of Default**” if either Party fails to keep, observe, or perform any of its obligations or duties imposed upon the Party under this Agreement and such failure shall continue for a period of thirty (30) days after written notice thereof from the other Party to the defaulting Party setting forth with reasonable specificity the nature of the alleged breach; or in the case of any such default or contingency which cannot, with due diligence and in good faith, be cured within thirty (30) days, the defaulting Party fails within said thirty (30) day period to proceed promptly and with due diligence and in good faith to pursue curing said default and thereafter continue to diligently pursue the curing of such default. Failure of a Party to perform hereunder due to an Unavoidable Delay shall not constitute grounds for an Event of Default.

Section 3.2. Failure to Cure Default. If an Event of Default shall occur, the non-defaulting Party, at any time after the periods set forth in Section 3.1 and provided the defaulting Party has failed to cure such Event of Default within such applicable period, shall have the

following rights and remedies, which are cumulative and in addition to any and all other remedies, in law or in equity that the non-defaulting Party may have against the defaulting Party:

(a) to sue the defaulting Party for all damages, costs and expenses arising from the Event of Default and to recover all such damages, costs and expenses, including reasonable attorneys' fees at both trial and appellate levels; or

(b) to restrain, by injunction, the commission of or attempt or threatened commission of an Event of Default and to obtain a decree specifically compelling performance of any such term or provision of this Agreement; or

(c) to terminate any and all obligations that the non-defaulting Party may have under this Agreement, in which event the non-defaulting Party shall be released and relieved from any and all liability under this Agreement.

Section 3.3. No Waiver. No failure by either Party to insist upon the strict performance of any of the terms of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of any of the terms of this Agreement. None of the terms of this Agreement to be kept, observed or performed by MFP, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the non-breaching Party. No waiver of any breach shall affect or alter this Agreement, but each of the terms of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. No waiver of any default of any Party hereunder shall be implied from any omission by the other Party to take any action on account of such default, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers by any Party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

ARTICLE 4 NOTICES

Section 4.1. Addresses. All notices, demands or requests by the City to MFP shall be deemed to have been properly served or given, if addressed to MFP as follows:

MFP: Miami Freedom Park, LLC
800 Douglas Road
12th Floor
Coral Gables, Florida 33134
Attn: Pablo A. Alvarez

With a copy to: Holland & Knight, LLP
701 Brickell Avenue
Miami, Florida
Attn: Richard Perez

and to such other address and to the attention of such other party as MFP may, from time to time, designate by written notice to the City. If MFP at any time during the Term hereof changes its office address as herein stated, MFP will promptly give notice of same in writing to the City. All notices, demands or requests by MFP to the City shall be deemed to have been properly served or

given if addressed to the City Manager, or his/her designee, 444 SW 2nd Avenue, 10th Floor, Miami, Florida 33130, with a copy to the City Attorney's Office, Attention: City Attorney, 444 SW 2nd Avenue, 9th Floor, Miami, FL 33130, and to such other addresses and to the attention of such other parties as the City may, from time to time, designate by written notice to MFP. If the City at any time during the Term hereof changes its office address as herein stated, the City will promptly give notice of same in writing to MFP.

Section 4.2. Method of Transmitting Notice. All such notices, demands or requests (a "**Notice**") shall be in writing and sent by: (a) United States registered or certified mail, postage prepaid, return receipt requested, (b) hand delivery, (c) nationally recognized overnight courier, or (d) electronic transmission, provided the transmission is electronically confirmed and the original of the Notice is sent by one of the foregoing means of transmitting Notice within 24 hours of the electronic transmission. Such Notices shall be deemed served or given on (a) the date received, (b) the date delivery of such Notice was refused or unclaimed, or (c) the date noted on the return receipt or delivery receipt as the date delivery thereof was determined impossible to accomplish because of an unnoticed change of address.

ARTICLE 5 CERTIFICATES BY THE CITY AND MFP

Section 5.1. MFP Certificates. MFP agrees at any time and from time to time, upon not less than twenty (20) days' prior written notice by the City, to execute, acknowledge and deliver to the City a statement in writing setting forth any monies then payable under this Agreement, if then known; certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the Agreement is in full force and effect as modified and stating the modification), and the dates to which monies (if any) have been paid; and stating (to the best of MFP's knowledge) whether or not the City is in default in keeping, observing or performing any of the terms of this Agreement, and, if the City shall be in default, specifying each such default (limited to those defaults of which MFP has knowledge). It is intended that any such statement delivered pursuant to this **Section 5.1** may be relied upon by the City or any prospective assignee, transferee or purchaser of the fee, but reliance on such certificate shall not extend to any default of the City as to which MFP shall have no actual knowledge.

Section 5.2. City Certificates. The City agrees at any time and from time to time, upon not less than twenty (20) days' prior written notice by MFP, to furnish a statement in writing setting forth any monies then payable under this Agreement, if then known; certifying that this Agreement is unmodified and in full force and effect (or if there shall have been modifications that the Agreement is in full force and effect as modified and stating the modifications) and the dates to which monies (if any) have been paid; and stating whether or not to the best of the City's knowledge, MFP is in default in keeping, observing and performing any of the terms of this Agreement, and, if MFP shall be in default, specifying each such default of which the City may have knowledge. It is intended that any such statement delivered pursuant to this **Section 5.2** may be relied upon by any prospective lender, assignee, transferee or purchaser of MFP's interest in this Agreement, but reliance on such certificate may not extend to any default of MFP as to which the City shall have had no actual knowledge.

ARTICLE 6 CONSTRUCTION OF TERMS AND MISCELLANEOUS

Section 6.1. Severability. If any provisions of this Agreement or the application thereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue valid and be enforced to the fullest extent permitted by law.

Section 6.2. Captions. The Article headings and captions of this Agreement and the Table of Contents preceding this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect this Agreement. All references to Sections and Articles mean the Sections and Articles in this Agreement unless another agreement is expressly referenced.

Section 6.3. Relationship of Parties. This Agreement does not create the relationship of principal and agent or of mortgagee and mortgagor or of partnership or of joint venture or of any association between the Parties, the sole relationship between the Parties being that of the City and MFP.

Section 6.4. Construction. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the party or parties may require. The Parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arm's length so that the judicial rule of construction to the effect that a legal document shall be construed against the drafters shall be inapplicable to this Agreement which has been drafted by counsel for both the Parties.

Section 6.5. Entire Agreement. This Agreement contains the entire agreement between the Parties hereto and shall not be modified or amended in any manner except by an instrument in writing executed by the Parties hereto and, if material, such amendment has been approved by the City and the City Commission.

Section 6.6. Successors and Assigns. The terms herein contained shall bind and inure to the benefit of the City, its successors and assigns, and MFP, its successors and assigns, except as may be otherwise provided herein.

Section 6.7. Schedules. Each Schedule referred to in this Agreement forms an essential part of this Agreement. The Schedules shall be treated as if they were part of this Agreement.

Section 6.8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to any choice of law provisions that would result in the application of other laws.

Section 6.9. Cooperation; Time is of the Essence. The Parties agree to cooperate with each other to the full extent practicable pursuant to the terms and conditions of this Agreement. The Parties agree that time is of the essence in all aspects of their respective and mutual responsibilities pursuant to this Agreement.

Section 6.10. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same agreement.

Section 6.11. No Third-Party Rights. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

Section 6.12. Exculpation. It is the intent and agreement of the Parties hereto that only the Parties as entities shall be responsible in any way for their respective obligations hereunder, except as otherwise expressly provided herein. In that regard, no officer, director, partner, trustee, representative, investor, official, representative, employee, agent, or attorney of any of the Parties to this Agreement shall be personally liable for the performance of any obligation hereunder or for any other claim made hereunder or in any way in connection with this Agreement, or any other matters contemplated herein, and any and all such personal liability, either at common law or in equity or by constitution or statute or other Applicable Laws are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

Section 7.1. City's Representations and Warranties. The City hereby represents and warrants to MFP that it has full power and authority to enter into this Agreement and perform in accordance with its terms and provisions and that the persons signing this Agreement on behalf of the City have the authority to bind the City and to enter into this transaction and the City has taken all requisite action and steps to legally authorize it to execute, deliver and perform pursuant to this Agreement.

Section 7.2. MFP's Representations and Warranties. MFP hereby represents and warrants to the City that it has full power and authority to enter into this Agreement and perform in accordance with its terms and provisions and that the parties signing this Agreement on behalf of MFP have the authority to bind MFP and to enter into this transaction and MFP has taken all requisite action and steps to legally authorize it to execute, deliver and perform pursuant to this Agreement.

[Signatures on Next Page]

IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its name by the City Manager; as authorized by the City Commission, and MFP has caused this Agreement to be executed by its duly authorized representative all on the day and year first hereinabove written.

CITY:

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

ATTEST:

By: _____
Todd B. Hannon
City Clerk

By: _____
Emilio T. Gonzalez
City Manager

**APPROVED AS TO INSURANCE
REQUIREMENTS:**

By: _____
Ann-Marie Sharpe, Director
Risk Management Department

**APPROVED AS TO LEGAL FORM &
CORRECTNESS:**

By: _____
Victoria Méndez
City Attorney

Signed in the presence of:

Print Name: _____

Print Name: _____

MFP:

MIAMI FREEDOM PARK, LLC,
a Delaware limited liability company

By: _____

Name:

Title:

SCHEDULE A
Public Park Parcel

SCHEDULE B

Park Fund Contribution Schedule

SCHEDULE C
Escrow Agreement

ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Escrow Agreement") is entered into effective _____, 2019, among **MIAMI FREEDOM PARK, LLC**, a Delaware limited liability company, having its principal office and place of business at 800 Douglas Road, 12th Floor, Coral Gables, Florida 33134 ("MFP"), **CITY OF MIAMI**, a municipal corporation of the State of Florida, having its principal office and place of business at 500 Pan American Drive, Miami, Florida 33133 ("City"), and [_____] having its principal office and place of business at [_____] ("Escrow Agent").

A. MFP and City entered into that certain Community Benefits Agreement, dated of even date herewith ("Community Benefits Agreement"), pursuant to which, MFP agreed to make both the (i) Park Fund Contribution, and (ii) Baywalk Contribution to the City, subject to the terms contained therein.

B. The Community Benefits Agreement further provides that (x) in connection with the Park Fund Contribution, MFP shall deposit with Escrow Agent the sum of \$20,000,000.00, over the course of thirty (30) years in equal annual installments in accordance with the Park Fund Contribution Schedule, and (y) in connection with the Baywalk Contribution, MFP shall deposit with Escrow Agent the sum of \$5,000,000.00 pursuant to the terms of the Community Benefit Agreement, both of which will be held in accordance with the terms of this Escrow Agreement. Said sums together with all other contributions paid by MFP to Escrow Agent pursuant to the terms of the Community Benefits Agreement are referred to collectively as the "Contribution(s)".

C. Escrow Agent may receive additional funds and documents incidental to the Community Benefits Agreement, which additional funds and documents shall also be subject to the terms of this Escrow Agreement.

In consideration of the obligations set forth herein and in the Community Benefits Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitations, Definitions and Conflicts. MFP and City each confirm that the recitations set forth above are correct. Capitalized terms not defined herein shall have the meanings ascribed thereto in the Community Benefits Agreement. To the extent of any conflict between the terms of the Community Benefits Agreement and this Escrow Agreement, this Escrow Agreement shall prevail.

2. General Terms of Escrow. Escrow Agent agrees to act as escrow agent in accordance with this Escrow Agreement. The Contributions shall be paid to Escrow Agent in the form of a bank cashier's or certified check or by wire transfer. If the Contribution is paid by check: (a) Escrow Agent agrees to deposit the check promptly upon receipt of the Form W-9; (b) if the check is not honored upon presentment (or if it otherwise does not clear in the normal course), Escrow Agent shall provide MFP and City with notice thereof; and (c) the Contribution shall not be deemed made if the check is not honored upon presentment (or if it otherwise does not clear in the normal course). If the Contribution is paid to Escrow Agent by wire transfer, it shall be wired to the following account:

Name of Bank: _____
 Address of Bank _____
 ABA Number: _____
 Name of Account: _____
 Account Number: _____
 Instructions: _____

Upon receipt of a Contribution, Escrow Agent shall provide MFP and City with notice thereof. Escrow Agent shall not be responsible for: (a) notifying any party if the Contribution is not received; (b) any adverse regulatory actions or reported failures affecting the financial institution at which the account is maintained; (c) the unavailability of FDIC insurance on all or any portion of the Contribution; or (d) any other matters beyond the direct and exclusive control of Escrow Agent.

3. Request for Contribution. If Escrow Agent receives written notice from the City, or MFP if it elects to exercise its Step-In Rights in accordance with the Community Benefits Agreement, requesting release of the Contribution (or a portion thereof) (“Contribution Notice”) along with (i) an invoice(s) for work done in connection with the Community Benefits for which disbursement is requested, which invoice(s) must total the amount being requested for disbursement, (ii) a written explanation describing the work done, and (iii) certification from the invoice payee that the aforementioned work has been completed, then Escrow Agent shall promptly deliver a copy of the Contribution Notice to the non-requesting party (i.e., if City issued the Contribution Notice, Escrow Agent shall deliver a copy to MFP, and vice versa) (“Other Party”). If by 5:00 p.m., local time, on the date that is five (5) business days following delivery of such Contribution Notice, the Other Party objects to the release of the Contribution by written notice received by Escrow Agent (“Objection Notice”), then Escrow Agent shall not disburse such Contribution until the dispute is resolved. However, if the Other Party does not deliver an Objection Notice to Escrow Agent by 5:00 p.m., local time, on the date which is five (5) business days following Escrow Agent’s receipt of such Contribution Notice, then Escrow Agent may disburse in accordance with the Contribution Notice.

4. Early Termination Event. Notwithstanding anything to the contrary herein and/or in the Community Benefits Agreement, MFP and City agree that MFP’s obligation to make ongoing Contributions under the Community Benefits Agreement is conditioned upon both the Ground Lease and the Community Benefits Agreement being valid and active agreements in good standing (the “Good Standing Condition”). In the event that the Good Standing Condition is no longer satisfied (an “Early Termination Event”), then MFP shall send written notice to the Escrow Agent (“MFP’s Notice”) asserting that an Early Termination Event has occurred, upon which, Escrow Agent shall promptly deliver a copy thereof to City. If by 5:00 p.m., local time, on the date which is five (5) business days following delivery of MFP’s Notice to City, City objects to MFP’s Notice by written notice received by Escrow Agent (“City’s Objection Notice”), then Escrow Agent shall not disburse the Contribution(s) to MFP until the dispute is resolved. However, if City does not deliver City’s Objection Notice to Escrow Agent by 5:00 p.m., local time, on the date that is five (5) business days following City’s receipt of MFP’s Notice from Escrow Agent, then (i) Escrow Agent shall disburse any portion of any Contribution(s) in Escrow Agent’s

possession to MFP, and (ii) MFP's obligation to make any further Contributions shall immediately cease and terminate.

5. Resolution of Disputes. In the event of any dispute between MFP and City regarding the Contribution or any other funds or documents held by Escrow Agent, or in the event Escrow Agent shall receive conflicting demands or instructions with respect thereto, Escrow Agent may withhold disbursement or delivery of the same to either party until Escrow Agent receives either: (a) joint written instructions from MFP and City with respect to the disbursement or delivery of the same; or (b) an order from a court of competent jurisdiction that is binding upon Escrow Agent regarding to the disbursement or delivery of the same.

6. Interpleader. In the event of any controversy or dispute arising under or relating to this Escrow Agreement, Escrow Agent, after ten (10) days prior written notice to City and MFP shall have the right to initiate an interpleader action in the _____ Court for _____, _____, naming the parties to this Escrow Agreement and any other parties as may be appropriate in the opinion of Escrow Agent. City and MFP, jointly and severally, shall indemnify and hold Escrow Agent harmless from all costs, including attorneys' fees, in connection with such interpleader action.

7. Consultation with Counsel. Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection for any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.

8. Release of Liability; Indemnification of Escrow Agent. Escrow Agent shall not be liable for any mistakes of fact or errors in judgment, or any acts or omissions of any kind, unless caused by its willful misconduct or gross negligence. MFP and City jointly and severally agree to release and indemnify and hold Escrow Agent harmless from any and all claims, demands, causes of action, liability, damages, judgments, including the reasonable costs of defending any action against it, together with any reasonable attorneys' fees incurred therewith (collectively, "Liabilities"), in connection with Escrow Agent's undertaking pursuant to this Escrow Agreement, unless such act or omission is a result solely of the willful misconduct or gross negligence of Escrow Agent.

9. Reliance on Documents. 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 assertions contained in such writing or instrument, and may assume that persons purporting to give any writing, notice 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 statements or instructions delivered to it. Escrow Agent shall not be liable in any manner for confirming, or failing to confirm, the identity, authority, or rights of any party hereunder. Escrow Agent undertakes to perform only such duties as are expressly set forth herein, and there are no implied duties or obligations of Escrow Agent.

10. Limitations on Escrow Agent's Actions. Escrow Agent shall not be required to institute or defend any action or legal process involving any matter referred to herein which in any manner affects it or its duties or liabilities hereunder unless or until requested to do show by any

party hereto, and then only upon receiving full indemnity, in an amount and of such character as it shall reasonably require, against any and all Liabilities in relation thereto, except in the case of its own gross negligence or willful misconduct.

11. Limitation on Escrow Agent's Knowledge. Escrow Agent shall not be bound or in any way affected by any fact or circumstance affecting or alleged to affect the rights or obligations of any other person, unless it has received written notice thereof signed by a party to this Escrow Agreement (a copy of any such notice shall be delivered promptly to all other parties to this Escrow Agreement).

12. Resignation of Escrow Agent. Escrow Agent may resign upon thirty (30) days written notice to the parties hereto. If a successor escrow agent is not appointed within such 30-day period, Escrow Agent may petition any court of competent jurisdiction to name a successor.

13. Discharge of Escrow Agent. Escrow Agent shall be discharged of its obligations hereunder upon the disbursement or delivery of the Contribution and any other funds or documents held by it in accordance with the terms of this Escrow Agreement, including any delivery or disbursement pursuant to an interpleader action.

14. Notices. All notices, demands, or other communications hereunder shall be in writing and given to the person(s) to whom the notice is directed, either by: (a) actual delivery at the address(es) stated below, including a national overnight delivery service, which shall be deemed effective at the time of actual delivery; (b) certified mail, return receipt requested, addressed as stated below, posted and deposited with the U.S. Postal Service, which shall be deemed effective three business days after being so deposited; (c) facsimile transmission to the facsimile transmission number stated below, provided that there is contemporaneous Contribution of such notice with a national overnight delivery service addressed as stated below, which notice shall be deemed effective upon the earlier to occur of: (i) completion of the facsimile transmission; or (ii) actual delivery; or (d) e-mail transmission to the e-mail address stated below, provided that there is simultaneous Contribution of such notice with a national overnight delivery service addressed as stated below, which notice shall be deemed effective upon the earlier to occur of: (i) completion of the e-mail transmission; or (ii) actual delivery by the overnight delivery service. All notices, demands, or other communications hereunder shall be addressed as follows:

If to MFP:

Address: _____

Attention: _____

Facsimile: _____

E-Mail: _____

If to City:

Address: _____

With a copy to:

Address: _____

Attention: _____

Facsimile: _____

E-Mail: _____

With a copy to:

Address: _____

Attention: _____
Facsimile: _____
E-Mail: _____

Attention: _____
Facsimile: _____
E-Mail: _____

If to Escrow Agent:

With a copy to:

Address: _____

Address: _____

Attention: _____
Facsimile: _____
E-Mail: _____

Attention: _____
Facsimile: _____
E-Mail: _____

Where two recipients of a party to this Escrow Agreement are shown above, any notice, demand, or other communication hereunder shall be effective when first given to either recipient, provided that both recipients are given such notice, demand, or other communication .

15. Reimbursement of Expenses. MFP and City jointly and severally agree to reimburse Escrow Agent upon request for all expenses, including attorneys' fees, incurred by it in performing its duties hereunder. Escrow Agent may deduct the amount thereof from the sums held at the time of disbursement pursuant to the interpleader or otherwise.

16. Miscellaneous. This Escrow Agreement may be executed in counterparts, and the counterparts together shall constitute the single agreement of the parties. Facsimile transmission of a counterpart signed by a party shall be sufficient to establish signature by that party. This is the entire agreement between the parties relating to the subject matter hereof (and it supersedes all prior and contemporaneous agreements relating to this subject matter). This Escrow Agreement shall be: (a) governed in accordance with the laws of State of Florida; (b) amended only by a written instrument signed by MFP, City and Escrow Agent; and (c) binding upon and enforceable by the parties and their respective successors and assigns. This Escrow Agreement may not be assigned or delegated by any party without the prior written consent of the other parties. Any legal proceeding relating hereto shall be maintained only in Miami-Dade County, Florida.

[SIGNATURES ON FOLLOWING PAGES]

The parties have caused this Escrow Agreement to be executed effective the date first stated above.

CITY:

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

ATTEST:

By: _____
Todd B. Hannon
City Clerk

By: _____
Emilio T. Gonzalez
City Manager

**APPROVED AS TO INSURANCE
REQUIREMENTS:**

**APPROVED AS TO LEGAL FORM &
CORRECTNESS:**

By: _____
Ann-Marie Sharpe, Director
Risk Management Department

By: _____
Victoria Méndez
City Attorney

Signed in the presence of:

MFP:

MIAMI FREEDOM PARK, LLC,
a Delaware limited liability company

Print Name: _____

By: _____
Name:
Title:

Print Name: _____

[ESCROW AGENT SIGNATURE ON FOLLOWING PAGE]

ESCROW AGENT:

_____,

By: _____
Name:
Title:

