

**PARK REHABILITATION 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

for the

**PUBLIC PARK PARCEL**

## PARK REHABILITATION AGREEMENT

THIS PARK REHABILITATION AGREEMENT (together with all amendments, supplements, addenda and renewals, 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, 12<sup>th</sup> 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 2** hereof.

### WITNESSETH:

A. The City owns that certain real property located in Miami-Dade County, Florida comprised of approximately [58 acres] of public park land, as more particularly described in Schedule “A” attached hereto, together with all rights, privileges and access appurtenant to said property, 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 property, as needed for the improvements (collectively, the “Public Park Parcel”).<sup>1</sup>

B. The City desires that MFP design and construct certain improvements to the Public Park Parcel on behalf of the City in accordance with the program elements set forth in Schedule “B” attached hereto (the “Park Concept Plans”).

C. The City and MFP recognize the potential public benefits attained from improving the Public Park Parcel, including, without limitation, the promotion of the development and use of public park spaces within the City of Miami.

D. It is hereby mutually covenanted and agreed by and between the Parties hereto that this Agreement is made upon the agreements, terms, covenants and conditions hereinafter set forth.

## ARTICLE 1 GENERAL TERMS OF AGREEMENT

**Section 1.1. Agreement.** For and in consideration of the covenants and agreements specified herein, the Parties agree that MFP shall design and construct certain improvements to the Public Park Parcel in accordance with 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 both parties and thus adequate consideration for this Agreement.

### **Section 1.2. Term of Agreement**

(a) The term of this Agreement (the “Term”) shall commence on the Effective Date and shall terminate contemporaneously with the expiration of MFP’s construction warranty

---

<sup>1</sup> Open Issue: The Public Park Parcel, as defined in this Agreement, does not include the Waterpark and the Grapeland baseball complex. Depending on the complexity of the environmental remediation, both properties may need to be included within the boundaries of the Public Park Parcel for purposes of this Agreement.

pursuant to Section 7.1, 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.

(b) This Agreement shall constitute a covenant running with the land that shall be binding upon, and inure to, the benefit of the Parties, their successors, assigns, heirs, legal representatives, and personal representatives.

(c) MFP agrees that it shall commence and complete the Park Site Development contemporaneously with the development and construction of the Soccer Stadium Development (as defined in the Ground Lease), in accordance with the terms set forth herein. Notwithstanding any other provision in the contrary, MFP shall have no obligation to undertake any of the activities contemplated by this Agreement until the occurrence of the Possession Date, as such term is defined in the Ground Lease.

## ARTICLE 2 DEFINITION OF CERTAIN TERMS

**Section 2.1. Terms Defined.** In addition to other capitalized terms as defined in the introductory recitals or elsewhere in this Agreement, when used in this Agreement, the terms set forth below shall be defined as follows:

(a) “**Administrative Review Period**” shall have the meaning ascribed to such term in **Section 3.2.**

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

(c) “**Applicable Law**” shall mean all applicable laws, ordinances, rules, regulations, authorizations, orders and requirements of all federal, state, county and municipal governments, the departments, bureaus or commissions thereof, or any other body or bodies exercising similar functions having or acquiring jurisdiction over all or any part of the Property.

(d) “**Business Day**” shall mean a day of the year that is not a Saturday, Sunday or Legal Holiday.

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

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

(g) “**City Indemnified Parties**” shall have the meaning ascribed to such term in **Section 5.2.**

(h) “**Claim**” shall have the meaning ascribed to such term in **Section 5.2.**

(i) “**Code**” shall mean the Code of Ordinances of the City of Miami or any other Governmental Agency having jurisdictional authority over the Property and future development of the Public Park Parcel.

(j) “**Commencement of Construction**” and “**commenced**” when used in connection with construction of the Improvements shall mean the earlier of the filing of the notice of commencement under Section 713.13, Florida Statutes, or the visible start of work on the Public Park Parcel, including on-site utility, excavation or soil stabilization work.

(k) “**Completion of Construction**” shall mean the occurrence of the following: (i) the architect of record has signed and delivered to MFP a certificate of final completion in accordance with the Construction Plans for the particular Improvement; and (ii) a certificate of completion, temporary certificate of occupancy, final inspection signoff, or equivalent has been issued for such Improvement (but only if required by Applicable Law).

(l) “**Construction Plans**” shall consist of the final design plans for the particular Improvement, the drawings and specifications for which are in the format with sufficient detail as required to obtain building permits for such Improvements, as further described in **Section 3.5**.

(m) “**Economic Unavoidable Delay**” shall mean (i) economic or political conditions or events that result in a decline in economic activity that impairs access to debt or equity markets by developers of development projects in the United States or South Florida similar to the portion of the Property being improved and rehabilitated or allow a committed debt or equity participant to terminate its debt or equity commitment, such as a temporary or long term liquidity crisis or recession, (ii) duties or other charges imposed as a result of geopolitical actions that result in a material increase in the construction costs for the Property, or (iii) a cessation of MLS activities or material disruption of one or more of its seasons.

(n) “**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 this Agreement, and (ii) the date this Agreement is last executed by MFP and the City.

(o) “**Event(s) of Default**” shall have the meaning ascribed to such term in **Section 12.1**.

(p) “**Governmental Agency(ies)**” shall mean all federal, state, county and municipal governments, the departments, bureaus or commissions thereof, or any other body or bodies exercising similar functions having or acquiring jurisdiction over all or any part of the Property.

(q) “**Ground Lease**” shall mean that certain Ground Lease and Master Development Agreement, dated of even date herewith, as may be amended from time-to-time, 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.

(r) “**Impositions**” shall mean all taxes, including, but not limited to, ad valorem taxes, special assessments, sales taxes, and other charges, impositions, assessments, fees or any other levies by any Governmental Agency or other entity with appropriate jurisdiction and any and all liabilities (including interest, fines, penalties or additions) with respect to the foregoing.

(a) “**Improvement Costs**” shall mean, collectively, all costs and expenses incurred by MFP in connection with the Improvements to be completed in accordance with the terms herein,

including, without limitation, all hard costs, soft costs (including all surveying, testing, architectural, design, engineering and project management fees, all permitting fees and any other soft costs), and the cost of general conditions, profit and overhead, insurance, bonds, and contingencies applicable to the Improvements.

(b) “**Improvements**” shall mean the improvements to the Public Park Parcel as depicted in the Park Concept Plans, as same may be modified in accordance with the terms of this Agreement.

(c) “**Insurance Requirements**” shall have the meaning ascribed to such term in **Section 5.1**.

(d) “**Legal Holiday**” shall mean any day, other than a Saturday or Sunday, on which the City’s administrative offices are closed for business.

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

(f) “**Notice**” shall have the meaning ascribed to such term in **Section 13.2**.

(g) “**Park Approval Process**” shall have the meaning ascribed to such term in **Section 3.5**.

(h) “**Park Concept Plans**” shall have the meaning ascribed to such term in the Recitals.

(i) “**Park Site Development**” shall mean the development of the Public Park Parcel in accordance with the Park Concept Plans, as same may be modified in accordance with the terms of this Agreement.

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

(k) “**Payment and Performance Bond**” shall have the meaning ascribed to such term in **Section 3.4**.

(l) “**Permit**” shall mean any permit or authorization issued or required to be issued by the appropriate Governmental Agency and/or department authorized to issue such permits or authorization, including, but not limited to, applicable permits for construction, demolition, installation, foundation, dredging, filling, alteration, repair or installation of any building, structure, sanitary plumbing, water supply, gas supply, electrical wiring or equipment, HVAC, sidewalk, curbs, gutters, drainage structures, paving and the like.

(m) “**Plans and Specifications**” shall mean the plans and specifications for all the work in connection with the alteration and construction of the Improvements on the Public Park Parcel, including any changes, additions or modifications thereof initiated by MFP, provided the same are approved by the City (if required) in accordance with this Agreement and the procedures set forth in Schedule “C.”

(n) “**Project**” shall mean the “Project” contemplated and defined in the Ground Lease.

(o) “**Property**” shall mean, collectively, and, to the extent required for development of the Improvements:

(1) the Public Park Parcel; and

(2) the Public Park Parcel, the Improvements and any other improvements now or hereafter existing on the Public Park Parcel;

It being understood between the parties hereto that no portion of the Public Park Parcel is being leased, conveyed or granted or intended to be leased, conveyed or granted to MFP and that all portions or areas of the Public Park Parcel are expressly excepted and reserved unto the City, except to the extent that rights in respect thereof and to the Improvements are granted to MFP as hereinbefore provided or pursuant to such separate instrument as may be entered into between the Parties.

(p) “**Public Park Parcel**” shall have the meaning ascribed to such term in the Recitals. The Public Park Parcel is located wholly outside of the Demised Property (as defined in the Ground Lease) leased to MFP under the Ground Lease.

(q) “**Term**” shall have the meaning ascribed to such term in **Section 1.2(a)**.

(r) “**Unavoidable Delays**” shall mean delays beyond the affected Party’s reasonable control, which includes, without being limited to, the following acts or events: (i) natural phenomena such as storms, floods, lightning, freezes and earthquakes, (ii) attacks, threats, emergencies, hostilities, wars (whether declared or not), terrorist acts, civil disturbances, riots, revolts, insurrections, sabotage and commercial embargoes between countries, (iii) transportation disasters, be they maritime, railroad, air or land, (iv) strikes or other labor disputes that are not due to the affected Party’s failure to comply with any labor contract, (v) fires or explosions, (vi) acts of a Governmental Agency that have not been voluntarily induced by the affected Party or any of its affiliates, and that are not the result of an affected Party’s noncompliance with its obligations, (vii) the inability of the affected Party, despite its reasonable efforts, to timely obtain any consent or approval that it is required in accordance with Applicable Laws, and (viii) changes in Applicable Law that prevent the affected Party to comply with its obligations hereunder. An Unavoidable Delay shall also include an Economic Unavoidable Delay and delays resulting from (i) a Governmental Agency improperly refusing or delaying a Permit, and (ii) MFP filing a suit in a court of competent jurisdiction to require said Governmental Agency to issue said Permit.

### ARTICLE 3

#### DEVELOPMENT OF LAND AND CONSTRUCTION OF IMPROVEMENTS

**Section 3.1. Property Uses.** The Parties recognize and acknowledge that the manner in which the Property is developed, used and operated are matters of critical importance to the City, MFP, and to the general welfare of the community. MFP agrees that, during the Term, it will use reasonable efforts to develop the Improvements in a manner substantially consistent with this Agreement, the intent of which is to promote the development and use of public parks within the City of Miami.

**Section 3.2. Development of Improvements; City Joinder.** Subject to the terms and conditions of this Agreement, MFP agrees to construct, or cause the construction of, the Improvements on and to the Public Park Parcel. The City, in its capacity as the owner of the affected property and at the request of MFP, will execute, join in, or consent to, any Permits, applications, approvals, agreements, or other administrative documents related to the construction of the Improvements or the Environmental Activities contemplated by **Article 10**. In furtherance thereof, the City shall take such further actions as necessary to: (x) allow for the execution, submittal and, if required, the recording of any Permits, agreements, temporary or permanent easements, or any covenants or declaration of restrictions required or requested by the reviewing Governmental Agency, and (y) accept any conditions related to such Permits, applications, approvals, agreements or other administrative documents reasonably imposed by the reviewing Governmental Agency; provided that any costs associated therewith (except for the cost of review by the City) will be assumed by MFP. The City agrees to use reasonable efforts to review and approve any such requests within seven (7) Business Days of such request from MFP (the “**Administrative Review Period**”) (except in the event that City Commission approval is required under Applicable Laws for such approval, in which case **Section 15.11** shall prevail). The City agrees that if the City has not provided MFP with written notice of its approval or disapproval within the Administrative Review Period, the City shall be deemed to have consented to the applicable request of MFP and the City hereby grants to MFP the right to execute such Permits, applications, approvals, agreements, or other administrative documents on behalf of the City.

**Section 3.3. Conformity of Plans.** The Park Concept Plans and all work by MFP with respect to the Improvements shall be in substantial conformity with this Agreement and Applicable Laws.

**Section 3.4. Performance Bonds and Payment Bonds.** The Parties agree that the Improvements to the Public Park Parcel contemplated by the Plans and Specifications are public buildings or public works as contemplated under Section 255.05, Florida Statutes. Prior to the Commencement of Construction of the Improvements on the Public Park Parcel, MFP shall (or cause its prime contractor(s) to) record in the public records of Miami-Dade County, Florida, a payment and performance bond equal to the total cost of construction of the Improvements, or the applicable portion thereof for each prime contractor, as reflected in the construction contract between MFP and such prime contractor (the “**Payment and Performance Bond**”). Each Payment and Performance Bond shall be in compliance with Applicable Laws, including the applicable provisions of Section 255.05, Florida Statutes, and shall be issued through a surety authorized to do business in the State of Florida. In the event that MFP satisfies the requirements for a Payment and Performance Bond through its prime contractor(s), then the Payment and Performance Bond shall name MFP and the City as dual obligees. MFP shall have the right, from time to time, to substitute or replace, or cause its prime contractor to substitute or replace, such Payment and Performance Bonds as deemed necessary by MFP for any portion of the work. Alternatively, MFP may satisfy the requirements to provide a Payment and Performance Bond by providing the City with an alternate form of security in the form of a certified check that the City may deposit in a City-controlled bank account or an irrevocable letter of credit in a form and for an amount that is acceptable to Landlord (“**Alternative Security**”), to remain in place until evidence reasonably satisfactory to the City is submitted to demonstrate all contractors performing work related to the Improvements (or, as applicable, any portion thereof) have been paid and the Improvements (or, as applicable, any portion thereof) has reached Completion of Construction.

The Alternative Security shall comply with the requirements of Section 255.05(7), Florida Statutes.

**Section 3.5. Park Approval Process.**

(a) The approval process for the Plans and Specifications and Construction Plans for the Park Site Development shall be as set forth in Schedule “C” (the “**Park Approval Process**”). MFP shall be responsible for the selection, oversight, and management of all contractors and consultants necessary to design and construct the Park Site Development in a diligent, competent and professional manner, all in accordance with the provisions of this Agreement and Applicable Laws.

(b) Recognizing the need for MFP to commence and complete the Park Site Development contemporaneously with the development of the Soccer Stadium Development, the City agrees to use good faith efforts to approve all Plans and Specifications (including the Park Concept Plans) for the Improvements within time frames that will enable MFP to obtain Permits for the Improvements reasonably concurrently with the Permits for the Soccer Stadium Development and/or Project under the Ground Lease.

**Section 3.6. MFP Obligations.** The City’s approval of any Plans and Specifications shall not relieve MFP of its obligations under Applicable Law to file such plans with any Governmental Agency having jurisdiction over the issuance of Permits and to take such steps as necessary to obtain issuance of such Permits. The City agrees to cooperate with MFP in connection with obtaining such approvals and Permits pursuant to **Section 3.2** and **Section 15.11** and join in (if applicable) with MFP in connection with the obtaining of such approvals and Permits. MFP shall have the right to execute any and all applications, approvals and consents for any Permits relating to the Improvements without any further joinder, consent or approval from the City as long as the contemplated Improvements are consistent with this Agreement, but in the event that the City’s authorization or signature is required for any Permit, and City Commission approval thereof is not required under Applicable Law, the City agrees to execute any such Permit, approval or consent within the Administrative Review Period. MFP acknowledges that any approval given by the City, in its proprietary capacity, pursuant to this **Article 3**, shall not constitute an opinion or agreement by the City that the plans are structurally sufficient or in compliance with any Applicable Laws, and no such approval shall impose any liability upon the City.

**Section 3.7. Conditions Precedent to Construction.** Prior to the Commencement of Construction of the Improvements (or any portion thereof):

- (a) MFP shall have complied with the Park Approval Process;
- (b) MFP shall have provided the City with proof that it has obtained, or its prime contractor has obtained, the applicable Payment and Performance Bond(s); and
- (c) MFP shall have obtained all Permits required by Applicable Law to commence construction of the applicable portion of the Improvements.

**Section 3.8. Facilities to be Constructed.** MFP shall be responsible for all Improvement Costs associated with the construction and installation of the Improvements pursuant

to the terms of this Agreement, subject to the obligation of the City to pay for any Impositions. Furthermore, the City acknowledges that the funds set aside for the Improvement Costs and Park Site Development by MFP qualify MFP for credits against the imposition of park impact fees in the manner contemplated by Section 13-16(e) of the Code.

**Section 3.9. Ownership of Improvements.** All Improvements located on the Public Park Parcel and all material and equipment provided by MFP or on its behalf that are incorporated into or become a part of the Improvements located on the Public Park Parcel shall, upon being added thereto or incorporated therein, be and remain the property of the City, excluding, however, any personal property of MFP or its contractors and invitees.

#### **ARTICLE 4 PAYMENT OF TAXES; ASSESSMENTS**

MFP shall not be required to pay any Impositions with respect to the Public Park Parcel or any improvements located now or hereinafter thereon, except for any sales taxes due with respect to any contracts for materials or equipment in connection with the construction of the Improvements. Notwithstanding the foregoing, if requested by MFP with respect to the construction of the Improvements, City shall take all reasonable steps, at MFP's sole cost and expense, to establish and maintain any applicable exemptions from Florida sales and use tax for items of tangible personal property and taxable services used to construct the Improvements.

#### **ARTICLE 5 INSURANCE; INDEMNIFICATION**

**Section 5.1. Insurance.** The City and MFP hereby agree that the terms and provisions governing the insurance required pursuant to this Agreement are contained in Schedule "D" attached hereto (the "**Insurance Requirements**"), which is hereby incorporated herein by reference.

**Section 5.2. Indemnification.**

(a) MFP shall defend, indemnify and hold harmless the City and its officers, employees, agents and instrumentalities (the "**City Indemnified Parties**") from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the City or its officers, employees, agents or instrumentalities may incur as a result of any claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance or non-performance of this Agreement by MFP and/or its employees, agents, servants, partners, principals or subcontractors, other than for liability, loss or damage caused by the negligence or willful conduct of the City or its employees, agents, servants, or subcontractors (collectively, a "**Claim**"). MFP shall pay all Claims in connection therewith and shall investigate and defend all Claims in the name of the City Indemnified Parties, where applicable, including any and all appellate proceedings, and shall pay all reasonable costs, judgments, and attorneys' fees which may issue thereon. MFP expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by MFP, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City Indemnified Parties.

(b) MFP shall control any litigation or potential litigation involving the defense of any Claim, including the selection by MFP of a single counsel to represent MFP and the City Indemnified Parties. Notwithstanding the foregoing, if there is a conflict between the positions of MFP and the City Indemnified Parties in conducting the defense of such action, or if there are legal defenses available to such City Indemnified Party different from or in addition to those available to MFP, then the City Indemnified Party shall be entitled to select counsel, reasonably acceptable to MFP, to conduct the defense of the Claim and MFP shall pay for the reasonable legal fees and related out-of-pocket expenses of the City Indemnified Parties; provided, that MFP shall not be required to pay the legal fees for more than one counsel for all the City Indemnified Parties in connection with any Claim. The City Indemnified Parties shall fully cooperate with MFP in the defense of the Claim. MFP shall have the right to compromise or settle any Claim without the consent of the City Indemnified Parties if the compromise or settlement of the Claim does not require the City Indemnified Parties to admit any liability or incur any financial liability, each with respect to the Claim.

**Section 5.3. Waiver of Subrogation.** MFP waives all rights to recover against the City, its employees, agents, officers, contractors or instrumentalities, for any claims, losses or damages arising from any cause covered by property insurance required to be carried by MFP hereunder. MFP shall cause its insurer(s) to issue customary waiver of subrogation rights endorsements to all such policies of insurance carried by MFP with respect to the Improvements. The City waives all rights to recover against MFP, its employees, agents, officers, partners, members, principals or contractors, for any claims, losses or damages arising from any cause covered by property insurance (irrespective of whether the insurance is carried by MFP or the City). The City shall cause its insurer(s) to issue customary waiver of subrogation rights endorsements in favor of MFP to all such policies of insurance carried by the City in connection with the Public Park Parcel. Any self-insurance program of the City shall be deemed to include a full waiver of subrogation consistent with this Section.

## **ARTICLE 6 OPERATION**

**Section 6.1. Control of the Property; Improvements.** During the Term, MFP shall have the right to undertake all necessary actions in furtherance of this Agreement within the Public Park Parcel, including the right to direct and manage the construction of the Improvements. After Completion of Construction, the City shall keep, maintain and repair the Improvements, as required in accordance with the Ground Lease and Applicable Law.

## **ARTICLE 7 WARRANTY**

**Section 7.1. MFP Construction Warranty.** Upon Completion of Construction, MFP shall assign to the City any warranties or guarantees received by MFP from its prime contractors or subcontractors related to the Improvements. MFP will use good faith efforts to include in any agreements with its prime contractors or subcontractors related to the Improvements, provisions providing for warranties against defective work allowing the City to request the correction of any defective work discovered within one (1) year after Completion of Construction of the Improvements. MFP's prime contractors and subcontractors shall have no obligation hereunder to repair and/or correct damage or defect caused by abuse, alterations to the Improvements not

executed by or under the direction of MFP or its prime contractors or subcontractors, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.

## **ARTICLE 8 COMPLIANCE WITH APPLICABLE LAW**

**Section 8.1. Compliance by the Parties.** Throughout the Term, the Parties, at their own cost and expense, shall promptly comply with all Applicable Law in the performance of their respective obligations under this Agreement. To the extent that MFP's compliance shall require the cooperation and participation of the City, the City agrees to use its best efforts to cooperate and participate with MFP.

## **ARTICLE 10 ENVIRONMENTAL COMPLIANCE**

**Section 10.1.** For purposes of this Agreement, the following additional definitions apply and shall be incorporated as part of the definitions included in **Article 2** above:

(a) “**Brownfield**” means real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination.

(b) “**BSRA**” means Brownfield Site Rehabilitation Agreement, as that term is defined by the Brownfield Redevelopment Act, 376.77-85, Fla. Stat.

(c) “**City Environmental Conditions**” means all Environmental Conditions affecting the Public Park Parcel and resulting from the conduct of the City or any subtenants, contractor, agent, employee or invitee of the City (except MFP) or resulting from the migration of pollutants from property other than the Public Park Parcel and not in MFP's control.

(d) “**Environmental Activities**” means any activities required by any Governmental Agency pursuant to Environmental Law to investigate, correct and remediate a Release or threatened Release. Such Environmental Activities shall include, without limitation, the investigations, removal, restoration, remediation, and/or rehabilitation activities required by any Governmental Agency pursuant to Environmental Law, including, without limitation, any required sampling, testing, monitoring, document submittal, or reporting.

(e) “**Environmental Condition**” means any event, circumstance or condition constituting (i) recognized environmental conditions within the meaning of ASTM 1527-13; (ii) the current or past Release or threatened Release of any Hazardous Material into the environment on the Public Park Parcel, whether originating from the Public Park Parcel or from off-site contamination or pollution that has migrated thereto; or (iii) any violation of Environmental Laws at or on any part of the Public Park Parcel.

(f) “**Environmental Law**” means any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial or agency interpretation of any of the foregoing, which pertains to health, safety, any Hazardous Material, or the environment (including, but not limited to, ground or air or

water or noise pollution or contamination, and underground or above ground tanks) and shall include without limitation, the Solid Waste Disposal Act, 42 U.S.C. 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq. (**CERCLA**), as amended by the Superfund Amendments and Reauthorization Act of 1986. (**SARA**); the Hazardous Materials Transportation Act 49 U.S.C. Section 1801 C 5-QQ; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, et seq.; the Clean Air Act 42 U.S.C. Section 7401, et seq.; the Toxic Materials Control Act 15 U.S.C. Section 2601, et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300f, et. seq.; Chapters 403, 376 and 373, Florida Statutes; Chapter 24 of the Miami-Dade County Code, and any other local, state or federal environmental statutes, codes, or ordinances, and all rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

(g) **“Environmental Representative”** means employees, agents, representatives, consultants, contractors and subcontractors who perform Environmental Activities.

(h) **“Environmental Requirement”** means any Environmental Law, agreement or restriction (including, but not limited to, any condition or requirement imposed by any insurance or surety company), as the same now exists or may be changed or amended or come into effect in the future, which pertains to Hazardous Material in the environment, including, but not limited to, ground or air or water pollution or contamination, and underground or aboveground tanks.

(i) **“Hazardous Material”** means any substance, whether solid, liquid or gaseous, which is listed, defined or regulated as a “hazardous substance,” a “hazardous waste” or “solid waste,” or pesticide, or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Requirement; or which is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons.

(j) **“Hazardous Materials Release”** shall have the meaning ascribed to such term in **Section 10.2(c)**.

(k) **“Institutional Control”** means the restriction on use or access to a site to eliminate or minimize exposure to contaminants; such restrictions may include, but are not limited to, deed restrictions, restrictive covenants, or conservation easements.

(l) **“MFP Environmental Conditions”** Environmental Conditions affecting the Public Park Parcel and resulting from the conduct of MFP or any contractor, agent, employee, or invitee of MFP or its subtenants, on the Public Park Parcel after the Effective Date.

(m) **“No Further Action Determination”** or **“NFA Determination”** means a No Site Rehabilitation Completion Order (SRCO) or a conditional Site Rehabilitation Completion Order (CSRCO), as those terms are defined in Chapter 62-780, Fla. Admin. Code, from the Florida Department of Environmental Protection (FDEP), or a No Further Action Determination or a No Further Action with Conditions determination from Miami-Dade County under Chapter 24 of the Miami-Dade County, Florida Code, or similar determination from a federal, local or other applicable Governmental Agency advising that no further action is necessary with respect to the

Release(s) of Hazardous Material(s) at the Public Park Parcel in order to meet the requirements of Environmental Law with respect to such Release(s).

(n) “**On**” or “**in**” means when used with respect to the Public Park Parcel, means “on, in, under, above or about.”

(o) “**Pre-Existing Environmental Conditions**” means any and all Environmental Conditions affecting the Public Park Parcel, whether known or unknown, existing as of the Effective Date.

(p) “**PRPs**” shall have the meaning ascribed to such term in **Section 10.2(d)**.

(q) “**Release**” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment at or from the Public Park Parcel, including migration to adjacent land, subsurface geology, surface water, or ground water.

## **Section 10.2. Responsibility for Environmental Conditions.**

(a) **City Reports.** The City shall provide to MFP, prior to the Effective Date all phase I and phase II environmental reports and similar environmental site assessment reports and other documentation related to the Environmental Activities conducted by the City or its Environmental Representatives, in its possession or reasonable control, regarding the Public Park Parcel.

(b) **Responsibility of Parties.** The City and MFP acknowledge that Environmental Conditions may be present on the Public Park Parcel as of the Effective Date, and that such conditions may be known or unknown. The Parties agree to the following allocation of responsibility for the Environmental Conditions on the Public Park Parcel: (i) MFP, at its sole cost and expense, shall conduct Environmental Activities reasonably necessary to investigate and remediate (after the Possession Date, as defined in the Ground Lease) the Pre-Existing Environmental Conditions on the Public Park Parcel, so as to permit the construction of the Park Site Development pursuant to a risk-based corrective action with a clean-up target level appropriate for public parks, as approved the applicable Governmental Agency, and to obtain the No Further Action Determination related to such development from the applicable Governmental Agency in accordance with the remediation standards set forth in **Section 10.3**; (ii) MFP, at its sole cost and expense, shall conduct Environmental Activities reasonably necessary to investigate and remediate any and all MFP Environmental Conditions in the manner set forth in this **Article 10**; and (iii) City, at its sole cost and expense, shall conduct Environmental Activities reasonably necessary to investigate and remediate any and all City Environmental Conditions in the manner set forth in this **Article 10**. Once MFP has satisfied its remedial obligations as to the Public Park Parcel set forth in **Section 10.2(b)(i)**, the City agrees that MFP shall have no liability or responsibility whatsoever for any Pre-Existing Environmental Conditions on the Public Park Parcel and that the City shall indemnify and hold harmless MFP, and bear all costs, damages, liabilities, losses, expenses or claims, including, without limitation, court costs and reasonable attorneys’ fees, resulting or arising from any Pre-Existing Environmental Conditions on the Public Park Parcel.

(c) **Remediation of Hazardous Material Release during the Term of the Agreement.** If any Hazardous Materials are released or discharged on or about the Public Park Parcel in violation of Environmental Law (a “**Hazardous Materials Release**”) at any time during the Term, the Party discovering same shall promptly notify the other Party orally within forty-eight (48) hours of discovery and in writing within five (5) Business Days thereafter pursuant to **Article 13** - Notices. MFP, if the Hazardous Materials Release was the result of MFP Environmental Conditions during the Term, or the City, if the Hazardous Materials Release was the result of the City Environmental Conditions during the Term, as applicable, shall promptly take all actions to promptly resolve such Environmental Condition, at its sole expense, in compliance with Environmental Law on the affected portion of the Public Park Parcel or the Improvements. Further, the Environmental Activities to remediate such Hazardous Materials Release shall be conducted so as to complete a risk-based corrective action for a non-residential property in accordance with the remediation standards set forth in **Section 10.2**.

(d) **Third Party Liability.** Nothing herein shall be construed to limit the responsibility of third parties who are potentially responsible parties (“**PRPs**”) for liability which may be imposed against such PRPs for any Environmental Condition, but the existing of any such PRPs shall not release either the City or MFP from its responsibility to the other for an Environmental Condition that is their responsibility, as between the City and MFP hereunder, but the responsible Party as between MFP and the City shall have the right to pursue recovery against such PRPs.

### **Section 10.3. Remediation Standards.**

(a) Whether conducted by MFP or the City, the Environmental Activities required by this Agreement shall be conducted by MFP or the City using risk-based corrective action principles to achieve the NFA Determination pursuant to this Agreement. The City hereby consents to such risk-based corrective action for a non-residential property, including the implementation of Institutional Controls with respect to the Public Park Parcel in connection with obtaining a No Further Action Determination. The City hereby consents to a limitation of the use of the Public Park Parcel to nonresidential purposes and the prohibition of potable or irrigation wells on the Public Park Parcel; the City consents, and will not object, to any Institutional Control needed to achieve the No Further Action Determination, unless it could materially impair the current non-residential use of the Public Park Parcel that is the subject of the Institutional Control or other restriction. Upon the request of MFP, the City shall execute such covenants or declarations of restrictions as required by Governmental Agencies in furtherance of the NFA Determination, which covenants and declarations of restrictions may encumber the Public Park Parcel, the Demised Property (as defined in the Ground Lease), or such property owned or controlled by the City adjacent to either the Public Park Parcel or the Demised Property. The City shall further do and perform, or cause to be done and performed, all such acts and things, including, but not limited to, the adjustment of the boundaries of the Public Park Parcel, and shall execute and deliver such other agreements, certificates, instruments and documents, each as the Tenant may reasonably request in order to obtain an NFA Determination; provided, however, that any reasonable out-of-pocket costs incurred by City associated therewith (and approved by Tenant in writing) shall be reimbursed by the Tenant to City.

(b) The City shall promptly execute such documents identified by MFP as reasonably necessary to effectuate an Institutional Control, designation of a Brownfield, approval of a BSRA, or other documentation, to achieve the NFA Determination.

(c) The Parties agree that the Public Park Parcel is not residential properties and risk-based corrective action for non-residential property as contemplated by this Agreement and Applicable Law are appropriate under the circumstances and that the City agrees not to demand remediation to meet residential standards.

(d) MFP shall decide the approach and pace of such Environmental Activities required by this Agreement, subject to the limits stated herein and applicable Environmental Law. MFP shall expeditiously commence such Environmental Activities and diligently pursue efforts to obtain the NFA Determination under applicable Environmental Law.

(e) The City hereby grants to MFP and its Environmental Representatives a license to enter the Public Park Parcel at reasonable times after providing notice for the purpose of performing the Environmental Activities pursuant to the terms of this Agreement. The City further grants to MFP a license to place, store and operate all equipment necessary for such Environmental Activities; provided that such placement, storage and operation shall remain no longer than necessary, shall comply with all Applicable Laws and regulations and shall not materially interfere with or disrupt the City's operations.

(f) MFP shall obtain all permits or approvals necessary to perform the Environmental Activities required of MFP this Agreement. To the extent available, the City shall allow MFP's Environmental Representatives to use existing utilities, including, without limitation, water and electrical power necessary to operate such systems, provided, however, that MFP shall reimburse the City for the cost of such utility expenses to the extent they can be reasonably ascertained. MFP shall bear responsibility for lawful storage and disposal of any wastes derived from such Environmental Activities (and shall serve as the generator of such wastes) and upon completion of the Environmental Activities, MFP shall restore the Public Park Parcel, as remediated, to substantially their condition prior to the commencement of such Environmental Activities.

(g) MFP shall take the lead in communicating and setting meetings with Governmental Agencies regarding MFP's Environmental Activities related to the Public Park Parcel. Unless required by Applicable Law, the City shall not initiate or set any meetings with any Governmental Agency regarding MFP's Environmental Activities without prior written notice to, consultation with and the consent of MFP, which consent shall not be unreasonably withheld or delayed. Such consent is expressly conditioned upon MFP's participation in, and taking lead of, any such communications.

(h) MFP shall provide a copy to the City of all material reports, remedial action plans, reliance letters, correspondence and filings by MFP concerning a Release and/or the Environmental Activities that have been or are to be conducted no later than ten (10) Business Days after being filed with or delivered to any Governmental Agency with jurisdiction over such Environmental Activities and a copy of all written correspondence received from such Governmental Agency in response thereto no later than ten (10) Business Days following receipt.

(i) Notwithstanding the foregoing, in the event the City is responsible for any Environmental Activities on the Public Park Parcel, all of the foregoing obligations of MFP and rights of the City in this **Section 10.3** should be read to be obligations of the City and rights of MFP in such event.

## ARTICLE 11 LIMITATION OF LIABILITY

**Section 11.1. Limitation of Liability of the City.** The City shall not be liable to MFP for any incidental, consequential, special or punitive loss or damage.

**Section 11.2. Limitation of Liability of MFP.** MFP shall not be liable to the City for any incidental, consequential, special or punitive loss or damage.

## ARTICLE 12 DEFAULT BY MFP OR CITY

**Section 12.1. 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.

**Section 12.2. 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 12.1** 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 (as limited by **Article 5** and **Article 11**), 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 (as limited by **Article 5** and **Article 11**); 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 12.3. 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 13 NOTICES**

**Section 13.1. 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  
12<sup>th</sup> Floor  
Coral Gables, Florida 33134  
Attn: Pablo A. Alvarez

With a copy to: Holland & Knight, LLP  
701 Brickell Avenue  
Suite 3000  
Miami, Florida 33131  
Attn: Richard Perez

Greenberg Traurig P.A.  
333 S.E. 2<sup>nd</sup> Avenue  
Suite 4400  
Miami, Florida 33131  
Attn: Kerri L. Barsh

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 13.2. 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 twenty four (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 14**  
**CERTIFICATES BY THE CITY**

**Section 14.1. 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 14.1** 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 15**  
**CONSTRUCTION OF TERMS AND MISCELLANEOUS**

**Section 15.1. 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 15.2. Captions.** The article and section headings and captions of 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.

**Section 15.3. 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 15.4. 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 15.5. Consents.** Whenever in this Agreement the consent or approval of the City or MFP is required, such consent or approval, with respect to the City shall be made by the City Manager, unless such approval requires the consent of the City Commission, and any duly authorized officer or representative of MFP on behalf of MFP, and:

(a) shall not be unreasonably or arbitrarily withheld, conditioned, or delayed unless specifically provided to the contrary, and shall not require a fee from the Party requesting same;

(b) shall not be effective unless it is in writing; and

(c) shall apply only to the specific act or transaction so approved or consented to and shall not relieve MFP or the City, as applicable, of the obligation of obtaining the other's prior written consent or approval to any future similar act or transaction.

Material amendments to this Agreement shall require the consent of the City Commission and shall not be effective until the consent of the City Commission is obtained. Amendments extending the time for performance of any obligation of MFP by no more than twelve (12) months shall not be deemed material.

**Section 15.6. 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 Commission.

**Section 15.7. 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 15.8. 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 15.9. Brokers.** The Parties hereby represent and agree that no real estate broker or other person is entitled to claim a commission as a result of the execution and delivery of this Agreement.

**Section 15.10. 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 15.11. Cooperation; Expedited Permitting and 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. The City shall use its best efforts to expedite the permitting and approval process in an effort to assist MFP in obtaining its Permits and achieving its development and construction milestones for the Improvements.

**Section 15.12. 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 15.13. 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 15.14. 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 Law are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

**Section 15.15. Unavoidable Delays.** The Party obligated to perform under this Agreement shall not be required to perform, and/or shall be entitled to a reasonable extension of time because of its inability to meet an obligation or a time frame or deadline specified in this Agreement, where such failure or inability to perform is caused by an Unavoidable Delay, provided that such Party shall, as soon as reasonably practical, give notice to the other Party in writing of the causes thereof, articulate the measures the non-performing or delayed Party intends to take to mitigate the non-performance or delay, and the anticipated, reasonable time extension necessary to perform. Neither Party shall be liable for loss or damage, or deemed to be in default hereof, due to any such Unavoidable Delays, provided that the Party claiming an Unavoidable Delay promptly and diligently acts to mitigate such Unavoidable Delay.

**Section 15.16 Public Records.** To the extent applicable, MFP shall comply with Section 119.0701, Florida Statutes, including without limitation: (1) keep and maintain those records constituting public records under Chapter 119, Florida Statutes; (2) provide the public with access to public records in the possession of MFP in the manner required by Chapter 119, Florida Statutes, and make available copies of such public records at the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by Applicable Law; (3) ensure that those public records that are confidential and exempt from disclosure are not disclosed, except as authorized by Applicable Law; (4) meet all requirements for retaining public records as set forth in Chapter 119, Florida Statutes, (5) transfer, upon the written request of the City and at no cost to the City, all public records in MFP's possession on the date of termination of this Agreement, which transfer shall be done in an electronic format compatible with the City's information technology systems. Notwithstanding the foregoing, MFP may (x) withhold any records that do not constitute public records under Chapter 119, Florida Statutes, and (y) withhold and/or redact certain records, trade secrets and other proprietary information, as confidential, and any such information shall be excluded from public disclosure to the fullest extent permitted by Applicable Law.

## **ARTICLE 16 REPRESENTATIONS AND WARRANTIES**

**Section 16.1. City's Representations and Warranties.** The City hereby represents and warrants to MFP that:

(a) 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.

(b) The City owns and holds fee simple title to the Property free and clear of any encumbrances that would limit, restrict, impair or otherwise impact the ability of MFP to construct

the Improvements or perform its obligations hereunder, and will make available the Property to MFP as contemplated in this Agreement.

(c) City has no knowledge of any existing conditions at the Property that would hinder, delay or otherwise impede MFP's construction or completion of the Improvements as contemplated herein or the performance of MFP's obligations hereunder or increase any costs associated therewith.

**Section 16.2. 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 Park Rehabilitation Agreement to be executed in its name by the City Manager; as authorized by the City Commission, and MFP has caused this Park Rehabilitation 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:**

**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: \_\_\_\_\_

**SCHEDULE A**

**Public Park Parcel Legal Description**

**SCHEDULE B**

**Park Concept Plans**

**SCHEDULE C**

**Park Approval Process**

## **PARK APPROVAL PROCESS**

For purposes of this Agreement, the defined terms below apply and shall be incorporated as part of the Definitions included in **Article 2** of the Agreement:

1. MFP and the City agree that MFP will construct the Park Site Development for the City in accordance with the sketch and program elements set forth in the Park Concept Plans. This Exhibit sets forth the approval process for the Construction Plans, construction contracts, change orders, and the inspection for the Park Site Development.

2. MFP agrees to design and construct the Park Site Development for the City in accordance with the following procedures:

(a) **Design Phase.**

(i) The design and construction of the Park Site Development shall be done using a delivery method chosen at the discretion of MFP. The architect and/or engineer for the Improvements shall be selected by MFP in accordance with Section 287.055 Fla. Stat., and the general contractor shall be selected in accordance with Section 255.20, Fla. Stat., and in the event that the Park Site Development is designed and constructed by a "design-build" firm, the applicable professionals shall be selected in accordance with requirements of 287.055 Fla. Stat. To the extent that MFP believes any exemption to the competitive bidding requirements of Section 255.20, Florida Statutes, are applicable, MFP may request, in writing, confirmation from the City that it may avail itself of any such exemption(s). The selected architect, engineer, and general contractor shall, respectively, be referred to herein as the "**Architect**," the "**Engineer**," and the "**Contractor**."

(ii) MFP shall enter into a written agreement with the Architect, Engineer, and/or Contractor providing services for the Park Site Development, which agreement shall incorporate, and be consistent with, all of the terms and conditions of the Agreement, including this Exhibit, and shall provide that the City is an express third party beneficiary of such agreements with the Architect, Engineer and/or Contractor.

(iii) The Park Site Development will be designed to be compliant with the Park Concept Plans and all laws and regulations applicable thereto, including, but not limited to, the Florida Accessibility Code, the Florida Building Code (FBC), the National Fire Protection Association (NFPA), and Fire Safety Code. The conceptual drawings for the Park Site Development ("**Conceptual Drawings**") will include conceptual site layouts and plans, sections, elevations, and massing rendering studies. The Architect will prepare and deliver the Conceptual Drawings to the City and MFP in the time agreed to between the Parties. The City shall then have thirty (30) days to approve the Conceptual Drawings, or to provide comments and request revisions. If the City fails to approve the Conceptual Drawings or provide comments within this period, the Conceptual Drawings shall be deemed approved. MFP shall make revisions timely requested by the City, or provide an explanation why such revisions have not been made, and resubmit same for approval within fourteen (14) days after MFP's receipt of such comments and requested revisions, and the City shall approve or provide comments to the resubmitted Conceptual Drawings within ten (10) Business Days of its receipt of same. If the City fails to approve the

Conceptual Drawings or provide comments within this period, the Conceptual Drawings shall be deemed approved.

(iv) The Architect and/or Engineers will complete the preparation of more detailed design drawings of the Park Site Development (the "**Schematic Drawings**") within a reasonable period of time after approval of the Conceptual Drawings. The Schematic Drawings may include 3D renderings, site plans, architectural, engineering, structural, mechanical, electrical, landscape and plumbing plans; preliminary grading and drainage plans; soil tests; utilities; water and sewer service connections; vehicular and pedestrian traffic circulation plans, including locations of ingress and egress to and from the Park Site Development; curbs, gutters, and parkways, as applicable; lighting, all sufficient to enable the City to review the Schematic Drawings for conformity to the Conceptual Drawings and the Park Concept Plans.

(v) Upon approval (or deemed approval) by the City of the Schematic Drawings, Architect and any Engineers will complete the Construction Plans for the Park Site Development. The Construction Plans shall illustrate and describe the further development of the Park Site Development, setting forth the quality levels of materials and systems and other requirements for the construction of the Park Site Development, all in detail sufficient and appropriate for a Contractor to agree to a price for a contract for the construction of the Park Site Development (the "**Contract**") and submission to the applicable Governmental Agencies having jurisdiction over the issuance of Permits for the Improvements.

(vi) Upon the approval (or deemed approval) by the City of the Construction Plans, MFP shall provide the City with a set of plans signed by all parties as approved. In the event any change is proposed after approval of the final Construction Plans, other than Minor Revisions (as hereinafter defined), then MFP must resubmit the proposed changes to the Construction Plans for the City's approval. The City expressly consents to minor changes in the Construction Plans that do not materially increase total project costs or materially extend the time to achieve substantial completion of the Park Site Development and comply with Applicable Laws ("**Minor Revisions**").

(vii) The City's approval of any plans pursuant to this Agreement shall not relieve MFP of its obligations under Applicable Law to file such plans with any department of the City or any other Governmental Agency having jurisdiction over the issuance of Permits and to take such steps as are necessary to obtain issuance of such Permits. MFP acknowledges that any approval given by the City pursuant to this Agreement shall not constitute an opinion or agreement by the City that the plans are structurally sufficient or in compliance with any Applicable Laws, and no such approval shall impose any liability upon the City related thereto.

(b) **Construction Phase.**

(i) MFP will assume full responsibility for supervising the performance of all of the work under the Contract, and for the methods, means, and equipment used in performing the Contract and for all materials, tools, apparatus, and property of every description used in connection therewith.

(ii) MFP will review all of Contractor's applications for payment and cause Contractor to be paid for the construction of the Park Site Development.

(iii) MFP shall conduct any and all tests of the work or inspections required by any Governmental Agencies or otherwise provided for in the Contract. All testing and analysis required to be performed by third parties shall be performed by qualified persons authorized to perform such tests by Governmental Agencies having jurisdiction.

(iv) The City, its employees, agents, representatives and contractors, may at any reasonable time and with reasonable notice conduct such on-site observations, inspections and testing, as the City deems necessary or desirable to ascertain whether the work complies with the terms of this Agreement provided that such persons adhere to all required safety instructions and directives governing the construction site and shall not interfere in any manner with the progress of the work. The costs of any such inspections and testing shall be paid by the City.

(v) Each of the Parties shall secure and deliver to the other promptly and immediately upon request, all required certificates of inspections, test reports, work logs, certified payroll and approvals with respect to the work.

(vi) When the Park Site Development is substantially complete, MFP shall furnish the City with a complete set of final record documents, which will include as-built plans and survey for the constructed improvements. Within ninety (90) days of final completion of the Park Site Development, MFP shall provide the City with two (2) signed and sealed sets of complete as-built drawings for the Park Site Development certified both by the Architect(s) and/or Engineer(s) of record and also by the Professional Surveyor and Mapper (PSM) where required. As-built shall show all changes and deviations from or to permitted plans and drawings and include as-built dimensions and elevations recorded or verified by the PSM. All as-built information regarding underground or otherwise concealed facilities shall be taken in the field concurrently with the program of construction and before facilities are covered or otherwise concealed. Otherwise, MFP's Contractor or design-builder, as the case may be, shall expose (and restore) sufficient areas of work to allow the PSM to meet the aforementioned dimension, elevation, and location verification certification requirements. The as-built drawing shall be submitted to the City in hard copy and AutoCAD format or in Geographic Information System as-built information format.

**(c) Access to Records by Auditor General.**

All records of MFP, the Contractor and any subcontractors pertaining to the Park Site Development shall be maintained and, upon reasonable notice, shall be made available for inspection to representatives of the City. In addition, the Office of the Independent Auditor General of the City shall have access thereto for any of the purposes provided in any City Code.

## SCHEDULE D

### Insurance Requirements

MFP shall require every contractor performing any work pertaining to the construction of the Property to furnish certificates of insurance, containing the following coverage limits and endorsements:

#### I. Commercial General Liability

##### Limits of Liability

Bodily Injury and Property Damage Liability	
Each Occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operations	\$1,000,000
Personal and Advertising Injury	\$1,000,000

##### Endorsements Required

- City of Miami listed as an additional insured
- Employees included as insured
- Independent Contractors Coverage
- Contractual Liability
- Premises/Operations
- Explosion, Collapse and Underground Hazard
- Loading and Unloading

#### II. Business Automobile Liability

##### Limits of Liability

Bodily Injury and Property Damage Liability	
Combined Single Limit	
Any Auto/Owned/Scheduled	
Including Hired, Borrowed or Non-Owned Autos	
Any One Accident	\$1,000,000

##### Endorsements Required

City of Miami listed as an additional insured

#### III. Worker's Compensation

##### Limits of Liability

- Statutory-State of Florida
- Waiver of subrogation
- USL&H if Applicable

#### IV. Employer's Liability

##### Limits of Liability

- \$1,000,000 for bodily injury caused by an accident, each accident.
- \$1,000,000 for bodily injury caused by disease, each employee
- \$1,000,000 for bodily injury caused by disease, policy limit

#### V. Owner's & Contractor's Protective

##### Limits of Liability

Each Occurrence	\$1,000,000
Policy Aggregate	\$1,000,000
City of Miami listed as named insured	

<b>VI.</b>	<b>Excess Liability/Umbrella Policy</b>	
	Limits of Liability	
	Bodily Injury and Property Damage Liability	
	Each Occurrence	\$5,000,000
	Aggregate	\$5,000,000
	<b>City of Miami listed as an additional insured</b>	
<b>VII.</b>	<b>Payment and Performance Bond</b>	\$ TBD
	City of Miami Listed as Oblige	
<b>VIII.</b>	<b>Builder's Risk</b>	
	Causes of Loss: Special /All Risk	
	Valuation: Replacement Cost	
	Deductible: 5% wind and hail	
	City listed as loss payee	
<b>IX.</b>	<b>Protection and Indemnity (If applicable)</b>	\$1,000,000
	Jones Act included.	