

Prepared by:
Jennifer Lynn Warren
Deputy City Attorney
City of North Miami
776 NE 125th Street
North Miami, Florida

A G R E E M E N T

THIS AGREEMENT ("Agreement"), is made and entered this 14th day of April 2021, by and between the **CITY OF NORTH MIAMI**, a Florida municipal corporation ("City"), and **Biscayne Boulevard Property Owner, LLC.** ("Customer").

WHEREAS, the City Water & Sewer Division of the Public Works Department has existing facilities, including but not limited to, water main ("Facilities") in the vicinity of the Customer's property as described in Exhibit "A"; and

WHEREAS, the Customer desires to obtain sanitary sewer service ("Service") to its property utilizing the Facilities; and

WHEREAS, the City desires to provide such Service upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained, it is agreed as follows:

1. The Service shall be permitted by the City from the Customer's area to the Facilities as described in Exhibit "A".

2. The complete plans and specifications must be approved by the City Engineer for Facilities to service the described area and the connection to the Facilities ("Connection") shall be prepared by the Customer's Professional Engineer who shall be registered in the State of Florida. All construction shall be in strict conformity with the final plans and specifications as approved by the City's Engineer. The City, its engineer, or other representative, shall have the right to inspect any and all portions of the facilities whether in Public Right-of-Way or on private property and upon notification of any deviation from the approved plans and specifications. The Customer shall immediately make modifications as directed by the City. No construction shall be commenced without final written approval of the plans and specifications by the City Engineer.

3. Customer will defend, indemnify, and hold the City harmless from any judgment, decree, order, demand, or claim (including costs or attorneys' fees), which in any way arises from this Agreement including the design and construction of the Facilities, or from the act or

omission of any customer or its agents. In addition, Customer shall, at all times, indemnify, defend and hold the City harmless from any and all loss, damage, cost or expense arising in any manner on account of the rights, privileges or conditions (contractual or otherwise), imposed by any federal, state or county agency. Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes. Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

4. Ownership of such portions of the facilities as are in the Public-Right-of-Way or across easements, shall be transferred to the City at such time as the City notifies the Customer that it is ready to accept such facilities. Prior to such acceptance, all maintenance of the facilities shall be by the Customer. At the time of acceptance by the City, the Customer shall furnish the City the following:

- (a) An affidavit of Release of Lien for all materials, supplies and services.
- (b) An executed Warranty Bond in the amount of one hundred ten percent (110%) of the value of the work constructed as estimated by the City, as protection to the City against losses and liabilities resulting from latent defects in materials or improper performances or work, which may appear or be discovered for a period of one (1) year from acceptance by the City. The Bond shall have as the surety only such companies as are authorized to write bonds of such character and amount under the laws of the State of Florida and with an agent in Miami-Dade County, Florida. Surety shall be rated by Best's Insurance Guide "A" or better. The bond shall be in a form and amount to be approved by the City.
- (c) Certification by the Professional Engineer of Record that all facilities were constructed in conformance with the approved documents and a certification as to the cost of the facilities.

5. All costs relating to the facilities including but not limited to labor, overhead, taxes, licenses application fees, easement acquisitions, lift stations, pumps pipes, materials, and any other direct or indirect costs related to installation of the facilities shall be borne by the Customer and shall be fully paid by the Customer. All of City's costs in connection with the facilities including but not limited to charges by the City's Engineer, the City's Attorneys' fees, inspections, maintenance, administrative expenses, and any other costs incurred by the City in connection with this matter shall be paid by the Customer. In addition to such costs, the Customer shall pay to the City a connection and/or tapping fee as shown in Exhibit "A". The City's connection fee and the City's costs shall be paid by the Customer within fifteen (15) days after being billed by the City. Any such billing by the City to the Customer shall be for items specified in the bill and may not necessarily cover all of the City's expenses, which shall be billed to the Customer separately. It is agreed that no reservation of capacity will be made by the City until all fees, set forth in Exhibit "A" have been paid. Payment of these fees shall in no way be construed as to relieve the Customer of its obligation to pay any further sums due in

accordance with this Agreement that are charged subsequent to the completion of such connection.

6. In addition to all other charges set forth above, the Customer shall pay to the City a portion of all costs in connection with construction of the lines to which the Customer's facilities are to be connected. This portion shall be indicated on Exhibit "A" as determined by the City. Payment shall be made by the Customer to the City within fifteen (15) days after billing by the City.

7. The Customer warrants and represents that it is either the owner of the property described above or has the complete authority to act on behalf of the owner in executing this Agreement and that the terms hereof shall run with the land. It is acknowledged that this Agreement is for the purpose of providing a volume and rate of service to the property described and that charges to be paid to the City for use of the Facilities shall be charged to the ultimate user. Any increase in volume or rate of flow shall make this Agreement voidable on the part of the City. The City reserves the right to collect additional connection fees if the volume or rate of flow increases.

8. The design, installation and all future uses of the Facilities by the Customer or its successors or assigns shall be subject to the specific approval of the City of North Miami and where applicable, by all other governing authorities, including but not limited to Miami-Dade County, State of Florida, and the Miami-Dade Water & Sewer Authority, and there shall be no subsequent modification or addition to the service to the Customer without the specific written consent of the City.

In the event any additional customers are permitted by the City to connect into the facilities to be constructed by the Customer, the Customer will be reimbursed, by the additional customer(s), a portion of its costs as determined by the City's utility extension policy. This shall not be construed as any obligation by the City to accept additional customers into the line, and whether or not any additional customers are accepted shall be solely within the discretion of the City. The payment required under this section shall be solely within the discretion of the City. The payment required under this section shall be solely from the added customer and the City's discretion to add a customer shall in no way obligate the City to pay the Customer any additional sums. This reimbursement cost shall be valid for a period of five (5) years from the date the City accepts ownership of the utility.

9. For the use of the City's system, the Customer shall pay a user rate established by the City Council of the City of North Miami, the billing to be issued by the City and paid by the Customer on a basis as the City customarily bills. The Customer shall, immediately upon demand pay to the City a non-interest bearing deposit as determined by the City. Upon failure of the Customer to immediately pay the periodic charges for service, the deposits shall immediately forfeit to the City. The City shall have the right to adjust its service rates to reflect

current or future costs, and the Customer agrees to pay all such lawfully imposed rates. The City reserves all rights it may have pursuant to the Chapter 195, Part 1, Florida Statutes.

10. Such parts of the system that are on the Customer's property shall at all times be maintained and repaired by the Customer; however, the City shall have the right to inspect such facilities and the Customer, upon the City's written direction, shall make such repairs and maintenance as City directs.

11. If sewer service is covered by this Agreement, the Customer agrees that it shall not discharge or cause to be discharged into the sewer lines any of the following described waters or waste:

- (a) Any surface drainage water or ground water infiltration.
- (b) Any gasoline, benzene, naphtha, fuel oil or other inflammable or explosive liquid, solid or gas.
- (c) Any noxious or malodorous gas or substances, which either singly or by interaction with other wastes, is capable of creating a public nuisance or hazard to life or preventing maintenance and repair of the lines or connecting lines and treatment facility.
- (d) Any waters or waste containing toxic or poisonous substances in sufficient quantity to constitute a hazard to any structures and appurtenances of the lines and connecting lines and treatment facility, humans or animals or create any hazard or aesthetically undesirable conditions within or without lines and connecting lines and treatment facility. Such materials shall include, but shall not be limited to:
 - (1) Any cyanides in excess of two (2) milligrams per liter as (ON).
 - (2) Phenols in excess of three hundred (300) milligrams per liter by weight.
 - (3) Hydrogen sulfide or sulfur dioxide in excess of ten (10) milligrams per liter by weight in sewage.
 - (4) Iron in excess of twenty-five (25) mg. per liter.
 - (5) Chromium in excess of ten (10) mg. per liter.
 - (6) Copper in excess of ten (10) mg. per liter.
 - (7) Zinc in excess of ten (10) mg. per liter.
 - (8) Nickel in excess of ten (10) mg. per liter.
 - (9) Biochemical oxygen demand in excess of two hundred (200) ppm.
 - (10) Chlorine demand in excess of 50 ppm.

Whenever the term "parts per million by weight" is used, it means equivalent to "milligrams per liter," when reported in laboratory analysis results. The methods of analysis shall conform to Standard Methods for the Examination of Water and Waste Water, Eleventh Edition as published by the American Public Health Association. The quality limitations of this

article shall apply to concentrations or other physical characteristics obtained by analysis of a composite sample of the waters or water collected for a 24-hour period, proportioned to flow. Periodic quality control tests shall be performed by chemists hired by the Water and Sewer Department of the City at the Customer's reasonable expense. The City may, from time to time, impose additional reasonable restrictions on the quality of discharge into the lines. The Customer further agrees to meet any and all regulations and conditions that may be required by future or existing contracts between the City and the State of Florida or Miami-Dade County, as well as meeting all requirements of Miami-Dade County Ordinance No.96-166. Customer agrees that in addition to any remedies provided for in the Ordinance No.96-166, the City may terminate any water and sewer service until the violation by the Customer is corrected to the satisfaction of the City.

12. The route of the lines from the Customer's property to the City's system shall be as determined by the City, and the Customer shall obtain, at its own expense, upon direction by the City any and all easements necessary which easements shall be in favor of the City of North Miami.

13. Any temporary cessation of the service by the City caused by an act of God, fire, strike, casualty, necessary maintenance work, breakdown of/or injuries to machinery, pumps or pipe lines, civil or military authority, insurrection, riot or any other unforeseeable circumstance, shall not constitute a breach of this Agreement on the part of the City, and the City shall not be liable to the Customer for any damage resulting from such cessation of service. The City shall not be responsible to the Customer for any backup, interruption of service, or any difficulty in the discharge of the Customer's sewage into the City's sewage facilities due to a cause beyond the City's control or otherwise.

14. Within the limits of Section 768.28, F.S., the Customer agrees to hold and save harmless the City for any litigation and/or damages including attorneys' fees and court costs resulting from the inclusion into the lines of the City's sewage facilities of any substance in violation of the provisions of this Agreement, or resulting from any violation by the Customer of any of the provisions of this Agreement. In the event of any violation by the Customer of any of the provisions of this Agreement (other than the payment of money by the Customer to the City), the City shall give the Customer notice and the Customer shall rectify said violation within fourteen (14) days after such notice (if such violation is reasonably susceptible of correction within fourteen days, otherwise the Customer shall commence the correction within this period and complete the correction without delay). If the violation is of such emergency nature as reasonable warrants immediate corrective action, the City may, at its option, undertake and complete, concurrent with written notice to the Customer, such emergency action as the circumstances warrant, and any reasonable expense incurred by the City shall be paid by the Customer. In the event it becomes necessary for the City to enforce any provision of this Agreement by court action or otherwise, and the City prevails, the Customer will pay all of the City's costs, including attorney's fees, at all levels, including any appeals.

15. Where necessary, any approvals of this Agreement by any governmental agency shall be obtained by the Customer at Customer's expense, including where necessary, inclusion of the Customer's property in the service area of the City. The City will cooperate with the Customer, at the Customer's expense, in obtaining any such approvals as are necessary.

16. All notice required shall be by certified mail, return receipt requested, to the Customer and to the City, addressed to : City Manager at 776 N.E. 125 Street, North Miami, Florida 33161.

17. This Agreement shall be binding upon the parties herein, their heirs, partners, executors, legal representatives, successors and assigns. Chapter 19 of the Code of Ordinances of the City of North Miami and Ordinance No. 811 as they apply to the Water and Sewer Enterprise of the City as presently existing and as may be amended in the future shall be deemed included as part of this Agreement. Any modification of this Agreement or any waiver or extension must be approved, in writing, by both parties.

18. The Customer agrees to dedicate to the City an easement, as to be determined by the City, so as to allow the City to enter the subject property and make such alterations, repairs, or other work to the Facilities, as the City shall deem necessary to achieve efficient Service. Any easement shall be dedicated to the City and so recorded at the Miami-Dade County Courthouse within ten (10) days of the signing of this Agreement, at Customer's expense.

19. If, at the time of execution, the property served pursuant to this Agreement is located within the unincorporated area of Miami-Dade County, Customer agrees that if the owner of the property attempts or allows such property now or in the future to be annexed or considered for annexation into any municipality, then in such event, the Customer grants to the City of North Miami, the right of first refusal to be the sole municipality to which the land will be annexed.

20. This Agreement shall be recorded by the Customer at its expense in the Public Records of Miami-Dade County in order to give notice to any successor in interest of the provisions of this Agreement. This Agreement shall run with the land of Customer as described in Exhibit "A".

IN WITNESS WHEREOF, the Customer has caused this Agreement to be executed this 14th day of April, 2021.

ATTEST:

Biscayne Boulevard Property Owner,
LLC. "Customer":

Secretary or Witness:

By: Paul Martin

By: W.O.

Print Name: Paul Martin

Print Name: William O'Connor

Date: 4/14/21

Date: 04/14/21

INDIVIDUAL ACKNOWLEDGMENT

STATE OF New York
COUNTY OF New York

BEFORE ME, an officer authorized to administer oaths, personally appeared

William O'Connor the individual referred to in the foregoing Agreement as Customer (s) who, first being duly sworn and acknowledge that he (she) executed said Agreement for the purposes therein expressed.

WITNESS my hand and official seal at New York,
said County and State this 14th day of April, 2021.

Commission expiration: 1/8/22

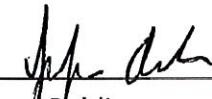
Notary Public

JENNIFER A QUIRK
Notary Public, State of New York
No. 01QU6369382
Qualified In Suffolk County
Commission Expires January 8, 2022

PARTNERSHIP ACKNOWLEDGMENT

STATE OF New York
COUNTY OF New York

THE FOREGOING instrument was acknowledged before me this 14th day of April 2021, by William O'Connor partner, on behalf of Biscayne Biscayne Property Owner a partnership.



Notary Public

Commission expiration: 1/8/22

JENNIFER A QUIRK
Notary Public, State of New York
No. 01QU6369382
Qualified in Suffolk County
Commission Expires January 8, 2022

CORPORATE ACKNOWLEDGMENT

STATE OF New York
COUNTY OF New York

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and county aforesaid to take acknowledgments, personally appeared, William O'Connor, and — personally known to me to be the President and Secretary respectively of the Biscayne Biscayne Property Owner Corporation named as Customer in the foregoing Agreement, and that they severally acknowledged executing the same freely and voluntarily under authority duly vested in them by said corporation and that the seal affixed thereto is the true corporate seal of said corporation.

WITNESS my hand and official seal in the County and State last aforesaid this 14th Day of April, 2021.

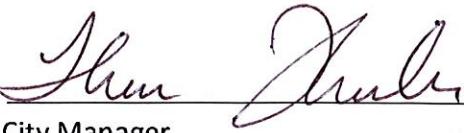


Notary Public

Commission expiration: 1/8/22

JENNIFER A QUIRK
Notary Public, State of New York
No. 01QU6369382
Qualified in Suffolk County
Commission Expires January 8, 2022

IN WITNESS WHEREOF, the City has caused this Agreement to be executed this 23rd day of April, 2021.

BY: 
City Manager

ATTESTED BY CITY CLERK

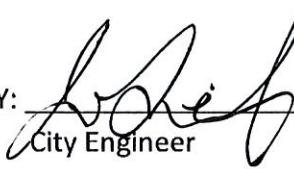
By: 
City Clerk

City Seal

APPROVED AS TO LEGAL FORM

BY: 
City Attorney

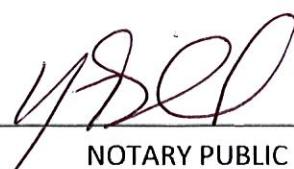
APPROVED AS TO ENGINEERING

BY: 
City Engineer
City of North Miami

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

I HEREBY CERTIFY that on this 23 day of April, 2021, Before me, personally appeared, **Theresa G. Therilus**, as City Manager of the City of North Miami, a municipal corporation, to me well known to be the person described in and who executed the foregoing Agreement and that said person has been authorized by the City Council to execute said Agreement.

Commission Expiration
2-23-2025


NOTARY PUBLIC

