

Addenda Num. 3

Marina Development and Operation

at Roosevelt Roads, Ceiba, Puerto Rico



Issued by the Local Redevelopment Authority for Roosevelt Roads: September 27, 2023

Proposal Deadline for Respondents: November 12, 2023 at 5:00pm

Documents are available at WWW.ROOSEVELTROADS.PR.GOV

One (1) Original, Seven (7) Copies,
and One (1) USB of Each Proposal Shall Be Submitted to:
Local Redevelopment Authority for Roosevelt Roads
Comercio y Exportación Building
#159 Chardón Ave. 3rd Floor
Hato Rey, PR 00918

This addendum has been issued to address the following revisions to Request for Proposals document RFP#2023-001, **Marina Development and Operation** at Roosevelt Roads, Ceiba, Puerto Rico published by the Roosevelt Roads Local Redevelopment Authority on September 27, 2023.

To include the Exhibit C-8 – Draft Development Agreement.

The information indicated in this Addendum becomes part of the RFP documents and should be taken into consideration by the proponents in the submission of their proposals.

END OF DOCUMENT

**Exhibit C-8 - Draft
Development Agreement**

Marina Development and Operation

at Roosevelt Roads, Ceiba, Puerto Rico



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DEVELOPMENT AGREEMENT

FIRST PARTY: ROOSEVELT ROADS NAVAL BASE LANDS FACILITIES REDEVELOPMENT AUTHORITY (LRA), a public corporation of the Commonwealth of Puerto Rico created by Law No.508 of September 2004, as amended, (hereinafter referred to as **LRA**), represented herein by its Acting Executive Director, Joel Pizá Batiz, esq. and,

SECOND PARTY: _____ (hereinafter referred to as **Developer**), an entity duly organized under the laws of the Commonwealth of Puerto Rico, represented herein by its _____, _____, of legal age, single/married, and resident of _____.

The **LRA** and the **Developer** may be referred to individually as a “**Party**” or together as the “**Parties**”.

WITNESSETH THAT

WHEREAS: In September 27th, 2023, the **LRA** issued the Request for Proposal #2023-001 (the **RFP**) for the Development and Operation of the existing recreational marina, located in Roosevelt Roads, in the municipality of Ceiba, Puerto Rico, as illustrated in **Exhibit A** of this Development Agreement (the **Agreement**). The scope of the RFP includes the planning, design, construction, financing, and operation of a new Marina.

WHEREAS: On _____, 2023, **Developer** submitted its response to the **RFP** (the **Proposal**), and the **LRA** evaluated and awarded the **RFP** to the **Developer** for the redevelopment of the existing marina, in acceptance with the established scope in the **RFP** (the **Project**), as hereinafter described, as set forth on the **LRA**’s Notification of Award dated _____, 2023.

WHEREAS: Pursuant to the **RFP**, the **Proposal** thus accepted, the Notification of Award and the terms and conditions negotiated and agreed upon, the **LRA** and the **Developer** intend and are proceeding to grant this **Agreement**, aimed at subsequently granting the Deed of Lease or Assignment of Rights for a ___-years Term Surface (“**Deed**”) for the planning, design, development, construction, and operation of the **Project**, as described in this **Agreement**. The **Deed**, in its content, will collect all the clauses and conditions contained in this **Agreement**.

NOW, THEREFORE, in consideration of the foregoing, the covenants and conditions hereinafter set forth, and other good valuable considerations, the sufficiency of which is hereby acknowledged, the **LRA** and the **Developer** hereby covenant and agree as follows:

ARTICLE 1 GENERAL PROVISIONS

Section 1.1 **Preamble.** The foregoing is a description of the current intent of the parties regarding the development, construction and operation of the **Project** and is intended to be an aid to the

understanding of the **Agreement**, but it is not intended to limit the right nor the obligations of the parties except to the extent that it contains definitions and terms which are used elsewhere in the **Agreement**. Accordingly, said Preamble forms an integral part of the terms and conditions of the **Agreement**.

Section 1.2 **Exhibits**. All **Exhibits** attached hereto are made form an integral part of this **Agreement**.

ARTICLE 2 CONDITIONS PRECEDENT

Section 2.1 **Conditions Precedent to Developer's Rights and Obligations to Develop the Project**. All the **Parties'** rights, duties, and obligations under the **Agreement**, except as otherwise specifically stated in the **Agreement**, are expressly conditioned upon and subject to the satisfaction by **Developer** of each and every one of the following conditions precedents:

2.1.1 **Developer** shall submit a Project Schedule that will include all the necessary activities to be performed by **Developer** to develop, plan, secure funding or financing, construct, and initiate operation of the **Project**. The Project Schedule shall identify the milestones of the Project; and must include the relationship between activities and shall identify the critical path of the Project as well. The Project Schedule will be considered as the baseline to the submittal of Quarterly Progress Reports, as stated in section 2.1.7 of this **Agreement**. The Project Schedule is included as **Exhibit** ___ of this Agreement. The established Project Schedule in this Article shall not be considered the same as the Construction Project Schedule, as required in Section 5.2 of the **Agreement**.

2.1.2 **Developer** shall have completed the Constructions Documents for the Project, as defined in Section 3.4 of this **Agreement**, and submitted a copy of the aforementioned Construction Documents to the **LRA** in accordance with the Project Schedule, for the **LRA** to review and verify compliance with the established scope for the **Project**.

2.1.3 **Developer** shall have obtained all governmental permits, authorizations, endorsements and approvals, including, but not limited to zoning and environmental approvals, variances, and construction building permits, and all necessary actions, permits and/or approvals by the Puerto Rico Planning Board, the Puerto Rico State Permits Management Office (henceforth, OGP_e, by its acronym in Spanish), as well as any other state or federal agency with interest in the development and construction of the project, in accordance with the Approved Plans, as defined in, and provided by, Article 3.

2.1.4 **Developer** shall have evidenced and initiated the necessary and appropriate funding or financing for the total construction of the Project, in a manner satisfactory to the **LRA**, understanding that the execution of the Deed for Long Term Lease Agreement might occur simultaneously with the closing of the funding or financing. Developer shall obtain such funding or financing from a lender, lenders or banking institution authorized to do so, and satisfactory and acceptable to the **LRA**.

2.1.5 **Developer** shall have entered into a valid and binding contract with the General Contractor for the project, in accordance with the requirements of Section 5.4 of this **Agreement**, for the construction of the Project in accordance with the Approved Plans.

2.1.6 **Developer** shall have obtained and provided to the **LRA**, in accordance with requirements established in Section 5.3 of this **Agreement**, the one hundred percent (100%) payment and performance bonds in relation to the construction of the **Project**.

2.1.7 **Developer** shall submit to the **LRA** Quarterly Progress Reports that show the initial stage and subsequent progress of the project, in accordance with the Project Schedule that is part of this **Agreement**, as established in Section 2.1.1.

2.1.8 **Developer** and the lead representative of each component of the Project Team, shall submit to the **LRA** a document certifying that each member of the Project Team is familiar with the language of the LIFOC and the Land Use Control restrictions and protocols. The **LRA** will provide to **Developer** and each lead representative a document with such Land Use Control restrictions and protocols.

Section 2.2 **Economic Consideration for the Agreement.** As economic consideration for the term granted by the Agreement, as set forth in Section 2.4, for the compliance of the Conditions Precedent, the **Developer** shall pay the **LRA** a non-creditable and a non-refundable amount of _____ dollars (\$), on or before the date of execution of this Agreement.

Section 2.3 **Term for the satisfaction of Conditions Precedent.** **Developer** shall use its best efforts in good faith to timely satisfy and comply with each and every one of the foregoing Conditions Precedent. It is recognized by the parties hereto that it is not the intention of any party to encumber the **Property** with the **Agreement** for an indefinite period of time during the period of satisfaction of the Conditions Precedent. Accordingly, any party shall have the right: (i) to terminate the Agreement if all of the Conditions Precedent set forth in Section 2.1 are not satisfied by **Developer** on or before (day/month)/2025, thirty sixth (36) months from the execution of this **Agreement**. Provided however that if **Developer** is not able to timely satisfy the conditions precedent only for reasons solely due to delay attributable to government agencies in the processing of the corresponding permits, after **Developer** demonstrates, through the submittal of Quarterly Progress Reports as established in Section 2.1.6 of this **Agreement**, having made its best efforts to obtain such permits, then, if previously requested by **Developer** not later than thirty (30) days prior to the expiration date of the conditions precedent time period, the **LRA** may, at its sole and absolute discretion, extend the date for satisfaction of the conditions precedent for one hundred and eighty (180) calendar days. Notwithstanding, if **Developer** is not able to timely satisfy the conditions precedent for any other reason than the ones above stated in this Section 2.4, then, if previously requested by **Developer** not later than thirty (30) days prior to the expiration date, the **LRA** may, at its sole and absolute discretion, extend the date for satisfaction of the conditions precedent for an additional period, as requested by the **Developer**, but no longer than two additional years, upon payment by **Developer** of a yearly extension fee, of one hundred thousand dollars (\$100,000.00), payable within five days of the authorization letter for the extended period.

Section 2.4 **Termination.** In the event the **Agreement** is terminated, then **Developer** shall immediately submit to the **LRA** true, correct and complete copies of all studies, reports, Construction Documents and specifications (as hereinafter defined), data and information obtained by or for the benefit of Developer with respect to the Property or the Project, whereupon the parties shall be released from all further obligations under the Agreement and with respect to the Property and the Project, except as otherwise specifically herein provided.

Section 2.5 **Possession.** The **LRA** shall and will retain total and exclusive possession of the Property until and unless all the Conditions Precedent have been fully satisfied by **Developer** as provided in Article 2, and the Deed for the Lease has been executed, as provided in Article 4 of this Agreement.

Section 2.6 **Cost and Expenses.** All costs and expenses in connection with the satisfaction and compliance of the foregoing conditions precedent shall be at the sole cost and responsibility of the **Developer**. The **LRA** shall bear the fees of its own professional consultants regarding the review of any documentation submitted by **Developer** and Developer's consultants, as well as any document prepared by **LRA** consultants regarding the **Project**.

ARTICLE 3

DRAWINGS AND PLANS FOR THE DEVELOPMENT OF THE PROJECT

Section 3.1 **LRA's Approval of Drawings and Plans.** No clearing, demolition or excavation of the **Property** shall be commenced until the Schematic, Design Development, and Construction drawings and Specifications have been approved in writing by the LRA as more particularly set forth in this Article 3. No building, wall, structure, or improvements of any nature shall be commenced, erected, placed altered or maintained on any portion of the Property, until the Construction Drawing and the Specifications have been approved in writing by the LRA, as more particularly set forth in this Article 3. Each proposed building, structure, infrastructure (power, water, sanitary, internet connection, and any other required infrastructure), and any other improvement of any nature shall be placed, erected and/or altered upon the **Property** only in substantial accordance with the Construction Documents, and any changes thereto, all as approved by the LRA, in accordance with this Article 3 (henceforth, the **Approved Plans**).

3.1.1 The approval of the Plans by the **LRA** will be for the sole purpose of determining their compliance with the scope and parameters of design and management of the property, established by the **LRA** and with the Resolutions approved by the LRA Board of Directors; and will not constitute any review of the **Developer's** compliance with the technical and/or professional and/or legal requirements necessary or applicable to the **Project**, nor will it constitute any judgment on their correctness, all of which is of the sole and absolute responsibility of the **Developer** and all the Puerto Rico Commonwealth permitting entity, such as the Puerto Rico Permits Management Office (OGPe, by its acronym in Spanish), as the official permitting entity.

Section 3.2 **Schematic drawings and plans.** Within sixty (60) days from the execution of this

Agreement, Developer shall submit to **LRA** for approval one printed and one digital (PDF version) set of the Schematic drawing and plans. Both versions of the document should be, at minimum, in a 24” x 36” landscape/horizontal format. **LRA** shall submit its comments in writing within twenty-one (21) calendar days.

3.2.1. Schematic drawings and plans shall include site plan, floors plans, sections, and elevations of the Project, supporting and additional drawings, plans and information drawings with enough detail to illustrate site planning, path of travel, buildings, heights, size and locations, schematic architectural design, building(s) layout, locations of entrances, sidewalks, pedestrian and vehicular access, driveways, parking, service areas as well as any other information relevant to address, verify and comply with the established project’s scope.

3.2.2 Once the **LRA** completes the review and evaluation of the Schematic drawings and plans, and verifies compliance with project scope, the **LRA** will issue a Request for Authorization for Work to the US Navy, as acknowledgment of the location of Solid Waste Management Unit (SWMU) 60 within the **Property**, as described in Exhibit ___ of this agreement. The **LRA** will submit copies of all communications in that regard to **Developer**.

3.2.2.1 Once the Navy and/or the regulators submit it official response, the **LRA** will submit a copy to **Developer**.

Section 3.3 **Design Development drawings and plans.** Within one hundred and eighty (180) days following the execution of the **Agreement, Developer** shall submit to **LRA** for approval one printed and one digital (PDF version) set of the Design Development drawing and plans. Both versions of the document should be, at minimum, in a 24” x 36” landscape/horizontal format, in accordance with the Plan Approval Process described in Section 3.5 (the "**Plan Approval Process**"). Such plans shall reflect any modifications to the Schematic drawings and plans, and the progress and completion schedule for construction.

3.3.1 Design Development drawings and plans shall include, without limitation: drawings and outline specifications providing details as to (i) the volume of all improvements to be constructed (including without limitation, the height, setbacks, projecting elements, entries and accessways of all such improvements); (ii) design of Public Improvements, including utilities, and all outdoor common and public areas, and the materials to be used in such areas; (iii) roof level design; (iv) elevations and facades of all improvements (including elements such as windows, spacing and size of fenestrations, balconies, canopies, cornices, ornamentation lines and exterior details); and (v) exterior furnishing materials, lighting plans and architectural treatment of machinery and mechanical equipment visible from the exterior of the improvements including courtyards.

3.3.2 Where, or if, variances, waivers, or deviations from the 2014 Master Plan and/or from the *Reglamento de Ordenación Territorial y la Forma Urbana de Roosevelt Roads*,

are proposed, such variances, waivers or deviations should be included in the Design Development drawings and plans, together with a statement of progress toward obtaining such approvals, as stated in the more recent Quarterly Progress Report. Where variances, waivers or deviations from the Schematic drawings and plans are proposed, they should be included in the Design Development drawings along with any support information.

- 3.3.3 Anything to the contrary notwithstanding, the **LRA** may disapprove any change from the Schematic drawings and plans, in **LRA's** sole and absolute discretion, provided, however that **LRA** shall not unreasonably disapprove any change or submittal which substantially conforms (in all material respects) with the Schematic Plans, unless the change or submittal contains matters which are in violation of the Agreement, governmental ordinances, codes or regulations.

Section 3.4 **Construction drawing and Plans.** Prior to the permitting submittal to OGP_e, and prior to the commencement of any work, included but not limited to clearing of the property, excavation or construction on the Property, **Developer** shall submit to the **LRA** for approval one printed and one digital (PDF version) set of the Construction drawings and plans. Both versions of the document should be, at minimum, in a 24" x 36" landscape/horizontal format, for approval in accordance with the Plan Approval Process, the Construction drawings, and the Specifications, (collectively, the Constructions Documents), included the revised and updated construction schedule. Both versions of the Specifications shall be submitted in an 8½" x 11" portrait format.

- 3.4.1 Constructions Documents, as understood in this **Agreement**, shall include final detailed working drawings, plans and specifications including without limitation, definitive architectural drawings and specifications, structural systems and foundations, electrical drawings and specifications, mechanical drawings and specifications, civil engineering drawings. All submitted documents including appropriate written specifications and scope descriptions relating thereto for the **Project**.

- 3.4.2 All submitted Construction Documents to the **LRA** will each be signed by a licensed professional according to their specific discipline. The Construction Documents approved by the **LRA** will be the documents submitted by **Developer** and Developer representative to the OGP_e, for permitting purposes.

- 3.4.3 Anything to the contrary notwithstanding, the **LRA** may disapprove any change from the Design Development drawings and plans, in **LRA's** sole and absolute discretion, provided, however that **LRA** shall not unreasonably disapprove any change or submittal which substantially conforms (in all material respects) with the Design Development Plans, unless the change or submittal contains matters which are in violation of this **Agreement**, governmental ordinances, codes or regulations.

Section 3.5 **Plan Approval Process.** The LRA shall have a period of twenty-one (21) calendar days after receipt of the Schematic drawings and plans; and twenty-eight days (28) calendar days

after receipt of the Design Development and the Construction Documents to review, evaluate and advise Developer, in writing, of the **LRA** approval. The **LRA** shall notify **Developer**, on or before the due period for each submittal, of any concern or reason not to approve the submitted document, with the specific grounds of such reason in accordance with the standards for review provided in the **Agreement** and the steps necessary to correct such concern. In the event of a notification of which the **LRA** identified the submitted document is not in compliance, the **Developer** may correct such fault within fourteen (14) calendar days and shall resubmit such corrected drawings, plans, and documents to the **LRA**. Any resubmission shall be subject to review and approval by the **LRA**, pursuant to the Plan Approval Process, until the same shall be finally approved by the **LRA**. After approval of any drawing and plans by the **LRA**, the approval as to those plans may not be subsequently withdrawn or rejected. The approval by the **LRA** is only directed to the compliance by **Developer** with the requirements of the Agreement and shall not imply or mean approval of the correctness of the Plans for the construction of the **Project**, nor of the compliance of the Plans with any applicable legal requirements, all of which remains the sole and absolute responsibility of **Developer**.

3.5.1 No approvals by the **LRA** of any Design Development drawings and plans and/or Construction Documents, pursuant to this Article 3 shall release the **Developer** of any obligations it may have at law to file the drawings and plans, with any appropriate department, agency, or any governmental authority, municipal, Commonwealth, or federal entity having jurisdiction over the development of the project, or to obtain any building permit, or approval required by law, regulation, or ordinance.

3.5.2 All drawing and plans as finally approved by the **LRA** shall be and are incorporated into this **Agreement** by this reference, and such drawing and plans shall be deemed conclusive evidence that the **LRA** has accepted such drawing and plans as being in conformity with the requirements of this **Agreement**.

Section 3.6 **Change to drawing and Plans.** **Developer** shall not change or modify the Construction Documents after their final approval by the **LRA**, without the **LRA's** prior written consent. Any such requested modification of the Construction Documents shall be submitted to the **LRA** for review in accordance with the Plan Approval Process, including, without limitation, the requirement that one printed and one digital (PDF) document of such changed drawings and plans be submitted. In addition to submitting the proposed changes, Developer shall include with the request, an Executive Memorandum describing the change, stating the reason for such change, and certifying that such change is in accordance with the Design Development drawings and plans, and that such change is not a substantial modification to the approved documents. The time period for review of any such change shall be deemed to twenty-eight (28) calendar days. The **LRA** agrees that it shall approve any change which is in fact in compliance with the approved Design Development drawings and plans, unless such change is in violation of this **Agreement**, municipal, Commonwealth, or federal governmental regulations, codes, or ordinances.

Section 3.7 **As Built drawing and plans, and Record Drawings.** **Developer** shall submit to the **LRA** within sixty (60) calendar days of achieving Final Completion of the **Project**, an exact copy of all final As Built and Record Drawings, used in the construction of the **Project**.

- 3.7.1. As-built drawings are those prepared by the general contractor and its employees and subcontractors, as it constructs the project and upon which it documents the actual locations of the building components and changes to the original contract documents. These, or a copy of same, are typically turned over to the architect or client at the completion of the project.
- 3.7.2 Record drawings are those drawings prepared by the architect when contracted to do so. These are usually a compendium of the original drawings, site changes known to the architect and information taken from the contractor's as-built drawings.

Section 3.8 **Conformity of Drawings and Plans**. All work by **Developer** and the Developer's Team, including, but not limited to Developer's Project Manager, Developer's Architect, as well as any other consultant on Developer's Team with respect to the construction of the **Project**, shall be in substantial accordance with the Approved Plans, this **Agreement** and all applicable Municipal, State and Federal laws, regulations, codes, and ordinances.

Section 3.9 **Non-liability of the Local Redevelopment Authority for Roosevelt Roads**. The **LRA** right of review and approved of Drawings and Plans and other submissions under this **Agreement** are intended solely for the benefit of the **LRA**. Neither the **LRA** nor any of its officers, directors, employees, agents, consultants, inspectors, or attorneys, shall be liable to **Developer** or any occupant of any portion of the **Project** or any other person or entity, by reason of mistake in judgement, failure to point out or correct deficiencies in any drawings or plans or other submissions, negligence, or any misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval of any drawings or plans, or submissions, or its enforcement of failure to enforce any site maintenance or other requirements hereof. Anyone submitting drawings and plans hereunder by the submission of same, agree not to seek damages from the **LRA** arising out of the **LRA's** review of any drawings and plans hereunder. Without limiting the generality of the foregoing, the **LRA** shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, correctness, accordance with building or other codes or industry standards, or compliance with governmental, industry or professional requirements. Further, **Developer**, including its successors and assigns agrees to indemnify and save and hold the **LRA**, and its officers, directors, employees, agents, contractors, consultants, inspectors or attorneys, harmless from and against any and all costs, claims, whether rightfully or wrongfully asserted; damages, expenses or liabilities whatsoever, including, without limitation, reasonable attorney's fees and court costs at trial and all appellate levels, arising out of any review of drawings and plans by the **LRA** hereunder. Anything to the contrary notwithstanding, the provisions of this Section 3.9 shall survive the termination or cancellation of this **Agreement**.

ARTICLE 4

LONG TERM LEASE TRANSACTION TERMS AND CONDITIONS

Section 4.1. **Long Term Lease**. Upon satisfaction by the **Developer** of the Conditions Precedent

as set forth in Article 2 of this **Agreement**, the **LRA** agrees to grant **Developer** a _____ (XX) years Term Deed of Long-Term Lease or Ground Lease, and by virtue thereof, such Deed will grant the **Developer** possession and authorization to build on the property, as described below:

“Rustica...”

Section 4.2. **Term, Annuity, and Interim Annuity.** The **LRA** will lease the **Property** to the **Developer** for a term of ____ (XX) years (the "Term") initiating from the granting of the Deed and including, within such term, the time to complete the construction of the **Project**. In addition to the foregoing in this **Agreement**, **Developer** shall pay a Fixed Annual Base Rent (henceforth, Annuity) during the Term of the Lease, as well as a Percentage Rent, as set forth below.

4.2.1 The Annuity for the Lease of the **Property** will consist in a sum of _____ dollars (\$), payable in advance, during the commencement of the natural year of the lease.

4.2.1.1 During construction of the **Project**, which will start no later than sixty (60) calendar days from the execution of the Deed for the Lease and will not exceed a twenty-four (24) months period, the Annuity will be of _____ dollars (\$). Once construction of the **Project** period concludes as established in this article, all parties acknowledge the Stabilization Period will commence.

4.2.1.2. During the Stabilization Period, which will commence once the **Project** gets the first Permit Use for any of its components and which will not exceed a twelve (12) months period, the Annuity will be of _____ dollars (\$). Once the Stabilization Period concludes as established in this article, all parties acknowledge that the Operational Period will commence.

4.2.1.3. Once **Project** starts its Operational Period, the Annuity – as established in Section 4.2.1 of this **Agreement** – will commence. The Annuity will be increased gradually in the amount of five percent (5%) every three (3) years.

Section 4.3 **Percentage Rent.** In addition to the Annuity, **Developer** will pay the **LRA** a two percent (2%) Percentage Rent of the gross income, produced by all operations carried out, as well as all the income in regards of operation of the project. The Percentage Rent corresponding to each operational year will be payable within the first ninety (90) days of the next operational year.

4.3.1. The **LRA** reserves the right to audit the financial information on which the **Developer** relies to determine the Percentage Rent.

4.3.2 In the event, the **LRA** exercises its right to audit the financial information of the **Project**, the **LRA** will issue a letter to **Developer** and to the Operator of the **Project**, with its interest and request for information regarding the financial activities

performed during the audited period. **Developer** and Operator and **Project** will submit the requested information within the dates or term established in the communication.

Section 4.4 **Capital Gains Events.** In the event **Developer** sells the **Project** or refinances the project, **Developer** will pay the **LRA** Administration ten percent (10%) of the net amount obtained from the loan or from the sale.

4.4.1 In the event **Developer** intends to sell the project or refinance the project, **Developer** will submit a letter to the **LRA** informing it with such intention. The **LRA** will elevate the request to the **LRA** Board of **Directors** whom, ultimately, will evaluate and determine whether **Developer** may proceed to sell or refinance the **Project**, in its reasonable discretion, which approval shall not be unreasonable be denied.

4.4.2 The **LRA** Board of Directors reserve its right to render such determination based, solely, on the **LRA** best interest, and its responsibility with the redevelopment of the **Property**; without this being understood as an impairment of the **Developer's** rights over the **Project**.

Section 4.5 **Condition of the Property.** **Developer** expressly accepts that, upon satisfaction of the Conditions Precedent, it shall accept and lease the **Property** in its "as is" condition. Pursuant to Section 11.1.9. of this **Agreement**, **Developer** acknowledges that independently of any investigation it has effectuated on the **Property**, for which it has had ample opportunity to make, **Developer** has determined that the **Property** is satisfactory in all respects, and therefore **Developer** shall release, hold safe and harmless the **LRA**, including its employees, officers, agents, and consultants of any responsibility, for any condition whatsoever, including environmental conditions, that may have existed prior to, during or after the fee simple title conveyance of the **Property** to the **LRA**. Pursuant to the above stated, the provisions of Section 11.1.9 and the indemnity provisions of Section 14.3 are also expressly incorporated herein by this reference.

ARTICLE 5 CONSTRUCTION OF THE PROJECT

Section 5.1 **Description of the Project.** Once **Developer** complies with all municipal, Commonwealth, and federal requirements, and all of the Conditions Precedent are duly satisfied, **Developer** shall construct [**insert Project description**].

- 5.1.1 Marina / Slips / Dry Dock description
- 5.1.2 Retail and Commercial Space description.
- 5.1.3 Hotel and related amenities description.
- 5.1.4 Parking description
- 5.1.5 Pedestrian and vehicular access improvements.

Section 5.2. **Construction Schedule for the Project.** Pursuant to this **Agreement**, **Developer**

shall submit to the **LRA**, within thirty (30) calendar days of the execution of the Deed of Lease, a Construction Schedule for the **Project** (“Construction Schedule”).

5.2.1 The **LRA** reserves its right to evaluate the Schedule, and to submit to **Developer**, its comments, and recommendations regarding the Construction Schedule, based on the **LRA** understanding of the **Property** and the **Project**.

Section 5.3 **Commencement of Construction**. Pursuant to this **Agreement**, **Developer** has agreed to construct the **Project** describe in Section 5.1. **Developer** shall commence construction of the **Project**, and, at all times, proceed diligently to Substantial Completion (as hereinafter defined), thereof accordance with the Construction Schedule, within sixty (60) calendar days, following the execution of the Deed of Lease, as established in Section 4.2.1.1 of this **Agreement**. **Developer** shall substantially complete (Substantial Completion) the **Project**, in accordance with the Approved Plans, the Construction Schedule and this Agreement, not later than twenty-four (24) months after the commencement of the construction, subject to the occurrence of Force Majeure (as described in Section 16.5 of this **Agreement**) events. All costs, expenses and obligations incurred or relating to the construction of the **Project**, including public improvements, and including without limitation, those for labor, work, materials, utilities, services, equipment, storage, permits, approvals, transactions, professional, technical, mechanical, engineering, architectural, and design fees; shall be the sole obligation and responsibility of **Developer**, except for the **LRA**'s expenses for review approval and inspection of requested information as set forth in this **Agreement**.

5.3.1 **Developer** shall be solely responsible for obtaining all utilities and actions necessary for the construction, occupancy, and operation of the project including without limitation potable water supply; storm and sanitary sewer facilities; electricity, gas and/or communications facilities.

5.3.2 As part of the EDC, the **LRA** owns all infrastructure in Roosevelt Roads; therefore, for the potable water supply; storm and sanitary sewer facilities; and the power distribution and transmission system, **Developer** shall submit to the **LRA**, all necessary information regarding infrastructure demand, for the latter to assign a point of connection.

5.3.3 **Developer** shall also be solely responsible for obtaining all binding agreements, allocations or commitment letters required to insure the connection of **Project** to such services and utilities, and for the payment of all impact, connection, or other associated fees.

Section 5.4. **Construction Contract**. **Developer** shall enter into a guaranteed maximum price or fixed price, at **Developer**'s sole and absolute discretion, construction contract with a General Contractor with experience commensurate with the construction of projects similar in scope, size, budget and/or complexity to the **Project**; and with the financial ability to perform its obligation under the construction contract. **Developer** shall provide the **LRA** a copy of the construction contract and all amendments to the construction contract after execution of same by both **Developer** and the General Contractor; given as this is a Condition Precedent as established in

section 2.1.5 of this **Agreement**. The **LRA** shall have the right to review the construction contract, solely to determine that the contract: (i) is fully 100% bonded as to both payment and performance as more fully described below in favor of the **LRA, Developer** and Developer's construction lender, as co-obligees and as their interests may appear; (ii) is with a general contractor meeting that requirement of Section 5.2; (iii) contains either a guaranteed maximum price or a fixed price; (iv) contains a definition of "Completion" or "Substantial Completion" which is the same or more stringent than the definition of substantial completion set forth in Section 5.10; (v) requires construction of the project in accordance with the Approved Plans; and (vi) requires completion of the project at or prior to the date for substantial completion set forth in the construction Schedule subject to Force Majeure events. If the **LRA** reasonably determines that the Construction contract it is not in accordance with the foregoing, then the **LRA** shall give notice of such to **Developer**, together with a written list of provisions in the construction contract which it determines do not comply with clauses (i) through (vi) above, and accordingly require modification, and the Conditions Precedent set forth in Section 2.1.5. The construction contract shall not be deemed to be fully enforceable and construction activities may not commence until and unless all such objections of the **LRA** are satisfied or waived. If Developer does not receive written notice of objections to the construction contract by the **LRA** within twenty-eight (28) calendar days following receipt of the construction contract by the **LRA**, then the construction contract shall be deemed in accordance with the requirements of this section 5.4.

Section 5.5 **Payment and Performance Bonds**. Prior to the commencement of construction of the project, **Developer** shall (or shall cause its General Contractor to) provide the **LRA, Developer** and **Developer's** construction lender with dual obligee payment and performance bonds (in such form as may be provided by applicable law to preclude liens for labor and materials from attaching to the **Property** or otherwise in form acceptable to the **LRA** and **Developer's** construction lender, and subject to such lenders right) each for one hundred percent (100%) of the estimated construction costs of the Project, which bonds shall (i) guaranty payment of all contractors, subcontractors, sub-subcontractors, suppliers, materialmen, and other persons performing work or supplying materials to the project by or through **Developer's** General Contractor; (ii) guaranty the General Contractor's faithful performance of all of its obligations under the construction contract; (iii) automatically be amended to reflect the final cost of the **Project** once same is determined; (iv) name the **LRA** and **Developer's** construction lender as co-obligees; (v) be issued by an entity duly authorized to issue payment and performance bonds in the Commonwealth of Puerto Rico; (vi) be issued by an entity having a safety and/or credit rating by A.M. Best or other recognized rating service of A (or higher) as to management and Class X (or higher) as to financial strength; (vii) by their terms, automatically continue in full force and effect regardless of changes to the Drawings and Plans; and, (viii) be in effect at all times through the completion of the **Project**.

Section 5.6 **Permits and Approvals**. **Developer** shall submit to the **LRA** for the agency's approval all applications for permits and approvals with respect to the development and construction of the **Project**, prior to submitting the same to the applicable state or federal governmental authorities. The above prior to submission to the **LRA** includes all environmental requirements necessary for the commencement and completion of the construction of the project. The **LRA** shall not unreasonably withhold or delay approval of any submission and the time for any approval here on

there by the elevational follow the same process established in section 3.5 of this **Agreement**, provided however, that the time period for review of application for permits and approvals by the agency here under, shall be deemed reduced to fourteen (14) calendar days. **Developer** shall apply, diligently pursue, obtain, and pay for any and all permits, licenses, variances, and approvals necessary for proper excavation, construction, completion, and operation of the **Project**, including zoning, platting, site planning, bonding, ecological, pollution control, environmental and other similar governmental requirements which are necessary for the commencement and completion of the construction of the project.

Section 5.7 **Progress of Construction.** **Developer** shall always commence construction of the **Project** and continuously proceed with said construction in accordance with this **Agreement** and the Construction Schedule, subject to Force Majeure events. **Developer** shall keep the **LRA** informed, at all times, of the progress of the construction through quarterly progress reports containing, at least, the following information:

- 5.7.1 General description of the construction's activities performed during each quarter.
- 5.7.2 Percentage of completions and costs to date.
- 5.7.3 Actualization of the progress schedule.
- 5.7.4 Any circumstances affecting the development of the Project.
- 5.7.5 Any other relevant information concerning the development of the Project.

Section 5.8 **Inspection.** It is **Developer's** sole obligation to continuously inspect the construction and work being performed by the General Contractor, to insure that said construction and work are being performed in accordance with the Approved Plan.

- 5.8.1 **Developer** shall contract the services of a Resident Inspector for the Project.
- 5.8.2 The **LRA** reserves its right, if deemed necessary, to contract or designate an additional Inspector for the **Project**. **LRA's** Inspector for the Project obligations will not interfere with **Developer's** Resident Inspector and its responsibility is to validate information submitted to the **LRA** by **Developer** regarding any aspect of the construction of the **Project**; advise the **LRA** of any situation, activity being performed or to be performed, that might affect the development of the **Project**; as well as any other information that might serve the interest of the **LRA** in regards of the development of the **Project**.

Section 5.9 **Compliance with laws.** In causing the construction work of the Project to be performed, Developer will assure that the construction complies with all applicable Federal, Commonwealth of Puerto Rico, Municipal, and/or local statutes, laws, ordinances, rules, regulations, and orders, including, without limitation, those regarding the storage, use, removal, disposal, handling and transportation of Hazardous Substances (as defined below), provided that nothing herein shall limit the right of Developer or contractor to contest the validity or enforceability of any such statute, law, ordinance, rule, regulation, or order with which Developer may be required to comply. As used herein, the term "**Hazardous Substances**" means any flammable explosives, radioactive materials, friable asbestos, electrical transformers, batteries and any paints, solvents, chemicals, or petroleum products, as well as any substance or material defined or designated as a hazardous or toxic waste material or substance, or other similar term by any Federal, Commonwealth of Puerto Rico, Municipal or local environmental statute, regulation or

ordinance presently or hereinafter in effect, as such statute, regulation or ordinance may be amended from time to time. With respect to the removal of any existing Hazardous Substances, Developer shall use only such contractors as are bonded and licensed for the removal and treatment of Hazardous Substances, and shall strictly comply with all laws, orders, rules, and regulations regarding the same.

Section 5.10 **Substantial Completion.** Upon the Substantial Completion of the Project, Developer shall furnish the LRA a written statement certifying the completion of the Project (the "**Certificate of Substantial Completion**"). For the purposes hereof, "**Substantial Completion**" or "**Substantially Completed**" shall mean such time as: (i) the Project have been completed in accordance with the Approved Plans, except only for minor punch list items of detail and decoration; (ii) a final and unconditional certificate of occupancy has been issued by the appropriate governmental agency with respect to the Project; and (iii) The LRA has received a signed and sealed professional certification from an architectural or engineering firm reasonably acceptable to the LRA that the Project has been completed in substantial accordance with the Approved Plans, except only for minor punch list items of detail and decoration, and have passed and received all final governmental approvals and inspections.

5.11 **Non-liability of the LRA.** Acceptance of the Certificate of Final Completion and any review and inspection made by the LRA pursuant to Article 5 are intended solely for the benefit of the LRA. Neither the LRA, nor any of its employees, officers, agents, directors, contractors, inspectors, or consultants, shall be liable to Developer, or any other occupant of any portion of the Project, or any other person or entity by reason or mistake in judgement, failure to point out or correct any deficiencies in construction or other negligence, misfeasance, malfeasance or nonfeasance arising out of or in connection with the construction contract, any payment and performance bonds, any permits and approvals, and/or any design or constructions with respect to the Project. Developer, and any other occupant of any areas of the Project, agree not to seek damages from the LRA arising out of the LRA's review and approval of any of the foregoing. Without limiting the generality of the foregoing, the LRA shall not be responsible for reviewing, nor shall its review of any of the foregoing be deemed approval of any contract, bond, construction, design, or workmanship, nor compliance with any governmental requirements, but the rights of the LRA are solely for its own benefit as aforesaid. Further, the Developer (including its successors and assigns), agrees to indemnify, save and hold the LRA (and its officers, directors, employees, agents, contractors, inspectors, or consultants) harmless and against any and all costs, claims (whether rightfully or wrongfully asserted) damages expenses or liabilities whatsoever (including, without limitation, reasonable attorney's fees and court costs at trial and all appellate levels) arising out of any review approval or certification made by the LRA hereunder. Anything to the contrary notwithstanding, the provisions of this section 5.11 shall survive the termination or cancellation of this Agreement.

ARTICLE 6 CASUALTY AND INSURANCES

Section 6.1 **Developer's Insurance.** Developer shall obtain and maintain, at all times, during the Agreement maintain, the following insurance with respect to the Project and as otherwise

required in this Article 6:

- 6.1.1 Builder's Risk Insurance, in an All-Risk form shall be maintained during the construction, repair, or replacement of the Project, insuring the Project against all casualties on a progressively insured basis for not less than one hundred percent (100%) of the construction, repair or replacement of the Project, in a completed value form with an installation floater, covering materials and supplies in transit to the Project. During such construction, repair or replacement, Developer shall require to the Contractor to obtain and maintain a worker's compensation insurance in the amounts required by law and adequate contractor's comprehensive general liability insurance (including automobile liability coverage) shall include supplemental endorsements, a completed operations endorsement and personal injuries and broad form Property damage endorsements. If the policy contains a co-insurance requirement, the policy shall contain an agreed amount endorsement. The Builder's Risk Policy shall provide coverage against all risks that would be covered by a Builder's Risk Completed Value Policy with All- Risk Difference in Conditions, Increase Cost of Construction and Demolition Cost endorsements.
- 6.1.2 Comprehensive General and Public Liability insurance including automobile liability coverage, and contractual liability, shall be obtained providing liability insurance against claims for personal injury, death, or Property damage, occurring on or about the Project, for at least a combined single limit for bodily injury, death, and Property damage liability of three million dollars (\$3,000,000.00) per occurrence.
- 6.1.3 Employers Liability insurance shall be provided for at least a combined single limit of five hundred thousand dollars (\$500,000.00) per person and per occurrence.
- 6.1.4 Flood insurance shall be obtained if the Property is located within a designated flood hazard zone for the maximum amount of coverage available for the Project.
- 6.1.5 Fire and Extended Coverage Casualty insurance shall be obtained for the Project, fixtures, equipment, and all tangible personal Property in or within the Project, insuring against fire, lightning, windstorm, explosion, earthquake, collapse, riots, riot attending a strike, civil commotion, aircraft, vehicles, flood, smoke, war risks (when and if available) and all other hazards included in extended coverage broad form and allied lines policies. The amount of coverage shall be not less than the amount of the full insurable value of the Property and the project on a replacement cost basis, with a *stipulated value* or *stated value* endorsement providing for automatic increase in policy value to cover cost increases due to due to inflation. Any deductible clauses shall not exceed a commercially reasonable amount.
- 6.1.6 Any other insurance required by applicable law. The LRA reserves its right to request for additional insurances, based on the long-term lease nature of this agreement and its interest in the Property and the Project.

Section 6.2 **Responsible Companies.** All insurance provided for in Article 6 shall be effected under valid and enforceable policies in form acceptable to the LRA by highly rated insurers of recognized responsibility which are licensed to the business in the Commonwealth of Puerto Rico. Also, all such companies must be rated at least A as to the management and at least Class X as to the financial strength on the latest editions of AM Best's Insurance Guide. Each insurance policy shall be marked "*premium paid*" or be accompanied by other satisfactory evidence of payment of premiums.

Section 6.3 **Named Insured; Notice to the LRA of Cancellation; Hold Harmless Agreement.** All policies of insurance required by this Article 6 shall indicate the LRA as named or additional insured. Notwithstanding any such inclusion, the parties hereto agree that any losses under such policies shall be payable, and all insurance proceeds recovered thereunder shall be applied and disbursed in accordance with the provisions of this Article 6. All insurance policies shall provide that no change, cancellation, or termination shall be effective until at least thirty (30) days prior written notice by certified mail return receipt requested to the additional and/or named insured. Each policy shall contain an endorsement to the effect that no act or omission of Developer (or contractor) or breach of warranty or conditions shall affect the obligation of the insurer to pay the full amount of any loss sustained. Each policy shall also contain an endorsement with a "Hold Harmless Clause" in favor of the LRA, in accordance with the provisions of the Agreement.

Section 6.4 **Developer's Obligations under coverage by Insurance.** No acceptance or approval of any insurance by the LRA shall be considered as waiver or release to Developer from any liability, duty, or obligation under this Agreement.

Section 6.5 **Proof of Loss.** Whenever any part of the Project shall have been damaged or destroyed by fire or other casualty, Developer shall promptly make proof of loss in accordance with the terms of the applicable insurance policies and shall promptly prosecute all valid claims which may have arisen against insurers or others based upon any such damage or destruction. Developer shall promptly give the LRA written notice of any damage or destruction to the Project and the property.

Section 6.6 **Property Insurance Proceeds.** All insurance proceeds shall be promptly used, to the extent necessary, for the reconstruction, repair, or replacement of the Project, so that the Project shall be restored to a condition comparable to the condition prior to the loss or damage (hereinafter referred to as "Reconstruction Work").

Section 6.7 **Covenant for Commencement and Completion of Reconstruction.** Developer covenants and agrees to promptly submit any claim for damage to the insurer, to promptly restore the Property to adequate, clean, and orderly condition and to commence the Reconstruction Work, as soon as practicable, and to fully complete such Reconstruction Work as expeditiously as reasonably possible.

Section 6.8 **Waiver of Subrogation Rights.** Anything in the Agreement to the contrary notwithstanding, the LRA and Developer each hereby waive any and all rights of recovery, claim, action, or cause of action against the other, its agents, officers, directors, partners, investors, employees, or consultants, for any liability, loss or damage that may occur in, on, about, or to the

Project, or to any portion or portions thereof, or to any personal Property brought thereon, by reason of fire, the elements, or any other cause(s) which are insured against under the terms of valid and collectible insurance policies carried for the benefit of the party entitled to make such claim, regardless of cause or origin, including negligence of another party hereto, its agents, officers, directors, partners, investors, employees, consultants or attorneys; provided that such waiver does not limit in any way any party's right to recovery under such insurance policies, and provided further that the insurer pays such claims. Developer shall obtain an endorsement to all of its insurance policies relating to or covering the Project, or any portions thereof, to affect the provisions of this Article 6.

Section 6.9 **Condition of Casualty Site.** Regardless of the disposition of insurance proceeds, Developer shall be required to immediately clean and clear the site of any casualty so that the Project and the Property remains in safe and adequate manner.

Section 6.10 **Release of the LRA.** Developer hereby waives any and all rights of recovery, claim, action, or causes of action against the LRA, its employees, officers, agents, directors, or consultants, for any death or injury to any person or loss or damage that may occur in or to the Project of the Property, or any part thereof, or any other property, or to any personal property of Developer therein by reason of fire, the elements or for any other cause(s) which are required to be insured against by Developer under the terms and provision of this Agreement, regardless of cause of origin, including negligence of the LRA, its employees, officers, agents, directors, or consultants.

Section 6.11 **Certificates and Copies of Insurance.** Developer shall provide to the LRA Certificates of Insurance of all insurance acquired by Developer in regard with the development, design, construction, and operation of the Project, as well as the management of the Property, which shall clearly indicate that Developer has obtained insurance in the type, amount and classification required by the LRA under this Agreement. Certificates for renewal policies replacing any policy expiring during the term of this Agreement shall be delivered at least twenty-one (21) calendar days prior to the date of expiration of any policy.

ARTICLE 7 LIENS; NO INTERFERENCE

Section 7.1 **Developer to Discharge Liens.** Developer shall make or cause to be made payment of all money due and legally owing to all persons and entities doing any work or providing any materials or supplies for the Project. Developer will not permit to be created or to remain undischarged any lien, encumbrance or charge arising out of work done or material or supplies furnished by any contractor, subcontractor, supplier, worker, or materialmen which might become a lien, encumbrance or charge upon the Project, or any income therefrom. If such lien or encumbrance shall, at any time, be filed against the Project as a result of Developer's construction of the Project, then Developer shall file a bond satisfactory to cause same to be removed as a cloud

on title within thirty (30) calendar days of the filing of the lien and shall promptly take and diligently prosecute appropriate action to have the same discharged or to contest in good faith the amount or validity thereof, and is unsuccessful in such contest, to have the same discharged.

ARTICLE 8 CONDEMNATION

Section 8.1 Entire Property Taken by Condemnation. In the event that, after the execution of the Deed of Lease, the Property or a “material” portion thereof is taken for any public use or purpose by the exercise of the power of eminent domain (or deed given in contemplation thereof) then all of the obligations of Developer under the Agreement concerning the development and construction of the Project shall fully terminate as of the taking, the Condemnation Award shall be disbursed to the parties in accordance with their respective interest and losses as determined by the condemning authority (or court) that initiates condemnation award.

Neither Developer nor the LRA shall in any way cooperate with, seek, or aid, directly or indirectly, any condemnation with respect to the Property. The term "material" as used in this Article 8 shall mean a condemnation of such portion of the Property as, in the good faith opinion of Developer, renders economically infeasible for Developer to proceed with the Project.

Section 8.2 **Partial Taking by Condemnation.** In the event of a nonmaterial condemnation after the Execution of the Deed of Lease, then all of the obligations of the parties shall continue, and Developer shall take such action as is reasonably necessary to restore the Project to as close a condition as is reasonably feasible under the originally Approved Plans. To the extent any portion of the Project is not feasibly restorable or is not economically feasible to restore, then such portion shall be deemed omitted from the terms of the Agreement. All condemnation awards for a nonmaterial condemnation shall be paid as follows:

- 8.2.1 First, to the expense of the parties' reasonable attorneys' fees and costs of the parties in connection with the condemnation proceeding;
- 8.2.2 Second, to the cost of restoration as required by this Section 8.2; and
- 8.2.3 Third, the balance shall be disbursed to the parties in accordance with their respective interest and losses as determined by the condemning authority (or court) in its condemnation award.

ARTICLE 9 MAINTENANCE OF THE PROJECT AND THE PROPERTY, OWNERSHIP AND DELIVERY OF THE PROJECT

Section 9.1 **Maintenance.** Developer shall preserve and maintain at all times during the term of this Agreement, the Project, and the Property, as well as all components that form part of or is located within the leased premises, including, in good and safe condition, except for ordinary wear and tear. Developer will comply with all applicable laws, regulations ordinances and legal

provisions for the security, preservation and maintenance of the Project and the Property.

Section 9.2 **Ownership.** Ownership of the improvements and structures built on the land (including the Project) during the term of this agreement, or until the expiration of the term or until termination of this Agreement as defined in this Agreement or in the Deed of Lease, will remain with Developer.

Section 9.3 **Delivery of the Property.** Once the term of the Agreement expires, or termination occurs by any of the reasons stated in the Agreement, the Lease Right will expire and full ownership of all the improvements and structures built on the land will, automatically, revert to the LRA, upon as well as right derived from them, without the right to any compensation and without any obligation for the LRA to compensate or indemnify Developer, for the value of said structures and improvements. Developer shall vacate the Property and the Project, and immediately deliver possession of the Property and the Project to the LRA, in good shape and maintenance, except for ordinary wear and tear, whose possession will also be in favor of the LRA, without any additional requirement for it.

9.3.1 In the event, Developer defaults on the delivery of the Property and the improvements and structures built (the Project), when the term expires or this Agreement is terminated, Developer will pay the LRA for the additional time Developer remains in possession of the Property and the Project, an equivalent amount of the triple the Annuity in proportion to said additional time. Also, during this additional time, Developer will the LRA a ten percent (10%) of Percentage Rent of all income and operations from the Project as defined in Section 4.3 of this Agreement.

9.3.1.1 Developer will be liable for all damages and/or losses caused to the LRA due to Developers delay in vacating and delivering the Property and the Project.

9.3.1.2 Developer will relieve the LRA and hold harmless from any claim, action, or lawsuit against the LRA as a consequence of such delay from Developer.

9.3.2 Notwithstanding the foregoing agreed in Section 9.3, the LRA reserves the right to request Developer to, at the Developer's expense, remove some or all structures and improvements made by Developer to the Property, leaving the Property free of structures. The LRA also reserves its right to remove and dispose of some or all structures and improvements, at the Developer's expense.

ARTICLE 10 DEFAULT AND REMEDIES

Section 10.1 Developer's Default. The occurrence of any of the following events shall constitute a default under this Agreement by Developer.

10.1.1 Any default or event of default by Developer (after the expiration of any applicable cure period) under the Deed of Lease.

- 10.1.2 Developer's abandonment of the construction of the Project for thirty (30) consecutive working days (excluding Saturdays, Sundays, and holidays under law of the Commonwealth of Puerto Rico) for any reason whatsoever other than reasons of Force Majeure events.
- 10.1.3 Any failure to obtain, assign, deliver or keep in force the insurances required by this Agreement.
- 10.1.4 If Developer shall make an assignment for the benefit of creditors, file a petition in bankruptcy, apply to or petition any court for the appointment of a custodian, receiver, intervenor or trustee for Developer or a substantial part of its assets; or if Developer shall commence any proceeding under any bankruptcy, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or if any such petition your application should have been filed or proceeding commenced against developer which remains not dismissed for sixty (60) days or more or in which an order for relief is enter; or if Developer shall suffer any such appointment of a custodian, receiver, intervenor or trustee to continue undischarged for sixty (60) days or more.
- 10.1.5 Developer's failure to observe, comply with or perform any other covenant, condition or agreement made by Developer in this Agreement, and the continuation of such failure or default for a period of thirty (30) consecutive days after written notice to Developer by the LRA; provided, however, if such failure cannot reasonably be cured within thirty (30) days, and developer, within said thirty (30) day period, shall have commenced and thereafter, at all times, continues diligently and in good faith to prosecute the cure at all times of such failure, then during such curative period, said failure shall not constitute a default here under; provided further that any failure that can be cured by the payment of money shall be never be deemed a failure that cannot be cured within 30 days.

Section 10.2 **Remedies.** Any default under the Agreement shall entitle the LRA, at its option and at any time, to exercise any or all of the following rights and remedies, and all such remedies shall be deemed cumulative and not mutually exclusive:

- 10.2.1 The right to pursue any and all equitable or contractual remedies, including the right to specifically enforce its right here under, to enjoin developer or obtain any other type of injunction against developer with respect to the Project.
- 10.2.2 The right to claim on any payment and performance bond obtained.
- 10.2.3 The right to terminate this Agreement and/or the deed of lease.
- 10.2.4 The right two pursue any and all remedies available at law, including the right to sue and collect for losses or damages.

Section 10.3 **Lender's Rights.** If requested in writing by Developer, the LRA agrees to provide duplicate copies of all notices of default under the agreement to any institutional lender specifically named in the request from Developer. Anything to the contrary notwithstanding, the LRA shall accept curative action by any such lender and, except for remedial action necessary on an emergency basis, any such lender shall have an additional period of fifteen (15) business days beyond the applicable grace period provided to Developer, if any, to cure any default of the Developer under this agreement.

Section 10.4 **Obligations, Rights, and Remedies Cumulative.** The rights and remedies of the LRA, whether provided by law, in equity or under the agreement, shall be cumulative. The exercise by the LRA of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or for another default or breach by Developer. No waiver made by the LRA with respect to performance, manner, or time of any obligation of Developer for any condition to its own obligation under this Agreement shall be considered waiver of any rights of the LRA with respect to the particular obligations of Developer or condition to its own obligation, or a waiver in any respect in regard to any other rights of the LRA. Nothing herein shall be deemed to limit or modify any rights of the agency under the Deed of Lease.

Section 10.5 **LRA's Default.** The occurrence of any of the following events shall constitute a default under the agreement by the LRA.

10.5.1 The LRA's failure to observe or perform any covenant or agreement made by the LRA in the Agreement and the continuation of such failure or default for a period of thirty (30) consecutive days after written notice thereof from Developer to the LRA; provided, however, if such failure cannot reasonably be cured within 30 days, and the LRA, within said 30 day period, shall have commenced and thereafter, at all times continues diligently and in good faith to prosecute the cure at all times of such failure, then during such period, said failure shall not constitute any fault here under.

10.5.2 Any default by the LRA, under this Agreement shall entitle Developer, at its option and at any time to exercise any and all rights and remedies available at law or in equity; provided, however, that any action for damages shall be limited to actual damages and not consequential damages.

ARTICLE 11 REPRESENTATIONS AND WARRANTIES

Section 11.1 **Developer's Representations and Warranties.** In order to induce the LRA to enter into the Agreement, Developer makes the following representations and warranties to the LRA, each of which shall survive the execution and delivery of the Agreement, and shall be and remain true and correct at all times, at least up to and until one (1) year after the submission of the Certificate of Final Completion:

- 11.1.1 Developer is a special partnership duly organized and validly existing under the laws of the Commonwealth of Puerto Rico; is duly authorized to transact business in the Commonwealth of Puerto Rico; has full power and capacity to own its properties; to carry on its businesses personally conducted by the developer; and to enter into the transaction contemplated by this Agreement.
- 11.1.2 Developer's execution, delivery and performance of this Agreement have been duly authorized by all necessary individual, partnership, corporate and legal actions, and do not, and shall not conflict with, or constitute, a default under any indenture, agreement or instrument to which Developer is a party or by which Developer or developer's Property may be bound or affected.
- 11.1.3 There are no actions, suits, or proceedings pending or, to the best of Developer's knowledge, now threatened against or affecting Developer or its Property before any court of law or equity, or any administrative board or tribunal or before or before any governmental authority.
- 11.1.4 Developer will make and devote its best good faith efforts to obtain all permits, licenses, approvals, and consents from, and make all filings with, any governmental which are necessary in connection with the execution and delivery of this Agreement, the performance and obligations of Developer hereunder, the enforcement of any provision of the Agreement, or the development, construction, and operation of the Project.
- 11.1.5 The Construction Documents, as defined in Section 3.4 of this Agreement, when delivered to the LRA for approval, shall be satisfactory to Developer as intended for the scope of the Project; and will be complete in all respects and contain all details necessary for the construction of the Project.
- 11.1.6 All construction work, when performed, will be performed substantially in accordance with the Construction Documents, and all applicable governmental requirements in an efficient, continuous, and diligent manner. All construction work shall be performed with good workmanship, and in observance of the prevailing construction techniques and construction codes of the Commonwealth of Puerto Rico, under the applicable laws, and regulations. There will be no structural defects or Hazardous Substances in the Project and when completed in accordance with the Approved Plans, the Project will not encroach upon any building line, setback line or any recorded or visible easement which exists with respect to the Property (except with the consent of the beneficiary of the easement which is evidenced by an instrument recorded among the appropriate public records).
- 11.1.7 The present and anticipated uses of the Property shall, prior to any construction and when completed, comply with all applicable governmental requirements and restrictive covenants, including without limitation all zoning, building,

environmental, land use, noise abatement, occupational health and safety or other laws, any building or occupancy permit, any condition, grant, easement, covenant, or restriction, whether or not recorded.

11.1.8 Prior to commencement of construction, all zoning, platting, site planning, bonding, ecological, pollution control, environmental and other similar governmental requirements which are necessary for the commencement of construction of the project will be duly complied with by Developer; all licenses, approvals and permits required to commence and prosecute such work will be duly paid for by an issued to Developer.

11.1.9 **Developer** acknowledges that it is a knowledgeable and sophisticated builder and that it has previously reviewed the nature of this transaction and has thoroughly inspected the **Property**. In that regard, **Developer** has had the opportunity to engage professionals to conduct a complete and thorough on-site inspection of the **Property** including, without limitation, sampling and analysis of the soil, surface water, ground water and air, as deemed necessary, to determine the presence of Hazardous Substances and/or archaeological artifacts, and **Developer** has had ample opportunity to undertake an appropriate inquiry into the previous ownership and uses of the **Property** consistent with good commercial or customary practice in an effort to minimize liability with respect to Hazardous Substances. **Developer** is familiar with the status of the **Property** and all necessary governmental requirements for the intended development of the **Project** and **Developer** has determined that the **Property** is satisfactory to **Developer** in all respects. **Developer** further acknowledges and agrees that it has entered into the **Agreement** based solely upon **Developer's** own independent investigations and inspections, and **Developer** has not relied, and will not rely on any representation of the **LRA**, either expressed or implied. The parties agree that the **LRA** has made no representation, warranty, covenant with respect to the **Project** or the **Property** upon which it is to be developed, and that the **LRA** is not and shall not be responsible, liable, or bound in any matter to **Developer** for any expressed or implied warranties, guaranties, statements, nor representations pertaining to the **Project** or the **Property**, except as otherwise may be specifically expressly set forth herein. For the purposes of this Section 11.1.9 the term “*the LRA*” shall include the Local Redevelopment Authority for Roosevelt Roads, and all its agents, directors, employees, consultants, attorneys, inspectors, and representatives.

11.1.10 Developer shall, at all times, comply with all covenants made by itself and will comply with all the terms and conditions necessary to put into force the obligations contained in this Agreement, and shall comply with all applicable laws, administrative orders, judgments, decrees, regulations, ordinances, whether Commonwealth of Puerto Rico, Federal or Municipal, as the case may be.

11.1.11 Developer represents that it is able to fully fulfill and comply with its commitments in accordance with its proposal to the LRA for the full completion of the Project.

- 11.1.12 This Agreement constitutes the valid and binding obligations of Developer, enforceable against Developer and its successors and assigns, in accordance with their respective terms.

Section 11.2 LRA's Representations and Warranties. The LRA hereby represents and warrants to Developer the following, which shall survive the execution and delivery of the Agreement and shall remain true and correct at all times up to until one (1) year after the submission of the Certificate of Final Completion.

- 11.2.1 The LRA is a governmental corporation and a public instrumentality duly organized and validly existing under the laws of the Commonwealth of Puerto Rico; is duly authorized to do business in the Commonwealth of Puerto Rico; and has all requisite power, authority and capacity to own property, to carry on its business as presently conducted and proposed to be conducted, and to execute, deliver, perform, enter into the transactions contemplated by this Agreement, under the prevailing laws in effect at the times the Agreement is executed.
- 11.2.2 The LRA's execution, delivery and performance of this Agreement has been duly authorized by its Board of Directors, and all necessary actions, including without limitation, all acts required under its regulations and does not, and shall not, conflict with or constitute default under any indenture, agreement, or instrument to which the LRA is a party, or by which the LRA or LRA's Property may be bound or affected.
- 11.2.3 Except as otherwise previously or concurrently disclosed to Developer in writing, there are no actions, suits, or proceedings pending against, or affecting the Property before any court of law, or equity or any administrative board or tribunal or before or by any governmental authority.
- 11.2.4 This Agreement constitutes the valid and binding obligation of the LRA, enforceable against the LRA and its successors and assigns, in accordance with its respective terms.
- 11.2.5 The LRA has received no notice of condemnation or eminent domain proceedings with respect to all or any portion of the Property.
- 11.2.6 The LRA shall at all times be in substantial compliance with all covenants made by the LRA in this Agreement and will comply with all terms and conditions necessary to do its obligations contained in this Agreement, and shall comply with all applicable laws, administrative orders, judgements, decrees, regulations, ordinances, of the Commonwealth of Puerto Rico, Federal or Municipal, as the case may be.
- 11.2.7 At the time of the execution of the Deed of Lease, the Property shall be free and clear of any liens.

11.2.8 At the time of execution of the Deed of Lease, the Property shall be free of tenants and squatters.

ARTICLE 12 AFFIRMATIVE COVENANTS

Section 12.1 **By Developer.** At all times, prior to the submission of the Certificate of Final Completion, Developer hereby covenants and agrees with the Local Redevelopment Authority for Roosevelt Roads as follows:

- 12.1.1 Developer shall do or cause to be done, all things necessary to preserve and keep in force and effect its existence, its properties, permits, rights, franchises, licenses, and qualifications to carry on business in all applicable jurisdictions.
- 12.1.2 Developer shall pay all costs incurred or required in connection with the development, design, construction, and operation of the Project.
- 12.1.3 Without the LRA's prior written consent, Developer shall not change nor modify the Approved Plans or cause any contract with its General Contractor to be in violation with Section 5.3, except as may be provided in Articles 3 and 5 hereof.
- 12.1.4 Developer shall promptly advise the LRA of any notice of default received by Developer in regard to any lawsuits pending against Developer.
- 12.1.5 If any actions or proceedings are filed or are threatened to be filed seeking to (i) enjoin or otherwise prevent or declare invalid or unlawful the construction, occupancy, maintenance, or operation of the Project or any portion thereof, (ii) adversely affect in a material way the financial condition of Developer the ability of Developer to complete the Project, then in any such event Developer shall promptly notify the LRA thereof and Developer shall promptly cause such suit or proceeding to be vigorously contested in good faith, and in the event of an adverse ruling or decision, Developer shall prosecute all allowable appeals therefrom. Without limiting the generality of the foregoing, Developer shall resist the entry of any temporary or permanent injunction and shall seek the stay of any such injunction that may be entered, and Developer shall use its best efforts to bring about a favorable and speedy disposition of such proceedings.
- 12.1.6 Developer shall comply, at all times, with the terms and conditions of this Agreement, with all restrictive covenants affecting the Property, and with all applicable laws, rules, regulations, ordinances, and other requirements of any Municipal, Commonwealth of Puerto Rico, Federal or other governmental authorities.

Section 12.2 By the LRA. The LRA hereby expressly covenants and agrees with Developer as

follows:

- 12.2.1 The LRA shall comply, at all times, with the terms and conditions of this Agreement and with all applicable laws, rules, regulations, ordinances, and other requirements of any Municipal, Commonwealth of Puerto Rico, Federal or other governmental authorities.

ARTICLE 13 NEGATIVE COVENANTS

At all times prior to the submission of the Certificate of Final Completion, Developer covenants and agrees with the LRA that without the prior written consent of the LRA:

Section 13.1 **Encumber.** Developer may encumber all or any part of the Property or any interest therein, or grant or record any covenant, restriction, declaration, dedication, plat, replat, easement, mortgage or similar item affecting such Property or any part thereof or interest therein only as specifically permitted in Sections 14.1 and 14.2 of this Agreement.

Section 13.2 **Modification of Entity.** Developer shall not, without the prior written consent of the LRA, amend or modify Developer's partnership constitution documents, nor merge or consolidate with any other entity, nor cause permit or suffer to occur any pledge, assignment, hypothecation, or other encumbrance of the whole or any portion of any owners, partner's interest in Developer or any change in the ownership or control of Developer, except in connection with financing as provided in Section 14.1 of this Agreement.

Section 13.3 **Assign.** Developer shall not directly or indirectly assign or transfer any of Developer's right or obligations on this Agreement without the express prior written consent of the LRA. No assignment shall be valid unless and until any permitted assignee (i) expressly assume in writing all, or so much, of the obligations of the Developer under this Agreement, as applicable to the rights, duties and obligations transferred, (ii) recertifies all representations and warranties of Developer as set forth in this Agreement, (iii) agrees to be subjected to all conditions and restrictions to which Developer is subject, and (iv) qualifies to do business in the Commonwealth Puerto Rico. Developer shall not be relieved or released in any manner whatsoever of its obligations under this Agreement, because of any assignment or transfer hereunder.

ARTICLE 14 FINANCING, GENERAL CONDITIONS AND OTHER COVENANTS

Developer and The LRA further covenant and agree as follows:

Section 14.1 **Financing.** Developer may place or agree to any mortgage, security agreement or other encumbrance against the Property only if such mortgage, security agreement or encumbrance provides the following:

- 14.1.1 The terms of the loan shall be consistent with the terms, conditions and provisions of the Agreement and the Deed of Lease.

14.1.2 The loan terms shall specifically acknowledge and accept that the only improvements authorized to be developed and constructed in the Property are as provided for in the Agreement; and that this stipulation shall be binding to any permitted successor or assign of the Developer or to any successor of the Developer as a consequence of the exercise by the Lender of its right under the loan agreement.

14.1.3 The lender shall be a recognized Institutional Lender with experience in making loans for construction and development of projects similar to the Project to be developed.

14.1.3.1 An "Institutional Lender" shall mean and refer to a bank, saving and loan association, life insurance company or any other entity which in the ordinary course of its business, makes large commercial construction loans to the public.

14.1.4 That all funds to be provided by the Lender shall be required to be used in the development, construction, and operation of the Project.

Section 41.2 **Documents Affecting Title.** All proposed plats, easements, dedications, restrictive covenants, and other documents which Developer intends to record against the Property as provided in this Agreement, shall be submitted to the LRA at least ten (10) business day in advance of the proposed date of execution of such documents for the review of same, and all proposed easements and dedications shall be accompanied by a current survey sketch showing their proposed location. No such documents shall be recorded against the title to said Property unless required by land use regulatory agencies and always with the prior written consent of the LRA. All costs and/or expenses related therewith shall be for the sole account of Developer.

Section 14.3 **Indemnity.** Developer shall indemnify and hold the LRA (its officers, directors, agents, contractors, employees, consultants, inspectors and attorneys) harmless of and from any and all: (a) claims or demands of any parties whatsoever (including without limitation any persons rendering labor, services and/or materials in connection with the - **Project**) arising from or growing out of or related to in any manner whatsoever with, this **Agreement** and the LRA's relationship to the **Property** or the **Project**; (b) any and all claims or demands of any parties whatsoever (including, without limitation any persons rendering labor, services and/or materials in connection with the **Project**) arising from or growing out of, or related to in any manner with, the existence of any Hazardous Substances, or the removal, discovery, generation, existence, storage, transport, disposal, use or generation of any Hazardous Substances in or around the **Property** or the **Project**; (c) litigation related to any of the foregoing; and (d) losses, costs or expenses suffered or incurred by The LRA in connection with any such claims, demands, taxes, interest, penalties or litigation (including attorney's fees and court costs at trial and all appellate levels). In the event the LRA is made party to any suit at law or equity or made to defend any counterclaim or any administrative proceeding, **Developer** shall provide the LRA with counsel acceptable to the LRA and **Developer** shall pay the reasonable fees and costs of such counsel. Provided, however, that if any of the events contemplated hereinbefore in this Section 14.3 or any portion of such events. Nevertheless, nothing provided herein shall affect the obligations of the

insurer under the insurance policies as required in this **Agreement**. Anything to the contrary notwithstanding, the provisions of this Section 14.3 shall survive the termination of this **Agreement**.

Section 14.4 **Partial Invalidity**. Any provision of this Agreement, which is prohibited or unenforceable un any jurisdiction shall, as to such jurisdiction only, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity of enforceability of such provision in any other jurisdiction.

Section 14.5 **Estoppel Certificate**. Developer shall, at any time and from time to time, within thirty (30) days after written request by the LRA, execute, acknowledge and deliver to the LRA a certificate stating that: (i) the Agreement is in full force and effect and has not been modified, supplemented or amended in any way, or, if there have been modifications, the Agreement is in full force and effect as modified, identifying such modification agreement, and if the Agreement is not in full force and effect the certificate shall so state the reasons why; (ii) the Agreement, together with the Purchase/Sale Deed, as modified, represent the entire agreement between the parties as to the Project, if it does not, the certificate shall so state why; and (iii) there are no existing defenses or offsets which Developer has against the enforcement of the Agreement by the LRA, or if there are any defenses or offsets, the certificate shall so state. The LRA may rely on the matters therein set forth and thereafter Developer shall be estopped from denying the veracity or accuracy of the same.

Section 14.6 **Confirmations**. Upon written request of any lender that have complied with the requirements established in Section 14.1 of this Agreement, the LRA shall execute documents reasonably necessary to confirm to such lender the rights of the LRA with respect to such lender as set forth in this Agreement.

ARTICLE 15 ARBITRATION

Section 15.1 **Claims, Disputes or Controversies**. In the event any controversies arise between Developer and the LRA, with respect to only the following matters: (i) whether or not construction of the Project, or any portions thereof, complies in all materials respects with the Approved Plan; (ii) whether an event of Force Majeure has occurred and the duration of such event; or (iii) whether the LRA properly disapproved Construction Documents or changes the Construction Documents submitted by Developer, then the parties agree to arbitrate such controversy in accordance with the following provisions. Only claims, disputes or controversies with respect of the foregoing specific items shall be subject to arbitration. Any other controversies must be resolved by litigation in the Court of First Instance of the Commonwealth of Puerto Rico. Any demand for arbitration shall be made in writing within sixty (60) calendar days after the occurrence of the events arising to the demand for arbitration, otherwise the right to arbitration shall be entirely waived.

Section 15.2 **Panel of Arbitration**. In any arbitration hereunder, there shall be a Panel of Arbitrators (the Panel), that shall consist of three (3) arbitrators, and who shall be selected as follows:

- 15.2.1 An Engineer or Architect, licensed and authorized for professional practice in the Commonwealth of Puerto Rico, to be named by Developer within fourteen (14) calendar days following demand for arbitration.
- 15.2.2 An Engineer or Architect, licensed and authorized for professional practice in the Commonwealth of Puerto Rico, to be named by the LRA within fourteen (14) calendar days following demand for arbitration.
- 15.2.3 An Attorney, licensed and authorized for professional practice in the Commonwealth of Puerto Rico, to be mutually agreed upon by Developer and the LRA. If no agreement is reached, both Developer and the LRA shall agree on a list of six (6) attorneys that shall be submitted to the previously chosen arbitrators; who shall determine the selection of such third arbitrator from the submitted list. If the two (2) arbitrators cannot agree on the third one, the list of candidates shall be submitted to the President of the Bar Association of Puerto Rico, who shall make the selection of one (1) attorney from the list therein submitted. Regardless of the method of selection of the third arbitrator, this third arbitrator shall preside over the arbitration hearings.

Section 15.3 **Governing Law.** The Panel shall be subject to the Arbitration Law of Puerto Rico, and all must conduct themselves in an impartial, objective and just manner. The decision of the Panel shall be made in writing, and it shall include specific findings of fact and the bases upon which their decision is founded, and reference shall also be made to applicable provisions of Puerto Rico's Statutory Law and to its judicial interpretations.

Section 15.4 **Claims to be Arbitrated.** The Panel shall make ruling, stating, and defining the matters that are being submitted to arbitration. Arbitrators shall also decide whether or not, any claim included in the petition for arbitration has been waived by the previous lack of action of any of the parties, in which such event, it shall not be subjected to arbitration. The petitioner shall set forth and include in his demand for arbitration, all and every claim and relief he is seeking in the arbitration proceeding. The opposing party shall file its answer to the demand for arbitration setting forth all of its defenses and objections to the claim made by petitioner and to the relief requested, including any appropriate and valid crossclaims or counterclaims.

Section 15.5 **Award.** The Award must be in accordance with the laws of the Commonwealth of Puerto Rico, and shall not impose any monetary award, unless the parties agree otherwise. In the event that there is monetary award, it shall only accrue interest, after the date in which it is validly rendered and signed by the Panel, at the prevailing legal rate of interest.

Section 15.6 **Procedures.** The Panel shall establish the procedures to be followed during the arbitration hearings. The rules of evidence shall not be strictly adhered to in the presentation of evidence by the parties, but all evidence shall be submitted in the presence of all members of the Panel. Every decision concerning the admissibility of evidence shall be taken by the entirety of the Panel in the presence of the parties. Arbitrators shall be guided and proceed in accordance

with provisions set forth in the Puerto Rico Arbitration Law.

Section 15.7 **Compensation of Arbitration.** The Panel shall fix its own reasonable compensation, which shall be horned equally between the parties unless otherwise provided by agreement and shall assess any other costs and charges of the arbitration upon the party which does not prevail in the arbitration. The Panel shall have the right to retain and consult experts and competent authorities skilled in the matter or matters under arbitration, whose services shall be paid by the parties as costs. No other costs shall be imposed.

Section 15.8 **Decision and Time of Award.** While rendering decision(s), the decision of any two (2) Arbitrators shall be binding, but the award shall be made with the participation of the three (3) Arbitrators and in all deliberations, the three (3) Arbitrators shall be present. The decision of the Panel shall be final and binding.

15.8.1 The decisions of the Panel shall be made no later than thirty (30) calendar days after the parties have submitted their cases. The decision of the Panel shall be notified to the parties and its attorneys by certified mail, return receipt requested. The Panel, after careful deliberation, shall decide all issues submitted for a determination, and no other issues. The Panel shall decide all matters justly, with integrity and fairness, exercising independent judgement in good faith and shall not permit outside pressure to affect their decision.

Section 15.9 **Conduct of Arbitrators.** The member of the Panel shall act and behave in accordance with the Code of Ethics that regulates the practice of their profession, and shall, at the request of any party, make full disclosure of any financial, family, business, professional or employment relationship or personal interest with the LRA, the Developer or any of their principals, associates or partners, including any parent company, partners, associates, affiliates and subsidiaries of those principals, associates or partners, that might affect their impartiality to decide the case, or which might reasonably create the appearance of partiality or bias, or for any other valid reason under the prevailing Code of Ethics applicable to judges in the Commonwealth of Puerto Rico. There shall be no communication of any type between any of the Arbitrators and the parties or its respective attorneys, during the entire arbitration process except in the presence of both parties and its attorneys.

Section 15.10 **Language of Arbitration Proceedings.** It is expressly agreed and understood by the parties hereto, that the arbitration proceedings will be conducted in its entirety in the Spanish language.

ARTICLE 16 MISCELLANEOUS PROVISIONS

Section 16.1 **No Partnership or Joint Venture.** Nothing contained in the Agreement is intended or shall be constructed in any manner or under any circumstances whatsoever as creating or establishing a partnership or a joint venture between or among Developer and the LRA or as constituting any party as the agent or representative of any other party.

Section 16.2 Construction. This Agreement shall be going by the laws of the Commonwealth of Puerto Rico. All of the parties of the agreement have participated fully in the negotiation and preparation hereof, and, accordingly, the agreement shall not be more strictly construed against any one of the parties hereto. In constructing this Agreement, the singular shall be held to include the plural, the plural shall be held to the singular, and the use of any gender should be held to include every other gender. The captions of the various paragraph of this Agreement are inserted for the purpose of convenient reference only and shall not affect the construction or interpretation to be given to any of the provisions hereof or be deemed in any manner to define, limit, modify, or prescribe the scope or intent of this agreement or any provision hereof. It is expressly agreed understood by the parties, including its owners, partners, successors, and assigns, that any and all claims hereunder, except those under the arbitration proceedings, shall be filed before the Court of First Instance of the Commonwealth of Puerto Rico, Fajardo Section, who shall have exclusive jurisdiction or such matter. Unless otherwise provided to the contrary, any reference herein to a section or subsection shall be deemed a reference to the corresponding section or subsection of the agreement.

Section 16.3 **Notice.** Any notice or communication under this Agreement shall be deemed sufficiently given if hand delivered or dispatched by first class or certified mail, postage prepaid, return receipt requested, or by national recognized overnight delivery service, or by email to the appropriate party or entity at the address specified below or at such other address of which the other party shall be duly notified.

16.3.1 In the case of a notice or communication to the Developer, to:

Name
Address line 1
Address line 2
Address line 3

Phone number
Email:

16.3.2 In the case of a notice or communication via mail to the LRA, to:

Local Redevelopment Authority for Roosevelt Roads
355 Roosevelt Avenue
San Juan, PR 00918

If delivered by hand:

Local Redevelopment Authority for Roosevelt Roads
Puerto Rico Trade and Export Company Building
159 Chardon Avenue
Third Floor
San Juan, PR 00918

Phone Number: 787-705-7188

Email: lraddevelopment@lra.pr.gov

16.3.3 All notices shall be deemed received when actually delivered by hand or by nationally recognized overnight delivery service and shall be deemed delivered five (5) days following mailing in the event mailed as provided.

Section 16.4 **Counterparts**. This Agreement is executed in two (2) counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

Section 16.5 **Force Majeure**. For the purpose hereof, “Force Majeure” shall mean and refer to any Act of God, earthquake, hurricane, flood, lockdown declared by authorities from the Commonwealth of Puerto Rico or the Government of the United States of America, riot, war, order of civil or military or naval authority, fire, strikes, extraordinary weather conditions, labor disputes or any other course of events reasonably be undeveloped control, provided, however, that the inability to pay any monetary obligation shopping never be deemed a Force Majeure. In the event of an incident of Force Majeure, **Developer** shall, within no more than fifteen (15) days thereafter, inform the **LRA** of the commencement of the Force Majeure event, and thereafter promptly notify the **LRA** when the problem resulting in the Force Majeure event is resolved; and all time periods shall be extended for the period of time for which the act of Force Majeure existed and actually affected the construction of the **Project**. Any failure of **Developer** to timely inform the **LRA** of an event of Force Majeure as foresaid shall be deemed a waiver by **Developer** of any right to claim Force Majeure with respect to such event.

Section 16.6 **Litigation**. In the event of any litigation between the parties under this Agreement, the prevailing party shall be entitled to reasonable attorney’s fees and court costs at all trial and appellate levels. The provisions of this section shall survive the termination of this Agreement.

Section 16.7 **Time of Essence**. The performance of all obligations on the precise time stated in the Agreement is of absolute importance and failure to so perform on time shall be a default, time being of the essence.

Section 16.8 **Successors and Assigns**. All of the terms, conditions, covenants, and obligations contained in this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

Section 16.9 **Severability**. In the event any term or provision of the Agreement shall be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of the Agreement shall be construed in full force and effect.

Section 16.10 **LRA’s Waiver Right**. The LRA shall have the authority to waive in writing any of the obligations of Developer, provided, however, that any such decision on the part of the LRA shall be at the LRA’s sole and absolute discretion.

Section 16.11 **Early Entry.** Provided the Developer has obtained the liability insurance required by Article 6 hereof, except that for the events contemplated in this Section it shall be limited to the amount of one million dollars (\$1,000,000), the Developer, the Developer’s agents and contractors shall have the right during the term of this Agreement to enter upon the Property at reasonable times and with the prior written consent of the LRA for purposes of inspection and investigation, including making tests and studies thereon. Developer agrees to indemnify, defend, and hold harmless the LRA from and against all liabilities, damages, claims, costs, fees, and expenses whatsoever, including reasonable attorney’s fees and court costs at trial and all appellate levels) arising out or resulting from any such inspection or investigation in connection with any removal or disposal of Hazardous Substances. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section shall survive the termination of the agreement.

Section 16.12 **Entire Agreement.** The Agreement, the Deed of Lease, and all documents referenced in the Agreement and in the Deed of Lease, together contain the entire agreement between the parties with respect to the subject matter hereof. To the extent of any conflict between the Agreement and Deed of Lease, the Agreement shall govern. No modification or amendment of the Agreement, or waiver of any right under the Agreement, shall be binding upon the parties unless such modification, amendment or waiver is in writing and signed by the party to be bound thereby.

**ARTICLE 17
MANDATORY CLAUSES**

**ARTICLE 18
ACCEPTANCE**

Section 17.1 Acceptance. The parties have agreed and formalized, freely accepting it in all its parts and without any hesitation, and in such virtue, they execute it. In witness whereof the appearing parties sign this agreement, in San Juan, Puerto Rico, this ___ day of _____, 2022.

LOCAL REDEVELOPMENT
AUTHORITY FOR ROOSEVELT
ROADS.

(DEVELOPER ENTITY NAME)

Joel Pizá Batiz
Executive Director
EIN: 660-66-1048

Authorized Person to sign the agreement
Position/Role
EIN