

DISCLAIMER
(TO BE DELETED UPON ADOPTION)

THIS DRAFT MEDIATED SETTLEMENT AGREEMENT (“DRAFT”) BETWEEN THE CITY OF MIAMI (“CITY”) AND THE VILLAGE OF KEY BISCAYNE (“VILLAGE”) HAS BEEN PREPARED FOR PURPOSES OF NEGOTIATING AND COMPLETING A GLOBAL SETTLEMENT AS PART OF A MEDIATION PROCESS BETWEEN THE CITY AND VILLAGE.

THE DRAFT PROVISIONS ARE INTENDED TO BE A PART OF A DISCUSSION OF OUTSTANDING ISSUES BETWEEN THE CITY AND THE VILLAGE. THE INDIVIDUAL PROVISIONS ARE INTENDED TO BE READ AND UNDERSTOOD “*IN PARI MATERIA*” WITH EACH AND EVERY OTHER PROVISION OF THE DRAFT.

NO INDIVIDUAL PROVISION IS INTENDED TO REPRESENT A PROPOSED TERM, FINDING OR CONDITION OF AN AGREEMENT, EXCEPT IN THE CONTEXT OF EACH AND EVERY OTHER PROVISION IN THE DRAFT, AND ONLY IF INCLUDED IN A WRITTEN AGREEMENT EXECUTED BY THE PARTIES.

MOREOVER, THE DRAFT PROVISIONS HAVE BEEN PREPARED BY SHUBIN & BASS, P.A. AND THE CITY ATTORNEY’S OFFICE AND DO NOT REPRESENT OFFICIAL OR UNOFFICIAL POSITIONS OF THE CITY OR THE VILLAGE ON ANY PARTICULAR SUBJECT UNTIL A FINAL AGREEMENT IS APPROVED AND ADOPTED BY THE CITY AND VILLAGE DURING A PUBLICLY NOTICED MEETING. NO PART OF THIS DRAFT SHOULD BE CONSTRUED AS REFLECTING ANY OFFICIAL POSITION OF THE CITY OR VILLAGE.

MEDIATED SETTLEMENT AGREEMENT

This Settlement Agreement is made this ___ day of _____, 2015 (the “Effective Date”) by and between the City of Miami, (the “City”) and the Village of Key Biscayne (the “Village”) (each a “Party” and collectively the “Parties”).

WHEREAS, the Parties have engaged in seven (7) mediation sessions over several months and have agreed to the following;

WHEREAS, as a result of a series of conveyances from 1929 through 1963, the City was deeded the upland property now referred to as the Marine Stadium Park (the “Park”) and the submerged lands known as the Marine Stadium Basin, with the exception of the portion of the submerged lands described in “**Exhibit A**,” attached hereto (the “Basin”) (located at 3501 Rickenbacker Causeway and collectively referred to herein as the “Property”);

WHEREAS, pursuant to its acceptance of the deeds conveying the Property (attached hereto as “**Exhibit B**”), the City became bound by various deed restrictions that the Parties acknowledge are still in full force and effect, including “public purpose only” and “Marine Stadium and allied purposes only” restrictions on the use of the Park and a “municipal purpose only” restriction on the use of the Basin (the “Deed Restrictions”);

WHEREAS, in 1963 the City constructed a large concrete stadium on the Park property known as the Commodore Ralph Middleton Munroe Marine Stadium (the “Stadium”) and subsequently utilized the Property for water sports and other community purposes;

WHEREAS, following Hurricane Andrew in 1992 and for several decades thereafter, the Property was largely underused and fell into structural disrepair;

WHEREAS, in 1991 the Village of Key Biscayne (the “Village”) was established under the provisions of the Miami-Dade County Home Rule Charter (the “Charter”);

WHEREAS, the Village is only accessible by way of the Rickenbacker Causeway;

WHEREAS, timely access to and from the mainland is critical to the residents of the Village;

WHEREAS, access to recreational and passive park space is critical to the residents of the Village;

WHEREAS, the City currently provides the Village with certain fire, rescue and ancillary services pursuant to that Automatic Aid and Ancillary Services Agreement between the City and the Village;

WHEREAS, on or about January 8, 2015 the City Commission voted to enter into a license agreement with the National Marine Manufacturer’s Association, Inc. (“NMMA”) to use the Property for the Miami International Boat Show (the “Boat Show”), which subsequently prompted

the actions styled *Village of Key Biscayne v. City of Miami*, Miami-Dade County Circuit Court Case No. 15-002997 CA 21 (Fla. 11th Cir. Ct. 2015); *Village of Key Biscayne v. National Marine Manufacturers Association*, Miami-Dade County Circuit Court Case No. 15-09160 CA 11; and *Village of Key Biscayne v. City of Miami*, Miami-Dade County Circuit Court, Appellate Division, Case No. 15-200 AP (the “Litigation”);

WHEREAS, since the filing of the Litigation, the Parties have agreed that they have a mutual obligation to maintain and/or restore the Property in a way that appropriately utilizes the Property consistent with the Deed Restrictions, preserves its historic character, promotes the public’s access to the waterfront and provides Village residents with timely access to and from the mainland;

WHEREAS, the Florida Interlocal Cooperation Act of 1969 (Section 163.01, Florida Statutes) allows local governments to efficiently exercise their powers by entering into interlocal agreements that allow the entities to collaborate on the basis of mutual advantage;

WHEREAS, Section 6.06 of the Charter gives every municipality in Miami-Dade County the power to enter into contracts with other government units for the purpose of jointly performing municipal functions;

WHEREAS, pursuant to these authorities and the Parties’ mutual obligation, the Parties intend to engage in a joint effort to rehabilitate, manage and operate the Property in a manner that is consistent with the Virginia Key Master Plan (completed on July 22, 2010 and attached hereto as “**Exhibit C**”), the City’s Comprehensive Plan, the City Code, and the Miami 21 Zoning Code;

WHEREAS, in order to facilitate this intention, and to amicably resolve the disputes between the Parties, including the Litigation, the City and the Village, in their proprietary capacities and without contractually abrogating their respective police powers, enter into this Settlement Agreement;

NOW, THEREFORE, pursuant to Section 163.01, Florida Statutes, the Charter and the Parties’ respective inherent power to enter into contracts, and in consideration of the foregoing recitation and the mutual covenants set forth in this Mediated Settlement Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I
INCORPORATION OF RECITALS

1.01 Incorporation of Recitals. The recitations set forth above are true and correct and are hereby adopted by reference and incorporated as though fully set forth herein.

ARTICLE II
OPERATIONAL PLAN AND PERMITTED USES

2.01 Virginia Key Master Plan; Operational Plan. The Parties agree to create an Operational Plan for rehabilitation of the Property in accordance with the generally recognized and accepted

public park standards and criteria and in a manner consistent with the guidelines and standards set forth in the Virginia Key Master Plan and the terms of this Mediated Settlement Agreement. It is the Parties' intention that the Operational Plan shall be created under the direction of the Park Conservancy, hereinafter described, and shall embody the principle that the Property is to be used in a manner consistent with the Deed Restrictions and the terms of this Mediated Settlement Agreement. The Operational Plan may be adopted or subsequently modified only upon a majority vote of the entire six-person membership of the Conservancy, with all Members present and voting at any such vote.

2.02 Permitted Uses. Prior to the establishment of the Operational Plan, a Declaration of Restrictive Covenants (as set forth in Section 4.01 of this Settlement Agreement), shall be recorded in the public records of Miami-Dade County and shall determine (subject to any subsequent amendments and court determinations thereto) the permitted uses of the Property and the valid improvements thereof. The Restrictive Covenant may be released only by the mutual consent of the Parties. The Parties agree that the Declaration of Restrictive Covenants shall provide for the following uses on the Property:

1. **Small-Scale Events.** Small-scale events and activities with less than 500 attendees; and
2. **Large-Scale Events Requiring Partial Removal of the Flex Park Artificial Turf.** The Parties further agree that up to five (5) large-scale events with less than 7,500 attendees shall be permitted each fiscal year, provided that each such event does not exceed three (3) consecutive days, together with reasonable set up and takedown, does not occur during the annual tennis tournament held at Crandon Park or July 4th, and does not require removal of more than the easternmost 50% of the flex park artificial turf. Reasonable set up and take down periods will be determined by the Conservancy.; and
3. **Events Requiring Removal of the Flex Park Artificial Turf.** Commencing in 2017, or upon the termination of the boat show, whichever occurs first, use of the Property during the time period from November 21 through January 5 for events with no more than 10,000 attendees per day, exclusive of parties such as contractors and employees needed for the operation of the event, provided that each such event does not exceed seven (7) consecutive days and limiting the days during that time period on which events can be held to twenty-one (21) total days, and providing for the removal of the flex park artificial turf during that time period; and
4. Participant-Based Athletic Events; and
5. Events primarily utilizing the Stadium, consistent with the Deed Restrictions, with up to 6,500 attendees, or the maximum capacity of the Stadium when it is renovated, whichever is lesser; and
6. Self-Contained Events on the West Side of the Flex Park Artificial Turf – Events that can be self-contained, including event space and parking, to the area of the Property west of the Flex Park Artificial Turf.

(all of which shall be collectively referred to herein as the “Permitted Uses”). All uses that exceed the Permitted Uses shall require approval by the Park Conservancy (as set forth in Section 3.03 of this Agreement). Notwithstanding the Permitted Uses, the eastern 50% portion of the Flex Park shall be available 320 days per year in good and playable condition for public use and 40 parking spaces shall be available during that time period for users of the Flex Park.

Regardless of whether a use falls within the “Permitted Uses,” as defined above, or requires the approval of the Park Conservancy, all otherwise applicable sections of the City Code, regarding permitting for the use of City parks, shall apply to such uses. Specifically, chapter 38, Article II of the City Code, titled “Use Regulations,” shall apply to all uses of the Property. These sections of the City Code are incorporated herein, as well as any amendments or renumbering of those sections that may take place in the future. The current version of Chapter 38, Article II of the City Code is attached hereto as **Exhibit D**.

ARTICLE III
COMMODORE RALPH MUNROE
MARINE STADIUM PARK CONSERVANCY

3.01 Creation of the Park Conservancy. The City hereby agrees to establish, by ordinance, a limited agency and instrumentality of the City to be known as the “Marine Stadium Park Conservancy” (the “Park Conservancy”). The Park Conservancy shall oversee the creation and implementation of the Operational Plan and shall thereafter direct, operate, manage and maintain all aspects of the Property for the purposes of facilitating the community’s enjoyment of the Property and ensuring that the Property is appropriately maintained for public purposes.

3.02 Governing Body. The Park Conservancy shall consist of six (6) members (individually referred to as a “Member” and collectively as the “Members”), three of whom shall be appointed by the City Commission and three of whom shall be appointed by the Village Council.

- a. *Appointment.* Each Member shall reside, work, own real property or own a business in the City or Village from which the appointment comes and shall be an individual of outstanding reputation for integrity, responsibility and commitment to serving the community. No City or Village elected official, officer or employee shall be eligible for appointment as a Member.
- b. *Term.* Each Member shall be named and appointed for a term of two (2) years and may be reappointed for additional term(s) in the same manner.
- c. *Removal.* Members appointed by the City may be removed by the City and Members appointed by the Village may be removed by the Village.

- d. *Oath.* Upon the effective date of his or her appointment, or as soon thereafter as practicable, each Member shall enter upon his or her duties but before doing so shall take the oath prescribed by Article II, Section 5 of the Florida Constitution.
- e. *Meetings.* The Park Conservancy shall hold regular monthly or bi-monthly meetings and may hold such other meetings as it deems necessary. All meetings of the Park Conservancy shall be noticed and open to the public, and written minutes of the proceedings thereof shall be maintained by the Park Conservancy. All actions taken at the meetings of the Park Conservancy shall be promptly and properly recorded.
- f. *Quorum and Voting.* At all meetings of the Park Conservancy, the presence of a majority of Members at a properly noticed meeting shall constitute a quorum for the transaction of business and each Member shall have one vote on every issue submitted to a vote of the Park Conservancy. The act of a majority of the Members present at a meeting at which a quorum is present shall be the act of the Park Conservancy. The members of the Park Conservancy shall make and adopt bylaws and rules and regulations for the Park Conservancy's governance and for the operation, management and maintenance of the Property.
- g. *Indemnification.* The Park Conservancy shall maintain officers and directors liability insurance coverage at all times, in an amount and in a form satisfactory to the City and the Village. To the extent such coverage does not apply, the City and the Village shall indemnify their appointees in the same manner and to the same extent that they indemnify all other advisory board members. Nothing in this section shall be construed in any way to affect the laws relating to sovereign immunity.

3.03 Powers and Duties. The Park Conservancy shall have the power to do all things necessary and proper to direct, manage and maintain the Property in accordance with the Operational Plan and shall have the exclusive authority to render all "Material Decision(s)" regarding the Property, which shall be defined to include:

1. Park use prior to the approval of the Operational Plan that is outside the scope of the Permitted Uses set forth in Section 2.01 of this Settlement Agreement;
2. Park use prior to the approval of the Operational Plan that seeks a waiver of any fees required for such use;
3. The approval of the Operational Plan and any subsequent amendments thereto;
4. Any change to the composition or powers of the Park Conservancy as provided for herein;
5. Appointment of an executive director by the Park Conservancy; and
6. The selection of an operator, the operation, and the refurbishment of a marine stadium on the Property.

3.04 Voting Impasse. Should the Members be unable to garner the vote necessary to render any Material Decision, such decision shall be deferred to the following monthly (or bi-monthly) meeting of the Park Conservancy during which the Members shall make an earnest effort to reach a consensus. Should the Members be unable to overcome an impasse at the subsequent meeting, the Parties to this Settlement Agreement agree that the Material Decision shall be rendered through binding arbitration conducted in Miami-Dade County and administered by a reputable entity which provides arbitration services, such as the American Arbitration Association, or any other entity which provides like services in accordance with the rules and procedures of said entity.

3.05 Appointment, Term, Qualifications, Compensation, General Powers and Responsibilities of the Executive Director. Any executive director appointed by the Park Conservancy shall be jointly approved by the City Commission and Village Council and each successor executive director shall be similarly appointed and approved. The executive director shall be a person of good moral character and have an excellent reputation for integrity, responsibility and business ability, but no Member nor any elected official, officer or employee of the City or the Village shall be eligible for appointment as executive director. The executive director shall receive such salary as shall be fixed by the Park Conservancy and shall serve at the will of the Park Conservancy, which shall have the power, through its Members, to remove the executive director at any time with or without cause. The executive director shall take an oath before entering upon any duties. The executive director shall act as the chief executive officer of the Park Conservancy. Subject to the policy directives of the Park Conservancy, the executive director shall have general supervision over and be responsible for the management and operation of all Park Conservancy properties, activities and facilities. The executive director shall execute all contracts on behalf of the Park Conservancy after approval by the Park Conservancy board. The executive director shall attend all meetings of the Park Conservancy, shall furnish the Park Conservancy with a quarterly report with respect to the management, operation and maintenance of the Property, and the financial condition of the Park Conservancy, and shall from time to time have prepared and shall furnish such reports, audits and other information relating to the Property and to said Park Conservancy as may be required by the Park Conservancy, the City or the Village. In the event that the executive director shall for any reason be temporarily incapable of exercising the powers and performing the duties and functions of his office, the Park Conservancy may appoint an acting executive director to exercise such powers and to perform such functions and duties until such incapacity of the executive director shall be terminated.

3.06 Employment of Assistants. Subject to the policy directives of the Park Conservancy and budget limitations, the executive director may employ such assistants as are necessary to provide for the efficient operation of the Park Conservancy.

3.07 Counsel. The City Attorney's Office, in consultation with legal counsel for the Village, shall provide legal services to the Park Conservancy as may be necessary and requested by the Park Conservancy.

3.08 Approval of Budget. Effective upon its creation, the Park Conservancy shall establish a fiscal year which coincides with that of the City of Miami. The Park Conservancy shall submit to the City and the Village, in a form acceptable to the City and Village managers and no later

than April 1 of the preceding fiscal year, a Park Conservancy budget request pertaining to management, operation, maintenance and capital expenditures and delineating the financial responsibility of the City and Village for certain categories including but not limited to: insurance, security, utilities, capital improvements and maintenance. Nothing contained herein shall be construed to prohibit the Park Conservancy from submitting a supplemental budget for approval. No expenditure shall be made in any given fiscal year without approval by the City Commission and Village Council of the Park Conservancy budget for that year.

3.09 Annual Plan; Capital Improvement Plan. In conjunction with the submission of the budget, the Park Conservancy shall submit an annual plan and a multi-year capital improvement plan showing the proposed operations, activities, improvements and maintenance plans for the forthcoming fiscal year.

3.10 Annual Report; Audit. The Park Conservancy shall submit to the City Commission and Village Council, an annual report and an annual audit. The audit shall be performed by an external auditor who is a certified public accountant. Additionally, the City and the Village shall have the right to audit any books, accounts, expenditures, receivables and contracts of the Park Conservancy at any time.

3.11 Contributions. It is the intention of the Parties to this Settlement Agreement that the Park Conservancy actively solicit contributions and financial support from private business interests and any other governmental authorities to further the operation and maintenance of the Property.

3.12 Reservation of Marine Stadium Park Use. Subject to Section 4.03 of this Settlement Agreement, the Property shall only be available for public use and shall be open to the community on an uninterrupted basis throughout the entire fiscal year unless the Park Conservancy expressly agrees otherwise. The Park Conservancy shall be empowered to waive any Property rental fees during periods of use by a bona fide nonprofit entity, which is exempt from federal taxation by virtue of Section 501(c) of the Internal Revenue Code, as amended. The Park Conservancy shall use its best efforts to accommodate youth athletic programming for both the City and the Village on an equal basis.

ARTICLE IV **ADDITIONAL OBLIGATIONS OF THE PARTIES**

4.01 Declaration of Restrictive Covenants. Upon the execution of this Settlement Agreement, the City agrees to record a Declaration of Restrictive Covenants in the public records of Miami-Dade County, containing the Permitted Uses (as set forth in Section 2.02 of this Settlement Agreement) and such Declaration shall be a covenant running with the land and shall

bind all Parties to this Settlement Agreement for a period of thirty (30) years from the date the Declaration of Restrictive Covenants is recorded, after which time it shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by the Parties agreeing to change the Declaration of Restrictive Covenants in whole or in part has been recorded and provided that the Declaration of Restrictive Covenants has first been modified or released by the Parties. The Restrictive Covenant may only be released with the mutual consent of the Parties.

4.02 Perpetual Use Payment. In consideration of the promises and covenants contained herein and the Village obtaining the right from the City to jointly direct, operate, manage and maintain all aspects of the Property in accordance with the Operational Plan, including the use of the Park, the Village hereby agrees to pay the City twelve million, five hundred thousand dollars (\$12,500,000.00), fifty percent (50%) of which shall be payable upon execution of this Settlement Agreement and the balance of which shall be payable upon the recording of the Declaration of Restrictive Covenants.

4.03 Yacht and Marine Sales Event. Notwithstanding any restrictions that may be set forth in the Operational Plan, the Parties agree to allow the NMMA to utilize the Park as a venue for its annual Boat Show for a five-day period in 2016. To the extent possible during the event, the City will provide for a dedicated traffic lane on the Rickenbacker Causeway for Key Biscayne residents or for attendees of the Boat Show.

Any Party wishing to invite the NMMA to utilize the Property for the 2017 Boat Show shall notify the other Party in writing within five (5) days of the conclusion of the 2016 Boat Show. The Parties agree that the 2017 Boat Show shall be permitted on the Property unless the following has occurred as a result of the 2016 Boat Show activities:

1. Any catastrophic event as determined jointly by the Fire Chiefs of the City of Miami and the Village of Key Biscayne. In the event that the Fire Chiefs are unable to reach a joint determination, this issue will be submitted to expedited binding arbitration in accordance with Section 3.04 of this Agreement.
2. In the event of a life-safety emergency, the inability to transport the patient to nearest emergency room by whatever means of conveyance are available.
3. A death directly caused by the Boat Show

4.04 Park Revenues; Financial Obligations. The Parties agree that as of the Effective Date, all revenues generated by activities conducted on the Property, excluding revenues generated from the 2016 Boat Show, shall be deposited in an interest-bearing escrow account maintained by the Park Conservancy and all such revenues shall thereafter be equally distributed to the Parties by an agent of the Park Conservancy. Similarly, the Parties agree to be equally responsible for the financial obligations associated with the continued management, maintenance and operation of the Park in accordance with the Operational Plan. The Parties further agree to use good-faith efforts to pursue private philanthropic funding and other federal and state contributions to defray the cost to refurbish a marine stadium. After those funds have been raised, then the parties agree to be

equally responsible for remaining costs of refurbishing a marine stadium which shall not exceed eighteen million, seven hundred fifty thousand dollars (\$18,750,000.00) per Party.

4.05 Future Governance of City-Owned Lands on Virginia Key. The Parties agree that the future use and operation of the property owned by the City of Miami and located at the northeast corner of Sewage Plant Road and Arthur Lamb Jr. Road (and more particularly described on “**Exhibit E**,” attached hereto) shall be subject to further agreement between the City and the Village.

4.06 Rickenbacker Causeway Authority. The Parties acknowledge that the Rickenbacker Causeway provides the only link to mainland property under the jurisdiction of the City of Miami and the City’s property on Virginia Key and provides the only means of access to the Village of Key Biscayne. The Parties further acknowledge that the Rickenbacker Causeway is currently under the jurisdiction of the Miami-Dade Expressway Authority and thus agree to cooperate with one another in good-faith to work with Miami-Dade County and the Miami-Dade Expressway Authority in an effort to provide the City and the Village with appropriate decision-making authority over the operation and maintenance of the Rickenbacker Causeway.

ARTICLE V
GENERAL PROVISIONS

5.01 Final Judgment. Upon the execution of this Settlement Agreement, the Parties shall jointly seek entry by the Court in that certain litigation styled, *Village of Key Biscayne v. City of Miami*, 15-002997 CA 21 (Fla. 11th Cir. Ct. 2015) of a final judgment adopting the provisions of this Settlement Agreement, directing the Parties to comply with the provisions of the same, and retaining jurisdiction to enforce its terms. In addition, the Village of Key Biscayne shall within five (5) days of execution of the Settlement Agreement file notices of voluntary dismissal in the following actions: *Village of Key Biscayne v. National Marine Manufacturers Association*, Miami-Dade County Circuit Court Case No. 15-09160 CA 11; and *Village of Key Biscayne v. City of Miami*, Miami-Dade County Circuit Court, Appellate Division, Case No. 15-200 AP.

5.02 Notices. All notices, documents or other communication required hereunder shall be given in writing and shall be delivered by mail (certified, return receipt requested), duly addressed to the Parties at the mailing addresses herein provided:

To the Village: Attn:

Courtesy Copies to: Attn: John K. Shubin, Esq.
 Shubin & Bass, P.A.
 46 SW First Street, 3rd Floor
 Miami, FL 33130

To the City: Attn: City Manager

Courtesy Copies to: Victoria Méndez

City Attorney
444 SW 2nd Avenue
Suite 945
Miami, FL 33130

5.03 Choice of Law; Choice of Forum. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any and all controversies, claims and/or disputes arising from or relating to this Settlement Agreement shall be brought solely in a court of competent jurisdiction in Miami-Dade County, Florida, United States.

5.04 Severability; Construction. In the event that any section, subsection, clause or word of this Settlement Agreement shall be held by a court of competent jurisdiction to be partially or wholly invalid or unenforceable for any reason whatsoever, any such invalidity, illegality or unenforceability shall not affect any of the remaining portions of this Settlement Agreement. This Settlement Agreement was mutually negotiated by the Parties, who have executed the same, and consequently, it is the intent of the Parties that no presumption for or against either side arising out of drafting all or any part of this Settlement Agreement, or out of any changes, additions or deletions to this Settlement Agreement, will apply in any arbitration or other legal action relating to, connected with or involving this Settlement Agreement.

5.05 Execution in Counterparts. This Settlement Agreement may be executed in counterparts, each of which when so executed shall be deemed an original and all of which together shall constitute but one and the same document.

5.06 No Assignment. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto, provided however that neither Party shall have the right to assign its interest or rights hereunder.

5.07 Entire Agreement. This Settlement Agreement and all documents referred to herein constitutes the entire understanding between the Parties and supersedes all previous discussions, contracts, representations and agreements between the Parties relating to the subject matter set forth herein. Any oral or written statements not incorporated herein shall be of no force or effect on this Settlement Agreement.

5.08 Attorneys' Fees. In the event a Party hereto institutes any action or proceeding to enforce any provision herein or to recover damages for an alleged breach of any provision of this Settlement Agreement, the Parties agree that each Party shall bear its own attorneys' fees and costs.

5.09 Dispute Resolution. The Parties agree to work in good-faith to implement the terms of this Settlement Agreement and to carry out the execution of the documents referenced herein and further agree to first engage in mediation for a 30-day period to resolve any disputes arising from this Settlement Agreement before commencing litigation.

5.10 Amendment, Rescission, Termination. There shall be no amendment, rescission or termination of this Settlement Agreement without the mutual consent of both Parties or by order of the Court. Such consent shall be evidenced by written resolutions duly adopted by the City

Commission of the City of Miami and the Village Council of the Village of Key Biscayne. In the event that the Parties are unable to consent to a proposed amendment, rescission or termination, the Party proposing the same may petition the Circuit Court division that has approved and retained jurisdiction over the enforcement of this Settlement Agreement. A final judicial determination shall be binding on the Parties.