

F. Consent Agenda - Planning and Development
ITEM 5.



AGENDA REPORT
April 23, 2019

Aquarina PUD Settlement Agreement Amendment

SUBJECT:

Amendment to the 2009 Aquarina PUD Settlement Agreement.

FISCAL IMPACT:

DEPT/OFFICE:

Planning and Development

REQUESTED ACTION:

It is requested that the Board of County Commissioners authorize the Chair to execute a consent to the 2019 Aquarina Settlement Agreement and Addendum.

SUMMARY EXPLANATION and BACKGROUND:

In 2009 the Board entered into a settlement agreement with three parties to resolve litigation regarding the Aquarina PDP/PUD. The litigation generally involved the enforcement of PDP/PUD requirements for completion of a racquet club and beach club. The other parties are the Aquarina Homeowners Association, Inc. (the "Association") and the two owners of remaining undeveloped tracts in the PUD who had acquired the properties from the original developer. The settlement agreement also included agreements between the two developers and the Association regarding the future development of certain tracts and the responsibility to pursue PDP/PUD amendments and replatting to secure those development rights.

Since 2009, both amenities have been completed and conveyed to the association and the County has completed its obligations under the settlement agreement. There are new owners of the undeveloped tracts and they became involved in litigation with the Association regarding their outstanding settlement agreement obligations. The County was originally named as a party, but was subsequently dismissed.

The three parties have entered into a settlement agreement and request the County's consent since it amends the 2009 settlement agreement. The 2019 settlement agreement and addendum do not change the County's obligation under the 2009 settlement agreement, nor creates any new obligation. The 2019 settlement agreement and addendum proposed two changes: (1) conveyance of property from the Association to a developer; and (2) the creation of a new homeowners association which will solely serve

specified tracts in the PUD. The County's consent will acknowledge that these changes are consistent with PUD code requirements.

CLERK TO THE BOARD INSTRUCTIONS:

Return original signed documents to the County Attorney's Office.

ATTACHMENTS:

Description

- ▢ **2009 Settlement Agreement**
- ▢ **2019 Settlement Agreement**
- ▢ **2019 Settlement Agreement Addendum**



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April 24, 2019

M E M O R A N D U M

TO: Eden Bentley, County Attorney

RE: Item F.5., Aquarina PUD Settlement Agreement Amendment

The Board of County Commissioners, in regular session on April 23, 2019, approved and authorized the Chair to execute consent to the 2019 Aquarina Settlement Agreement and Addendum. Enclosed is a fully-executed Settlement Agreement and Addendum.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

Encls. (2)

cc: Planning and Development Director
Contracts Administration

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Agreement") is made and entered into by and between Plaintiff, KAHAMA VII, LLC ("KAHAMA"), and Defendant, AQUARINA COMMUNITY SERVICES ASSOCIATION, INC. ("AQUARINA"), collectively the "Parties".

RECITALS

WHEREAS, KAHAMA filed suit against AQUARINA and others in the 18th Judicial Circuit Court in and for Brevard County, Florida (Case No. 05-2014-CA-017274) (the "Litigation"); and,

WHEREAS, AQUARINA has asserted a Counterclaim in the Litigation; and,

WHEREAS, all the claims in the Litigation between KAHAMA and AQUARINA arise out of a dispute concerning their respective obligations with respect to real property to become owned by KAHAMA under that certain Settlement Agreement with an Effective Date of December 16, 2009 which is attached as *Exhibit "6"*, said Settlement Agreement is hereby incorporated by reference (the "First Settlement Agreement"), pertaining to the Aquarina PUD, executed by Brevard County, Florida (the "COUNTY"), AQUARINA, KAHAMA and Carolina First Bank, then a South Carolina corporation authorized to do business in the State of Florida ("CFB"); and,

WHEREAS, Paragraph 7.10 of the First Settlement Agreement states that the same is binding upon the successors and assigns of the parties thereto; and,

WHEREAS, MAD Associates, LLC ("MAD") has intervened in the Litigation, as successor in interest to CFB, and such intervention was approved by Order of the Court on February 23, 2018; and,

WHEREAS, Paragraph 7.7 of the First Settlement Agreement indicates that it can be amended by a writing which is executed by all parties; and,

WHEREAS, AQUARINA has obtained and recorded in Brevard County Official Records Book 7232 at Page 2183 a Termination of an Ingress and Egress Easement Agreement, in favor of Transnations Inc. (which Ingress and Egress Easement was previously recorded in Brevard County Official Records Book 4303 at Page 0209), and AQUARINA obtained and recorded in Brevard County Official Records Book 7238 at Page 1480 a Partial Release of a Non-Taxable Agreement Not to Encumber or Transfer Property (which Non-Taxable Agreement Not to Encumber or Transfer Property was previously recorded in Brevard County Official Records Book 6654 at Page 839); and,

WHEREAS, the Parties agree it is in their mutual interest to finally and fully settle and discharge all claims of any nature whatsoever which each may have against the other arising from or related to the facts and circumstances at issue in the Litigation and their dispute as to their respective obligations under First Settlement Agreement, including but not limited to claims for damages, injunctive relief, and attorneys' fees and costs, because they wish to avoid further expense and distraction as a result of the same; and,

WHEREAS, the Parties agree that their respective rights and obligations set forth in the First Settlement Agreement remain as rights and obligations unless modified herein; and,

WHEREAS, MAD is consenting to this Settlement Agreement as a change to the First Settlement Agreement; and,

WHEREAS, the COUNTY, which is not a litigant in the Litigation, is consenting to this Settlement Agreement as a change to the First Settlement Agreement, provided that such Consent in and of itself shall in no way make the COUNTY a litigant in the Litigation now, in and of itself constitute a form development approval for any of the property affected by this Settlement Agreement;

NOW, THEREFORE, in consideration of the foregoing, the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals; Defined Terms.** The recitals are true and correct and incorporated for all purposes herein. Whenever defined terms or words of art, as indicated by the initial capitalization thereof, are used herein, such defined terms or words of art, if not defined herein, shall have the meanings ascribed to such terms in the First Settlement Agreement.

a. For purposes of defining the boundary of the "Reconfigured Kahama Parcels" as set forth in the First Settlement Agreement, the legal description of the boundary of the Reconfigured Kahama Parcels shall be that described in *Exhibit "1"*, and this legal description shall control to the extent of any conflict with any other definition, descriptive statements or inferences for same in the First Settlement Agreement.

b. For purposes of defining the boundary of the real property to be conveyed by AQUARINA to KAHAMA under the First Settlement Agreement (so as to allow the Kahama Parcels to become the "Reconfigured Kahama Parcels"), such real property's legal description shall be that described in *Exhibit "2"*, and this legal description shall control to the extent of any conflict with other definitions, descriptive statements or inferences for same in the First Settlement Agreement. The real property described in *Exhibit "2"* shall be referenced herein as the "AQUARINA Conveyance Parcel."

c. The subdivision of the Reconfigured Kahama Parcels into two (2) Lots and one (1) Tract for purposes of the re-platting application contemplated by this Agreement shall be as set forth in *Exhibit "3"* of this Agreement. The two (2) Lots shall be referenced herein as "Lot 1" and "Lot 2," and the Tract shall be referenced as "Tract A.5."

d. The Parties agree that the vested local government regulatory land development Entitlements under the First Settlement Agreement and this Agreement for the Reconfigured Kahama Parcels are as follows:

(1) (A) Lot 1 may be developed with three (3) low-rise multi-family attached dwelling units or one (1) low-rise single-family dwelling unit, in building(s) having a

maximum of thirty-five (35) feet in height in accordance with the COUNTY's applicable land development regulations.

(B) Lot 2 may be developed with three (3) low-rise multi-family attached dwelling units or one (1) low-rise single-family dwelling unit, in building(s) having a maximum of thirty-five (35) feet in height in accordance with the COUNTY's applicable land development regulations.

(C) The setback from the 1981 Coastal Construction Control Line has and shall remain waived for the Reconfigured Kahama Parcels. Construction on Lot 1, Lot 2 and Tract A.5 is permitted with zero setback from the 1981 Coastal Construction Control Line.

(D) The option described in Paragraph 5.10 of the First Settlement Agreement for Lot 1 or Lot 2, or both, to become Members of AQUARINA by timely submitting such Property to AQUARINA's Declaration of Covenants, Conditions, and Restrictions, shall remain in effect.

e. The Entitlements described in this paragraph e. are not vested as of the Effective Date of this Agreement. However, the Entitlements described in this paragraph e. are intended to be vested at the end of the Parties performance of this Agreement, and therefore, they shall be treated as vested Entitlements as such terms are used in this Agreement. Tract A.5 shall be used for private, passive recreation and open space purposes for the benefit of the owners, tenants, and invitees of Lot 1 and Lot 2. Nothing in this Settlement Agreement or First Settlement Agreement shall prevent all or a portion of Tract A.5 from being used to satisfy any land development regulatory requirements applicable to Lot 1 or Lot 2, or both Lot 1 and Lot 2, which are not inconsistent with Tract A.5's private, passive recreation and open space use (e.g. minimum site dimension or area requirements, landscape coverage requirements, open space requirements, permeable surface area requirements, etc.).

f. KAHAMA is of the view that Lot 1 and Lot 2 may be combined (so as to eliminate any side setback requirement [or other building separation requirement] for either Lot based upon their shared Lot line) to develop up to six (6) low-rise multi-family attached dwelling units, in building(s) having a maximum of thirty-five (35) feet in height in accordance with the COUNTY's applicable land development regulations, and that the Entitlements described in this paragraph f. are vested Entitlements under the First Settlement Agreement, but AQUARINA does not wish to agree that this is the case; therefore, on this point the Parties have agreed to disagree, but regardless of whether such entitlements are vested or not vested, AQUARINA agrees that it will cooperate with KAHAMA, and will not oppose KAHAMA, in the event KAHAMA ever desires to pursue and obtain whatever development approvals may be needed to obtain and utilize the Entitlements described in this paragraph and they will be treated in the same manner as "vested Entitlements" are otherwise treated under this Agreement.

g. In the event any of the Entitlements described in Paragraph 1.d., e. or f., are ever determined by the County or by another local governmental entity or agency with jurisdiction to not be vested for any reason after the performance of this Agreement, they shall nonetheless still be considered "vested Entitlements" between the Parties for the purposes of this Agreement, and shall be within the definition of "Reconfigured Kahama Parcels Remaining PUD Development Approvals" as defined in paragraph 2.b. and 2.c. of this Agreement.

h. KAHAMA agrees that AQUARINA does not warrant or guarantee in this Agreement that KAHAMA will be able to obtain whatever permits or development approvals may now or in the future be required by local governmental entities or agencies with jurisdiction in order for KAHAMA to utilize and construct one, some, or all of KAHAMA's vested Entitlements on the Reconfigured Kahama Parcels. This Agreement contains various provisions applicable to KAHAMA's vested Entitlements, such as for example, the Re-Plat provisions, AQUARINA's duties to cooperate and assist KAHAMA in obtaining the vested Entitlements, AQUARINA's agreement to not oppose KAHAMA in KAHAMA's effort to obtain the vested Entitlements, and AQUARINA's compliance with the provisions of Sections 9, 17, 19, 20, and 25 of this Agreement, which provisions are and shall remain in full force and effect regardless of anything in this Agreement to the contrary. In the event that the COUNTY (or another a local governmental entity or agency with jurisdiction) denies permits or development approvals as may be now or in the future be required to utilize and construct KAHAMA's vested Entitlements on the Reconfigured KAHAMA Parcels, KAHAMA agrees that AQUARINA shall not be liable for damages to KAHAMA for such denial and that AQUARINA shall have no obligation to grant any consideration (money or otherwise) to KAHAMA to reimburse KAHAMA or make KAHAMA whole, provided always that such denial was not caused by or attributed to AQUARINA and that AQUARINA has performed AQUARINA's obligations under this Agreement.

i. The "Re-Plat" is defined in Paragraph 4.b.(4)(a) of this Agreement below.

2. Cooperation with Kahama's Development Approvals.

a. At the time the Parties signed this Agreement, it is the Party's reasonable understanding that the Reconfigured Kahama Parcels could remain in the AQUARINA PUD and not be subject to the Declaration of Covenants, Conditions, and Restrictions for Aquarina as recorded in Brevard County Official Record Book 2434 at Page 1145, as amended, including the Notice of Preservation of Conditions, Covenants, and Restrictions recorded in Official Records Book 7533 at Page 943 (the "Declaration"). The Parties agree that this was intended and envisioned by the First Settlement Agreement. The Parties further are of the reasonable understanding that in order for Tract A.5 on *Exhibit "3"* to be private, passive recreation and open space which is conveyed to a not for profit legal entity (i.e. homeowners association, condominium association or other like-residential purpose legal entity) which (i) is independent of AQUARINA and (ii) is to be formed by KAHAMA and owned by (or where the members are) the owners of Lot 1 and Lot 2 as depicted on *Exhibit "3"*, that the County would consider this result a decrease in open space for the AQUARINA PUD. To make up for this decrease in open space, if determined, the Parties have agreed that:

(1) In addition to KAHAMA providing a non-exclusive pedestrian ingress and egress easement over the East (10) Feet of Tract A.5 as provided in Paragraph 4.d. (3) of this Agreement:

(a) KAHAMA shall additionally provide to AQUARINA a non-exclusive pedestrian ingress and egress easement over and upon the balance of Tract A. 5 which lies West of the East Ten (10) feet thereof and which has the same terms and conditions described in Paragraph 4.d.(3). of this Agreement, but which shall additionally provide that: (i) the owner of Tract A.5 shall be able to build a dune crossover structure on and over such easement area, which dune crossover will be reserved for the exclusive use of the owners of Lot 1 and Lot 2 as depicted on *Exhibit "3"*, and their invitees, and (ii) such additional non-exclusive easement in favor of AQUARINA will terminate, in whole or in part,

upon the COUNTY's approval of one or more PDP/PUD amendment(s) where MAD (or a land owner other than AQUARINA) contributes open space allocated to land it owns within the AQUARINA PUD to make up for the amount of open space attributed to such additional non-exclusive easement which is to terminate, and (iii) the owner of Tract A.5 shall be able to reasonably curtail the use of the easement during construction or reconstruction of the dune crossover, provided that such curtailment shall be limited to the area of such construction and reconstruction. The non-exclusive easement described in this paragraph (a) shall be referenced as the Terminable Non-Exclusive Easement.

- (b) AQUARINA agrees that the construction and use of the dune crossover for the exclusive use of the owners of Lot 1 and Lot 2 as depicted on *Exhibit "3"*, and their invitees, as described in (a) above while the Terminable Non-Exclusive Easement remains in effect, is not a reduction in the AQUARINA PUD open space, and is not inconsistent with AQUARINA's non-exclusive expected recreational and open space use of the easement area while the Terminable Non-Exclusive Easement remains in effect. Additionally, AQUARINA agrees that it shall join in and cooperate in one (1) or more of such amendment(s) to the AQUARINA PUD as are necessary to reflect the change of open space allocations as indicated in this Paragraph 2.a., provided always that AQUARINA shall never be required to contribute to such amendments any open space which is otherwise attributed to land that it owns.
- (c) KAHAMA shall prepare and execute the Terminable Non-Exclusive Easement, and cause same to be delivered in escrow, to the Escrow Agent, on or before the Brevard County Commission Hearing on the Re-Plat. The document shall be prepared by counsel for KAHAMA and shall be subject to the reasonable review and approval of counsel for KAHAMA and AQUARINA.

b. The Parties agree that Section 6.9 of the First Settlement Agreement would remain applicable prior to the construction and use of the Reconfigured Kahama Parcels' vested Entitlements. However, the Parties recognize that the performance of this Agreement (and the confirmation of Entitlements described in Paragraph 1.e. and 1.f.) may require other development approvals from any governmental agencies, authorities, and entities with jurisdiction in order for KAHAMA to obtain or satisfy conditions of a Final Development Plan Approval to construct the vested Entitlements for the Reconfigured KAHAMA Parcels while remaining in the AQUARINA PUD. Any necessary PUD/PDP Amendment and other development approvals required for approval of a Final Development Plan Approval, except the Re-Plat which is AQUARINA's responsibility, are referenced herein as the "Reconfigured Kahama Parcels Remaining PUD Development Approvals."

KAHAMA shall apply for, process, obtain, and pay for all Reconfigured Kahama Parcels Remaining PUD Development Approvals, and AQUARINA shall reasonably cooperate with KAHAMA's effort to obtain same (including, being a co-applicant for any necessary PDP/PUD approval).

c. Some of the Reconfigured Kahama Parcels Remaining PUD Development Approvals may be required in order for the Re-Plat contemplated by this Agreement to be approved,

and this subset of the Reconfigured Kahama Parcels Remaining PUD Development Approvals shall be referenced as the "Pre-requisite Additional Development Approvals."

As to the Pre-requisite Additional Development Approvals, KAHAMA shall additionally exert best efforts to ensure that the same are obtained before or con-concomitant with the approval of the Re-Plat contemplated by this Agreement, and AQUARINA shall reasonably cooperate with KAHAMA's effort to coordinate and obtain same (including, if necessary, coordinating the timing of the approval of the Re-Plat contemplated by this Agreement).

3. **Completion Date.** Time is of the essence. The transactions contemplated by this Agreement shall be consummated (the "Completion Date") upon the recording of a Re-Plat pursuant to the provisions of this Agreement as provided in Paragraph 4.f. below, or as otherwise may be provided in such Paragraph 4.f.

4. **Additional Terms of Settlement.** The Parties agree that each will undertake the obligations as set forth in this paragraph, and that the Parties agree to cooperate as necessary to assist the other party in fulfilling its obligations herein.

a. AQUARINA's Conveyance for the Reconfigured Kahama Parcels.

(1) AQUARINA shall convey the "AQUARINA Conveyance Parcel" using the form of General Warranty Deed set forth in *Exhibit "2"*.

(2) The Parties expect as the time this Settlement is executed that it will be necessary for AQUARINA to convey the AQUARINA Conveyance Parcel to two (2) grantees, such that (i) the portion of the AQUARINA Conveyance Parcel that lies east of the 1981 Coastal Construction Control Line ("CCCL") (and which is Tract A.5 on *Exhibit "3"*) will be conveyed to a not for profit legal entity (i.e. homeowners association, condominium association, or other like residential purpose legal entity) which is to be formed by KAHAMA and owned by (or where the members are) the owners of Lot 1 and Lot 2, and (ii) the portion of the AQUARINA Conveyance Parcel which lies west of and includes the 1981 CCCL line is conveyed to KAHAMA.

(3) The quality of title to the AQUARINA Conveyance Parcel which shall be conveyed shall be marketable title at the time the General Warranty Deed(s) is(are) delivered by the Escrow Agent to KAHAMA upon the Completion Date, and thus the normal accessory closing-type documentation to convey Marketable Title will be prepared by counsel for KAHAMA and will be subject to the reasonable review and approval of counsel for AQUARINA (such as, for example, (i) a Resolution of the Board of Directors of AQUARINA authorizing conveyance, stating that the same is not a conveyance of all or substantially all of AQUARINA's assets, (ii) proof of payment of all taxes and assessments through 2018 and 2019, and (iii) the execution and delivery of a "closing - type affidavit" to cover the subjects of there being no parties in possession, no unrecorded assessments, no improvements made within the most recent ninety (90) day period which could give rise to a construction lien under Chapter 713, Florida Statutes, or other law; and that all dues and assessments of AQUARINA as same may relate to such AQUARINA Conveyance Parcel have been paid through 2018 and 2019, if any).

(4) Within ten (10) days following the Effective Date of this Agreement, AQUARINA shall deliver to the Escrow Agent the deed showing KAHAMA as the Grantee for the portion of the AQUARINA Conveyance Parcel which lies West of and includes the 1981 CCCL line.

(5) On or before the hearing where the Brevard County Commission considers AQUARINA Re-Plat contemplated in Paragraph 4.b. below, AQUARINA shall deliver to the Escrow Agent the deed showing a not for profit legal entity (i.e. homeowners association, condominium association, or other like residential purpose legal entity which is to be formed by KAHAMA and owned by [or where the members are] the owners of Lot 1 and Lot 2) as the Grantee for the portion of the AQUARINA Conveyance Parcel which lies east of the 1981 CCCL line (also known as Tract A.5 on *Exhibit "3"*). KAHAMA shall form the entity prior to the Application for Re-Plat. The Parties understand that the entity will not be able to operate as a residential purpose entity until the AQUARINA CONVEYANCE PARCEL has been conveyed to the grantees as intended by this Agreement, and the Reconfigured Kahama Parcels are submitted to an appropriate declaration, and the Parties shall cooperate with each other on the timing of such submission if this is necessary to obtain approval of the Re-Plat.

b. Re-Plat of the portion of the Tax Parcel which is to be land owned by AQUARINA and the Reconfigured Kahama Parcels.

(1) Section 1.21 of the First Settlement Agreement defined the "Tax Parcel" with reference to a Brevard County Ad Valorem Tax Identification Number that included the Reconfigured Kahama Parcels, land owned by AQUARINA, and a "Lot 3" which was defined in Section 1.9 of the First Settlement Agreement and which was owned by an owner which was not a party to the First Settlement Agreement.

(2) At the time of the First Settlement Agreement, a replatting of the Tax Parcel was desired by KAHAMA and AQUARINA in part because the Brevard County Property Appraiser had not assigned a separate ad valorem tax parcel identification (and billing) number to Lot 3. This has since occurred.

(3) Sections 4.3 and Sections 4.4.4 of the First Settlement Agreement reflect that KAHAMA had the obligation to take a lead role to process a replat application for the Tax Parcel, and that the First Settlement Agreement did not *require* that Lot 3 be included in this effort.

(4) The Parties have agreed that:

(a) The land which will be re-platted as contemplated by the First Settlement Agreement shall not include Lot 3, but instead, shall include only the land as reflected in *Exhibit "3"*, and when and if a re-plat of such property is approved and recorded, the Parties will treat such re-plat (herein the "Re-Plat") as being the same as a re-plat of the Tax Parcel under the First Settlement Agreement.

(b) Instead of KAHAMA taking the lead role in the Re-Plat effort as contemplated by Section 4.3 of the First Settlement Agreement, AQUARINA shall take the lead role, and shall exert its best efforts to apply for, process, and obtain approval of the Re-Plat Application from all local governmental agencies and entities with jurisdiction.

(c) As to the Re-Plat effort's impact on the Reconfigured Kahama
Parcels:

i. The Reconfigured Kahama Parcels shall be replatted in substantial accordance with the proposed mylar and notes for the Re-Plat application which has been approved by KAHAMA for application purposes and which is attached as *Exhibit "3"*, with such changes as are approved by KAHAMA as necessary to obtain approval by the COUNTY to implement the vested Entitlements for the Reconfigured Kahama Parcels and the terms and conditions of this Agreement. The Parties recognize that *Exhibit "3"* is a pre-application draft, and it may need to be modified to obtain the County's approval of the Re-Plat. Provided that any (or all) modifications to *Exhibit "3"* do not impair the vested Entitlements on the Reconfigured KAHAMA Parcels and are consistent with the terms and conditions of this Agreement, KAHAMA will not assert that modifications to *Exhibit "3"* which are otherwise necessary to obtain County approval of the Re-Plat either (i) constitute a default in AQUARINA's performance of its obligations with respect to the Re-Plat or (ii) excuse KAHAMA's performance of this Agreement.

ii. KAHAMA's comment as to the Re-Plat Application with respect to its impact on the Reconfigured Kahama Parcels and the COUNTY's review of same shall be included in AQUARINA's application and in submissions which are made by AQUARINA in response to COUNTY review comments. KAHAMA shall address all County and other reviewing agency comments on the Re-Plat effort with respect to their impact on the Reconfigured Kahama Parcels in a timely and prompt manner.

iii. KAHAMA shall be a co-applicant on the Re-Plat
Application.

iv. Nothing in this Agreement shall restrict or affect KAHAMA'S right to communicate directly with the COUNTY and other local governmental agencies and entities with jurisdiction to review and approve the Re-Plat, and AQUARINA shall reasonably cooperate with KAHAMA to keep it informed of issues that arise and of any need for KAHAMA to communicate with the COUNTY and other local governmental agencies and entities regarding any issues that affect the Reconfigured Kahama Parcels.

(d) As to the Re-Plat effort's impact on land included therein other than the Reconfigured Kahama Parcels:

i. The Re-Plat will show one (1) two hundred fifty-four (254) foot wide parcel that is owned by AQUARINA for Beach Club and active recreational purposes, in accordance with *Exhibit "3"*, and with such changes as are approved by AQUARINA as necessary to obtain approval by the COUNTY to implement any Entitlements on real property it will continue to own after the anticipated performance of this Agreement and the terms and conditions of this Agreement.

ii. AQUARINA's comment as to the application with respect to their impact on the on land included therein other than the Reconfigured Kahama Parcels shall be included in AQUARINA's application and in submissions which are made by AQUARINA in response to COUNTY review comments. AQUARINA shall address all County and other reviewing agency comments on the Re-Plat effort with respect to its impact on land included therein other than the Reconfigured Kahama Parcels in a timely and prompt manner.

iii. AQUARINA shall be a co-applicant on the Re-Plat Application.

iv. Nothing in this Agreement shall restrict or affect AQUARINA'S right to communicate directly with the COUNTY and other local governmental agencies and entities with jurisdiction to review the RePlat with respect to its impact on the on land included therein other than the Reconfigured Kahama Parcels, and KAHAMA shall reasonably cooperate with AQUARINA to keep it informed of issues that arise and of any need for AQUARINA to communicate with the COUNTY and other local governmental agencies and entities regarding any issues that affect land included therein other than the Reconfigured Kahama Parcels.

(e) As to both Parties:

i. The Re-Plat effort will not depict *Aquarina Beach Drive*, a private right of way depicted on the Plat recorded in Brevard County Plat Book 33 at Page 8.

ii. KAHAMA has approved AQUARINA's selection of *Briel & Associates Land Surveyors, Inc.* ("Briel") as a consultant and agent to assist the Parties in conducting the Re-Plat effort.

iii. AQUARINA shall notify KAHAMA of other consultants, if any which it wishes to retain in the Re-Plat effort, and agrees that it will not employ a consultant with whom KAHAMA has a reasonable objection.

iv. AQUARINA shall assure that the financial terms of the engagement of all of its consultants shall be commercially reasonable.

v. One half of the reasonable costs and expenses incurred by AQUARINA in performing the lead role in applying for, processing, and obtaining the approval of the Re-Plat in accordance with this Agreement shall be paid by KAHAMA, as opposed to vice versa as set forth in Paragraph 5.5 of the First Settlement Agreement.

vi. As part of AQUARINA's lead role, it shall ensure that it keeps KAHAMA advised of the progress of the Re-Plat effort, and counsel for AQUARINA shall provide reasonable advance notice of all public hearings of advisory board or committee review of the application, and all public hearings of the COUNTY and other local government agencies and entities with jurisdiction to review and approve the application, so that counsel for KAHAMA may attend and participate in such hearings.

vii. The Re-Plat effort to be completed by AQUARINA, with KAHAMA's assistance, as soon as reasonably possible, anticipated to be no later than December 31, 2019, and both Parties shall cooperate to accomplish this goal. The December 31, 2019 aspirational deadline may be reasonably extended if necessary as a result of *force majeure*, unanticipated issues arising, the Pre-requisite Additional Development Approvals, and the like, providing both Parties are still exerting consistent and commercially reasonable best efforts to conclude the Re-Plat effort.

c. AQUARINA additional documents:

(1) AQUARINA shall, on or before the Brevard County Commission Re-Plat Hearing Date (or earlier if required by Brevard County), prepare and execute, deliver in escrow, to the Escrow Agent, a Release and Abandonment of Easement Rights, duly executed by AQUARINA, releasing and abandoning any and all rights which AQUARINA may have over the Reconfigured Kahama Parcels based upon the Access and Parking Easement and its subsequent Modification that are recorded in the Brevard County Official Records Book 4485, Page 2479 and Official Records Book 4495, Page 1938. The current draft form of this document is set forth in *Exhibit "4"*, and the same will be finalized and subject to the reasonable review and approval of counsel for KAHAMA and AQUARINA.

(2) AQUARINA shall, on or before the Brevard County Commission Re-Plat Hearing Date, prepare or obtain, and deliver in escrow, to Escrow Agent, a Release of the "Non-Taxable Agreement Not To Encumber or Transfer Property" dated October 30, 2015 and recorded in the Official Records of Brevard County, Florida, on November 2, 2015, in Official Records Book 7484, Page 1160, or a partial release so that it does not affect any of the Reconfigured Kahama Parcels. The form of this document shall be subject to the review and reasonable approval of counsel for KAHAMA and AQUARINA.

(3) KAHAMA and AQUARINA shall cooperate to prepare and obtain, and record proper documentation acceptable to KAHAMA's title underwriter which reflects that the Temporary Easement described in the next sentence terminated by its own terms and conditions. In the event this cooperative effort is unsuccessful, AQUARINA shall within thirty (30) days of the Effective Date, prepare and execute and deliver in escrow, to the Escrow Agent, a release of the Grant of Temporary Easement for Beach Access ("Temporary Easement"), dated October 10, 1984, and recorded in Official Records Book 2551, Page 413, Public Records of Brevard County, Florida, on October 24, 1984, or a partial release so that it excludes (and thus does not encumber) the Reconfigured Kahama Parcels. The current draft form of this document is set forth in *Exhibit "5"*, and the same will be finalized and subject to the reasonable review and approval of counsel for KAHAMA and AQUARINA.

(4) AQUARINA shall, on or before the Brevard County Commission Re-Plat Hearing Date, prepare or obtain, and deliver in escrow, to Escrow Agent, a Release of the "Non-Taxable Agreement Not To Encumber or Transfer Property," recorded July 30, 2012 in Brevard County Official Records Book 6654 at Page 839, together with a UCC Financing Statement recorded in Official Records Book 6654 at page 853, continued by UCC Financing Statement recorded in Official Records Book 7813 at Page 2725, and as affected by Partial Release recorded in Official Records Book 7238 at Page 1480, or a partial release so that the foregoing do not affect any of the

Reconfigured Kahama Parcels. The form of this document shall be subject to the review and reasonable approval of counsel for KAHAMA and AQUARINA

(5) AQUARINA shall, if requested by KAHAMA, on or before the Brevard County Commission Re-Plat Hearing Date (or earlier if required by Brevard County), prepare, re-execute and deliver in escrow, to the Escrow Agent, a Release of all AQUARINA's rights to that certain 30' Private Drive shown as "Aquarina Beach Drive" as reflected on the Plat of AQUARINA BEACH CLUB, as recorded in Brevard County Plat Book 33 at Page 8. The form of this document shall be subject to the review and reasonable approval of counsel for KAHAMA and AQUARINA

(6) AQUARINA shall, on or before the Completion Date and if requested by KAHAMA in writing, prepare, obtain and deliver in escrow, to the Escrow Agent: (i) a termination or release of any other documents evidencing matters which arise by, through, or under AQUARINA and which encumber, touch upon, concern, or affect the marketable title of the Reconfigured Kahama Parcels, or (ii) an amendment to such documents so that they do not encumber, touch upon, concern, or affect the marketable title of the Reconfigured Kahama Parcels. Examples of documents evidencing matters which arise by, through, or under AQUARINA include: (i) the Declaration of Covenants, Conditions, and Restrictions for Aquarina as recorded in Brevard County Official Record Book 2434 at Page 1145, as amended, and including the Notice of Preservation of Conditions, Covenants, and Restrictions recorded in Official Records Book 7533 at Page 943 (the "Declaration"), (ii) any other restrictive covenant executed and recorded by AQUARINA, (iii) encumbrances or security interests or UCC Filings or agreements not to encumber that arise from any of AQUARINA's mortgages, loan agreements, or financing arrangements, (iv) any liens which arise as a result of improvements to real property owned by AQUARINA under the Construction Lien Law, (v) the lien of any Judgment against AQUARINA, or (vii) leases, easements, licenses, rights of way or the like executed by AQUARINA. The form of these documents shall be acceptable to KAHAMA's title underwriter, and shall subject to the review and reasonable approval of AQUARINA's legal counsel and KAHAMA's legal counsel.

(7) AQUARINA shall, on or immediately before the Completion Date (so that such documents are timely with respect to KAHAMA's title insurance commitment) execute and deliver to the Escrow Agent the normal accessory type closing documentation described in paragraph 4.a.(3) which shall be prepared by KAHAMA's legal counsel and which shall be subject to the reasonable review and approval of AQUARINA's legal counsel and KAHAMA's legal counsel.

d. KAHAMA Additional Documents:

(1) KAHAMA covenants and agrees to place into escrow for AQUARINA's benefit, the sum of Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00) which is identified in Paragraph 4.4. of the First Settlement Agreement. The payment shall be deposited in escrow, with the Escrow Agent, in favor of AQUARINA, within ten (10) of the Effective Date of this Agreement. The escrow deposit shall be released to AQUARINA as provided in 4.f. below.

(2) KAHAMA shall, if requested by AQUARINA, or KAHAMA's title agent, on or before the Brevard County Commission Re-Plat Hearing Date (or earlier if required by Brevard County), prepare, re-execute, and deliver in escrow, to the Escrow Agent, a Release of all KAHAMA's rights to that certain 30' Private Drive shown as "Aquarina Beach Drive" as reflected on the Plat of Aquarina Beach Club, as recorded in Brevard County Plat Book 33 at Page 8. The form of this document shall be subject to the review and reasonable approval of AQUARINA's legal counsel and KAHAMA's legal counsel.

(3) KAHAMA shall execute a non-exclusive, perpetual easement for pedestrian ingress and egress in favor of AQUARINA (the "Easement Agreement") over and upon the East Ten (10) Feet of the AQUARINA Conveyance Parcel. The Easement Agreement shall be delivered in escrow, to the Escrow Agent, on or before the Brevard County Commission Hearing on the Re-Plat. The easement shall be prepared by counsel for KAHAMA and shall be subject to the reasonable review and approval of counsel for AQUARINA. The non-exclusive easement shall provide that: (i) the easement area is provided at all times in an "*as is and with all faults*" condition and with no warranty that the same is safe or suitable for the non-exclusive pedestrian use intended, (ii) that the use of the easement area by AQUARINA (and its members and their invitees) shall be at their own risk, (v) that AQUARINA shall have no right to improve or alter the easement area (as such rights [but not any obligation with respect to such retained rights] are to be remain with the owner of the lands burdened thereby), (v) that AQUARINA shall repair any damage to the easement area as is caused by its members or their invitees, and shall promptly pick up and properly dispose of any garbage, trash, refuse, or other material deposited or placed upon the easement area by its members or their invitees, and (vi) that AQUARINA shall take reasonable steps to prevent its members or their invitees from engaging in activities which are illegal, which disturb the peace, or which otherwise constitute a nuisance (including if necessary suspending or curtailing the use of the easement areas by such members or their invitees). The form of this document shall be subject to the review and approval of counsel for AQUARINA and KAHAMA.

e. Change of Escrow Agent. The Parties agree to change the Escrow Agent for the First Settlement Agreement to Alliance Title Insurance Agency, Inc., 10 S. Harbor City Boulevard, Melbourne, Florida 32901.

f. Release of Documents and Funds in Escrow.

(1) Within five (5) business days following receipt of notice from any Party confirming the approval by the COUNTY of the Re-Plat and the recording of such Re-Plat in the Brevard County Official Records, the Escrow Agent shall deliver to AQUARINA:

(a) the \$350,000, together with any interest earned on same; and,

(b) the documents described in Paragraph 4.d.(2) and 4.d.(3) for AQUARINA to record in the Brevard County Official Records at AQUARINA's expense.

(2) Within five (5) business days following receipt of notice from any Party confirming the approval by the COUNTY of the Re-Plat and the and the recordation of such Re-Plat in the Brevard County Official Records, the Escrow Agent shall deliver to KAHAMA:

(a) the General Warranty Deed(s) held by the Escrow Agent pursuant to the provisions of Paragraph 4.a. for KAHAMA to record in the Brevard County Official Records at KAHAMA's expense; and,

(b) the other documents held by the Escrow Agent pursuant to the provisions of Paragraph 4.a. and Paragraph 4.c. for KAHAMA to record in the Brevard County Official Records at KAHAMA's expense.

(3) The Parties agree that if it is necessary to record in the Brevard County Official Records the documents identified in Paragraph 4.f.(1).(b). and 4.f.(2) above, prior to the recording of the Re-Plat, then the Escrow Agent shall be able to effect delivery of such documents, and shall pay to AQUARINA the \$350,000, together with any interest earned on same, simultaneously.

(4) In the event that the COUNTY or any other local governmental entity or agency with jurisdiction denies a Pre-requisite Additional Development Approval or the application for the Re-Plat, the Escrow Agent shall be able to make the disbursements and document deliveries identified in Paragraphs 4.f.(1). and 4.f.(2). notwithstanding such denial if both Parties then agree in writing. The Parties shall confer with each other and shall exercise good faith and fair dealing in reaching a decision along these lines, and no decision shall be made during a thirty (30) day period of time after the COUNTY's decision is rendered and within which the Parties may be able to address the reasons for denial and ask that the matter be reconsidered for approval (without starting the application process all over). If the Parties decide to authorize the Escrow Agent to break the escrow as provided herein, then nothing in this Agreement shall prevent either Party from subsequently applying for a re-plat of only the land it then owns (after the Escrow Agent effects delivery) if, as, and when required by the COUNTY to improve same consistent with the COUNTY's land development regulations or such property's vested Entitlements. In the event the Parties utilize this provision of this Agreement, the same shall be treated as if the Tax Parcel was successfully replatted under the First Settlement Agreement.

(5) In the event that the COUNTY or any other local governmental entity or agency with jurisdiction denies the application for the Re-Plat and both Parties do not agree within the thirty (30) day period to authorize the Escrow Agent to make the disbursement and document deliveries described in the preceding paragraph, then upon receipt of a notice of termination of this Agreement from either Party (a copy of which will be sent to the non-terminating Party), the Escrow Agent shall return all funds held in escrow to KAHAMA (including any interest earned on same) and return documents held in escrow pursuant to Paragraph 4.f.(1).(b) to KAHAMA and the documents held in escrow pursuant to Paragraph 4.f.(2). to AQUARINA, and thereupon this Agreement shall be of no further force and effect, except that the Parties agree the Litigation may continue (or may be re-instituted), and the Parties agree that neither shall assert that any remedy sought in the Litigation (or in the re-institution thereof) has been barred by the passage of time which accrues from and after the date the Parties signed this Agreement to ninety (90) days after receipt of the notice of termination by the Escrow Agent.

g. In Paragraph 4.5 and 5.4 of the First Settlement Agreement, provisions were included which would allow AQUARINA to utilize a portion of the Reconfigured Kahama Parcels for a temporary ninety (90) day period for parking. The Parties have agreed in view of the passage of time that these provisions shall no longer apply.

h. After building permits are issued for improvements on Lot 1 or Lot 2, and upon being requested by KAHAMA in writing, AQUARINA shall within a reasonable time remove the boardwalk extending from the 1981 Coastal Construction Control Line, eastward over the dune, and to the beach, and failing to do so within a period of six (6) months from such written notice, KAHAMA shall have the right to thereafter without any additional notice remove same at KAHAMA's expense. In the event the Parties separately agree, in writing, in exchange for consideration for use of the dune crossover boardwalk, KAHAMA can waive this provision. This paragraph is not intended to restrict AQUARINA from removing the boardwalk at any time unless the Parties make the separate written agreement referenced in the prior sentence.

5. **Dismissal.** Within ten (10) business days of approval of the Pre-requisite Additional Development Approvals and Re-Plat by the COUNTY, and the recording of the Re-Plat in the Brevard County Official Records, the Parties will submit an agreed Motion and Stipulated Order dismissing the Litigation and retaining jurisdiction to enforce this Agreement. The Litigation may also be dismissed by agreed Motion and Stipulated Order retaining jurisdiction to enforce this Agreement upon the delivery of the documents and monies to the Parties by the Escrow Agent without the County's approval of the Pre-requisite Additional Development Approvals or the Re-Plat as provided for in paragraph 4.f.(4). MAD shall not object to the dismissal of the Litigation. Each of the litigants shall bear their own costs, fees, and other litigation expenses.

6. **Mutual Releases.**

a. Except for the AQUARINA's rights and KAHAMA's obligations as set forth in this Agreement and those in the First Settlement Agreement that are not inconsistent with this Agreement, AQUARINA, for itself, and its members past and present, and their beneficiaries, successors and assigns hereby releases and discharges KAHAMA and KAHAMA's past and present members, directors, officers, managers, and employees, attorneys and other representatives, and each of the foregoing's successors and assigns (collectively, "KAHAMA's Releasees") from any and all claims, demands, agreements, contracts, covenants, actions, suits, causes of action, obligations, debts, expenses, damages, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise, whether now known or unknown which AQUARINA now owns or holds or have at any time heretofore owned or held, or may in the future hold against said KAHAMA's Releasees which are related to any claims, matters or facts asserted in the Litigation.

b. Except for KAHAMA's rights and AQUARINA's obligations as set forth in this Agreement and those in the First Settlement Agreement that are not inconsistent with this Agreement, KAHAMA, for itself, its members, past and present, and their beneficiaries, successors, and assigns, hereby releases and discharges AQUARINA and AQUARINA's past and present members, directors, officers, managers, employees, attorneys, and other representatives, and each of the foregoing's successors and assigns (collectively, "AQUARINA's Releasees") from any and all claims, demands, agreements, contracts, covenants, actions suits, causes of action, obligations, debts, expenses, damages, judgments, orders and liabilities of whatever kind or nature in law, equity or

otherwise, whether now known or unknown which KAHAMA now owns or holds or has at any time heretofore owned or held, or may in the future hold, against said AQUARINA's Releasees which are related to any claims, matters or facts asserted in the Litigation.

c. The provisions of this Paragraph 6. will become effective within ten (10) business days of approval of the Re-Plat by the COUNTY and the recording of the Re-Plat in the Brevard County Official Records, or upon the delivery of the documents and monies to the Parties by the Escrow Agent without the COUNTY'S approval of the Re-Plat as provided for in paragraph 4.f.(4).

7. **Stay of Litigation.** Upon execution of this Agreement by the Parties, they shall immediately seek a stay of the Litigation, and upon obtaining such stay, neither Party, nor the Intervenor, shall file any pleading (or amended pleading), motion or notice in the Litigation, except as may be required to continue such stay during this Agreement's performance period, unless the Default notice period has expired without cure.

8. **Default.** If either KAHAMA or AQUARINA (the "Defaulting Party") shall default in the payment of any amount due to the other party (the "Non-defaulting Party") when due, and such default shall continue for a period of ten (10) days after the Defaulting Party's receipt of written notice thereof, or if the Defaulting Party shall default in the performance of any nonmonetary covenant or agreement of this Agreement and said default shall continue for more than thirty (30) days after the Defaulting Party's receipt of written notice thereof, or in the event that the default is of such a nature as cannot with diligent effort be cured within said thirty (30) day period, if the Defaulting Party shall not commence to cure within said period and diligently prosecute remedial efforts to complete such cure within a reasonable time thereafter, or if the Defaulting Party should become bankrupt or insolvent or any debtor proceedings be taken by or against the Defaulting Party (provided, if same shall be involuntary on the part of the Defaulting Party, the event in question shall not be deemed a default within the meaning of this Agreement if dismissed or vacated by the Defaulting Party within sixty (60) days of the filing thereof), then:

a. If the failure to cure the default has occurred before the conditions precedent to breaking the Escrow Agent's escrow as provided in this Agreement's Paragraphs 4.f.(1)-(4), the Non-defaulting Party shall be entitled, in addition to any and all other legal and equitable remedies available to the Non-defaulting Party at law or in equity, to terminate this Agreement, in which event the Escrow Agent shall return all funds held in escrow to KAHAMA and all documents held in escrow pursuant to Paragraph 4.f.(1).(b). to KAHAMA and all documents held in escrow pursuant to Paragraph 4.f.(2). to AQUARINA, and thereupon this Agreement shall be of no further force or effect, except that the Parties agree the Litigation may continue (or be re-instituted), and the Parties agree that neither shall assert that any remedy sought in the Litigation (or in the re-institution thereof) has been barred by the passage of time which accrues from and after the date the Parties signed this Agreement to ninety (90) days after the notice of termination is received by the defaulting Party. The Parties agree that the remedy of specific performance and the remedy of Injunction shall be available to each Party to enforce the terms of this Agreement, regardless of the existence or adequacy of available remedies at law.

b. If the failure to cure the default has occurred after the conditions precedent to breaking the Escrow Agent's escrow as provided in this Agreement's Paragraphs 4.f.(1)-(4), then this Agreement shall not terminate and the Non-defaulting Party shall be entitled to pursue all legal remedies and equitable remedies available to the Non-defaulting Party, the Parties agree the Litigation may continue (or be re-instituted), and the Parties agree that neither shall assert that any remedy sought in the Litigation (or in the re-institution thereof) has been barred by the passage of time which accrues from and after the date the Parties signed this Agreement to ninety (90) days after the date the Litigation is re-opened or re-instituted. The Parties additionally agree that the remedy of specific performance and the remedy of Injunction shall be available to each Party to enforce the terms of this Agreement, regardless of the existence or adequacy of available remedies at law.

9. **Preservation.** The Parties agree that the First Settlement and this Agreement recognized and preserved certain vested Entitlements with respect to the Reconfigured Kahama Parcels and land which will remain owned by AQUARINA. For purposes of this Agreement, AQUARINA has decided for the time being not to utilize certain residential uses that were attributed to its property and which are a part of its Entitlements. By the same token, KAHAMA may not use all of the Reconfigured Kahama Parcel's vested Entitlements. Nothing in this Agreement or the First Settlement Agreement shall prevent AQUARINA or KAHAMA from deciding in the future to re-develop either of their respective property so as to use their property's vested Entitlements, or to develop and use their respective property in a manner that may be allowable by the COUNTY's then applicable land development regulations, and if necessary, from seeking such development approvals as are necessary to obtain same.

10. **Accord and Satisfaction.** This Agreement shall operate as an accord and satisfaction of disputed claims and may be pleaded as a complete defense and bar to any action brought in contravention of this Agreement.

11. **Non-Admission.** The Parties have entered into this Agreement to effect an amicable and mutually acceptable termination of any disputes between them. In doing so, no Party admits that it has done anything wrong or that it has or could have any liability to the other.

12. **Entire Agreement.** This Agreement sets forth the entire understanding between the Parties to resolve the Litigation, and fully supersedes any and all prior agreements or understandings between the Parties pertaining to the subject matter of this Agreement, except for the terms of the First Settlement Agreement that are not inconsistent herewith. This Agreement may only be modified by a written agreement, duly signed by a person authorized to sign agreements on behalf of KAHAMA and AQUARINA, and if the modification reflects a further amendment to the First Settlement Agreement, a consent by MAD and the COUNTY shall also be required.

13. **Acknowledgement: Legal Representation.** The Parties acknowledge that they have consulted with legal counsel concerning the matters contained in this Agreement. AQUARINA disclaims reliance upon any promise, statement, representations or any other act of omission or commission by KAHAMA or KAHAMA's Releasees and affirm that it is relying solely upon its independent judgment and that of separate legal counsel in entering into this Agreement. KAHAMA disclaims reliance upon any promise, statement, representations or any other act of omission or commission by AQUARINA or AQUARINA's Releasees and affirm that it is relying solely upon

its independent judgment and that of separate legal counsel in entering into this Agreement. No provision of this Agreement shall be interpreted against a Party because such Party or its legal representative drafted such provision.

14. **Governing Law.** This Agreement shall be governed by the laws of the State of Florida. Any legal proceeding of any nature brought by either party to enforce any right or obligation under this Agreement, or arising out of any matter pertaining to this Agreement, shall be submitted exclusively to the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida; or, if the Circuit Court does not have jurisdiction, then jurisdiction shall be in the United States District Court, Middle District of Florida. KAHAMA, AQUARINA and MAD consent and submit to the exclusive jurisdiction of any such Court and agree to accept service of process outside the State of Florida in any matter to be submitted to any such Court pursuant hereto. THE PARTIES ALSO WAIVE TRIAL BY JURY WITH TO ANY SUCH ACTION OR PROCEEDING.

15. **Counterparts.** This Agreement may be executed in counterparts, and copies will have the same force and effect for all purposes as the original.

16. **Attorneys' Fees.** In the event of any litigation, including any appeals, arising from or relating to the enforcement, scope, meaning, interpretation, performance or non-performance of or under this Agreement, the prevailing party therein shall be entitled to recover from the non-prevailing party all reasonable attorneys' fees, paralegal fees and costs incurred in connection therewith.

17. **Implementation.** The Parties hereto agree, without receipt of further consideration, they will sign and deliver any documents and do anything else that is reasonable and proper in the future to make the provisions of this Agreement effective, and to accomplish its intended purposes.

18. **Contract Construction.** This Agreement and the attachments hereto have been fully negotiated by the Parties with the representation of counsel, and no presumption in construing the Agreement shall inure to the benefit of either party.

19. **Non-Circumvention.** The Parties hereto agree, without receipt of further consideration, that neither they or their respective directors, officers, members, or employees, shall take any action or actions to circumvent the provisions of this Agreement, to frustrate its intent, affect the performance of the other Party, or otherwise injure or harass one another in the performance of their respective obligations or in the exercise of each other's rights.

20. **Successors and Assigns.** This Agreement shall be binding upon the Parties hereto and shall inure to the benefit of and be binding upon their successors, assigns, officers, directors, members, employees, successors, beneficiaries, and assigns, agents, insurers, and any other persons acting by, through, under or in concert with any of the entities referenced in this Agreement.

21. **Severability.** The provisions of this Agreement shall be deemed severable, and in the event a Court of competent jurisdiction renders a Final Judgment that any one or more of its provisions is invalid or unenforceable, and all appellate review of such decision is exhausted, such decision shall not affect the validity or enforceability of the other provisions of this Agreement. If, however, the provision(s) determined to be invalid materially affects the performance of the Parties,

or materially impacts the Parties' expectations or positions with respect to this Agreement, the Parties will negotiate in good faith to modify this Agreement in some fashion so as to, as near as possible, place the Parties in the same position they were in, vis-à-vis, their intent, performance expectations, and economic position. If, after such good faith negotiations, no modification is reached, then:

a. If the Final Judgment was rendered before the conditions precedent to breaking the Escrow Agent's escrow as provided in this Agreement's Paragraphs 4.f.(1)-(4), either Party shall be entitled, in addition to any and all other legal and equitable remedies available to it, to terminate this Agreement, in which event the Escrow Agent shall return all funds held in escrow to KAHAMA and all documents held in escrow pursuant to Paragraph 4.f.(1).(b). to KAHAMA and all documents held in escrow pursuant to Paragraph 4.f.(2). to AQUARINA, and thereupon this Agreement shall be of no further force or effect, except that the Parties agree the Litigation may continue (or be re-instituted), the Parties agree that remedies for breach of warranties or representations as provided in Paragraphs 22, 23, and 24 shall survive the termination, and the Parties agree that neither shall assert that any remedy sought in the Litigation (or in the re-institution thereof) has been barred by the passage of time which accrues from and after the date the Parties signed this Agreement to ninety (90) days after the notice of termination is received by the non-terminating Party. The Parties agree that the remedy of specific performance and the remedy of Injunction shall be available to each Party to enforce the terms of this Agreement, regardless of the existence or adequacy of available remedies at law.

b. If the Final Judgment was rendered after the conditions precedent to breaking the Escrow Agent's escrow as provided in this Agreement's Paragraphs 4.f.(1)-(4), then this Agreement shall not terminate, and either Party shall be entitled to seek any and all legal and equitable remedies available against the other Party, the Parties agree the Litigation may continue (or be re-instituted), and the Parties agree that neither shall assert that any remedy sought in the Litigation (or in the re-institution thereof) has been barred by the passage of time which accrues from and after the date the Parties signed this Agreement to ninety (90) days after the date that one Party advises the other in writing (and after good faith negotiations have occurred) that it is not possible to modify this Agreement in some fashion so as to, as near as possible, place the Parties in the same position they were in, vis-à-vis, their intent, performance expectations, and economic position. The Parties agree that the remedy of specific performance and the remedy of Injunction shall be available to each Party to enforce the terms of this Agreement, regardless of the existence or adequacy of available remedies at law.

22. **Warranties and Representations.** The Parties make the following warranties and representations:

a. That each Party is duly organized and validly existing under the laws of the State of Florida, and has full legal right, power and authority to agree to and perform its obligations under this Agreement.

b. That all organizational prerequisites to the execution of this Agreement have occurred.

c. That that this Agreement, and all documents executed pursuant thereto are or shall be duly and lawfully authorized, and as executed, shall be duly executed by such Party, and shall constitute a valid and binding agreement of the Party, enforceable in accordance with its terms, provided, however, that the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and to the exercise of judicial discretion and general principles of equity. For those documents requiring the execution of other parties, assuming the due authorization, execution and delivery by the other parties thereto, each shall constitute a valid and binding agreement of the Party, enforceable in accordance with its terms, provided, however, that the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and to the exercise of judicial discretion and general principles of equity.

23. Warranty and Representation for KAHAMA.

AQUARINA makes the following warranties and representations for KAHAMA:

a. The execution and delivery of this Agreement, and AQUARINA's compliance with its terms and provisions, will not conflict with or constitute a breach of or default under any existing Declaration, Articles of Incorporation, or bylaws, as amended, to which AQUARINA may then be subject, or any other agreement or other instrument to which AQUARINA is a party, or any court order or consent decree to which AQUARINA is subject.

b. The execution and delivery of the General Warranty Deed(s) called for in this Agreement will not conflict with or constitute a breach of or default under any existing Declaration, Articles of Incorporation, or bylaws, as amended, to which AQUARINA may then be subject, or any other agreement or other instrument to which AQUARINA is a party, or any court order or consent decree to which AQUARINA is subject.

c. The execution and delivery by AQUARINA of all other documents contemplated by this Agreement, and AQUARINA's compliance with their terms and provisions, as such documents are understood by AQUARINA at the time it executed this Agreement, should not conflict with or constitute a breach of or default under any existing Declaration, Articles of Incorporation, or bylaws, as amended, to which AQUARINA may then be subject, or constitute a breach of or default under any other agreement or other instrument to which AQUARINA is a party, or any court order or consent decree to which AQUARINA is subject.

d. The execution and delivery of all other documents called for by this Agreement, as the same actually exists at time of execution by AQUARINA and delivery by the Escrow Agent, will not conflict with or constitute a breach of or default under any existing Declaration, Articles of Incorporation, or bylaws, as amended, to which AQUARINA may then be subject, or any other agreement or other instrument to which AQUARINA is a party, or any court order or consent decree to which AQUARINA is subject.

24. Warranty and Representation for AQUARINA.

KAHAMA makes the following warranties and representations for AQUARINA:

The execution and delivery of this Agreement, and the documents contemplated thereby, and compliance with their terms and with the provisions of all of them, will not conflict with or constitute a breach of or default under any existing, Articles of Organization, or Operating Agreement, as amended, to which KAHAMA may then be subject, or any other agreement or other instrument to which KAHAMA is a party, or any court order or consent decree to which KAHAMA is subject.

25. First Settlement Agreement. The Parties agree that all of their respective rights and obligations set forth in the First Settlement Agreement shall remain as rights and obligations, except to the extent modified by this Agreement, provided that this Agreement remains in full force and effect.

26. Miscellaneous.

a. Notices. All notices given or delivered under or relating to this Agreement or any schedule or exhibit thereto shall be sent to the following, via overnight courier or via email:

If to KAHAMA or MAD ASSOCIATES, LLC to:

Michael A. DiAntonio, Sr.
17 Cache Cay Drive
Vero Beach, Florida 32963
(mda@diantonio.com)
with copy to:

Donald J. Lunny Jr., Esq.
Harris K. Solomon, Esq.
Brinkley Morgan
100 SE 3rd Avenue, 23rd Floor
Fort Lauderdale, Florida 33394
(donald.lunny@brinkleymorgan.com)
(harris.solomon@brinkleymorgan.com)

If to AQUARINA to:

Kimberly Rezanka, Esq.
96 Willard St. #302
Cocoa, Florida 32922
(kim@cfglawoffice.com)

b. Effective Date. This Agreement shall be effective the day the last Party has executed same or the last day any required Consent thereto is executed, whichever is later. The Parties shall cooperate in obtaining the Consent of Brevard County.

c. **Legal Descriptions.** Several of the Exhibits to this Settlement Agreement have legal descriptions that might need to change slightly to be approved by a licensed surveyor. It is believed that some of the descriptions used in the Exhibits may reference a former Mean High Water Line (MHWL) location instead of the current MHWL location, and so some of the distance calls may change. The Parties agree that all of the legal descriptions in the Exhibits will be subject to Briel's final approval so that they are accurate and proper.

[REMAINDER OF DOCUMENT INTENTIONALLY LEFT BLANK]

PJP
dc

IN WITNESS WHEREOF, the Parties have signed this Agreement on the dates indicated below their signature.

KAHAMA VII, LLC

By: Michael DiAntonio Sr

Print Name: MICHAEL DiAntonio

Title: manager

Date: 1/23/19

The foregoing instrument was acknowledged before me this 23 day of January 2019, by Michael DiAntonio Sr, on behalf of KAHAMA VII, LLC, who (check one) is personally known to me, X produced a driver's license (issued by a state of the United States within the last five years) as identification, or _____ produced other identification, to wit: _____



Print Name Christie Klager

Notary Public, State of Florida

Commission No. 955395

My Commission Expires: 01/27/2020

AQUARINA COMMUNITY SERVICES
ASSOCIATION, INC.

By: [Signature]

Print Name: PATRICK J. Pollock

Title: PRESIDENT

The foregoing instrument was acknowledged before me this 30 day of January,
2019, by PATRICK J. Pollock, on behalf of AQUARINA COMMUNITY
SERVICES ASSOCIATION, INC., who (check one) ☒ is personally known to me,
produced a driver's license (issued by a state of the United States within the last five years) as
identification, or produced other identification, to wit: .

[Signature]

Print Name: BARBARA J. PELTIER

Notary Public, State of FLORIDA

Commission No. GG-065238

My Commission Expires: 5/23/21



BARBARA J. PELTIER
MY COMMISSION # GG 065238
EXPIRES: May 23, 2021
Bonded Thru Budget Notary Services

RSP

By its execution below, the Intervenor has indicated its Consent to this Settlement Agreement as a change the First Settlement Agreement.

Intervenor, MAD ASSOCIATES, LLC

By: Michael D'Antonio Sr.

Print Name: MICHAEL D'ANTONIO Sr.

Title: manager

Date 1/23/19

The foregoing instrument was acknowledged before me this day of 23rd January 2019, by Michael D'Antonio Sr. on behalf of MAD ASSOCIATES, LLC, who (check one) ☒ is personally known to me, ☐ produced a driver's license (issued by a state of the United States within the last five years) as identification, or ☐ produced other identification, to wit: _____



Print Name: Christie Klager

Notary Public, State of Florida

Commission No. 955395

My Commission Expires: 01/27/2020

By its execution below, Brevard County has indicated its consent to this Settlement Agreement as a change to the First Settlement Agreement; provided however, that this Consent, in and of itself, shall not make the COUNTY a litigant in the Litigation, or constitute a form development approval for any of the property affected by this Settlement Agreement.

Brevard County, a Political Subdivision of the State
of Florida

By: 

Print Name: KRISTINE PETERS

Title: CHAIR

As approved by the Board April 23, 2019.

ATTEST:



SCOTT ELLIS, CLERK

- Exhibit "1" Legal Description of Re-Configured Kahama Parcels
- Exhibit "2" Legal Description and Form of General Warranty Deed for of AQUARINA
Conveyance Parcel
- Exhibit "3" Draft Mylar and Plat Notes for the Re-Plat application
- Exhibit "4" Form of Release of 99' Parking Easements
- Exhibit "5" Form of Release of 6' Easement
- Exhibit "6" First Settlement Agreement

018798-18001 [400,v45]

PST
VA

EXHIBIT "1"

RECONFIGURED KAHAMA PARCELS
LEGAL DESCRIPTION

The following 2 Parcels of Property together shall comprise the Reconfigured Kahama Parcels:

PARCEL 1:

The Northern 140 feet of the AQUARINA P.U.D. STAGE 2, TRACT A, as recorded in Plat Book 33, Page 8, of the Public Records of Brevard County, Florida, lying west of the 1981 Coastal Construction Control Line and east of the State Road A1A east right of way line.

PARCEL 2:

A parcel of land being a portion of AQUARINA P.U.D. STAGE 2, TRACT A, as recorded in Plat Book 33, Page 8, of the Public Records of Brevard County, Florida and being more particularly described as follows: From the northwesterly corner of said Tract A and run S26°51'00"E along the westerly line of Tract A and the easterly right of way line of State Road A-1-A as depicted by aforesaid Plat Book 33, Page 8, a distance of 140.00 feet to the southwesterly corner of that parcel of land described in Official Records Book 6088, Page 2298 of the Public Records of Brevard County, Florida and the Point of Beginning of the herein described parcel; Thence departing from said line run N63°09'00"E along the southerly line of said parcel 92.80 feet to the Coastal Construction Control Line recorded October 6, 1981 in Survey Book 2A, Pages 15-28 of the Public Records of Brevard County, Florida; Thence continue along the extension of said line N63°09'00"E 148.49 feet to the Mean High Water Line of the Atlantic Ocean; Thence run southerly along said Mean High Water Line S28°47'54"E 35.02 feet; Thence Departing from said Mean High Water Line run S63°09'00"W 242.48 feet to the westerly line of the aforesaid Tract A and the easterly right of way line of the State Road A-1-A; Thence run N26°51'00"W along said right of way line 35.00 feet to the Point of Beginning.

PSP
AC

EXHIBIT "2"
LEGAL DESCRIPTION OF THE
AQUARINA CONVEYANCE PARCEL

DESCRIPTION:

PREPARED BY BRIEL & ASSOCIATES LAND SURVEYORS, INC.
 A PARCEL OF LAND BEING A PORTION OF TRACT "A" OF AQUARINA BEACH CLUB AS
 RECORDED IN PLAT BOOK 33, PAGE 8 OF THE PUBLIC RECORDS OF BREVARD
 COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;
 FROM THE NORTHWESTERLY CORNER OF SAID TRACT "A" AND RUN S26°51'00"E
 ALONG THE WESTERLY LINE OF TRACT "A" AND THE EASTERLY RIGHT OF WAY LINE OF
 STATE ROAD A1A AS DEPICTED BY AFORESAID PLAT BOOK 33, PAGE 8 A DISTANCE OF
 140.00 FEET TO THE SOUTHWESTERLY CORNER OF THAT PARCEL OF LAND DESCRIBED
 IN OFFICIAL RECORDS BOOK 6088, PAGE 2298 OF THE PUBLIC RECORDS OF
 BREVARD COUNTY, FLORIDA AND THE POINT OF BEGINNING OF THE HEREIN DESCRIBED
 PARCEL; THENCE DEPARTING FROM SAID LINE RUN N63°09'00"E ALONG THE
 SOUTHERLY LINE OF SAID PARCEL 92.80 FEET TO THE COASTAL CONSTRUCTION
 CONTROL LINE RECORDED OCTOBER 6, 1981 IN SURVEY BOOK 2A, PAGES 15-28 OF
 THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE CONTINUE ALONG THE
 EXTENSION OF SAID LINE N63°09'00"E 148.49 FEET TO THE MEAN HIGH WATER LINE
 OF THE ATLANTIC OCEAN; THENCE RUN SOUTHERLY ALONG SAID MEAN HIGH WATER
 LINE S28°47'54"E 35.02 FEET; THENCE DEPARTING FROM SAID MEAN HIGH WATER
 LINE RUN S63°09'00"W 242.48 FEET TO THE WESTERLY LINE OF THE AFORESAID
 TRACT "A" AND THE EASTERLY RIGHT OF WAY LINE OF STATE ROAD A-1-A; THENCE
 RUN N26°51'00"W ALONG SAID RIGHT OF WAY LINE 35.00 FEET TO THE POINT OF
 BEGINNING.

THE PARCEL DESCRIBED HEREIN IS A PORTION OF THAT PARCEL DESCRIBED IN
 SPECIAL WARRANTY DEED RECORDED IN OFFICIAL RECORDS BOOK 6260, PAGE 728 OF
 THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

NOTES:

1. THIS SKETCH OF DESCRIPTION IS NOT INTENDED TO REPRESENT A LAND BOUNDARY SURVEY.
2. BEARINGS ARE BASED ON THE EASTERLY RIGHT OF WAY LINE OF STATE ROAD A1A BEING S26°51'00"E AS SHOWN ON THE RECORD PLAT.

SHEET 1 OF 2

SKETCH & DESCRIPTION FOR: **AQUARINA COMMUNITY SERVICES ASSOCIATION**

Certified as to meeting the Minimum Technical Standards,
 Chapter 5J-17.050 thru 5J-17.052, F.A.C., set forth by
 the Florida Board of Professional Surveyors and Mappers,
 pursuant to Section 348.027, Florida Statutes.

ROBERT M. BRIEL, Florida Professional Surveyor &
 Mapper, No. 3699

This survey is prepared and certified for the exclusive use
 of the client or clients named hereon. Not valid without the
 signature and original raised seal of a Florida licensed
 surveyor and mapper. Additions or deletions to survey maps
 or reports by other than the signing party is prohibited.

REVISED	AUGUST 31, 2011	09027-35
SKETCH OF		
DESCRIPTION	FEBRUARY 15, 2011	09027-35
TYPE	DATE	JOB NO.

PARCEL FROM AQUARINA COMMUNITY
 SERVICES ASSOCIATION
 TO KAHAMA, LLC

DWN BY: RRB | CHK BY: RRB | SCALE: 1"=40'



BRIEL & ASSOCIATES
 Land Surveyors, Inc.

1790 Hwy A1A, Suite 20B • Satellite Bch., Florida 32937 • (321) 773-7775

Legal Description and Form of General
 Warranty Deed for of AQUARINA Conveyance Parcel

1 DRAFT Subject to further review and
 and approvals current MHWL Adjustments

AP
 de

THIS DOCUMENT PREPARED BY
AND RETURN TO:

EXHIBIT "2"
FORM OF DEED TO KAHAMA

GENERAL WARRANTY DEED

THIS GENERAL WARRANTY DEED is made the ____ day of _____, 2019, by AQUARINA COMMUNITY SERVICES ASSOCIATION, INC., a Florida corporation not for profit, whose mailing address is 450 Aquarina Boulevard, Melbourne Beach, Florida 32951 (hereinafter collectively referred to as the "Grantor"), to KAHAMA VII, LLC, a Florida limited liability company, whose mailing address is 17 Cache Cay Drive, Vero Beach, Florida 32963 (hereinafter referred to as the "Grantee").

(Wherever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of trustees, corporations and partnerships.)

WITNESSETH:

That the Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations, the receipt and sufficiency of which is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee, all that certain real property situate, lying and being in Brevard County, Florida (hereinafter referred to as the "Property"), more particularly described on Exhibit "A", attached hereto and made a part hereof:

TOGETHER with all of the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.

AND the Grantor hereby covenants with the Grantee that the Grantor is lawfully seized of the Property in fee simple; that the Grantor has good right and lawful authority to sell and convey the Property; and that the Grantor hereby fully warrants the title to the Property and will defend the same against the lawful claims of all persons whomsoever. This conveyance is subject to taxes accruing subsequent to _____, 2019, and to easements, restrictions, agreements, conditions, limitations, reservations and matters of record, if any, but this reference to the foregoing shall not operate to reimpose the same.

DSP
De

IN WITNESS WHEREOF, the Grantor has caused this instrument to be duly executed and delivered in its name and has intended the same to be and become effective as of the day and year first above written.

Signed, sealed and delivered
In the presence of:

Witness Name: _____

AQUARINA COMMUNITY SERVICES
ASSOCIATION, INC., a Florida corporation
not for profit

Witness Name: _____

By: _____
Name: _____
Title: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____, as _____ of AQUARINA COMMUNITY SERVICES ASSOCIATION, INC., a Florida corporation not for profit, on behalf of the corporation. Said person produced a driver's license (issued by a state of the United States within the last five (5) years) as identification.

Print Name: _____
Notary Public; State of _____
My Commission Expires: _____
Commission No: _____

BP
OK

DESCRIPTION:

PREPARED BY BRIEL & ASSOCIATES LAND SURVEYORS, INC.
A PARCEL OF LAND BEING A PORTION OF TRACT "A" OF AQUARINA BEACH CLUB AS
RECORDED IN PLAT BOOK 33, PAGE 8 OF THE PUBLIC RECORDS OF BREVARD
COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
FROM THE NORTHWESTERLY CORNER OF SAID TRACT "A" AND RUN S26°51'00"E
ALONG THE WESTERLY LINE OF TRACT "A" AND THE EASTERLY RIGHT OF WAY LINE OF
STATE ROAD A1A AS DEPICTED BY AFORESAID PLAT BOOK 33, PAGE 8, A DISTANCE
OF 140.00 FEET TO THE SOUTHWESTERLY CORNER OF THAT PARCEL OF LAND
DESCRIBED IN OFFICIAL RECORDS BOOK 6088, PAGE 2298 OF THE PUBLIC RECORDS
OF BREVARD COUNTY, FLORIDA AND THE POINT OF BEGINNING OF THE HEREIN
DESCRIBED PARCEL; THENCE DEPARTING FROM SAID LINE RUN N63°09'00"E ALONG
THE SOUTHERLY LINE OF SAID PARCEL 92.80 FEET TO THE COASTAL CONSTRUCTION
CONTROL LINE RECORDED OCTOBER 6, 1981 IN SURVEY BOOK 2A, PAGES 15-28 OF
THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE RUN S26°54'58"E
ALONG THE COASTAL CONSTRUCTION CONTROL LINE 35.00 FEET; THENCE DEPARTING
THE COASTAL CONSTRUCTION CONTROL LINE RUN S63°09'00"W 92.84 FEET TO THE
WESTERLY LINE OF SAID TRACT "A" AND THE EASTERLY RIGHT OF WAY LINE OF STATE
ROAD A1A; THE RUN N26°51'00"W ALONG SAID LINE 35.00 FEET TO THE POINT OF
BEGINNING.

THE PARCEL DESCRIBED HEREIN IS A PORTION OF THAT PARCEL DESCRIBED IN
SPECIAL WARRANTY DEED RECORDED IN OFFICIAL RECORDS BOOK 6260, PAGE 726 OF
THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

NOTES:

1. THIS SKETCH OF DESCRIPTION IS NOT INTENDED TO REPRESENT A LAND BOUNDARY
SURVEY.
2. BEARINGS ARE BASED ON THE EASTERLY RIGHT OF WAY LINE OF STATE ROAD A1A
BEING S26°51'00"E AS SHOWN ON THE RECORD PLAT.

SHEET 1 OF 2

SKETCH & DESCRIPTION FOR: AQUARINA COMMUNITY SERVICES ASSOCIATION

Certified as to meeting the Minimum Technical Standards,
Chapter 5J-17.050 thru 5J-17.052, F.A.C., set forth by
the Florida Board of Professional Surveyors and Mappers,
pursuant to Section 472.027, Florida Statutes.

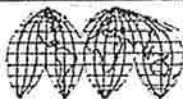
ROBERT R. BRIEL, Florida Professional Surveyor &
Mapper, No. 3599

This survey is prepared and certified for the exclusive use
of the client or clients named herein. Not valid without the
signature and original raised seal of a Florida licensed
surveyor and mapper. Additions or deletions to survey maps
or reports by other than the signing party is prohibited.

REVISED	AUGUST 12, 2016	11016-35
REVISED	AUGUST 31, 2011	09027-35
SKETCH OF		
DESCRIPTION	FEBRUARY 15, 2011	09027-35
TYPE	DATE	JOB NO.

PARCEL FROM AQUARINA COMMUNITY
SERVICES ASSOCIATION
TO KAHAMA, LLC

DWN BY: RRB | CHK BY: RRB | SCALE: 1"=40'



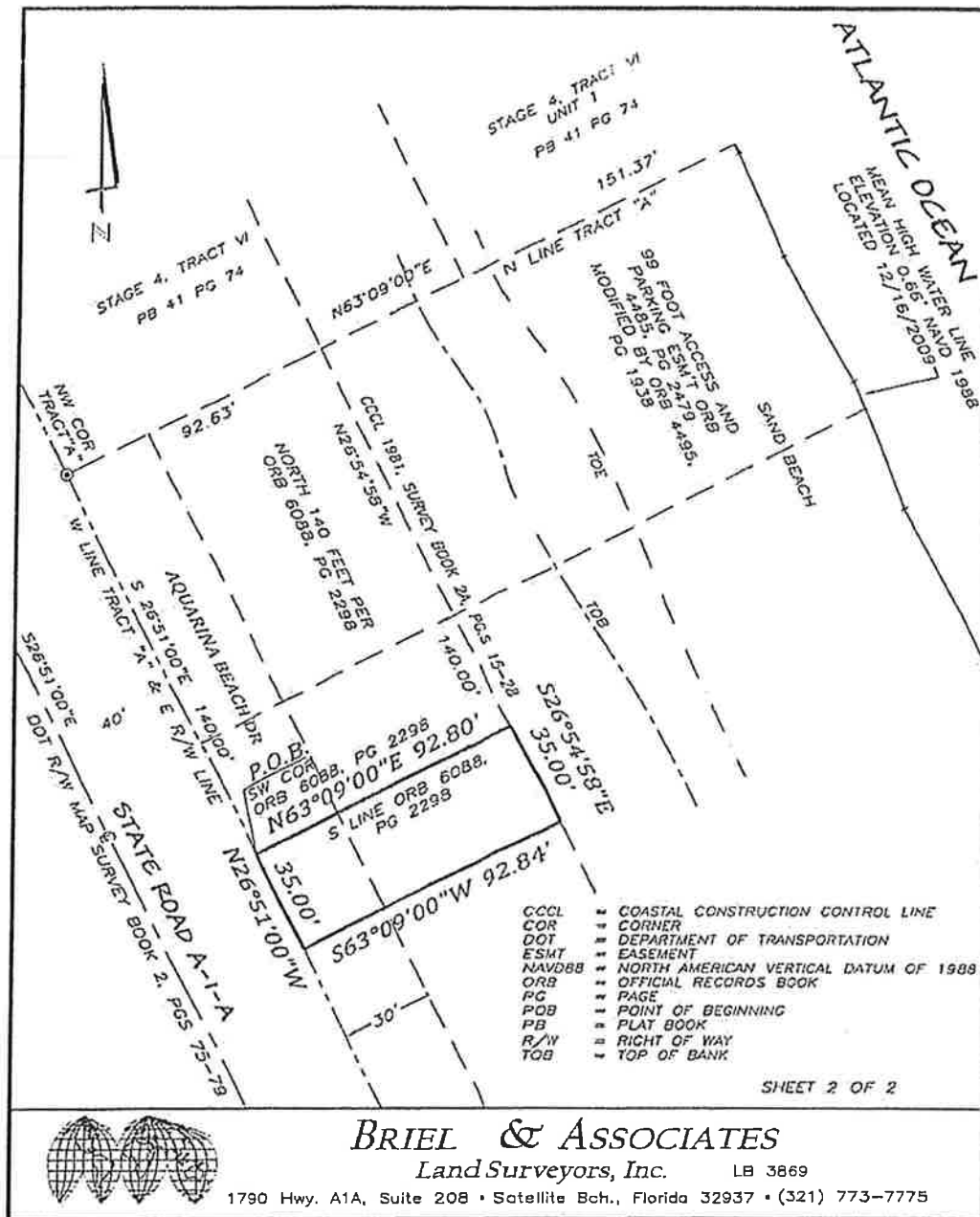
BRIEL & ASSOCIATES
Land Surveyors, Inc.

LB 3869

1790 Hwy A1A, Suite 208 • Satellite Bch., Florida 32937 • (321) 773-7775

PSP
12

Exhibit "A"
Page 2 of 2



Legal Description and Form of General
Warranty Deed for of AQUARINA Conveyance Parcel

6 DRAFT Subject to further review and
and approvals current MHWL Adjustments

ASP
Dr

THIS DOCUMENT PREPARED BY
AND RETURN TO:

EXHIBIT "2"
FORM OF DEED FOR TRACT A.5

GENERAL WARRANTY DEED

THIS GENERAL WARRANTY DEED is made the ____ day of _____, 2019, by
AQUARINA COMMUNITY SERVICES ASSOCIATION, INC., a Florida corporation not for
profit, whose mailing address is 450 Aquarina Boulevard, Melbourne Beach, Florida 32951
(hereinafter collectively referred to as the "Grantor"), to (TO BE FORMED)
CONDO/HOMEOWNERS OWNERS ACCOCIATION. INC., a Florida not for profit
corporation, whose mailing address is _____ (hereinafter referred to as the "Grantee").

(Wherever used herein the terms "Grantor" and "Grantee" include all the parties
to this instrument and the heirs, legal representatives and assigns of individuals,
and the successors and assigns of trustees, corporations and partnerships.)

WITNESSETH:

That the Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other
valuable considerations, the receipt and sufficiency of which is hereby acknowledged, hereby
grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee, all that
certain real property situate, lying and being in Brevard County, Florida (hereinafter referred to
as the "Property"), more particularly described on Exhibit "A", attached hereto and made a part
hereof:

TOGETHER with all of the tenements, hereditaments and appurtenances thereto
belonging or in anywise appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.

AND the Grantor hereby covenants with the Grantee that the Grantor is lawfully seized
of the Property in fee simple; that the Grantor has good right and lawful authority to sell and
convey the Property; and that the Grantor hereby fully warrants the title to the Property and will
defend the same against the lawful claims of all persons whomsoever. This conveyance is subject
to taxes accruing subsequent to _____, 2019, and to easements, restrictions,
agreements, conditions, limitations, reservations and matters of record, if any, but this reference
to the foregoing shall not operate to reimpose the same.

BP
Dr

IN WITNESS WHEREOF, the Grantor has caused this instrument to be duly executed and delivered in its name and has intended the same to be and become effective as of the day and year first above written.

Signed, sealed and delivered
In the presence of:

Witness Name: _____

Witness Name: _____

AQUARINA COMMUNITY SERVICES
ASSOCIATION, INC., a Florida corporation
not for profit

By: _____

Name: _____

Title: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____, as _____ of AQUARINA COMMUNITY SERVICES ASSOCIATION, INC., a Florida corporation not for profit, on behalf of the corporation. Said person produced a driver's license (issued by a state of the United States within the last five (5) years) as identification.

Print Name: _____

Notary Public; State of _____

My Commission Expires: _____

Commission No: _____



Exhibit "A"
LEGAL DESCRIPTION

Sketch by Briel and Associates Land Surveyors to be included.

PARCEL 1:

A parcel of land being a portion of AQUARINA P.U.D. STAGE 2, TRACT A, as recorded in Plat Book 33, Page 8, of the Public Records of Brevard County, Florida and being more particularly described as follows: From the northwesterly corner of said Tract A and run S26°51'00"E along the westerly line of Tract A and the easterly right of way line of State Road A-1-A as depicted by aforesaid Plat Book 33, Page 8, a distance of 140.00 feet to the southwest corner of that parcel of land described in Official Records Book 6088, Page 2298 of the Public Records of Brevard County, Florida and the Point of Beginning of the herein described parcel; Thence departing from said line run N63°09'00"E along the southerly line of said parcel 92.80 feet to the Coastal Construction Control Line recorded October 6, 1981 in Survey Book 2A, Pages 15-28 of the Public Records of Brevard County, Florida; Thence continue along the extension of said line N63°09'00"E 148.49 feet to the Mean High Water Line of the Atlantic Ocean; Thence run southerly along said Mean High Water Line S28°47'54"E 35.02 feet; Thence Departing from said Mean High Water Line run S63°09'00"W 242.48 feet to the westerly line of the aforesaid Tract A and the easterly right of way line of the State Road A-1-A; Thence run N26°51'00"W along said right of way line 35.00 feet to the Point of Beginning.

LESS and EXCEPT:

A parcel of land being a portion of AQUARINA P.U.D. STAGE 2, TRACT A, as recorded in Plat Book 33, Page 8, of the Public Records of Brevard County, Florida and being more particularly described as follows: From the northwesterly corner of said Tract A and run S26°51'00"E along the westerly line of Tract A and the easterly right of way line of State Road A-1-A as depicted by aforesaid Plat Book 33, Page 8, a distance of 140.00 feet to the southwest corner of that parcel of land described in Official Records Book 6088, Page 2298 of the Public Records of Brevard County, Florida and the Point of Beginning of the herein described parcel; Thence departing from said line run N63°09'00"E along the southerly line of said parcel 92.80 feet to the Coastal Construction Control Line recorded October 6, 1981 in Survey Book 2A, Pages 15-28 of the Public Records of Brevard County, Florida; Thence run S26°54'58"E along the Coastal Construction Control Line 35.00 feet; Thence departing the Coastal Construction Control Line run S63°09'00"W 92.84 feet to the westerly line of said Tract A and the easterly right of way line of State Road A-1-A; Thence run N26°51'00"W along said right of way line 35.00 feet to the Point of Beginning.

Handwritten initials:
JSP
DA

EXHIBIT "3"
DRAFT MYLAR AND PLAT NOTES
FOR RE-PLAT APPLICATION

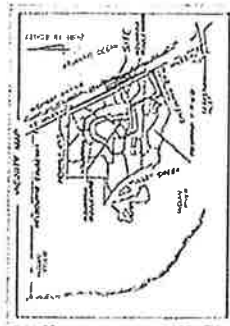
[See the Attached Sketch on the Following Two Pages]

ASP
De

BEING A REPLAT OF A PORTION OF TRACT "A", AQUARIANA P.U.D. STAGE 2, TRACT A, AQUARIANA BEACH CLUB, AS RECORDED IN PLAT BOUN 33, PAGE 8 OF THE PUBLIC RECORDS OF DREWARD COUNTY, FLORIDA AND LYING IN SECTION 36, TOWNSHIP 29 SOUTH, RANGE 13 EAST, DREWARD COUNTY, FLORIDA

[illegible]

NAME	ORGANIZATION & WHEREABOUTS	PURPOSE
Paul A. and CCCL	Aquarium Community Services Association, Inc	Common Area Game Space Recreation
Joe A. S	Blue Water Residents Association Inc	Private Reserve Recreation Open Space



DRAFT

NOTICE THAT AS REQUIRED IN IT'S GRAPHIC FORM, IS THE OFFICIAL DECISION ON THE SURROUNDING LANDS DISCOVERED HEREON AND WILL IN NO CIRCUMSTANCES BE SUPPLANTED IN AUTHORITY BY ANY OTHER GRAPHIC OR DIGITAL FORM OF THE MAP.

~~Draft Mylar and Plat Notes for the Re-Plat Application~~
~~DRAFT Subject to Surveyor's Opinion and Approval~~

2

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BRIEL & ASSOCIATES

Land Survivors, Inc.

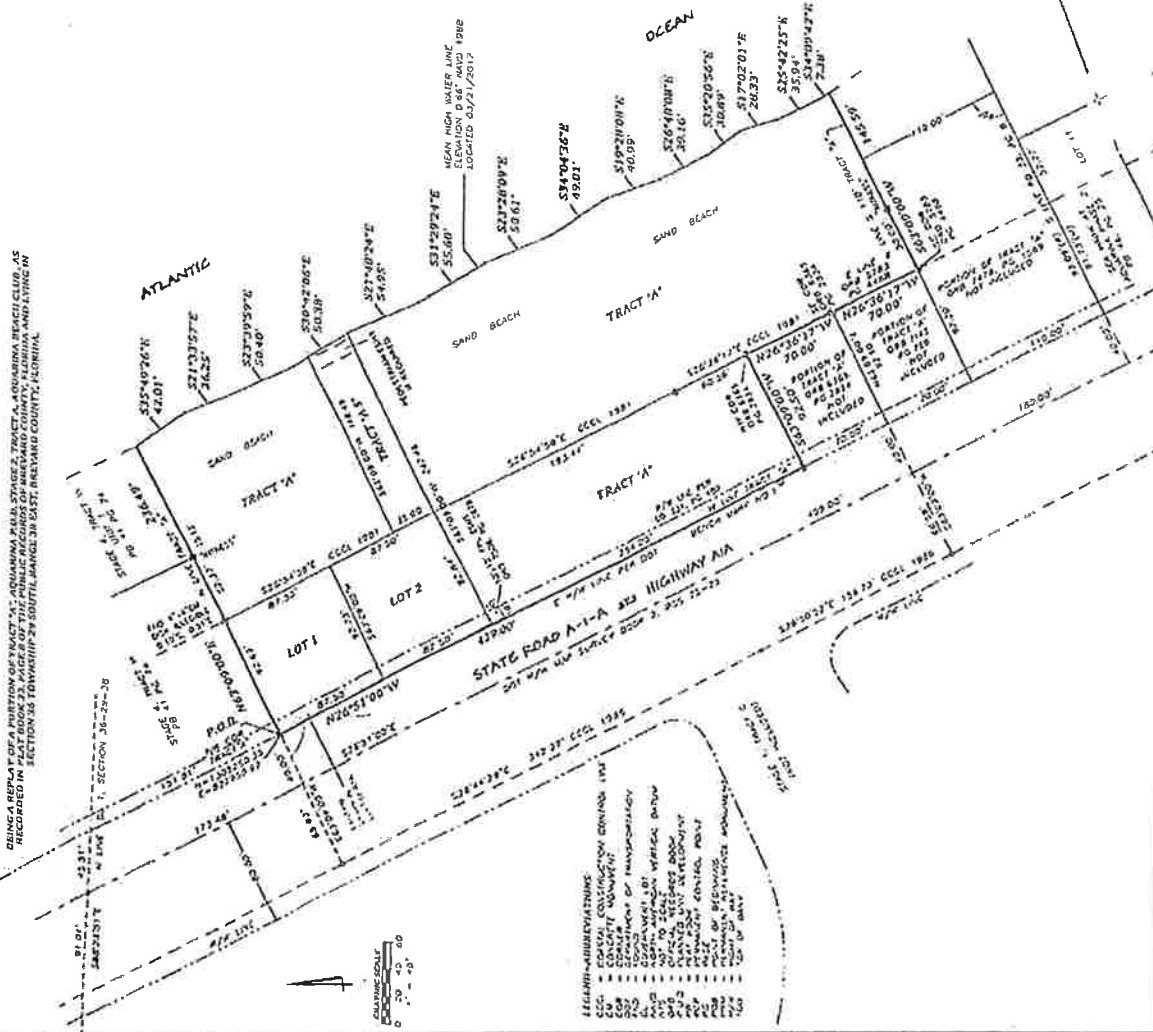
WILLIAMS, A. L. 1961

Satellite Health, 11 2917 (121)771 7775

www.pearsoned.co.uk

BEING A REPLAT OF A PORTION OF TRACT "A", AQUARIANA P.L.D., STAGE 2, TRACT A, AQUARIANA BEACH CLUB, AS
RECORDED IN PLAT BOOK 22, PAGE 8 OF THE PUBLIC RECORDS OF HENRY COUNTY, FLORIDA AND LYING IN
SECTION 36 TOWNSHIP 29 SOUTH RANGE 38 EAST, BREVARD COUNTY, FLORIDA.

BEING A REPLAY OF A PORTION OF TRACT "A", AQUARIANA P.U.D., STAGE 2, TRACT A, AQUARIANA BEACH CLUB, AS
RECORDED IN PLAT BOOK 22, PAGE 8 OF THE PUBLIC RECORDS OF HENRY COUNTY, FLORIDA AND LYING IN
SECTION 36 TOWNSHIP 29 SOUTH RANGE 38 EAST, BREVARD COUNTY, FLORIDA.




3. Samples are tested on the east half of the lot. The results are as follows:

4. Sample 1, Page 8, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644

STATION NAME	NORTH	EAST	PVD	SCALE FACTOR	CHIRP FORCE
BREWARD GRS 3032	1310264.719	525271.325	0.0373	0.0373732	0.0117
PA 40 34	1312902.978	618982.545	0.0688	0.05997156	0.0117

[illegible]

NOTICE: THIS PLAT AS RECORDED IN IT'S GRADING FORM, IS THE OFFICIAL DECISION OF THE SUBDIVIDER. UNLESS OTHERWISE NOTED AND BOLD IN NO CIRCUMSTANCES BE SUPPLEMENTED IN AUTHORITY BY ANY OTHER DRAWING OR SOCIAL FORM OR THE PLAT.



DANIEL & ASSOCIATES
and SURVEYOR, INC.
1700 HILL ST., SUITE 200
DALLAS, TEXAS 75201

THIS DOCUMENT PREPARED BY
AND RETURN TO:

EXHIBIT "4"

TERMINATION, RELEASE, AND ABANDONMENT OF EASEMENT RIGHTS

THIS TERMINATION, RELEASE, AND ABANDONMENT OF EASEMENT RIGHTS is made as of the _____ day of _____, 2019, by AQUARINA COMMUNITY SERVICES ASSOCIATION, INC., a Florida corporation not for profit (hereinafter referred to as the "First Party"), to KAHAMA VII, LLC, a Florida limited liability company (hereinafter referred to as the "Second Party").

(Wherever used herein the terms "First Party" and "Second Party" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of trustees, corporations and partnerships.)

WITNESSETH:

1. First Party has caused a Certificate of Amendments to the Declaration of Covenants, Conditions and Restrictions for Aquarina PUD to be recorded in Brevard County Official Records Book 6097 at Page 2901, the 13th Paragraph of which reflect that an approval of a majority of the owners of residential units within Aquarina development authorized the Board of Directors of First Party to terminate the easements described in Paragraph 3 below.
2. First Party has caused a Resolution of the Board of Directors of First Party to be delivered to Second Party which authorized this Termination, Release, and Abandonment of Easement Rights.
3. That First Party, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, hereby releases, abandons and quit-claims unto the Second Party, all right, title, interest and claim which the First Party has in and that certain real property situate, lying and being in Brevard County, Florida (hereinafter referred to as the "Property") more particularly described in Exhibit "A", attached hereto and made a part hereof, including without limitation the easement rights granted to the First Party under and pursuant to

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that certain Access and Parking Easement Agreement dated December 12, 2001 and recorded December 17, 2001 in Official Records Book 4485, page 2479, Public Records of Brevard County, Florida, as amended by that certain Modification to Access and Parking Easement Agreement dated December 24, 2001 and recorded December 28, 2001 in Official Records Book 4495, page 1938, Public Records of Brevard County, Florida, and hereby acknowledge that the Property is forever freed and released from the lien, operation, force and effect of said Access and Parking Easement Agreements and all amendments thereto.

TO HAVE AND HOLD the same, together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest and claim whatsoever the First Party may have, either in law or equity, for the proper use, benefit and behalf of the Second Party forever.

4. Second Party has also agreed to the Termination, Release, and Abandonment of Easement Rights.

IN WITNESS WHEREOF, the First Party and Second Party have caused this instrument to be duly executed and delivered in its name and has intended the same to be and become effective as of the day and year first above written.

Signed, sealed and delivered
In the presence of:

Witness Name: _____

Witness Name: _____

AQUARINA[A1] COMMUNITY SERVICES
ASSOCIATION, INC., a Florida corporation
not for profit

By: _____

Name: _____

Title: _____

STATE OF FLORIDA

COUNTY OF _____

RP
w/c

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____, as _____ of AQUARINA COMMUNITY SERVICES ASSOCIATION, INC., a Florida corporation not for profit, on behalf of the corporation. Said person produced a driver's license (issued by a state of the United States within the last five (5) years) as identification.

Print Name: _____

Notary Public; State of _____

My Commission Expires: _____

Commission No: _____

Signed, sealed and delivered
In the presence of:

Witness Name: _____

KAHAMA VII, LLC,
a Florida limited liability company

By: _____

Name: _____

Witness Name: _____

Title: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____, as _____ of KAHAMA VII,

RSP

LLC, a Florida limited liability company, on behalf of the LLC. Said person produced a driver's license (issued by a state of the United States within the last five (5) years) as identification.

Print Name: _____

Notary Public; State of _____

My Commission Expires: _____

Commission No: _____

SUBJECT TO FURTHER REVIEW AND APPROVALS

BP
dc

Exhibit A
Legal Description of Release and Abandonment of Easement Rights

The following property in Brevard County, Florida:

PARCEL 1:

The Northern 175 feet of the AQUARINA P.U.D. STAGE 2, TRACT A, as recorded in Plat Book 33, Page 8, Public Records of Brevard County, Florida, lying west of the 1981 Coastal Construction Control Line and east of the State Road A1A east right of way line. |

[A2]

PARCEL 2:

The Southern 35 feet of the Northern 175 feet of the AQUARINA P.U.D. STAGE 2, TRACT A, as recorded in Plat Book 33, Page 8, Public Records of Brevard County, Florida, lying east of the 1981 Coastal Construction Control Line and west of the Mean High Water Line of the Atlantic Ocean. |

[A3]

DP
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THIS DOCUMENT PREPARED BY
AND RETURN TO:

EXHIBIT "5"

RELEASE AND ABANDONMENT OF EASEMENT RIGHTS

THIS RELEASE AND ABANDONMENT OF EASEMENT RIGHTS is made as of the _____ day of _____, 2019, by AQUARINA COMMUNITY SERVICES ASSOCIATION, INC., a Florida corporation not for profit (hereinafter referred to as the "First Party"), to KAHAMA VII, LLC, a Florida limited liability company (hereinafter referred to as the "Second Party").

(Wherever used herein the terms "First Party" and "Second Party" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of trustees, corporations and partnerships.)

WITNESSETH:

That First Party, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, hereby releases, abandons and quit-claims unto the Second Party, all right, title, interest and claim which the First Party has in and that certain real property situate, lying and being in Brevard County, Florida (hereinafter referred to as the "Property") more particularly described in Exhibit "A", attached hereto and made a part hereof, including without limitation the easement rights granted to the First Party under and pursuant to that certain Grant of Temporary Easement for Beach Access dated October 10, 1984 and recorded October 25, 1984 in Official Records Book 2551, page 413, Public Records of Brevard County, Florida, and hereby acknowledges that the Property is forever freed and released from the lien, operation, force and effect of said Grant of Temporary Easement for Beach Access.

TO HAVE AND HOLD the same, together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest and claim whatsoever the First Party may have, either in law or equity, for the proper use, benefit and behalf of the Second Party forever.

PJD
WDC

IN WITNESS WHEREOF, the First Party has caused this instrument to be duly executed and delivered in its name and has intended the same to be and become effective as of the day and year first above written.

Signed, sealed and delivered
In the presence of:

Witness Name: _____

Witness Name: _____

AQUARINA COMMUNITY SERVICES
ASSOCIATION, INC., a Florida corporation
not for profit

By: _____

Name: _____

Title: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____, as _____ of AQUARINA COMMUNITY SERVICES ASSOCIATION, INC., a Florida corporation not for profit, on behalf of the corporation. Said person produced a driver's license (issued by a state of the United States within the last five (5) years) as identification.

Print Name: _____

Notary Public; State of _____

My Commission Expires: _____

Commission No: _____

DSP
Q

Exhibit A

Easement Being Released and Abandoned Legal Description:

A 6 foot wide strip of land lying in Government Lot 1, in Fractional Section 36, Township 29 South, Range 38 East, Brevard County, Florida, the same being more particularly described as follows: Commence at the intersection of the North line of said Section 36 with the East right of way line of STATE ROAD A-1-A as said right of way line is shown on the D.O.T. Maintenance Map, Section 70060, as said map is recorded in Survey Book 2 at Pages 75 through 79 of the Public Records of Brevard County, Florida; thence run S26°51'00"E along said East right of way line for 235.83 feet to the Point of Beginning of the following described centerline description of a 6 foot wide strip of land lying 3 feet on each side of the following described centerline; thence run N63°09'00"E for 93.12 feet to a point on the Department of Natural Resources, Coastal Construction setback line, said point being the point of Termination of said centerline description.

A handwritten signature in black ink, appearing to be 'D. J. A.', located in the bottom right corner of the page.

EXHIBIT "6"

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this "Settlement Agreement") is entered into by and among BREVARD COUNTY, a political subdivision of the State of Florida and Charter County (the "County"); AQUARINA COMMUNITY SERVICES ASSOCIATION, INC., a Florida not-for-profit corporation ("ACSA"); CAROLINA FIRST BANK, a South Carolina corporation authorized to do business in the State of Florida ("CFB"), which owns all assets of Mercantile Bank, a division of Carolina First Bank, and Flaresco, Inc.; which was merged into Carolina First Bank; and KAHAMA VII, LLC, a Florida limited liability company authorized to do business in the State of Florida ("Kahama"), as of the date on which this document is signed by the last party hereto (the "Effective Date").

Article 1. Definitions.

1.1. "Beach Club Parcel" means the parcel described as such on Exhibit "B" of the May 19, 2005, First Addendum to the PUD/PDP and Exhibit "D" of the May 16, 2006, Second Addendum to the PUD/PDP, lying between Lot 2 and Lot 3 that are also depicted on Exhibit "B" and Exhibit "D," respectively, as Stage 2, Tract A of the PUD. The legal description of the Beach Club Parcel is attached hereto as Schedule 1.

1.2. "Community Center Parcel" means the parcel described as a portion of Stage 3, Tract K, of the Aquarina PUD, Stage 1, Tracts C and D, Stage 2, Tracts B, D and H, Stage 4, Tracts B, I, and X, Stage 5, as recorded in Plat Book 41, Pages 88 through 92, in the Public Records of Brevard County, Florida. The legal description of the Community Center Parcel is attached hereto as Schedule 2.

1.3. "Entitlements" means the description of the uses, densities, and intensities, as well as the coastal construction line determination and ocean-front setback line applicable to the currently undeveloped portions of the PUD, as they are set forth in the PUD/PDP, and as may be modified by the proposed PUD/PDP Amendment and any Subsequent PUD/PDP Amendment which is described herein.

1.4. "Escrow Agent" means Kinberg & Associates, LLC, 1290 W. Eau Gallie Boulevard, Melbourne, FL 32935.

1.5. "Flaresco" means Flaresco, Inc., a Florida corporation that merged with CFB on December 31, 2008, and that held title by deed in lieu of foreclosure to Stage 4, Tracts V, VIII, IX and C, the Community Center Parcel, and other parcels within the PUD prior to the merger of Flaresco and CFB.

1.6. "Governing Documents" means the Declaration of Covenants, Conditions and Restrictions for Aquarina, including Articles and By-Laws of ACSA, which are recorded at

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Execution Version

- 1 -



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Official Records Book 2434, Page 1145, in the Public Records of Brevard County, Florida, as amended to date.

1.7. "IRD" means Indian River No. 1 Developers, LLC, the developer of the Aquarina PUD.

1.8. "Kahama Parcels" means the two 70-foot wide parcels located north of the Beach Club Parcel and depicted as Lot 1 and Lot 2 which are included as part of Stage 2, Tract A of the PUD and depicted on Exhibit "B" of the First Addendum to the PUD/PDP and Exhibit "D" of the Second Addendum to the PUD/PDP.

1.9. "Lot 3" means the 70-foot wide parcel located south of the Beach Club Parcel which is included as part of Stage 2, Tract A of the PUD/PDP and depicted on Exhibit "B" of the First Addendum to the PUD/PDP and Exhibit "D" of the Second Addendum to the PUD/PDP. Lot 3 is currently owned by IRD and is subject to a mortgage recorded in Official Records Book 5754, Page 7453, of the Public Records of Brevard County, Florida in favor of Larry S. Sazant, Trustee.

1.10. "PDP" means the Preliminary Development Plan that accompanies the Aquarina PUD as it exists on the effective date of the Settlement Agreement.

1.11. "Property Escrow Agreement" means that certain Property Escrow Agreement between IRD and ACSA dated May 4, 2006.

1.12. "PUD" means the Aquarina PUD as it exists on the effective date of this Settlement Agreement.

1.13. "PUD/PDP Amendment" means the further amendment to the Aquarina PUD/PDP that will be prepared and submitted by CFB as provided by the terms of Section 3.3 of this Settlement Agreement.

1.14. "Reconfigured Kahama Parcels" means the Kahama Parcels and the additional thirty-five (35) feet of property which is to be added equally to each of the Kahama Parcels (Lot 1 and Lot 2) pursuant to Section 5.4 of this Settlement Agreement, resulting in Lot 1 and Lot 2 each having a total of eighty-seven and one-half (87.5) feet of ocean front property following approval of the Amended PUD/PDP or a Subsequent PUD/PDP and replating of the Tax Parcel as contemplated in Section 4.3 of this Settlement Agreement.

1.15. "Reconfigured Beach Club Parcels" means the Beach Club Parcel once it has been reconfigured to eliminate a thirty-five (35) foot wide parcel of ocean front property that is to be conveyed to Kahama, leaving a seventy-five (75) foot wide ocean front parcel to be owned by ACSA for residential purposes and/or active recreational purposes, and a one hundred seventy-nine (179) foot wide ocean front parcel to be owned by ACSA for active recreational purposes, following approval of the Amended PUD/PDP or a Subsequent PUD/PDP Amendment and replating of the Tax Parcel as contemplated in Section 4.3 of this Settlement Agreement.

1.16. "Recreation Parcel" means that parcel currently designated for recreational uses that is located adjacent to the golf course and on which a vacant administrative building is located, as more particularly described in Schedule 3.

1.17. "Registry of the Court" means the repository maintained by the Clerk of the Eighteenth Judicial Circuit Court, which is the current location of the executed deed to the Beach Club Parcel and to the Community Center Parcel that is subject to the Property Escrow Agreement.

1.18. "Riversedge Parcels" means the undeveloped parcels that are currently owned by CFB and that are designated on the PUD/PDP as Stage 4, Tracts V and VIII; Stage 4, Tract IX (Commercial/Marina parcel); and Stage 4, Tract C (road easement). The legal description of the Riversedge Parcels is attached hereto as Schedule 4.

1.19. "Stage 4, Tracts V and VIII" means the undeveloped residential portion of the Riversedge Parcels as designated on the PUD/PDP.

1.20. "Subsequent PUD/PDP Amendment" means any further amendment to the PUD/PDP contemplated by this Settlement Agreement and submitted by either Kahama or ACSA as the result of either of these parties not participating in the PUD/PDP Amendment referenced in Section 3.3 of this Settlement Agreement.

1.21. "Tax Parcel" means tax parcel ID # 29-38-36-05-0000A.0-0000.00 that includes the Kahama Parcels, the Beach Club Parcel and Lot 3.

Article 2. Contingency Provision.

2.1. The terms and conditions set forth in this Settlement Agreement are conditioned upon the satisfaction of the following events: (i) ACSA obtaining approval of this Settlement Agreement from its membership; and (ii) the Brevard County Commission approving the Settlement Agreement within ninety (90) days of all other parties executing same. In the event ACSA does not approve this Settlement Agreement on or before November 15, 2009, or, in the sole discretion of the Board of Directors of ACSA, on a later date that is prior to December 15, 2009, then this Settlement Agreement shall automatically terminate and the remaining terms and conditions shall be null and void.

Article 3. CFB Commitments

3.1. The CFB Commitments become effective only upon satisfaction of the Contingency Provision.

3.2. CFB shall pay to ACSA Two Hundred Seventy Five Thousand and 00/100 Dollars (\$275,000.00) upon the following terms and conditions:

3.2.1. One Hundred Thousand and 00/100 Dollars (\$100,000.00) within ten (10) days following receipt of written notice from ACSA that it has obtained a building permit from

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the County for construction of either (i) a community pool on the Community Center Parcel or on the Beach Club Parcel, or (ii) a community building on the Beach Club Parcel, and has executed a contract for construction of same. The notice shall attach a copy of the building permit and a copy of the fully executed construction contract.

3.2.2. Seventy-five Thousand and 00/100 Dollars (\$75,000.00) on or before March 1, 2010, so that ACSA will have funds available on April 1, 2010, to pay its share to redeem the 2007 and 2008 tax certificates that have been issued on the Tax Parcel and, in cooperation with Kahama, prevent the delivery of a tax deed to the holder or holders of the tax certificates.

3.2.3. One Hundred Thousand and 00/100 Dollars (\$100,000.00) at the earliest occurrence of the following events: (i) ten (10) days following CFB's sale of Stage 4, Tracts V and VIII; or (ii) ten (10) days following receipt of notice from ACSA that it has obtained a building permit from the County for a community pool on the Community Center Parcel or on the Beach Club Parcel, or has obtained a building permit for a community building on the Beach Club Parcel, and has executed a contract for construction and provided proof of same; provided, however, that the building permit and construction contract used to satisfy this element must be different from the building permit and construction contract used to satisfy Subsection 3.2.1.

3.3. CFB agrees that it shall take the lead role in the preparation of the proposed PUD/PDP Amendment and shall retain, at its sole expense, the land planner and other consultants that may be needed to submit and process the PUD/PDP Amendment. During preparation of the PUD/PDP Amendment, CFB shall receive input from Kahama (only as to the Kahama Parcels) and from ACSA (only as to the Beach Club Parcel, the Community Center Parcel, the boat storage relocation parcel referenced in this Section 3.3, Lot 3, and the Recreation Parcel), or regarding the reconfiguration of the Kahama Parcels and the Beach Club Parcel, as well as the other matters on which input is required by the terms of this Settlement Agreement or the County Code. CFB shall incorporate the information obtained from Kahama and ACSA, as provided herein for the proposed PUD/PDP Amendment submittal to the County, provided such input is received by CFB within sixty (60) days of CFB's written request for such input, and failing timely receipt of same, CFB may proceed with the proposed PUD/PDP Amendment for the Riversedge Parcels only (and without such other matters being addressed therein). CFB's written request for input shall be given no later than January 15, 2010. The proposed PUD/PDP Amendment (if timely input is received from ACSA as required by the preceding sentence), or any Subsequent PUD/PDP Amendment, shall relocate the current boat storage area to an upland, open space parcel to be identified by ACSA that is not owned by CFB, but which is owned or leased by ACSA (if leased, ACSA shall obtain the consent of the owner to the PUD/PDP Amendment or to any Subsequent PUD/PDP Amendment). If timely input is not received from ACSA as required above (such that the relocation of the boat storage areas cannot be reflected in the proposed PUD/PDP Amendment), the proposed PUD/PDP Amendment may allow other development in the area of the current boat storage area; thereafter, in addition to relocating the boat storage area, a Subsequent PUD/PDP Amendment may make other changes to the PUD/PDP with respect to real property owned or controlled by the applicant for the Subsequent PUD/PDP Amendment. CFB, Kahama and ACSA agree that the proposed PUD/PDP

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Amendment and any Subsequent PUD/PDP Amendment will not request modification of any waiver or "grandfathering" language that may be contained in the PUD/PDP.

3.4. Provided that written comment has been timely received by CFB as required by Section 3.3., CFB shall provide the final draft of the proposed PUD/PDP Amendment to Kahama or ASCA, or both if prior timely written input was received from both, and Kahama, ASCA, or both as applicable, shall have fourteen (14) days following receipt of the final draft in which to provide CFB additional written notice of any additional changes that need to be made in order to fully implement the intended use of the parcels on which either Kahama or ASCA are entitled to provide written input for the proposed PUD/PDP Amendment.

3.5. At the time CFB submits the proposed PUD/PDP Amendment, CFB shall include a request to transfer from the two hundred twenty seven (227) residential units that are currently allocated to Stage 4, Tracts V and VIII of the PUD/PDP, four (4) residential units to Kahama for use on the Reconfigured Kahama Parcels and two (2) residential units to ASCA for use on the Reconfigured Beach Club Parcel. CFB will retain two hundred twenty-one (221) residential units for development in Stage 4, Tracts V and VIII of the PUD/PDP. The residential units that are to be transferred for use on the Reconfigured Kahama Parcel and the Reconfigured Beach Club Parcel shall be reserved for use on these Parcels irrespective of the ownership of these Parcels at the time of submittal or approval of the PUD/PDP Amendment. The Riversedge Parcels may be reconfigured and renumbered in the PUD/PDP Amendment or in a Subsequent PUD/PDP Amendment. Notwithstanding the foregoing, in the event ASCA acquires the Recreation Parcel or acquires Lot 3, ASCA shall be entitled to receive two (2) additional residential units of CFB's two hundred twenty-one (221) residential units for use on the acquired property, and CFB shall retain two hundred nineteen (219) residential units for development in Stage 4, Tracts V and VIII, as these Tracts may be reconfigured and renumbered in the PUD/PDP Amendment or any Subsequent PUD/PDP Amendment. If ASCA desires to use one (1) or both of the additional two (2) residential units on the Recreation Parcel, ASCA must demonstrate to the satisfaction of the County's zoning official that it has also obtained from someone other than CFB (unless CFB subsequently agrees to provide it), a sufficient amount of additional open space within the PUD/PDP to allow conversion of the Recreation Parcel into residential use as a minor amendment of the PUD/PDP or shall submit an application for a major amendment to the PUD/PDP in order to reduce the open space requirement. ASCA's rights and obligations created herein regarding the Recreation Parcel and Lot 3 are fully assignable to a third party without prior approval of the other parties to this Agreement.

3.6. CFB agrees that it shall provide an additional 14,740 s.f. of active recreational open space in Stage 4, Tracts V and VIII in the proposed PUD/PD Amendment submittal to offset the conversion of 14,740 s.f. of active recreational open space from the Beach Club Parcel into residential area for use by Kahama and ASCA, as follows: (35 ocean-front feet to Kahama + 75 ocean-front feet to ASCA for residential purposes) x 134 feet depth of property = 14,740 s.f.

3.7. CFB agrees to deliver to ASCA a quit claim deed at the conclusion of its foreclosure on the Community Center Parcel such that the deed currently being held in the

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Registry of the Circuit Court under the terms of the Property Escrow Agreement can be released to ACSA free and clear of the mortgage or interest of CFB in the Community Center Parcel.

3.8. CFB agrees to proceed expeditiously with the pending foreclosure action (Case No. 05-2008CA21914 in the Eighteenth Judicial Circuit in and for Brevard County, Florida) so that the Community Center Parcel can be conveyed to ACSA free and clear of any liens filed by third parties which can be eliminated by the above-referenced foreclosure proceeding. Notwithstanding the foregoing, CFB agrees that any foreclosure action shall not eliminate the existence of, or the obligations contained in the FUD/PDP or this Settlement Agreement but shall eliminate all title interests or claims of ACSA in the Riversedge Parcels other than its currently recorded easement rights, subject to those rights being reconfigured under Section 3.5 above.

3.9. CFB agrees to pay any taxes that may be due and owing on the Community Center Parcel so that it can be conveyed to ACSA without any delinquent tax liability. Taxes for the year 2008 have been paid.

3.10. CFB agrees that from the closing proceeds that would otherwise be due to it, the court appointed Receiver will pay to ACSA all assessments due, up to the date of the first sale of each unit, on the Ocean Dunes Condominium Units that may be sold. The assessments due for each unit shall be paid at the closing of each unit by the Receiver or his closing agent. If for any reason the Receiver does not pay to ACSA the funds due from the closing proceeds as described herein and pays same to CFB, CFB shall pay such funds to ACSA.

3.11. CFB agrees to assign any interest it may have in the lease of the submerged lands to ACSA, which lease is recorded in Official Records Book 5286, page 1767, of the Public Records of Brevard County, Florida. The parties agree that this lease has expired, and that ACSA shall pay the cost for CFB to obtain a new lease from the State of Florida, Department of Environmental Protection. Assuming that CFB is successful in obtaining the new lease, CFB shall then assign the lease to ACSA. The other parties to this Settlement Agreement shall cooperate with CFB and ACSA in the efforts to obtain a new lease of the submerged lands, provided that they shall not be required to incur any costs in doing so.

3.12. CFB agrees to lease to ACSA for One and 00/100 Dollar (\$1.00) per year the fenced area that is currently being used for boat storage. CFB shall draft a lease for review and execution by ACSA that: (i) allows use of the boat storage area exclusively by the ACSA members and/or tenants; (ii) provides that ACSA shall maintain the boat storage area and shall use its best efforts to prevent unauthorized dumping of household trash and other materials in the storage area or in the conservation area adjacent to the water's edge; (iii) requires that liability insurance be maintained by ACSA; and (iv) includes other reasonable terms and conditions typical of similar leases of vacant land for storage purposes. The lease shall terminate upon CFB's giving ASCA ninety (90) days prior written notice of its intent to terminate the lease, but only: (i) in the event that CFB sells the leased property to an unrelated third party; or (ii) a certificate of occupancy is issued for construction within one thousand five hundred (1,500) feet of any boundary line of the leased property; or (iii) permits are issued for construction of one half of the vested number of residential units on the land which presently comprises Stage 4, Tracts V and VIII; or (iv) there is a material breach of the terms of the lease by ACSA after

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reasonable notice and an opportunity to cure the breach. CFB shall have the responsibility, at its sole expense, for resolving the Notice of Violation issued by the St. Johns River Water Management District on July 23, 2009, regarding Compliance Item No. 933639 for the adjoining conservation area adjacent to the Mullet Creek water's edge and within property owned by CFB.

3.13. Prior to or contemporaneously with its execution of this Settlement Agreement, CFB shall execute an affidavit in the form attached hereto as Schedule 5.

3.14. CFB shall participate and cooperate with ACSA in the amendment of the ACSA Governing Documents to accomplish the intended purposes of this Settlement Agreement, including the conveyance by ACSA of the north 35 feet of the Beach Club Parcel to Kahama.

3.15. After the effective date of the PUD/PDP Amendment, in the event CFB wishes to further amend the PUD/PDP, as amended, CFB shall send a copy of the submittal to ACSA and Kahama contemporaneously with submitting the proposed amendment to the County. Any such further amendment of the PUD/PDP shall not affect the Reconfigured Kahama Parcels and/or any property owned by ACSA without the express written consent of Kahama and/or ACSA, as applicable.

Article 4. Kahama Commitments.

4.1. Kahama shall proceed with its pending foreclosure action to obtain title to the Kahama Parcels. Notwithstanding the foregoing, Kahama agrees that any foreclosure action shall not eliminate the existence of, or the obligations contained in, the PUD/PDP or this Settlement Agreement. Kahama shall not be obligated to perform any of the following commitments until such time as its pending foreclosure action against Indian River No. 1 Developers, LLC (Case No. 05-2007-CA-072320 in the Eighteenth Judicial Circuit in and for Brevard County, Florida) has been completed and title to the Kahama Parcels has vested in Kahama. Kahama shall proceed in good faith to expeditiously complete the pending foreclosure action and obtain title to the Kahama Parcels. Within ten (10) days following issuance of the Certificate of Title to Kahama by the Clerk of the Court, Kahama shall give written notice to the other parties to this Settlement Agreement that title has vested in Kahama.

4.2. Kahama agrees to coordinate with ACSA and pay prior to April 1, 2010 (the earliest date that will avoid issuance of a tax deed) its share of the amount needed to redeem the tax certificates that have been issued on the Tax Parcel for 2007 and 2008. Since the Tax Parcel includes Lot 3 as well as the Kahama Parcels and the Beach Club Parcel, if the owner or mortgagee of Lot 3 is not willing to pay a share of the past due taxes, then Kahama and ACSA shall proportionally share the additional taxes attributable to Lot 3. In this instance, Kahama's pro-rata share of the past due taxes will be 40.79 percent of the taxes and interest owed and ACSA's pro-rata share of the past due taxes will be 59.21 percent of the taxes and interest owed. If the owner or mortgagee of Lot 3 will pay the share of the past due taxes and interest that is attributable to Lot 3, then Kahama's pro-rata share would be reduced to 35.07 percent, ACSA's pro-rata share would be reduced to 50.90 percent, and the pro-rata share of the Lot 3 owner or mortgagee would be 14.03 percent.

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4.3. Kahama agrees to take the lead role in replatting the Tax Parcel into four (4) or five (5) separate taxable parcels as specified in Subsection 4.4.4. below. Prior to beginning the replatting process, Kahama shall determine whether the owner or mortgagee of Lot 3 is interested in participating in the replatting process and whether it will contribute equally with Kahama and ACSA toward payment of the replatting expense.

4.4. Total cash to be paid by Kahama to ACSA shall be Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00). The payment shall be deposited in escrow with the Escrow Agent, in favor of ACSA, within ten (10) days following satisfaction of Subsections 4.4.1. and 4.4.2. The escrow deposit shall be released to ACSA within ten (10) days following satisfaction of Subsections 4.4.3. and 4.4.4. Kahama shall submit the replatting application to the County not later than thirty (30) days following title to the Kahama Parcels vesting in Kahama, as provided in Subsection 4.1.

4.4.1. ACSA places in escrow with the Escrow Agent a duly executed warranty deed conveying to Kahama thirty five (35) ocean-front feet of property that is immediately south of the Kahama Parcels;

4.4.2. ACSA places in escrow with the Escrow Agent a document releasing and abandoning any and all rights, whether express or implied, under the easements that provide parking, access rights and all other rights ACSA may have over the Kahama Parcels granted in the Access and Parking Easement Agreement and Modification to Access and Parking Easement Agreement that is recorded in Official Records Book 4485, Page 2479 and Book 4495, Page 1938, respectively, in the Public Record of Brevard County, Florida.

4.4.3. The PUD/PDP is amended to reflect a reconfiguration of the existing Kahama Parcels and the additional property to be conveyed by ACSA into two (2) lots that each may be developed as three (3) attached units or as one (1) single family unit at maximum of thirty five (35) feet in height.

4.4.4. The Tax Parcel is replatted to create four (4) or five (5) separate taxable parcels, as follows: (i) two (2) eighty-seven and one-half (87.5) foot wide parcels that will be owned by Kahama for residential purposes; (ii) one (1) seventy five (75) foot wide parcel that will be owned by ACSA for residential purposes or used as a beach club facility; (iii) one (1) one hundred seventy nine (179) foot wide parcel that will be owned by ACSA for active recreational purposes; and possibly (iv) one (1) seventy (70) foot wide lot defined herein as Lot 3.

4.5. Within ten days following receipt of notice from any party confirming that all of the requirements in Subsections 4.4.3 and 4.4.4. have been satisfied, the Escrow Agent shall release the documents in escrow to Kahama for recording at Kahama's sole expense, and shall release the funds in escrow to ACSA. In the event the County does not approve the application for replatting, the Escrow Agent shall return all funds and documents held in escrow pursuant to this Section 4.5 to the party who placed the funds or the documents in escrow within ten (10) days following receipt of the County's denial of the application for replatting. If the replatting is approved by the County, and following release of the funds and documents held in the escrow to ACSA and Kahama, respectively, Kahama shall allow ACSA to temporarily utilize the property

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that was formerly subject to the Access and Parking Easement Agreement and Modification to Access and Parking Easement Agreement that is recorded in Official Records Book 4485, Page 2479, and in Official Records Book 4495, Page 1938, respectively, in the Public Record of Brevard County, Florida, for a period of ninety (90) days following escrow release. Subsequent to escrow release, ACSA shall have the right to file in the Public Records of Brevard County a Notice of Temporary Access and Parking Rights in order to put third parties on notice that these temporary use rights have been granted by Kahama. ACSA shall name Kahama as an additional insured on its liability insurance policy which shall be provided within fifteen (15) days following execution of this Settlement Agreement and which shall remain in effect until the temporary access rights are terminated as provided in this Section 4.5. No extensions to the termination date for the temporary access rights shall be valid unless Kahama expressly agrees to the extension in writing and ACSA expressly agrees in writing to continue including Kahama as an additional insured on its liability insurance policy.

4.6. If Kahama desires to obtain a title commitment or owner's title policy on the Kahama Parcels and/or the additional thirty five (35) feet of property to be conveyed by ACSA to Kahama, then Kahama shall obtain the title commitment or title policy at its sole cost and expense.

4.7. After the effective date of the PUD/PDP Amendment, in the event Kahama wishes to apply for a Subsequent PUD/PDP Amendment, Kahama shall send a copy of the submittal to ACSA and CFB contemporaneously with submitting the proposed amendment to the County.

Article 5. ACSA Commitments.

5.1. ACSA shall provide written notice to each of the other parties to this Settlement Agreement that the Contingency Provision set forth in Subsection 2.1(i) above has been satisfied within ten (10) days following full satisfaction of this contingency.

5.2. ACSA agrees to waive any claim for past due assessments that it may have against Flaresco or CFB under Florida Statutes Section 720.3085 and in consideration thereof, will acknowledge that when CFB's property is sold to a third party, that third party would be recognized as a "Participating Builder" under the terms of the Governing Documents. The waiver referenced in this Subsection 5.2 is not intended to and does not waive any assessments due and owing pursuant to Section 3.10 of this Settlement Agreement.

5.3. ACSA agrees to amend the ACSA Governing Documents to provide for the conveyance to Kahama of that portion of the Beach Club Parcel that is thirty five (35) feet wide and contiguous to the southernmost of the Kahama Parcels and to conform to the other provisions of this Settlement Agreement.

5.4. Following receipt of notice from Kahama that title to the Kahama Parcels has vested in Kahama, ACSA agrees to execute and place in escrow with the Escrow Agent a warranty deed conveying to Kahama the thirty five (35) feet of the Beach Club Parcel which is located immediately south of and contiguous to the Kahama Parcels. ACSA also agrees to execute and place in escrow with the Escrow Agent a document releasing and abandoning any

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and all rights, whether express or implied, under the easements that provide parking, access rights and all other rights ACSA may have over the Kahama Parcels granted in the Access and Parking Easement Agreement and Modification to Access and Parking Easement Agreement that is recorded in Official Records Book 4485, Page 2479, and Book 4495, Page 1938, respectively, in the Public Record of Brevard County, Florida. Notwithstanding the foregoing, Kahama has agreed in Section 4.5 of this Settlement Agreement that following termination of the described easement rights, it will allow ACSA to temporarily utilize the property that was formerly subject to the Access and Parking Easement Agreement and Modification to Access and Parking Easement Agreement that is recorded in Official Records Book 4485, Page 2479, and in Official Records Book 4495, Page 1938, respectively, in the Public Record of Brevard County, Florida, in accordance with the terms and conditions set forth in Section 4.5. ACSA hereby confirms that it shall name Kahama as an additional insured on its liability insurance policy in accordance with the terms and conditions of Section 4.5 of this Settlement Agreement. The provisions of Section 4.5 shall prevail in the event of a conflict between this Section 5.4 and Section 4.5.

5.5. ACSA agrees to pay to Kahama one-half (1/2) of the reasonable costs of replatting the Tax Parcel incurred by Kahama and also agrees to join Kahama in executing the application for replatting and the final plat.

5.6. If ACSA desires to obtain a title commitment or owner's title policy on the parcels it will own once the Tax Parcel is replatted, then ACSA shall obtain the title commitment or title policy at its sole cost and expense.

5.7. ACSA agrees to give copies of all concept plans and permit plans for the community pool and for all improvements on the Beach Club Parcel to CFB for CFB's review and comment. CFB's comments shall be considered by ACSA prior to the next subsequent revision of such concept plans or permit plans, and the CFB comments on the finalized set shall be considered prior to such concept plans and permit plans being submitted for consideration and approval by governmental authorities. The term "considered" as used herein does not obligate ACSA to concur with or implement any of the comments received.

5.8. The Board of Directors of ACSA, on behalf of ACSA, agrees to support CFB's proposed PUD/PDP Amendment for all property currently owned by CFB, as such Amendment is described in this Settlement Agreement. The support required by this Section 5.7 may be in writing or in person, at the election of the Board of Directors of ACSA.

5.9. ACSA and CFB agree to mutually cooperate in the preparation of amendments to the Governing Documents as each may reasonably request.

5.10. ACSA agrees that Kahama, its successors or assigns, shall have the option of having one (1) or both of the Reconfigured Kahama Parcels become members of ACSA. Each option may be exercised in writing not later than ten (10) days following issuance of the first Certificate of Occupancy for the particular Reconfigured Kahama Parcel to which it applies. Upon the exercise of the option for either of the Reconfigured Kahama Parcels, assessments and capital contributions shall be due and owing under the Governing Documents. If an option is exercised in accordance with this Section 5.10, Kahama, or its successor in title, shall execute an

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appropriate document annexing the applicable Reconfigured Kahama Parcel into ACSA and joining in and consenting to the terms of the Governing Documents; provided, however, neither Kahama nor its successors or assigns shall have an obligation to pay ACSA dues or assessments imposed prior to the date the option is exercised.

5.11. After the effective date of the PUD/PDP Amendment, in the event ACSA wishes to apply for a Subsequent PUD/PDP Amendment, ACSA shall send a copy of the submittal to CFB and Kahama contemporaneously with submitting the proposed amendment to the County.

5.12. ACSA acknowledges and agrees that all real property, improvements thereon, or both, which ACSA receives from CFB, and its successors and assigns, as a result of this Settlement Agreement will be deemed transferred and accepted "As and With All Faults" and without any: (i) warranties of specifications (that such specifications complied with applicable construction code requirements or professional standards), (ii) warranties that construction was performed in accordance with approved plans, (iii) warranties that the improvements are free of construction defects, (iv) warranties of work and materials, or (v) warranties of fitness for a particular purpose.

5.13. ASCA warrants and represents that the performance by ACSA of its obligations under this Settlement Agreement has been duly authorized, including where necessary by requisite action of ASCA's members at duly noticed and held meetings (i.e. elections) for such purpose. ASCA further warrants and represents that the ACSA Board of Directors has the legal authority to perform such obligations in accordance with the terms of this Settlement Agreement and without any further authorizing action being a necessary condition precedent.

Article 6. County Commitments.

6.1. Following the County's approval of this Settlement Agreement and within fifteen (15) days following receipt of written notice from ACSA that the contingency set forth in Subsection 2.1 has been satisfied, the County shall pay to ACSA the sum of Sixty Eight Thousand and 00/100 Dollars (\$68,000.00) to be applied toward the planning, design and/or construction of the community building and/or community pool described in Section 3.2 of this Settlement Agreement herein, including such costs as may be necessary to pay for and/or satisfy any liens on the Beach Club Parcel.

6.2. The County agrees to seek an Order from the Court in Case No. 05-2009-CA-072320 to allow early release of the Deed from the Registry of the Court and delivery of the Deed to ACSA.

6.3. The County shall waive all fees associated with filing and processing the application for the proposed PUD/PDP Amendment and any Subsequent PUD/PDP Amendment. Furthermore, the County agrees to expedite its review and processing of same if consistent with the terms of this Settlement Agreement.

6.4. The County shall waive all fees associated with replatting of the Tax Parcel.

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6.5. The County shall determine whether it has the ability to extinguish any public access rights to the marina located within the PUD/PDP, and, if so, to take the actions necessary to extinguish those rights. The County hereby acknowledges and agrees that any extinguishment of public access rights shall not extinguish the right of ACSA members, their tenants and invitees to access the boat ramp, dock and parking lot located within the Commercial/Marina parcel that comprises part of the Riversedge Parcels.

6.6. The County acknowledges and agrees that in addition to (and notwithstanding) whatever rights to development may be now or in the future permitted pursuant to the County's Comprehensive Plan or Land Development Regulations, the area within the PUD/PDP known as Stage 4 Tract VIII (Riversedge South) is vested for development and use of one hundred forty-two (142) mid-rise residential dwelling units, subject to CFB's compliance with applicable County Land Development Regulations.

6.7. The County acknowledges and agrees that in addition to (and notwithstanding) whatever rights to development may be now or in the future permitted pursuant to the County's Comprehensive Plan or Land Development Regulations, the area within the PUD/PDP known as Stage 4 Tract V (Riversedge North) is vested for development and use of eighty-five (85) mid-rise residential dwelling units, subject to CFB's compliance with applicable County Land Development Regulations.

6.8. The County acknowledges and agrees that in addition to (and notwithstanding) whatever rights to development may be now or in the future permitted pursuant to the County's Comprehensive Plan or Land Development Regulations, the area within the PUD known as Stage 4 Tract IX (Commercial/Marina Parcel) is vested for development and use of commercial and marina facilities, including but not limited to retail, restaurant, marina (including boat storage, ramps, slips, docks, and piers), and private recreation uses. The PUD/PDP Amendment shall specifically authorize development of these uses on the Commercial/Marina Parcel, subject to compliance with all applicable County Land Development Regulations provisions related to such uses.

6.9. The County acknowledges and agrees that except for the approval of a Final Development Plan, as this term is defined in the County's Land Development Regulations, showing the design, location and arrangement of structures to accommodate the Entitlements, and except for satisfying conditions of such Final Development Plan Approval which must be met prior to applying for building permits (if any), there are no other County zoning, subdivision, or comprehensive planning conditions precedent to constructing the Entitlements. Construction must comply with the provisions of the Florida Building Code.

6.10. The County agrees to an extension of time until December 31, 2015, in which to file an application for approval of a Final Development Plan(s) for the vested Entitlements. This time period may be further extended by the County, pursuant to the County's proper practice and procedures. In no event will the failure to file an application for approval of a Final Development Plan(s) affect the continued viability of the Entitlements or the fact that they are vested; rather, if an application for Final Development Plan(s) is (are) not filed within the time period provided above for the vested Entitlements or within the time period that may be

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otherwise applicable for the balance of the Entitlements, as such time periods may be further extended, the status of the affected Entitlements shall be that they will be merely inactive until such Final Development Plan(s) is (are) duly filed.

6.11. The County agrees that it shall not take any action that would restrict or adversely affect the Entitlements, and further, agrees to take such actions as may be necessary to confirm or preserve such Entitlements in the event some existing or future law or regulation is determined to affect the Entitlements.

6.12. Upon receipt of the proposed PUD/PDP Amendment application or any Subsequent PUD/PDP Amendment application, the County shall consider the application pursuant to Section 62 of the County Code. The County zoning official has determined that the proposed PUD/PDP Amendment and any Subsequent PUD/PDP Amendment that is proposed in accordance with the terms of the Settlement Agreement is not "substantial" as defined in subsection 62-1448(c) of the County Code. The Brevard County Commission agrees that the proposed PUD/PDP Amendment as described in this Settlement Agreement is minor in nature, is not "substantial" as defined in subsection 62-1448(c) of the County Code, and hereby directs the zoning official to administratively process the proposed PUD/PDP Amendment and any proposed Subsequent PUD/PDP Amendment as such.

6.13. In the event the lien on the Beach Club Parcel that is held by International Golf Maintenance, Inc., a Delaware corporation ("IGM") has not been released on or before January 15, 2010, the County hereby agrees to initiate a claim against IGM, either in pending Case No. 05-2009-CA-011928 or as a separate action, in an effort to enforce the PUD/PDP requirement that the Beach Club Parcel be conveyed to ACSA free and clear of any liens. The County also agrees to pursue this claim to its conclusion.

Article 7. Miscellaneous Provisions.

7.1. Each party shall cooperate with the other parties in the implementation of this Settlement Agreement and agrees to execute additional documents that may be necessary to effectuate the purposes of this Settlement Agreement.

7.2. All parties stipulate for all purposes regarding any rights or obligations that arise under the ACSA Governing Documents that neither Flaresco, nor CFB are or shall be deemed the "Developer" of the PUD/PDP, or any portion thereof, and shall also stipulate that none of these entities ever acquired rights as the "Developer," except the voting rights, if any, of the Developer, as that term is defined in the Governing Documents.

7.3. All parties agree that the development vested for Stage 4 Tract V, Stage 4 Tract VIII, and Stage 4 Tract IX of the PUD, as described in Sections 6.6, 6.7 and 6.8 is not burdened with completing any construction or development obligations for, of, or with respect to any other property within the PUD/PDP. Furthermore, each of these sites may be developed independently from each other, or concurrently with each other.

Handwritten initials/signature

7.4. Notices under this Agreement shall be given to the parties by mailing written notice postage prepaid, to the parties at the following addresses:

7.4.1. **If to County to:** Christine Lepore, Esq., Attorney for Brevard County, Brevard County Attorney's Office, 2725 Judge Fran Jamieson Way, Bldg. C, Room 308, Viera, FL 32940.

7.4.2. **If to CFB to:** Harris Solomon, Esq., Attorney for Mercantile Bank and Carolina First Bank, Brinkley, Morgan, Solomon, Tatum, Stanley & Lunny, LLP, Suite 1900, 200 E. Las Olas Boulevard, Fort Lauderdale, FL 33301-2248.

7.4.3. **If to Kahama to:** Robert Abraham, Esq., 220 S. Ridgewood Avenue, Suite 200, Daytona Beach, FL 32114 and to Edward Kinberg, Kinberg & Associates, LLC, 1290 W. Eau Gallie Boulevard, Melbourne, FL 32935, Attorneys for Kahama VII, LLC.

7.4.4. **If to ACSA to:** Jay S. Levine, Esq., Attorney for Aquarina Community Services Association, Inc., Jay Steven Levine Law Group, 2500 N. Military Trail, Suite 283, Boca Raton, FL 33431-6322.

7.5. Time is hereby declared of the essence as to the lawful performance of all duties and obligations set forth in this Agreement. For purposes of the time requirements hereunder, such time frames shall, unless otherwise specifically stated herein: (i) include the day from which the period commences; and (ii) be construed to mean calendar days; provided that if the final day of such period falls on a Saturday, Sunday or legal holiday, such period shall extend to the first business day thereafter.

7.6. The parties shall have the right to enforce a breach of the terms and conditions of this Settlement Agreement. Each party agrees that the terms of this Settlement Agreement may be enforceable by injunctive relief by each party to this Settlement Agreement and their successors and assigns, either individually or collectively, regardless of the existence or adequacy of any other remedy or of an action at law for damages. In any action to enforce the terms of the Settlement Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees.

7.7. This Settlement Agreement may only be modified, supplemented or amended in writing, executed by all parties.

7.8. This Settlement Agreement shall be governed by the laws of the State of Florida. Venue for any legal action authorized hereunder shall exclusively be in the Circuit Court for the Eighteenth Judicial Circuit in and for Brevard County, Florida, and jurisdiction shall be vested exclusively in such court. The parties hereto stipulate to the personal jurisdiction of the referenced court and waive any defenses thereto. **THE PARTIES ALSO HEREBY WAIVE TRIAL BY JURY WITH RESPECT TO ANY SUCH ACTION OR PROCEEDING.**

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7.9. Except as specifically provided in this Settlement Agreement, the parties hereto shall bear their own expenses, including attorneys' fees and costs, incurred in negotiating, delivering and performing the obligations contemplated by this Settlement Agreement.

7.10. The covenants, terms, conditions, provisions and undertakings in this Settlement Agreement shall extend to and be binding upon the heirs, personal representatives, executors, administrators and permitted successors and assigns of the respective parties hereto.

7.11. This Settlement Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter of this Settlement Agreement and supersedes any and all previous agreements between the parties hereto, whether written or oral, with respect to such subject matter. Prior drafts of this Settlement Agreement shall not be admissible as extrinsic evidence. The language in all parts of this Settlement Agreement shall, in all cases, be construed as a whole and in accordance with its fair meaning and any ambiguities shall not be resolved against the drafting party.

7.12. This Settlement Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

7.13. This Settlement Agreement is not intended and shall not create a joint venture, partnership or other formal business relationship or entity of any kind, or any obligation to form any such relationship or entity.

7.14. Each signatory to this Settlement Agreement has entered into same freely and without duress, after having consulted with the attorney(s) of his/her choice. The parties acknowledge that the mediator did not give legal advice and is not the attorney for any party, and that each party has had the opportunity to have this Settlement Agreement reviewed by that party's attorney prior to executing same.

7.15. Immediately after the happening of both contingencies in Section 2.1 above, ACSA shall dismiss its claims with prejudice in the cases styled Aquarina Community Services Association, Inc. v. Brevard County, Florida and Carolina First Bank, Case No. 9-CA-025287 and Mercantile Bank v. Indian River Developers, LLC, et al., Case No. 05-2008-LA-21914. After the occurrence of both events referenced in Section 3.7 of this Settlement Agreement; namely, CFB's delivery to ACSA of the quit claim deed to the Community Center Parcel and release to ACSA of the deed currently held in the Registry of the Court, the County shall dismiss with prejudice its claims, counterclaims and crossclaims against CFB, Mercantile and Kahama, VII, in Brevard County, Florida v. Indian River No. 1 Developers, LLC, Carolina First Bank, and Kahama VII, LLC, Case No. 05-2009-CA-011928. All cases are in the Circuit Court for the Eighteenth Judicial Circuit in and for Brevard County, Florida. The County, CFB and Kahama agree to a six (6) month abatement of the latter lawsuit pending ACSA's receipt of both deeds referenced in Section 3.7 of this Settlement Agreement.

(SIGNATURES APPEAR ON THE FOLLOWING PAGES)

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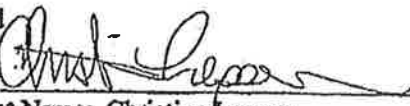
KAHAMA VII VS AQUARINA COMM SV

05-2014-CA-017274-XXXX-XX

RSP
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**BREVARD COUNTY, a political subdivision of
the State of Florida and Charter County**

By: 
Print Name: Howard Tipton
Its: County Manager
Date: 12/1/09

and
By: 
Print Name: Christine Lepore
Its: Assistant County Attorney
Date: November 23, 2009

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KAHAMA VII VS AQUARINA COMM SV

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**AQUARINA COMMUNITY SERVICES
ASSOCIATION, INC.**, a Florida not-for-profit
corporation

By: Taul Higgins
Print Name: Taul Higgins
Its: REG President
Date: 12/3/09

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

CAROLINA FIRST BANK, a South Carolina
corporation authorized to do business in the State of
Florida

By: 
Print Name: MICHAEL J. LEONARD
Its: S.R. V.P.
Date: 02 DEC 09


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KAHAMA VII, LLC, a Florida limited liability
company authorized to do business in the State of
Florida

By: 
Print Name: Mark S. Carter
Its: Managing Member
Date: December 16, 2009

* Subject to the substitution of Greenfield & Coomber, P.A.,
as Escrow Agent in Section 1.4.

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KAHAMA VII VS AQUARINA COMM SV

05-2014-CA-017274-XXXX-XX

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Schedule 1

(Legal description of the Beach Club Parcel)

STAGE 2, TRACT A OF THE AQUARINA PLANNED UNIT DEVELOPMENT AS RECORDED IN PLAT BOOK 33 PAGE 8 OF THE OFFICIAL RECORDS OF BREVARD COUNTY, LESS AND EXCEPT THE FOLLOWING:

1. THE SOUTHERN 110 FEET OF STAGE 2, TRACT A, AS DESCRIBED IN ORB 4265, PAGE 3201 OF THE OFFICIAL RECORDS OF BREVARD COUNTY. CONTAINING 0.61 ACRES MORE OR LESS.
2. THE NORTHERN 140 FEET OF THE AQUARINA PLANNED UNIT DEVELOPMENT STAGE 2, TRACT A, AS RECORDED IN PLAT BOOK 33 PAGE 8 OF THE OFFICIAL RECORDS OF BREVARD COUNTY, LYING WEST OF THE 1981 COASTAL CONSTRUCTION CONTROL LINE AND EAST OF THE STATE ROAD A1A EAST RIGHT OF WAY LINE. CONTAINING 0.299 ACRES MORE OR LESS.
3. THE SOUTHERN 250 FEET OF THE AQUARINA PLANNED UNIT DEVELOPMENT STAGE 2, TRACT A, AS RECORDED IN PLAT BOOK 33 PAGE 8 OF THE OFFICIAL RECORDS OF BREVARD COUNTY, LYING WEST OF THE 1981 COASTAL CONSTRUCTION CONTROL LINE AND EAST OF THE STATE ROAD A1A EAST RIGHT OF WAY LINE, LESS AND EXCEPT THE SOUTHERN 110 FEET OF STAGE 2, TRACT A AS RECORDED IN ORB 4265 PAGE 3201 OF THE OFFICIAL RECORDS OF BREVARD COUNTY. CONTAINING 0.299 ACRES MORE OR LESS.

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Schedule 2

(Legal description of the Community Center Parcel)

STAGE 3, TRACT K, OF AQUARINA P.U.D. STAGE 1; TRACTS C & D, STAGE 2, TRACTS B, D & H, STAGE 3, STAGE 4, TRACTS B, I & X, STAGE 5, AS RECORDED IN PLAT BOOK 41, PAGES 88 THROUGH 92, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; LESS AND EXCEPT THEREFROM THE PROPERTY DESCRIBED IN THE QUITCLAIM DEED RECORDED IN OFFICIAL RECORDS BOOK 4265, PAGE 3193; AND THE QUITCLAIM DEED RECORDED IN OFFICIAL RECORDS BOOK 4265, PAGE 3197, AS CORRECTED BY CORRECTIVE QUITCLAIM DEED RECORDED IN OFFICIAL RECORDS BOOK 4320, PAGE 3349, ALL OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

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KAHAMA VII VS AQUARINA COMM SV

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Schedule 3

(Legal description of Recreation Parcel)

STAGE 1, STAGE 2, AND STAGE 3, OF AQUARINA P.U.D., LOT 3A, AS RECORDED IN
PLAT BOOK 41, PAGE 61 OF THE PUBLIC RECORDS OF BREVARD COUNTY,
FLORIDA.

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KAHAMA VII VS AQUARINA COMM SV

05-2014-CA-017274-XXXX-XX

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Schedule 4

(Legal description of Riversedge Parcels)

PARCEL OF LAND LYING IN SECTIONS 35 AND 36, TOWNSHIP 29 SOUTH, RANGE 38 EAST, BREVARD COUNTY, FLORIDA, BEING A PORTION OF STAGE 4, TRACT I, OF AQUARINA P.U.D. STAGE 1, TRACTS C & D, STAGE 2, TRACTS B, D & H, STAGE 3, STAGE 4, TRACTS B, I, & X, STAGE 5, AS RECORDED IN PLAT BOOK 41, PAGES 88 THROUGH 92; OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE WEST LINE OF GOVERNMENT LOT 3 OF SAID SECTION 36 AND THE NORTHERLY LINE OF STAGE 4, TRACT I, AS SHOWN ON SAID PLAT, AND RUN ALONG SAID NORTHERLY LINE THE FOLLOWING COURSES: S 88° 58' 01" E 45.40 FEET; THENCE S 88° 47' 07" E 228.06 FEET; THENCE N 87° 24' 29" E 221.56 FEET TO THE EASTERLY LINE OF SAID STAGE 4, TRACT I; THENCE RUN ALONG SAID EASTERLY LINE THE FOLLOWING COURSES: S 07° 47' 18" E 160.53 FEET; THENCE S 54° 27' 10" E 68.01 FEET; THENCE S 89° 38' 10" E 253.56 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF AQUARINA BOULEVARD, AS RECORDED IN PLAT BOOK 48, PAGES 47 THROUGH 48, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; SAID POINT LYING ON A CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 514.50 FEET AND FROM WHICH POINT A RADIAL LINE BEARS S 79° 17' 25" E; THENCE RUN SOUTHERLY ALONG SAID RIGHT OF WAY LINE AND ALONG SAID CURVE THROUGH A DELTA ANGLE OF 12° 57' 51" AN ARC DISTANCE OF 116.41 FEET TO THE POINT OF A CUSP OF A CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 22.25 FEET AND A DELTA ANGLE OF 82° 49' 05" AND FROM WHICH POINT A RADIAL LINE BEARS N 87° 44' 45" E; THENCE DEPARTING FROM SAID RIGHT OF WAY LINE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE 32.16 FEET TO THE POINT OF COMPOUND CURVATURE OF CURVE CONCAVE TO THE SOUTH HAVING A RADIUS OF 100.00 FEET AND A DELTA ANGLE OF 56° 57' 44"; THENCE RUN WESTERLY ALONG THE ARC OF SAID CURVE 99.42 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 217.60 FEET AND A DELTA ANGLE OF 35° 36' 01"; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE 135.21 FEET TO THE POINT OF COMPOUND CURVATURE OF A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 479.00 FEET AND A DELTA ANGLE OF 07° 12' 23"; THENCE RUN WESTERLY ALONG THE ARC OF SAID CURVE 60.25 FEET TO THE POINT OF COMPOUND CURVATURE OF A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 268.46 FEET AND A DELTA ANGLE OF 32° 18' 22"; THENCE RUN WESTERLY ALONG THE ARC OF SAID CURVE 151.37 FEET TO THE POINT OF COMPOUND CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 825.58 FEET AND A DELTA ANGLE OF 00° 33' 49"; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE 8.12 FEET;

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THENCE DEPARTING SAID CURVE ON A LINE NOT TANGENT TO SAID CURVE RUN S 15° 46' 33" W 78.28 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 92.00 FEET AND A DELTA ANGLE OF 26° 07' 00"; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE 41.94 FEET TO THE POINT OF TANGENCY; THENCE S 41° 53' 33" W 52.94 FEET; THENCE S 55° 43' 41" W 25.64 FEET; THENCE S 11° 42' 09" E 176.98 FEET TO THE SOUTH LINE OF SAID STAGE 4, TRACT I; THENCE RUN ALONG SAID SOUTH LINE S 78° 16' 10" W 84.84 FEET;

THENCE N 88° 46' 02" W 228.75 FEET TO THE MEAN HIGH WATER LINE OF THE INDIAN RIVER; THENCE RUN ALONG SAID MEAN HIGH WATER LINE N 35° 40' 52" W 48.81 FEET; THENCE N 28° 47' 04" W 41.93 FEET; THENCE N 48° 46' 21" E 16.27 FEET; THENCE N 32° 55' 39" W 34.23 FEET; THENCE N 63° 33' 26" W 24.96 FEET; THENCE N 27° 48' 58" W 36.24 FEET; THENCE S 57° 21' 27" W 6.26 FEET; THENCE N 39° 02' 16" W 38.50 FEET; THENCE N 48° 33' 42" W 53.99 FEET; THENCE N 24° 32' 57" E 8.48 FEET; THENCE N 23° 16' 52" W 30.10 FEET; THENCE N 46° 22' 07" W 64.65 FEET; THENCE N 10° 07' 28" W 59.99 FEET; THENCE N 43° 18' 09" W 29.79 FEET; THENCE S 64° 17' 00" W 9.96 FEET; THENCE S 84° 39' 41" W 26.23 FEET; THENCE N 67° 23' 14" W 6.96 FEET; THENCE N 82° 38' 23" W 11.80 FEET; THENCE N 84° 00' 35" W 11.47 FEET; THENCE N 12° 48' 40" W 13.82 FEET; THENCE N 31° 57' 55" W 28.32 FEET; THENCE N 76° 04' 58" W 24.82 FEET; THENCE S 72° 12' 12" W 13.89 FEET; THENCE S 75° 06' 23" W 13.42 FEET; THENCE N 73° 13' 18" W 19.67 FEET; THENCE N 32° 04' 43" W 20.43 FEET; THENCE N 07° 04' 15" W 14.77 FEET; THENCE N 88° 31' 41" E 16.20 FEET; THENCE S 46° 18' 51" E 11.52 FEET; THENCE S 77° 24' 34" E 16.82 FEET; THENCE N 26° 41' 46" E 14.80 FEET; THENCE N 37° 26' 03" W 38.19 FEET; THENCE S 70° 22' 44" W 22.37 FEET; THENCE N 52° 16' 34" W 33.44 FEET; THENCE N 43° 45' 20" W 90.70 FEET; THENCE N 23° 18' 04" W 42.36 FEET; THENCE N 49° 20' 04" W 23.12 FEET TO THE INTERSECTION OF SAID MEAN HIGH WATER LINE AND THE AFORESAID NORTHERLY LINE OF STAGE 4, TRACT I; THENCE RUN ALONG SAID NORTHERLY LINE THE FOLLOWING COURSES: N 61° 21' 31" E 194.62 FEET; THENCE N 59° 54' 30" E 98.58 FEET; THENCE N 87° 42' 53" E 77.18 FEET; THENCE S 87° 53' 29" E 41.35 FEET; THENCE S 78° 17' 07" E 73.67 FEET; THENCE S 88° 58' 01" E 77.51 FEET TO THE POINT OF BEGINNING.

Handwritten signature/initials

Schedule 5
(Affidavit of CFB)

IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

INDIAN RIVER NO. 1
DEVELOPERS, LLC,

Plaintiff,

CASE NO: 05-2009-CA-15122

vs.

AQUARINA COMMUNITY SERVICES
ASSOCIATION, INC.,

Defendant.

AFFIDAVIT IN SUPPORT OF DEFENDANT AQUARINA COMMUNITY SERVICES
ASSOCIATION, INC.'S MOTION FOR SUMMARY FINAL JUDGMENT

STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

Before me, this day personally appeared Michael Leonard, Senior Vice President of
Mercantile Bank, a division of Carolina First Bank, a South Carolina corporation ("Affiant"),
who, being first duly sworn upon oath, under the penalty of perjury, deposes and states as
follows:

1. The Affiant, Michael Leonard is a Senior Vice President of Mercantile Bank, a
division of Carolina First Bank, a South Carolina corporation ("CFB").

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2. The Affiant affirms that CFB is authorized to do business in the state of Florida, and owns all assets of Mercantile Bank, a division of Carolina First Bank, and Flaresco, Inc., which was merged into Carolina First Bank.

3. Indian River No. 1 Developers, LLC, a Florida limited liability company ("IRD") conveyed to Flaresco, Inc. (which was merged into Carolina First Bank) all of the commercially developable parcels of real property then owned by IRD within Aquarina and subject to the Declaration of Covenants, Conditions and Restrictions for Aquarina, along with "all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining" to such property conveyed, which included all developer voting rights, if any, of IRD with respect to Aquarina. The deed of conveyance was recorded on December 2, 2008 in Official Record Book 5900, at Page 6289, Public Records of Brevard County, Florida. Said deed is attached hereto and made a part of this Affidavit as Exhibit "A".

4. Based on the above deed, IRD had no developer voting rights, if any existed, within Aquarina beginning with December 2, 2008.

5 Affiant further sayeth naught.



Michael Leonard, Senior Vice President
Mercantile Bank, a division of Carolina First
Bank, a South Carolina corporation

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

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SWORN TO (or affirmed) and subscribed before me on this 2nd day of December, 2009, by MICHAEL LEONARD, in his capacity as Senior Vice President of Mercantile Bank, a division of Carolina First Bank, a South Carolina corporation.

Leda Lorenzo
Notary Public - State of Florida

☒ Personally Known To Me.
☐ Produced Identification



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ADDENDUM TO SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This ADDENDUM TO SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Addendum") is made and entered into by and between Plaintiff, KAHAMA VII, LLC ("KAHAMA"), and Defendant, AQUARINA COMMUNITY SERVICES ASSOCIATION, INC. ("AQUARINA"), collectively the "Parties".

RECITALS

WHEREAS, on January 30, 2019, the Parties executed a Settlement Agreement and Mutual Release (the "Agreement"), which is attached as Exhibit "A" to this Addendum, as a resolution to Case No 05-2014-CA-017274 (the "Litigation") in the 18th Judicial Circuit Court in and for Brevard County, Florida (the "Court"); and,

WHEREAS, on January 31, 2019, the Court stayed the Litigation pending the consent by Brevard County (the "COUNTY") of the Agreement; and,

WHEREAS, the COUNTY's Staff have requested some clarifying changes to the Agreement in order to recommend that the Brevard County Board of County Commissioners consent thereto, which clarifications are set forth in this Addendum; and,

NOW, THEREFORE, in consideration of the foregoing, the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. The recitals are true and correct and incorporated for all purposes herein. The capitalized terms in this Addendum have the same meaning as in the Agreement.
2. On February 15, 2019, KAHAMA formed Bluewater Residents Association, Inc., a Florida not-for-profit corporation, to be the not-for-profit legal entity described in Paragraph 2.a. of the Agreement and the fee-simple title owner of Tract "A.5" to be conveyed by AQUARINA pursuant to Paragraph 4.a.(2). of the Agreement.
3. The Terminable Non-Exclusive Easement in favor of AQUARINA as provided in Paragraph 2.a.(1).(a). of the Agreement, shall be granted by Bluewater Residents Association, Inc.
4. The non-exclusive pedestrian ingress and egress easement in favor of AQUARINA as provided in Paragraph 4.d.(3) of the Agreement shall be granted by Bluewater Residents Association, Inc.

5. The Parties agree that Paragraph 4.e. of the Agreement shall be amended as follows, with the changes being underlined:

“e. Change of Escrow Agent. The Parties agree to change the Escrow Agent for the First Settlement Agreement to Alliance Title Insurance Agency, Inc., 10 S. Harbor City Boulevard, Melbourne, Florida 32901, or such other Escrow Agent as the Parties shall select. Notice of the name and address and phone number and e-mail address of the Escrow Agent shall be provided to MAD and the COUNTY.”

6. The Parties accept the revised COUNTY's form of Consent of the Agreement and this Addendum, which is included as a signature page to this Addendum.
7. The provisions of the Agreement and this Addendum shall be binding on the Parties; provided however, the provisions of this Addendum shall control over any inconsistent or contrary provisions in the Agreement.
8. This Addendum may be executed in counterparts, and an electronic scan of a signature will suffice as an original.

[Reminder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have signed this Addendum on the dates indicated below their signature.

KAHAMA VII, LLC

By: Mike DiAntonio, Sr.
Michael A. DiAntonio, Sr., Manager

Date: 3/29/19

AQUARINA COMMUNITY SERVICES
ASSOCIATION, INC.

By: _____
Patrick J. Pollock, President

Date: _____

By its execution below, the Intervenor has indicated its Consent to this Addendum to Settlement Agreement and Mutual Releases.

Intervenor, MAD ASSOCIATES, LLC

By: Mike DiAntonio, Sr.
Michael A. DiAntonio, Sr., Manager

Date: 3/29/19

IN WITNESS WHEREOF, the Parties have signed this Addendum on the dates indicated below their signature.

KAHAMA VII, LLC

By: _____
Michael A. DiAntonio, Sr., Manager

Date: _____

AQUARINA COMMUNITY SERVICES
ASSOCIATION, INC.

By:  _____
Patrick J. Pollock, President

Date: 4 April 2019

By its execution below, the Intervenor has indicated its Consent to this Addendum to Settlement Agreement and Mutual Releases.

Intervenor, MAD ASSOCIATES, LLC

By: _____
Michael A. DiAntonio, Sr., Manager

Date: _____

By its execution below, Brevard County has indicated its consent to the Settlement Agreement and Mutual Releases, attached as Exhibit "A" and amended by this Addendum, as a change to the First Settlement Agreement; provided however, that this Consent, in and of itself, shall not make the COUNTY a litigant in the Litigation, or constitute a form development approval or waiver from applicable local development regulations for any of the property affected by the Settlement Agreement and Mutual Releases and this Addendum. Brevard County agrees that the creation of a separate, independent home owner's association for Lot 1, Lot 2 and Tract "A.5", as provided in this Settlement Agreement and Mutual Releases and this Addendum, is consistent with Section 62-1445(d), Code of Ordinances of Brevard County, Florida. Brevard County further agrees that the provisions of this Settlement Agreement and Mutual Releases and this Addendum applicable to Tract "A.5" will not result in any portion of the land area of Tract "A.5" being considered a decrease in required open space for the Aquarina P.U.D.

Brevard County, a Political Subdivision of the
State of Florida

By: 

Print Name: KRISTINE WARD

Title: CHAIR

Date: 4/23/19

As approved by the Board April 23, 2019.

ATTEST:


SCOTT ELLIS, CLERK

Exhibit "A"
(Copy of Settlement Agreement and Mutual Release)



January 13, 2010

MEMORANDUM

TO: Scott Knox, County Attorney Attn: Christine Lepore

RE: Item VI.B. Approval of Settlement Agreement with Aquarina Community Services Association, Inc., Carolina First Bank, and Kahama, VII, LLC

The Board of County Commissioners, in regular session on January 12, 2010, approved the Settlement Agreement between Brevard County, Aquarina Community Services Association, Inc., Carolina First Bank, and Kahama VII, LLC.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tamara Van Fossan, Deputy Clerk

/jj

cc: Contracts Administration
Finance
Budget

Meeting Date
January 12, 2010



REVISED AGENDA	
Section	Unfinished business
Item No.	VI. B

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT: Settlement Agreement between Brevard County, Aquarina Community Services Association, Inc., Carolina First Bank

DEPT/OFFICE: County Attorney's Office: Christine Lepore, Asst. County Attorney/Scott Knox, County Attorney 633-2090

Requested Action:

It is requested that the Board consider and approve the Settlement Agreement between Brevard County, Aquarina Community Services Association, Inc., Carolina First Bank and Kahama VII, LLC.

Summary Explanation & Background:

On January 27, 2009, the Board authorized the County Attorney's Office to file an action for injunctive relief against Indian River No.1 Developers (Developer), Carolina First Bank (CFB) and Kahama VII, LLC to compel compliance with the Aquarina PDP/PUD requirements regarding the Community Center/Racquet Club and Beach Club. The Aquarina Community Services Association (ACSA) subsequently filed a lawsuit against the County and Carolina First Bank in April. All parties, except the Developer who was defaulted in the County's lawsuit, and International Golf Maintenance, Inc.(IGM), agreed to participate in mediation to resolve all outstanding issues. Attached is the global Settlement Agreement and a list of Critical Tasks and Dates. CFB will pay the ACSA \$275,000 and Kahama will pay the ACSA \$350,000, in addition to proposing certain minor PUD/PDP amendments that will trade development rights between the parties. The members of the ACSA approved the Settlement Agreement on December 17, 2009, by a vote of 297 to 19. Article 6 outlines the County's Commitments, which are summarized as follows:

1. Payment of \$68,000.00 to the ACSA within 15 days after approval.
2. County seeks a court order to release the deed to the Community Center and Beach Club parcels to ACSA.
3. County waives the fees for processing of subsequent PUD/PDP amendments described in the Settlement Agreement and agrees to expedite review and processing of such amendments. The proposed PUD/PDP amendments are deemed not "substantial" and shall be processed administratively.
4. County waives all fees associated with replatting the Beach Club tax parcel.
5. County agrees to review the necessity for the public access easement to the marina located within the PUD.

(continued on next page)

Exhibits Attached:

(1) Settlement Agreement (2) Critical Tasks and Dates

Yes ☐ No ☐

County Manager's Office:

Department:

Howard Tipton, County Manager

Scott Knox, County Attorney

6. County affirms the existing development rights to the Riversedge North Parcel and the Commercial/Marina Parcel.
7. If ACSA and IGM cannot negotiate the release of the lien against the Beach Club parcel by January 15, 2010, the County will seek to clear title to the property through its pending lawsuit.
8. The County will dismiss its claims against Carolina First Bank and Kahama and ACSA will dismiss its lawsuit against the County and Carolina First Bank.

Fiscal impact: \$68,000.00

PUD/PDP processing and review fees: \$277.00

Replatting fees: \$8,300.00

Total: \$76,577.00

Commission District: 3

It is recommended that the payment be made from a transfer from General Fund Operating Reserves. The current budgeted balance is \$13,006,716. The payment will be made from Fund 0001, Cost Center 200500.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this "Settlement Agreement") is entered into by and among BREVARD COUNTY, a political subdivision of the State of Florida and Charter County (the "County"); AQUARINA COMMUNITY SERVICES ASSOCIATION, INC., a Florida not-for-profit corporation ("ACSA"); CAROLINA FIRST BANK, a South Carolina corporation authorized to do business in the State of Florida ("CFB"), which owns all assets of Mercantile Bank, a division of Carolina First Bank, and Flaresco, Inc., which was merged into Carolina First Bank; and KAHAMA VII, LLC, a Florida limited liability company authorized to do business in the State of Florida ("Kahama"), as of the date on which this document is signed by the last party hereto (the "Effective Date").

Article 1. Definitions.

1.1. "Beach Club Parcel" means the parcel described as such on Exhibit "B" of the May 19, 2005, First Addendum to the PUD/PDP and Exhibit "D" of the May 16, 2006, Second Addendum to the PUD/PDP, lying between Lot 2 and Lot 3 that are also depicted on Exhibit "B" and Exhibit "D," respectively, as Stage 2, Tract A of the PUD. The legal description of the Beach Club Parcel is attached hereto as Schedule 1.

1.2. "Community Center Parcel" means the parcel described as a portion of Stage 3, Tract K, of the Aquarina PUD, Stage 1, Tracts C and D, Stage 2, Tracts B, D and H, Stage 4, Tracts B, I, and X, Stage 5, as recorded in Plat Book 41, Pages 88 through 92, in the Public Records of Brevard County, Florida. The legal description of the Community Center Parcel is attached hereto as Schedule 2.

1.3. "Entitlements" means the description of the uses, densities, and intensities, as well as the coastal construction line determination and ocean-front setback line applicable to the currently undeveloped portions of the PUD, as they are set forth in the PUD/PDP, and as may be modified by the proposed PUD/PDP Amendment and any Subsequent PUD/PDP Amendment which is described herein.

1.4. "Escrow Agent" means Kinberg & Associates, LLC, 1290 W. Eau Gallie Boulevard, Melbourne, FL 32935.

1.5. "Flaresco" means Flaresco, Inc., a Florida corporation that merged with CFB on December 31, 2008, and that held title by deed in lieu of foreclosure to Stage 4, Tracts V, VIII, IX and C, the Community Center Parcel, and other parcels within the PUD prior to the merger of Flaresco and CFB.

1.6. "Governing Documents" means the Declaration of Covenants, Conditions and Restrictions for Aquarina, including Articles and By-Laws of ACSA, which are recorded at



Official Records Book 2434, Page 1145, in the Public Records of Brevard County, Florida, as amended to date.

1.7. "IRD" means Indian River No. 1 Developers, LLC, the developer of the Aquarina PUD.

1.8. "Kahama Parcels" means the two 70-foot wide parcels located north of the Beach Club Parcel and depicted as Lot 1 and Lot 2 which are included as part of Stage 2, Tract A of the PUD and depicted on Exhibit "B" of the First Addendum to the PUD/PDP and Exhibit "D" of the Second Addendum to the PUD/PDP.

1.9. "Lot 3" means the 70-foot wide parcel located south of the Beach Club Parcel which is included as part of Stage 2, Tract A of the PUD/PDP and depicted on Exhibit "B" of the First Addendum to the PUD/PDP and Exhibit "D" of the Second Addendum to the PUD/PDP. Lot 3 is currently owned by IRD and is subject to a mortgage recorded in Official Records Book 5754, Page 7453, of the Public Records of Brevard County, Florida in favor of Larry S. Sazant, Trustee.

1.10. "PDP" means the Preliminary Development Plan that accompanies the Aquarina PUD as it exists on the effective date of the Settlement Agreement.

1.11. "Property Escrow Agreement" means that certain Property Escrow Agreement between IRD and ACSA dated May 4, 2006.

1.12. "PUD" means the Aquarina PUD as it exists on the effective date of this Settlement Agreement.

1.13. "PUD/PDP Amendment" means the further amendment to the Aquarina PUD/PDP that will be prepared and submitted by CFB as provided by the terms of Section 3.3 of this Settlement Agreement.

1.14. "Reconfigured Kahama Parcels" means the Kahama Parcels and the additional thirty-five (35) feet of property which is to be added equally to each of the Kahama Parcels (Lot 1 and Lot 2) pursuant to Section 5.4 of this Settlement Agreement, resulting in Lot 1 and Lot 2 each having a total of eighty-seven and one-half (87.5) feet of ocean front property following approval of the Amended PUD/PDP or a Subsequent PUD/PDP and replatting of the Tax Parcel as contemplated in Section 4.3 of this Settlement Agreement.

1.15. "Reconfigured Beach Club Parcels" means the Beach Club Parcel once it has been reconfigured to eliminate a thirty-five (35) foot wide parcel of ocean front property that is to be conveyed to Kahama, leaving a seventy-five (75) foot wide ocean front parcel to be owned by ACSA for residential purposes and/or active recreational purposes, and a one hundred seventy-nine (179) foot wide ocean front parcel to be owned by ACSA for active recreational purposes, following approval of the Amended PUD/PDP or a Subsequent PUD/PDP Amendment and replatting of the Tax Parcel as contemplated in Section 4.3 of this Settlement Agreement.

1.16. "Recreation Parcel" means that parcel currently designated for recreational uses that is located adjacent to the golf course and on which a vacant administrative building is located, as more particularly described in Schedule 3.

1.17. "Registry of the Court" means the repository maintained by the Clerk of the Eighteenth Judicial Circuit Court, which is the current location of the executed deed to the Beach Club Parcel and to the Community Center Parcel that is subject to the Property Escrow Agreement.

1.18. "Riversedge Parcels" means the undeveloped parcels that are currently owned by CFB and that are designated on the PUD/PDP as Stage 4, Tracts V and VIII; Stage 4, Tract IX (Commercial/Marina parcel); and Stage 4, Tract C (road easement). The legal description of the Riversedge Parcels is attached hereto as Schedule 4.

1.19. "Stage 4, Tracts V and VIII" means the undeveloped residential portion of the Riversedge Parcels as designated on the PUD/PDP.

1.20. "Subsequent PUD/PDP Amendment" means any further amendment to the PUD/PDP contemplated by this Settlement Agreement and submitted by either Kahama or ACSA as the result of either of these parties not participating in the PUD/PDP Amendment referenced in Section 3.3 of this Settlement Agreement.

1.21. "Tax Parcel" means tax parcel ID # 29-38-36-05-0000A.0-0000.00 that includes the Kahama Parcels, the Beach Club Parcel and Lot 3.

Article 2. Contingency Provision.

2.1. The terms and conditions set forth in this Settlement Agreement are conditioned upon the satisfaction of the following events: (i) ACSA obtaining approval of this Settlement Agreement from its membership; and (ii) the Brevard County Commission approving the Settlement Agreement within ninety (90) days of all other parties executing same. In the event ACSA does not approve this Settlement Agreement on or before November 15, 2009, or, in the sole discretion of the Board of Directors of ACSA, on a later date that is prior to December 15, 2009, then this Settlement Agreement shall automatically terminate and the remaining terms and conditions shall be null and void.

Article 3. CFB Commitments

3.1. The CFB Commitments become effective only upon satisfaction of the Contingency Provision.

3.2. CFB shall pay to ACSA Two Hundred Seventy Five Thousand and 00/100 Dollars (\$275,000.00) upon the following terms and conditions:

3.2.1. One Hundred Thousand and 00/100 Dollars (\$100,000.00) within ten (10) days following receipt of written notice from ACSA that it has obtained a building permit from

the County for construction of either (i) a community pool on the Community Center Parcel or on the Beach Club Parcel, or (ii) a community building on the Beach Club Parcel, and has executed a contract for construction of same. The notice shall attach a copy of the building permit and a copy of the fully executed construction contract.

3.2.2. Seventy-five Thousand and 00/100 Dollars (\$75,000.00) on or before March 1, 2010, so that ACSA will have funds available on April 1, 2010, to pay its share to redeem the 2007 and 2008 tax certificates that have been issued on the Tax Parcel and, in cooperation with Kahama, prevent the delivery of a tax deed to the holder or holders of the tax certificates.

3.2.3. One Hundred Thousand and 00/100 Dollars (\$100,000.00) at the earliest occurrence of the following events: (i) ten (10) days following CFB's sale of Stage 4, Tracts V and VIII; or (ii) ten (10) days following receipt of notice from ACSA that it has obtained a building permit from the County for a community pool on the Community Center Parcel or on the Beach Club Parcel, or has obtained a building permit for a community building on the Beach Club Parcel, and has executed a contract for construction and provided proof of same; provided, however, that the building permit and construction contract used to satisfy this element must be different from the building permit and construction contract used to satisfy Subsection 3.2.1.

3.3. CFB agrees that it shall take the lead role in the preparation of the proposed PUD/PDP Amendment and shall retain, at its sole expense, the land planner and other consultants that may be needed to submit and process the PUD/PDP Amendment. During preparation of the PUD/PDP Amendment, CFB shall receive input from Kahama (only as to the Kahama Parcels) and from ACSA (only as to the Beach Club Parcel, the Community Center Parcel, the boat storage relocation parcel referenced in this Section 3.3, Lot 3, and the Recreation Parcel), or regarding the reconfiguration of the Kahama Parcels and the Beach Club Parcel, as well as the other matters on which input is required by the terms of this Settlement Agreement or the County Code. CFB shall incorporate the information obtained from Kahama and ACSA, as provided herein for the proposed PUD/PDP Amendment submittal to the County, provided such input is received by CFB within sixty (60) days of CFB's written request for such input, and failing timely receipt of same, CFB may proceed with the proposed PUD/PDP Amendment for the Riversedge Parcels only (and without such other matters being addressed therein). CFB's written request for input shall be given no later than January 15, 2010. The proposed PUD/PDP Amendment (if timely input is received from ACSA as required by the preceding sentence), or any Subsequent PUD/PDP Amendment, shall relocate the current boat storage area to an upland, open space parcel to be identified by ACSA that is not owned by CFB, but which is owned or leased by ACSA (if leased, ACSA shall obtain the consent of the owner to the PUD/PDP Amendment or to any Subsequent PUD/PDP Amendment). If timely input is not received from ACSA as required above (such that the relocation of the boat storage areas cannot be reflected in the proposed PUD/PDP Amendment), the proposed PUD/PDP Amendment may allow other development in the area of the current boat storage area; thereafter, in addition to relocating the boat storage area, a Subsequent PUD/PDP Amendment may make other changes to the PUD/PDP with respect to real property owned or controlled by the applicant for the Subsequent PUD/PDP Amendment. CFB, Kahama and ACSA agree that the proposed PUD/PDP

Amendment and any Subsequent PUD/PDP Amendment will not request modification of any waiver or "grandfathering" language that may be contained in the PUD/PDP.

3.4. Provided that written comment has been timely received by CFB as required by Section 3.3., CFB shall provide the final draft of the proposed PUD/PDP Amendment to Kahama or ASCA, or both if prior timely written input was received from both, and Kahama, ASCA, or both as applicable, shall have fourteen (14) days following receipt of the final draft in which to provide CFB additional written notice of any additional changes that need to be made in order to fully implement the intended use of the parcels on which either Kahama or ASCA are entitled to provide written input for the proposed PUD/PDP Amendment.

3.5. At the time CFB submits the proposed PUD/PDP Amendment, CFB shall include a request to transfer from the two hundred twenty seven (227) residential units that are currently allocated to Stage 4, Tracts V and VIII of the PUD/PDP, four (4) residential units to Kahama for use on the Reconfigured Kahama Parcels and two (2) residential units to ASCA for use on the Reconfigured Beach Club Parcel. CFB will retain two hundred twenty-one (221) residential units for development in Stage 4, Tracts V and VIII of the PUD/PDP. The residential units that are to be transferred for use on the Reconfigured Kahama Parcel and the Reconfigured Beach Club Parcel shall be reserved for use on these Parcels irrespective of the ownership of these Parcels at the time of submittal or approval of the PUD/PDP Amendment. The Riversedge Parcels may be reconfigured and renumbered in the PUD/PDP Amendment or in a Subsequent PUD/PDP Amendment. Notwithstanding the foregoing, in the event ASCA acquires the Recreation Parcel or acquires Lot 3, ASCA shall be entitled to receive two (2) additional residential units of CFB's two hundred twenty-one (221) residential units for use on the acquired property, and CFB shall retain two hundred nineteen (219) residential units for development in Stage 4, Tracts V and VIII, as these Tracts may be reconfigured and renumbered in the PUD/PDP Amendment or any Subsequent PUD/PDP Amendment. If ASCA desires to use one (1) or both of the additional two (2) residential units on the Recreation Parcel, ASCA must demonstrate to the satisfaction of the County's zoning official that it has also obtained from someone other than CFB (unless CFB subsequently agrees to provide it), a sufficient amount of additional open space within the PUD/PDP to allow conversion of the Recreation Parcel into residential use as a minor amendment of the PUD/PDP or shall submit an application for a major amendment to the PUD/PDP in order to reduce the open space requirement. ASCA's rights and obligations created herein regarding the Recreation Parcel and Lot 3 are fully assignable to a third party without prior approval of the other parties to this Agreement.

3.6. CFB agrees that it shall provide an additional 14,740 s.f. of active recreational open space in Stage 4, Tracts V and VIII in the proposed PUD/PD Amendment submittal to offset the conversion of 14,740 s.f. of active recreational open space from the Beach Club Parcel into residential area for use by Kahama and ASCA, as follows: (35 ocean-front feet to Kahama + 75 ocean-front feet to ASCA for residential purposes) x 134 feet depth of property = 14,740 s.f.

3.7. CFB agrees to deliver to ASCA a quit claim deed at the conclusion of its foreclosure on the Community Center Parcel such that the deed currently being held in the

Registry of the Circuit Court under the terms of the Property Escrow Agreement can be released to ACSA free and clear of the mortgage or interest of CFB in the Community Center Parcel.

3.8. CFB agrees to proceed expeditiously with the pending foreclosure action (Case No. 05-2008CA21914 in the Eighteenth Judicial Circuit in and for Brevard County, Florida) so that the Community Center Parcel can be conveyed to ACSA free and clear of any liens filed by third parties which can be eliminated by the above-referenced foreclosure proceeding. Notwithstanding the foregoing, CFB agrees that any foreclosure action shall not eliminate the existence of, or the obligations contained in the PUD/PDP or this Settlement Agreement but shall eliminate all title interests or claims of ACSA in the Riversedge Parcels other than its currently recorded easement rights, subject to those rights being reconfigured under Section 3.5 above.

3.9. CFB agrees to pay any taxes that may be due and owing on the Community Center Parcel so that it can be conveyed to ACSA without any delinquent tax liability. Taxes for the year 2008 have been paid.

3.10. CFB agrees that from the closing proceeds that would otherwise be due to it, the court appointed Receiver will pay to ACSA all assessments due, up to the date of the first sale of each unit, on the Ocean Dunes Condominium Units that may be sold. The assessments due for each unit shall be paid at the closing of each unit by the Receiver or his closing agent. If for any reason the Receiver does not pay to ACSA the funds due from the closing proceeds as described herein and pays same to CFB, CFB shall pay such funds to ACSA.

3.11. CFB agrees to assign any interest it may have in the lease of the submerged lands to ACSA, which lease is recorded in Official Records Book 5286, page 1767, of the Public Records of Brevard County, Florida. The parties agree that this lease has expired, and that ACSA shall pay the cost for CFB to obtain a new lease from the State of Florida, Department of Environmental Protection. Assuming that CFB is successful in obtaining the new lease, CFB shall then assign the lease to ACSA. The other parties to this Settlement Agreement shall cooperate with CFB and ACSA in the efforts to obtain a new lease of the submerged lands, provided that they shall not be required to incur any costs in doing so.

3.12. CFB agrees to lease to ACSA for One and 00/100 Dollar (\$1.00) per year the fenced area that is currently being used for boat storage. CFB shall draft a lease for review and execution by ACSA that: (i) allows use of the boat storage area exclusively by the ACSA members and/or tenants; (ii) provides that ACSA shall maintain the boat storage area and shall use its best efforts to prevent unauthorized dumping of household trash and other materials in the storage area or in the conservation area adjacent to the water's edge; (iii) requires that liability insurance be maintained by ACSA; and (iv) includes other reasonable terms and conditions typical of similar leases of vacant land for storage purposes. The lease shall terminate upon CFB's giving ASCA ninety (90) days prior written notice of its intent to terminate the lease, but only: (i) in the event that CFB sells the leased property to an unrelated third party; or (ii) a certificate of occupancy is issued for construction within one thousand five hundred (1,500) feet of any boundary line of the leased property; or (iii) permits are issued for construction of one half of the vested number of residential units on the land which presently comprises Stage 4, Tracts V and VIII; or (iv) there is a material breach of the terms of the lease by ACSA after

reasonable notice and an opportunity to cure the breach. CFB shall have the responsibility, at its sole expense, for resolving the Notice of Violation issued by the St. Johns River Water Management District on July 23, 2009, regarding Compliance Item No. 933639 for the adjoining conservation area adjacent to the Mullet Creek water's edge and within property owned by CFB.

3.13. Prior to or contemporaneously with its execution of this Settlement Agreement, CFB shall execute an affidavit in the form attached hereto as Schedule 5.

3.14. CFB shall participate and cooperate with ACSA in the amendment of the ACSA Governing Documents to accomplish the intended purposes of this Settlement Agreement, including the conveyance by ACSA of the north 35 feet of the Beach Club Parcel to Kahama.

3.15. After the effective date of the PUD/PDP Amendment, in the event CFB wishes to further amend the PUD/PDP, as amended, CFB shall send a copy of the submittal to ACSA and Kahama contemporaneously with submitting the proposed amendment to the County. Any such further amendment of the PUD/PDP shall not affect the Reconfigured Kahama Parcels and/or any property owned by ACSA without the express written consent of Kahama and/or ACSA, as applicable.

Article 4. Kahama Commitments.

4.1. Kahama shall proceed with its pending foreclosure action to obtain title to the Kahama Parcels. Notwithstanding the foregoing, Kahama agrees that any foreclosure action shall not eliminate the existence of, or the obligations contained in, the PUD/PDP or this Settlement Agreement. Kahama shall not be obligated to perform any of the following commitments until such time as its pending foreclosure action against Indian River No. 1 Developers, LLC (Case No. 05-2007-CA-072320 in the Eighteenth Judicial Circuit in and for Brevard County, Florida) has been completed and title to the Kahama Parcels has vested in Kahama. Kahama shall proceed in good faith to expeditiously complete the pending foreclosure action and obtain title to the Kahama Parcels. Within ten (10) days following issuance of the Certificate of Title to Kahama by the Clerk of the Court, Kahama shall give written notice to the other parties to this Settlement Agreement that title has vested in Kahama.

4.2. Kahama agrees to coordinate with ACSA and pay prior to April 1, 2010 (the earliest date that will avoid issuance of a tax deed) its share of the amount needed to redeem the tax certificates that have been issued on the Tax Parcel for 2007 and 2008. Since the Tax Parcel includes Lot 3 as well as the Kahama Parcels and the Beach Club Parcel, if the owner or mortgagee of Lot 3 is not willing to pay a share of the past due taxes, then Kahama and ACSA shall proportionally share the additional taxes attributable to Lot 3. In this instance, Kahama's pro-rata share of the past due taxes will be 40.79 percent of the taxes and interest owed and ACSA's pro-rata share of the past due taxes will be 59.21 percent of the taxes and interest owed. If the owner or mortgagee of Lot 3 will pay the share of the past due taxes and interest that is attributable to Lot 3, then Kahama's pro-rata share would be reduced to 35.07 percent, ACSA's pro-rata share would be reduced to 50.90 percent, and the pro-rata share of the Lot 3 owner or mortgagee would be 14.03 percent.

4.3. Kahama agrees to take the lead role in replatting the Tax Parcel into four (4) or five (5) separate taxable parcels as specified in Subsection 4.4.4. below. Prior to beginning the replatting process, Kahama shall determine whether the owner or mortgagee of Lot 3 is interested in participating in the replatting process and whether it will contribute equally with Kahama and ACSA toward payment of the replatting expense.

4.4. Total cash to be paid by Kahama to ACSA shall be Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00). The payment shall be deposited in escrow with the Escrow Agent, in favor of ACSA, within ten (10) days following satisfaction of Subsections 4.4.1. and 4.4.2. The escrow deposit shall be released to ACSA within ten (10) days following satisfaction of Subsections 4.4.3. and 4.4.4. Kahama shall submit the replatting application to the County not later than thirty (30) days following title to the Kahama Parcels vesting in Kahama, as provided in Subsection 4.1.

4.4.1. ACSA places in escrow with the Escrow Agent a duly executed warranty deed conveying to Kahama thirty five (35) ocean-front feet of property that is immediately south of the Kahama Parcels;

4.4.2. ACSA places in escrow with the Escrow Agent a document releasing and abandoning any and all rights, whether express or implied, under the easements that provide parking, access rights and all other rights ACSA may have over the Kahama Parcels granted in the Access and Parking Easement Agreement and Modification to Access and Parking Easement Agreement that is recorded in Official Records Book 4485, Page 2479 and Book 4495, Page 1938, respectively, in the Public Record of Brevard County, Florida.

4.4.3. The PUD/PDP is amended to reflect a reconfiguration of the existing Kahama Parcels and the additional property to be conveyed by ACSA into two (2) lots that each may be developed as three (3) attached units or as one (1) single family unit at maximum of thirty five (35) feet in height.

4.4.4. The Tax Parcel is replatted to create four (4) or five (5) separate taxable parcels, as follows: (i) two (2) eighty-seven and one-half (87.5) foot wide parcels that will be owned by Kahama for residential purposes; (ii) one (1) seventy five (75) foot wide parcel that will be owned by ACSA for residential purposes or used as a beach club facility; (iii) one (1) one hundred seventy nine (179) foot wide parcel that will be owned by ACSA for active recreational purposes; and possibly (iv) one (1) seventy (70) foot wide lot defined herein as Lot 3.

4.5. Within ten days following receipt of notice from any party confirming that all of the requirements in Subsections 4.4.3 and 4.4.4. have been satisfied, the Escrow Agent shall release the documents in escrow to Kahama for recording at Kahama's sole expense, and shall release the funds in escrow to ACSA. In the event the County does not approve the application for replatting, the Escrow Agent shall return all funds and documents held in escrow pursuant to this Section 4.5 to the party who placed the funds or the documents in escrow within ten (10) days following receipt of the County's denial of the application for replatting. If the replatting is approved by the County, and following release of the funds and documents held in the escrow to ACSA and Kahama, respectively, Kahama shall allow ACSA to temporarily utilize the property

that was formerly subject to the Access and Parking Easement Agreement and Modification to Access and Parking Easement Agreement that is recorded in Official Records Book 4485, Page 2479, and in Official Records Book 4495, Page 1938, respectively, in the Public Record of Brevard County, Florida, for a period of ninety (90) days following escrow release. Subsequent to escrow release, ACSA shall have the right to file in the Public Records of Brevard County a Notice of Temporary Access and Parking Rights in order to put third parties on notice that these temporary use rights have been granted by Kahama. ACSA shall name Kahama as an additional insured on its liability insurance policy which shall be provided within fifteen (15) days following execution of this Settlement Agreement and which shall remain in effect until the temporary access rights are terminated as provided in this Section 4.5. No extensions to the termination date for the temporary access rights shall be valid unless Kahama expressly agrees to the extension in writing and ACSA expressly agrees in writing to continue including Kahama as an additional insured on its liability insurance policy.

4.6. If Kahama desires to obtain a title commitment or owner's title policy on the Kahama Parcels and/or the additional thirty five (35) feet of property to be conveyed by ACSA to Kahama, then Kahama shall obtain the title commitment or title policy at its sole cost and expense.

4.7. After the effective date of the PUD/PDP Amendment, in the event Kahama wishes to apply for a Subsequent PUD/PDP Amendment, Kahama shall send a copy of the submittal to ACSA and CFB contemporaneously with submitting the proposed amendment to the County.

Article 5. ACSA Commitments.

5.1. ACSA shall provide written notice to each of the other parties to this Settlement Agreement that the Contingency Provision set forth in Subsection 2.1(i) above has been satisfied within ten (10) days following full satisfaction of this contingency.

5.2. ACSA agrees to waive any claim for past due assessments that it may have against Flaresco or CFB under Florida Statutes Section 720.3085 and in consideration thereof, will acknowledge that when CFB's property is sold to a third party, that third party would be recognized as a "Participating Builder" under the terms of the Governing Documents. The waiver referenced in this Subsection 5.2 is not intended to and does not waive any assessments due and owing pursuant to Section 3.10 of this Settlement Agreement.

5.3. ACSA agrees to amend the ACSA Governing Documents to provide for the conveyance to Kahama of that portion of the Beach Club Parcel that is thirty five (35) feet wide and contiguous to the southernmost of the Kahama Parcels and to conform to the other provisions of this Settlement Agreement.

5.4. Following receipt of notice from Kahama that title to the Kahama Parcels has vested in Kahama, ACSA agrees to execute and place in escrow with the Escrow Agent a warranty deed conveying to Kahama the thirty five (35) feet of the Beach Club Parcel which is located immediately south of and contiguous to the Kahama Parcels. ACSA also agrees to execute and place in escrow with the Escrow Agent a document releasing and abandoning any

and all rights, whether express or implied, under the easements that provide parking, access rights and all other rights ACSA may have over the Kahama Parcels granted in the Access and Parking Easement Agreement and Modification to Access and Parking Easement Agreement that is recorded in Official Records Book 4485, Page 2479, and Book 4495, Page 1938, respectively, in the Public Record of Brevard County, Florida. Notwithstanding the foregoing, Kahama has agreed in Section 4.5 of this Settlement Agreement that following termination of the described easement rights, it will allow ACSA to temporarily utilize the property that was formerly subject to the Access and Parking Easement Agreement and Modification to Access and Parking Easement Agreement that is recorded in Official Records Book 4485, Page 2479, and in Official Records Book 4495, Page 1938, respectively, in the Public Record of Brevard County, Florida, in accordance with the terms and conditions set forth in Section 4.5. ACSA hereby confirms that it shall name Kahama as an additional insured on its liability insurance policy in accordance with the terms and conditions of Section 4.5 of this Settlement Agreement. The provisions of Section 4.5 shall prevail in the event of a conflict between this Section 5.4 and Section 4.5.

5.5. ACSA agrees to pay to Kahama one-half (1/2) of the reasonable costs of replatting the Tax Parcel incurred by Kahama and also agrees to join Kahama in executing the application for replatting and the final plat.

5.6. If ACSA desires to obtain a title commitment or owner's title policy on the parcels it will own once the Tax Parcel is replatted, then ACSA shall obtain the title commitment or title policy at its sole cost and expense.

5.7. ACSA agrees to give copies of all concept plans and permit plans for the community pool and for all improvements on the Beach Club Parcel to CFB for CFB's review and comment. CFB's comments shall be considered by ACSA prior to the next subsequent revision of such concept plans or permit plans, and the CFB comments on the finalized set shall be considered prior to such concept plans and permit plans being submitted for consideration and approval by governmental authorities. The term "considered" as used herein does not obligate ACSA to concur with or implement any of the comments received.

5.8. The Board of Directors of ACSA, on behalf of ACSA, agrees to support CFB's proposed PUD/PDP Amendment for all property currently owned by CFB, as such Amendment is described in this Settlement Agreement. The support required by this Section 5.7 may be in writing or in person, at the election of the Board of Directors of ACSA.

5.9. ACSA and CFB agree to mutually cooperate in the preparation of amendments to the Governing Documents as each may reasonably request.

5.10. ACSA agrees that Kahama, its successors or assigns, shall have the option of having one (1) or both of the Reconfigured Kahama Parcels become members of ACSA. Each option may be exercised in writing not later than ten (10) days following issuance of the first Certificate of Occupancy for the particular Reconfigured Kahama Parcel to which it applies. Upon the exercise of the option for either of the Reconfigured Kahama Parcels, assessments and capital contributions shall be due and owing under the Governing Documents. If an option is exercised in accordance with this Section 5.10, Kahama, or its successor in title, shall execute an

appropriate document annexing the applicable Reconfigured Kahama Parcel into ACSA and joining in and consenting to the terms of the Governing Documents; provided, however, neither Kahama nor its successors or assigns shall have an obligation to pay ACSA dues or assessments imposed prior to the date the option is exercised.

5.11. After the effective date of the PUD/PDP Amendment, in the event ACSA wishes to apply for a Subsequent PUD/PDP Amendment, ACSA shall send a copy of the submittal to CFB and Kahama contemporaneously with submitting the proposed amendment to the County.

5.12. ACSA acknowledges and agrees that all real property, improvements thereon, or both, which ACSA receives from CFB, and its successors and assigns, as a result of this Settlement Agreement will be deemed transferred and accepted "As and With All Faults" and without any: (i) warranties of specifications (that such specifications complied with applicable construction code requirements or professional standards), (ii) warranties that construction was performed in accordance with approved plans, (iii) warranties that the improvements are free of construction defects, (iv) warranties of work and materials, or (v) warranties of fitness for a particular purpose.

5.13. ASCA warrants and represents that the performance by ACSA of its obligations under this Settlement Agreement has been duly authorized, including where necessary by requisite action of ASCA's members at duly noticed and held meetings (i.e. elections) for such purpose. ASCA further warrants and represents that the ACSA Board of Directors has the legal authority to perform such obligations in accordance with the terms of this Settlement Agreement and without any further authorizing action being a necessary condition precedent.

Article 6. County Commitments.

6.1. Following the County's approval of this Settlement Agreement and within fifteen (15) days following receipt of written notice from ACSA that the contingency set forth in Subsection 2.1 has been satisfied, the County shall pay to ACSA the sum of Sixty Eight Thousand and 00/100 Dollars (\$68,000.00) to be applied toward the planning, design and/or construction of the community building and/or community pool described in Section 3.2 of this Settlement Agreement herein, including such costs as may be necessary to pay for and/or satisfy any liens on the Beach Club Parcel.

6.2. The County agrees to seek an Order from the Court in Case No. 05-2009-CA-072320 to allow early release of the Deed from the Registry of the Court and delivery of the Deed to ACSA.

6.3. The County shall waive all fees associated with filing and processing the application for the proposed PUD/PDP Amendment and any Subsequent PUD/PDP Amendment. Furthermore, the County agrees to expedite its review and processing of same if consistent with the terms of this Settlement Agreement.

6.4. The County shall waive all fees associated with replatting of the Tax Parcel.

6.5. The County shall determine whether it has the ability to extinguish any public access rights to the marina located within the PUD/PDP, and, if so, to take the actions necessary to extinguish those rights. The County hereby acknowledges and agrees that any extinguishment of public access rights shall not extinguish the right of ACSA members, their tenants and invitees to access the boat ramp, dock and parking lot located within the Commercial/Marina parcel that comprises part of the Riversedge Parcels.

6.6. The County acknowledges and agrees that in addition to (and notwithstanding) whatever rights to development may be now or in the future permitted pursuant to the County's Comprehensive Plan or Land Development Regulations, the area within the PUD/PDP known as Stage 4 Tract VIII (Riversedge South) is vested for development and use of one hundred forty-two (142) mid-rise residential dwelling units, subject to CFB's compliance with applicable County Land Development Regulations.

6.7. The County acknowledges and agrees that in addition to (and notwithstanding) whatever rights to development may be now or in the future permitted pursuant to the County's Comprehensive Plan or Land Development Regulations, the area within the PUD/PDP known as Stage 4 Tract V (Riversedge North) is vested for development and use of eighty-five (85) mid-rise residential dwelling units, subject to CFB's compliance with applicable County Land Development Regulations.

6.8. The County acknowledges and agrees that in addition to (and notwithstanding) whatever rights to development may be now or in the future permitted pursuant to the County's Comprehensive Plan or Land Development Regulations, the area within the PUD known as Stage 4 Tract IX (Commercial/Marina Parcel) is vested for development and use of commercial and marina facilities, including but not limited to retail, restaurant, marina (including boat storage, ramps, slips, docks, and piers), and private recreation uses. The PUD/PDP Amendment shall specifically authorize development of these uses on the Commercial/Marina Parcel, subject to compliance with all applicable County Land Development Regulations provisions related to such uses.

6.9. The County acknowledges and agrees that except for the approval of a Final Development Plan, as this term is defined in the County's Land Development Regulations, showing the design, location and arrangement of structures to accommodate the Entitlements, and except for satisfying conditions of such Final Development Plan Approval which must be met prior to applying for building permits (if any), there are no other County zoning, subdivision, or comprehensive planning conditions precedent to constructing the Entitlements. Construction must comply with the provisions of the Florida Building Code.

6.10. The County agrees to an extension of time until December 31, 2015, in which to file an application for approval of a Final Development Plan(s) for the vested Entitlements. This time period may be further extended by the County, pursuant to the County's proper practice and procedures. In no event will the failure to file an application for approval of a Final Development Plan(s) affect the continued viability of the Entitlements or the fact that they are vested; rather, if an application for Final Development Plan(s) is (are) not filed within the time period provided above for the vested Entitlements or within the time period that may be

otherwise applicable for the balance of the Entitlements, as such time periods may be further extended, the status of the affected Entitlements shall be that they will be merely inactive until such Final Development Plan(s) is (are) duly filed.

6.11. The County agrees that it shall not take any action that would restrict or adversely affect the Entitlements, and further, agrees to take such actions as may be necessary to confirm or preserve such Entitlements in the event some existing or future law or regulation is determined to affect the Entitlements.

6.12. Upon receipt of the proposed PUD/PDP Amendment application or any Subsequent PUD/PDP Amendment application, the County shall consider the application pursuant to Section 62 of the County Code. The County zoning official has determined that the proposed PUD/PDP Amendment and any Subsequent PUD/PDP Amendment that is proposed in accordance with the terms of the Settlement Agreement is not "substantial" as defined in subsection 62-1448(c) of the County Code. The Brevard County Commission agrees that the proposed PUD/PDP Amendment as described in this Settlement Agreement is minor in nature, is not "substantial" as defined in subsection 62-1448(c) of the County Code, and hereby directs the zoning official to administratively process the proposed PUD/PDP Amendment and any proposed Subsequent PUD/PDP Amendment as such.

6.13. In the event the lien on the Beach Club Parcel that is held by International Golf Maintenance, Inc., a Delaware corporation ("IGM") has not been released on or before January 15, 2010, the County hereby agrees to initiate a claim against IGM, either in pending Case No. 05-2009-CA-011928 or as a separate action, in an effort to enforce the PUD/PDP requirement that the Beach Club Parcel be conveyed to ACSA free and clear of any liens. The County also agrees to pursue this claim to its conclusion.

Article 7. Miscellaneous Provisions.

7.1. Each party shall cooperate with the other parties in the implementation of this Settlement Agreement and agrees to execute additional documents that may be necessary to effectuate the purposes of this Settlement Agreement.

7.2. All parties stipulate for all purposes regarding any rights or obligations that arise under the ACSA Governing Documents that neither Flaresco, nor CFB are or shall be deemed the "Developer" of the PUD/PDP, or any portion thereof, and shall also stipulate that none of these entities ever acquired rights as the "Developer," except the voting rights, if any, of the Developer, as that term is defined in the Governing Documents.

7.3. All parties agree that the development vested for Stage 4 Tract V, Stage 4 Tract VIII, and Stage 4 Tract IX of the PUD, as described in Sections 6.6, 6.7 and 6.8 is not burdened with completing any construction or development obligations for, of, or with respect to any other property within the PUD/PDP. Furthermore, each of these sites may be developed independently from each other, or concurrently with each other.

7.4. Notices under this Agreement shall be given to the parties by mailing written notice postage prepaid, to the parties at the following addresses:

7.4.1. **If to County** to: Christine Lepore, Esq., Attorney for Brevard County, Brevard County Attorney's Office, 2725 Judge Fran Jamieson Way, Bldg. C, Room 308, Viera, FL 32940.

7.4.2. **If to CFB** to: Harris Solomon, Esq., Attorney for Mercantile Bank and Carolina First Bank, Brinkley, Morgan, Solomon, Tatum, Stanley & Lunny, LLP, Suite 1900, 200 E. Las Olas Boulevard, Fort Lauderdale, FL 33301-2248.

7.4.3. **If to Kahama** to: Robert Abraham, Esq., 220 S. Ridgewood Avenue, Suite 200, Daytona Beach, FL 32114 and to Edward Kinberg, Kinberg & Associates, LLC, 1290 W. Eau Gallie Boulevard, Melbourne, FL 32935, Attorneys for Kahama VII, LLC.

7.4.4. **If to ACSA** to: Jay S. Levine, Esq., Attorney for Aquarina Community Services Association, Inc., Jay Steven Levine Law Group, 2500 N. Military Trail, Suite 283, Boca Raton, FL 33431-6322.

7.5. Time is hereby declared of the essence as to the lawful performance of all duties and obligations set forth in this Agreement. For purposes of the time requirements hereunder, such time frames shall, unless otherwise specifically stated herein: (i) include the day from which the period commences; and (ii) be construed to mean calendar days; provided that if the final day of such period falls on a Saturday, Sunday or legal holiday, such period shall extend to the first business day thereafter.

7.6. The parties shall have the right to enforce a breach of the terms and conditions of this Settlement Agreement. Each party agrees that the terms of this Settlement Agreement may be enforceable by injunctive relief by each party to this Settlement Agreement and their successors and assigns, either individually or collectively, regardless of the existence or adequacy of any other remedy or of an action at law for damages. In any action to enforce the terms of the Settlement Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees.

7.7. This Settlement Agreement may only be modified, supplemented or amended in writing, executed by all parties.

7.8. This Settlement Agreement shall be governed by the laws of the State of Florida. Venue for any legal action authorized hereunder shall exclusively be in the Circuit Court for the Eighteenth Judicial Circuit in and for Brevard County, Florida, and jurisdiction shall be vested exclusively in such court. The parties hereto stipulate to the personal jurisdiction of the referenced court and waive any defenses thereto. THE PARTIES ALSO HEREBY WAIVE TRIAL BY JURY WITH RESPECT TO ANY SUCH ACTION OR PROCEEDING.

7.9. Except as specifically provided in this Settlement Agreement, the parties hereto shall bear their own expenses, including attorneys' fees and costs, incurred in negotiating, delivering and performing the obligations contemplated by this Settlement Agreement.

7.10. The covenants, terms, conditions, provisions and undertakings in this Settlement Agreement shall extend to and be binding upon the heirs, personal representatives, executors, administrators and permitted successors and assigns of the respective parties hereto.

7.11. This Settlement Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter of this Settlement Agreement and supersedes any and all previous agreements between the parties hereto, whether written or oral, with respect to such subject matter. Prior drafts of this Settlement Agreement shall not be admissible as extrinsic evidence. The language in all parts of this Settlement Agreement shall, in all cases, be construed as a whole and in accordance with its fair meaning and any ambiguities shall not be resolved against the drafting party.

7.12. This Settlement Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

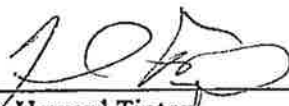
7.13. This Settlement Agreement is not intended and shall not create a joint venture, partnership or other formal business relationship or entity of any kind, or any obligation to form any such relationship or entity.

7.14. Each signatory to this Settlement Agreement has entered into same freely and without duress, after having consulted with the attorney(s) of his/her choice. The parties acknowledge that the mediator did not give legal advice and is not the attorney for any party, and that each party has had the opportunity to have this Settlement Agreement reviewed by that party's attorney prior to executing same.

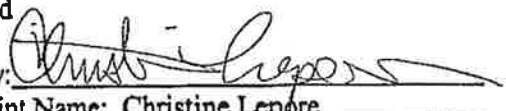
7.15. Immediately after the happening of both contingencies in Section 2.1 above, ~~ACSA shall dismiss its claims with prejudice in the cases styled Aquarina Community Services Association, Inc. v. Brevard County, Florida and Carolina First Bank, Case No. 9-CA-025287 and Mercantile Bank v. Indian River Developers, LLC, et al., Case No. 05-2008-LA-21914.~~ After the occurrence of both events referenced in Section 3.7 of this Settlement Agreement; namely, CFB's delivery to ACSA of the quit claim deed to the Community Center Parcel and release to ACSA of the deed currently held in the Registry of the Court, the County shall dismiss with prejudice its claims, counterclaims and crossclaims against CFB, Mercantile and Kahama, VII, in Brevard County, Florida v. Indian River No. 1 Developers, LLC, Carolina First Bank, and Kahama VII, LLC, Case No. 05-2009-CA-011928. All cases are in the Circuit Court for the Eighteenth Judicial Circuit in and for Brevard County, Florida. The County, CFB and Kahama agree to a six (6) month abatement of the latter lawsuit pending ACSA's receipt of both deeds referenced in Section 3.7 of this Settlement Agreement.

(SIGNATURES APPEAR ON THE FOLLOWING PAGES)

BREVARD COUNTY, a political subdivision of
the State of Florida and Charter County


By: 
Print Name: Howard Tipton
Its: County Manager
Date: 12/1/09

and

By: 
Print Name: Christine Lepore
Its: Assistant County Attorney
Date: November 25, 2009


(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

**AQUARINA COMMUNITY SERVICES
ASSOCIATION, INC.**, a Florida not-for-profit
corporation

By: 
Print Name: Paul Lemaire
Its: ACCA President
Date: 12/3/09


(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

CAROLINA FIRST BANK, a South Carolina
corporation authorized to do business in the State of
Florida

By: 
Print Name: MICHAEL J. LEONARD
Its: SR. V.P.
Date: 02 DEC 09

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

KAHAMA VII, LLC, a Florida limited liability
company authorized to do business in the State of
Florida

By: 
Print Name: Mark S. Carter
Its: Managing Member
Date: December 16, 2009

* Subject to the substitution of Greenfield & Coomber, P.A.,
as Escrow Agent in Section 1.4.

Schedule 1

(Legal description of the Beach Club Parcel)

STAGE 2, TRACT A OF THE AQUARINA PLANNED UNIT DEVELOPMENT AS RECORDED IN PLAT BOOK 33 PAGE 8 OF THE OFFICIAL RECORDS OF BREVARD COUNTY, LESS AND EXCEPT THE FOLLOWING:

1. THE SOUTHERN 110 FEET OF STAGE 2, TRACT A, AS DESCRIBED IN ORB 4265, PAGE 3201 OF THE OFFICIAL RECORDS OF BREVARD COUNTY. CONTAINING 0.61 ACRES MORE OR LESS.
 2. THE NORTHERN 140 FEET OF THE AQUARINA PLANNED UNIT DEVELOPMENT STAGE 2, TRACT A, AS RECORDED IN PLAT BOOK 33 PAGE 8 OF THE OFFICIAL RECORDS OF BREVARD COUNTY, LYING WEST OF THE 1981 COASTAL CONSTRUCTION CONTROL LINE AND EAST OF THE STATE ROAD A1A EAST RIGHT OF WAY LINE. CONTAINING 0.299 ACRES MORE OR LESS.
 3. THE SOUTHERN 250 FEET OF THE AQUARINA PLANNED UNIT DEVELOPMENT STAGE 2, TRACT A, AS RECORDED IN PLAT BOOK 33 PAGE 8 OF THE OFFICIAL RECORDS OF BREVARD COUNTY, LYING WEST OF THE 1981 COASTAL CONSTRUCTION CONTROL LINE AND EAST OF THE STATE ROAD A1A EAST RIGHT OF WAY LINE, LESS AND EXCEPT THE SOUTHERN 110 FEET OF STAGE 2, TRACT A AS RECORDED IN ORB 4265 PAGE 3201 OF THE OFFICIAL RECORDS OF BREVARD COUNTY. CONTAINING 0.299 ACRES MORE OR LESS.
-

Schedule 2

(Legal description of the Community Center Parcel)

STAGE 3, TRACT K, OF AQUARINA P.U.D. STAGE 1; TRACTS C & D, STAGE 2, TRACTS B, D & H, STAGE 3, STAGE 4, TRACTS B, I & X, STAGE 5, AS RECORDED IN PLAT BOOK 41, PAGES 88 THROUGH 92, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; LESS AND EXCEPT THEREFROM THE PROPERTY DESCRIBED IN THE QUITCLAIM DEED RECORDED IN OFFICIAL RECORDS BOOK 4265, PAGE 3193; AND THE QUITCLAIM DEED RECORDED IN OFFICIAL RECORDS BOOK 4265, PAGE 3197, AS CORRECTED BY CORRECTIVE QUITCLAIM DEED RECORDED IN OFFICIAL RECORDS BOOK 4320, PAGE 3349, ALL OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

Schedule 3

(Legal description of Recreation Parcel)

STAGE 1, STAGE 2, AND STAGE 3, OF AQUARINA P.U.D., LOT 3A, AS RECORDED IN
PLAT BOOK 41, PAGE 61 OF THE PUBLIC RECORDS OF BREVARD COUNTY,
FLORIDA.

Schedule 4

(Legal description of Riversedge Parcels)

PARCEL OF LAND LYING IN SECTIONS 35 AND 36, TOWNSHIP 29 SOUTH, RANGE 38 EAST, BREVARD COUNTY, FLORIDA, BEING A PORTION OF STAGE 4, TRACT I, OF AQUARINA P.U.D. STAGE 1, TRACTS C & D, STAGE 2, TRACTS B, D & H, STAGE 3, STAGE 4, TRACTS B, I, & X, STAGE 5, AS RECORDED IN PLAT BOOK 41, PAGES 88 THROUGH 92, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE WEST LINE OF GOVERNMENT LOT 3 OF SAID SECTION 36 AND THE NORTHERLY LINE OF STAGE 4, TRACT I, AS SHOWN ON SAID PLAT, AND RUN ALONG SAID NORTHERLY LINE THE FOLLOWING COURSES: S 88° 58' 01" E 45.40 FEET; THENCE S 88° 47' 07" E 228.06 FEET; THENCE N 87° 24' 29" E 221.56 FEET TO THE EASTERLY LINE OF SAID STAGE 4, TRACT I; THENCE RUN ALONG SAID EASTERLY LINE THE FOLLOWING COURSES: S 07° 47' 18" E 160.53 FEET; THENCE S 54° 27' 10" E 68.01 FEET; THENCE S 89° 38' 10" E 253.56 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF AQUARINA BOULEVARD, AS RECORDED IN PLAT BOOK 48, PAGES 47 THROUGH 48, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; SAID POINT LYING ON A CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 514.50 FEET AND FROM WHICH POINT A RADIAL LINE BEARS S 79° 17' 25" E; THENCE RUN SOUTHERLY ALONG SAID RIGHT OF WAY LINE AND ALONG SAID CURVE THROUGH A DELTA ANGLE OF 12° 57' 51" AN ARC DISTANCE OF 116.41 FEET TO THE POINT OF A CUSP OF A CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 22.25 FEET AND A DELTA ANGLE OF 82° 49' 05" AND FROM WHICH POINT A RADIAL LINE BEARS N 87° 44' 45" E; THENCE DEPARTING FROM SAID RIGHT OF WAY LINE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE 32.16 FEET TO THE POINT OF COMPOUND CURVATURE OF CURVE CONCAVE TO THE SOUTH HAVING A RADIUS OF 100.00 FEET AND A DELTA ANGLE OF 56° 57' 44"; THENCE RUN WESTERLY ALONG THE ARC OF SAID CURVE 99.42 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 217.60 FEET AND A DELTA ANGLE OF 35° 36' 01"; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE 135.21 FEET TO THE POINT OF COMPOUND CURVATURE OF A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 479.00 FEET AND A DELTA ANGLE OF 07° 12' 23"; THENCE RUN WESTERLY ALONG THE ARC OF SAID CURVE 60.25 FEET TO THE POINT OF COMPOUND CURVATURE OF A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 268.46 FEET AND A DELTA ANGLE OF 32° 18' 22"; THENCE RUN WESTERLY ALONG THE ARC OF SAID CURVE 151.37 FEET TO THE POINT OF COMPOUND CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 825.58 FEET AND A DELTA ANGLE OF 00° 33' 49"; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE 8.12 FEET;

THENCE DEPARTING SAID CURVE ON A LINE NOT TANGENT TO SAID CURVE RUN S 15° 46' 33" W 78.28 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 92.00 FEET AND A DELTA ANGLE OF 26° 07' 00"; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE 41.94 FEET TO THE POINT OF TANGENCY; THENCE S 41° 53' 33" W 52.94 FEET; THENCE S 55° 43' 41" W 25.64 FEET; THENCE S 11° 42' 09" E 176.98 FEET TO THE SOUTH LINE OF SAID STAGE 4, TRACT I; THENCE RUN ALONG SAID SOUTH LINE S 78° 16' 10" W 84.84 FEET;

THENCE N 88° 46' 02" W 228.75 FEET TO THE MEAN HIGH WATER LINE OF THE INDIAN RIVER; THENCE RUN ALONG SAID MEAN HIGH WATER LINE N 35° 40' 52" W 48.81 FEET; THENCE N 28° 47' 04" W 41.93 FEET; THENCE N 48° 46' 21" E 16.27 FEET; THENCE N 32° 55' 39" W 34.23 FEET; THENCE N 63° 33' 26" W 24.96 FEET; THENCE N 27° 48' 58" W 36.24 FEET; THENCE S 57° 21' 27" W 6.26 FEET; THENCE N 39° 02' 16" W 38.50 FEET; THENCE N 48° 33' 42" W 53.99 FEET; THENCE N 24° 32' 57" E 8.48 FEET; THENCE N 23° 16' 52" W 30.10 FEET; THENCE N 46° 22' 07" W 64.65 FEET; THENCE N 10° 07' 28" W 59.99 FEET; THENCE N 43° 18' 09" W 29.79 FEET; THENCE S 64° 17' 00" W 9.96 FEET; THENCE S 84° 39' 41" W 26.23 FEET; THENCE N 67° 23' 14" W 6.96 FEET; THENCE N 82° 38' 23" W 11.80 FEET; THENCE N 84° 00' 35" W 11.47 FEET; THENCE N 12° 48' 40" W 13.82 FEET; THENCE N 31° 57' 55" W 28.32 FEET; THENCE N 76° 04' 58" W 24.82 FEET; THENCE S 72° 12' 12" W 13.89 FEET; THENCE S 75° 06' 23" W 13.42 FEET; THENCE N 73° 13' 18" W 19.67 FEET; THENCE N 32° 04' 43" W 20.43 FEET; THENCE N 07° 04' 15" W 14.77 FEET; THENCE N 88° 31' 41" E 16.20 FEET; THENCE S 45° 18' 51" E 11.52 FEET; THENCE S 77° 24' 34" E 16.82 FEET; THENCE N 26° 41' 46" E 14.80 FEET; THENCE N 37° 26' 03" W 38.19 FEET; THENCE S 70° 22' 44" W 22.37 FEET; THENCE N 52° 16' 34" W 33.44 FEET; THENCE N 43° 45' 20" W 90.70 FEET; THENCE N 23° 18' 04" W 42.36 FEET; THENCE N 49° 20' 04" W 23.12 FEET TO THE INTERSECTION OF SAID MEAN HIGH WATER LINE AND THE AFORESAID NORTHERLY LINE OF STAGE 4, TRACT I; THENCE RUN ALONG SAID NORTHERLY LINE THE FOLLOWING COURSES: N 61° 21' 31" E 194.62 FEET; THENCE N 59° 54' 30" E 98.58 FEET; THENCE N 87° 42' 53" E 77.18 FEET; THENCE S 87° 53' 29" E 41.35 FEET; THENCE S 78° 17' 07" E 73.67 FEET; THENCE S 88° 58' 01" E 77.51 FEET TO THE POINT OF BEGINNING.

Schedule 5

(Affidavit of CFB)

IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

INDIAN RIVER NO. 1
DEVELOPERS, LLC,

Plaintiff,

CASE NO: 05-2009-CA-15122

vs.

AQUARINA COMMUNITY SERVICES
ASSOCIATION, INC.,

Defendant.

AFFIDAVIT IN SUPPORT OF DEFENDANT AQUARINA COMMUNITY SERVICES
ASSOCIATION, INC.'S MOTION FOR SUMMARY FINAL JUDGMENT

STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

Before me, this day personally appeared Michael Leonard, Senior Vice President of

Mercantile Bank, a division of Carolina First Bank, a South Carolina corporation ("Affiant"),
who, being first duly sworn upon oath, under the penalty of perjury, deposes and states as
follows:

1. The Affiant, Michael Leonard is a Senior Vice President of Mercantile Bank, a
division of Carolina First Bank, a South Carolina corporation ("CFB").

2. The Affiant affirms that CFB is authorized to do business in the state of Florida, and owns all assets of Mercantile Bank, a division of Carolina First Bank, and Flaresco, Inc., which was merged into Carolina First Bank.

3. Indian River No. 1 Developers, LLC, a Florida limited liability company ("IRD") conveyed to Flaresco, Inc. (which was merged into Carolina First Bank) all of the commercially developable parcels of real property then owned by IRD within Aquarina and subject to the Declaration of Covenants, Conditions and Restrictions for Aquarina, along with "all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining" to such property conveyed, which included all developer voting rights, if any, of IRD with respect to Aquarina. The deed of conveyance was recorded on December 2, 2008 in Official Record Book 5900, at Page 6289, Public Records of Brevard County, Florida. Said deed is attached hereto and made a part of this Affidavit as Exhibit "A".

4. Based on the above deed, IRD had no developer voting rights, if any existed, within Aquarina beginning with December 2, 2008.

5 Affiant further sayeth naught.



Michael Leonard, Senior Vice President
Mercantile Bank, a division of Carolina First
Bank, a South Carolina corporation

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

SWORN TO (or affirmed) and subscribed before me on this 2nd day of December,
2009, by MICHAEL LEONARD, in his capacity as Senior Vice President of Mercantile Bank, a
division of Carolina First Bank, a South Carolina corporation.

Leda Lorenzo
Notary Public - State of Florida

☒ Personally Known To Me
☐ Produced Identification



Prepared By and Return to:
PHILIP J. MORGAN, ESQ.
BRINKLEY, MORGAN, SOLOMON, TATUM,
STANLEY, LUNNY & CROSBY, LLP
200 E. LAS OLAS BLVD. - 19TH FLOOR
FORT LAUDERDALE, FL 33301

HC

Space above this line for recording data

This Deed, made this 27th day of October, 2008,

BETWEEN INDIAN RIVER No. 1 DEVELOPERS, LLC, a Florida limited liability company

whose business address is 7860 Peters Road - Suite F-111, Plantation, FL 33317, Grantor*, and

FLARESCO, INC., a Florida corporation

whose post office address is 104 S. Main Street, Greenville, SC 29601, Attn: Special Assets, Grantee*,

(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

Witnesseth that said grantor, for and in consideration of the sum of TEN AND NO/100 (\$10.00) ----- Dollars, and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying and being in Brevard County, Florida, to-wit:

SEE EXHIBITS "A" AND "A-1" ATTACHED HERETO

SUBJECT to certified or pending liens for municipal assessments and taxes for the year 2007 and subsequent years.

This Deed is given in lieu of foreclosure for the purpose of conveying absolute fee simple title, and is not intended as additional security, nor shall it cause a merger of title with or satisfaction of that certain Mortgage, more particularly described on Exhibit "B" attached hereto, executed by INDIAN RIVER No. 1 DEVELOPERS, LLC, a Florida limited liability company, in favor of MERCANTILE BANK, a division of Carolina First Bank. Said Mortgage shall continue to be a lien against the above described property, and Mercantile Bank may continue and complete said foreclosure action, in Case No. 05-2008CA21914, pending in Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida including the issuance of a Certificate of Title.

EXHIBIT

A

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

Together with all tangible and intangible personal property located on the property described on attached Exhibit "A" and owned by the said grantor.


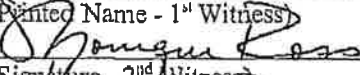
To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that it is lawfully seized of said land in fee simple and that it has good right and lawful authority to sell and convey said land.

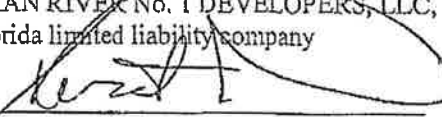
And Further, Grantor hereby assigns to Grantee all of its right, title and interest as lessee under that certain Sovereignty Submerged Lands Lease Renewal between the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida as lessor and Grantor as lessee, filed May 8, 2004 in Official Records Book 5286, Page 1767 of the Public Records of Brevard County, Florida.

In Witness Whereof, grantor has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed, by its proper officers thereunto duly authorized, the day and year first above written.

Signed, sealed and delivered
in the presence of:


(Signature - 1st Witness)
Ana Perez
(Printed Name - 1st Witness)

(Signature - 2nd Witness)
Monique Ross
(Printed Name - 2nd Witness)

INDIAN RIVER No. 1 DEVELOPERS, LLC,
a Florida limited liability company

By: 
S. Martin Sadkin, Managing Member

STATE OF FLORIDA :

COUNTY OF Palm Beach :

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared S. MARTIN SADKIN, Managing Member of INDIAN RIVER No. 1 DEVELOPERS, LLC, a Florida limited liability company, who is personally known to me to be the person described in and who executed the foregoing instrument, or who has produced his driver's license as identification, and acknowledged before me that he executed the foregoing instrument freely and voluntarily and under authority duly vested in him by said Company for the purposes therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid this 23 day of October, 2008.

Bridgette Elliott
NOTARY PUBLIC

Printed Name of Notary:



My Commission Expires:

NOTARY SEAL

DESCRIPTION

A PARCEL OF LAND LYING IN SECTIONS 35 AND 36, TOWNSHIP 29 SOUTH, RANGE 38 EAST, BREVARD COUNTY, FLORIDA, BEING A PORTION OF STAGE 4, TRACT I, OF AQUARINA P.U.D. STAGE 1, TRACTS C & D, STAGE 2, TRACTS B, D & H, STAGE 3, STAGE 4, TRACTS B, I, & X, STAGE 5, AS RECORDED IN PLAT BOOK 41, PAGES 88 THROUGH 92, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE WEST LINE OF GOVERNMENT LOT 3 OF SAID SECTION 36 AND THE NORTHERLY LINE OF STAGE 4, TRACT I, AS SHOWN ON SAID PLAT, AND RUN ALONG SAID NORTHERLY LINE THE FOLLOWING COURSES: S 88° 58' 01" E 45.40 FEET; THENCE S 88° 47' 07" E 228.06 FEET; THENCE N 87° 24' 29" E 221.56 FEET TO THE EASTERLY LINE OF SAID STAGE 4, TRACT I; THENCE RUN ALONG SAID EASTERLY LINE THE FOLLOWING COURSES: S 07° 47' 18" E 160.53 FEET; THENCE S 54° 27' 10" E 68.01 FEET; THENCE S 89° 38' 10" E 253.56 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF AQUARINA BOULEVARD, AS RECORDED IN PLAT BOOK 48, PAGES 47 THROUGH 48, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; SAID POINT LYING ON A CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 514.50 FEET AND FROM WHICH POINT A RADIAL LINE BEARS S 79° 17' 25" E; THENCE RUN SOUTHERLY ALONG SAID RIGHT OF WAY LINE AND ALONG SAID CURVE THROUGH A DELTA ANGLE OF 12° 57' 51" AN ARC DISTANCE OF 116.41 FEET TO THE POINT OF A CUSP OF A CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 22.25 FEET AND A DELTA ANGLE OF 82° 49' 05" AND FROM WHICH POINT A RADIAL LINE BEARS N 87° 44' 45" E; THENCE DEPARTING FROM SAID RIGHT OF WAY LINE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE 32.16 FEET TO THE POINT OF COMPOUND CURVATURE OF CURVE CONCAVE TO THE SOUTH HAVING A RADIUS OF 100.00 FEET AND A DELTA ANGLE OF 56° 57' 44"; THENCE RUN WESTERLY ALONG THE ARC OF SAID CURVE 99.42 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 217.60 FEET AND A DELTA ANGLE OF 35° 36' 01"; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE 135.21 FEET TO THE POINT OF COMPOUND CURVATURE OF A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 479.00 FEET AND A DELTA ANGLE OF 07° 12' 23"; THENCE RUN WESTERLY ALONG THE ARC OF SAID CURVE 60.25 FEET TO THE POINT OF COMPOUND CURVATURE OF A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 268.46 FEET AND A DELTA ANGLE OF 32° 18' 22"; THENCE RUN WESTERLY ALONG THE ARC OF SAID CURVE 151.37 FEET TO THE POINT OF COMPOUND CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 825.58 FEET AND A DELTA ANGLE OF 00° 33' 49"; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE 8.12 FEET; THENCE DEPARTING SAID CURVE ON A LINE NOT TANGENT TO SAID CURVE RUN S 15° 46' 33" W 78.28 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 92.00 FEET AND A DELTA ANGLE OF 26° 07' 00"; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE 41.94 FEET TO THE POINT OF TANGENCY; THENCE S 41° 53' 33" W 52.94 FEET; THENCE S 55° 43' 41" W 25.64 FEET; THENCE S 11° 42' 09" E 176.98 FEET TO THE SOUTH LINE OF SAID STAGE 4, TRACT I; THENCE RUN ALONG SAID SOUTH LINE S 78° 16' 10" W 84.84 FEET; THENCE N 88° 46' 02" W 228.75 FEET TO THE MEAN HIGH WATER LINE OF THE INDIAN RIVER; THENCE RUN ALONG SAID MEAN HIGH WATER LINE N 35° 40' 52" W 48.81 FEET; THENCE N 28° 47' 04" W 41.93 FEET;

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THENCE N 48° 46' 21" E 16.27 FEET; THENCE N 32° 55' 39" W 34.23 FEET; THENCE N 63° 33' 26" W 24.96 FEET; THENCE N 27° 48' 58" W 36.24 FEET; THENCE S 57° 21' 27" W 6.26 FEET; THENCE N 39° 02' 16" W 38.50 FEET; THENCE N 48° 33' 42" W 53.99 FEET; THENCE N 24° 32' 57" E 8.48 FEET; THENCE N 23° 16' 52" W 30.10 FEET; THENCE N 46° 22' 07" W 64.65 FEET; THENCE N 10° 07' 28" W 59.99 FEET; THENCE N 43° 18' 09" W 29.79 FEET; THENCE S 64° 17' 00" W 9.96 FEET; THENCE S 84° 39' 41" W 26.23 FEET; THENCE N 67° 23' 14" W 6.96 FEET; THENCE N 82° 38' 23" W 11.80 FEET; THENCE N 84° 00' 35" W 11.47 FEET; THENCE N 12° 48' 40" W 13.82 FEET; THENCE N 31° 57' 55" W 28.32 FEET; THENCE N 76° 04' 58" W 24.82 FEET; THENCE S 72° 12' 12" W 13.89 FEET; THENCE S 75° 06' 23" W 13.42 FEET; THENCE N 73° 13' 18" W 19.67 FEET; THENCE N 32° 04' 43" W 20.43 FEET; THENCE N 07° 04' 15" W 14.77 FEET; THENCE N 88° 31' 41" E 16.20 FEET; THENCE S 46° 18' 51" E 11.52 FEET; THENCE S 77° 24' 34" E 16.82 FEET; THENCE N 26° 41' 46" E 14.80 FEET; THENCE N 37° 26' 03" W 38.19 FEET; THENCE S 70° 22' 44" W 22.37 FEET; THENCE N 52° 16' 34" W 33.44 FEET; THENCE N 43° 45' 20" W 90.70 FEET; THENCE N 23° 18' 04" W 42.36 FEET; THENCE N 49° 20' 04" W 23.12 FEET TO THE INTERSECTION OF SAID MEAN HIGH WATER LINE AND THE AFORESAID NORTHERLY LINE OF STAGE 4, TRACT I; THENCE RUN ALONG SAID NORTHERLY LINE THE FOLLOWING COURSES: N 61° 21' 31" E 194.62 FEET; THENCE N 59° 54' 30" E 98.58 FEET; THENCE N 87° 42' 53" E 77.18 FEET; THENCE S 87° 53' 29" E 41.35 FEET; THENCE S 78° 17' 07" E 73.67 FEET; THENCE S 88° 58' 01" E 77.51 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH:

STAGE 3, TRACT K, OF AQUARINA P.U.D. STAGE 1, TRACTS C & D, STAGE 2, TRACTS B, D & H, STAGE 3, STAGE 4, TRACTS B, I, & X, STAGE 5, AS RECORDED IN PLAT BOOK 41, PAGES 88 THROUGH 92, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; LESS AND EXCEPT THEREFROM THE PROPERTY DESCRIBED IN THE QUITCLAIM DEED RECORDED IN OFFICIAL RECORDS BOOK 4265, PAGE 3193; AND THE QUITCLAIM DEED RECORDED IN OFFICIAL RECORDS BOOK 4265, PAGE 3197, AS CORRECTED BY CORRECTIVE QUITCLAIM DEED RECORDED IN OFFICIAL RECORDS BOOK 4320, PAGE 3349, ALL OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

TOGETHER WITH:

STAGE 4, TRACT B, OF AQUARINA P.U.D. STAGE 1, TRACTS C & D, STAGE 2, TRACTS B, D & H, STAGE 3, STAGE 4, TRACTS B, I, & X, STAGE 5, AS RECORDED IN PLAT BOOK 41, PAGES 88 THROUGH 92, OF THE PUBLIC RECORDS OF BREVARD COUNTY FLORIDA.

TOGETHER WITH:

STAGE 3, TRACT B OF AQUARINA II P.U.D. STAGE 1, STAGE 2 AND STAGE 3, TRACTS B, I, II AND III, AS RECORDED IN PLAT BOOK 41, PAGES 61 THROUGH 63, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

TOGETHER WITH:

A PARCEL OF LAND LYING IN SECTION 36, TOWNSHIP 29 SOUTH, RANGE 38 EAST, BREVARD COUNTY, FLORIDA, BEING A PORTION OF STAGE 4, TRACT I, OF AQUARINA P.U.D. STAGE 1, TRACTS C & D, STAGE 2, TRACTS B, D & H, STAGE 3, STAGE 4, TRACTS B, I, & X, STAGE 5, AS RECORDED IN PLAT BOOK 41, PAGES 88 THROUGH 92, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGIN AT THE SOUTHEAST CORNER OF SAID STAGE 4, TRACT I, BEING THE MOST NORTHERLY CORNER OF STAGE 3, TRACT F, OF SAID AQUARINA P.U.D., SAID POINT LYING ON THE WEST

RIGHT OF WAY LINE OF AQUARINA BOULEVARD, AS RECORDED IN PLAT BOOK 48, PAGES 47 THROUGH 48, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; RUN ALONG THE SOUTH LINE OF STAGE 4, TRACT I, S 27° 31' 00" W 183.89 FEET; THENCE S 78° 16' 10" W 453.70 FEET; THENCE DEPARTING SAID SOUTHERLY LINE RUN N 11° 42' 09" W 176.98 FEET; THENCE N 55° 43' 41" E 25.64 FEET; THENCE N 41° 53' 33" E 52.94 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 92.00 FEET AND A DELTA ANGLE OF 26° 07' 00"; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE 41.94 FEET TO THE POINT OF TANGENCY; THENCE N 15° 46' 33" E 78.28 FEET TO A POINT ON A CIRCULAR CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 825.58 FEET AND FROM WHICH POINT A RADIAL LINE BEARS N 23° 38' 29" E; THENCE RUN EASTERLY ALONG THE ARC OF SAID CURVE 8.12 FEET THROUGH A DELTA ANGLE OF 00° 33' 49" TO THE POINT OF COMPOUND CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 268.46 FEET AND A DELTA ANGLE OF 32° 18' 22"; THENCE RUN EASTERLY ALONG THE ARC OF SAID CURVE 151.37 FEET TO THE POINT OF COMPOUND CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 479.00 FEET AND A DELTA ANGLE 07° 12' 23"; THENCE RUN EASTERLY ALONG THE ARC OF SAID CURVE 60.25 FEET TO THE POINT OF COMPOUND CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 217.60 FEET AND A DELTA ANGLE OF 35° 36' 01"; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE 135.21 FEET TO THE POINT OF REVERSE CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 100.00 FEET AND A DELTA ANGLE OF 56° 57' 44"; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE 99.42 FEET TO THE POINT OF COMPOUND CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 22.25 FEET AND A DELTA ANGLE OF 82° 49' 05"; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE 32.16 FEET TO A POINT OF REVERSE CURVATURE ON THE WESTERLY RIGHT OF WAY LINE OF SAID AQUARINA BOULEVARD, SAID CIRCULAR CURVE BEING CONCAVE TO THE EAST HAVING A RADIUS OF 514.50 FEET; THENCE RUN SOUTHERLY ALONG SAID RIGHT OF WAY LINE AND ALONG SAID CURVE THROUGH A DELTA ANGLE OF 19° 07' 54" AN ARC DISTANCE OF 171.80 FEET TO THE POINT OF BEGINNING.

LOT 1B,, AQUARINA P.U.D STAGE 1, STAGE 2 AND STAGE 3, TRACTS B, I, II AND III, ACVCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 41, PAGES 61 THROUGH 63, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

Exhibit "A-1"

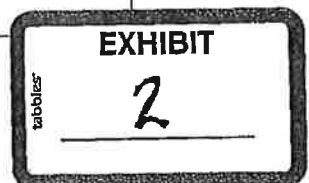
EXHIBIT "B"

Mortgage and Security Agreement dated February 28, 2003, and recorded March 10, 2003, in Official Records Book 4842, Page 1233 of the Public Records of Brevard County, Florida; Mortgage Modification and Future Advance Agreement dated July 30, 2003 and recorded August 22, 2003 in Official Records Book 5026, Page 2778 of the Public Records of Brevard County, Florida; Second Mortgage Modification and Future Advance Agreement dated October 21, 2004 and recorded October 26, 2004 in Official Records Book 5376, Page 0286 of the Public Records of Brevard County, Florida; Third Mortgage Modification and Future Advance Agreement dated April 4, 2005 and recorded April 7, 2005 in Official Records Book 5448, Page 1917 of the Public Records of Brevard County, Florida; Fourth Mortgage Modification and Future Advance Agreement dated February 23, 2006 and recorded April 4, 2006 in Official Records Book 5626, Page 1773 of the Public Records of Brevard County, Florida; Fifth Mortgage Modification, Future Advance & Spreader Agreement dated March 21, 2006 and recorded April 4, 2006 in Official Records Book 5626, Page 1792 of the Public Records of Brevard County, Florida; Sixth Mortgage Modification and Future Advance Agreement dated August 11, 2006, and recorded August 25, 2006, in Official Records Book 5689, Page 3395 of the Public Records of Brevard County, Florida; Seventh Mortgage Modification and Future Advance Agreement dated September 21, 2007, recorded October 1, 2007, in Official Records Book 5815, Page 6377 of the Public Records of Brevard County, Florida; Collateral Assignment of Leases, Rents and Income dated February 28, 2003, and recorded March 10, 2003 in Official Records Book 4842, Page 1252 of the Public Records of Brevard County, Florida; UCC-1 Financing Statement recorded March 10, 2003 in Official Records Book 4842, Page 1263 of the Public Records of Brevard County, Florida; UCC-1 Financing Statement filed with the Secretary of State, State of Florida under File No. 200303430646 and Amended and filed with the Secretary of State, State of Florida under File No. 200707235896; UCC-3 Statement of Change recorded April 7, 2005 in Official Records Book 5448, Page 1929 of the Public Records of Brevard County, Florida; UCC-3 Statement of Change filed with the Secretary of State, State of Florida under File No. 200509402125 (collectively the "Mortgage") securing that certain Fifth Consolidated & Amended Promissory Note in the sum of \$9,604,925.00 dated September 21, 2007.

Aquarina Settlement Agreement

Critical Tasks and Dates

<u>Article</u>	<u>Task</u>	<u>Deadline</u>	<u>Completion Date</u>
2.1(i)	ACSA membership to approve Settlement Agreement	December 17, 2009	December 17, 2009 Approved by vote of 297 to 19
2.2 (ii)	BOCC to approve Settlement Agreement	January 15, 2010	BOCC to consider at January 12, 2010 general meeting
3.2.1	CFB pays ACSA \$100,000	Within 10 days after notice that ACSA has obtained a building permit for construction of a community pool on Community Center Parcel or Beach Club Parcel or community building on Beach Club and fully executed a construction contract	
3.2.2	CFB to pay ACSA \$75,000 for redemption of taxes certificates on the Tax Parcel	March 1, 2010	
3.2.3	CFB to pay ACSA \$100,000	Upon the earliest occurrence of the following (1) ten days after CFB sells Stage 4, Tracts V and VII; or (2) ten days after notice that ACSA has obtained a building permit and fully executed construction contract for a community pool on the	



			community Center Parcel or Beach Club Parcel of the community building on the Beach Club Parcel. The building permit must be different than the one used to satisfy 3.2.1.	
3.3	CFB shall request written input from ACSA and Kahama in preparation of the proposed PUD/PDP amendment application.		January 15, 2010	
	ACSA and Kahama may provide input to CFB for the proposed PUD/PDP amendment application.		60 days after CFB's written request for input.	
3.4	ACSA and Kahama to provide additional comments on CFB's final draft of the proposed PUD/PDP amendment application.		14 days after receipt of final draft from CFB	
3.7	CFB to deliver a quit claim deed to ACSA for the Community Center Parcel.		Upon conclusion of CFB's foreclosure action	
3.9	CFB to pay all delinquent taxes on Community Center.		Prior to delivery of quit claim deed	
3.10	Payment of all assessments due to ACSA by either Ocean Dunes Condominium Receiver or CFB.		Paid by Receiver from closing proceeds of Ocean Dunes Units or by ACSA after closing if no Receiver funds are available.	
3.11	CFB to assign any interest it has in submerged lands least (ORB 5286/1767) to ACSA			
3.12	CFB to lease to ACSA a fenced area currently used for boat storage.			
	CFB to resolve Notice of Violation issued by SJRWMD			
4.1	Kahama to proceed with pending foreclosure actions to obtain title to Kahama Parcels and		10 days after Certificate of Title is issued by Clerk of Court	

	provide written notice to all parties of issuance of Certificate of Title		
4.2	Kahama to coordinate with ACSA to redeem tax certificates issued on Tax Parcel	Redeem tax certificates on or before April 1, 2010	
4.3	Kahama to take lead role in replatting Tax Parcel/ACSA to contribute 50% of the reasonable costs of replatting and join Kahama as a co-applicant in the replatting request (See Art. 5.5)		
4.4	Kahama to escrow \$350,000 for payment to ACSA	Upon satisfaction of 4.4.1 and 4.4.2	
4.4.1	ACSA escrows executed warranty deed conveying to Kahame 35' of property immediately south of the Kahama Parcels (See also Art. 5.4)		
4.4.2	ACSA to escrow an executed release of the Access and Parking Easement Agreement encumbering Kahama Parcels (See also Art. 5.4)		
4.4	Escrow Agent to release funds (\$350,000) to ACSA	Within 10 days of satisfaction of 4.4.3 and 4.4.4	
4.4.3	Proposed PUD/PDP amendment is adopted		
4.4.4	Tax Parcel is replatted		
4.5	Kahama to grant ACSA a 90-day temporary access easement	Upon release of funds and documents by Escrow Agent	
	ACSA to add Kahama as an insured to its liability insurance policy (See also Art. 5.4)	15 days of execution of Settlement Agreement	
5.1	ACSA shall provide written notice that the Contingency Provision in 2.1(i) has been satisfied	10 days after December 17, 2090	December 18, 2009
5.2	ACSA waives any claims for past due Section 720.3085, F.S. assessments against CFB. These are different than the assessments described in Art. 3.10		

5.3	ACSA agrees to amend its Governing Documents to accommodate the conveyance to Kahama described in Art. 4.4.1		
5.7	ACSA agrees to allow CFB the opportunity to comment on all concept and permit plans for the community pool and improvements to the Beach Club Parcel	Prior to submission of plans for approval by governmental authorities	
5.10	ACSA will allow Kahama the option of having one or both of the Reconfigured Kahama Parcels become members of the ACSA	Option to be exercised in writing no later than 10 days after the issuance of the CO for the applicable parcel	
6.1	County pays ACSA \$68,000	15 days after County approves Settlement Agreement	
6.2	County to seek a court order releasing the deed from court registry for delivery to ACSA		
6.3	County waives fees for processing proposed PUD/PDP amendment		
6.4	County waives fees for replatting Tax Parcel		
6.5	County to review public access rights to marina		
6.6 through 6.9	County acknowledges existing development rights for Stage 4 Tract V, Stage 4 Tract VIII and State 4 Tract IX		
6.10	County allow extension of time for submission of Final Development Plans for vested development	December 31, 2015	
6.12	County agrees that proposed PUD/PDP amendments are not "substantial" and shall be processed as minor amendments		
6.13	County agrees to enforce PUD/PDP requirement that requires clear title to Beach Club Parcel be conveyed to ACSA against IGM	If IGM does not release lien against Beach Club Parcel by January 15, 2010	
7.15	ACSA to dismiss claims against CFB, County,	Immediately after both	

	Mercantile Bank and Developer	contingencies in Art. 2.1 are satisfied	
	County to dismiss claims against CFB, Mercantile and Kahama	After CFB delivers deed to Community Center Parcel to ACSA per Art. 3.7 and deed to same is released from court registry	