MEMORANDUM

TO: The Honorable City Commission

FROM: Hans Ottinot, City Attorney

DATE: July 19, 2012

RE: Approving the Renewal of the Agreement between the State of Florida and the City regarding the submerged Lands Lease for the Pier

RECOMMENDATION:

It is recommended that the City commission approve the attached Resolution approving a submerged land lease in substantially the same form with the State of Florida.

REASONS:

When the City took over the operation of the Newport Fishing Pier located at 16701 Collins Avenue, the City was required to enter into a submerged land lease with the State of Florida to operate the Pier. The prior lease with the State was for five (5) years and is up for renewal. Please note that the City has also asked the State to waive the fees for the lease agreement until the Pier is operational.
RESOLUTION NO. 2012-____

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SUNNY ISLES BEACH, FLORIDA, APPROVING THE RENEWAL OF AN AGREEMENT BETWEEN THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA AND THE CITY OF SUNNY ISLES BEACH RELATING TO A SOVEREIGNTY SUBMERGED LANDS LEASE FOR OPERATION OF THE NEWPORT FISHING PIER, IN SUBSTANTIALLY THE SAME FORM ATTACHED HERETO AS EXHIBIT “A”; AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT; AUTHORIZING THE CITY ATTORNEY AND THE CITY MANAGER TO DO ALL THINGS NECESSARY TO EFFECTUATE THE TERMS OF THIS AGREEMENT; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Pier was operated by its former owner Newport Operating Corporation, through a submerged land lease with the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, from 1984 until April 23, 2007; and

WHEREAS, in 2008, when the City took over operations of the Pier, the City entered into an agreement with the State of Florida to lease the submerged land for the use of the property known as the Newport Fishing Pier (the “Pier”) located at 16701 Collins Avenue; and

WHEREAS, the City Commission wishes to renew the submerged land lease agreement with the State of Florida in order for the City to continue to operate the Pier; and

WHEREAS, the City Commission finds that entering into this submerged land lease with the State of Florida is in the City’s best interest and is a necessary step in a myriad of procedural actions required to successfully repair and re-open the Pier.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF SUNNY ISLES BEACH, FLORIDA, AS FOLLOWS:

Section 1. Approval of Agreement. The Sovereignty Submerged Lands Lease with the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, providing for the operation of the fishing pier, ticket booth and restaurant, attached hereto as Exhibit “A”, be and the same, is hereby approved in substantially the same form.

Section 2. Authorization of Mayor. The Mayor is hereby authorized to execute said Sovereignty Submerged Lands Lease.

Section 3. Authorization of the City Attorney and the City Manager. The City Attorney and the City Manager are hereby authorized to do all things necessary to effectuate the terms of this Sovereignty Submerged Lands Lease.
Section 4. Effective Date. This Resolution will become effective upon adoption.

PASSED AND ADOPTED this 19th day of July, 2012.

Norman S. Edelcup, Mayor

ATTEST:

Jane A. Hines, CMC, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Hans Otten, City Attorney

Moved by: __________________________
Seconded by: _______________________

Vote:

Mayor Edelcup (Yes) (No)
Vice Mayor Thaler (Yes) (No)
Commissioner Aelion (Yes) (No)
Commissioner Gatto (Yes) (No)
Commissioner Scholl (Yes) (No)
This Instrument Prepared By:
Tiera Brown
Recurring Revenue Section
Bureau of Public Land Administration
3900 Commonwealth Boulevard
Mail Station No. 125
Tallahassee, Florida 32399

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
OF THE STATE OF FLORIDA

SOVEREIGNTY SUBMERGED LANDS FEE WAIVED LEASE RENEWAL
AND MODIFICATION TO INCREASE SQUARE FOOTAGE

BOF FILE NO. 130174558
PA NO. 0295091-001-JC

THIS LEASE is hereby issued by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, hereinafter referred to as the Lessor.

WITNESSETH: That for and in consideration of the faithful and timely performance of and compliance with all terms and conditions stated herein, the Lessor does hereby lease to City of Sunny Isles Beach, Florida, hereinafter referred to as the Lessee, the sovereignty lands described as follows:

A parcel of sovereignty submerged land in Section 14, Township 52 South, Range 42 East, in Atlantic Ocean, Miami-Dade County, containing 18,545 square feet, more or less, as is more particularly described and shown on Attachment A, dated September 21, 2011.

TO HAVE THE USE OF the hereinabove described premises from October 27, 2011, the effective date of this modified lease renewal, through April 23, 2017, the expiration date of this modified lease renewal. The terms and conditions on and for which this modified lease renewal is granted are as follows:

1. USE OF PROPERTY: The Lessee is hereby authorized to construct and operate a public fishing pier with a non-water dependent ticket booth, bait and tackle shop and restaurant, a life guard station and Aquatic Safety Center on the second floor exclusively to be used for fishing and passive recreational activities only in conjunction with an upland public beachfront park and condominium, without fueling facilities, without a sewage pumpout facility, and without liveaboards as defined in paragraph 25 as shown and conditioned in Attachment A, and the State of Florida Department of Environmental Protection Consolidated Joint Coastal Permit No. 0295091-001-JC, dated October 6, 2011, incorporated herein and made a part of this lease by reference. The construction of the structures described in Attachment A shall be completed within the initial term hereof or within the first 5 years of the initial term if the initial term is for a period greater than 5 years. The failure to complete the construction of all authorized structures within this time period shall constitute a material breach of the lease causing the lease to automatically terminate upon the expiration of the initial term or first 5 years, whichever is sooner, without any right of renewal. All of the foregoing subject to the remaining conditions of this lease.

[02-29]

Exhibit "A"
2. AGREEMENT TO EXTENT OF USE: This lease is given to the Lessee to use or occupy the leased premises only for those activities specified herein and as conditioned by the State of Florida Department of Environmental Protection Consolidated Joint Coastal Permit. The Lessee shall not (i) change or add to the approved use of the leased premises as defined herein (e.g., from commercial to multi-family residential, from temporary mooring to rental of wet slips, from rental of wet slips to contractual agreement with third party for docking of cruise ships, from rental of recreational pleasure craft to rental or temporary mooring of charters/tour boats, from loading/offloading commercial to rental of wet slips, etc.); (ii) change activities in any manner that may have an environmental impact that was not considered in the original authorization or regulatory permit; or (iii) change the type of use of the riparian upland as permitted by the Lessee’s interest in the riparian upland property that is more particularly described in Attachment B without first obtaining a regulatory permit/modified permit, if applicable, the Lessee’s written authorization in the form of a modified lease, the payment of additional fees, if applicable, and, if applicable, the removal of any structures which may no longer qualify for authorization under the modified lease. If at any time during the lease term this lease no longer satisfies the requirements of subparagraph 18-21.0111(1)(b)(7), Florida Administrative Code, for a fee waived lease, the Lessee shall be required to pay an annual lease fee in accordance with Rule 18-21.011, Florida Administrative Code, and if applicable, remove any structures which may no longer qualify for authorization under this lease.

3. EXAMINATION OF LESSEE’S RECORDS: The Lessor is hereby specifically authorized and empowered to examine, for the term of this lease including any renewals, plus three (3) additional years, at all reasonable hours, the books, records, contracts, and other documents confirming and pertaining to the computation of annual lease payments as specified in paragraph two (2) above.

4. MAINTENANCE OF LESSEE’S RECORDS: The Lessee shall maintain separate accounting records for: (i) gross revenue derived directly from the use of the leased premises, (ii) gross revenue derived indirectly from the use of the leased premises, and (iii) all other gross revenue derived from the Lessee’s operations on the riparian upland property. The Lessee shall secure, maintain and keep all records for the term of this lease and any renewals plus three (3) additional years. This period shall be extended for an additional two (2) years upon request for examination of all records and accounts for lease verification purposes by the Lessor.

5. PROPERTY RIGHTS: The Lessee shall make no claim of title or interest to said lands hereinafter described by reason of the occupancy or use thereof, and all title and interest to said land hereinafter described is vested in the Lessor. The Lessee is prohibited from including, or making any claim that purports to include, said lands described or the Lessee’s leasehold interest in said lands into any form of private ownership, including but not limited to any form of condominium or cooperative ownership. The Lessee is further prohibited from making any claim, including any advertisement, that said land, or the use thereof, may be purchased, sold, or re-sold.

6. INTEREST IN RIPARIAN UPLAND PROPERTY: During the term of this lease, the Lessee shall maintain the interest in the riparian upland property that is more particularly described in Attachment B, and by reference made a part hereof together with the riparian rights appurtenant thereto, and if such interest is terminated, the lease may be terminated at the option of the Lessee. Prior to sale and/or termination of the Lessee’s interest in the riparian upland property, the Lessee shall inform any potential buyer or transferee of the Lessee’s interest in the riparian upland property and the existence of this lease and all its terms and conditions and shall complete and execute any documents required by the Lessor to effect an assignment of this lease, if consented to by the Lessor. Failure to do so will not relieve the Lessee from responsibility for full compliance with the terms and conditions of this lease which include, but are not limited to, payment of all fees and/or penalty assessments incurred prior to such act.

7. ASSIGNMENT OF LEASE: This lease shall not be assigned or otherwise transferred without prior written consent of the Lessor or its duly authorized agent. Such assignment or other transfer shall be subject to the terms, conditions and provisions of management standards and applicable laws, rules and regulations in effect at that time. Any assignment or other transfer without prior written consent of the Lessor shall be null and void and without legal effect.

8. INDEMNIFICATION/INVESTIGATION OF ALL CLAIMS: The Lessee shall investigate all claims of every nature at its expense. Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof. Nothing herein shall be construed as an indemnity or a waiver of sovereign immunity enjoyed by any party hereto, as provided in Section 768.28, Florida Statutes, as amended from time to time, or any other law providing limitations on claims.
9. NOTICES/COMPLIANCE/TERRMINATION: The Lessee binds itself, its successors and assigns, to abide by the provisions and conditions herein set forth, and said provisions and conditions shall be deemed covenants of the Lessee, its successors and assigns. In the event the Lessee fails or refuses to comply with the provisions and conditions herein set forth, or in the event the Lessee violates any of the provisions and conditions herein set forth, and the Lessee fails or refuses to comply with any of said provisions or conditions within twenty (20) days of receipt of the Lessor’s notice to correct, this lease may be terminated by the Lessor upon thirty (30) days written notice to the Lessee. If canceled, all of the above-described parcel of land shall revert to the Lessor. All notices required to be given to the Lessee by this lease or applicable law or administrative rules shall be sufficient if sent by U.S. Mail to the following address:

City of Sunny Isles Beach, Florida
18070 Collins Avenue
Sunny Isles Beach, Florida 33160

The Lessee shall notify the Lessor by certified mail of any change to this address at least ten (10) days before the change is effective.

10. TAXES AND ASSESSMENTS: The Lessee shall assume all responsibility for liabilities that accrue to the subject property or to the improvements thereon, including any and all drainage or special assessments or taxes of every kind and description which are now or may be hereafter lawfully assessed and levied against the subject property during the effective period of this lease.

11. NUISANCES OR ILLEGAL OPERATIONS: The Lessee shall not permit the leased premises or any part thereof to be used or occupied for any purpose or business other than herein specified unless such proposed use and occupancy are consented to by the Lessor and the lease is modified accordingly, nor shall Lessee knowingly permit or suffer any nuisances or illegal operations of any kind on the leased premises.

12. MAINTENANCE OF FACILITY/RIGHT TO INSPECT: The Lessee shall maintain the leased premises in good condition, keeping the structures and equipment located thereon in a good state of repair in the interests of public health, safety and welfare. No dock or pier shall be constructed in any manner that would cause harm to wildlife. The leased premises shall be subject to inspection by the Lessor or its designated agent at any reasonable time.

13. NON-DISCRIMINATION: The Lessee shall not discriminate against any individual because of that individual’s race, color, religion, sex, national origin, age, handicap, or marital status with respect to any activity occurring within the area subject to this lease or upon lands adjacent to and used as an adjunct of the leased area. During the lease term, the Lessee shall post and maintain the placard furnished to the Lessee by the Lessor in a prominent and visible location on the leased premises or adjacent business office of the Lessee. It shall be the responsibility of the Lessee to post the placard in a manner which will provide protection from the elements, and, in the event that said placard becomes illegible at any time during the term of this lease (including any extensions thereof), to notify the Lessor in writing, so that a replacement may be provided.

14. ENFORCEMENT OF PROVISIONS: No failure, or successive failures, on the part of the Lessor to enforce any provision, nor any waiver or successive waivers on its part of any provision herein, shall operate as a discharge thereof or render the same ineffectual or impair the right of the Lessor to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.

15. PERMISSION GRANTED: Upon expiration or cancellation of this lease all permission granted hereunder shall cease and terminate.
16. RENEWAL PROVISIONS: Renewal of this lease shall be at the sole option of the Lessee. Such renewal shall be subject to the terms, conditions and provisions of management standards and applicable laws, rules and regulations in effect at that time. In the event that Lessee is in full compliance with the terms of this lease, the Lessee may apply in writing for a renewal. Such application for renewal must be received by Lessor no sooner than 120 days and no later than 30 days prior to the expiration date of the original or current term thereof. The term of any renewal granted by the Lessor shall commence on the last day of the previous lease term. If the Lessee fails to timely apply for a renewal, or in the event the Lessor does not grant a renewal, the Lessee shall vacate the leased premises and remove all structures and equipment occupying and erected therein at its expense. The obligation to remove all structures authorized herein upon termination of this lease shall constitute an affirmative covenant upon the Lessee's interest in the riparian upland property more particularly described in Attachment B, which shall run with the title to the Lessee's interest in said riparian upland property and shall be binding upon Lessee and Lessee's successors in title or successors in interest.

17. REMOVAL OF STRUCTURES/ADMINISTRATIVE FINES: If the Lessee does not remove said structures and equipment occupying and erected upon the leased premises after expiration or cancellation of this lease, such structures and equipment will be deemed forfeited to the Lessor, and the Lessor may authorize removal and may sell such forfeited structures and equipment after ten (10) days written notice by certified mail addressed to the Lessee at the address specified in Paragraph 9 or at such address on record as provided to the Lessor by the Lessee. However, such remedy shall be in addition to all other remedies available to the Lessor under applicable laws, rules and regulations including the right to compel removal of all structures and the right to impose administrative fines.

18. REMOVAL COSTS/LIEN ON RIPARIAN UPLAND PROPERTY: Subject to the noticing provisions of Paragraph 17 of this lease, any costs incurred by the Lessor in removal of any structures and equipment constructed or maintained on state lands shall be paid by Lessee and any unpaid costs and expenses shall constitute a lien upon the Lessee's interest in the riparian upland property that is more particularly described in Attachment B. This lien on the Lessee's interest in the riparian upland property shall be enforceable in summary proceedings as provided by law.

19. RECORDATION OF LEASE: The Lessee, at its own expense, shall record this fully executed lease in its entirety in the public records of the county within which the lease site is located within fourteen (14) days after receipt, and shall provide to the Lessor within ten (10) days following the recordation a copy of the recorded lease in its entirety which contains the O.K. Book and pages at which the lease is recorded.

20. RIPARIAN RIGHTS/FINAL ADJUDICATION: In the event that any part of any structure authorized hereunder is determined by a final adjudication issued by a court of competent jurisdiction to encroach on or interfere with adjacent riparian rights, Lessee agrees to either obtain written consent for the offending structure from the affected riparian owner or to remove the interference or encroachment within 60 days from the date of the adjudication. Failure to comply with this paragraph shall constitute a material breach of this lease agreement and shall be grounds for immediate termination of this lease agreement at the option of the Lessor.

21. AMENDMENTS/MODIFICATIONS: This lease is the entire and only agreement between the parties. Its provisions are not severable. Any amendment or modification to this lease must be in writing, must be accepted, acknowledged and executed by the Lessee and Lessor, and must comply with the rules and statutes in existence at the time of the execution of the modification or amendment. Notwithstanding the provisions of this paragraph, if mooring is authorized by this lease, the Lessee may install boatlifts within the leased premises without formal modification of the lease provided that (a) the Lessee obtains any state or local regulatory permit that may be required; and (b) the location or size of the lift does not increase the mooring capacity of the facility.

22. ADVERTISEMENTS/SIGN/SIGN/WATER DEPENDENT ACTIVITIES/ADDITIONAL ACTIVITIES/MAJOR STRUCTURAL REPAIRS: No permanent or temporary signs directed to the boating public advertising the sale of alcoholic beverages shall be erected or placed within the leased premises. No restaurant or dining activity except as authorized in this lease and conditioned by Special Lease Condition No. 27 A, are to occur within the leased premises. The Lessee shall ensure that no permanent, temporary or floating structures, fences, docks, pilings or any structures whose use is not water-dependent shall be erected or conducted over sovereignty submerged lands without prior written consent from the Lessor. No additional structures and/or activities including dredging, relocation/realignment or major repairs or renovations to authorized structures, shall be erected or conducted on or over sovereignty, submerged lands without prior written consent from the Lessor. Unless specifically authorized in writing by the Lessor, such activities or structures shall be considered unauthorized and a violation of Chapter 255, Florida Statutes, and shall subject the Lessee to administrative fines under Chapter 18-14, Florida Administrative Code. This condition does not apply to minor structural repairs required to maintain the authorized structures in a good state of repair in the interests of public health, safety or welfare provided, however, that such activities shall not exceed the activities authorized by this agreement.
23. **USACE AUTHORIZATION:** Prior to commencement of construction and/or activities authorized herein, the Leesee shall obtain the U.S. Army Corps of Engineers (USACE) permit if it is required by the USACE. Any modifications to the construction and/or activities authorized herein that may be required by the USACE shall require consideration by and the prior written approval of the Lessor prior to the commencement of construction and/or any activities on sovereign, submerged lands.

24. **COMPLIANCE WITH FLORIDA LAWS:** On or in conjunction with the use of the leased premises, the Leesee shall at all times comply with all Florida Statutes and all administrative rules promulgated thereunder. Any unlawful activity which occurs on the leased premises or in conjunction with the use of the leased premises shall be grounds for the termination of this lease by the Lessor.

25. **LIVEABOARDS:** The term “liveaboard” is defined as a vessel docked at the facility and inhabited by a person or persons for any five (5) consecutive days or a total of ten (10) days within any thirty (30) day period. If liveaboards are authorized by paragraph one (1) of this lease, in no event shall such “liveaboard” status exceed six (6) months within any twelve (12) month period, nor shall any such vessel constitute a legal or primary residence.

26. **GAMBLING VESSELS:** During the term of this lease and any renewals, extensions, modifications or assignments thereof, Leesee shall prohibit the operation of or entry onto the leased premises of gambling cruise ships, or vessels that are used principally for the purpose of gambling, when these vessels are engaged in “cruises to nowhere,” where the ships leave and return to the state of Florida without an intervening stop within another state or foreign country or waters within the jurisdiction of another state or foreign country, and any watercraft used to carry passengers to and from such gambling cruise ships.

27. **SPECIAL LEASE CONDITIONS:**

   A. The Leesee shall not rebuild or restore the non-water dependent structures included in this lease if 50 percent or more of the area encompassed by the structure is destroyed or if use of the structure has been discontinued and 50 percent or more of the structure must be replaced in order to restore the structure to a safely useable condition unless authorized by the Lessor. In addition, the use of the non-water dependent structures included in this lease shall not be converted to a new use except as authorized by the Lessor.

   B. This lease is granted as a fee-waived lease provided the Leesee operates and maintains the structures and qualifies for the waiver pursuant to subparagraph 18-21.011(1)(O)(1), Florida Administrative Code. Leesee agrees to pay the Lessor lease fees beginning with the operation of any portion of the fishing pier, aquatic center or restaurant by a private entity. Leesee agrees to notify the State of Florida Department of Environmental Protection of any changes in use described in paragraph 1. of this lease, prior to any portion of the leased premises being operated by a private entity or prior to any part of the leased premises becoming an adjunct to a commercial endeavor.

   C. Within 30 days after each anniversary of the effective date of this lease, the Leesee shall submit annual certified financial records of income and expenses to the State of Florida Department of Environmental Protection, Division of State Lands, Bureau of Public Land Administration, 5900 Commonwealth Blvd, MS 120, Tallahassee, FL 32399. “Income” is defined in subsection 18-21.002(11), Florida Administrative Code. The submitted financial records shall be certified by a certified public accountant.
WITNESSES:

Original Signature

Print/Type Name of Witness

Original Signature

Print/Type Name of Witness

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this ___ day of ___ , 20___ by Jeffery M. Gentry, Operations and Management Consultant Manager, Bureau of Public Land Administration, Division of State Lands, State of Florida Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. He is personally known to me.

APPROVED AS TO FORM AND LEGALITY:

DEP Attorney

Notary Public, State of Florida

Printed, Typed or Stamped Name

My Commission Expires:

Commission/Serial No.

WITNESSES:

Original Signature

Typed/Printed Name of Witness

Original Signature

Typed/Printed Name of Witness

STATE OF ________________
COUNTY OF ________________

The foregoing instrument was acknowledged before me this ___ day of ___ , 20___ by Norman S. Edelcup as Mayor, for and on behalf of City of Sunny Isles Beach, Florida. He is personally known to me or who has produced ________________ as identification.

My Commission Expires:

Notary Signature

Notary Public, State of ________________

Printed, Typed or Stamped Name

Page 6 of 33 Pages
Sovereignty Submerged Land Lease No. 130176358
SURVEYOR’S NOTES:
1. NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
2. LANDS SHOWN HEREON WERE NOT ABSTRACTED, BY THE SURVEYOR, FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP OR OTHER INSTRUMENTS OF RECORD.
3. UNLESS OTHERWISE NOTED, THIS FIRM HAS NOT ATTEMPTED TO LOCATE UNDERGROUND UTILITIES, TO DELINATE ANY POSSIBLE WETLANDS, FOOTINGS AND/OR FOUNDATIONS.
4. THE LEGAL DESCRIPTION SHOWN HEREON WAS PROVIDED BY THE CLIENT.
5. THIS SURVEY AND DESCRIPTION REPRESENTS A STRUCTURAL MODIFICATION OF CASTING LEASE No. 130174356.

   
   POINT NUMBER  X(Coordinates)  Y(Coordinates)
   AARL  943551.922  581351.797
   AMELAND  943360.762  581351.694
   EAST  943576.010  581333.730

   THE BASELINES FOR SUNNY ISLES BEACH BOULEVARD (STATE ROAD 880) AND COLLINS AVENUE (STATE ROAD A-1A) AS SHOWN HEREON WERE ESTABLISHED BY CALCULATING USING COORDINATES SHOWN ON SHERIDAN "PROJECT SURVEY CONTROL" SHEET. COORDINATES SHOWN HEREON ARE RELATIVE TO A CENTERLINE OF STATE ROAD 880 (SUNNY ISLES BEACH BOULEVARD), WITH SHERIDAN HAVING A BEGINNING POINT OF NORTH INFINITY EAST.


7. ELEVATIONS SHOWN HEREON ARE RELATIVE TO NORTH AMERICAN HYDROGRAPHIC DATUM OF 1929. Tidal Bench Mark Stationing No. 1 (1990-1992-94 Station No. 1, Monogramron: 321.698-feet O.D. No. 573.229, and No. 3279-Agency/Boat Type: NOS. SETTING CLASSIFICATION: CONCRETE MANHOLE COVER, DESCRIPTION: THE BENCH MARK IS SET IN THE CENTER OF THE BASE OF A CONCRETE MANHOLE COVER NEAR THE FOOT OF THE NEWPORT FISHING PIER; IN LINE WITH THE CENTERLINE OF SUNNY ISLES BOULEVARD, 17.1 m (56.0 ft) SW OF THE SW CORNER OF A TROLLEY STOP; 12.34 (39.3 ft) NE AND 14.04 (46.0 ft) W OF A TELEPHONE POLE; 10.04 (32.8 ft) FROM A WIRE FENCE; AND A SCARAB AT THE CASTAWAY’S NOTE; AND 2.5 M (8.0 ft) ABOVE GROUND LEVEL. THE BENCH MARK IS A DISC SET FLUSH IN A CONCRETE MANHOLE COVER. ELEVATION: + 0.04 (DAVID BLEICH, BENCHMARK DESIGNER)

8. THE MEAN HIGH WATER (MHW) DATA SHOWN HEREON WAS DERIVED FROM THE LADY BOUNDARY INFORMATION INTERNET INTERACTIVE MAPS. THE MEAN HIGH WATER ELEVATION AS SHOWN HEREON WAS ESTABLISHED BY EXTENDING THE ELEVATION SHOWN AT MEAN HIGH WATER INTERPOLATION POINT NO. 572-3302.

9. THE SPECIFIC PURPOSE OF THIS SURVEY IS TO SHOW THE LOCATION OF THE PROPOSED PIER IN RELATION TO THE RECORDED ELEVATION SUBMERGED LAND LEASE.

NEWPORT FISHING PIER
CITY OF SUNNY ISLES BEACH
MIAMI-DADE COUNTY, FLORIDA

N. T. S. 11-423B
1 09-21-11 see all 10
DESCRIPTION OF LAND LEASE FOR NEWPORT FISHING PIER

A PORTION OF SECTION 14, TOWNSHIP 52 SOUTH, RANGE 42 EAST, NAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT DAVE COUNTY COASTAL CONSTRUCTION PERMANENT REFERENCE MONUMENT DESIGNATED AS STATION 87-76-A-05 AT COORDINATES Y=537,634.558, X=788,359.780;

THENCE NORTH 02°33'33" EAST, FOR A DISTANCE OF 2,698.17 FEET TO A POINT;

THENCE NORTH 00°29'26" WEST, FOR A DISTANCE OF 1,691.45 FEET TO DAVE COUNTY COASTAL CONSTRUCTION PERMANENT REFERENCE MONUMENT DESIGNATED AS 87-76-A-04 POSITIONED AT COORDINATES Y=537,003.588, X=786,362.494;

THENCE NORTH 04'00'17" EAST, FOR A DISTANCE OF 890.67 FEET TO A POINT;

THENCE NORTH 01°32'13" EAST, FOR A DISTANCE OF 514.61 FEET TO A POINT;

THENCE NORTH 02°30'06" EAST, FOR A DISTANCE OF 446.46 FEET TO A POINT;

THENCE NORTH 01°31'18" EAST, FOR A DISTANCE OF 383.79 FEET TO A POINT;

THENCE NORTH 02°37'43" EAST, FOR A DISTANCE OF 401.18 FEET TO A POINT;

THENCE NORTH 02°17'54" WEST, FOR A DISTANCE OF 437.00 FEET TO A POINT;

THENCE NORTH 01°45'30" EAST, FOR A DISTANCE OF 116.87 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF STATE ROAD 826 (SUNNY ISLES OCEAN BEACH BOULEVARD), SAID POINT BEING ALSO LOCATED ON THE NORTHEAST PROPERTY LINE OF WESTSIDE MIAMI BEACH, A CONDOMINIUM, DESCRIBED IN A CONDOMINIUM OFFICIAL RECORD BOOK 1718, PAGE 1478 OF THE PUBLIC RECORDS OF NAMI-DADE COUNTY, FLORIDA;

THENCE CONTINUE ALONG THE NORTH RIGHT-OF-WAY LINE OF SUNNY ISLES OCEAN BEACH BOULEVARD TO A POINT WHERE DAVE COUNTY EROSION CONTROL LINE BENDS FROM THE NORTH AND INTERSECTS THE NORTH RIGHT OF WAY LINE OF APFOMENTIONED SUNNY ISLES OCEAN BEACH BOULEVARD AS SHOWN ON THE DAVE COUNTY COASTAL CONSTRUCTION PLAN 570613-81 (COASTAL CONTROL LINE 330) ON A MAP FILED AUGUST 16, 1983 IN THE PUBLIC RECORDS OF DAVE COUNTY, FLORIDA;

THENCE CONTINUE ON THE NORTH RIGHT OF WAY LINE OF SAID SUNNY ISLES OCEAN BEACH BOULEVARD FOR A DISTANCE OF 721.51 FEET TO A POINT WHERE THE DAVE COUNTY EROSION CONTROL LINE BENDS FROM THE NORTH AND INTERSECTS THE NORTH RIGHT OF WAY LINE OF STATE ROAD 826 (SUNNY ISLES OCEAN BEACH BOULEVARD), SAYING EROSION CONTROL LINE ASSUMED TO BE THE PROPERTY LINE OF THE RESIDENTIAL PARCEL OF LAND ON THE WEST SIDE OF THE ROAD, AS SHOWN ON THE DAVE COUNTY EROSION CONTROL LINE 570613-81 (COASTAL CONTROL LINE 330) ON A MAP FILED AUGUST 16, 1983 IN THE PUBLIC RECORDS OF DAVE COUNTY, FLORIDA;

THENCE NORTH 01°50'35" EAST, ON SAID EROSION CONTROL LINE AND WESTERLY LINE OF SAID SOVEREIGNTY SUBMERGED LAND LEASE FOR NEWPORT FISHING PIER FOR A DISTANCE OF 34.92 FEET TO A POINT;

THENCE NORTH 01°57'49" EAST, OUT TO THE ATLANTIC OCEAN FOR A DISTANCE OF 102.94 FEET TO A POINT IN THE ATLANTIC OCEAN;

THENCE SOUTH 02°42'51" EAST, FOR A DISTANCE OF 9.00 FEET TO A POINT IN THE ATLANTIC OCEAN;

THENCE NORTH 01°57'49" EAST, FOR A DISTANCE OF 552.26 FEET TO A POINT IN THE ATLANTIC OCEAN;

THENCE NORTH 02°42'51" WEST, FOR A DISTANCE OF 30.00 FEET TO A POINT IN THE ATLANTIC OCEAN;

THENCE NORTH 01°57'49" WEST, FOR A DISTANCE OF 48.00 FEET TO A POINT IN THE ATLANTIC OCEAN;

THENCE SOUTH 02°42'51" EAST, FOR A DISTANCE OF 65.00 FEET TO A POINT IN THE ATLANTIC OCEAN;

THENCE SOUTH 01°57'49" WEST, FOR A DISTANCE OF 48.00 FEET TO A POINT IN THE ATLANTIC OCEAN;

THENCE NORTH 02°42'51" WEST, FOR A DISTANCE OF 15.00 FEET TO A POINT IN THE ATLANTIC OCEAN;

THENCE SOUTH 01°57'49" WEST, FOR A DISTANCE OF 552.26 FEET TO A POINT IN THE ATLANTIC OCEAN;

THENCE SOUTH 02°42'51" WEST, FOR A DISTANCE OF 12.00 FEET TO A POINT IN THE ATLANTIC OCEAN;

THENCE NORTH 01°50'35" EAST, ON SAID DAVE COUNTY EROSION CONTROL LINE FOR A DISTANCE OF 6.70 FEET TO THE POINT OF BEGINNING.

ALL OF THE ABOVE LYING AND SITUATING IN A PORTION OF SECTION 14, TOWNSHIP 52 SOUTH, RANGE 42 EAST, COUNTY OF DAVE, STATE OF FLORIDA, CONTAINING 18,545 SQUARE FEET MORE OR LESS.

DESCRIPTION OF PORTION OF RESTAURANT LYING SEAWARD OF THE EROSION CONTROL LINE

A PORTION OF SECTION 14, TOWNSHIP 52 SOUTH, RANGE 42 EAST, NAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE BASELINE OF STATE ROAD A-1-A (COLLINS AVENUE) WITH THE NORTH RIGHT OF WAY LINE OF STATE ROAD A-1-A (COLLINS AVENUE) AS SHOWN ON A MAP FILED AUGUST 16, 1983 IN THE PUBLIC RECORDS OF DAVE COUNTY, FLORIDA;

THENCE NORTH 01°57'49" EAST, ON SAID STATE ROAD A-1-A (COLLINS AVENUE) A DISTANCE OF 30.00 FEET TO THE INTERSECTION WITH A LINE SEGMENT EAST AND PARALLEL WITH SAID BASELINE OF SURVEY OF STATE ROAD A-1-A (COLLINS AVENUE).
SPECIFIC PURPOSE SURVEY

CONTINUED

THENCE NORTH 052°23' East on said parallel line, a distance of 28.51 feet to a point of intersection with the Western projection of the Northernly right-of-way line of said State Road 828 (Sunny Isles Beach Boulevard); THENCE NORTH 387°17'49" East on said Westernly projection of the Northernly right-of-way line of said State Road 828 (Sunny Isles Beach Boulevard), a distance of 431.77 feet to a point on the erosion control line as shown in plat book 124, page 43, of the Public Records of Miami-Dade County, Florida and also being the most Westernly line of Sovereignty Submerged Land Lease for Newport Fishing Pier as contained in the stipulated Sovereignty Submerged Lands Fee Waived Lease Renewal and Modification to reflect change in ownership and change description of use recorded in official records Book 25618, page 3725, of the Public Records of Miami-Dade County, Florida, and the point of beginning; THENCE NORTH 090°15'30" East on said erosion control line and Westernly line of said Sovereignty Submerged Land Lease for Newport Fishing Pier, a distance of 28.11 feet; THENCE NORTH 87°17'45" East, a distance of 91.20 feet; THENCE SOUTH 024°21'11" East, a distance of 32.02 feet; THENCE SOUTH 67°17'49" West, a distance of 66.77 feet to the intersection with said Westernly line of submerged land lease for Newport Fishing Pier and said erosion control line; THENCE NORTH 090°25'26" East on said erosion control line, a distance of 65.77 feet to the point of beginning; Said lands lying in the city of Sunny Isles Beach, Miami-Dade County, Florida, and containing 3.008 square feet, more or less.

DESCRIPTION OF SUBMERGED LAND LEASE FOR NEWPORT FISHING PIER LESS PORTION OF RESTAURANT LYING SEAWARD OF THE EROSION CONTROL LINE

A portion of section 14, township 52 south, range 42 east, Miami-Dade County, Florida, being more particularly described as follows:


THENCE NORTH 023°30'50" East, for a distance of 2,508.37 feet to a point;

THENCE NORTH 002°32'28" West, for a distance of 1,681.40 feet to Dade County Coastal Construction Permanent Reference Monument designated as 87-70-A-64 positioned at coordinates X=777,803,359, Y=789,355,494;

THENCE NORTH 040°17'17" East, for a distance of 665.87 feet to a point;

THENCE NORTH 013°15'13" East, for a distance of 301.61 feet to a point;

THENCE NORTH 003°30'05" East, for a distance of 446.46 feet to a point;

THENCE NORTH 013°17'18" East, for a distance of 363.79 feet to a point;

THENCE NORTH 024°37'13" East, for a distance of 401.18 feet to a point;

THENCE NORTH 021°54'57" East, for a distance of 432.00 feet to a point;

THENCE NORTH 004°53'56" East, for a distance of 110.87 feet to a point on the North-right-of-way line of State Road 828 (Sunny Isles Beach Boulevard), said point being also located on the South property line of Westgate Miami Beach, a Condominium, described in official record Book 17194, page 1478 of the Public Records of Miami-Dade County, Florida;

THENCE CONTINUE ALONG THE NORTH RIGHT-OF-WAY OF SUNNY ISLES BEACH BOULEVARD ON A BEARING OF NORTH 67°17'49" East, distance 000°00'00" East Florida Department of Transportation Right-of-Way Map, State Road No. 828, Section 87170-25618, sheet A of B for a distance of 540.87 feet to a point where Dade County Coastal Construction Line shown in plat book 124, page 30, recorded February 10, 1982 in the Public Records of Dade County, Florida intersects the North right-of-way line of aforementioned Sunny Isles Beach Boulevard;

THENCE CONTINUE ON THE NORTH RIGHT-OF-WAY OF SAID SUNNY ISLES BEACH BOULEVARD FOR A DISTANCE OF 271.51 FEET TO A POINT ON THE Dade County Erosion Control Line [mean high water line of the Atlantic Ocean elevation 1.75 feet reference to 0.00 feet mean sea level (North American Vertical Datum) shown on a map filed August 3, 1988 in plat book 124, page 47 of the Public Records of Dade County, state of Florida, and also being the most Westernly line of Sovereignty Submerged Land Lease for Newport Fishing Pier, as contained in the stipulated Sovereignty Submerged Lands Fee Waived Lease Renewal and Modification to reflect change in ownership and change description of use recorded in official record Book 25618, page 3725, of the Public Records of Miami-Dade County, Florida, said point being also the point of beginning of the following described land lease area;

THENCE NORTH 003°10'35" East, on said erosion control line and Westernly line of said Sovereignty Submerged Land Lease for Newport Fishing Pier for a distance of 34.92 feet to a point;

THENCE NORTH 87°17'49" East, out to the Atlantic Ocean for a distance of 102.94 feet to a point in the Atlantic Ocean;

THENCE SOUTH 024°21'11" East, for a distance of 92.00 feet to a point in the Atlantic Ocean;

THENCE NORTH 87°17'45" East, for a distance of 552.88 feet to a point in the Atlantic Ocean;

THENCE NORTH 024°21'11" West, for a distance of 50.00 feet to a point in the Atlantic Ocean;

THENCE NORTH 87°17'45" East, for a distance of 48.00 feet to a point in the Atlantic Ocean;

THENCE SOUTH 024°21'11" East, for a distance of 65.00 feet to a point in the Atlantic Ocean;

THENCE SOUTH 87°17'45" West, for a distance of 48.00 feet to a point in the Atlantic Ocean;
CONTINUED:

THENCE NORTH 02°21'11" WEST, FOR A DISTANCE OF 13.50 FEET TO A POINT IN THE ATLANTIC OCEAN;
THENCE SOUTH 87°38'46" WEST, FOR A DISTANCE OF 552.49 FEET TO A POINT IN THE ATLANTIC OCEAN;
THENCE SOUTH 02°21'11" EAST, FOR A DISTANCE OF 12.00 FEET TO A POINT IN THE ATLANTIC OCEAN;
THENCE SOUTH 87°38'46" WEST, FOR A DISTANCE OF 110.14 FEET TO A POINT ON THE AFORESaid Dade County
Erosion Control Line;
THENCE NORTH 07°30'52" EAST (PLAT BOOK 134, PAGE 47), ON SAID DADE COUNTY EROSION CONTROL LINE FOR A DISTANCE
OF 8.79 FEET TO THE POINT OF BEGINNING.

ALL OF THE ABOVE LIVING AND SITUATE IN A PORTION OF SECTION 12, TOWNSHIP 52 SOUTH, RANGE 42 EAST, COUNTY OF
DADE, STATE OF FLORIDA, CONTAINING 15,537 SQUARE FEET MORE OR LESS.

LESS THEREFROM THE FOLLOWING DESCRIBED RESTAURANT PARCEL:

A PORTION OF SECTION 12, TOWNSHIP 52 SOUTH, RANGE 42 EAST, MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY
DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEASTERLY CORNER OF THAT PART OF THE PRESENT PARCEL DEDICATED TO THE USE OF THE
RESTAURANT AND COMMERCIAL USE FOR THE RESTAURANT AND COMMERCIAL USE BEING EXEMPT FROM THE CITY OF
SUNNY ISLES BEACH, MIAMI-DADE COUNTY, FLORIDA, ACCORDING TO A NATIONAL ORTHOMONOLITHIC SURVEY OR
REAL PROPERTY SURVEY OF SAID PARCEL:" THE SOUTHEASTERLY CORNER OF THAT PART OF THE PRESENT PARCEL
DEDICATED TO THE USE OF THE RESTAURANT AND COMMERCIAL USE BEING EXEMPT FROM THE CITY OF SUNNY
ISLES BEACH, MIAMI-DADE COUNTY, FLORIDA, ACCORDING TO A NATIONAL ORTHOMONOLITHIC SURVEY OR
REAL PROPERTY SURVEY OF SAID PARCEL;" AND EXTEND SOUTHWESTERLY ALONG THE LINE DESCRIBED AS "THE
SOUTHEASTERLY CORNER OF THAT PART OF THE PRESENT PARCEL DEDICATED TO THE USE OF THE RESTAURANT AND
COMMERCIAL USE BEING EXEMPT FROM THE CITY OF SUNNY ISLES BEACH, MIAMI-DADE COUNTY, FLORIDA, ACCORDING TO A
NATIONAL ORTHOMONOLITHIC SURVEY OR REAL PROPERTY SURVEY OF SAID PARCEL;" AND LENGTH OF 334.85 FEET
TO THE INTERSECTION OF THE SOUTHEASTERLY CORNER OF THE RESTAURANT AND COMMERCIAL use PARCEL
WITH THE LATERAL LINE OF THE PRESENT PARCEL;

THENCE NORTH 07°30'52" EAST ON SAID LATERAL LINE AND PARALLEL THEREWITH A DISTANCE OF 334.85 FEET TO A POINT
ON THE EROSION CONTROL LINE AND PARALLELING SAID EROSION CONTROL LINE FOR THE DISTANCE OF 8.79 FEET;

THENCE NORTH 02°21'11" WEST, A DISTANCE OF 13.50 FEET;
THENCE SOUTH 02°21'11" WEST, A DISTANCE OF 12.00 FEET;
THENCE SOUTH 87°38'46" WEST, A DISTANCE OF 552.49 FEET TO THE INTERSECTION WITH SAID WESTERLY LINE OF SUBMERGED
LAND LEASE FOR NEWPORT FISHING PIER AND SAID EROSION CONTROL LINE;
THENCE NORTH 07°30'52" EAST ON SAID EROSION CONTROL LINE AND WESTERLY LINE OF SAID SUBMERGED LAND LEASE FOR
NEWPORT FISHING PIER, A DISTANCE OF 8.79 FEET;
THENCE NORTH 02°21'11" EAST, A DISTANCE OF 13.50 FEET;
THENCE SOUTH 02°21'11" EAST, A DISTANCE OF 12.00 FEET;
THENCE SOUTH 87°38'46" WEST, A DISTANCE OF 552.49 FEET TO THE INTERSECTION WITH SAID WESTERLY LINE OF SUBMERGED
LAND LEASE FOR NEWPORT FISHING PIER AND SAID EROSION CONTROL LINE;
THENCE NORTH 07°30'52" EAST ON SAID EROSION CONTROL LINE, A DISTANCE OF 8.37 FEET TO THE POINT OF BEGINNING.

SAID LANDS LYE IN THE CITIES OF SUNNY ISLES BEACH, MIAMI-DADE COUNTY, FLORIDA, AND CONTAINING A NET AREA
15,537 SQUARE FEET (0.367 ACRES), MORE OR LESS.

AREA TABULATION:

| Net Area of Lease Area for Newport Fishing Pier | 15,537 SQUARE FEET (0.367 ACRES) |
| Portion of Restaurant Living Seaward of Erosion Control Line | 3,069 SQUARE FEET (0.084 ACRES) |
| Total Area | 18,566 SQUARE FEET (0.451 ACRES) |

CERTIFIED TO:
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA.

SURVEYOR'S CERTIFICATE:

I HEREBY CERTIFY THAT THE "SPECIFIC PURPOSE SURVEY" OF THE PROPERTY DESCRIBED HEREBIN IS TRUE AND CORRECT TO
THE BEST OF MY KNOWLEDGE AND BELIEF AS RECENTLY SURVEYED AND DRAWN UNDER MY SUPERVISION. THIS SURVEY
COMPLIES WITH THE APPROPRIATE TECHNICAL STANDARDS SET FORTH BY THE FLORIDA STATE BOARD OF PROFESSIONAL
SURVEYS AND MAPPER NO. M-97-295; FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472, FLORIDA STATUTES.

DATE OF SURVEY Field Work: August 28, 2011

SIGNED: CALVON, GORDANO & ASSOCIATES, INC.

8-30-2011

CALVON, GORDANO & ASSOCIATES, INC.

CALVIN GORDANO & ASSOCIATES INC.

EXCEPTIONAL SOLUTIONS

(954) 548-8001 FAX: (954) 548-8007

3535 NW 103rd Ave. Miami, Florida 33166

A QUALIFIED SURVEYOR ACTING UNDER THE DIRECTION OF CALVIN GORDANO

FIN DE MEXIAN, FLORIDA,Regs. P. 1338.

MIA-DADE COUNTY, FLORIDA

NEWPORT FISHING PIER

CITY OF SUNNY ISLES BEACH

SAID FISHING PIER LOCATED IN A PART OF THE CITY OF SUNNY ISLES BEACH

N. T. S.

4

11-4239

05-21-11

see left

Attachment A
Page 11 of 33 Pages
SSL No. 130174356
MATCH LINE A-A
(SEE THIS SHEET)
N02°30'05.1"E (R)
N02°30'27.0"E (C)
446.464' (C&R)
N01°29'13.1"E (R)
N01°29'35.0"E (C)
551.607' (R&C)
N04°01'17.1"E (R)
N04°01'36.0"E (C)
865.370' (R&C)
CONCRETE MONUMENT
87-76-A-04
N02°29'28.0"W (R)
N02°29'05.1"W (C)
1681.448' (R&C)
N02°35'35.0"E (R)
N02°35'55.0"E (C)
2500.365'(R&C)
P.O.C.
S.S.L. AREA
(G.R.B. 26619,
PG. 3725, D.C.R.)
CONCRETE MONUMENT 87-87-A-05
FND. 1 CM W/BRASS
DISK STAMPED "H-028-1971"

MATCH LINE B-B
(SEE SHEET 7 OF 10)
N02°15'33.9"W
435.116" (R)
N02°15'32.0"W
437.003" (C)
N02°07'43.1"E (R)
N02°08'05.0"E (C)
401.179' (R&C)
N01°31'18.1"E (R)
N01°31'40.0"E (C)
363.794' (R&C)

MATCH LINE A-A
(SEE THIS SHEET)

SPECIFIC PURPOSE SURVEY

LEGEND:
Q CENTERLINE
CO CHORDS BEARING
FOOT FLORIDA DEPARTMENT OF TRANSPORTATION
FND FOUND
LT LOCKED BUSINESS
MCOK MIAMI-DADE COUNTY RECORDS
NAD NORTHERN AMERICAN MERTICAL DATUM
ORB OFFICIAL RECORD BOOK
P.B. PLAT BOOK
PG PAGE
PDB POINT OF BEGINNING
POC POINT OF COMMENCEMENT
R/W RIGHT-OF-WAY
SF SQUARE FEET
SSL SOUTHWEST SUBMERGED LAND LEASE
R REDUCED
C CALCULATED
PI PORTION OF RESTAURANT LIVING
EA SEAMENS OF THE EROSION CONTROL LINE

NEWPORT FISHING PIER
CITY OF SUNNY ISLES BEACH
MIAMI-DADE COUNTY, FLORIDA

Scale: 1"=100'
Project No.: 11-4239
Date: 09-21-11
Sheet 10

Attachment A
Page 13 of 33 Pages
SSLI. No. 130174356
DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

WHEREAS, FIVE SEAS INVESTORS, INC. ("Owner" or "Grantor") is the owner of the following described real property (the "Property"), lying, being and situated in Sunny Isles Beach, Miami-Dade County, Florida, and legally described as:

SEE COMPOSITE EXHIBIT "A"

(consisting of a legal description and a sketch) and located at 16699 Collins Avenue, Sunny Isles Beach, Florida.

In accordance with Conditions III(i)(e) and (g) of Resolution No. 02-Z-66 (the "Resolution") adopted by the CITY OF SUNNY ISLES BEACH (the "City" or "Grantor"), on February 5, 2002, the Owner, its successors and assigns, freely, voluntarily and without regard to race, sex, age, or any other matter, makes the following Declaration of Restrictions and Grant of Easements ("Declaration") covering and running with the Property and grants the following easements as described below:

1. Valet Parking. Owner shall provide 24-hour valet parking for guests of the Property. This provision shall be applicable to service or delivery vehicles, or emergency and utility vehicles.

2. Grant of Easement. Owner does hereby grant and convey to the City the following non-exclusive easements (collectively, the "Easements"): (i) a beach access easement, exactly as shown on Composite Exhibit "C"; consisting of a legal description and a sketch (the "Beach Access Easement"); (ii) a ten-foot (10') landscaping streetcape easement as per the City Streetscape Master Plan along the westerly 10' of the Property adjacent to Collins Avenue (the "Landscape Easement") which shall enable the implementation of the City Streetscape Master Plan; and (iii) an Oceanfront Park easement as exactly shown on Composite Exhibit "C". 

[End of text]
Declarant of Restrictions
and Grant of Easements
Page 2

consisting of a legal description and sketches (the “Oceanfront Park Basement”), all of which shall be fully accessible to the public and clearly designated by means of signage approved in writing by the City Manager or his designee, as amenities open to all members of the public. In addition, Owner does hereby grant and convey to the City vehicular ingress and egress for fire, police, health, sanitation and other public service personnel and vehicles employed and utilized by the City over the driveways and pathways as they may exist from time to time on the Property.

3. Landscape on the Basements. Prior to the issuance of the Certificate of Occupancy, Owner shall plant landscaping on the Landscape Basement as required pursuant to the City Streetscape Master Plan or as otherwise approved by the City.

4. Repair, Construction and Maintenance of Basements and Improvements. Owner and its successors and assigns or any condominium association managing the common areas of the Property shall have the exclusive right to design, build, furnish and maintain any and all improvements (including but not limited to landscaping, irrigation and lighting) located within the Basements. The design of the improvements and of any and all materials to be used for any and all improvements within the Basements shall be presented to the City for its approval prior to construction of such improvements, which approval shall not be unreasonably withheld or delayed. The Landscape Basement shall comply with the City Streetscape Master Plan as approved by the City Zoning and Code Administrator. Prior to the issuance of the Certificate of Occupancy, Owner shall plant landscaping on the Landscape Basement as required pursuant to the City Streetscape Master Plan or as otherwise approved by the City. Owner shall at all times maintain the Basements in good condition and in a safe, clean and reasonably attractive manner to a standard reasonably acceptable to the City Manager.

After any landscape or other installation within the Basements or any subsequent repairs and/or maintenance thereof, the Owner shall restore the surface of the Basements, as applicable, so near to their original conditions as may be possible, in the reasonable discretion of the City Manager, all within a reasonable time after the installation, repair, anchor or maintenance of such activity described above. In the event that the Owner fails to restore or commence restoration and diligently pursue same, after receipt of thirty (30) days’ written notice from City to Owner of such failure, then the City may restore the Basement(s) to its (their) required condition (the “City’s Right to Restore”) and thereafter the Owner shall reimburse the City for the reasonable costs of such restoration within thirty (30) days following receipt by the Owner of a reasonably documented invoice (the “Invoices”) for same. In the event reimbursement is not received by the City within the required time, the City may then place a lien against the Property for the cost as documented in the invoice. Grantor agrees that the City’s lien shall be on a parity with special assessment items and superior to all other liens excepting those of taxing authorities.

5. Parking Spaces. As part of development of the Property, Owner shall provide, in addition to the 29 existing spaces located in the adjacent property known as Pines Park (formerly known as Gilbert Samsen Park) as described on Exhibit “D”, an additional 29 spaces in the

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Declaration of Restrictions
and Grant of Basements
Page 3

parking garage proposed to be developed on the Property, said parking spaces to be available to the general public at the same price charged by the City at Met Park.

6. Effective Date. This Declaration shall not become effective until the City issues a final certificate of use and occupancy for the development approved under City of Sunny Isles Beach Resolution 07-Z-06 as modified by any subsequent substantial compliance approval, or as such other plans are approved at public hearing consistent with this Declaration.

7. Reservation. Grantee hereby reserves all rights of ownership in and to the Basements which are not inconsistent with this Declaration, including, without limitation: (a) the right to grant further non-exclusive easements on, over, under and/or across the Basements (i.e., utility and/or access easements); (b) the right to use the Basements for all uses not interfering or inconsistent with the uses permitted herein, including, but not limited to: vehicular access and ingress and egress to, over, and from the Basements and the Property; service access to, over and from the Basements and the Property; installation, maintenance and use of utility facilities and access thereto and maintenance thereof; the right to conduct any activity upon the Basements which promotes the security of the Basements or the Property or any persons or property located thereon as long as public access to the beach through the Basements is continuously maintained, and the right to construct and maintain any signs within the Basements as may be permitted by applicable law; and (c) the exclusive right to design, build, furnish and maintain, except for the City's Right to Restore, any and all improvements (including, but not limited to, landscaping and lighting) located within the Basements, provided, however, that prior to its exercise of these rights set forth in (a), (b) or (c) of this paragraph (7), Grantee shall obtain the approval of the City Manager, who shall determine, in its sole opinion, whether the proposed grant, use, or other activity is inconsistent with the grant of easements set forth herein and in the Resolution.

8. Indemnification. For separate consideration, the receipt and sufficiency of which is hereby acknowledged, Owner, and its successors and assigns hereby agree to indemnify and save the City harmless from any and all claims, liability, losses and causes of action which may arise as a result of this Declaration of Restrictions and Grant of Basements, unless such claim, liability, loss or cause of action is the result of the City's negligence.

9. City Inspection. As further part of this Declaration, it is hereby understood and agreed that any official inspector of the City of Sunny Isles Building and Zoning Department, or its agents duly authorized, may have the privilege at any time during normal working hours of entering and inspecting the use of the premises to determine whether or not the requirements of the building and zoning regulations and the conditions herein agreed to are being complied with.

10. Insurance. Owner, including its successor and assigns, shall maintain, during the term of this Declaration, the insurance specified below. A Certificate of Insurance shall be filed with the City of Sunny Isles Beach's City Manager prior to the commencement of this Declaration. No modification, change or cancellation of insurance shall be made without thirty (30) days' written advance notice to the City Manager, with a copy to the City Attorney.
Public Liability Insurance on a comprehensive basis in an amount not less than One Million Dollars combined single limit and an aggregate of not less than Three Million Dollars for bodily injury and property damage. The policy shall list the City as an additional insured. The policy shall include Product Liability coverage if and when applicable. No modification, change, or cancellation of insurance shall be made without thirty (30) days written advance notice to the City Manager with a copy to the City Attorney. The Public Liability insurance coverage shall include those classifications as listed in Standard Liability Insurance Manual, which are applicable to the operations of Owner, its successor and assigns in the performance of this Declaration. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida. Such companies shall have a general policy holders' rating of "A" or better and a financial rating of not less than "Class V" as reported by Best's Key Rating Guide, published by A.M. Best Company, latest edition. This insurance shall be in effect as long as the existence exists. Failure to continue to provide the insurance coverage shall constitute a violation of the Declaration.

Compliance with the foregoing requirements shall not relieve Owner, its successors or assigns of its liability and obligations under this section or any other portion of this Declaration.

The City reserves the right to reasonably amend the insurance requirements by the issuance of a notice in writing to Owner, its successors or assigns.

11. Covenant Running with the Land. This Declaration on the part of the Owner shall constitute a covenant running with the land and shall be recorded in the public records of Miami-Dade County, Florida and shall remain in full force and effect and be binding upon the Owner, and its heirs, successors and assigns (including, without limitation, any ensuing condominium association or operator of the Property) until such time as the same is modified or released. Those restrictions, during their lifetime, shall be for the benefit of, and limitation upon, all present and future owners of the Property. However, nothing contained in this Declaration shall create a public dedication of all or any portion of the Property.

12. Term. This Declaration is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years from the date this Declaration is recorded, after which time it shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by a majority of the, then, owners of the Property has been recorded agreeing to change the Declaration in whole, or in part, provided that the Declaration has first been modified or released by the City.

13. Modification, Amendment, Release. The restrictions granted in this Declaration shall be perpetual in duration, and shall not be changed, altered or amended except by instrument in writing executed by the Owner or a majority of the then owners and the City or their respective successors and assigns, provided that the same is also approved by the City Commission after public hearing. Any ensuing operator or condominium association with valid
authority to act on behalf of the majority of the owners of the Property may execute the amending instrument upon submission of proof of authority to act on behalf of a majority of the owners.

14. Enforcement. Enforcement shall be by action against any party or person violating, or attempting to violate, any covenant. The prevailing party in any action or suit, pertaining to or arising out of this Declaration, shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of his attorney at trial and appellate levels. This enforcement provision shall be in addition to any other remedies available at law or in equity or both.

15. Authorization for Department of Building and Zoning to Withhold Permits and Inspections. In the event of failure to comply with the terms of this Declaration, in addition to any other remedies available, the City is hereby authorized to withhold any further permits, and refuse to make any inspections or grant any approvals, until such time as the failure to comply is cured.

16. Conflict. In the event of a conflict between provisions of the Resolution and the Declaration, the terms of the Resolution shall control.

17. Election of Remedies. All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

18. Severability. Invalidation of any one of these covenants, by judgment or Court, or law, in no way shall affect any of the other provisions, which shall remain in full force and effect.

19. Recording. This Declaration shall be recorded in the public records of Miami-Dade County, Florida at the cost of the Owner.
Signed, witnessed, executed and acknowledged this 13 day of May, 2004.

WITNESSES:

SHERA J. RAMSEY

Print Name: SHERA J. RAMSEY

THERON J. RAMSEY

Print Name: THERON J. RAMSEY

FIVE SEAS INVESTORS, INC.,
a Florida corporation

By: ____________

Print Name: ____________

Title: ____________

[CORPORATE SEAL]

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 13 day of May, 2004, by

ROBERT M. CONRAD, as President, of FIVE SEAS INVESTORS, INC., a
Florida corporation, on behalf of the corporation. He is personally known to me or has produced a
driver's license as identification.

SHERA J. RAMSEY

Printed Name: SHERA J. RAMSEY

My Commission Expires: 7/6/2004

Notary Public, State of Florida at Large

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Page 6 of 16

Attachment B
Page 23 of 33 Pages
SSLL No. 130174356
MORTGAGEE JOINER


IN WITNESS WHEREOF, the undersigned has executed this Joiner this 13 day of May, 2004.

INTERNATIONAL NURSING CENTERS, INC.,
a Florida corporation

By: ____________________________
Print Name: ______________________
Title: ____________________________

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 13 day of May, 2004, by ____________________________ as President of INTERNATIONAL NURSING CENTERS, INC., a Florida corporation, on behalf of the corporation. He is personally known to me or has produced a driver's license as identification.

Printed Name: ______________________
My Commission Expires: ____________

[Seal]

SHERI A. RAMSEY
ST. COMMISSION NO. 13017456
EXPIRES: APRIL 25, 2006

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Page 7 of 16
Declaration of Restrictions
and Grant of Easements
Page 8.

COMPOSITE
EXHIBIT "A"

LEGAL DESCRIPTION OF LA PERLA PARCEL

A portion of Section 14, Township 52 South, Range 42 East, Miami-Dade County,
Florida, being more particularly described as follows:

Commence at the intersection of Collins Avenue (State Road A-1-A) and Sunny Isles
Ocean Beach Boulevard; thence N 87°18'10" E along the centerline of said Sunny Isles
Ocean Beach Boulevard for 50.66 feet; thence N 69°32'18" E for 67.89 feet to the point of curvature of
a circular curve to the left, having for its elements a radius of 4083.34 feet and a central angle of
01°30'01", said point being the Point of Beginning of a parcel of land hereinafter described, said
point also being on the Easterly right of way line of said Collins Avenue, thence Northerly along
the arc of said curve and along said Easterly right of way for an arc distance of 106.52 feet to a
point on the arc of said curve, having a radial bearing of S 84°27'41" E from the center; thence N
86°49'18" E for a distance of 342.34 feet to a point; thence N 53°00'15" E for a distance of 44.00
feet to a point on the Brodien Control Line shown in Plat Book 134, Page 47 of the Public
Records of Miami-Dade County, Florida; thence S 07°02'44" W (S 07°10'25" W, Plat Book 134,
Page 47) along said Brodien Control Line for a distance of 146.05 feet to a point on said
Northerly right of way line of Sunny Isles Ocean Beach Boulevard (W) right of way; thence S
87°18'19" W along the Northerly right of way line of aforementioned Sunny Isles Ocean Beach
Boulevard for a distance of 392.48 feet to a point of curvature of a circular curve to the right,
having for its elements a radius of 25.00 feet and a central angle 59°14'01", thence Westerly and
Northerly along the arc of said curve for an arc distance of 52.30 feet to the Point of Beginning.

Said lands lying and being in the City of Sunny Isles Beach, Miami-Dade County,
Florida
LEGAL DESCRIPTION - BEACH ACCESS EASEMENT:

A portion of Section 14, Township 52 South, Range 42 East, Miami-Dade County, Florida, being more particularly described as follows:

Commenced at the intersection of Collins Avenue (State Road A-1-A) and Sunny Isles Ocean Beach Boulevard (State Road No. 825); thence N87°18'19"E along the centerline of said Sunny Isles Ocean Beach Boulevard for 50.62 feet; thence N64°32'16"E for 38.60 feet to a point on the extension of the Northern right-of-way line of said Sunny Isles Ocean Beach Boulevard; thence N87°18'19"E along said Western extension and the Northern right-of-way line of said Sunny Isles Ocean Beach Boulevard for 349.60 feet to the Point of Beginning of the hereinbefore described Easement B; thence continue N87°18'19"E along said Northern right-of-way line for 10.26 feet; thence departing said right-of-way line N8°42'52"E for 43.91 feet; thence E87°18'19"E for 66.19 feet to a point on the Erosion Control Line shown in Plat Book 134 at Page 47 of the public Records of Miami-Dade County, Florida; thence N87°02'44"E along said Erosion Control Line for 10.15 feet; thence N87°18'19"W for 77.17 feet; thence SO19'58.13"W for 52.06 feet to the Point of Beginning.

The above described per lateral boundary at elevation 18.00 feet and below relative to the National Geodetic Vertical Datum of 1929.

CONVEYING: 1,196 sq. ft. 0.027 acres

SURVEYORS NOTES:

- This site lies in Section 14, Township 52 South, Range 42 East, City of Sunny Isles Beach, Miami-Dade County, Florida.
- Bearings shown hereon are referred to an assumed value of N87°18'19"E for the centerline of Sunny Isles Ocean Beach Boulevard.
- Lots shown hereon were not constructed for parcels and/or rights-of-way of record.
- This is not a “Boundary Survey” but only a graphic depiction of the description shown hereon.
- Dimensions shown hereon are based on Fortin, Leavy, Skiles, sketch 200290-060-1.

SURVEYORS CERTIFICATION:

I hereby certify that this "Sketch of Description" was made under my responsible charge on May 7, 2004 and meets the Minimum Technical Standards as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 61G17-8, Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

"Not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper"

FORTIN, LEAVY, SKILES, INC., LB9653

By:
Daniel C. Fortin, For the Firm
Surveyor and Mapper, LB9653
State of Florida.

LA PERLA
BEACH ACCESS EASEMENT

DESCRIPTION, NOTES AND CERTIFICATION

FORTIN, LEAVY, SKILES, INC.
CONSULTING ENGINEERS, SURVEYORS & MAPPERS
FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003693
180 Northeast 16th St / North Miami Beach, Florida 33162
Phone: 561-453-8429 / Fax: 561-451-7169 / Email: info@plugtv.com

Drawn By: RuM
Cert. No. 022047
Ref. Drg. 4/7/04
Plot No: 1/13/04 5310

Scale NOT TO SCALE

Date 5/7/04

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Attachment B
Page 27 of 33 Pages
SSLN No. 130174556
LEGAL DESCRIPTION - OCEAN FRONT PARK EASEMENT:

A portion of Section 14, Township 32 South, Range 42 East, Miami-Dade County, Florida, beeing more particularly described as follows:

Commence at the intersection of Collins Avenue (State Road A-1-A) and Sunny Isles Beach Boulevard (State Road No. 585); thence N87°10'19"E along the easterly line of said Sunny Isles Beach Boulevard for 50.05 feet thence N07°32'10"E for 38.20 feet to a point on the northerly extension of the northerly right-of-way line of said Sunny Isles Beach Boulevard; thence N87°18'15"E along said westerly extension and the northerly right-of-way line of said Sunny Isles Beach Boulevard for 201.86 feet to the Point of Beginning of this parcel, as described OCEAN FRONT PARK EASEMENT, thence continue N87°18'15"E along said northerly right-of-way line for 60.42 feet to a point on the Dawson Control Line shown in Plat Book 123 of Page 47 of the public Records of Miami-Dade County, Florida; thence N03°02'44"E along said Dawson Control Line for 144.03 feet thence S87°00'15"E for 84.00 feet thence S89°40'18"W for 0.42 feet thence S10°37'44"W for 138.04 feet to the Point of Beginning.

This above described parcel is located at elevation 18.00 feet and below relative to the National Geodetic Vertical Datum of 1929.

CONTAINING: 10,795 sq. ft. 2.46 acres

SURVEYOR'S NOTES:

- This parcel is in Section 14, Township 32 South, Range 42 East, City of Sunny Isles Beach, Miami-Dade County, Florida.
- Bearings herein are referred to an assumed value of N87°18'15"E for the centerline of Sunny Isles Beach Boulevard.
- Land surveys herein were not executed for ascertainment and/or rights-of-way of record.
- This is not a boundary survey but only a graphic depiction of the description shown herein.
- Dimensions shown herein are based on forts, levies, sides, sketch #2002-089-1.

SURVEYOR'S CERTIFICATION:

I hereby certify that the "Sketch of Description" was made under my responsible charge on May 12, 2004 and meets the Minimum Technical Standards as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 89117-9, Florida Administrative Code, pursuant to Section 473.021, Florida Statutes.

"Not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper"

FORTIN, LEAVY, SKILES, INC., LS6633

[Signature]

Daniel G. Fortin, P.E.
Professor and Mapper, LS6633
State of Florida

LA PERLA
OCEAN FRONT PARK EASEMENT

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Attachment B
Page 30 of 33 Pages
SSLL No. 130174356
EXHIBIT "D"

LEGAL DESCRIPTION OF PARK

The Easterly extension of Sunny Isles Ocean Beach Boulevard (N.E. 167 Street) as delineated upon that certain plat recorded in Plat Book 50, at Page 76 of the Public Records of Miami-Dade County, Florida, seaward of the pavement of State Road A-1A to the mean high water line of the Atlantic Ocean;