

Execution Version

SETTLEMENT AGREEMENT

BY AND AMONG

FISHER ISLAND HOLDINGS, LLC,

PAR 7, LLC

AND

FISHER ISLAND COMMUNITY ASSOCIATION, INC.

Dated as of June 15, 2021

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SETTLEMENT AGREEMENT

This Settlement Agreement (this “Agreement”) is made and entered into as of June 15, 2021, by and among Fisher Island Holdings, LLC, a Florida limited liability company (“FIH”), Par 7, LLC, a Florida limited liability company (“Par 7” and, together with FIH, the “Developer”), and Fisher Island Community Association, Inc., a Florida not-for-profit corporation (“FICA”). FIH, Par 7 and FICA may be referred to in this Agreement individually as a “Party” and together as the “Parties.”

RECITALS

WHEREAS, the Parties are parties in a pending lawsuit styled *Thomas E. Lauria, et al. v. Fisher Island Community Association, Inc., et al.*, filed in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida (the “Court”), Case No. 2020-020499-CA 01 (such lawsuit, excluding any counterclaims not against FICA as well as any claims against Fisher Island Club, Inc., the “Lawsuit”);

WHEREAS, the Parties desire to, among other things, fully and finally settle the Lawsuit, modify certain governing documents of FICA, settle and release certain claims, including the Lawsuit and other disputes and pending or threatened litigation, make payments and complete other matters as more fully described herein; and

WHEREAS, concurrently herewith, the Parties have executed the documents set forth on Schedule 1 hereto (such documents, collectively, the “Turnover Documents”), all of which are undated as of the date hereof and will be exchanged and held in escrow by the respective Parties and will only become effective upon and be dated as of the Turnover in accordance with the terms of each Turnover Document, as well as the Releases (as defined below) which will be exchanged and held in escrow by the respective Parties and will only become effective upon and be dated as of the Closing (as defined below) in accordance with the terms of each such Release.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Amendments to Master Covenants and FICA Governing Documents.

1.1 Amendments to Master Covenants. Subject to Section 1.5, on June 14, 2022 (the “Turnover”), FIH shall cause, with cooperation from FICA, the Amended and Restated Master Covenants for Fisher Island (the “Master Covenants”), recorded August 23, 2009 at Official Records Book 26838, Page 4363 of the public records of Miami-Dade County, Florida (the “Records”), to be amended by way of the “Second Amended and Restated Master Covenants for Fisher Island”, in the form attached hereto as Exhibit A (the “Second Amended and Restated Master Covenants”), which will be recorded on that same date. Notwithstanding the foregoing, the Second Amended and Restated Master Covenants are not intended to and shall not impact FIH’s rights under the Master Covenants to amend the Master Covenants prior to Turnover, so

long as any such amendment is made in good faith and is not inconsistent with the substantive changes set forth in the Second Amended and Restated Master Covenants.

1.2 Amendments to FICA Governing Documents. Subject to Section 1.5, effective as of the Turnover, the Parties shall cause (i) the Amended and Restated By-Laws of Fisher Island Community Association, Inc., as amended from time to time (the “FICA By-Laws”), to be amended by way of the “Amendment to By-Laws of Fisher Island Community Association, Inc.” substantially in the form attached hereto as Exhibit B (the “Amendment to the FICA By-Laws”); and (ii) the Articles of Incorporation of Fisher Island Community Association, Inc., as amended from time to time (“FICA Charter”), to be amended by way of the “Articles of Amendment to Articles of Incorporation of Fisher Island Community Association, Inc.” substantially in the form attached hereto as Exhibit C (the “Amendment to the FICA Charter”, and together, with the Amendment to the FICA By-Laws, the “Amendments to the FICA Governing Documents”), which will be recorded on that same date. Notwithstanding the foregoing, the Amendments to the FICA Governing Documents are not intended to and shall not impact any of FIH’s rights under the FICA By-Laws or FICA Charter, as applicable, to amend the FICA By-Laws or FICA Charter prior to Turnover, so long as any such amendment is made in good faith and is not inconsistent with the substantive changes set forth in the Amendments to the FICA Governing Documents.

1.3 Costs and Taxes. FICA shall pay any recording costs and taxes on the payment from FIH to FICA, which may be due in connection with this Agreement or any Turnover Documents (together with the Releases, the “Transaction Documents”).

1.4 Indemnification by FICA Related to Amendments to Master Covenants and FICA Governing Documents.

- (a) The rights and obligations set forth in this Section 1.4 shall commence from and after the filing of the earlier of (x) the commencement of any Indemnified Claim, provided that the rights and obligations set forth in this Section 1.4 shall cease to further accrue if, prior to the recording of the Second Amended and Restated Master Covenants, the approval by Judge Hanzman has been overturned, and FICA is no longer seeking approval for the Settlement, or (y) the recording of the Second Amended and Restated Master Covenants. For the avoidance of doubt, this Lawsuit shall not be considered an Indemnified Claim.
- (b) The Parties do not contemplate that the Developer will incur any liability in respect of Indemnified Claims (as defined below) as a result of effectuating the Second Amended and Restated Master Covenants and the Amendments to the FICA Governing Documents referred to in this Agreement. Nonetheless, FICA will indemnify the Developer and any FIH or Par 7 affiliates, directors and officers (collectively, the “FIH Indemnitees”, provided that, for the avoidance of doubt, the term FIH Indemnitees shall in no circumstance include FICA) from any and all liability, losses or damages claimed by, or actions or causes of action (whether in contract, tort, strict liability or otherwise) brought by, any party (other than an FIH Indemnitee) arising from, or on the basis of, the effectuation or content of the modifications to the Master Covenants requested by FICA which are reflected in the highlighted portions of the redlined Second Amended and Restated Master Covenants,

attached hereto as Exhibit D, or arising from, or on the basis of, the effectuation or content of the modifications to the FICA Governing Documents, reflected in the highlighted portions of the redlined Amendments to the FICA Governing Documents, attached hereto as Exhibit E (collectively, the “Indemnified Claims”).

- (c) The Developer agrees to provide FICA with reasonably prompt written notice of any Indemnified Claims (the “Indemnified Claims Notice”), provided that the Developer’s failure to do so shall not affect the rights of the Developer under this Section 1.4 unless, and then only to the extent that, such delay or failure is materially prejudicial to FICA, or otherwise adversely affects the Indemnified Claims. Upon receipt of an Indemnified Claims Notice, FICA may, in FICA’s discretion, (i) defend FIH with respect to any Indemnified Claims at FICA’s expense, using reputable counsel of its choosing who is reasonably satisfactory to the Developer (provided that FICA’s current counsel in the Lawsuit shall be deemed satisfactory for purposes of this provision), provided that it delivers written notice of its election to the Developer (which notice shall contain a binding confirmation from FICA that, for the avoidance of doubt, FICA can and will fully indemnify the FIH Releasees in respect of such Claim pursuant to Section 1.4(a) within thirty (30) days of the receipt of the Indemnified Claims Notice, provided, further, that if the Developer reasonably and in good faith determines that the interests of FICA and the Developer are in material conflict with one another such that FICA could not adequately represent the interests of the Developer, then FICA shall also pay the reasonable fees and costs of separate counsel of the Developer in connection with such Indemnified Claim during such time as such a conflict exists (provided that the prevailing rates of FIH’s current counsel in the Lawsuit shall be deemed reasonable), or (ii) pay FIH Indemnitees’ reasonable legal fees to defend any such Indemnified Claims, with FIH Indemnitees’ using reputable counsel of FIH’s choosing who is reasonably satisfactory to FICA (provided that FIH’s current counsel in the Lawsuit shall be deemed satisfactory for purposes of this provision and the prevailing rates of such counsel shall be deemed reasonable).
- (d) FICA and the FIH Indemnities shall reasonably cooperate with respect to the defense of any Indemnified Claim. If FICA is defending the Indemnified Claims, FICA shall keep the FIH Indemnities reasonably informed of the progress of the defense of the Indemnified Claims, and shall not settle or compromise any Indemnified Claim without reasonable prior notice to, and consent from, the Developer, which consent shall not be unreasonably withheld, conditioned or delayed. If FIH Indemnitees are defending the Indemnified Claims, the FIH Indemnities shall keep FICA reasonably informed of the progress of the defense of the Indemnified Claims, and shall not settle or compromise any Indemnified Claim without reasonable prior notice to, and consent from, FICA, which consent shall not be unreasonably withheld, conditioned or delayed.

1.5 Effect of Non-Approval or Overturn. Notwithstanding any other provision hereof, no Party shall have any obligation pursuant to Section 1.1 or Section 1.2 in the event that either (x) this Agreement has been not approved by Judge Hanzman by Turnover or (y) the

approval of this Settlement Agreement from Judge Hanzman has been overturned prior to Turnover.

2. Ferry and Landing Matters.

2.1 Acknowledgement of Satisfied Obligations in Respect of Ferry Landing Sites.

Except as provided in Section 2.2, Developer shall not be obligated to provide, maintain or construct, or otherwise have any obligation in respect of, a third or any additional ferry landing site (*i.e.*, additional beyond the ferry landing sites on Parcel 6 and Parcel 8) or otherwise construct any boat landing or emergency landing site on Fisher Island (any of the foregoing, an “Excess Ferry Landing Site”) or flagging, staging or any other preliminary matters for or in respect of any such Excess Ferry Landing Site. FICA hereby releases and disclaims any rights it may have and waives any purported obligations of Developer, in respect of any Excess Ferry Landing Site.

2.2 Removal of Parcel 7 Auxiliary Ramp. The Parties agree that Developer has the right to permanently remove the temporary auxiliary ramp and all appurtenances thereto (*e.g.*, any roadways located on Parcel 7 and connected to such temporary auxiliary ramp) currently located on Parcel 7 (the “Parcel 7 Auxiliary Ramp”) at Developer’s sole cost and expense and to take any and all actions reasonably necessary or appropriate for such removal; provided, that Developer shall not remove or disable the Parcel 7 Auxiliary Ramp until the earlier to occur of the following: (i) the Parcel 8 Ferry Landing Widening and the Parcel 6 Lift and Sea Wall Replacement (as such terms are defined below) by FICA are completed and the ferry landings on both Parcels 6 and 8 are open and available for permanent and continuous use (the “Parcel 6 and Parcel 8 Improvements”) (for the avoidance of doubt, the fact that the ferry landing on Parcel 6 and/or the Ferry Landing on Parcel 8 has not received a CO or completed items on any TCO punch list will not delay removal of the Parcel 7 Auxiliary Ramp, as long as the ferry landings on Parcel 6 and the ferry landing on Parcel 8 are open for permanent and continuous use), or (ii) December 31, 2023, unless either the ferry landing at Parcel 6 or the ferry landing on Parcel 8 are not available for use on December 31, 2023 due to an act of God, in which case, the removal of the Parcel 7 Auxiliary Ramp shall be delayed until the ferry landings on Parcel 6 and Parcel 8 ferry landing are open and available for permanent and continuous use. FICA shall expeditiously complete the Parcel 6 and Parcel 8 Improvements. For purposes hereof, “Parcel 8 Ferry Landing Widening” means the widening of the Parcel 8 ferry landing slip by FICA to accommodate ferries in a manner consistent with the current permit obtained by FICA as of the date hereof, as well as the installation of a new ramp and hydraulic system similar in design as the newly installed system on Terminal East; and “Parcel 6 Lift and Sea Wall Replacement” means the replacement of the existing synchro lift system for a ramp and hydraulic system similar in design to the newly installed system on Terminal East and the repair and/or replacement of that portion of the sea wall proximate to the Parcel 6 ferry landing designated as “1” or “2” on Exhibit H. In connection with the foregoing, FICA shall (i) expeditiously complete the Parcel 6 and Parcel 8 Improvements, and (ii) not interfere with any efforts by Developer to obtain approval or permits to remove or otherwise effectuate the removal of the Parcel 7 Auxiliary Ramp, provided that the ramp removal shall be consistent with the requirements of this Section 2.2. FICA shall not initiate, authorize or in any way support (financially or otherwise) any challenge, objection, obstruction, appeal, formal or informal complaint, administrative or judicial action adverse to or concerning, or otherwise interfere with any aspect relating, either directly or indirectly, to Developer’s efforts to remove the Parcel 7 Auxiliary Ramp, including, without limitation, obtaining any required approvals or permits in

connection with the removal of the Parcel 7 Auxiliary Ramp, provided the Developer's efforts to remove the Parcel 7 Auxiliary Ramp are consistent with the requirements of this Section 2.2. Notwithstanding any other provision hereof, FIH shall have the irrevocable right to control the permitting process and construction on the Parcel 6 Lift and Sea Wall Replacement, without liability to FIH. It is understood that FIH may expedite the permitting and construction process without any additional cost to FICA (other than as set forth herein), who shall retain control over pricing matters. FICA shall not withhold its approval of pricing that is commercially reasonable, and at prevailing standard market rates for work to be completed in a manner and pricing consistent with the sea wall work on Parcel 7, subject to adjustment for current market rates. It is understood that the work and pricing may include reasonable lobbying expenses, consistent with the lobbying expenses and costs associated with expedited inspections that were incurred in connection with the sea wall work on Parcel 7, subject to adjustment for current market rates.

2.3 Parcel 8 Ferry Landing. Upon completion of the Parcel 8 Ferry Landing Widening, the Parties acknowledge and agree that all ingress and egress to and from Fisher Island shall be via such new and widened ferry landing on Parcel 8 (the "New Parcel 8 Landing") between the hours of 10:00 pm and 6:00 am ("Night Hours"), except that the Parcel 6 ferry landing may be used for such ingress and egress during Night Hours instead of the New Parcel 8 Landing at such times as (i) the New Parcel 8 Landing is unavailable for its intended use due to emergency maintenance or maintenance that, notwithstanding FICA's commercially reasonable efforts to complete such maintenance without ingress and egress on Parcel 6 during Night Hours, is nonetheless reasonably required and necessary scheduled maintenance of the New Parcel 8 Landing that must be completed during Night Hours, (ii) Developer is using the transportation system for its development activities and, as a result thereof, the New Parcel 8 Landing is unavailable for use by residents, or (iii) other emergencies arise that reasonably require the operation of the Parcel 6 ferry landing. When the use of the Parcel 6 ferry landing during Night Hours for one of the above specified reasons is scheduled, FICA shall provide the Developer with seventy-two (72) hours prior notice which shall include the reasons for such use. When the use of the Parcel 6 ferry landing during Night Hours for one of the above specified reasons is due to an emergency, prior notice to the Developer is not required provided that Developer shall receive contemporaneous notice or notice as promptly as practicable thereafter. The notice provisions herein shall expire on December 31, 2028.

2.4 Transportation Services Agreement. FICA and FIH entered into that certain Ferry Transportation Services Agreement (the "TSA") which is attached hereto as Exhibit F and attached as an exhibit to the Master Covenants by way of the Second Amended and Restated Master Covenants. FICA and Developer hereby (i) affirm the continuing force and effect Article VI, Section 14 of the Master Covenants (commonly referred to as the "first pour" provision) and (ii) acknowledge and agree that Developer shall have no other or further obligation in connection with its use of the transportation system except as set forth in the TSA and Exhibit A to the TSA. In case of a conflict between this Agreement and the TSA, the TSA controls. "Effective Date" as used in the TSA means the date on which the Settlement receives approval at the Circuit Court, regardless of the outcome of any future appeals.

3. Cooperation and Support

3.1 Further Assurances. The Parties shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other Party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby. From and after Turnover, as part of that cooperation and support, and at FICA's sole expense without liability to the Developer, FIH shall cooperate with FICA and take reasonable steps requested by FICA to assist FICA in FICA's efforts to ensure that any parcels on Fisher Island that are commonly understood to be subject to the Second Amended and Restated Master Covenants for Fisher Island are indeed subject to the Second Amended and Restated Master Covenants and also FICA's efforts to ensure that any parcels that have been used as Common Areas and are commonly understood to be Common Areas under the Second Amended and Restated Master Covenants for the efficient functioning of FICA and the benefit of the residents of Fisher Island are so designated, including by conveying title to FICA of any segment of any parcel to which FIH has title and that FIH does not either need to complete its remaining development or otherwise desire to retain or convey to a building association. FICA will indemnify FIH for any such cooperation or reasonable steps it takes treating any liability arising from those steps as if it were liability arising from any effectuation or modification FICA requested to the master covenants reflected in the Second Amended and Restated Master Covenants. For the avoidance of doubt, nothing herein shall govern, or impose any obligation upon Developer, with respect to either Parcel 7 or Parcel 9.

3.2 FICA's Cooperation and Support of Parcel 7 and Parcel 9 Development. Subject to and as limited by Section 2.2 hereof, from and after the date hereof, FICA hereby agrees to affirmatively and fully support and cooperate with Developer in connection with Developer's planned development of Parcel 7 or Parcel 9, so long as such development does not (i) violate Developer's obtained approvals obtained from Miami-Dade County or (ii) result in a breach of Developer's 2020 Settlement Agreement with Fisher Island, Club, Inc., dated June 5, 2020 (the "Parcels 7 and 9 Development Activities"), at the reasonable request of Developer and at the Developer's expense. In addition, FICA shall not initiate, authorize or in any way support (financially or otherwise) any challenge, objection, obstruction, appeal, formal or informal complaint, administrative or judicial action adverse to or concerning, or otherwise interfere with any aspect relating, either directly or indirectly, to the Developer's Parcels 7 and 9 Development Activities or any element thereof other than in respect of any breach by Developer of Section 2.2.

4. Representations and Warranties.

4.1 Power and Authority of FICA. FICA hereby represents and warrants to Developer that the following representations and warranties are and shall be true and correct in all respects as of the date hereof and, contingent upon obtaining an Order that is Final and Non-Appealable (as the terms "Order" and "Final and Non-Appealable" are defined in Section 5.2 below), as of the Closing Date (as if made anew as of such date) except to the extent such representations and warranties expressly relate solely to an earlier date (in which case as of such earlier date): FICA has full power and authority to execute and deliver this Agreement and the Transaction Documents to which it is party and to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. . The execution, delivery and performance by FICA of this Agreement and the Transaction Documents to which it is party, and the consummation of the transactions contemplated hereby and thereby, have been

duly and validly authorized and approved by all necessary corporate action on the part of FICA, and no other actions or proceedings on the part of or in respect of FICA are necessary to authorize or approve this Agreement, the Transaction Documents to which it is party or the transactions contemplated hereby and thereby. FICA has duly and validly executed and delivered this Agreement and has duly and validly executed and delivered the Transaction Documents to which it is party. Assuming, in each case, the due execution and delivery of the other parties hereto and thereto, this Agreement constitutes the legal, valid and binding obligation of FICA, and the Transaction Documents to which FICA is party, upon execution and delivery by FICA, will constitute legal, valid and binding obligations of FICA, in each case, enforceable in accordance with its respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, moratorium, reorganization or similar laws in effect which affect the enforcement of creditors' rights generally and by general equitable principles. The consummation of the Agreement and Transaction Documents will not and the execution, delivery and performance by FICA of this Agreement and Transaction Documents will not: (i) constitute or result in a breach or violation of, or a default under, FICA's organizational or governing documents, (ii) contravene, violate or conflict with any law applicable to FICA or its affiliates or any of its respective properties or assets or (iii) require the consent, notice or other action by any person or governmental entity under, or, with or without notice, lapse of time or both, result in a breach or violation of, a termination (or right of termination) or default under, the creation or acceleration of any obligations or under any law to which FICA or any of its affiliates is subject.

4.2 Power and Authority of FIH and Par 7. FIH and Par 7 each hereby represent and warrant to FICA that the following representations and warranties, as applicable to each of FIH and Par 7, are and shall be true and correct in all respects as of the date hereof and, contingent upon obtaining an Order that is Final and Non-Appealable, as of the Closing Date (as if made anew as of such date) except to the extent such representations and warranties expressly relate solely to an earlier date (in which case as of such earlier date): Each of FIH and Par 7 has full power and authority to execute and deliver this Agreement and the Transaction Documents to which it is a party and to carry out its respective obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by each of FIH and Par 7 of this Agreement and the Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized and approved by all necessary corporate action on the part of each of FIH and Par 7, and no other actions or proceedings on the part of or in respect of FIH and Par 7 are necessary to authorize or approve this Agreement, the Transaction Documents to which it is party or the transactions contemplated hereby and thereby. FIH and Par 7 each have duly and validly executed and delivered this Agreement and have each duly and validly executed and delivered the Transaction Documents to which it is a party. Assuming, in each case, the due execution and delivery of the other parties hereto and thereto, this Agreement constitutes the legal, valid and binding obligation of each of FIH and Par 7, and the Transaction Documents to which it is a party, upon execution and delivery by FIH and Par 7, will constitute legal, valid and binding obligations of each of FIH and Par 7, in each case, enforceable in accordance with its respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, moratorium, reorganization or similar laws in effect which affect the enforcement of creditors' rights generally and by general equitable principles. The consummation of the Agreement and Transaction Documents will not and the execution, delivery and performance by FIH and Par 7 of this Agreement and Transaction Documents will not: (i) constitute or result in a

breach or violation of, or a default under, FIH's organizational or governing documents or under Par 7's organizational or governing documents, (ii) contravene, violate or conflict with any law applicable to FIH or Par 7 or their affiliates or any of its respective properties or assets or (iii) require the consent, notice or other action by any person or governmental entity under, or, with or without notice, lapse of time or both, result in a breach or violation of, a termination (or right of termination) or default under, the creation or acceleration of any obligations or under any law to which FIH or Par 7 or any of their affiliates is subject.

4.3 No Prior Assignment of Claims. As of the date hereof and as of the Closing Date (as if made anew as of such date), each Party represents that it has not sold, assigned, granted, conveyed or transferred to any other person, firm, corporation or entity any of the claims, demands or causes of action referred to in the Release which it now owns or holds, or has owned or held or may own or hold against the other Party.

5. Procedural Terms and Deliverables.

5.1 Turnover Documents. Concurrently herewith, the Parties hereto have executed and exchanged undated Turnover Documents, all of which shall be held in escrow by the respective Parties and become automatically effective upon, and dated as of, the Turnover, in accordance with the terms of each such Turnover Document. Concurrently herewith, the Parties have executed and delivered undated releases (the "Releases") attached hereto as Exhibit G, which, for the avoidance of doubt, shall automatically become effective upon, and dated as of, the Closing.

5.2 Closing and Lawsuit Dismissal. The "Closing" under this Agreement shall be deemed to automatically occur upon and be subject only to the Order being Final and Non-Appealable. For purposes hereof, "Order" means the Court's issuance of a final order approving this Agreement and dismissing all claims against each of FIH and Par 7 and each of their respective affiliates in the Lawsuit with prejudice (whether in the form of a Partial Final Judgment, due to the pendency of counterclaims, or a Final Judgment). The Order becomes "Final and Non-Appealable" on the date which is thirty-one days following the Court's issuance of the Order, so long as no appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing or motion for new trial, or any other motion or filing has been filed that would delay the operation of the Order as final, binding, and not subject to additional timely legal proceedings, or, if any of the foregoing has been timely filed, it has been finally disposed of in a manner that upholds and affirms the subject Order in all material respects without the possibility for further appeal, rehearing, or legal process. The date on which the Closing occurs is referred to herein as the "Closing Date". The Parties shall affirmatively, fully and unconditionally support and cooperate in obtaining the Order and in any further efforts as may be necessary for the Order to be considered Final and Non-Appealable. From and after the date hereof, the Parties shall also cooperate to seek dismissal of any other pending litigation involving claims affected by the Releases.

5.4 Payment. Within three business days of the Closing, FIH shall pay to FICA, by wire transfer of immediately available funds, Two Million Five Hundred Thousand Dollars (US \$2,500,000).

6. Default, Remedies and Dispute Resolution.

6.1 Efforts to Resolve. If a dispute arises between the Parties arising out of or relating to the application, interpretation, enforceability, validity, performance or breach of this Agreement or any Transaction Document, whether based in contract, tort, law, equity or any other legal form (a “Dispute”), the Parties shall use their best efforts for a period of up to thirty (30) calendar days to resolve the Dispute.

6.2 Jurisdiction and Venue for Enforcement of Agreement and Disputes. If any Dispute is not resolved pursuant to Section 6.1, then the Dispute shall be submitted to be resolved by binding arbitration that shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures then in effect. The Dispute shall be heard by a panel of three (3) neutral arbitrators, one appointed by the claimant, one appointed by the respondent, and the third appointed jointly by the first two (2) arbitrators, who shall be the chairperson of the arbitration panel. The arbitrators shall have the authority to grant any temporary, preliminary or injunctive relief in a form substantially similar to that which would otherwise be granted by a court of law. The Arbitrator shall not have the authority to award punitive damages against any Party. The seat of the arbitration shall be Miami, Florida, and all proceedings before the arbitrators shall be held in Miami, Florida. The arbitration award shall be decided by majority opinion and shall be a reasoned award, which shall specifically state the reasons upon which it is based and include findings of fact and conclusions of law. The arbitrators shall allocate the fees and costs of the arbitration. The losing Party shall pay the prevailing Party’s reasonable attorney’s fees and costs and reasonable costs associated with the arbitration, including the reasonable expert fees and costs and the arbitrators’ fees. The award rendered by the arbitrators shall be final and binding on the Parties and not subject to any appeal. The Parties agree that exclusive jurisdiction and venue to confirm or enforce such award shall lie in the state and federal courts in Miami-Dade County, Florida.

6.3 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida notwithstanding any choice of law rules that would require application of the laws of another jurisdiction.

7. General Provisions.

7.1 Headings; Construction. The titles and headings of the various sections of this Agreement are intended solely for convenience of reference and shall not be construed as an explanation, modification or intended construction of any terms or provisions of this Agreement. For all purposes of and under this Agreement, (a) the words “include,” “includes,” and “including” shall be deemed to be immediately followed by the words “without limitation,” (b) words (including defined terms) in the singular shall be deemed to include the plural and vice versa, (c) words of one gender shall be deemed to include the other gender as the context requires and (d) the terms “hereof,” “herein,” “hereto,” “herewith” and any other words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including the schedules and exhibits) and not to any particular term or provision of this Agreement, unless otherwise specified. Neither Developer, on the one hand, nor FICA, on the other hand, shall be deemed to

be in breach of any covenant contained in this Agreement if such Party’s deemed breach is the result of any action or inaction on the part of the other.

7.2 Comprehension of Terms. The Parties hereby acknowledge that they have entered into this Agreement freely and voluntarily and without coercion or undue influence. The Parties have each retained their own counsel, who have reviewed and participated in the drafting of this Agreement. Accordingly, this Agreement is deemed to have been jointly drafted by the Parties, and any uncertainty or ambiguity shall not be construed for or against any Party as an attribution of drafting by any Party.

7.3 Amendment. This Agreement may be amended only by a subsequent agreement, in writing, signed by the Parties.

7.4 Assignment; Third Party Beneficiaries. Each Party shall have the right to assign to a single third party such Party’s legal and equitable rights and benefits hereunder in connection with a sale of all of such Party’s real property and assets to such third-party as may be appropriate; provided that in the event of any such assignment the assigning Party shall not be relieved from any of its remaining obligations under this Agreement. Subject to the foregoing, this Agreement is for the benefit of the Parties, ASR Construction, LLC and ASR Interior, LLC (collectively, with any other contractor or construction agent of the Developer or its assignees, “ASR”). FICA acknowledges that ASR is an affiliate of Developer and shall be an express third-party beneficiary of the TSA and the transportation and cooperation related covenants of FICA hereunder, except that ASR’s special rights under this Agreement shall survive until, and terminate after, December 31, 2028. Nothing herein expressed or implied shall give or be construed to give any other person, other than the Parties and ASR or an assignee in accordance herewith, any legal or equitable rights this Agreement.

7.5 Merger and Integration; Subject to Master Covenants. This Agreement and the documents specifically contemplated hereby (including the Turnover Documents and the Releases) incorporate, embody, express and supersede all prior agreements and understandings between the Parties relating to any issue between and among them addressed or referenced herein or in the documents specifically contemplated hereby. The Parties agree and represent that there are no representations upon which they relied in entering into this Agreement that are not set forth in writing in this Agreement and the documents specifically contemplated hereby.

7.6 Counterparts; Signatures. This Agreement and any amendments hereto may be executed and delivered in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. The facsimile or electronic signatures of the Parties shall be deemed to constitute original signatures.

7.7 Defined Terms. Each of the following terms is defined in the Section set forth opposite such term:

<i>Defined Terms</i>	<i>Section</i>	<i>Defined Terms</i>	<i>Section</i>
Agreement.....		Preamble	

Amendment to the FICA By-Laws	Section 1.2	Par 7	Preamble
Amendment to the FICA Charter	Section 1.2	Parcel 6 and Parcel 8 Improvements	Section 2.2
Amendments to the FICA Governing Documents	Section 1.2	Parcel 6 Lift Replacement.....	Section 2.2
ASR.....	Section 7.4	Parcel 7 Auxiliary Ramp.....	Section 2.2
Closing Date.....	Section 5.2	Parcel 8 Ferry Landing Widening.....	Section 2.2
Court	Recitals	Parcels 7 and 9 Development Activities.....	Section 3.2
Developer	Preamble	Parties.....	Preamble
Dispute	Section 6.1	Party	Preamble
Excess Ferry Landing Site	Section 2.1	Payment.....	Section 5.3
FICA	Preamble	Records	Section 1.1
FICA By-Laws.....	Section 1.2	Releases.....	Section 5.1.1
FICA Charter	Section 1.2	Second Amended and Restated Master Covenants	Section 1.1
FIH	Preamble	Second Amended and Restated Master Covenants for Fisher Island	Section 1.1
Final and Non-Appealable	Section 5.2	TSA	Section 2.4
Lawsuit.....	Recitals	Turnover Documents	Recitals
Master Covenants.....	Section 1.1		
New Parcel 8 Landing.....	Section 2.3		
Normal Hours.....	Section 2.3		
Order	Section 5.2		

[Signature pages follow.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above.

Fisher Island Holdings, LLC, a Florida limited liability company

By: 

Name: Heinrich von Hanau

Title: President and Chief Executive Officer

Par 7, LLC, a Florida limited liability company

By: 

Name: Heinrich von Hanau

Title: President and Chief Executive Officer

Fisher Island Community Association, Inc.

DocuSigned by:
By: Archie Drury
Name: Archie Drury
Title: FICA Special Litigation Committee

DocuSigned by:
By: STAN SMITH
Name: Stan Smith
Title: FICA Special Litigation Committee

DocuSigned by:
By: James Ferraro
Name: James Ferraro
Title: FICA Special Litigation Committee

SCHEDULE 1

TURNOVER DOCUMENTS

1. Second Amended and Restated Master Covenants
2. Amendment to the FICA By-Laws
3. Amendment to the FICA Charter
4. The TSA