



## VILLAGE OF PALMETTO BAY

Mayor Karyn Cunningham  
Vice Mayor John DuBois  
Council Member Patrick Fiore (Seat 1)  
Council Member David Singer (Seat 2)  
Council Member Marsha Matson (Seat 3)

Interim Village Manager Gregory Truitt  
Village Attorney John C. Dellagloria  
Village Clerk Missy Arocha

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation, a sign language interpreter, or hearing impaired to participate in this proceeding should contact the Village Clerk at (305) 259-1234 for assistance no later than four days prior to the meeting.

---

### **AMENDED VIRTUAL SPECIAL VILLAGE COUNCIL MEETING WEDNESDAY, SEPTEMBER 9, 2020 – 6:30 PM (305) 259-1234**

---

1. **CALL TO ORDER, ROLL CALL, INVOCATION, PLEDGE OF ALLEGIANCE, AND DECORUM STATEMENT, IN THAT ORDER:** Any person making impertinent or slanderous remarks, or who becomes boisterous, while addressing the Council may be barred from further appearance before the Council by the Mayor, unless permission to continue or again address the Council is granted by a majority vote of the Council. Applauding speakers shall be discouraged. Heckling or verbal outbursts in support or opposition to a speaker, or his or her remarks, shall be prohibited. No signs or placards shall be allowed in the Council meeting. Persons exiting the Council meeting shall do so quietly. All cellular telephones and beepers are to be silenced during the meeting.
  2. **REQUESTS, PETITIONS AND PUBLIC COMMENTS SUBMITTED**
  3. **VILLAGE COUNCIL DISCUSSION AND ACTION ON THE DEVELOPMENT AGREEMENT BETWEEN YACHT CLUB BY LUXCOM, LLC AND THE VILLAGE OF PALMETTO BAY, ATTACHED AS EXHIBIT "A".**
  4. **COUNCIL COMMENTS**
  5. **NEXT MEETING AND ADJOURNMENT**
-

WE, THE VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, HEREBY COMMIT OURSELVES TO MAINTAINING CIVILITY IN OUR PUBLIC AND POLITICAL DISCOURSE AND PLEDGE TO THE FOLLOWING PRINCIPLES:

- We will respect the right of all citizens in our community to hold different opinions;
- We will avoid rhetoric intended to humiliate or question the wisdom of those whose opinions are different from ours;
- We will strive to understand differing perspectives;
- We will choose our words carefully;
- We will speak truthfully without accusation and we will avoid distortion;
- We will speak out against violence, prejudice, and incivility in all of their forms, whenever and wherever they occur.

---

PURSUANT TO FLORIDA STATUTES 286.0105, THE VILLAGE HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE VILLAGE FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

---



**MEETING NOTICE -  
INSTRUCTIONS ON HOW TO ACCESS  
THE MEETING AND HOW THE  
PUBLIC CAN PARTICIPATE**



## VILLAGE OF PALMETTO BAY NOTICE OF SPECIAL COUNCIL MEETING

**NOTICE IS HEREBY GIVEN** that on Wednesday, September 9, 2020 at 6:30 p.m. the Village of Palmetto Bay shall hold a Special Council Meeting for the purposes of discussing the Development Agreement between Yacht Club by Luxcom, LLC and the Village of Palmetto Bay. This Special Council Meeting will be conducted using a teleconferencing platform and broadcast live. Members of the public may watch the virtual meeting via the Village's official Facebook page and/or our Granicus web stream on [www.palmettobay-fl.gov](http://www.palmettobay-fl.gov).

**PLEASE NOTE** that pursuant to Governor DeSantis' Executive Order 20-193, in which he declared a public health emergency and a state of emergency, there is a recommendation to limit public gatherings. Any Florida Statute that requires a quorum to be present in person or requires a local government body to meet at a specific public place, is suspended, and the Village is authorized to hold public meetings through the use of communications media technology, subject to the rules pursuant to Section 120.54(5)(b)2, Florida Statutes. *This notice provides instructions on how to access the meeting and how the public can participate.*

**Public comments forum (Option 1):** Prior to the meeting, the public can submit a web form available at this address: <https://www.palmettobay-fl.gov/FormCenter/Public-Comments-Form-10/Public-Comments-Form-52>. Form submissions received prior to the meeting will be read before the item is heard. Form submissions received after 6:30 p.m. will be read at the end of the Village Council's Agenda.

**Public comments forum (Option 2):** Public attendees wishing to provide real-time, audible public comments during the meeting may do so using GoToWebinar's desktop, laptop, tablet, or smartphone app. Once registered, attendees will receive GTW session information and call-in telephone numbers for those wishing to use a telephone. Telephone attendees may not participate in public comment as the system has no way to mute or unmute. Attendees wishing to speak during public comment time must use the GoToWebinar application on their desktop, laptop, or smart device. Attendees may not use a webcam whatsoever. In lieu of no availability to participate through the webinar, please submit your public comment using the web form as described above.

**Please register to attend the session as follows:**

<https://attendee.gotowebinar.com/register/3373188833571210764>

**After registering, you will receive a confirmation email containing information about joining the webinar.**

All persons are invited to speak at this meeting, or to be represented by an agent, or to express their views in writing addressed to the Village Council c/o of the Village Clerk, 9705 E. Hibiscus Street, Palmetto Bay, FL 33157 and/or via email: [council@palmettobay-fl.gov](mailto:council@palmettobay-fl.gov). Inquiries may be directed to the Clerk at (305) 259-1234. The above items may be continued at this meeting and, under such circumstances, additional legal notice would not be provided. Any person may contact the Village Clerk for information as to the status of this item as a result of the meeting.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation (or hearing impaired) to participate in this proceeding or to review any documents relative thereto should contact the Village for assistance at (305) 259-1234 no later than four (4) days prior to the proceedings.

**Missy Arocha**  
**Village Clerk**

[www.palmettobay-fl.gov](http://www.palmettobay-fl.gov)



# **EXHIBIT "A" - DEVELOPMENT AGREEMENT**

This instrument was prepared by:

Name: Pedro Gassant, Esq.  
Address: Holland & Knight LLP  
701 Brickell Avenue  
Suite 3000  
Miami, Florida 33131

(Space reserved for Clerk of Court)

## **DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (hereinafter the “Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2020, by and between Yacht Club by Luxcom, LLC, a Florida limited liability company (“Luxcom” or the “Developer”), and the Village of Palmetto Bay (the “Village”), a Florida municipal corporation (each individually, a “Party” and collectively, the “Parties”).

### **WITNESSETH:**

WHEREAS, the Developer is the owner of that certain real property located within the boundaries of the Village identified by Miami-Dade County Property Appraiser Tax Folio No. 33-5024-000-0025 (the “Property”), the legal description of which is attached hereto as Exhibit A and made a part hereof;

WHEREAS, the Village is a Florida municipal corporation with powers and authority conferred under the Florida Constitution, the Municipal Home Rule Powers Act, Florida Statutes, and the Village’s Charter (“Charter”), Municipal Code of Ordinances (“Ordinances”), Zoning Code (“Code”), Comprehensive Plan and Land Development Regulations, and the Village has all governmental, corporate and proprietary powers to enable it to conduct municipal services, including authority to adopt, implement and enforce (together with any other required government approvals) a comprehensive plan, zoning ordinances, variances, redevelopment plans and other police power and legislative measures necessary to assure the health, safety and general welfare of the Village and its inhabitants;

WHEREAS, Luxcom is a real estate developer with a wide range of experience developing a variety of different types of properties and is currently planning the development of a hospital on the Property and, in connection therewith, Luxcom submitted an application to the Village in April, 2019 to that effect;

WHEREAS, the Village would prefer to see a residential development on the Property;

WHEREAS, Luxcom is also a premiere developer of residential communities throughout South Florida and is willing to develop the Property provided that it is granted all necessary approvals to construct 177 residential dwelling units on the Property pursuant to the Project Plan, as that term is used and defined in Section 4 below;

WHEREAS, to make the development of the Project Plan feasible, the Property will require, among other things, a Brownfield Designation, a Community Development District, land use plan text amendment(s), rezoning, variance(s), and site plan or development tract plan approval from the Village as well as certain environmental approvals from a variety of governmental agencies;

WHEREAS, the Property, which consists of approximately 71 acres, is currently designated “Estate Density” and “Water” on the Village’s Future Land Use Map (“FLUM”);

WHEREAS, the development of the Project Plan requires certain amendments to the text of the Village’s Future Land Use Element of the Comprehensive Plan, including amendments to allow for the use of all water bodies, whether existing or created as a result of development, located fully within the Property’s limits to be utilized in gross residential density calculations;

WHEREAS, the Property is currently zoned “E-1”, Estate Single Family, pursuant to the Village’s zoning map,

WHEREAS, to develop the Project Plan, the Property must be rezoned to the PAD, Planned Area Development District (the “Rezoning”), as in effect as of the date of this Agreement, with certain variances from the PAD standards concerning private open space, common open space, limitations concerning the square footage of convenience retail services provided on the Property, and parking requirements to allow for the private open space, common open space, convenience retail services and parking to be developed pursuant to the regulations provided in Section 4 below (the “Variances”);

WHEREAS, the development of the Project Plan will also require approval of a site plan or a development tract plan, tentative plat and final plat;

WHEREAS, the Village agrees to consider the approval of the text amendments to the Village’s Future Land Use Element, Rezoning, Variances, Brownfield Designation, Community Development District, this Agreement, site plan or development tract plan, and tentative plat (collectively, the “Public Hearing Items”) for the Property *all contemporaneously* at two (2) public hearings (as applicable) and to expedite the *concurrent* consideration of all these items;

WHEREAS, the Village agrees to expedite the hearing for final plat if the Public Hearing Items are approved at the two public hearings;

WHEREAS, the proposed text amendment(s) to the Future Land Use Element, which must be reviewed by the Florida Department of Economic Opportunity prior to the second of the two (2) public hearings referenced above, will be processed by the Village under the State’s Expedited Review Process, and not as part of an Evaluation and Appraisal Report;

WHEREAS, the Developer and the Village anticipate, subject to the consideration of the Public Hearing Items at public hearing, that the Property will be developed pursuant to the Project Plan;

WHEREAS, should the Village approve the Public Hearing Items at the public hearings, it is intended that the Project Plan will comport with the requirements and standards set forth in this Agreement;

WHEREAS, provided that the Public Hearing Items are approved, this Agreement provides certain terms and conditions relating to the proposed development of the Property and establishes clarity as to the ultimate development of the Project Plan, as provided pursuant to the Florida Local Government Development Agreement Act, which is defined and codified in Section 163.3220, Florida Statutes, *et. seq.* (the “Act”); and

WHEREAS, the Village has decided to enter into this Agreement after having fully considered it at two (2) duly conducted public hearings in compliance with Section 163.3225 of the Act, and having determined that the envisioned Project Plan, as described in this Agreement, is in compliance with the Comprehensive Plan and the Village’s Charter, Ordinances, Code, and Land Development Regulations as of the date of the approval of this Agreement at the second public hearing, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the conditions, covenants and mutual promises hereinafter set forth, the Developer and Village agree as follows:

1. **Recitals; Exhibits; Definitions.** The foregoing recitals are true and correct and are hereby incorporated herein by reference. All exhibits attached to, and referenced in, this Agreement are hereby deemed a part hereof. The capitalized terms used, but not defined, in the foregoing recitals or other sections of this Agreement, shall have the meanings ascribed to them in Section 9(a) hereof.

2. **Consideration; Authority.** The Parties agree that the consideration and obligations recited and provided for under this Agreement constitute substantial benefits to both Parties and is therefore adequate consideration for this Agreement. The Developer represents that the person signing on its behalf is duly authorized to execute this Agreement which is therefore binding on Developer.

3. **Intent.** It is the intent of the Developer and the Village to ensure that the Property is developed and operated as a cohesive, compatible, successful, residential project with adequate infrastructure. Further, the Developer and the Village agree that this Agreement should be construed and implemented so as to effectuate the purposes and intent of the Parties and the purpose and intent of the Act, in order to complete development of the Project Plan with an initial development program set out as follows, as may be changed pursuant to this Agreement. The Village finds that the development as described herein is consistent with the Village’s Charter, Ordinances, Code, Comprehensive Plan and its Land Development Regulations.

4. **Project Plan.** The Project Plan consists of a residential community of up to 177 residential dwelling units and accessory uses as allowed within the PAD zoning district, including, but not limited to, an entry feature, guardhouse, guard gate, clubhouse and amenity center, boat house, private parks, tot lots, fishing piers, Jacuzzi, bocce court, gazebos, pergolas, fountains, basketball and volleyball courts, gym, manager’s office, catering kitchen, meeting room, fuel dock, repair/service facilities, swimming pools, swimming pool decks, swimming pools at grade, sundry

shop, café, marina, dock master’s office, boat slips, launch and boat service, marina parking and amenity parking as well as other accessory uses as may be allowed in the PAD zoning district. The density and regulations governing the development of the Property, shall be as follows:

<b>Overall Site<sup>1</sup> Regulations</b>	
<b>Maximum Number of Units</b>	177 Units
<b>Maximum Total Lot Coverage</b>	1,000,000 s.q. f.t.
<b>Minimum Roads</b>	185,000 s.q. f.t.
<b>Minimum Common Open Space</b>	595,000 s.q. f.t.
<b>Minimum Water Bodies</b>	420,000 s.q. f.t.
<b>Maximum Public Facilities</b>	75,000 s.q. f.t.
<b>Maximum Pervious Surface</b>	800,000 s.q. f.t.
<b>Maximum Impervious Surface</b>	2,000,000 s.q. f.t.
<b>Maximum Building Height</b>	40 feet <sup>2</sup>
<b>Maximum Bedrooms</b>	1,062

<b>Lot Specific Regulations</b>	
<b>Minimum Total Dwelling Unit Square Footage</b>	2,500 sq. f.t.
<b>Minimum Private Open Space</b>	1,115 sq. f.t.
<b>Setbacks</b>	<b>Proposed</b>
<b>Front</b>	15’
<b>Rear</b>	10’

<sup>1</sup> The overall site for the purposes of this Agreement is the entirety of the Property including all of the water within the Property boundaries.

<sup>2</sup> In this Agreement “height” is measured from the highest finished grade of the individual lot for the residential dwelling unit to the top of the highest perimeter tie beam of the envelope of the residential dwelling unit. This definition for height shall apply to the Property notwithstanding any subsequent changes or amendments by the Village to the definition of the term “height.”

<b>Side Street</b>	2' 5"
<b>Interior Side</b>	2' 5"

The administrative approval process by the Village shall not prohibit the development of the Project so long as the development is in substantial compliance with the Project Plan. The minimum lot sizes for the development will be 5,000 square foot lots and the setbacks listed above are recognized as the minimum setbacks for the Project Plan. The setbacks provided above are the setbacks requirements as measured to the structure of the homes and do not include additional and separate structures or terraces. To the extent that additional structures are provided on the lots, such as amenities for the residential homes, including gazebos, pergolas, swimming pools, swimming pool decks, swimming pools at grade, summer kitchens and other structures, the minimum rear setback will be 2 feet 5 inches for such structures. So long as the plan for development complies with Section 4 of this Agreement, the Developer shall be entitled to pull building permits.

A. Canals. It is anticipated that the development of the Property will include several canals to provide as many homes as possible with waterfront access (“Canals”). It is possible, however, that many, and even all, of the proposed Canals may be rejected by the applicable permitting authorities. Therefore, it is hereby recognized and agreed to by the Village that should it approve the Public Hearing Items, that the existence or non-existence of Canals for the Property will not require substantial compliance or administrative modification so long as the Developer complies with the development regulations and parameters set forth in Section 4 of this Agreement.

B. Conceptual Master Plan. In recognition of the fact that the approval or denial of the Canals proposed for the Property will substantially impact the ultimate design and development of the Property, the Village hereby agrees to allow Luxcom to submit a Conceptual Master Plan, in lieu of a site plan, as part of Luxcom’s site plan or development tract plan approval. It is agreed that the Conceptual Master Plan will provide only the *general* concept of the development of the Property. It is hereby further recognized and agreed that the Conceptual Master Plan shall not serve as a limitation upon the development of the Property and only serves as a conceptual illustrative plan for the development of the Property and that the development of the Property may be substantially different from what is shown on the Conceptual Master Plan. It is hereby agreed that should the Village approve the Public Hearing Items, that the building permits that are issued by the Village for the development of the Property shall be based upon and governed by the development regulations provided in Section 4 of this Agreement.

C. Seawall and Mangrove Impacts. It is anticipated that the development of the Property will also include seawalls and mangrove impacts. The approval of the seawalls and mangrove impacts are not within the jurisdiction of the Village and are subject to the approval of various environmental agencies. Therefore, it is hereby recognized and agreed to by the Village that should it approve the Public Hearing Items, that the existence or non-existence of seawalls or the nature and extent of seawalls or mangroves on the Property will not require substantial

compliance or administrative modification so long as the Developer complies with the development regulations and parameters set forth in Section 4 of this Agreement.

D. Parking Spaces. The parking spaces provided for the Project Plan shall be three (3) parking spaces per residential dwelling unit and the parking space(s) provided for in the garages shall count towards this minimum requirement. In addition, to the extent that a marina is provided on the Property, then there shall be one (1) parking space per every two boat slips irrespective of whether the boat slip accommodates living on-board or not. Notwithstanding the foregoing, no parking space will be required for boat slips that are owned by residents of the Property. The outdoor recreational courts shall provide four (4) spaces per court for basketball and volleyball courts and two (2) spaces per court for tennis, racquetball and any other outdoor recreational court. The café, sundry shop, gym, manager's office, boat house, fishing pier and amenity building and similar uses shall provide for one space per 250 square feet under air conditioning of interior floor area, excluding bathrooms and storage rooms. The private parks and other uses deemed private shall not require parking spaces as such uses will be limited to the residents of the Project and are covered by the parking spaces provided by the residential dwelling units. At the discretion of the Developer, golf cart parking spaces may also be provided as well as dedicated drop off zones for ridesharing companies, such as Uber and Lyft.

- a. Handicapped Spaces. Handicapped parking spaces shall be provided as specified herein. Specifically, handicapped parking spaces shall be calculated based on the areas of parking provided in the areas of public accommodation, including the marina, café, sundry shop, boat house and other uses that provide access to the Property for individuals other than the residents of the Property and shall be provided as required by the South Florida building code.
  - i. Size. Where parking spaces for the handicapped are provided, each space shall be a minimum of 18 feet in length and 12 feet in width.
  - ii. Signage and parking. All parking spaces designated for handicapped parking shall be prominently outlined with blue stripes. Access aisles shall be striped diagonally with white stripes. Spaces shall be posted with an approved permanent above-ground sign which shall state "Parking by Disabled Permit Only" and shall bear the international accessibility symbol.

5. Ancillary Amenities. The Property may provide for ancillary amenities including, but not limited to an amenity center and clubhouse, amenity center pool and pool deck, basketball court(s), volleyball court(s), tennis court(s), café, sundry shop, gym, manager's office, dock master office, marina (including live-aboard and non-live aboard use), clubhouse parking lot, Jacuzzi, bocce court, boat house, launch and boat service, repair/service facilities, fishing pier, fuel dock, amenity building, marina parking lot, and other uses so long as such uses do not exceed 200,000 square feet. This square footage limitation does not apply to any structure over water.

6. **Environmental Approvals.** The Parties acknowledge that Luxcom intends to develop a premiere residential community on the Property by providing as many Canals and waterfront homes on the Property as possible. In order to design and develop Canals and waterfront homes on the Property, Luxcom will be required to obtain approvals for the digging of the Canals from various environmental regulatory agencies, including, but not limited to, the Division of Environmental Resources Management of Miami Dade County (“DERM”), the Miami-Dade Environmental Quality Control Board (“EQCB”), the South Florida Water Management District (“SFWMD”), the U.S. Army Corps of Engineers (“USACE”), the Florida Department of Environmental Protection (“FDEP”), and the Board of County Commissioners for Miami-Dade County (“County”), among others (collectively, the “Environmental Agencies”). It is expressly agreed that if the Village approves the Public Hearing Items, the Village shall cooperate with and take affirmative steps to support Luxcom’s submission for environmental approval from the Environmental Agencies including submitting an administration letter of support and/or a Village Resolution of support for the approval of the Canals, seawalls, mangrove impacts and Miami Dade County Class I permit, among other environmental applications that will be submitted for approval, and executing, as the local zoning authority, such environmental applications as may be required by the Environmental Agencies.

7. **Roadway Network.** As a minimum, the Project will have direct access to and from SW 67<sup>th</sup> Avenue, but if required by the County, the Project may also have access to and from Coral Reef Drive.

8. **Concurrency.** The Village acknowledges that the Project meets all of the Village’s concurrency requirements and agrees to reserve capacity in the affected services and facilities during the Term of this Agreement so that the Developer may proceed with development of the Project. The Village’s reservation of capacity with respect to water and sewer may be limited to the extent that such facilities are available from the Water and Sewer Department (or any successor department) of the County.

9. **Public Facilities.** The Developer shall provide the following public water and sewer utilities to serve the proposed Project.

A. **Water Distribution System.** The water distribution system will be of an adequate size for the Property to service the residential dwelling units, the marina and other uses provided on the Property pursuant to Section 4 of this Agreement.

B. **Sanitary Sewer Collection.** The sanitary sewer collection system will be of an adequate size and design to service the residential dwelling units, the marina and other uses provided on the Property pursuant to Section 4 of this Agreement.

C. **Pump Station and Force Main.** If it is determined that a pump station and force main is required for the Property, a public pump station will be provided which will be sufficient to service the residential dwelling units, the marina and other uses provided on the Property pursuant to Section 4 of this Agreement.

10. **Miscellaneous.**

(a) *Definitions.*

- (i) “Brownfield Designation” means the identification by the Village of real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination.
- (ii) “Community Development District” means a local, special purpose government framework for managing and financing infrastructure, and other items required to support the development of a community.
- (iii) “Comprehensive Plan” means the Village’s comprehensive plan in effect on the Effective Date, meeting the requirements of Chapter 163, F.S.
- (iv) “Comprehensive Plan Future Land Use Plan Map” or “FLUM” means the Future Land Use Plan Map that has been adopted by the Village as part of its Comprehensive Plan.
- (v) “Conceptual Master Plan” means the conceptual plan provided to the Village in connection with the Project Plan *solely for illustrative purposes, which can vary and change without additional approval or review by the Village.*
- (vi) “Developer” means the person or entity undertaking the development of the Property, as defined in the recitals to this Agreement, or any successors or assigns thereof that (a) acquire an interest in any portion of the Property and (b) are specifically assigned rights as Developer hereunder by Developer pursuant to an express written assignment. Upon execution and recording of such assignment, the assignee will be deemed the Developer hereunder to the extent set forth in such assignment.
- (vii) “Development” means the carrying out of any construction activity, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels and such other activities described in Section 163.3221(4), F.S.; provided, however, that the activities and uses set forth in Section 163.3221(4)(b), F.S., shall not constitute Development.
- (viii) “Development Permit” includes any building permit, zoning permit subdivision approval, rezoning, certification, special exception, variance, development order or any other official action of local government or governmental agency having the effect of permitting the development of land.
- (ix) “Effective Date” is the date of recording of this Agreement in the Public Records of Miami-Dade County, Florida.

- (x) “Environmental Approvals” is defined in Section 5 of this Agreement.
  - (xi) “Land” means the earth, minerals, water, and air, above, below, or on the surface and includes any improvements or structures customarily regarded as land.
  - (xii) “Land Development Regulations” means ordinances, rules and policies in effect on the Effective Date, which have been enacted and implemented by the Village for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulation or any other regulations controlling the development of, or construction upon, land.
  - (xiii) “Laws” means all ordinances, resolutions, regulations, comprehensive plans, land development regulations, and rules adopted by a local government affecting the development of land.
  - (xiv) “Local Government” means any county or municipality or any special district or local governmental entity established pursuant to law which exercises regulatory authority over, and grants development permits for, land development.
  - (xv) “Project” means the development project approved pursuant to the Project Plan.
  - (xvi) “Project Plan” is defined above in Section 4 of this Agreement.
  - (xvii) “Public Facilities” means major capital improvements, including but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, police, fire, parks and recreational, and health systems and facilities.
  - (xviii) “Term” is defined below in Section 9(b)(ii) of this Agreement.
  - (xix) “Utility” includes any person, firm, corporation, association or political subdivision, whether private, municipal, county or cooperative, which is engaged in the sale, generation, provision or delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service, or telecommunication service.
- (b) *Binding Effect, Term and Duration.*
- (i) Binding Effect. For the Term of this Agreement, the obligations provided in this Agreement upon the Developer and Village shall run with and bind the Property as covenants running with the

Property, and this Agreement shall be binding upon and enforceable by and against the Parties hereto, their personal representatives, heirs, successors, grantees and assigns, and a copy of this Agreement shall be recorded in the Public Records of Miami-Dade County, Florida, at the sole cost and expense of the Developer, immediately upon full execution of this Agreement.

- (ii) Term. This Agreement shall become effective on the Effective Date and shall remain effective and shall be binding on the Parties and all persons claiming under them for a term of thirty (30) years from the Effective Date, as may be extended pursuant to the provisions of this Agreement (the “Term”) and by mutual written consent of the Parties, subject to approval at a public hearing pursuant to Florida Statutes Section 163.3225, as amended from time to time. The expiration/termination date of this Agreement shall be upon the expiration of the Term (the “Expiration Date”). The Parties to this Agreement shall have no further obligations upon expiration of the Term unless otherwise extended.

(c) *Permitted Development Uses, Comprehensive Plan and Building Intensities.*

- (i) Permitted Development Uses. Concurrently with the adoption and acceptance of this Agreement, the Developer has proffered and the Village has accepted and adopted the Project Plan as defined in Section 4, subject to the terms and conditions as set forth in this Agreement. In acceptance and approval of this Agreement, the Village has determined and hereby concurs that the Project Plan is consistent with the Village’s Comprehensive Plan. Upon the Effective Date of this Agreement and for the Term, the Village confirms that Developer has the express right to develop the Property in accordance with Section 4 of this Agreement, subject to the terms and conditions of this Agreement and subject to Developer obtaining building permits.
- (ii) Comprehensive Plan. The Village hereby confirms that the development of the Property and completion of the Project in accordance with the Project Plan shall not be subject to any changes to the Village’s Land Development Regulations and Comprehensive Plan designation made after the Effective Date and during the Term. Further, it is confirmed by the Village that the Project Plan authorizes all permitted uses for the Property, in a manner consistent with the underlying FLUM designation for the Property.
- (iii) Building Intensities. The minimum requirement for setbacks, private open space, common open space, parking and the maximum requirements for height and other requirements for any development

on the Property shall comply with the regulations set forth in Section 4 of this Agreement.

(d) *Local Development Permits.* The Village or Village Staff will need to approve the necessary Development Permits, which will include those Development Permits needed in order for the Developer to complete the Project in a manner consistent with the Project Plan, the Land Development Regulations and Comprehensive Plan, including, where applicable, the following:

- (i) Subdivision plat and/or waiver of plat approvals;
- (ii) Land use amendments;
- (iii) Zoning amendments, variances, waivers, special or conditional use permits;
- (iv) Water, sewer, paving and drainage and other infrastructure permits;
- (v) Covenant or unity of title, restrictive covenant, easements, or dedications and the acceptance or the release of existing unities or covenants;
- (vi) Building permits;
- (vii) Certificates of occupancy; and
- (viii) Any other official action of the Village having the effect of permitting the development of land or providing permits required for the development of land.

(e) *Reservation of Development Rights.* For the Term, the Village hereby agrees that it shall permit the development of the Project in accordance with the Project Plan, the Land Development Regulations, the Comprehensive Plan, and existing laws and policies as of the Effective Date of this Agreement that are or may be applicable to the Property, subject to the conditions of this Agreement.

Nothing herein shall prohibit the Developer from applying for an increase in development density or intensity within the Project in a manner consistent with the Comprehensive Plan and Land Development Regulations, in effect any time after the Effective Date of this Agreement.

(f) *Public Services and Facilities; Concurrency.* The Village has established the scope of the public facilities and services that are required to service the Project. To the fullest extent available under the Village Code, the dedications and improvements of any facilities shall be credited or treated as land dedications in lieu of monetary fees. For the purposes of concurrency review, it is hereby agreed that throughout the Term of this Agreement, the Project shall be deemed to satisfy the Village's concurrency requirements and that the Village shall reserve and maintain available sufficient infrastructure capacities to serve this Project up to the full build out contemplated by the Project Plan.

(g) *Compliance with Local Regulations Relative to Development Permits.* The Developer and the Village agree that the failure of this Agreement to address a particular regulation, permit, condition, fee, term or restriction in effect on the Effective Date of this Agreement shall not relieve Developer of the necessity of complying with, and the Village shall

not be obligated to issue development permits to the extent the Developer does not comply with, the regulation governing said permitting requirements, condition, fee, term or restriction.

(h) *Impact Fees.* As of the Effective Date of this Agreement, the Village has a park concurrency impact fee and a mobility impact fee, but does not impose any other impact fees as a condition to development of the Property. Should the Village adopt any additional impact fees, they shall not apply to the Project. The imposition of the park concurrency impact fee and the mobility impact fee shall not exceed the calculations of such amounts as of the final execution date of this Agreement. The park concurrency impact fee is \$2,200 per unit and the mobility impact fee is 45% of the applicable road impact fee for Miami Dade County, which as of the execution of this Agreement is \$9,237.27 per unit. Thus, the Village's road impact fee is \$4,156.77 per unit. The Developer shall be required to pay only the impact fees referenced herein and shall not be required to pay any other impact fees and shall not be required to pay any increase in impact fees for the Term of this Agreement.

(i) *Governing Laws.* This Agreement shall be governed and construed in accordance with the laws of the State of Florida. The Developer and the Village agree that Miami-Dade County, Florida, shall be the exclusive venue in connection with any litigation between the Parties with respect to this Agreement. The prevailing Party in any action or suit pertaining to or arising out of this Agreement 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/her/its attorney, including any appellate proceedings relating thereto. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

(j) *Entire Agreement.* This Agreement sets forth the entire Agreement and understanding between the Parties relating in any way to the subject matter contained herein and merges all prior discussions between the Developer and the Village relating to the subject matter thereof. Neither Party shall be bound by any agreement, condition, warranty or representation relating to the subject matter hereof other than as expressly stated in this Agreement. This Agreement may not be amended, waived or released, except by written instrument signed by the Village and by the Developer (and/or its assigns, which may include, but are not limited to a Community Development District and/or a master property Developers' association and/or a homeowner's association with appropriate authority over the Property), provided that such amendment, waiver, release or change has been approved by the Village after public hearing, pursuant to any applicable requirements of Sections 163.3225 and 163.3220, F.S.

(k) *Cumulative Remedies.* All of the rights and remedies available to the Village and Developer under this Agreement are intended to be distinct, separate and cumulative and no such right and remedy herein mentioned is intended to be in exclusion of or a waiver of any of the others or any right or remedy that either may have under applicable law, except to the extent otherwise provided herein to the contrary.

(l) *Amendment and Waiver.* This Agreement may be amended only by a written instrument signed by the Parties. If either Party fails to enforce any of their respective rights under this Agreement, or fails to insist upon the performance of the other Party's obligations hereunder, such failure shall not be construed as a waiver of any rights as stated in this Agreement.

(m) *Severability*. If any section, sentence, clause, paragraph, or phrase of this Agreement is to be invalidated or deemed unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Agreement.

(n) *Counterparts*. This Agreement may be executed in two or more counterparts, each of which shall be taken to be an original and all collectively deemed one instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

**VILLAGE:**

ATTEST:

VILLAGE OF PALMETTO BAY, FLORIDA

\_\_\_\_\_  
Village Clerk

By: \_\_\_\_\_  
Mayor

Approved as to legal sufficiency and form:

\_\_\_\_\_  
Village Attorney

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

**DEVELOPER:**

YACHT CLUB BY LUXCOM, LLC  
a Florida limited liability company

WITNESSES:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF FLORIDA            )  
  ) ss:  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_ day of \_\_\_\_\_, \_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Yacht Club By Luxcom, LLC, a Florida limited liability company, who is personally known to me or who has produced \_\_\_\_\_ as identification.

[NOTARIAL SEAL]

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida  
Commission #: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION: