

**DEVELOPMENT AGREEMENT**  
**FOR**  
**OCEAN MARINE**

This agreement is entered into this 3<sup>rd</sup> day of June, 2003, between Ocean Marine Yacht Club, Inc. ("Ocean Marine") and the City of Hallandale Beach, a municipal corporation organized and existing under the laws of the State of Florida.

**FINDINGS OF FACT**

This agreement is predicated upon the following facts:

a. City of Hallandale Zoning and Land Development Code, Article III, Section 32-174.1 allows the City to enter into binding Development Agreements for the development of real property with persons having legal or equitable interests in such real property;

b. Pursuant to The Zoning and Land Development Code, Section 32-174 "PDD" Planned Development District and the Design Guidelines Manual, the City has adopted rules and regulations establishing procedures and requirements for Development Agreements;

c. Ocean Marine has requested the City of Hallandale Beach to consider entering into a Development Agreement and proceedings have been taken into accordance with the aforementioned City of Hallandale Beach rules and regulations as recited above;

d. The Hallandale Beach City Commission has found that this Development Agreement is consistent with the Comprehensive Plan, the Major Development Plan, the land development regulations and all other applicable requirements except as otherwise provided for in this agreement;

**NOW THEREFORE, THE PARTIES AGREE:**

1. Definitions. For the purpose of this agreement, unless the context otherwise requires:

(a) "Project" shall mean the Major Development Plan approved by the City of Hallandale Beach for construction of a high rise condominium, cabanas, marina, office space and retail space located 1945 South Ocean Drive, including parking and landscape improvements, as more specifically set forth in the plans for these projects which have previously been submitted to the City.

(b) "Owner" hereinafter referred to as Ocean Marine, includes the property owner's successors, assignees, tenants, agents, contractors, subcontractors and parties in interest.

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2. Description of Real Property. The legal description of the property which is the subject of this agreement is described and contained in Exhibit "A" attached hereto and made a part hereof.

(a) The name of the project is Ocean Marine Yacht Club located at 1945 South Ocean Drive.

(b) The name of the applicant is Ocean Marine Yacht Club, Inc.

3. Specific Restrictions on Development of Real Property. The project shall be undertaken and carried out in accordance with all City Codes and Ordinances in effect on the effective date of this agreement, except for those exceptions and variations as set forth in this agreement or any Exhibit attached hereto. All additional Code Amendments adopted after the date of this agreement and not conflicting with the exceptions and variations enumerated in this agreement shall be applicable to the project. The City and the Owner agree that the development of the project will be governed in conformance with the following agreement, limitations, and modifications:

(a) Permitted Use. The project may include all those uses permitted by the RM-25 Zoning District and all uses permitted under this agreement and in accordance with the Hallandale Beach Comprehensive Plan.

(b) Permitted Development. 283 residential units in a 33-story condominium, 161 cabanas, Marina with 48 wet boat slips, 16,560 square feet of retail, and 37,500 square feet office space and 15,000 square feet of restaurant use.

(c) Parking. A minimum of 970 parking spaces shall be provided.

(d) All plans shall provide detailed design data subject to final approval by the City Manager during the building permit process. The Owner agrees to comply with all local, county, state and federal laws pertaining to this Construction. Should the City Manager require revisions after the building permit is issued but before the certificate of occupancy is issued, including but not limited to facade treatment, signage, additional landscaping, revised walkways, etc., then details must be revised to meet the City Manager's approval of the design at the most conservative basis, even though such designs may be more conservative or demanding than the Florida Building Code or other Codes, but only if such changes are approved by the City Commission.

(e) Completion of Project. Owner agrees to diligently prosecute to completion the construction of the Project.

4. Special Conditions.

(a) See attached Exhibit "B" for list of conditions.

(b) Satisfaction of Conditions. The Owner may notify the City asserting the completion of any of the conditions of this agreement and, as necessary, furnish evidence of same. The City shall then consider such notice, inspect the work or proof of

completion and, within 21 days, notify the Developer that such conditions have either been found to be completely satisfied, or found to be not completed, with a list of deficiencies.

5. Waiver of Sales Trailer Restriction. The City agrees to grant a waiver of Code Section 32-450, which prohibits the placing of a sales trailer on the property until a building permit has been issued. The City agrees to permit a sales trailer to be placed on the property upon approval of the Major Development Plan (site plan) by the City. Ocean Marine agrees to remove the trailer at their expense if construction does not commence within 2 years from the date of site plan approval by the city Commission.
6. Public and Private Dedications, Reservations, and Conveyances. The Owner shall provide a 12 foot wide utility easement running the length of the property. Said easement shall run parallel to and be contiguous to state road A.I.A. The Owner shall also provide a 6-foot wide by 13-foot long easement for a bus shelter on the property.
7. Exhibits and Controlling Documents. The following documents are made a part thereof by this reference:
8. Amendments. Any amendment to this agreement shall not be approved unless all parties:
  - a. The Code of Ordinances of the City of Hallandale Beach.
  - b. The Development Plans and Specifications filed with the City.
  - c. In the event that the Major Development Plan and/or any of its contents are found to be in conflict with this Development Agreement, the applicable provision of this Development Agreement shall prevail.
  - d. There shall be strict adherence to this Development Agreement and the Major Development Plan. Any substantive change or amendment to the aforementioned Exhibits shall be addressed in conformance with Zoning and Land Development Code, Article III, Section 32-174 (j)(1)-(3).
9. Building Permits and Certificates at Occupancy. The City agrees to issue to the Owner, upon application and approval, all required building permits, approvals or other required permits and Certificates of Occupancy for the construction, use and occupancy of the project, subject to compliance with the permit conditions, this agreement and the most current Florida Building Code, as amended from time to time.

It is further understood and agreed that failure to fulfill any provision of this Agreement, the Major Development Plan, or the conditions of approval, including any conditions of a specific building permit, may result in non-issuance of Certificates of

Occupancy, certificates of completion, or other regulatory approvals until such time as all conditions of the specific building permit and this Agreement are complied with, and that the City shall not be liable for any direct, indirect and/or consequential damages claimed for such non-issuance.

10. Fees. Approvals are also based upon payment of the City's usual and customary fees and charges for such applications, permits or services, in effect at the time of issuance of the permit or approval, and any financial contribution identified as part of this agreement.
11. Binding Effect of Agreement. This agreement shall be binding upon the Owner and the City and upon any successive owners, their respective assignees, successors, including any mortgagees who acquire title by deed or foreclosure, legal representatives, heirs and beneficiaries (as applicable) upon acquiring any interest in the property and shall run with the land.
12. Breach of Agreement. In the event that the Owner has materially breached the Development Agreement, prior to issuance of the Certificate of Occupancy the Owner shall commence to cure the breach within thirty (30) days of notice by the City. If the Owner is unable or unwilling to cure the breach and abide by the Agreement, the City shall exercise its right to take appropriate legal action for the purpose of curing the breach and enforcing this agreement.
13. Hold Harmless. Owner agrees to and shall hold the City, its officers, agents, employees, and representatives harmless from liability for damage or claims for damage for personal injury including death and claims for property damage which may arise from the direct or indirect operations of the Owner or those of the property owner's contractor, subcontractor, agent, employee, or other person acting on his behalf which relate to the project. Property owner agrees to and shall defend the City and its officers, agents, employees, and representatives from actions for damages caused or alleged to have been caused by reason of property owner's activities in connection with the Project.
14. Monitoring Official. The City Manager or his designee shall ensure that all requirements of this agreement are met.
15. Surety. Bonding shall be as provided in the Code and applicable ordinances and regulations. This agreement shall not affect such requirements except to provide for joint and severable liability and to make clear that all requirements shall be binding on any mortgagees, successors or assigns. Irrevocable letters of credit in such form and issued by such institution as may be acceptable by the City shall serve as appropriate surety against failure to perform. However, nothing herein shall prevent the City, in its discretion, from accepting bonds or letters of credit in lieu of any specific improvement, on site or off site, being completed within a specified time period.

16. Notices. Any notice, demand or other communication required or permitted under the terms of this Agreement shall be in writing, made by overnight delivery services or certified mail, return receipt requested, and shall be deemed to be received by the addressee one (1) business day after sending by overnight delivery service, and three (3) business days after mailing, if sent by certified mail. Notices shall be addressed as provided below:

a. If to the City:

City of Hallandale Beach  
Attn.: City Manager  
400 South Federal Hwy.  
Hallandale, FL 33009  
(954) 457-1300 - phone  
(954) 457-1342 - fax

b. If to the Owner:

Greg Arnone  
Director Of Land Procurement And Development  
Security Management Corporation  
1250 East Hallandale Beach Blvd.  
Suite 300  
Hallandale, FL 33009  
(954) 385-2885

and a copy to:

Alan B. Koslow, Esq.  
Becker & Poliakoff, P.A.  
3111 Stirling Road  
Fort Lauderdale, FL 33312  
(954) 985-4169

17. Effective Date of the Agreement. This agreement shall become effective upon the Hallandale Beach City Commission approval and execution by the Owner and City Manager of the City.

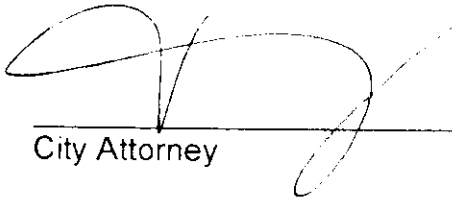
18. Recording. This Agreement or a memorandum shall be recorded in the public records and shall run with the land.

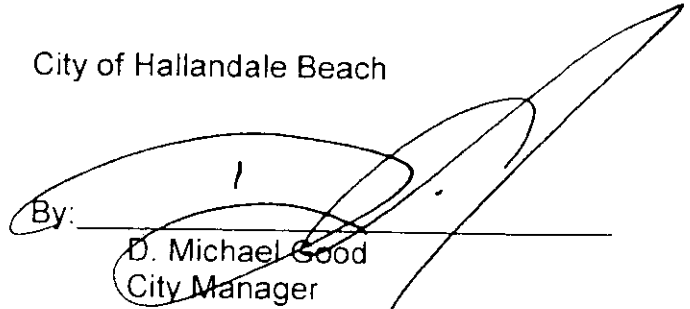
19. Severability. In the event that any portion or section of this agreement is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this agreement, which shall remain in full force and effect.

IN WITNESS WHEREOF THIS Agreement has been executed by the parties on the day and year first above written.

Approved as to form:

City of Hallandale Beach

  
\_\_\_\_\_  
City Attorney

  
By: \_\_\_\_\_  
D. Michael Good  
City Manager

Attest:   
\_\_\_\_\_  
City Clerk

Witnesses

OCEAN MARINE YACHT CLUB, INC.

Belinda Blair

Kevin Emswiler

By: Melvin R. Colvin  
Name: MELVIN R. COLVIN  
Title: VICE-PRES

STATE OF FLORIDA     )  
  ) ss.:  
COUNTY OF BROWARD )

The foregoing instrument was acknowledged before me on this 30th day of June, 2003, by Melvin Colvin, as VP of OCEAN MARINE YACHT CLUB. He is personally known to me or has produced Personally known OCEAN MARINE YACHT CLUB as identification and did (did not) take an oath.

Commission No.  
\_\_\_\_\_

Cornie Bidwell  
Notary Public, State of Florida Manatee

Cornie Bidwell  
Printed Name of Notary Public

My Comm. Exps. 2/11/2008  
LORE

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

The South 200 feet of the North 1,850 feet of Tract 1, less therefrom the Easterly 17 feet of SECOND AMENDED PLAT OF SEMINOLE BEACH, according to the Plat thereof, as recorded in Plat Book 15 at Page 19 of the Public Records of Broward County, Florida. Also known as the South 100 feet of the North 1,750 feet and the South 100 feet of the North 1,850 feet of Tract 1 of SECOND AMENDED PLAT OF SEMINOLE BEACH, according to the plat thereof, as recorded in Plat Book 15 at Page 19 of the Public Records of Broward County, Florida. A/K/A Lots 9 and 10 in Block 1 of WADE H. HARLEY SUBDIVISION, UNRECORDED.

And

The South 200 feet of the North 1,650 feet of Tract 1, SECOND AMENDED PLAT OF SEMINOLE BEACH, according to the plat thereof, as recorded in Plat Book 15 at Page 19 of the Public Records of Broward County, Florida; said 200 feet and said 1,650 feet being measured at right angles to the North boundary line of said Tract 1 together with all statutory and common law riparian rights and water privileges as may be appurtenant and adjacent thereto; less those portion previously conveyed to the State of Florida for road right-of-way purposes, being the East 17 feet of the South 100 feet of the North 1,550 feet of Tract 1, and the East 17 feet of the South 100 feet of the North 1,650 feet of Tract 1, according to the SECOND AMENDED PLAT OF SEMINOLE BEACH, according to the Plat thereof, as recorded in Plat Book 15 at Page 19 of the Public Records of Broward County, Florida.

Said land containing 5.794 acres, more or less.



**EXHIBIT "B"**

**CONDITIONS OF COMMISSION APPROVAL**

**Application #42-02-DB AND # 35-99-P (Amended)**

General Comments:

All of the following conditions are intended to be requirements of the final design as submitted for and approved during construction document preparation and issuance of building permits. The conditions may include or supplement general requirements of the Zoning and Land Development Code, the Florida Building Code, the City Design Guidelines Manual, any other applicable Code, and the approved Major Development Plan.

The following list incorporates conditions as stipulated in the Development Services Staff Report on Application #42-02-DB and 35-99-P (Amended) dated February 25, 2003. The developer shall comply with the list of conditions enumerated herein following issuance of all necessary building permits and prior to the issuance of a Final Certificate of Occupancy for the development.

1. The plat note amendment shall be approved by Broward County and recorded prior to the issuance of the building permit.
2. The temporary sales center shall be removed at the owner's expense if construction does not commence within 2 years from the date of the Major Development Plan (site plan) approval.
3. The maximum number of units in the development shall not exceed 283 units~
4. Roof-mounted mechanical equipment shall be screened from view, engineered and screened to reduce noise from roof equipment.
5. No required tree shall be less than 12 feet in overall height and a three inch caliper.
6. Provide a turn-around area in the dead-end parking corridors by eliminating a parking space and designating it as no parking zone to be used as a maneuvering area.
7. Submission of hydraulic analysis of water system and sewer system showing adequate provision of fire and domestic use demand or upgrading the existing systems to the satisfaction of the City Engineer.
8. Drainage calculations will be required at time of permitting. Must comply with DPEP regulations and City criteria to retain 5-year, 1 hour storm on-site.

9. The garage parking spaces in the development shall not be converted to any other use than parking.
10. The City's 12 foot utility easement fronting the property on AIA shall be shown on drawings. Existing water and sewer mains shall be taken into account with landscaping.
11. The 161 cabanas in the building shall be sold to unit owners only and deed restricted accordingly.
12. All marina boat slips shall be sold to the unit owners only and deed restricted accordingly.
13. Freestanding signage shall be limited to one 16 square foot backlit 8 feet in height monument sign setback a minimum of 10 feet from the front property line. No commercial signage shall be allowed on such sign.
14. The developer shall grant an easement 6 feet by 13 feet in length for a bus shelter on the property.
15. The developer shall, at his expense, re-fly and generate an aerial photography of the AIA quadrant meeting the City's specifications after construction has been completed. The estimated Cost is \$9,000.
16. Should the City Commission approve the development of 283 units, the developer shall pay for the purchase of sewer capacity in the amount of \$179,000 to the City prior to the issuance of the Certificate of Occupancy for the development. Otherwise, the purchase of sewer capacity shall be based on the pro-rata percentage of total approved units divided by 283 and, thereafter, multiplied by \$179,000.
17. The developer shall pay a \$78,800 contribution for a new water main to serve the area.
18. The developer shall contribute \$80,000 to the City for the purpose to enhance the City's median. The donation will fund the installation of 16 Medjool Palms in the median directly across the project.
19. The developer shall contribute \$17,000 to the City's bus shelter program and for a bus shelter at the site in accordance with the City's specifications.
20. The developer shall contribute \$20,000 to the City to install brick pavers on the public beach access across the project
21. The developer shall contribute an additional \$20,000 to the City to upgrade and enhance the public showers at the City's Beach.

22. The developer shall contribute \$25,000 to the City for the City-wide marketing plan.
23. The developer shall contribute to the City an amount equal to half the cost of a traffic camera at A1A and Hallandale Beach Boulevard, but only if such traffic camera is deemed necessary by the City Manager or his designee and the Developer's contribution for same shall not exceed \$10,000.
24. Financial contributions for the landscaping, bus shelter, beach access and marketing plan (items 18, 19, 20, 21 and 22) above shall be paid to the city upon issuance of the building permit for the development. Payment for the purchase of sewer capacity and water main contribution shall be paid prior to the issuance of the Certificate of Occupancy for the development. Payment for the developer's share of traffic camera equipment shall be made within thirty (30) days of City's decision to implement and install said equipment.
25. Execution of a Developer's Agreement pursuant to Section 32-174(d)(2) stipulating agreed conditions of the negotiated process satisfactory to the City.
26. Developer agrees to use good faith efforts to hire or contract with local residents or local companies that are otherwise qualified and competitive for each respective position, contract or assignment of work.