

HOLD HARMLESS AGREEMENT

This AGREEMENT, is made the date last indicated below between KIRIC INVESTMENTS, INC., a Florida corporation ("Kiric") and the TOWN OF FORT MYERS BEACH (the "Town").

RECITALS

WHEREAS, Kiric submitted an application to the Town for the rezoning of 1.38± acres located at 645 Old San Carlos Boulevard and 445 Old San Carlos Boulevard, Fort Myers Beach, Lee County, Florida (the "Property") and more specifically described on the attached Exhibit "A" and incorporated herein by reference; and

WHEREAS, the application requested rezoning of the Property, a portion of which was formerly used as a gas station and a dry cleaner from DOWNTOWN to Commercial Planned Development (CPD); and

WHEREAS, in response to said rezoning application, and after proper consideration, the Town voted to approve Resolution Number 09-10 on August 10, 2009, approving Kiric's request to rezone from DOWNTOWN to CPD (Commercial Planned Development) subject to conditions; and

WHEREAS, Condition 10 of Resolution Number 09-10 requires Kiric to test the Property for pollution prior to obtaining a development order;

WHEREAS, Condition 10 of Resolution Number 09-10 requires Kiric to enter into this agreement (the "Agreement") with the Town to indemnify and hold the Town harmless against any environmental pollution claims, including third-party claims, resulting from current or former uses on the Property; and

WHEREAS, in order to satisfy the Agreement and prior to the issuance of a development order, Kiric must provide the Town with an official determination, made by the agency or agencies having jurisdiction, that the Property complies with all applicable environmental regulations.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the adequacy and sufficiency of said consideration having been acknowledged by each of the parties to this Agreement, the parties covenant and agree as follows:

1. The above recitals are hereby incorporated into this Agreement.
2. Release and Hold Harmless. Kiric hereby agrees that Kiric, its successors, assigns and heirs, hereby fully holds harmless and discharges the Town from and against the Town's and /or any third party claims which may arise against the Town resulting from the former use of gas tanks and dry-cleaning chemicals on the

Property. This indemnification and hold harmless of the Town shall include, but not be limited to, any third party claims related to the removal of the aforesaid gas tanks and/or any issues related directly or indirectly to pollution of soil, groundwater and/or other material on the Property or otherwise. This indemnification and hold harmless shall further include, but not be limited to, claims which may be asserted through administrative action or in some venue other than through the state or federal court system, and shall include but not be limited to reasonable attorney fees and costs, including appellate attorney fees, incurred by the Town related to the gas tanks and/or any issues related directly or indirectly to pollution of soil, groundwater and/or other material on the Property. The Town is indemnified and held harmless from all claims as may arise in the aforesaid manner until such time as condition 10 of Resolution Number 09-10 is fulfilled to the Town's satisfaction.

3. Jurisdiction over Environmental Compliance. The Florida Department of Environmental Protection (FDEP) has jurisdiction over environmental compliance with regard to the closure of underground storage tanks and cleanup for the Property and the Lee County Department of Natural Resources is authorized under contract with the FDEP to exercise some or all of the FDEP duties and responsibilities with regard thereto.

4. Satisfaction. Satisfaction of the Agreement requires Kiric to provide, prior to the issuance of a development order, an official determination, made by the agency or agencies having jurisdiction, that the Property complies with all applicable environmental regulations. Provided all other relevant conditions precedent contained in Resolution Number 09-10 are satisfied, the Town Council will execute Resolution Number 09-10 upon execution of this Agreement.

5. Other Agreements. No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the parties intended to be bound by it.

6. Venue and Governing Law. The sole and exclusive venue for the resolution of any dispute arising pursuant to the Agreement shall be in a court of competent jurisdiction located in Lee County, Florida, and this Agreement shall be construed in accordance with the laws of the state of Florida.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date last written below.

WITNESSES:

Cynthia Henderson
(Witness Sign Name)

Dolonda Campbell
(Witness Sign Name)

KIRIC INVESTMENTS, INC.

[Signature]
Print Name: RICHARD HENDRICKS
Title: CEO
Date: 10/01/09

City STATE OF Virginia
COUNTY OF Waynesboro

The foregoing instrument was acknowledged before me this 2nd day of Oct, 2009, by Richard A. Hendricks, as _____ of Kiric Investments, Inc., who is personally known to me or who has produced a driver's license as identification.

Sharon Y. Wood
Notary Public - State of Virginia
Sharon Y. Wood
Printed Name of Notary Public
182773 7/31/2010
Commission No. Expiration Date

TOWN OF FORT MYERS BEACH

By: [Signature]
Print Name: LARRY KIKER
Title: Mayor
Date: 1-4-10

ATTEST:

By: [Signature]
Approved as to form by:
[Signature]
Name: ANNE DALTON
Town Attorney

EXHIBIT A

Parcel 1

A parcel of land situated in the State of Florida, County of Lee, lying in Section 24, Township 46 South, Range 23 East and further bounded and described as follows:

Starting at a concrete monument on the Northwesterly right-of-way line of San Carlos Boulevard (30.00 feet from centerline) being the same monument that is shown three feet Southeast of the most Southeasterly corner of Matanzas View Subdivision as recorded in Plat Book 9 at Page 40 of the Public Records of Lee County; thence N 25 Degrees 00' 00" E along said right-of-way line for 125.00 feet to the Point of Beginning; thence N 65 Degrees 00' 00" W for 119.33 feet; thence N 25 Degrees 00' 00" E for 84.60 feet; thence N 65 Degrees 00' 00" W for 25.07 feet; thence N 25 Degrees 00' 00" E for 75.40 feet; thence N 65 Degrees 00' 00" W for 36.00 feet; thence S 25 Degrees 00' 00" W for 13.50 feet; thence N 65 Degrees 00' 00" W for 19.60 feet to the Easterly line of a parcel described in Official Records Book 439 at Page 55; thence N 25 Degrees 00' 00" E along said Easterly line for 46.50 feet; thence S 65 Degrees 00' 00" E for 21.66 feet to the Westerly line of a parcel described in Official Records Book 1637 at Page 1411 for Marina Village at Snug Harbor, a Condominium; thence S 25 Degrees 00' 00" W along said parcel for 6.00 feet; thence S 65 Degrees 00' 00" E along said parcel for 147.32 feet; thence N 25 Degrees 00' 00" E along said parcel for 70.52 feet; thence N 65 Degrees 00' 00" W along said parcel for 113.77 feet; thence N 16 Degrees 09' 15" E for 39.02 feet to the waters edge of a concrete seawall; thence S 70 Degrees 33' 16" E along said waters edge of a concrete seawall for 151.50 feet to the Northwesterly right-of-way line of said San Carlos Boulevard; thence S 25 Degrees 00' 00" W along said right-of-way line for 310.74 feet to the Point of Beginning.

Parcel 3

Units 2, 3, 4 and 5 of Marina Village at Snug Harbor Condominium, per the Declaration of Condominium thereof filed and recorded in O.R. Book 1637, Pages 1386-1449, Public Records of Lee County, Florida.

Parcel 4

A submerged tract or parcel of land lying in Matanzas Pass, situated in the State of Florida, County of Lee, Section 24, Township 46 South, Range 23 East and further bounded and described as follows;

Beginning at a drill hole marking in the intersection of the waters edge of a concrete seawall and the Northwesterly right-of-way line of San Carlos Boulevard, said drill hole being referenced by an iron rod (Corp. 4919) on said right-of-way line at a distance of 112.75 feet, bearing S 25 Degrees 00' 00" W; thence N 70 Degrees 33' 16" W along said waters edge of a concrete seawall for 151.50 feet; thence N 16 Degrees 09' 15" E along said waters edge of a concrete seawall for 1.57 feet; thence N 70 Degrees 40' 28" W along said waters edge of a concrete seawall for 49.21 feet; thence N 25 Degrees 34' 06" W for 52.53 feet to an intersection with a wood deck; thence N 21 Degrees 32' 25" E along said deck and a prolongation thereof for 23.20 feet; thence S 68 Degrees 27' 35" E for 67.51 feet; thence S 73 Degrees 04' 04" E for 54.00 feet; thence S 70 Degrees 33' 16" E for 121.69 feet to an intersection with a line bearing N 25 Degrees 00' 00" E from the Point of Beginning; thence S 25 Degrees 00' 00" W for 61.98 feet to the Point of Beginning.

Parcel 6

Commencing at a concrete monument in the Northwesterly line of San Carlos Boulevard, 30 feet from the center thereof and being the same monument that is shown three feet East from the more Easterly corner of Lot 1, Block A, of Matanzas View Subdivision, Plat Book 9, Page 40, Public Records of Lee County, Florida; thence N 65 Degrees W a distance of 200 feet; thence N 25 Degrees E parallel to San Carlos Boulevard 125 feet; thence S 65 Degrees E 200 feet to Westerly side of San Carlos Boulevard ; thence S 25 Degrees W a distance of 125 feet to the Point of Beginning; being in Government Lot 1, Section 24, Township 46 South, Range 23 East, Lee County, Florida.