

THIS INSTRUMENT PREPARED BY
AND, AFTER RECORDING, RETURN TO:
THE TOWN OF FORT MYERS BEACH
2523 ESTERO BOULEVARD
FORT MYERS BEACH, FL 33931

AGREEMENT FOR USE OF TOWN RIGHT- OF-WAY

COMMERCIAL DESIGN STANDARDS

The Town of Fort Myers Beach, a municipal corporation whose address is 2523 Estero Boulevard, Fort Myers Beach, FL 33931 ("Town") and Kiric Investments, Inc. ("Licensee") a Florida Corporation whose address is 1522 Park Road, Waynesboro, VA 22980, enter into this Agreement ("Agreement") on this 22 day of December, 2009 for use of portions of Town Right-of-Way on an annual basis, under the following terms and conditions:

1. Town Land Development Code Provisions. The Town Land Development Code (LDC) requires that commercial buildings have traditional pedestrian-oriented exteriors and further requires, pursuant to LDC Section 34-995(e), that commercial buildings located at 450 Old San Carlos Blvd. maintain a continuous awning or canopy unless the sidewalk is shaded by an arcade or colonnade. LDC Section 34-995(e)(6)(a) further states that arcades and colonnades may encroach into a Town Right-of-Way, provided explicit permission is granted by the Town.

2. Licensee's Property. Licensee owns a parcel of real property located at 645 Old San Carlos Boulevard and 645 Old San Carlos Boulevard Fort Myers Beach, FL, as is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

3. Licensee's Addition and R-O-W Structure(s). Licensee desires to construct Snug Harbor CPD on the subject property for the purpose of compliance with the Town's Commercial Design Standards and the architectural design thereof has structural and habitable space extending into or over the subject Right-of-Way ("Licensed Area" or "Structure"). Exhibit "B," which is attached hereto and incorporated by reference, sets forth the proposed Structure(s) inclusive of the legal description for the area of the Town Right-of-Way referenced in this Agreement.

4. Term of License. This License will continue indefinitely unless terminated by either party in writing upon sixty (60) days' prior notice or as provided elsewhere herein. It is the Licensee's sole responsibility to contact the Town for payment of the applicable fee(s) prior to December 31 of each year. The Town assumes no responsibility to notify the Licensee of any obligation hereunder.

5. Grant of License. The Town hereby grants, gives and conveys to Licensee, its successors, and assigns, an annual and non-exclusive license to use the subject right-of way for purposes of placement and the maintenance of the Structure(s) for the subject property, limited to the area described in Exhibit "B."

6. Maintenance and Use. Licensee is responsible for all construction costs associated with its use of the subject Right-of-Way and is responsible for all costs associated with the maintenance and repair of the Structure(s). Licensee covenants and agrees to construct,

maintain and use the subject Right-of-Way and the Structure(s) in a manner consistent with the depiction in Exhibit "B" and applicable Elevations and as set forth elsewhere in this Agreement.

7. Town Access To Subject Right-of-Way.

(a) From time to time, the Town may require access to a portion or all of the subject Right-of-Way within which Licensee's Structure(s) are located. The Town will endeavor to minimize the impact of such access on Licensee's Structure(s) if possible but Licensee accepts and agrees that (i) the Town has sole discretion as to whether such partial or full access is required by the Town and (ii) the Town's judgment as to the need for and extent of such access shall be final, and (iii) it may be necessary for Licensee to remove and replace the Structure(s) in their entirety at Licensee's sole cost.

(b) As soon as practicable, the Town will notify Licensee of the potential need for use of any or all of the portion of the subject Right-of-Way upon which the Structure(s) are located and/or the necessity of removal of the Structure(s) from the subject Right-of-Way. The Town will not be required to provide advance notice in the event of an emergency, as defined by the Town. In the event that this License is not renewed for any reason, Licensee shall remove any and all structures from the Town Right-of-Way within seven (7) days of expiration hereof.

(c) The cost of Licensee's removing part or all of the Structure(s) from the subject Right-of-Way promptly upon request shall be Licensee's sole responsibility; however in the event of an emergency, as defined by the Town, the Town may remove all or part of such Structure(s), in its sole discretion. The cost of replacement and/or repair of any section of the Structure(s) due to the Town's need for access to the Right-of-Way shall be Licensee's sole responsibility. If Licensee does not promptly comply with the Town's request for access, or in the event of such emergency, as defined by the Town, the Town may remove the Structure(s) in part or in full and place temporary structural components in their stead, and Licensee shall be required to reimburse the Town for all labor, materials, and other costs to the Town related thereto, within fifteen (15) days of being invoiced.

7. Licensee's Obligation to Repair In the Event of Damage and/or Destruction. In the event the Structure(s), and/or the subject property and/or any part of the Town's Right-of-Way is/are damaged by Licensee or any third party as a result of the use allowed hereunder, or if any of the foregoing is/are destroyed by fire, wind, water or other casualty, Licensee must repair the Structure(s) to comply with the then-current Florida Building Code and Licensee must also repair the Town's Right-of-Way to the satisfaction of the Town . All costs of such repair are at the sole expense of Licensee, and all such repairs must be consistent with Exhibit "B" attached hereto and incorporated herein. This paragraph does not waive Licensee's obligation to comply with the requirements of the LDC.

8. Indemnification and Hold Harmless. The Licensee, its successors, and assigns, agree to defend, indemnify and hold the Town, its employees, contractors and representatives harmless from and against any and all loss, liability, claim, damage and expense (including but not limited to attorney fees and appellate attorney fees) that may result from, arise out of, or concern the subject matter of this Agreement.

9. Insurance. Licensee covenants and agrees to obtain and maintain general liability insurance, property damage insurance, and other insurance for the term of this Agreement in the amount of one million (\$1,000,000) dollars /three million (\$3,000,000) dollars

with a maximum deductible of \$25,000 .The insurance type, amount, and deductible required herein are subject to reasonable amendment by the Town in the Town's sole discretion. Licensee shall designate the Town as an additional insured and shall deliver to the Town a Certificate of Insurance showing the Town as an additional insured upon mutual execution of this Agreement and provide annual updates of such Certificate of Insurance to the Town Finance Department on January 2 of each year this Agreement is in effect.

10. Successors and Assigns; Transfer of Property. This Agreement shall be binding upon the parties hereto, their respective heirs, successors and assigns. In the event Licensee shall sell or otherwise transfer its interests in the subject property, such transfer shall be subject to this Agreement and such transferee shall become bound to all terms and obligations accruing subsequent to such transfer.

11. Notices. All notices which may be given or which are required to be given under this Agreement, shall be deemed effective when either: (i) personally delivered to the intended recipient; (ii) upon acknowledgment of receipt of certified or registered mail by the recipient or (iii) immediately if sent during regular business hours by facsimile, provided that receipt for such facsimile is verified by the sender and followed by a notice sent in accordance with one of the other provisions set forth above.

12. Entire Agreement; Modification. This Agreement, with all exhibits referenced herein, contains the entire understanding and agreement between the parties hereto and there are no promises, agreements, conditions, undertaking or warranties or representations, oral or written, expressed or implied, between them except as set forth herein. No change or modification hereto shall be effective unless it is in writing and signed by the parties hereto.

13. Dispute Resolution and Attorneys Fees. Venue for resolution of any disputes arising from this Agreement shall be in the Twentieth Judicial Circuit Court in and for Lee County, Florida. The prevailing party shall be entitled to an award of attorney's fees up through and including any appeal.

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14. Effective Date; Recording. The Effective Date of this Agreement shall be the date when the last party has signed this Agreement. This Agreement shall be recorded in the Public Records of Lee County, Florida by Licensee at Licensee's sole cost and a certified copy shall be provided to the Town within three (3) business days of such recording.

IN WITNESS WHEREOF, the parties have executed this Agreement effective the day and year set forth above.

Licensee:

Witness for Licensee:

KIRIC INVESTMENTS, INC.

BY: 

Print name: 

Print name of person signing:

Richard Hendricks, CEO

ATTEST:

TOWN OF FORT MYERS BEACH



Michelle D. Mayher, Town Clerk


_____, Town Manager

Approved as to Legal Form and Sufficiency:

By: 

Anne Dalton, Esquire, Town Attorney

EXHIBIT A:
LEGAL DESCRIPTION OF SUBJECT PROPERTY

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.

EXHIBIT B:

DESCRIPTION OF PROPOSED STRUCTURE(S)

(INCLUSIVE OF LEGAL DESCRIPTION FOR AFFECTED AREA OF TOWN RIGHT-OF-WAY)

LEGAL DESCRIPTION FOR AFFECTED AREA OF TOWN RIGHT-OF-WAY

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 25 Degrees 00' 00" E parallel to San Carlos Boulevard 275 feet; thence S 65 Degrees 00' 00" E a distance of 15 feet; thence S 25 Degrees 00' 00" West parallel to San Carlos Boulevard 275 feet; thence N 65 Degrees 00' 00" W a distance of 15 feet to the Point of Beginning; being in Government Lot 1, Section 24, Township 46 South, Range 23 East, Lee County, Florida.