CRA RESOLUTION 11 – 26

A RESOLUTION OF THE CAPE CORAL REDEVELOPMENT AGENCY, AUTHORIZING THE APPROVAL OF A TAX INCREMENT REBATE AGREEMENT BETWEEN THE CITY OF CAPE CORAL, FLORIDA, THE CAPE CORAL COMMUNITY REDEVELOPMENT AGENCY, CROWN DEVELOPMENT, INC., AND BIMINI BASIN REDEVELOPMENT COMPANY, LLC, (HEREINAFTER IDENTIFIED AS THE "PARTIES"), FOR AN AMOUNT THAT SHALL NOT EXCEED A MONETARY TOTAL OF FORTY-FIVE MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS ($45,750,000.00), WHICH DIRECTLY PERTAINS TO AND IS ASSOCIATED WITH, THE COMPREHENSIVE REDEVELOPMENT OF THOSE PROPERTIES LOCATED WITHIN THE BIMINI EAST PROJECT; AND FURTHER AUTHORIZING THE COMMUNITY REDEVELOPMENT AGENCY EXECUTIVE DIRECTOR TO EXECUTE THE TAX INCREMENT REBATE AGREEMENT; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Cape Coral Community Redevelopment Agency ("CRA") was created pursuant to Part III, Chapter 163, Florida Statutes (the "Redevelopment Act") for the purpose of planning, acquiring land, financing with increment tax revenue and redeveloping a blighted area within the boundaries of the City of Cape Coral, Florida, (the "City"), known as the "South Cape Downtown Redevelopment Area" (hereinafter identified as the "Redevelopment Area"), pursuant to the "South Cape Downtown Community Redevelopment Plan for the Cape Coral Community Redevelopment Agency" (the "Redevelopment Plan"); and

WHEREAS, the Florida Legislature has found, declared and determined that the powers conferred to Community Redevelopment Agencies pursuant to Chapter 163, Part III, Florida Statutes, are for public uses and purposes for which public money may be expended and police power exercised, and the promotion and support, including financial assistance, of economic development activities, which are necessary for in the interest of the public health, safety, morals, or welfare of the City's residents, and visitors; and

WHEREAS, the City is authorized, pursuant to Chapter 166, Florida Statutes, known as the "Municipal Home Rule Powers Act," to utilize various economic development incentives for the express purpose of promoting positive forms of new development and redevelopment; develop or improve local infrastructure; create activities conducive to economic promotion; attract businesses; revitalize and preserve property values; increase the nonresidential tax-base; and foster a diverse employment base within the City; and

WHEREAS, the City owns certain real property within the CRA, which consists of vacant land that is generally located, south of Cape Coral Parkway East, east of Versaille Canal, west of Coronado Parkway, and north of Victoria Drive, as further identified within the Tax Increment Rebate Agreement, which the City intends to convey the right, title and interest of that certain real property to Bimini Basin Redevelopment Company, LLC, ("Owner"), who shall then engage Crown Development, Inc. ("Developer"), to proceed forward with and completely develop the subject property into a mixed-use project containing a walkable and integrated open air venue with dynamic public spaces and exceptional "live, work and play destination," (the "Project Area"); and

WHEREAS, the Parties shall be required to enter into a definitive Development Agreement to construct this project which will contain retail and professional space, a minimum of 130,000 square feet of commercial space, a minimum of 150,000 square feet to a maximum of 200,000 square feet of medical use, a maximum of 900 residential units that consist of townhomes, condominiums, and apartments, bandshell, hotel(s), public park(s), a pedestrian promenade to Bimini Square, four (4) parking garages containing a minimum of 2,000 parking spaces, and a 50 slip transient boat dock for use by the general public (the "Bimini East Project"); and

WHEREAS, the Owner and Developer have requested certain, direct economic development incentives related to their proposed development of the Bimini East Project, which would provide exceptional public benefits to the City and its visitors and residents and serve to foster the continued redevelopment of the CRA; and

WHEREAS, the total cumulative Project Increment Revenues that would be paid or payable to the Owner, pursuant to this Tax Increment Rebate Agreement, shall not exceed a maximum aggregate total of Forty-Five Million Seven Hundred Fifty Thousand and 00/100 Dollars ($45,750,000.00) over the duration of the Agreement; and

WHEREAS, the Parties are legally required to fully execute that certain Development Agreement, which is associated with the Bimini East Project, in order to ensure that the Tax Increment Rebate Agreement remain legally viable, or would otherwise be deemed null, void, and of no legal force and effect should there be a failure to fully execute the Development Agreement; and

WHEREAS, the City and the CRA, finding it to be in the best interest of the City and the CRA, and to promote the health, safety and welfare of the citizens and visitors of the City, have determined that providing certain economic and financial incentives to the Owner and Developer, in order to facilitate the development of the Project Area (approximately 34 acres), with the expectation that these incentives shall encourage and accelerate the timing of the development, thus preserving the property values in the CRA, enhancing and expanding economic development activities within the CRA for the purpose of providing a stronger, more balanced, and stable economy, enhance and preserve employment opportunities for residents, consolidate land, promote exceptional redevelopment, and to further recognize the monetary benefits of additional redevelopment throughout the CRA, by assisting the funding of certain public improvements, as set forth and described herein, and within the Development Agreement; and

WHEREAS, the CRA Board of Commissioners have determined that providing the Owner a portion of the Tax Increment Revenues is essential for incentivizing the completion of the Bimini East Project; and

WHEREAS, the CRA Board of Commissioners authorizes the approval of the Tax Increment Rebate Agreement between the Parties, establishing their respective duties and obligations as a condition precedent to the commencement of construction of the Bimini East Project with respect to the design, development, completion, and operation of the Bimini East Project and the remittance of those monetary incentives received through Tax Increment Revenues.

NOW, THEREFORE, BE IT RESOLVED BY THE CAPE CORAL COMMUNITY REDEVELOPMENT AGENCY BOARD OF COMMISSIONERS:

Section 1. The Cape Coral Community Redevelopment Agency hereby authorizes the approval of the Tax Increment Rebate Agreement between the City of Cape Coral, Florida, the Cape Coral Community Redevelopment Agency, Crown Development, Inc., and Bimini Basin Redevelopment Company, LLC, which is directly associated with the comprehensive redevelopment of those properties located within the Bimini East Project. A copy of the Tax Increment Rebate Agreement is attached hereto as Exhibit 1.

Section 2. The Cape Coral Community Redevelopment Agency hereby authorizes the CRA Executive Director to execute the Tax Increment Rebate Agreement.

Section 3. This resolution shall take effect immediately upon its adoption by the governing board of the CRA.

ADOPTED at a regular meeting of and by the Cape Coral Community Redevelopment Agency this _______ day of _______________, 2026.

CAPE CORAL COMMUNITY
REDEVELOPMENT AGENCY

By:___________________________
JENNIFER LASTRA
CRA Chairperson

VOTE OF BOARD OF COMMISSIONERS:

LASTRA	__________	DONNELL	__________
GUNTER	__________	KILRAINE	__________
STEINKE	__________	LONG	__________
LEHMANN	__________	KADUK	__________

ATTEST:

By:____________________________

MICHAEL ILCZYSZYN
CRA Executive Director

APPROVED AS TO FORM:

____

ALEKSANDR BOKSNER
CITY ATTORNEY
Res/TIF Agreement Bimini East
YL

EXHIBIT 1

TAX INCREMENT REBATE AGREEMENT

BETWEEN

THE CAPE CORAL COMMUNITY REDEVELOPMENT AGENCY
(“CRA”)

AND

THE CITY OF CAPE CORAL, FLORIDA
(“City”)

AND

CROWN DEVELOPMENT, INC.
(“Developer”)

AND

BIMINI BASIN REDEVELOPMENT COMPANY, LLC
(“Owner”)

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TAX INCREMENT REBATE AGREEMENT

THIS TAX INCREMENT REBATE AGREEMENT ("Agreement") is made as of this _____ day of _________________, 20__ (the "Effective Date"), between the **City of Cape Coral Community Redevelopment Agency** (hereinafter referred to as "CRA"), a public body corporate and politic created and existing pursuant to Part III, Chapter 163, Florida Statutes, **City of Cape Coral, Florida,** a Florida municipal corporation ("City"), **Crown Development, Inc.**, a corporation established under the laws of the State of North Dakota (hereinafter referred to as "Developer"), and **Bimini Basin Redevelopment Company, LLC,** a Florida limited liability company (hereinafter referred to as "Owner").

RECITALS:

WHEREAS, Owner and City are negotiating a Development Agreement, and the Owner intends to engage the Developer, to develop certain real property owned by the City, as described in **Exhibit A,** attached hereto and incorporated herein (the "Property"), on which Developer intends to construct, and Owner intends to operate, a mixed-use project containing a walkable and integrated open-air, mixed-use development as more particularly described in **Exhibit A**, attached hereto and incorporated herein, which shall include hotel(s), dining, retail, office space, medical and a marina with a fifty (50) slip transient boat dock (subject to the transfer by the City of Cape Coral of a sufficient number of slip credits to the Owner in order to construct the required number of boat slips for the Project, as discussed below), and related seawall improvements, including a pedestrian promenade to Bimini Square, and a minimum of 2,000 spaces throughout four (4) parking garages, as hereinafter described (the "Project"); and

WHEREAS, the CRA was created pursuant to Part III, Chapter 163, Florida Statutes (the "Redevelopment Act") for the purpose of planning, acquiring land, financing with increment tax revenue and redeveloping a blighted area within the boundaries of the City known as the "Downtown Redevelopment Area" (the "Redevelopment Area"), pursuant to the "Community Redevelopment Plan for the Downtown Redevelopment Area" (the "Redevelopment Plan"); and

WHEREAS, the CRA is empowered by the Redevelopment Act to collect in each year the "increment revenues" from each non-exempt "taxing authority" (as each term is defined in the Redevelopment Act) levying ad valorem real estate taxes within the Redevelopment Area (the "Tax Increment Revenues") for deposit into a trust fund established pursuant to Section 163.387, Florida Statutes, (the "Redevelopment Trust Fund") and to apply the amounts on deposit therein to the implementation of the Redevelopment Plan; and

WHEREAS, it is a specific goal of the Redevelopment Plan to facilitate quality development in the Redevelopment Area; and

WHEREAS, the Project is located within the Redevelopment Area, and as reflected by the City's adoption of the Redevelopment Plan, the City and the CRA have determined that there is a need to financially support mixed-use development in the Redevelopment Area; and

WHEREAS, the CRA desires to provide to Owner a portion of the Tax Increment Revenues, as hereinafter provided, as certain financial support and as an incentive for the proposed development; and

WHEREAS, the CRA, City, Owner and Developer now desire to enter into a definitive agreement prior to the commencement of construction of the Project with respect to the design, development, completion, and operation of the Project and the payment by the CRA of a certain amount of Tax Increment Revenues to Owner.

NOW, THEREFORE, it is hereby mutually covenanted and agreed by and between the parties hereto that this Agreement is made upon the terms, covenants and conditions hereinafter set forth.

ARTICLE I

The foregoing recitals are true and correct and incorporated herein as if completely restated.

DEFINITIONS

For all purposes of this Agreement, the following terms shall have the following meanings:

"Agency" means the City of Cape Coral Community Redevelopment Agency, and any assignee or transferee of all of the Agency's rights, obligations and interests herein, from and after the date of any such assignment or transfer thereof (by operation of law or otherwise).

"Agency Indemnified Party" or "Agency Indemnified Parties" means, collectively, the Agency and the City and their respective elected and appointed officials (including the Chair, the Members, the Mayor and the Council Members), directors, officers, shareholders, members, employees, permitted successors and assigns and agents and affiliates of such Persons (and the respective heirs, legal representatives, successors and assigns of any of the foregoing).

"Agreement" means, collectively, this Tax Increment Rebate Agreement and all exhibits and attachments hereto, as any of the same may hereafter be supplemented, amended, restated, severed, consolidated, extended, revised and otherwise modified, from time to time, either in accordance with the terms of this Agreement or by mutual written agreement of the Parties.

"Allocated Percentage" shall have the meaning set forth in Section 2.2 hereof.

“Business Day” or “business day” means a day other than Saturday, Sunday or a day on which banking institutions in the State are authorized or obligated by law or executive order to be closed.

“Certificate of Occupancy” shall mean a final certificate of occupancy for the entire Project, including, but not limited to the apartment homes, issued by the City.

“Chair” means the chairperson of the governing body of Agency.

“City” means the City of Cape Coral, Florida.

“Commence” or “Commencement,” as such terms relate to the commencement of construction required hereunder, means the issuance by the City of the permit required for the commencement of site work pursuant to and in accordance with such permit.

“Controlling Interest” means the ownership, directly or indirectly, of, or other legal right to direct the voting of, 50% or more of the voting interests in a Person or the governing body of such Person.

“Tax Increment Revenues” means the increment revenues attributable to the entire Redevelopment Area for deposit into the Redevelopment Trust Fund pursuant to Section 163.387, Florida Statutes.

“Default” means any condition or event, or failure of any condition or event to occur, which constitutes, or would, after the giving of notice, lapse of time or both, constitute a breach of this Agreement.

“Default Notice” has the meaning provided in Section 4.1 below.

“Developer” means Crown Development, Inc., a North Dakota corporation, and any assignee or transferee of the Developer that is permitted under this Agreement, from and after the date of such permitted assignment or transfer.

“Eligible Improvements” means any of the following improvements constructed or installed as part of the Project, including but not limited to: a) construction of public works or improvements; b) site preparation; c) infrastructure or utility improvements; d) bandshell; e) public park(s); f) recreational facilities; g) marina; h) hotel(s); i) garages; j) police substation; k) public promenade; l) retail space; m) professional offices; and n) medical uses.

“Mayor” means the Mayor of the City of Cape Coral, Florida.

“Member” means a member of the governing body of Agency.

“Notice” has the meaning provided in Section 7.1 below.

"Owner" means Bimini Basin Redevelopment Company, LLC, a Florida limited liability company, or any subsequent owner of any portion of the Project, and each of them may be referred to as an "Owner".

"Party" means Developer, Owner, City, or Agency as indicated by the context. "Parties" means, collectively, the Developer, Owner and the Agency.

"Person" means an individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, estate, unincorporated association or other entity; any federal, state, county or municipal government or any bureau, department, political subdivision or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Project" means the development known as the "Bimini East" approved by the City of Cape Coral, Florida, as may be amended from time to time, which are intended to include a mixed-use project containing retail and professional space, a minimum of 130,000 square feet of commercial space, a minimum of 150,000 square feet to a maximum of 200,000 square feet of medical space, a maximum of 900 residential units (including multi-family residential units, single-family detached or attached units, townhomes, condominiums, and apartment), a pedestrian promenade to Bimini Square, four (4) parking garages containing a minimum of 2,000 parking spaces, and shall contain a fifty (50) slip transient boat dock for use by the general public (subject to the transfer by the City of Cape Coral of a sufficient number of slip credits to the Owner in order to construct the required number of boat slips for the Project from other properties owned by the City provided, however, that any transfer of slip credits by the City is contingent upon the approval of Lee County, and if not approved by Lee County, the City's obligation to transfer boat slip credits is null and void) and related seawall improvements. The inability of the City to transfer boat slip credits, and therefore the ability of Developer to construct a fifty (50) slip transient boat dock, shall not otherwise affect the rights and obligations of the Parties hereunder, including without limitation the obligation of the CRA under this Agreement to pay Project Tax Increment Revenues to Owner and the right of Owner to receive the Project Tax Increment Revenues contemplated hereunder.

"Project Increment Revenues" shall mean the Allocated Percentage of the amount deposited in the Redevelopment Trust Fund pursuant to Section 163.387, Florida Statutes, which is attributable to the Project using January 1, 2026 as the base year for calculation of such increment revenues.

"Property" means the real property described as **Exhibit A** attached hereto.

"Redevelopment Area" means the blighted area within the boundaries of the City known and referred to as the "Downtown Redevelopment Area".

"Redevelopment Plan" means the "Community Redevelopment Plan for the Downtown Redevelopment Area" adopted by the Mayor and City Council of the City of

Cape Coral, Florida by Ordinance No. 16-19 on April 15, 2019, and as may be amended from time to time.

“Redevelopment Trust Fund” means the trust fund established pursuant to Section 163.387, Florida Statutes, in which increment revenues attributable to the Redevelopment Area are deposited.

“State” means the State of Florida.

“Substantial Completion” shall mean the completion of the construction of the Project, as evidenced by the issuance by the City of a final Certificate of Occupancy for the apartment homes, which will permit the Project to be open for business to the public.

“Tax Roll” means the real property ad valorem tax assessment roll prepared and maintained by the Property Appraiser of Lee County, Florida, for the purpose of the levy and collection of ad valorem taxes on taxable real property.

“Unavoidable Delay” means delay due to any of the following (provided that such delay is beyond a Party’s reasonable control): strikes, slowdowns, lockouts, acts of God, pandemic conditions, governmental moratorium or inaction, inability to obtain labor or materials, war, enemy action, civil commotion, terrorist acts, fire, casualty, abnormal weather conditions including, but not limited to, hurricanes, tropical storms, or other inclement weather resulting in extended delays, a court order which causes a delay (unless resulting from disputes between or among the party alleging an Unavoidable Delay, present or former employees, officers, members, partners or shareholders of such alleging party or Affiliates or present or former employees, officers, partners, members or shareholders of such Affiliates of such alleging party), or other such cause beyond such Party’s reasonable control.

“Vertical Improvement” means any above ground building or structure built upon the Property, above the foundation or slab level, which include residential units, commercial/retail space and parking garages, consistent with the Concept Plan, as defined in the Development Agreement.

ARTICLE II
PROJECT INCREMENT REVENUES

2.1 <u>Purpose of Funding Agreement</u>. In consideration for the Developer and Owner’s mutual agreements herein provided, the City and the CRA covenant and agree to transfer Increment Revenues into the Revenue Trust Fund on or before each January 31, commencing on January 31st following the year the Certificate of Occupancy or Temporary Certificate of Occupancy for any improvements are issued, and continuing through the termination of this Agreement as herein provided.

2.2 <u>Allocated Percentage of Project Tax Increment Revenues</u>. The Allocated Percentage of Project Tax Increment Revenues payable to Owner shall not exceed 95% of the Project Increment Revenues in any one year through September 30, 2042.

2.3 **Maximum Project Tax Increment Revenues.** The Project Increment Revenues payable to Owner during the term of this Agreement shall not exceed Forty-Five Million Seven Hundred Fifty Thousand Dollars ($45,750,000.00) in the aggregate. The obligation of the CRA under this Agreement to pay Project Tax Increment Revenues to Owner under this Agreement is expressly limited to the amount generated under the formulas identified in Section 2.4, and in the event that pursuant to said formula the Project does not result in sufficient Project Tax Increment Revenue during the remaining term, the CRA shall have no obligation to pay to Owner an amount greater than the amount of the actual Project Tax Increment Revenues, in that fiscal year. This Agreement shall terminate upon the payment of $45,750,000.00 or September 30, 2042. The Owner acknowledges and agrees that Owner shall be entitled to all the Project Tax Increment Revenues pursuant to this Agreement.

2.4 **Calculation of Annual Project Tax Increment Revenues.** The base value for determining Project Increment Revenues attributed to the Project shall be the assessed value of the Property on January 1, 2026 as reflected on the Tax Roll for Lee County, Florida. Annual Project Tax Increment Revenues shall be calculated for this Property in accordance with the annual tax increment calculation provided in Section 163.387, Florida Statutes.

2.5 **Completion of Eligible Improvements.** Upon completion of any Eligible Improvement(s) defined in Article I, Definitions, the Developer shall provide the CRA with a Certificate of Occupancy (CO), Temporary Certificate of Occupancy (TCO), Certificate of Completion (CC), or other equivalent industry standard certificate confirming the completion of such improvement(s).

2.6 **Vertical Improvements Deadline and Termination**. If a Certificate of Occupancy, or Temporary Certificate of Occupancy for any Vertical Improvements is not issued on, or before, October 1, 2032, this Agreement shall be null and void, unless otherwise extended by the CRA upon good cause shown, or for Unavoidable Delays.

2.7. **Annual Payments**. Annual Payments by the CRA to Owner as provided in the Agreement shall commence upon receipt by the CRA of the following to its reasonable satisfaction:

A) Certification of Occupancy or Temporary Certificate of Occupancy for any Vertical improvements; and

B) Annual payment of Lee County Ad Valorem taxes.

ARTICLE III
NON-DISCRIMINATION

3.1 <u>Non-Discrimination</u>. Developer and Owner shall be an equal opportunity employer and shall not engage in any unlawful discrimination against any person because of race, creed, national origin, sex, age, disability, marital status or sexual orientation. Developer and Owner shall act in compliance with all Federal, state and local anti-discrimination laws, including, without limitation, the State or Lee County's equal opportunity statute or ordinance.

ARTICLE IV
EVENTS OF DEFAULTS; BREACH; REMEDIES

4.1 <u>Default</u>. In the event of any Default under this Agreement the defaulting party, upon written notice from the other (the "Default Notice"), shall proceed immediately to cure the default and shall cure the default within 60 days after receipt of the Default Notice (the "Cure Period"). If the defaulting party is the Developer or Owner, then the CRA's obligation to make Project Increment Revenue payments to Owner shall cease and the CRA may pursue all available legal remedies. If the CRA is the defaulting party and fails to cure such default within the Cure Period, the Developer and Owner, as applicable, shall have all available legal remedies.

4.2 <u>Default in Payment of Ad Valorem Taxes; Forfeiture of Increment Payout.</u> If Owner fails to pay all the ad valorem real property taxes assessed against the Owner's Property fully, timely, and prior to delinquency for any given tax year, Owner shall automatically forfeit its right to receive any Tax Increment Revenue payout under this Agreement attributable to that tax year. Notwithstanding the foregoing, if Owner conveys any portion(s) of the Property to an unaffiliated third party in a bona fide, arm's-length transaction and the ad valorem taxes attributable to that conveyed portion(s) become delinquent, Owner shall forfeit only the portion(s) of the Tax Increment Revenue payout attributable to such conveyed parcel(s).

4.3 <u>Litigation; Attorneys' Fees and Costs</u>. In the event of any litigation between the parties under this Agreement for a breach thereof, each party shall bear its own attorney's fees and court costs at all trial and appellate levels. The terms of this paragraph shall survive the expiration or early termination of this Agreement.

4.4 <u>Delay</u>. In the event of delay in performance by either party hereto under this Agreement due to Unavoidable Delay, the time for performance of such obligations shall be extended for the period of the enforced delay, provided the Party seeking the benefit of the provisions of this section shall, within 30 days after the beginning of any such Unavoidable Delay, have notified the other party in writing of the causes and the extension.

4.5 <u>Strict Performance</u>. No failure by either Party to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy available to such party by reason of Owner's Default, and no payment or acceptance of full or partial payments of amount due under this Agreement during the continuance (or with the CRA's knowledge of the occurrence) of any Default, shall constitute a waiver of any such Default or of such covenant, agreement, term or condition or of any other covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by the parties, and no Default by either party, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any Default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Default. Payment by Owner to the CRA of any amounts due under this Agreement shall be without prejudice to, and shall not constitute a waiver of, any rights of Owner against the CRA provided for under this Agreement or at law or in equity. Owner's compliance with any request or demand made by the CRA shall not be deemed a waiver of Owner's right to contest the validity of such request or demand.

4.6 Remedies Under Bankruptcy Code. If an order for relief is entered or if any stay of proceeding or other act becomes effective against Owner or in any proceeding which is commenced by or against Owner, under the present or any future federal bankruptcy code or in a proceeding which is commenced by or against Owner, seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy statute or law, the CRA shall be entitled to any and all rights and remedies available to it under such bankruptcy code, statute or law or this Agreement.

4.7 Dispute Resolution.

(a) Mediation. In the event of any dispute, controversy or question of interpretation of or relating to this Agreement (the "Dispute"), the Parties shall first attempt to settle the Dispute in an amicable manner through mediation pursuant to Florida Rules for Certified and Court-Appointed Mediators. The mediation shall be conducted in Lee County, Florida, by a single mediator, certified by the Florida Supreme Court as a mediator of circuit court matters, mutually agreed upon between the Parties, within thirty (30) days after the selection of a mutually agreed upon mediator. In the event of a Dispute, either Party may initiate mediation by providing written notice to the other Party (the "Notice of Dispute") setting forth the nature of the Dispute to be resolved at mediation and the name of at least three (3) mediators that would be acceptable to the Party initiating the mediation. Upon receipt of the Notice of Dispute, the other Party, shall within five (5) days, either select one of the three (3) mediators proposed by the Party initiating the mediation, or if none of the proposed mediators is acceptable, provide the names of at least three (3) proposed mediators who would be acceptable, which process shall continue until such time as the parties have agreed upon the selection of a single mediator. No mediator may be a shareholder, director, officer, employee or family member of a party to the mediation. All mediation fees shall be shared equally by the Parties.

(b) Arbitration. In the event that the Parties are not able to agree upon a single mediator within thirty (30) days after the Notice of Dispute, or in the event that the

Dispute is not resolved at the mediation session, then the Dispute shall be settled by arbitration, in Lee County, Florida, by a single arbitrator in accordance with the procedures of the American Arbitration Association. Either Party may initiate the arbitration proceeding by filing a request for arbitration with the American Arbitration Association in Lee County, Florida. No arbitrator may be a shareholder, director, officer, employee or family member of a party to the arbitration. Each Party shall be required to provide the other Party with copies of all documentation and other written or photographic materials that they intend to introduce into evidence at least ten (10) days in advance of the arbitration hearing. All arbitrator's fees and any other costs of the arbitration proceeding are to be paid by the non-prevailing Party or as otherwise determined by the arbitrator. Any determination rendered in accordance with the provisions of this Section shall be controlling and decisive of any dispute thereafter arising under this Agreement, if and to the extent that the same issues of law and fact are involved, and judgment upon, or confirmation of, the determination may be entered in any court of record of competent jurisdiction or application may be made in such court for judicial acceptance of the award and an order of enforcement as the law of such jurisdiction may require or allow. Notwithstanding anything contained in this Section to the contrary, each Party shall have the right to institute judicial proceedings against the other Party or anyone acting by, through or under such other Party, in order to enforce the instituting Party's rights hereunder through specific performance, injunction or other similar equitable relief. Any such proceedings shall be brought in the courts of record of the State of Florida in Lee County, and each Party consents to the jurisdiction of such court in any suit, action or proceeding and waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts.

(c) Jury Trial. The Parties hereby waive any right they may have under any applicable law to a trial by jury with respect to any suit or legal action which may be commenced by or against the other concerning the interpretation, construction, validity, enforcement or performance of this Agreement or any other agreement or instrument executed in connection with this Agreement.

ARTICLE V
REPRESENTATIONS

5.1 <u>No Brokers</u>. The CRA, City, Developer and Owner each represents to the other that it has not dealt with any broker, finder or like entity in connection with this Agreement or the transactions contemplated hereby, and each party shall indemnify the other against any claim for brokerage commissions, fees or other compensation by any person alleging to have acted for or dealt with the other party in connection with this Agreement or the transactions contemplated hereby. The CRA and the City do not waive their sovereign immunity for liability for torts provided within Section 768.28, Florida Statutes, caselaw or other applicable law, and acknowledge that sovereign immunity shall not apply to an action for breach of this Agreement.

5.2 <u>Indemnification</u>. The Developer and Owner hereby covenant and agree to indemnify and hold harmless the CRA, its board members and the City and its

Councilmembers and their respective employees, consultants, attorneys, and/or agents (collectively "Related Parties") from and against all actual liability, losses, or damages, including reasonable attorneys' fees and costs, at both the trial and appellate levels, which the CRA and/or the Related Parties may suffer as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the failure of Developer to perform under this Agreement. The Developer expressly understands and agrees that any insurance carried by the Developer shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CRA and the Related Parties. Nothing contained in this Agreement shall be construed to affect the CRA's rights of sovereign immunity as provided in Chapter 768 of the Florida Statutes. Additionally, the CRA does not waive sovereign immunity.

5.3 Authority to Execute. The CRA, City, Developer and Owner each represents to the other that each individual executing this Agreement on behalf of the CRA, Owner, or Developer (or in any representative capacity), as applicable, has full right and lawful authority to execute this Agreement. Developer and Owner agree to furnish to the CRA on or prior to the date of execution of this Agreement true and correct copies of such instruments or documents evidencing, to the CRA's reasonable satisfaction, the authority of each such person executing this Agreement on behalf of Developer and Owner (or in any representative capacity).

5.4 Representation. Developer and Owner confirm that, except for the representations contained in Sections 5.1 and 5.3 above, (a) no representations, statements or warranties, express or implied, have been made by, or on behalf of, the CRA with respect to the transactions contemplated by this Agreement and (b) Developer and Owner have relied on no such representation, statements or warranties.

5.5 No Liability. Developer and Owner hereby forever waive and releases the City and the CRA from any liability whatsoever, now or hereafter arising in connection with any lawsuit filed to challenge this Agreement by any third party and hereby covenant and agree not to initiate any legal proceedings against the City or CRA in connection with any such challenges to this Agreement (other than as a result of a default by the CRA with respect to its obligations under this Agreement).

5.6 Survival. The provisions of this Article shall survive the termination of this Agreement.

ARTICLE VI
CERTIFICATES BY AGENCY AND DEVELOPER

6.1 Certificate of Developer. Developer and/or Owner shall, within fifteen (15) days after request by the CRA for reasonable purposes, execute, acknowledge and deliver to the CRA, or such other Person specified by the CRA, a written statement (a) certifying that this Agreement is unmodified and in full force and effect (or if there are modifications, that this Agreement, as modified, is in full force and effect and stating such modifications) (and, if so requested, that the annexed copy of this Agreement is a true, correct and complete copy of this Agreement), and (b) stating (i) whether Developer or

Owner have given the CRA written notice of any Default, or any event that, with the giving of notice or the passage of time, or both, would constitute a Default, by the CRA in the performance of any covenant, agreement, obligation or condition contained in this Agreement, which Default or event has not been cured, and (ii) whether, to the actual knowledge of Developer or Owner (but without independent inquiry), the CRA is in Default in performance of any covenant, agreement obligation or condition contained in this Agreement, and if so, specifying in detail each such Default.

6.2 **<u>Certificate of Agency</u>.** The CRA shall, within fifteen (15) days after request by Developer or Owner for reasonable purposes, including, without limitation, project financing, execute, acknowledge and deliver to Developer and Owner, or such other Person specified by the Developer or Owner, a written statement (a) certifying that this Agreement is unmodified and in full force and effect (or if there are modifications, that this Agreement, as modified, is in full force and effect and stating such modifications) (and, if so requested, that the annexed copy of this Agreement is a true, correct and complete copy of this Agreement), and (b) stating (i) whether a Default has occurred or whether the CRA has given Developer or Owner written notice of any Default, or any event that, with the giving of notice or the passage of time, or both, would constitute a Default, which Default has not been cured, and (ii) whether, to the actual knowledge of the CRA (but without independent inquiry), Developer or Owner are in Default in the performance of any covenant, agreement, obligation or condition contained in this Agreement, and, if so, specifying, in detail, each such Default.

ARTICLE VII
NOTICES, CONSENTS AND APPROVALS

7.1 **<u>Notices and Other Communications.</u>**

(a) Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the parties by the other, or whenever either of the parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to the Project, each such notice, demand, request, consent, approval or other communication (referred to in this Section 7.1 as a "Notice") shall be in writing (whether or not so indicated elsewhere in this Agreement) and shall be effective for any purpose only if given or served by (i) certified or registered United States Mail, postage prepaid, return receipt requested, (ii) personal delivery with a signed receipt or (iii) a recognized national courier service, addressed as follows:

If to Developer: Crown Development, Inc.
c/o Larry S. Nygard, President
1918 9th Street E
West Fargo, ND 58078

And

	Bolanos Truxton, P.A. c/o Gregg S. Truxton, Esq 12800 University Drive, Suite 350 Ft. Myers, FL 33907
Owner:	Bimini Basin Redevelopment Company, LLC c/o Larry S. Nygard, Manager 1918 9th Street E West Fargo, ND 58078
And	
	Bolanos Truxton, P.A. c/o Gregg S. Truxton, Esq 12800 University Drive, Suite 350 Ft. Myers, FL 33907
If to The City:	City Manager City of Cape Coral
Mailing:	PO Box 150027 Cape Coral, Florida 33915
Physical:	1015 Cultural Park Blvd. Cape Coral, Florida 33990
If to Agency:	Cape Coral Community Redevelopment Agency
Mailing:	PO Box 150027 Cape Coral, Florida 33915
Physical:	1015 Cultural Park Blvd. Cape Coral, Florida 33990
With a copy to:	City Attorney City of Cape Coral
Mailing:	PO Box 150027 Cape Coral, Florida 33915
Physical:	1015 Cultural Park Blvd. Cape Coral, Florida 33990

(b) Any Notice may be given in the manner provided in this Section 7.1 on either party's behalf by its attorneys designated by such party by Notice hereunder.

(c) Every Notice shall be effective on the date actually received, as indicated on the receipt therefore or on the date delivery thereof is refused by the recipient thereof.

(d) All references in this Agreement to the "date" of Notice shall mean the effective date, as provided in the preceding subsection (c).

ARTICLE VIII
MISCELLANEOUS

8.1 <u>Governing Law</u>. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida. Exclusive venue and jurisdiction for any dispute arising out of this Agreement shall be in Lee County, Florida.

8.2 <u>Amendments and Waivers</u>. This Agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by a further agreement in writing duly executed by the Parties hereto. No failure by any Party hereto to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Any Party hereto, by Notice, may, but shall not be under any obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other Party hereto. No waiver shall affect or alter this Agreement but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof as may otherwise be provided herein. All the terms, provisions and conditions of this Agreement shall inure to the benefit of and be enforceable by the Parties hereto, and their respective successors and assigns. This Agreement may be assigned by Developer or by Owner to any entity that now or hereafter acquires or owns any portion of the Property or to a lender, or community development district (CDD), providing financing to Owner in connection with the Project; provided, however, that any successors or assignees of Owner that own only a portion of the Property shall be limited to Tax Increment Funds for such portion of the Property that it owns. This Agreement shall not be construed more strictly against one Party than against the other, merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both Parties have contributed substantially and materially to the preparation of this Agreement.

8.3 <u>Captions</u>. The captions of this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision hereof.

8.4 <u>Severability</u>. If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

8.5 **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be considered to be an original, and all collectively deemed one instrument.

8.6 **Effective Date.** The Effective Date of this Agreement shall be the date first written in the first paragraph of this Agreement.

a. This agreement shall become effective, valid, and legally binding if, and only if, that certain Development Agreement associated with the Project by and among the City, Owner and Developer, is fully executed and delivered by all requisite parties thereto. In the event said Development Agreement is not fully executed, this Agreement shall be null, void, and of no legal force and effect *ab initio*.

8.7 **Termination.** Subject to the cure provisions set forth in Section 4.1, the obligations of Developer, Owner, City, and the CRA shall terminate upon the last of the Project Increment Revenues payments to Owner as provided in Article II hereof, or September 30, 2042, whichever occurs first.

8.8 **Vested Rights.** This Agreement does not create, nor is it intended to create, a vested property right in favor of the Developer.

8.9 **Attorney-in-Fact**. Owner hereby designates Developer as its attorney-in-fact, which appointment is coupled with an interest and shall be irrevocable so long as this Agreement remains in effect, to execute such further documents, including any amendments to this Agreement, applications or other authorizations, consents or approvals, as may be necessary or appropriate in connection with the performance by Developer of its obligations under this Agreement.

[SIGNATURE PAGE TO FOLLOW]

EXECUTION

IN WITNESS WHEREOF, The CRA and Developer, intending to be legally bound, have executed this Tax Increment Financing Agreement as of the day and year first above written.

CAPE CORAL COMMUNITY REDEVELOPMENT AGENCY

Signed, sealed and delivered
in the presence of:

____
Witness:

____
Witness:

By _______________________________
Name: Michael Ilczyszyn
Executive Director

CITY OF CAPE CORAL, FLORIDA, a municipal corporation

____
Witness:

____
Witness:

By: _______________________________
Michael Ilczyszyn, City Manager

APPROVED AS TO FORM:

____
Aleksandr Boksner, City Attorney

CROWN DEVELOPMENT, INC., a North Dakota Corporation

____
Witness:

By: ______________________________
Larry S. Nygard, its President

____
Witness:

BIMINI BASIN REDEVELOPMENT COMPANY, LLC, a Florida limited liability company

____
Witness:

By: ______________________________
Larry S. Nygard, its Manager

____
Witness:

APPROVED AS TO FORM:

____
Gregg S. Truxton
Bolaños Truxton, PA

<u>Exhibit A</u>
Description of the Property