



July 22, 2019

Attn: Mr. William Garviso, Contracting Officer II
City of Miami Beach
Procurement Department
1755 Meridian Avenue, 3rd Floor
Miami Beach, FL 33139

RE: Request for Proposal No. 2019-098-KB
For the Development of The Barclay Workforce Housing Project

Dear Mr. Garviso:

Atlantic | Pacific Communities, LLC ("A | P") respectfully submits the enclosed Phase II response to the Request for Proposal for the development of The Barclay Workforce Housing Project. Also included are two envelopes, one containing the response to Tab 7 and one containing the response to Tab 8 along with a USB drive.

The Proposer Primary Contact for the purposes of this solicitation is as follows:

Name: Kenneth Naylor
Title: Chief Operating Officer
Phone: (305) 357-4700
Email: knaylor@apcompanies.com
Address: 161 NW 6th Street, Suite 1020, Miami, FL 33136

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Liz Wong", is written over a horizontal line.

Liz Wong
Senior Vice President

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Tab 1: Programming

Tab 1 – Programming Plan

Atlantic | Pacific Communities, LLC (“A | P”) respectfully submits this response to the Request for Proposal for the development of The Barclay Workforce Housing Project. It is our understanding that the City of Miami Beach is seeking an experienced workforce/affordable housing developer to revitalize The Barclay. We believe that our team is uniquely qualified to implement this historic development that will benefit future residents, neighbors and visitors to The Barclay. Our team has deep roots in Miami Beach including extensive experience, knowledge and relationships with the City of Miami Beach, and the historic preservation board.

We are committed to working with all stakeholders to ensure this important development reaches its full potential. Our award-winning design team includes **R.J. Heisenbottle Architects** (“Heisenbottle”) and **Corwil Architects, Inc.** (“Corwil”). Heisenbottle has been in continuous practice for over 32 years in Miami and during that time has become well known for successful large-scale historic preservation and adaptive use projects. Corwil is a highly reputable, innovative, and cost-conscious design firm. Since inception in 1992, they have designed multifamily developments across the public and private sectors and have worked with A | P staff for the past 13 years on numerous affordable/workforce housing developments. **Abney + Abney Green Solutions**, a Green building consulting firm which we have worked with on numerous developments, will ensure we meet LEED Gold certification or equivalent.

Programming Scenarios

A | P has evaluated The Barclay development from various perspectives and determined that the development can be executed in a variety of innovative ways that could meet the City of Miami Beach priorities. Accordingly, we have provided a menu of options, each offering different benefits and some trade-offs. Below is a brief summary of each option, for additional details see the Scenario chart included.

- ❖ Scenario 1: Substantial historic rehabilitation of The Barclay (only) for Workforce housing (140% AML) with 41 units averaging 600 sf
- ❖ Scenario 2: Substantial historic rehabilitation of The Barclay and new construction of a 5-story building on site for Workforce housing with 71 units averaging 599 sf
- ❖ Scenario 3: Substantial historic rehabilitation of The Barclay and new construction of a 5-story building on site, plus the addition of an additional site with a 7-story building, Collins Park (detailed further below) for Workforce housing with 143 units averaging 683 sf
- ❖ Scenario 4: Substantial historic rehabilitation of The Barclay (only) for Workforce housing utilizing a co-living concept (explained further below) with 25 units (78 bedrooms) averaging 815 sf
- ❖ Scenario 5: Substantial historic rehabilitation of The Barclay and the Collins Park new construction site for Affordable and Workforce housing (financed with Low-Income Housing Tax Credits) with 113 units averaging 690 sf

Collins Park is a proposed workforce housing development on a city-owned site, approximately 0.45 acres, located at 224 23rd Street, for which A | P was recently invited to negotiate with the City. By combining these two sites we are able to achieve greater economies of scale which consistently requires less gap financing to implement.

Co-Living offers a new and unique option to share housing by providing private rooms and shared spaces in each unit. This option can include an occupancy preference for City of Miami Beach municipal workers, teachers and firefighters.

Tab 1 – Programming Plan

Number and Size of Units

Scenario	Scenario 1 The Barclay Only	Scenario 2 The Barclay + New Building	Scenario 3 The Barclay + New Building + Collins Park	Scenario 4 The Barclay Co-Living	Scenario 5 The Barclay + Collins Park
Studio	Rehab - 22 (457 sf)	Rehab - 22 New – 25 (457 sf)	Rehab – 22 New – 63 (450 sf)	Rehab - 2 (473 sf)	Rehab - 22 New - 38 (457 sf)
1 Bedroom	Rehab - 19 (743 sf)	Rehab - 19 New – 5 (740 sf)	Rehab - 19 New – 31 (729 sf)	-	Rehab – 19 New - 26 (743 sf)
2 Bedroom	-	-	New – 8 (870 sf)	Rehab - 5 (697 sf)	New - 8 (870 sf)
3 Bedroom	-	-	-	Rehab - 6 (879 sf)	-
4 Bedroom	-	-	-	Rehab - 12 (1,212 sf)	-
Total Units	41	71	143	25	113
Total Bedrooms	41	71	151	78	121

There will be a balancing act between the City's multiple priorities of maximizing workforce units, obtaining Historic Preservation Board approval and achieving LEED Gold status; we look forward to further discussing these priorities and related tradeoffs to better refine the program.

Amenities and Common Spaces

The proposed development would include features and amenities typically found in market rate developments. To better serve the needs of the future residents we propose the following site features and unit amenities below, also refer to the chart that follows.

Unit Features

- ✓ Full-size electric range and oven
- ✓ Energy efficient central air conditioning
- ✓ Energy Star refrigerator and dishwasher
- ✓ Energy Star water heater
- ✓ Energy Star ceiling fans with lighting fixtures in living room and bedroom
- ✓ Window treatments
- ✓ Units will be wired for cable and high-speed internet
- ✓ Programmable thermostats
- ✓ Water Sense certified dual flush toilets

Common Area Amenities

The following amenities listed may vary depending on which scenario the City of Miami Beach selects:

Tab 1 – Programming Plan

- ✓ Multi-purpose community room with Wi-Fi, kitchenette; room designed to accommodate a broad range of services including resident activities, entertainment and social gatherings
- ✓ Fully equipped exercise facility
- ✓ Business center with computers with internet access and printer
- ✓ Laundry facilities
- ✓ Mail/package area
- ✓ Management/leasing office and maintenance facilities
- ✓ Secure access
- ✓ Swimming Pool

In addition to the Green features noted in the amenities above we commit to achieve LEED Gold certification. For more details refer to Tab 2-Resiliency.

The Barclay Scenarios Summary

THE BARCLAY RFP	Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5
Description	The Barclay Only Workforce Housing	The Barclay + 30 new units Workforce Housing	The Barclay + 30 new units + Collins Park Workforce Housing	The Barclay Co-Living Workforce Housing	The Barclay + Collins Park Affordable Housing
Total Units	41	71	143	25	113
Total Bedrooms	41	71	151	78	121
Average Unit SF	600 sf	599 sf	683 sf	815 sf	690 sf
Income Target	< 140% AMI	< 140% AMI	< 140% AMI	< 140% AMI	< 80% AMI
Amenities	Pool, restored Historic lobby, common area space	Restored Historic lobby, common area space	Restored Historic lobby, 4,000 sf of retail space, common area space	Pool, restored Historic lobby, co-working space, community kitchen and dining area	Pool, restored Historic lobby, 4,000 sf of retail space, common area space
Estimated Common Spaces	1,815 sf	3,800 sf	6,800 sf	1,973 sf	4,800 sf
Percentage Rent to CMB	0%	0%	0%	0%	0%
Annual Min Rent Payment to CMB	\$0	\$0	\$0	\$0	\$0
Other Payments to CMB	\$0	\$0	\$0	\$0	\$750,000
Benefits	- Clean historic rehab (no building blocking) - No regulatory changes required - Relatively quick completion - Maintain on-site parking and pool	- More workforce residents served - No regulatory changes required - Relatively quick completion	- Most workforce residents served - No regulatory changes required - Relatively quick completion	- Does not require any dollars from CMB - Clean historic rehab (no building blocking) - Relatively quick completion - Maintain on-site parking and pool - Co-living can include an occupancy preference for CMB staff, teachers and firefighters	- Only scenario with financial benefit to CMB / no CMB dollars required - Clean historic rehab (no building blocking) - Maintain on-site parking and pool - No regulatory changes required
Tradeoffs	- Requires significant dollars from CMB / no financial benefit to CMB - Fewer workforce residents served	- Requires significant dollars from CMB / no financial benefit to CMB - HPB and state historic tax credit agency may not like new building - Less on-site parking and - No pool	- Requires some dollars from CMB / no financial benefit to CMB - HPB and state historic tax credit agency may not like new building - Lose on-site parking - No pool	- Requires change to workforce ordinance - No financial benefit to CMB	- Serves residents up to 80% AMI - May require more time to obtain LIHTC

Acronyms: AMI – Area Median Income, LIHTC – Low Income Housing Tax Credits, CMB – City of Miami Beach, HPB – Historic Preservation Board

Tab 2: Conceptual Design & Resiliency

2.1 Conceptual Design

Tab 2 – Conceptual Design & Resiliency

Conceptual Design

The Barclay Plaza Hotel is located at 1940 Park Avenue within both the City of Miami Beach Museum Historic District and the National Register Historic District.

As the various historic designation reports describe, the development of property within the historic district reflected the character of Miami Beach in the post-depression recovery period. In the 1930's numerous small hotels in the District like the Barclay were designed in the Streamline Moderne style and built to attract the growing numbers of middle-class tourists. In addition to the hotel development that occurred in the district in the 1930's and 1940's, many apartments, nightclubs and restaurants also flourished. Architectural styles in the district include Art Deco, Streamline Moderne, Mediterranean Revival and a combination of Transitional Styles. Seventy-five percent of the buildings in the district were constructed during this timeframe. Because so many buildings were constructed in so short a period of time, designed by so few architects, the district is highly consistent in scale, architectural style, and design character.

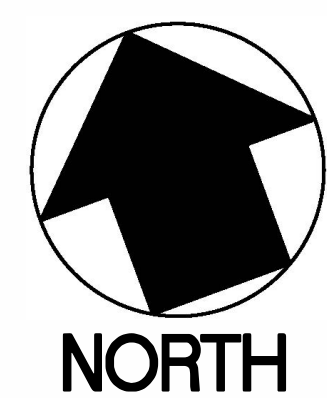
The Streamline Moderne Style used for the Barclay is more simplified than earlier "Art Deco" structures and responded to a depression-ethic of restraint and machine-like refinement of detail. The Streamline Moderne style is characterized by rounded "aerodynamic" forms, projecting planes, and smooth surfaces of stucco, oolitic limestone, and cast stone. Many buildings, particularly hotel and commercial buildings like the Barclay have significant interior design features in their lobbies, including terrazzo floors, molded ceilings, murals, light fixtures and hardware, fireplaces, stairways and railings.

In the 1950's, newer and larger hotels were developed in areas north of the district. This was the beginning of the resort hotel, complete with numerous restaurants, nightclubs, shops, and private beaches. As these new hotels drew tourists from southern Miami Beach, the nightclubs and restaurants closed or were converted to other uses, and the hotels and apartments changed to an older and poorer clientele. Minimal improvement was performed on the buildings and serious deterioration occurred. This is exactly what has happened to the Barclay. Fortunately, trends favoring historic preservation and recent market trends have encouraged greater rehabilitation in the area and the district is now undergoing a complete renaissance.

Atlantic | Pacific will be proud to be a part of this community renaissance. Our proposed adaptive reuse of the Barclay as either affordable housing or co-housing is completely predicated upon the historic restoration of the entire exterior of the building and the buildings historic lobby. Our proposal will meet all the requirements of the City of Miami Beach Historic Preservation Board and the Secretary of the Interiors Standards and Guidelines for the Restoration and Rehabilitation Historic Structures. The site will remain consistent with the original development pattern and the architectural harmony of the area will be maintained.

The City of Miami Beach can be assured that whichever design option is chosen, the completed building will maintain the integrity of location, design, setting, materials, workmanship, and association. The distinctive characteristics of the style, type, period, or method of construction will be upheld and the integrity of the historic district strengthened while we simultaneously provide low cost affordable housing for our community.

Conceptual Design The Barclay (Co-Living)



THE BARCLAY
1940 PARK AVENUE, MIAMI BEACH
CONCEPTUAL DEVELOPMENT STUDY - CO-LIVING

SCALE: 1/32" = 1'-0"

R.J. HEISENBOTTLE ARCHITECTS, P.A.
2199 PONCE DE LEON BLVD. CORAL GABLES, FLORIDA 33134
PHONE: 305.446.7799 FAX: 305.446.9275

JULY 12, 2019

RENDERING
VIEW FROM PARK AVENUE



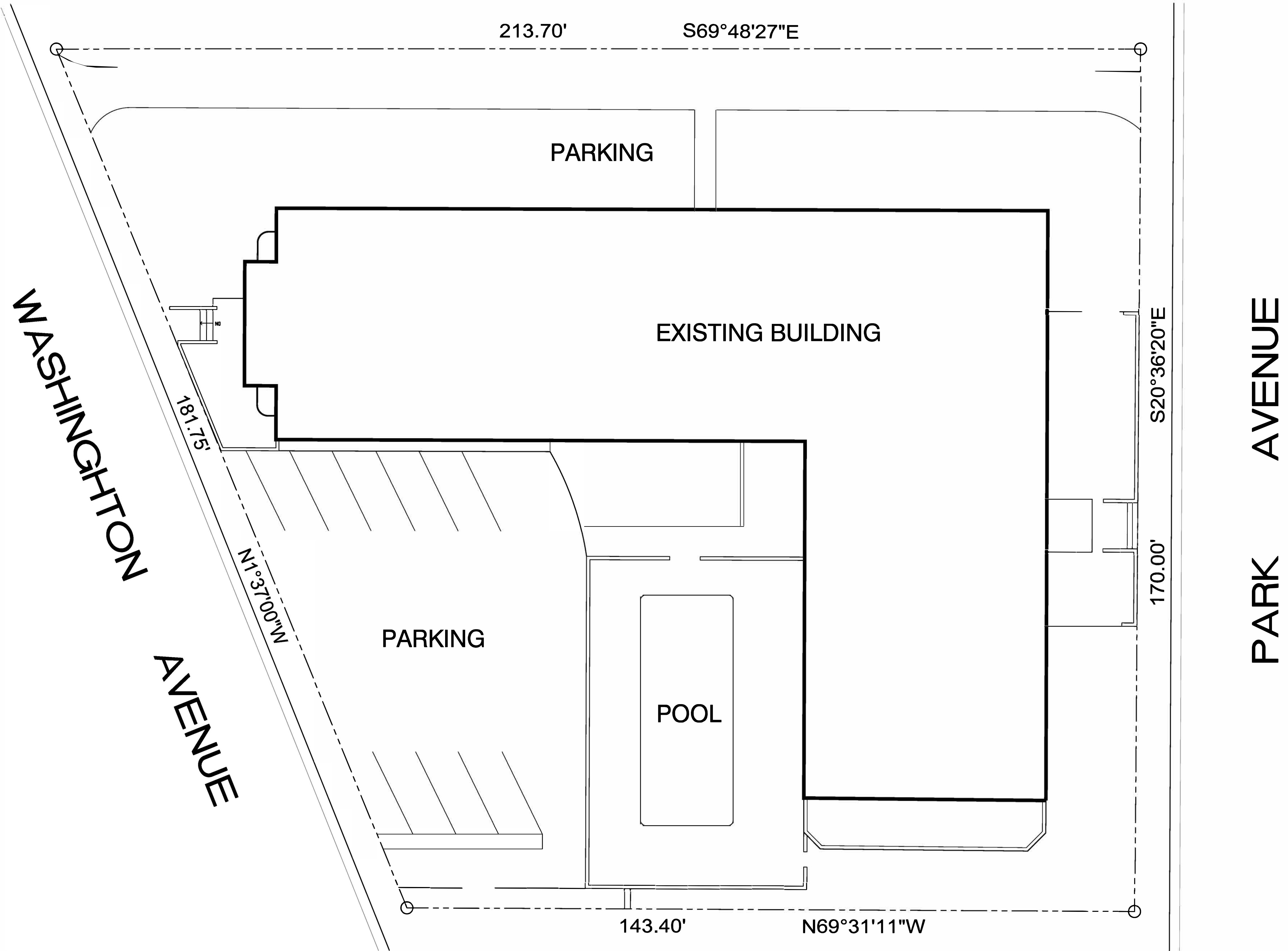
THE BARCLAY
1940 PARK AVENUE, MIAMI BEACH
CONCEPTUAL DEVELOPMENT STUDY - CO-LIVING

SCALE: 1/32"= 1'-0"

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RENDERING
VIEW FROM WASHINGTON AVENUE



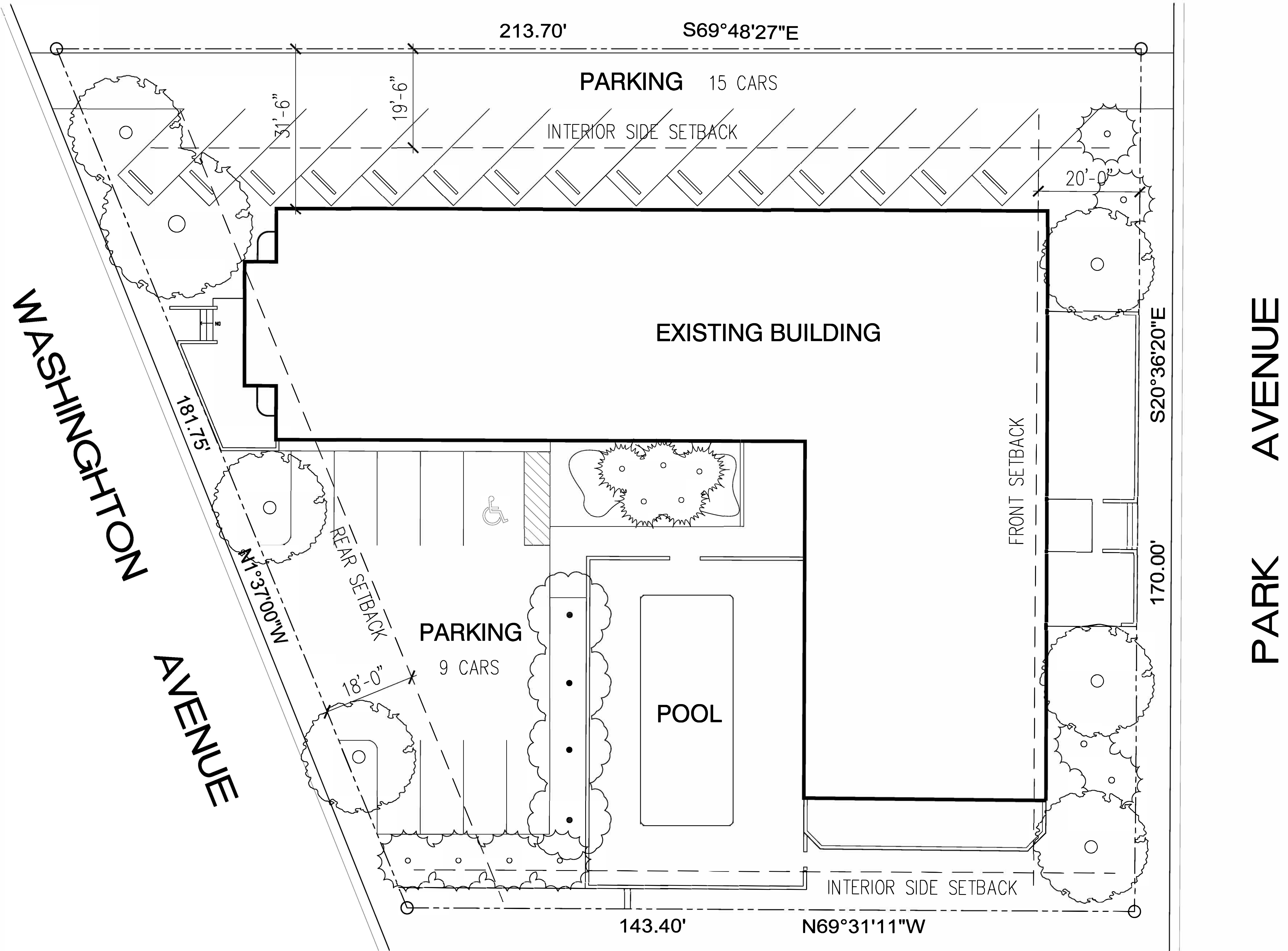
THE BARCLAY
1940 PARK AVENUE, MIAMI BEACH
CONCEPTUAL DEVELOPMENT STUDY - CO-LIVING

SCALE: 1/32" = 1'-0"

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EXISTING SITE PLAN



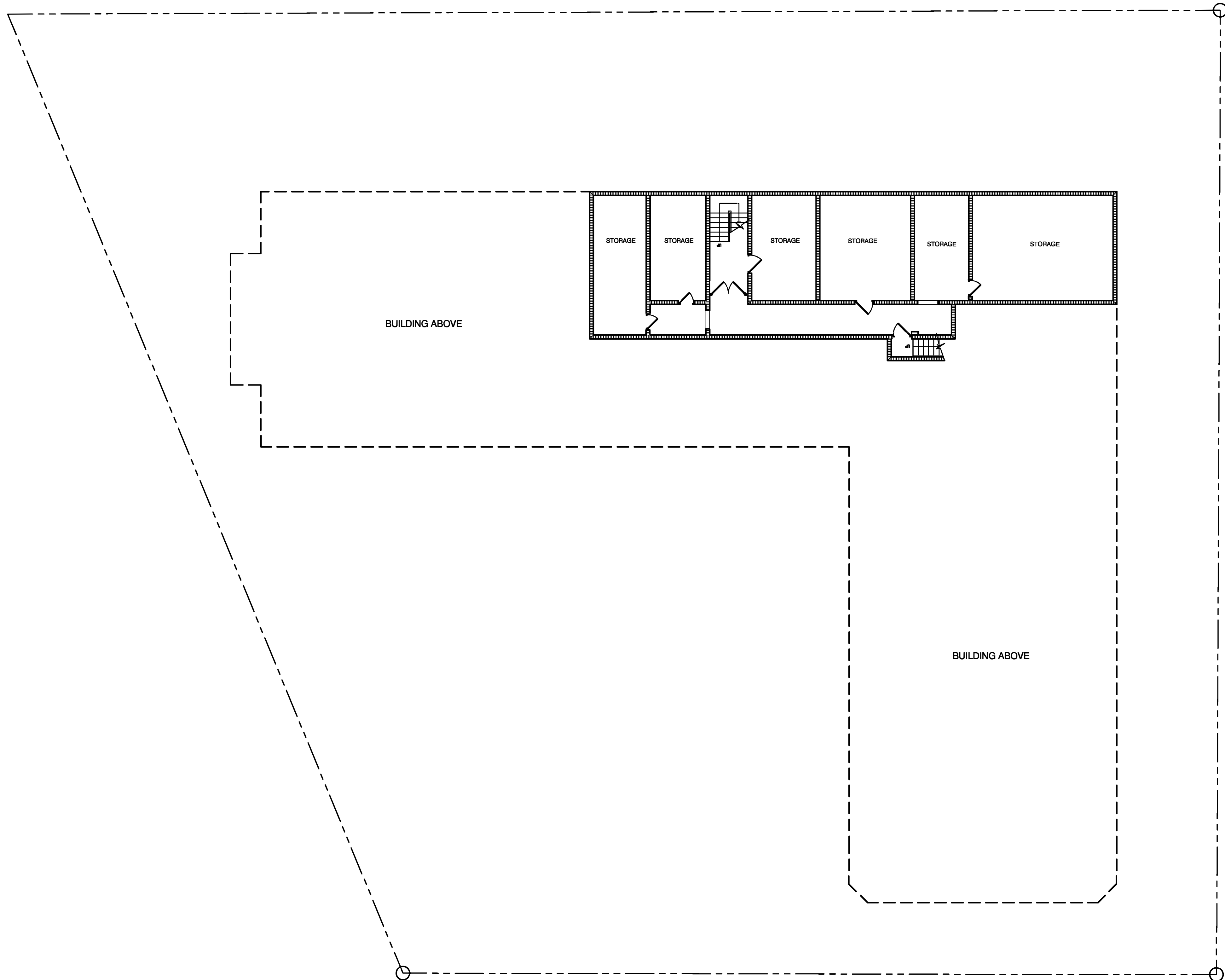
THE BARCLAY
1940 PARK AVENUE, MIAMI BEACH
CONCEPTUAL DEVELOPMENT STUDY - CO-LIVING

PROPOSED SITE PLAN

SCALE: 1/32" = 1'-0"

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THE BARCLAY
1940 PARK AVENUE, MIAMI BEACH
CONCEPTUAL DEVELOPMENT STUDY - CO-LIVING

SCALE: 1/32"= 1'-0"

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JULY 12, 2019

BASEMENT PLAN



THE BARCLAY **1940 PARK AVENUE, MIAMI BEACH** **CONCEPTUAL DEVELOPMENT STUDY - CO-LIVING**

SCALE: 1/32"= 1'-0"

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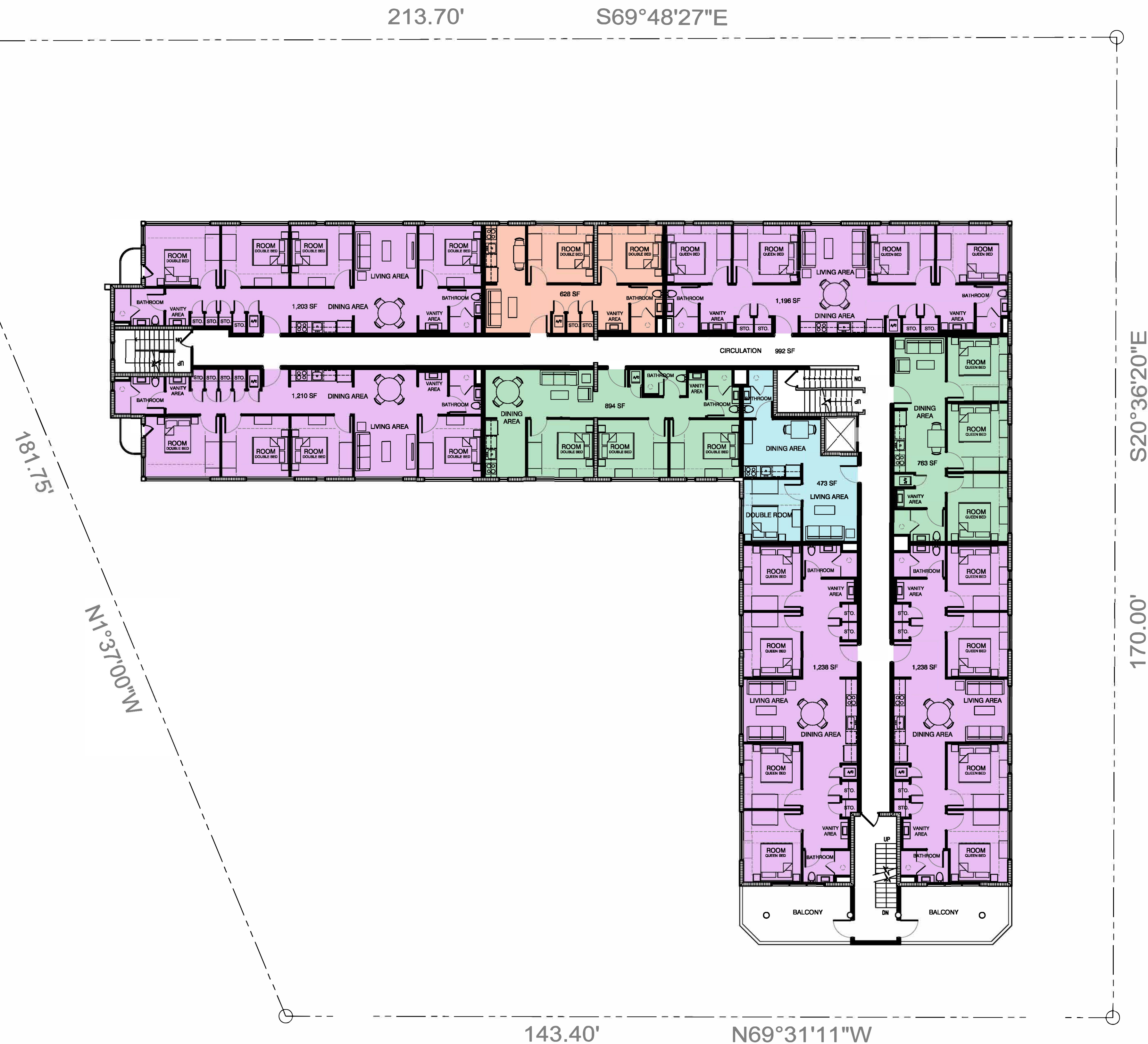
JULY 12, 2019

GROUND FLOOR PLAN

20 BEDROOMS
COMMUNITY SPACES

BUILDING TOTAL = 78 BEDROOMS

- SINGLE UNIT - 2
- DOUBLE UNIT - 4
- TRIPLE UNIT - 6
- QUAD UNIT - 12
- COMMUNITY SPACES



THE BARCLAY
1940 PARK AVENUE, MIAMI BEACH
 CONCEPTUAL DEVELOPMENT STUDY - CO-LIVING

SCALE: 1/32"= 1'-0"

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SECOND FLOOR PLAN

29 BEDROOMS

- SINGLE UNIT - 2
- DOUBLE UNIT - 4
- TRIPLE UNIT - 6
- QUAD UNIT - 12
- COMMUNITY SPACES



181.75'
N1°37'00"W



213.70' S69°48'27"E

S20°36'20"E
170.00'

143.40' N69°31'11"W

THE BARCLAY

1940 PARK AVENUE, MIAMI BEACH

CONCEPTUAL DEVELOPMENT STUDY - CO-LIVING

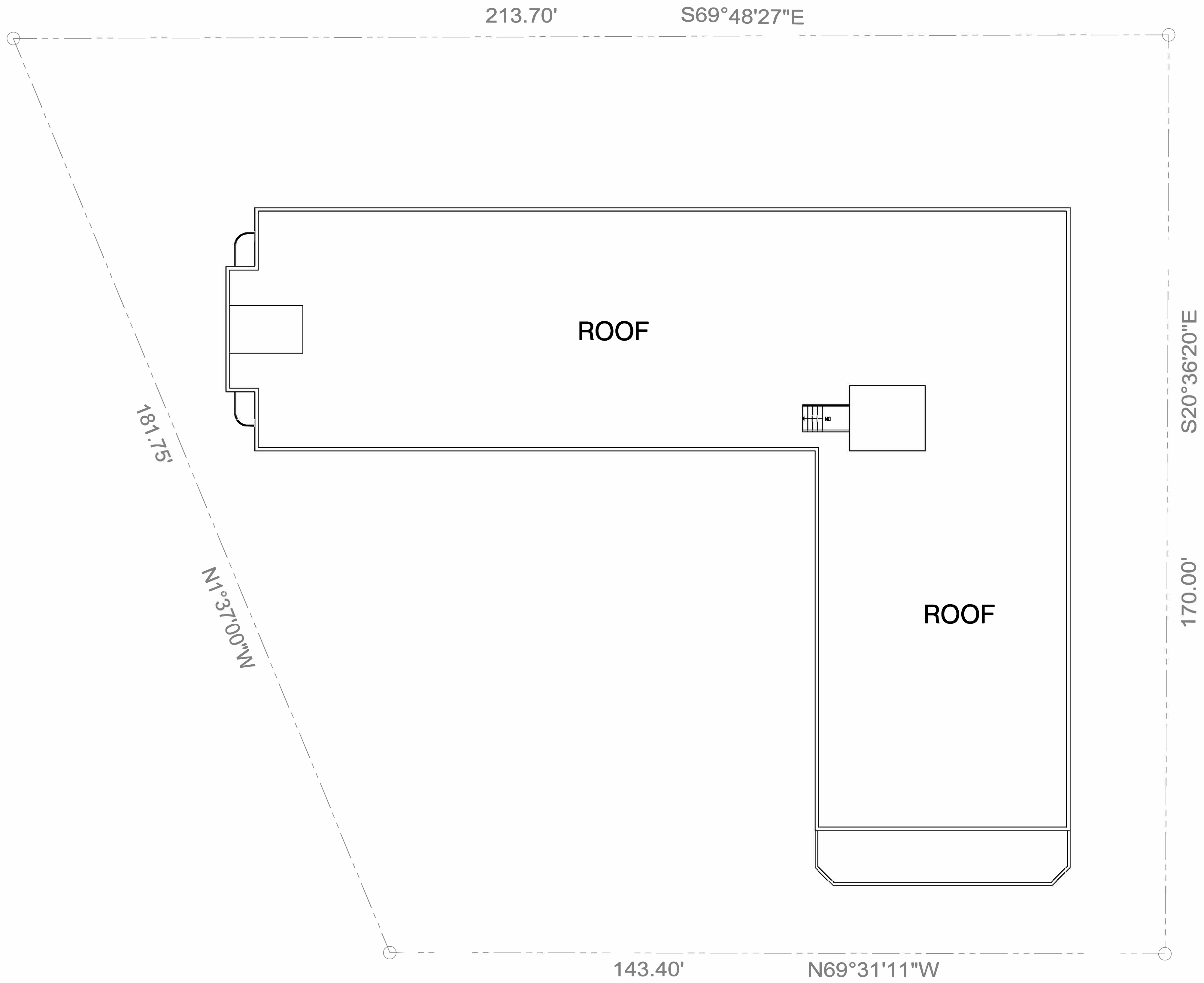
SCALE: 1/32"= 1'-0"

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THIRD FLOOR PLAN

29 BEDROOMS



THE BARCLAY
1940 PARK AVENUE, MIAMI BEACH
CONCEPTUAL DEVELOPMENT STUDY - CO-LIVING

SCALE: 1/32"= 1'-0"

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ROOF PLAN

Conceptual Design The Barclay Apartments



THE BARCLAY
1940 PARK AVENUE, MIAMI BEACH
CONCEPTUAL DEVELOPMENT STUDY - **APARTMENTS**

SCALE: 1/32" = 1'-0"

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RENDERING
VIEW FROM PARK AVENUE



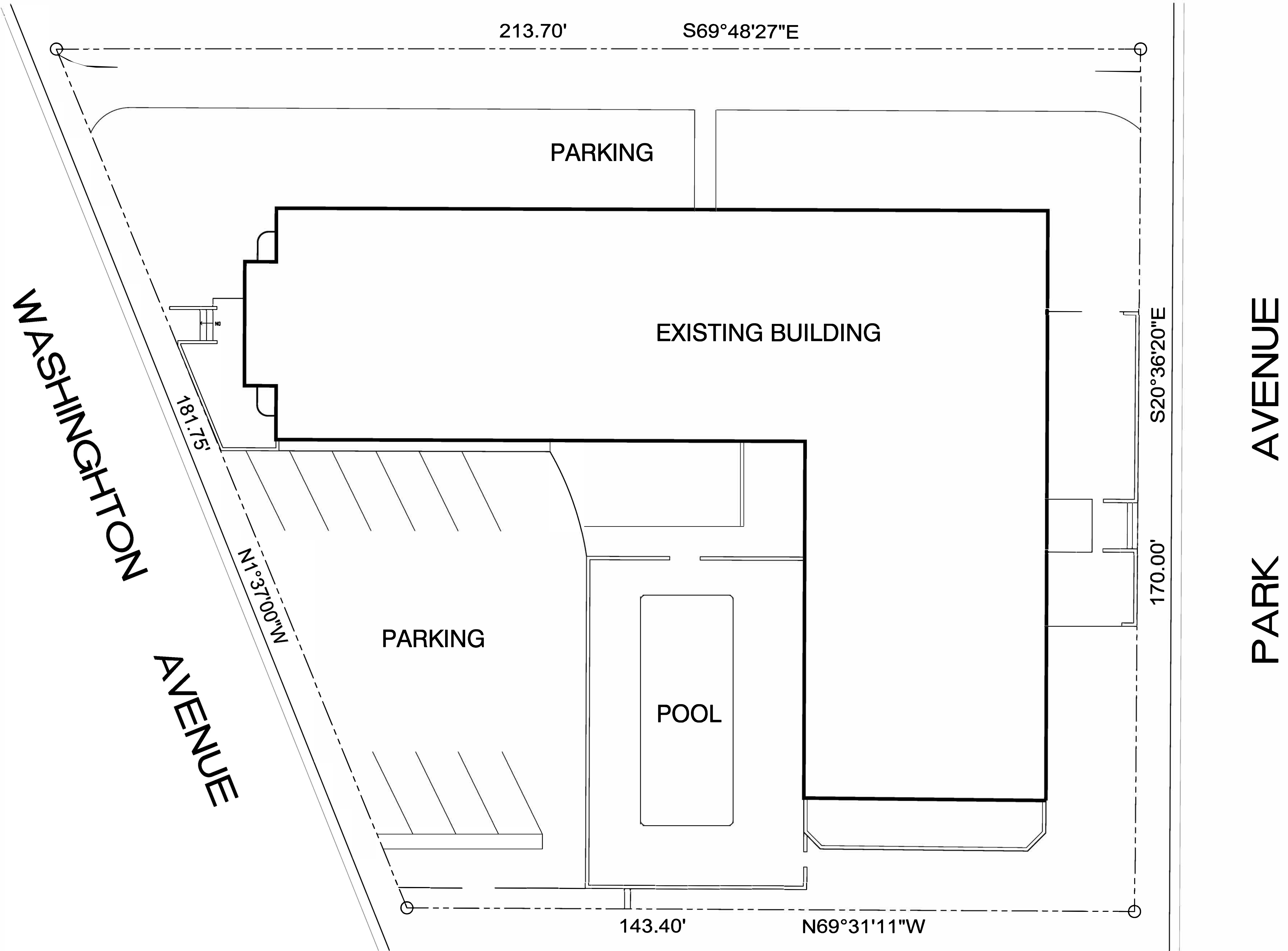
THE BARCLAY
1940 PARK AVENUE, MIAMI BEACH
CONCEPTUAL DEVELOPMENT STUDY - **APARTMENTS**

SCALE: 1/32" = 1'-0"

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RENDERING
VIEW FROM WASHINGTON AVENUE



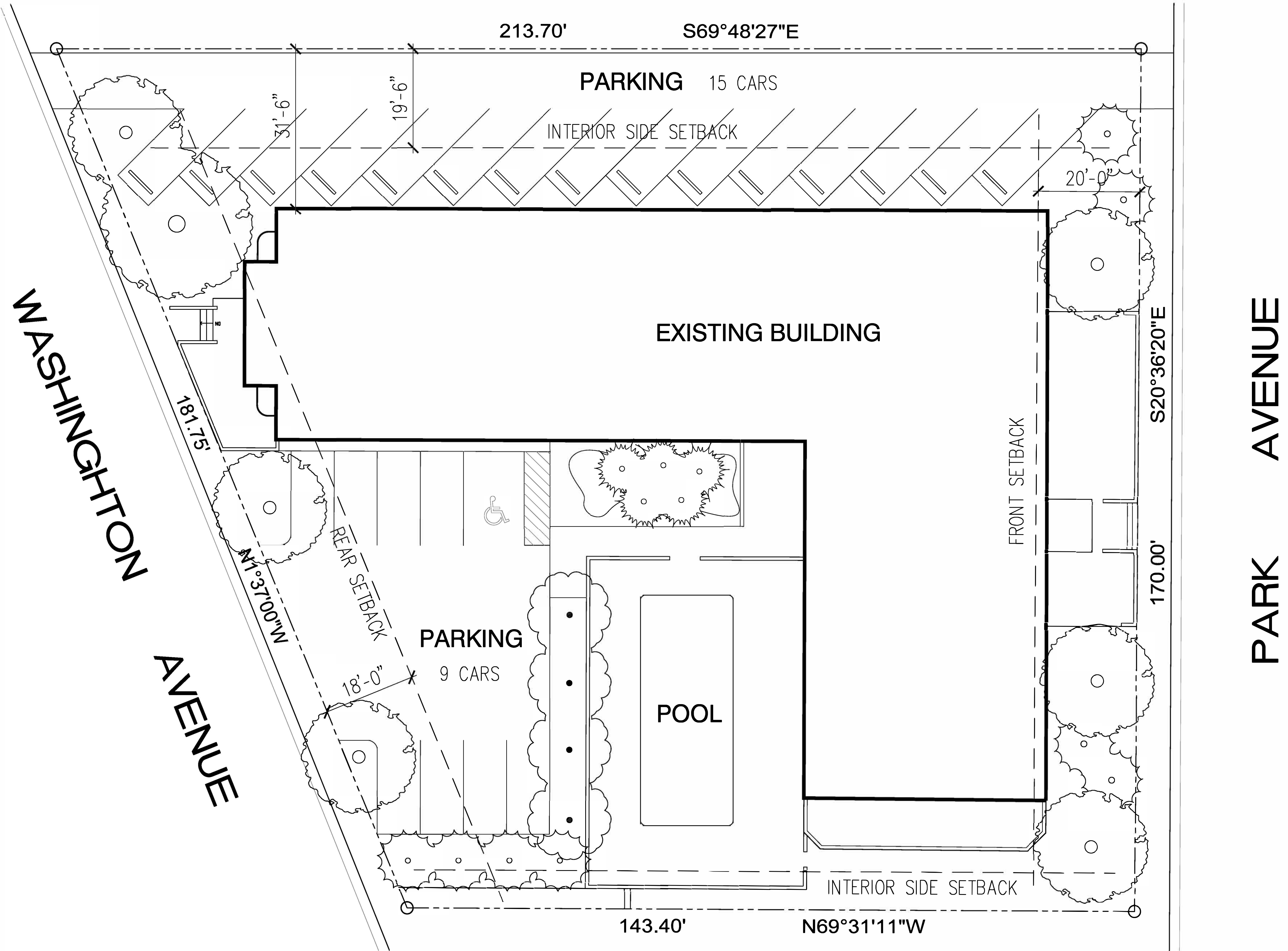
THE BARCLAY
1940 PARK AVENUE, MIAMI BEACH
CONCEPTUAL DEVELOPMENT STUDY - APARTMENTS

EXISTING SITE PLAN

SCALE: 1/32" = 1'-0"

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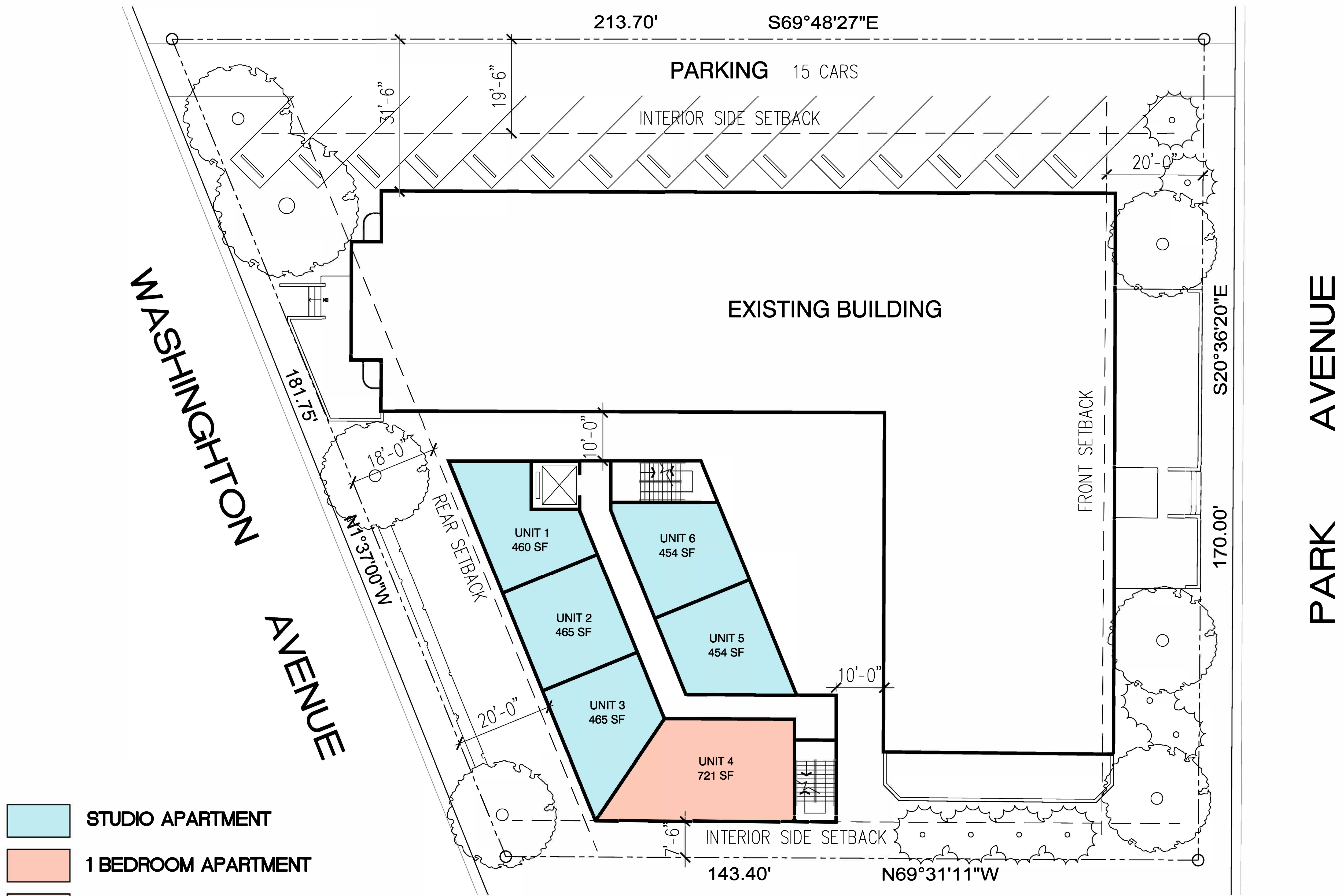
THE BARCLAY
1940 PARK AVENUE, MIAMI BEACH
CONCEPTUAL DEVELOPMENT STUDY - APARTMENTS

PROPOSED SITE PLAN

SCALE: 1/32" = 1'-0"

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- STUDIO APARTMENT
- 1 BEDROOM APARTMENT
- COMMON SPACES

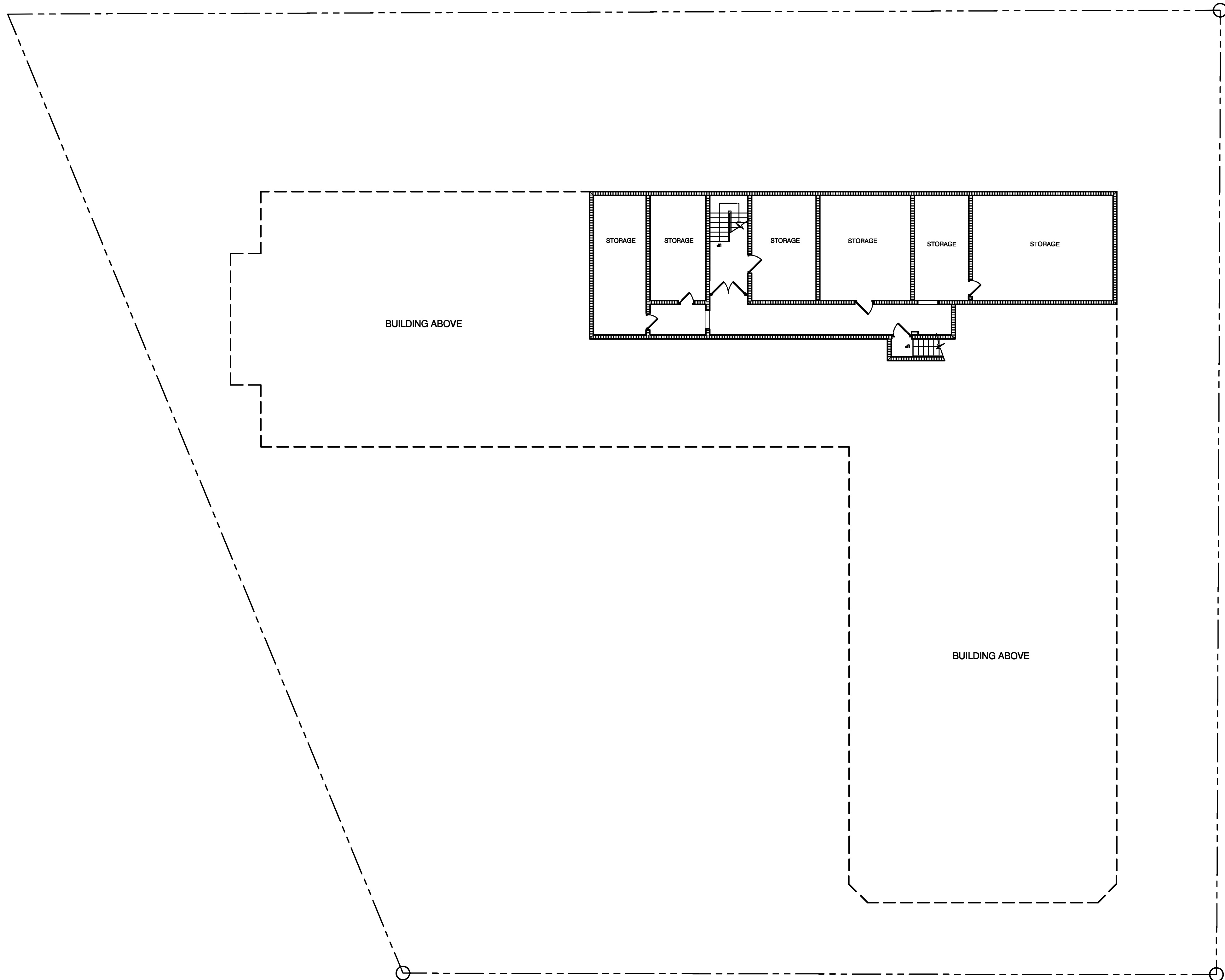


THE BARCLAY
1940 PARK AVENUE, MIAMI BEACH
CONCEPTUAL DEVELOPMENT STUDY - APARTMENTS

SCALE: 1/32" = 1'-0"
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PROPOSED SITE PLAN
ADDITIONAL BUILDING OPTION



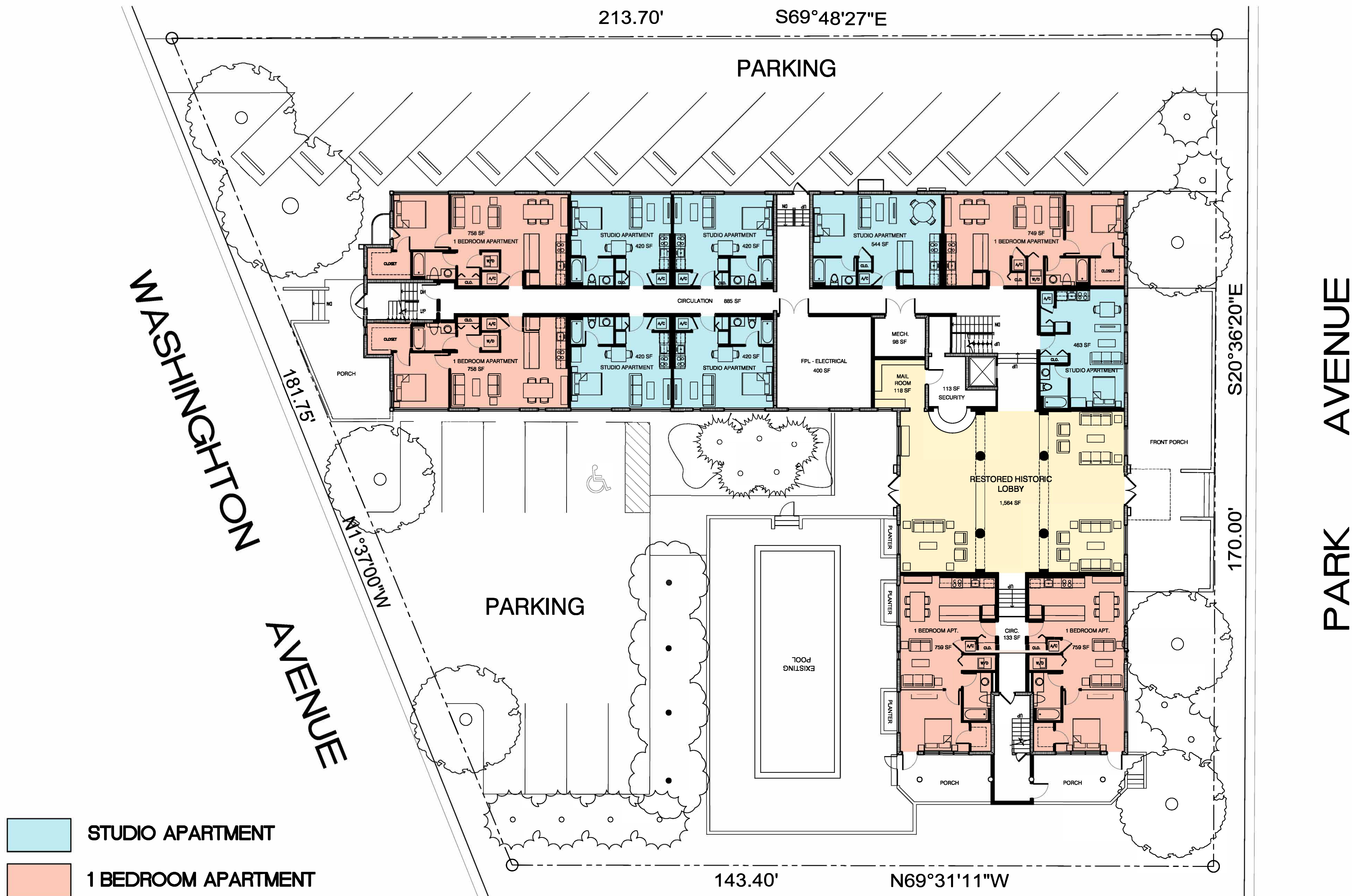
THE BARCLAY
1940 PARK AVENUE, MIAMI BEACH
CONCEPTUAL DEVELOPMENT STUDY - APARTMENTS

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BASEMENT PLAN



THE BARCLAY **1940 PARK AVENUE, MIAMI BEACH** **CONCEPTUAL DEVELOPMENT STUDY - APARTMENTS**

SCALE: 1/32" = 1'-0"

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JULY 12, 2019

GROUND FLOOR PLAN

6 - STUDIO / 5 - 1 BEDROOM
COMMUNITY SPACES

BUILDING TOTAL = 41 UNITS
22 - STUDIO / 19 - 1 BEDROOM

- STUDIO APARTMENT
- 1 BEDROOM APARTMENT
- COMMON SPACES



181.75'

N1°37'00"W

213.70'

S69°48'27"E

S20°36'20"E

170.00'

143.40'

N69°31'11"W

THE BARCLAY
1940 PARK AVENUE, MIAMI BEACH
 CONCEPTUAL DEVELOPMENT STUDY - APARTMENTS

SCALE: 1/32"= 1'-0"

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SECOND FLOOR PLAN

8 - STUDIO / 7 - 1 BEDROOM EACH





- STUDIO APARTMENT
- 1 BEDROOM APARTMENT
- COMMON SPACES



THE BARCLAY
1940 PARK AVENUE, MIAMI BEACH
 CONCEPTUAL DEVELOPMENT STUDY - APARTMENTS

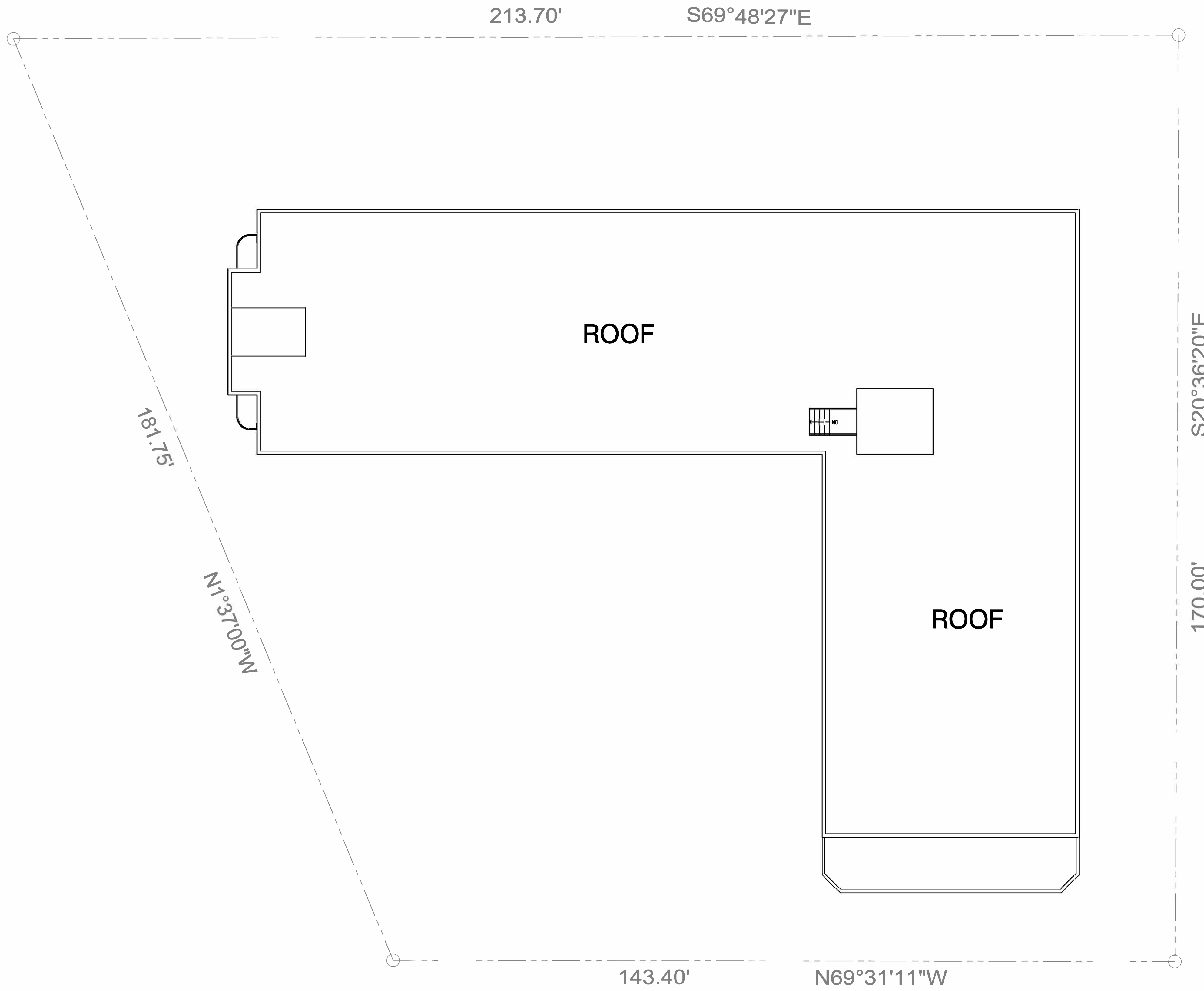
SCALE: 1/32" = 1'-0"

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JULY 12, 2019

THIRD FLOOR PLAN

8 - STUDIO / 7 - 1 BEDROOM



THE BARCLAY
1940 PARK AVENUE, MIAMI BEACH
CONCEPTUAL DEVELOPMENT STUDY - APARTMENTS

SCALE: 1/32" = 1'-0"

R.J. HEISENBOTTLE ARCHITECTS, P.A.
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ROOF PLAN

2.2 Resiliency

Resiliency

A|P Communities, RJ Heisenbottle, Corwil Architects and Abney+Abney have extensive experience developing resilient and sustainable communities throughout South Florida that will benefit The Barclay development. The team will ensure that the project will not only be developed into a sustainable community and **meet the required LEED Gold standards or equivalent** but will be designed to sustain sudden or chronic shocks and stresses over the long run, both from the environment and community pursuant to the Resiliency Standards provided in Appendix E of this RFP for the development of The Barclay. Abney+Abney has reviewed the conceptual plan(s) for the development and provided a Project Checklist and Certification Plan (copy attached) to obtain LEED Gold certification. During the planning process, input of the City's Chief Resiliency Officer will be obtained to ensure we are meeting the Resilience Strategy of the City, Resilient 305.

As a transit-oriented development The Barclay will help the City deal with chronic stresses like lack of affordable workforce housing and inefficient public transportation by providing affordable housing, and also increasing ridership of the City's public transportation options. Besides design, site location is one of the most impactful ways to promote sustainable building and resilient community. Creating an affordable workforce development at the site(s) helps shrink the city's environmental footprint by reducing vehicle-miles traveled – directly correlated to energy consumption and tailpipe emissions as reported by the Urban Land Institute ("ULI"). The Southeast Florida Regional Climate Change Compact reports that the transportation sector contributes 45% of the region's greenhouse emissions. With immediate proximity to the Miami Beach-South Beach Trolley and several multi-route public bus stops (with 5+ routes each) within one-tenth of a mile, the development will encourage increased transit use, higher density, a mix of uses, and reduced surface parking, all of which are key synergies of combining Transit Oriented Development (TOD) and green urbanism per the ULI.

Tab 3: Approach & Methodology

3.1 Schedule

Tab 3 – Approach & Methodology

Schedule

The timeline below outlines the estimated durations to complete The Barclay rehabilitation and new construction on-site (or at Collins Park) once the Development and Lease Agreements are signed between A|P and the City of Miami Beach. The durations will vary depending on what scenario is selected.

ACTIVITY (Scenarios 2, 3 and 5)	DURATION
Key Design	3 months
Certificate of Appropriateness	3 months
Entitlement Process	12 months
Construction Start/Finish (with new construction)	16 months
Total Project Duration	34 months

ACTIVITY (Scenarios 1 and 4)	DURATION
Key Design	3 months
Certificate of Appropriateness	3 months
Entitlement Process	12 months
Construction Start/Finish (rehabilitation only)	12 months
Total Project Duration	30 months

3.2 Construction Administration

Tab 3 – Approach & Methodology

3.2 Construction Administration Plan

Our experience in both market rate and affordable housing development has prompted us to establish and implement a work model that maximizes quality control. Each development is directly managed by a team of A|P Communities staff and consistently monitored by executives from A|P Companies, A|P Community Builders and A|P Community Management. This multi-disciplinary approach ensures reliable execution of complex developments that meet all construction, regulatory, and operational quality requirements.

Through the development of numerous successful housing communities, A|P Communities has honed rigorous processes which ensure timely completion and high-quality construction. Residents should not only have a place to live, but also a high-quality home environment where they feel comfortable, and that also elicits a strong sense of community pride. With this in mind we do not **anticipate any negative impacts to the development, the immediate surroundings or the neighborhood.** Provided below is A|P Community Builders' ("APCB") construction administration plan.

Phasing

- Selective Demolition Phase – perform all demolition work on site
- Evaluation Phase – evaluate the existing infrastructure to determine the scope and what utilities that will remain
- Build-out/New Construction Phase – perform the scope of work
- Close-out Phase – Perform punch out and turn the project over to the property management team

Vehicular & Pedestrian Traffic Patterns (New Construction)

- APCB will develop a traffic plan that will be approved through the City of Miami Beach and obtain the applicable permits prior to construction commencement.
- Intermittent road closures are anticipated for concrete pours and utility tie ins.
 - Large concrete pours would be completed during pre-dawn hours.
- During construction APCB will monitor traffic for any recurring backups that were not anticipated at the outset and mitigate accordingly. For example, APCB would shift deliveries of materials accordingly to alleviate these occurrences.
- Throughout construction, APCB will ensure pedestrian pathways are safe, clean and clear.

Site Considerations

- Prior to construction commencement, APCB will ensure a storm water pollution prevention plan is in place and adhered to.
- Dumpsters will be located in areas to least impact the surrounding areas.
- Site deliveries will be coordinated during hours to least impact the neighborhood and traffic patterns.
- Construction parking will be coordinated with the City.
- Dust control measures will be taken for trucks entering and leaving the site.

Noise Mitigation

- Minor noise due to construction is anticipated but should not be disruptive.

Tab 3 – Approach & Methodology

- APCB will limit construction to working hours only except when pouring concrete during pre-dawn hours as noted above.

Mitigating Negative Impact on Neighborhood

There are no anticipated negative impacts to the neighborhood. APCB's policy is that any complaints from neighbors reported to our site staff are immediately reported to APCB's Director of Operations to ensure that they are expeditiously addressed in a satisfactory manner.

Preconstruction Planning

Collaboration with the development team begins during the initial site due diligence and preliminary design phase. Once construction drawings are started:

- Project requirements are reviewed with the team and
- The Pre-Construction Development Checklist and Owner Contract Checklist are reviewed, updated as needed for the project and distributed
- A scheduler (consultant) is engaged
- A Third Party Safety Consultant is engaged

Prior to construction start, a pre-construction kick off meeting with City of Miami Beach Building Department will be held.

Upon receipt of Bid Documents, the development and construction teams begin to meet on a bi-weekly basis to review pending pre-construction items for the project. The team reviews the Pre-Construction Development Checklist making note of documents/report received with the bid package and answers standard pre-construction questions. Once the subcontractor(s) are selected, standard AIA 102 and AIA 201 contracts executed.

Meetings with subcontractors and consultants are kicked off at 50% construction drawings. The development and construction teams participate in meetings with waterproofing, security/access control, LEED/Green Building, Digital Antenna System and Interior Design consultants. Both teams meet with all the utility companies together in one room to review, plan and coordinate for disconnects prior to demolition, and the permanent utilities for the project.

Project Management & Protocol

Scheduling - APCB engages a 3rd party scheduler on each job to create the project schedule and work with the project staff to manage any schedule updates.

Pay Applications – Monthly Process:

- Project Manager assembles pay application with input from project staff.
- Project Executive reviews and approves pay apps prior to Vice President's signature and submission to Owner.
- Vice President, Project Executive and Director meet with all Project Manager's monthly to review job status, project financials, active change orders.
- Contract Manager checks all documentation prior to releasing checks (lien releases, no change order form, compliant insurance, certified payroll, etc.).

Reporting

- Daily reports are filed by field staff and include job site activities, manpower and weather delays.
- Weekly reports:
 - Project Manager Weekly Report summarizing key activities and issues are sent to the Vice President, Director and Project Executive

Tab 3 – Approach & Methodology

- A Hot List is provided summarizing critical items required immediately from Owner or the Design teams to keep the project on schedule
- A Three-Week Look Ahead Schedule is provided by field staff and sent to the Vice President, Director, Project Executive and all active subcontractors

Project Meetings

- Buyout/Project Status: The Vice President, Director and Project Executive hold a check in meeting with project staff every Monday morning to review buyout, contract status and subcontractor issues
- Owner, Architect and Contractor ("O/A/C") Meetings are held bi-weekly with staff. Minimum of one Vice President, Director or Project Executive attends each meeting.
- Subcontractor Meetings: Held weekly by project staff. Alternating weeks also contain scheduling meetings with scheduling consultant. Minimum of one Vice President, Director or Project Executive attends each meeting.

Support Staff – The following staff are integral to the day-to-day operations:

-Contract Manager is responsible for the following - Insurance, NTOs, lien releases, subcontractor payments, liaison with accounting, Procore administrator, Subcontractor boilerplate agreements

-Compliance Coordinator responsibilities include - certified payroll, minority business participation, subcontractor pre-qualification, Section 3 and other hiring requirements

Quality Control

- Pre-Construction meetings are held with each subcontractor to discuss their scope of work, submittal requirements, quality control, scheduling expectations, safety, logistics/staging and clean up.
- Oversight and 3rd Party Consultants
 - Director of Operations walks each jobsite on a weekly basis and provides feedback to project staff
 - Third party pre-construction site assessment of existing conditions of adjacent structures by engineering firm prior to commencing work (may indicate vibration monitoring is required)
 - Third party waterproofing consultant hired on all jobs to review and contribute to waterproofing, roofing and windows scope and perform material testing in the field during construction
 - Third party LEED/Green Building consultant assures green building requirements are met during construction
 - Moisture Management plan is adhered to
 - Third party Scheduler walks each jobsite on a bi-weekly basis, checks work in place, material deliveries with staff and subcontractor, and updates lookahead schedule

Please refer to the attached APCB **Quality Control Plan** for more information on strategies to ensure quality construction.

Review of Drawings

Drawings are reviewed for quality and content each time an updated set is received through a bulletin. A review meeting is scheduled with project team, Vice President, Director, Project Executive and the development team to review the plans and assure everyone is aware of changes. Plans are then distributed to the subcontractors through Procore.

Tab 3 – Approach & Methodology

Trade-to-Trade Turnover

A procedure is established to assure completion of each scope prior to turning over to the next trade coming into the space.

Financial Project Management Quality Control

- Project Executive reviews all pay applications and checks prior to team sending to owner and subcontractors, respectively.
- Contract Manager checks lien releases, no change order form and insurance prior to releasing checks.
- Director and Project Executive review all change orders prior to sending out.
- A monthly financial meeting is held with project management team to review project financials.
- Checks above \$50,000 require two signatures.

Insurance - A Contract Manager reviews and approves all subcontractor insurance.

- Runs report on a weekly basis showing subcontractors without insurance and with expired insurance. Report is reviewed with Executive Team in weekly meeting and Project Managers are notified of issues.
- Subcontractors are not eligible for payment and may be removed from the jobsite if insurance is not kept up to date.

Safety – There is a constant feedback loop from APCB's Executive Team to jobsite employees through bi-monthly one-on-one evaluations addressing general organizational competencies and specific tasks to manage risk throughout the project.

- All APCB employees must adhere to the Safety Manual provided.
- All subcontractors must adhere to the Safety Manual provided.
- The Superintendent addresses safety every week in the subcontractor meeting and encourages Toolbox Talks to be held by all subcontractors with their crews.
- In the unlikely event of an accident, the Superintendent is responsible for following OSHA protocol, completing an incident form and submitting it to the Executive Team.
- A Third Party Safety Consultant walks each jobsite on a bi-weekly basis and submits a report of findings to executive team and project team.

Construction Quality Control Plan
Atlantic Pacific Community Builders, LLC

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1. INTRODUCTION

This Construction Quality Control Plan (CQCP) will be implemented to ensure remedial and construction procedures are performed in compliance with the plans and specifications under this contract. This CQCP will provide a means to maintain effective quality control on all construction sites. The quality control measures as presented herein include quality control organization; methods of performing, documenting, and enforcing quality control operations of both the primary Contractor and their subcontractors (including inspection and testing); inspections to be performed; and protocol describing corrective actions.

Overall management of the CQCP will be the responsibility of the Contractor's Quality Control Manager (QCM). The QCM will have the authority to act in all construction quality control CQC matters and will be responsible for ensuring that all materials and work comply with the contract specifications. All inspection and testing firms will be at the disposal of the QCM to ensure that all aspects of work are compliant with the contract. The QCM will report any deviations from the CQCP independently to the On-site Project Manager.

2. PROJECT ORGANIZATION

The Contractor's key personnel assigned to this project should possess a broad range of remedial action experience and skills. All should have experience dealing with the handling of construction activities and should be familiar with requirements of day-to-day work under this contract.

The Contractor's proposed project organization for this project and the resumes of key personnel, along with their job titles, should be submitted for review and approval.

The functional responsibilities of key technical personnel are summarized as follows.

2.1 HOME OFFICE PERSONNEL

Contractor – Vice President

The Contractor's Vice President will ultimately be responsible for the project's success. He will provide the required resources to ensure that the project is successfully executed. He will be kept informed of the project's progress and maintain that the project is meeting its goals. The Vice President will resolve problems that cannot be resolved by the On-site Project Manager or Corporate Project Manager.

Contractor – Director of Operations

The Contractor's Director of Operations will oversee the project at the corporate level and report directly to the Vice President. He will communicate with the On-site Project Manager regarding all aspects of the project including, but not limited to, project problems, progress, payments, schedules, administrative duties, and QCM oversight. He will also resolve problems that cannot be resolved by the On-site Project Manager and will periodically visit the site and be acquainted with personnel and procedures.

Contractor

Regarding safety and occupational health, the Contractor will:

- Maintain overall responsibility of Site safety.
- Be responsible for assigning Safety responsibilities.
- Ensure that all activities are carried out in compliance with the approved site Health and Safety Plan.

The Contractor's Director of Operations is responsible for the preparation, implementation, and enforcement of the site-specific Health and Safety Plan (HASP). The Contractor's Director of Operations will report site safety activities to the VP on a regular basis, including all safety and occupational health issues. All job safety records generated will be thoroughly reviewed by the Director of Operations, who will also perform quarterly job-site safety inspections. He will prepare an audit report of findings for each inspection, including identification of deficiencies requiring corrective action.

2.2 FIELD PERSONNEL

Contractor - On-site Project Manager

The Contractor's On-site Project Manager, will be the primary contact person at the site with whom the Development Manager will interact with on a daily basis under this contract.

The Contractor's On-site Project Manager will ensure that:

- Appropriate resources are allocated to the project and balanced to ensure best value to APC.
- All cost tracking and reporting is carried out in a manner compliant with APC's Contract Management Procedures.

- All tasks are conducted in accordance with the plans and project specifications.

The Contractor's field personnel should rely on home office support throughout the course of the project. The Contractor's Director of Operations and on-site Project Manager will become and remain personally involved until each problem is resolved and appropriate corrective measures are implemented. They will typically communicate at least once daily on the progress of the project. The Project Manager will be present on the jobsite, to ensure that the project is progressing as scheduled.

The On-site Project Manager is responsible for implementation and support of the Contractor's CQCP and will oversee all aspects of work under this contract for remediation at the site, including:

- All procurements.
- Qualified Contractor and subcontractor resources are assigned to the project and balanced to ensure jobs are aligned with project needs.
- The Site is maintained and secure.
- All tasks are carried out safely and in compliance with the project specifications

His responsibilities include:

- Contractor coordination.
- Acting as site liaison between the Contractor and APC.
- Maintaining charge of all field operations.

3. CONTRACTOR - QUALITY CONTROL MANAGER (QCM)

The Quality Control Manager will report directly to the On-site Project Manager with matters concerning quality control. He will have both the authority and the duty to halt any operation appearing to be out of compliance with contract specifications.

The QCM is responsible for keeping and maintaining all records related to personnel, supplies, equipment use, and equipment. His function will be to ensure compliance with the contract plans and specifications.

QCM responsibilities include:

- Performing and documenting field inspections.
- Preparing daily reports.
- Scheduling, reviewing, certifying, and managing project submittals.
- Maintaining the Submittal Register.
- Providing coordination of required quality control testing, reviewing results, and submitting.
- Coordinating, documenting, and tracking preparatory, initial, and follow-up inspections.
- Tracking construction deficiencies and ensuring timely corrective action.
- Coordinating field sampling activities (as required).
- Reviewing calibration of test equipment (as necessary).
- Preparing addenda to the CQCP as necessary when additional phases of work are added.
- Maintenance of as-built drawings.
- Coordinating responses to subcontractor's requests for information and technical issues.
- Serving as main point of contact at the site for APC questions and discussions on quality and technical issues.

The QCM or an alternate will be on-site when work is being performed.

Contractor - Superintendent

The project Superintendent will be responsible for supervising all field activities. His duties include supervision of the craft labor (equipment operators, truck drivers, and laborers), technical staff (survey crew), and all subcontractors. The designated Superintendent is also responsible for the maintenance of all on-site construction equipment.

4. SUBMITTALS

The QCM will follow standard procedures concerning submittals, including the use of the AP transmittal form. Each submittal form may contain more than one submittal specific to that specification section. A submittal register listing major submittals will be prepared by APCB. This register will be prepared in conjunction with the anticipated progress schedule.

The QCM will be responsible for the review and approval of submittals prior to their submittal to

APC representative. This includes reviews of materials and suppliers' catalog cuts, as well as subcontractor submittals. The QCM will review the submittal for completeness and compliance with the contract specifications. Variations to a submittal will be noted on the APCB transmittal form. The QCM will actively participate during procurement activities to ensure purchase orders and subcontracts comply with the contract.

Tab 4: Operations & Maintenance

Tab 4 – Operations & Maintenance

A|P has purchased, developed, leased, and managed residential and commercial properties throughout the United States and currently manages more than 40,800 multifamily units across 159 properties, of which 2,541 are affordable and mixed-income housing units. Our experience in both market rate and affordable housing development has prompted us to establish and implement a work model that maximizes efficiency and quality control. Each development is directly managed by a team of A|P Communities staff and consistently monitored by executives from A|P Companies, A|P Community Builders and A|P Community Management ("A|PCM"). This multi-disciplinary approach ensures reliable execution of complex developments that meet all construction, regulatory, and operational quality requirements. Development managers at A|P Communities and our in-house general contractor, A|P Community Builders, work hand-in-hand with A|PCM staff to ensure successful planning and operation of the properties from the pre-development design stage through conversion and stabilization.

A|PCM's team of seasoned professionals with multi-disciplinary backgrounds has decades of residential and commercial real estate experience including legal, financial, accounting and managerial. Human resources, insurance, accounting, compliance, reporting, and asset management are centralized, increasing transparency, maximizing efficiency, reducing operating costs, and enhancing the asset value of our portfolio.

Lease-up

When construction begins, A|PCM places a large sign with a toll-free number and leasing information prominently at the site. Corporate staff tracks all telephone inquiries and provides callers with preliminary information about the property until on-site staff is available and pre-leasing begins. Recruitment for on-site staff begins six months prior to the first Certificate of Occupancy ("CO"); brochures and other marketing materials are also prepared at this time.

Four months prior to the first CO, a property manager will be hired and trained. Our managers thoroughly examine applicants and conduct a comprehensive interview process to ensure the best and most qualified candidate is hired. A trailer will be placed on the property (or a retail space nearby will be leased) along with banners, balloons, flags and signs advertising the availability and rents of the apartments. For The Barclay, City of Miami Beach staff, teachers and firefighters would be informed of the housing options available.

Three months prior to the first CO, leasing staff will be hired and intensive training programs will be conducted. The goal of these efforts is to increase resident retention, assist leasing agents with their closing ratios, and ensure that all LHTC, ADA and Fair Housing rules and regulations are met.

A|PCM conducts thorough local research in order to devise creative and applicable ways to promote this specific community to target residents. Staff undertakes additional marketing outreach such as distributing clear and attractive property information to the City of Miami Beach and the area's major employers, religious and civic organizations, as well as the local Chamber of Commerce. We also post notices on bulletin boards at local supermarkets, laundromats, convenience stores, houses of worship, community centers, senior centers, and medical clinics, if necessary.

Once the leasing office is ready for occupancy, the management staff will be on-site daily to manage leasing activities. When necessary, a fully-furnished model unit will be made available for prospective residents, so they may fully visualize the entire lifestyle that the community will offer. Immediately upon the first move-ins, a resident referral program will be implemented to facilitate and encourage word-of-mouth advertising. A referral bonus will be offered to all residents who refer a household who successfully rents at the property. We have found this program to be extremely effective at similar communities.

Tab 4 – Operations & Maintenance

Application and Qualification (Affordable Housing)

The resident application process begins when a fully trained leasing agent guides an applicant through the application package. During this process, all questions on the form and additional required documents are thoroughly explained. Special attention is paid to the documents that verify income eligibility under the affordable housing program(s). A | P Community Management compliance staff is available to assist the resident and leasing staff every step of the way for a successful lease and compliant tenant file. Through this process, we aim to provide a high level of customer service and efficiency as well as extremely accurate financial data. Applicants are then screened via an advanced software program that determines the prospect's eligibility by examining income, criminal records, and credit and rental history against indicators of future rental payment performance.

Credit check evaluation factors include credit accounts in good standing and rent-to-income ratios. Medical collections and student loans do NOT affect the credit score calculation. Further, no credit history equals good credit history. Unpaid financial obligations to utility providers, unpaid judgments, rent, and/or damages owed to prior landlords will result in a denial. If a tenant is deemed in positive standing but has a small unsatisfactory finding that is found to be workable by our agents, they may be approved under the condition that they supply an additional deposit.

Rental history is also reviewed with prior landlords. Reports of disturbance, destruction of property, disruptive, dangerous, or violent behavior including non-compliance with rental agreement or unsanitary or hazardous housekeeping will typically result in a denial. All leaseholders and occupants must pass criminal background checks, including young residents upon turning 18 years of age.

A | PCM has policies in place to account for the challenges often faced by low-income persons; persons on a fixed income, and persons with special needs. Consideration is given to these prospective residents despite not having any credit and by reviewing bankruptcies and foreclosures on a case by case basis. Management will consider mitigating information during their review of past and current behavior (including credit) and may override what might otherwise be a denial if, for example, staff can obtain positive two-year rental history verification.

Where residents have been referred by a supportive service agency approved by the Florida Housing Finance Corporation through their Special Needs Link Program, management will allow for more flexibility as it relates to income, credit and rental history criteria. Management will take a unique approach toward evaluating the income and credit status of households with a disabling condition because referral agencies are often able to provide supportive services to assist residents and management in moderating any issues that may emerge after move in.

To ensure the safety of all residents and staff, it is A | P Community Management's policy that all federal crimes, sex crimes and felony convictions result in an automatic denial. In regards to lesser crimes, we will review the facts and circumstances of the convictions, specifically the nature and timeframe of the conviction, and the potential threat to the health and safety of other residents and property. At move-in all residents must also commit to live by the standards of crime-free and drug-free housing.

Once a resident signs the lease they will meet with management staff for an orientation to the community and the amenities, rules will be reviewed, and resident services/supports will be offered. Additionally meetings with the residents will be held on a regular basis to educate residents relative to requirements under the lease, discuss updates to resident services or new offerings as well as other pertinent topics which will also be included in the property newsletter.

Tab 4 – Operations & Maintenance

Maintenance

It is A | PCM's policy to adhere to strict preventive maintenance procedures, and promptly address repair requests as they arise. Residents can make repair requests by letter, through the property's online resident portal, via email, in person or by phone to management staff. A telephone answering service will answer calls during non-working hours. Residents' repair requests are entered into property management software which tracks the time of the request, urgency, repairs/parts needed, timeliness of resolution and any required follow-up. Emergency repairs are performed on an immediate, on-call basis 24 hours a day, 7 days a week. Normal repair requests are performed within 48 hours when possible. All outstanding repair requests and repair request history is monitored by the property manager on a daily basis.

Another key A | PCM best practice is the strict preventative maintenance schedule our team prepares. This schedule outlines all building systems identified in the inventory and then establishes daily, weekly, monthly, quarterly, and yearly preventative maintenance measures that staff must adhere to. This schedule is then paired with a system of daily and weekly checklists and building logs given to maintenance staff to provide clear direction on proper preventative maintenance measures to take each day. A | PCM's team of Regional and Property Managers then complete weekly and monthly property inspections to ensure compliance with the established preventative maintenance protocols. The result of these thorough processes and extensive front-end diligence is a well-maintained asset that will outlive the long-term compliance periods associated with affordable housing developments.

Safety

In addition to maintaining the physical conditions of the community as a clean and well-kept development, A | P Communities and A | P Community Management will implement additional strategies to deter crime, if necessary. The development design will include access controlled entrances, and as necessary security cameras, guard patrols and a neighborhood watch for all residential buildings.

Leveraging technology to implement the above improves safety and security. Security cameras or video surveillance is a deterrent to criminals when they know their actions are being recorded on camera and can help police identify suspects. Cameras are strategically placed and monitored to ensure efficacy.

Collectively, these measures are designed to provide all residents with a sense of safety and comfort within their home environments.

Reporting

A | PCM utilizes RealPage property management software with centralized accounting and reporting as well as other functions to streamline day-to-day operations. In addition to reporting and filing the required financial reports and documents, A | PCM also works with the owners to tailor the information and timing of the reports. Core financial reports in a reporting package include an Asset Management Report (Summary of Financials, Occupancy, Operations, Capital Projects, Staffing, Litigations-Citations, Marketing) and Financial Reports (Operating Budget Monthly Variance, Twelve Month Trailing Income Statement, Balance Sheet, Rent Roll, Rent Roll Detail/GPR, Delinquent and Prepaid, Resident Deposit Audit, Resident Summary Balances, Bank Statement Reconciliation).

To date, A | PCM has successfully satisfied all Real Estate Assessment Center ("REAC"), Housing Quality Standards ("HQS") and Uniform Physical Condition Standards ("UPCS") inspections required by state, county and city agencies. In addition, all Program Reports, Bond Reports and

Tab 4 – Operations & Maintenance

other required reports are submitted in a timely manner. All of our affordable housing properties comply with all extended use, land use and restrictive regulatory agreements and none have ever received a non-compliance IRS Form 8823.

A | PCM takes pride in providing the opportunity for low- to moderate-income persons of diverse backgrounds to live in safe, affordable, and high-quality housing. To maintain excellent quality management, A | PCM provides ongoing, structured Fair Housing Training to all management staff in person and online. New employees are required to complete the Fair Housing Principals and Practices Course and are required to take a refresher course semi-annually or quarterly to ensure strict adherence to federal, state and local fair housing laws and requirements.

Please refer to the attached A | PCM Sample Management Plan as an example of current operations plan that are similar to A | P's proposed development for The Barclay redevelopment.

Tab 5: Organization Plan / Personnel

Tab 5 – Organizational Plan / Personnel

Organizational Chart

Atlantic|Pacific Communities, LLC ("A|P"), is the developer subsidiary of Atlantic|Pacific Companies, a fourth-generation family-operated real estate company that provides high quality housing to serve every income level. A|P Companies has a 125-year track record in purchasing, developing, constructing, leasing, and managing residential and commercial properties; owns \$2B of multifamily real estate; employs 1,230 people full-time (with 687 in Miami-Dade County); manages 40,800 units (with over 17,220 located in Miami-Dade County); and does business in South Florida, Georgia, North Carolina, Washington DC, Maryland, Texas and California.

Building on A|P Companies' legacy of owning and managing affordable housing since the 1970's, A|P Communities was founded in 2013 to bridge the gap between real estate development and economic development. We connect people, ideas and capital to help communities achieve their true potential. A|P has been consistently ranked in *Affordable Housing Finance* magazine's "Top 50 Affordable Housing Developers" in the country; most recently in April 2019 we were again ranked the largest Florida-based developer of affordable housing in the country.

If selected, A|P would serve as the developer and would be responsible for directing and coordinating the development team and for ensuring the timely and cost-effective completion of all development services for the City of Miami Beach (the "City"). This includes all pre-development activities, obtaining entitlements and permits, securing financing, overseeing the design, construction and quality control of the development, marketing and lease up efforts, and management. In addition, A|P principals would provide all construction, operating, and compliance guarantees.

Our experience in both market rate and affordable housing development has prompted us to establish and implement a work model that maximizes quality control. Each development is directly managed by a team of A|P Communities staff and consistently monitored by executives from A|P Companies, **A|P Community Builders** and **A|P Community Management**. This multi-disciplinary approach ensures reliable execution of complex developments that meet all construction, regulatory, and operational quality requirements. Development managers at A|P Communities and our in-house general contractor, A|P Community Builders, work hand in hand with A|P Community Management staff to ensure successful planning and operation of the properties from the pre-development design stage through conversion and stabilization.

The firms that we have chosen to work with are locally based with strong ties to the community and have decades of direct experience working on local neighborhood revitalizations, public-private planning and design, and historic preservation. Our team has the capacity and required skills to undertake all of the responsibilities set forth by the City of Miami Beach, including (but not limited to) planning, community outreach, design, entitlements, zoning, financing (public and private), adherence to funding sources rules and regulations, local employment and contracting, construction, construction management, marketing/lease-up, compliance and asset management. Our team has completed several multi-phase, multi-year, and multi-use redevelopments of entire neighborhoods providing housing for seniors, families, individuals with special needs and youth aging out of foster care. Our projects have been consistently praised by our partners, our investors, our municipal authorities, and most of all, our residents. The breadth and depth of experience we have displayed in order to undertake and complete developments of this size, scope, and complexity are directly applicable to the successful development and vision of The Barclay site.

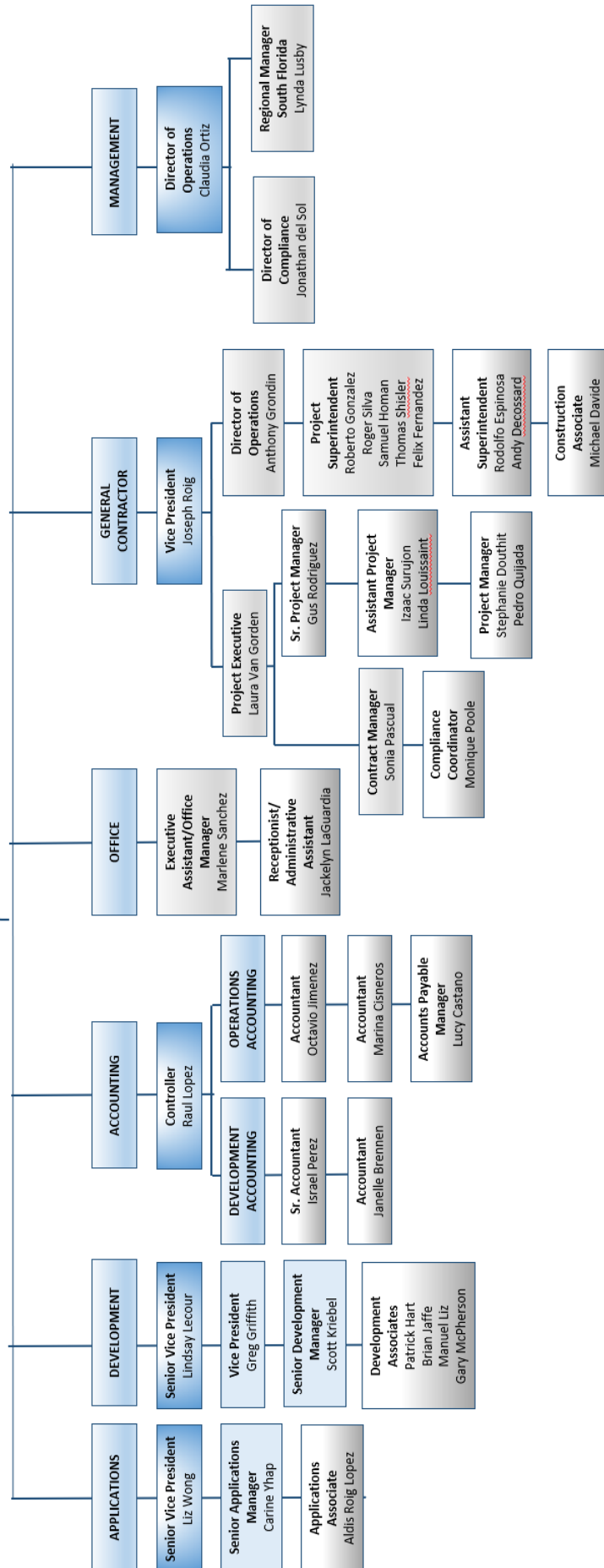
Tab 5 – Organizational Plan / Personnel

We recognize that any redevelopment will touch hundreds if not thousands of stakeholders, and we do our best to establish lines of communication with as many key stakeholders as possible. We plan to employ participatory planning principles to engage the local community and incorporate stakeholder feedback early in the design process. Our development process begins by putting together an expert team of professionals across a myriad of specialties who will be responsible for the development from the initial planning phases through occupancy. For The Barclay redevelopment, A | P has engaged local Miami architects, **R.J. Heisenbottle Architects** and **Corwil Architects**, green building consultant **Abney+Abney Green Solutions**. We will work with the City, the local community, and other stakeholders to create a shared vision for The Barclay Workforce Housing community.

A | P's organizational chart is depicted on the next page.

Tab 5 – Organizational Plan / Personnel

Chief Operating Officer
Kenneth Naylor



DEVELOPMENT TEAM PERSONNEL ORGANIZATIONAL CHART

MIAMI BEACH

ATLANTIC PACIFIC COMMUNITIES

Howard D. Cohen, CEO
Randy Weisburd, President
Kenneth Naylor, COO
Liz Wong, SVP
Lindsay Lecour, SVP
Greg Griffith, VP
Raul Lopez , Controller
Michael Fincher, In-house Counsel

PROJECT MANAGER

Scott Kriebel, Sr. Development Manager
Brian Jaffe, Development Associate

HISTORIC PRESERVATION

R.J. Heisenbottle, President
Juan B. Alcala M., Dir. of Design
R.J. HEISENBOTTLE ARCHITECTS

MASTER CONTRACTOR

Joseph Roig, Vice President
Anthony Grondin, Dir. of Operations
Laura VanGorden, Project Exec.
Monique Poole, Compliance Coord.

ATLANTIC | PACIFIC COMMUNITY BUILDERS, LLC

PROPERTY MANAGEMENT

Randy Weisburd, President
Claudia Ortiz, Dir. of Operations
Lynda Lusby, Regional Manager
Jonathan Del Sol, Compliance Director

ATLANTIC | PACIFIC COMMUNITY MANAGEMENT, LLC

ACCOUNTANT

Chris Thomas, Managing Partner

TIDWELL GROUP

LAND USE COUNSEL

Neisen Kasdin, Managing Partner

AKERMAN, LLC

CORPORATE COUNSEL

Brian McDonough, Shareholder

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, PA

ARCHITECT

Alberto Cordoves, President
President Ena Cordoves, VP

CORWIL ARCHITECTS

GREEN BUILDING CONSULTANT

Kyle Abney, Principal

ABNEY+ABNEY GREEN SOLUTIONS

SPECIAL COUNSEL

Donna Blanton, Shareholder

RADEY LAW

Tab 5 – Organizational Plan / Personnel

Key Personnel

Individuals in A|P Communities' leadership team bring over 20 years of affordable and mixed-income housing experience, and to date has closed on more than \$2.2 billion in capital and built nearly 10,200 apartments homes ranging from standalone 22-unit buildings to phased neighborhood redevelopments totaling 1,145 units. In Miami-Dade County alone, A|P Communities' staff has built or currently has under construction or in credit underwriting 33 affordable housing developments with over 3,840 units. Many of these developments leveraged Miami-Dade County funds and/or land to either revitalize existing communities or establish new neighborhoods. Of these properties, over 1,760 units across 15 developments are mixed-use, urban in-fill, TODs, from garden-style to high-rise construction, with resident amenities, surface and/or structured parking, kiss-n-rides, transit facilities or improvements, and retail/commercial space. A|P also has experience in Miami Beach having developed five hotels on the beach; and is currently managing 12 condominiums with 2,858 units.

Listed below are key individuals that will manage and coordinate the development services of The Barclay Project to completion. All members have direct experience working on developments of similar scope and scale as proposed in the various scenarios as well as adaptive reuse and historic rehabilitations. They are highly experienced in land acquisition, entitlements, zoning, construction contract negotiations, project management, Section 3 and local hiring, and have significant experience working in Florida and specifically, Miami-Dade County. The team is prepared to start immediately upon award and able to complete the development timely. There are no existing time commitments of the team members or staff which would impair the team's ability to proceed expeditiously.

A P Executives	Name & Address	Key Staff, Function
Developer Ken Naylor, COO Lindsay Lecour, SVP Liz Wong, SVP Greg Griffith, Vice President Michael Fincher, In-House Counsel Raul Lopez, Controller	Atlantic Pacific Communities 161 NW 6 th Street, Suite 1020 Miami, FL 33136 www.apcompanies.com Telephone: 305-357-4700	Carine Yhap, Sr. Applications Manager Scott Kriebel, Sr. Development Manager Brian Jaffe, Development Associate
General Contractor Joseph Roig, Vice President	Atlantic Pacific Community Builders 161 NW 6 th Street, Suite 1020 Miami, FL 33136 Telephone: 305-357-4700	Anthony Grondin, Director of Operations Laura Van Gorden, Project Executive Monique Poole, Compliance Coordinator
Property Management & Compliance Randy Weisburd, President	Atlantic Pacific Community Management 8609 South Dixie Highway Pinecrest, FL 33156 Telephone: 305-357-4700	Claudia Ortiz, Director of Operations Lynda Lusby, Regional Manager Jonathan Del Sol, Compliance

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Resumes

Developer: Atlantic Pacific Communities, LLC

A|P's development staff consists of Miami-based seasoned professionals with extensive experience acquiring, planning, financing, developing, leasing, and managing multifamily assets. Each development is directly managed by a team of development staff which is managed by executives in A|P Communities' Acquisitions, Applications, Underwriting, Development, Finance, Construction Management, Accounting, and Management departments. This multi-disciplinary approach ensures reliable execution of complex developments with maximum efficiency.

Resumes of the key principals and staff to be involved in the development effort are provided below.

Atlantic | Pacific Communities Key Principals



Howard D. Cohen, Chief Executive Officer: Howard D. Cohen leads as the President and Chief Executive Officer of Atlantic | Pacific Companies and has served in this position for nearly 20 years. Mr. Cohen's role includes the oversight of all affiliated companies, managing the company's investments and creating strategic partnerships that further enhance the firm's systematic and intelligent approach to delivering better results and a richer experience.

Mr. Cohen practiced with the preeminent law firms of Ruden McClosky, P.A. and Becker & Poliakoff, P.A., as a senior real estate attorney specializing in commercial real estate, financing and lending transactions. Mr. Cohen has more than 25 years of real estate investment, real estate law and management experience.

Mr. Cohen, **a Miami Beach native**, graduated from Miami Beach Senior High, received his Bachelor of Science degree from Cornell University, and his Doctorate of Jurisprudence from the University of Miami with Magna Cum Laude distinction. Mr. Cohen currently serves on the board of directors of Cornell University's Center for Real Estate Finance.



Randy Weisburd, Chief Operating Officer: Randy K. Weisburd, Chief Operating Officer of Atlantic | Pacific Companies, is primarily responsible for the formulation and execution of the company's overall strategic plan as well as its day-to-day growth management. Under the Atlantic | Pacific corporate umbrella, Mr. Weisburd oversees the Acquisitions, Asset and Property Management, Development, Fund Management and General Contracting. He has served as court appointed Receiver and Monitor as well as Advisory-Lead Partner on numerous assignments during the past several years.

Prior to joining A | P, Mr. Weisburd served as Vice President of LNR Property Corporation. During Mr. Weisburd's nine-year tenure at LNR, he was directly responsible for the acquisition, development, and management of numerous commercial properties throughout the United States.

Mr. Weisburd currently serves on the Board of Directors of Lehrman Community Day School, The University of Miami School of Business Administration Real Estate Advisory Board and is the past **Chairman of the Miami Beach Planning Board**. Mr. Weisburd, **a Miami Beach native**, graduated from Miami Beach Senior High School and the University of Miami with a degree in Business.

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Key Staff

Below are the resumes of A|P Communities key staff that will be directly working on The Barclay site.



Kenneth Naylor, LEED A.P., Chief Operating Officer: Ken Naylor started his development career in 2000. Since then he has led the most complicated developments – major multi-year redevelopments with municipalities, housing authority partners, historic rehabilitations, homeless developments and development in the Florida Keys, to name a few.

He is an excellent manager of complexity; he thrives on proving out new concepts, such as LEED Certification or Transit-Oriented Development, believing that by pioneering the path, others will follow. In 2006, he led the first LEED certified affordable development in the Southeast (Tallman Pines, winner of 2008 *Developer Magazine* sustainability award) in partnership with the Broward County Housing Authority. In 2010, Naylor helped facilitate important and progressive housing initiatives, including the construction of 7 new LEED transit-oriented developments; and successfully petitioning the Florida Housing Finance Corporation to allow Youth Aging out of Foster Care to live in Low-Income Housing Tax Credit units. He oversaw the rehabilitation of The Royalton, winner of the 2009 *Affordable Housing Finance* magazine Reader's Choice Award and 2010 National Preservation Award from the National Trust for Historic Preservation. In creating new housing and services near public transit, Ken's work is helping individuals and families overcome the most costly and debilitating burdens that limit access to job opportunities. In 2011, Naylor was named as one of four "Young Leaders" in the affordable housing industry by *Affordable Housing Finance* magazine and was selected as *Multifamily Executive Magazine's* Rising Star of the Year.

In 2013, A|P Companies designated Ken Naylor Chief Operating Officer responsible for overseeing the day to day nationwide operations of A|P Communities. He serves on the Monroe County Commission's Affordable Housing Advisory Committee; and on the Building Efficiency 305 Working Group, convened by the Miami-Dade County Regulatory and Economic Resources Department to shape energy and water efficiency policies and program in the county. He is a Director for the Coalition of Affordable Housing Providers, a statewide organization dedicated to the furtherance of affordable housing policies in Florida and is a member of the US Green Building Council and Urban Land Institute. Mr. Naylor graduated with Honors from the University of Miami and is a **Miami Beach resident**.



Lindsay Lecour, Senior Vice President: Having overseen the development of more than 50 multifamily communities across the Southeast worth more than \$1.4 billion, Ms. Lecour specializes in complex neighborhood revitalizations and transit-oriented developments with housing authorities, non-profits, religious institutions, and municipal partners in Miami-Dade and Broward Counties.

Lindsay has helped build strong relationships with local housing authorities. In 2010, she helped launch a groundbreaking pilot, community garden program at Dixie Court Apartments. This initiative has helped reduce family food budgets for residents living in the community, has served as a model

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for future developments, and has garnered the attention of federal congress members and local media alike. Both Dixie Court and the Northwest Gardens neighborhood (with the Housing Authority of the City of Fort Lauderdale) have also created new avenues for vocational training opportunities for neighborhood youth participating in the Step-Up program. Her experience also includes the first LEED Silver and first LEED for Homes Gold affordable developments in Florida, as well as the one of the first LEED for Neighborhood Development projects in the United States.

Prior to joining the A|P team, Ms. Lecour was an associate for a Seattle-based investment bank specializing in public finance, and a management consultant in the financial services and nonprofit sectors. Ms. Lecour holds an MBA from Yale School of Management and earned a BA in International Relations from Stanford University, where she studied in Santiago, Chile. For the last six years Lindsay has been serving as the Chair of the Town of Surfside's Planning and Zoning Board. She is a 12-year resident of Miami-Dade County.



Dan Wilson, Senior Vice President: Dan Wilson is responsible for formulating and executing the company's national growth platform as well as overseeing the firm's day-to-day acquisition and predevelopment activities. Much of his focus is on the origination of new multifamily developments.

Mr. Wilson has diverse real estate development experience including land acquisition, site planning, and design; sourcing of equity and debt; construction management; and leasing supervision. He has managed the development of a wide variety of mixed-use developments totaling more than 3,800 multifamily units.

Dan is a former Chairman of the ULI Multifamily Development Council for the State of Florida and is an active member of the Texas Affiliation of Affordable Housing Providers. He was named as one of six **2018 Young Leaders** by *Affordable Housing Finance* magazine. Dan was also selected by the *South Florida Business Journal* for their **40 Under 40** award which honors 40 business executives age 39 and younger for their innovation, leadership and community contributions. He holds dual B.A. degrees in Finance and Real Estate from Florida Atlantic University.



Liz Wong, Senior Vice President: Ms. Wong has over 20 years of experience overseeing finance applications to federal, state, and local governments. She specializes in housing credit applications and, to date, has been instrumental in obtaining over a \$1 billion in housing credits from Florida, Texas, North Carolina, South Carolina, Washington DC, and the US Virgin Islands. Ms. Wong's deep experience with subsidy funding processes gives A|P Communities' development team a distinct competitive advantage in the competition for housing credits and other scarce funding sources. Since 1998, Liz Wong has competed successfully to fund 108 tax credit communities for a total of 12,439 affordable housing units.

Ms. Wong is a Miami-Dade County native and resides in the City of Miami. She attended Saint John's University in Queens, New York, and majored in Accounting.

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Greg Griffith, Vice President: Greg Griffith is responsible for managing development staff and overseeing developments through site planning, design, entitlement, sourcing of equity and debt, financial closing, management of third-party professionals, construction/financial management through project completion, and stabilization.

His experience includes partnerships with housing authorities and non-profits (City of Fort Lauderdale, City of Dania Beach, City of Austin and Catholic Health Services) along with a product mix that includes new construction/rehabilitation, garden style, mid- and high-rise buildings serving families and seniors, transit-oriented, and mixed-finance developments. Greg has experience with maximizing the use of various

financing vehicles and with developments with HUD requirements, such as Rental Assistance Demonstration or RAD, HAP Contracts and HOME loans.

Prior to joining A|P Communities, Greg Griffith served as property manager for Atlantic | Pacific Management and was responsible for a portfolio of 200 residential units and 130,000 square feet of commercial space. Mr. Griffith received a degree in housing and consumer economics from the University of Georgia and his M.B.A. from the University of Miami and attended the ULI's Leadership Institute. Griffith is a 9-year resident of Miami-Dade County.



Michael Fincher, General Counsel: Mike Fincher has represented principals of A|P Communities for over 20 years, and in 2017 joined A|P full time as its General Counsel. Mr. Fincher coordinates the delivery of legal services to A|P and its subsidiaries in the various jurisdictions where it operates. Since joining he has closed on 11 LIHTC transactions for A|P Communities including mixed-financed, mixed-use developments, as well as negotiated ground lease agreements with Miami-Dade County.

He has worked at several international law firms headquartered in Atlanta, San Francisco and Miami. In addition, Mike Fincher served for a time on the legal staff of the Resolution Trust Corporation, where he coordinated real estate law activities for the Congressional Inquiry Team. Mike Fincher

obtained his juris doctorate from the University of Georgia.

Scott Kriebel, Senior Development Manager: Scott Kriebel is responsible for managing multiple developments and staff through all phases of real estate development, including underwriting, project financing, entitlement, application to state housing agencies, design/construction management, and legal partnerships with investors and joint venture developments. Mr. Kriebel works to structure deals across several financing sources including LIHTC equity, debt (including tax-exempt bonds, private placement, and conventional), HUD HAP Contracts and local assistance (including PILOT). He is currently working on predevelopment activities on two mixed-use developments in Washington, DC and in Glenn Dale, Maryland.

In addition to his activities in the Mid-Atlantic, in 2018 Scott closed the construction financing on two 9% LIHTC preservation transactions with our non-profit partner, Catholic Health Services, located in Sunny Isles Beach and in Pompano Springs, and two 9% LIHTC redevelopments with the Dania Beach Housing Authority in Dania Beach, Florida.

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Prior to joining the A|P Communities team, Mr. Kriebel was with a market-rate multifamily real estate developer and real estate sovereign wealth fund in London, England. He also worked for a multi-family LIHTC developer in Tennessee where he successfully closed financing on 608 LIHTC apartment units and 220 conventional units while sourcing both 9% and 4% LIHTCs for those transactions. Mr. Kriebel graduated with a B.A. degree from the University of Richmond and an M.Sc. from the London School of Economics.

Brian Jaffe, Development Associate: Mr. Jaffe's responsibilities involve managing all phases of the development cycle from predevelopment through stabilization. This includes entitlements, debt and equity sourcing, design, and construction management. His experience comprises using diverse financing sources including LIHTC equity, tax-exempt bonds, local government gap financing, and traditional construction and permanent loans. Mr. Jaffe is currently overseeing the construction of two affordable housing projects in South Florida and two in Texas.

Prior to joining A|P, Mr. Jaffe worked for a Miami-based affordable housing development firm where he focused on the underwriting, acquisition, and disposition of real estate investments across South Florida. Mr. Jaffe holds a Bachelor of Science in Real Estate & Entrepreneurship and a Master of Science in Finance from Florida State University.

Carine Yhap, Senior Applications Manager: Ms. Yhap manages acquisition site research and due diligence, preparation and submittal of funding applications, and assists with credit underwriting and financial closing due diligence. She specializes in housing tax credit applications in Florida and Texas.

Ms. Yhap joined A|P with over five years of property management experience. She also worked as a compliance specialist, providing compliance support, monitoring, training and reporting for a portfolio of 55 properties. She holds a Bachelor of Arts in Anthropology from the University of Florida with a minor in International Development & Humanitarian Assistance. She has been a Miami-Dade County resident for over 20 years.

Raul Lopez, Controller: Raul Lopez has over 20 years of real estate accounting experience, working with affordable and market rate developers. He has overseen the development and management accounting functions of over 8,000 units including multi-layered, mixed-finance developments in Florida, Texas, Washington DC, North Carolina, South Carolina, Georgia and the Virgin Islands.

Raul Lopez is responsible for all the accounting and financial reporting for A|P Communities, A|P Community Management and A|P Community Builders. He supervises the accounting staff and the day to day accounting functions of development and management, including cash projections, pre-development expenses, construction draws, and treasury functions across A|P Communities' entire real estate portfolio. Mr. Lopez is a Miami-Dade County native, and former reservist with the United States Army.

General Contractor: Atlantic | Pacific Community Builders, LLC

Atlantic | Pacific Community Builders (A|PCB) is a bonded and licensed Florida general contractor and an affiliate of A|P and would serve as the General Contractor on The Barclay. In 2018, the firm completed construction on the 420-unit Atlantic Cypress Creek (\$49M contract) in Broward County, and the 346-unit Atlantic Delray Beach (\$41M contract) in Palm Beach County, both garden-style, market rate communities developed by A|P Companies. Additional completed market-rate multi-family developments include Grande Palms at Tradition, a 252-unit, garden-

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style, \$20M rental community in Port St. Lucie, Florida, completed in 2015, and Atlantic Doral, a 360-unit, \$34.5M garden-style development in Doral (Miami) completed in 2014. Both are Class A apartment communities developed by A|P Companies.

A|PCB is also an experienced affordable housing general contractor, a Miami-Dade County Section 3 certified firm and a strong advocate of Vicinity Hiring and contracting with local and D/M/WBE and small business firms. In the last five years, A|PCB has completed nearly 2,100 affordable, workforce and market-rate units and currently has 920 mixed-income units under construction. In addition, A|PCB is working on pre-construction activities on the following awarded projects: Residences at Dr. King Boulevard (120 units) in Miami, Suncrest Court (116 units) in Fort Lauderdale, Northside Transit Village II (3rd phase of the NTV project with 180 units) in Miami and Block 45, a mixed-use – market rate, workforce and affordable housing project with more than 600 units in Overtown.



Joseph A. Roig, Vice President of Construction: Mr. Roig joined A|P in 2011 bringing over 20 years of construction management and development experience to the firm. Mr. Roig is a State of Florida licensed General Contractor and the qualifier of A|PCB. He is responsible for construction oversight for all A|PCB projects.

Prior to working with A|P Companies, Mr. Roig served as Vice President of Construction for Taubco, a South Florida commercial real estate development company. During his time at Taubco, he was responsible for the implementation of all development and construction within the Taubco portfolio of properties. During his last two years with Taubco, he completed 200,000 SF of mixed-use, retail and office development, including a 400-space garage. Mr. Roig held a similar position at Lennar Developers (NYSE: LEN), as Director of Construction, managing the construction of Lennar's high-rise multifamily developments. During his time at Lennar, he was responsible for construction of the 360° Condominiums & Marina project, a \$104M project in North Bay Village consisting of 414 condominium units including waterfront townhomes, and a marina; and The Colonnade and Park Towers condominium projects, a \$102M, 296-unit condominium located in Miami.

Prior to his tenure at Lennar, Mr. Roig spent 11 years with "best in class" general contractors, working in all phases of construction. He is a 48-year resident of Miami-Dade County.



Anthony Grondin, LEED A.P., Director of Operations: Mr. Grondin joined A|P in 2011 bringing over 16 years of construction management experience to the firm. Mr. Grondin's role at A|PCB includes the oversight of all field operations and staff, as well as all purchasing activity. Prior to joining the A|P team, Mr. Grondin served as a Construction Manager for Lennar Homes (NYSE: LEN) where he oversaw the construction of 104 units at the St. Moritz condominium in Doral, Florida. He was also responsible for managing the daily activities of Lennar Developer's high-rise multifamily developments.

Mr. Grondin has a degree in Construction Management from Florida International University (FIU). While attending FIU he interned with Turner Construction and transitioned to full time employee, working in all aspects of the construction field. He is a LEED accredited professional for building design and construction, a level one post tension field specialist from the Post Tensioning Institute and holds a 30-hour OSHA certification. Mr. Grondin is a Miami-Dade County native.

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Laura Van Gorden, Project Executive: Ms. Van Gorden joined A|P with 14 years of diverse commercial construction and real estate experience. Ms. Van Gorden provides financial and administrative oversight for A|P multi-family construction projects in South Florida.

Prior to joining A|P, Ms. Van Gorden spent 10 years with the Lennar companies (NYSE: LEN - including Rialto Capital, Lennar Commercial and Lennar Developers), working on retail and condominium developments, CMBS, distressed debt and asset management. Most recently, Ms. Van Gorden was a Senior Vice President at Rialto Capital overseeing the CMBS Collateral Surveillance platform.

Ms. Van Gorden received a Master of Science in Construction Management from Florida International University and a Bachelor of Arts from the University of Wisconsin. She holds a 30-hour OSHA certification and serves as the Executive Vice President and board member of the Junior League of Miami. She is a 15-year resident of Miami-Dade County.

Monique Poole, Compliance Coordinator: Ms. Poole works with the executive team and project site teams to plan, implement and track all regulatory requirements on affordable housing projects including certified payroll, Section 3, Davis Bacon and SBE/DBE/MBE/WBE certifications. She works with the pre-construction team to assure all qualified bidders have the appropriate certifications and are aware of the requirements for the project. Ms. Poole also assists newly qualified companies with obtaining minority certifications from the local municipality.

Ms. Poole graduated from Miami Northwestern Senior High School, and attended college at Jefferson Community College in Louisville, KY. She enjoys giving back to the community she grew up in (Liberty City/Overtown) by providing food, clean clothes, toiletries and hope to the homeless and residents in the area.

Management Agent: Atlantic | Pacific Community Management

Over the course of several decades in the real estate business, A|P Companies has become particularly well-known not only for their development capabilities, but for their exemplary property leasing and management expertise. Since the mid 1970's, A|P has purchased, developed, leased, and managed residential and commercial properties throughout the United States and currently manages more than 40,800 residential units (with over 17,000 units owned), and more than 500,000 square feet of commercial space.

A|P Management is the management platform under A|P Companies. A|P Management delivers first-class services and oversight to a variety of condominium and multifamily communities. The company is an Accredited Management Organization that places an emphasis on extensive and continuous training and education for its employees. Property Managers work directly with residents, unit owners, contractors, attorneys, accountants, and more to ensure that all parties' needs are met in an adequate and timely manner.

With over 1,200 employees, A|P Management offers a broad spectrum of real estate services to private and institutional residential owners as well as developers of office and retail properties throughout the Southeast U.S. and California. Their team of seasoned professionals with multi-disciplinary backgrounds has decades of residential and commercial real estate experience including legal, financial, accounting and managerial. Human resources, insurance, accounting, compliance, reporting, and asset management are centralized, increasing transparency, maximizing efficiency, reducing operating costs, and enhancing the asset value of our portfolio.

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Atlantic | Pacific Community Management, LLC is an affiliate of A | P Management formed to provide on-site management, marketing, administrative, full-charge accounting, financial reporting, asset management evaluation, and compliance monitoring for A | P Communities. A | P Community Management manages and performs compliance for properties with a variety of public funding sources, including: 9% and 4% housing credits; local, county and state (including FHFC) tax-exempt bonds; FHFC SAIL and SAIL ELI loans; HUD NSP, HOME and HAP contracts; Miami-Dade County Building Better Communities General Obligation Bonds, and Surtax loans.

In addition, development managers at A | P Communities and our in-house general contractor, A | P Community Builders, work hand-in-hand with A | P Community Management staff to ensure successful planning and operation of the properties from the pre-development design stage through conversion and stabilization. This teamwork ensures a holistic and successful transfer of the property to management. A | P Community Management also works with local businesses, agencies and non-profits to provide a wide variety of on-site resident programs at no cost to the residents.



Claudia Ortiz, ARM, Director of Operations: As the Director of Operations for A | P Community Management, Ms. Ortiz is responsible for the overall strategy, management, and profitability of the affordable housing portfolio consisting of 25 LIHTC assets and over 2,760 units in Florida, Texas, and Washington DC ranging from 28 units to 220 units. She manages client relationships and oversees all aspects of operations including overall performance, budgets, and debt-service testing for lease ups. She supervises regional managers and on-site personnel and oversees training and employee development.

Claudia Ortiz has over 13 years of property management experience in the multifamily industry, including direct oversight of lease-ups, acquisitions, renovations, repositions, and financially and physically stressed assets. She is a CPM candidate through the Institute of Real Estate Management and earned the Accredited Residential Manager certification. She is a member of the Southeast Florida Apartment Association and National Apartment Association.



Lynda Lusby, Regional Manager: As Regional Manager for A | P Community Management, she is responsible for the overall strategy, management, and profitability of current and future affordable housing developments. Lynda Lusby currently oversees six Florida mixed-finance, multi-family LIHTC rental housing developments. Financing for these developments include conventional loans, LIHTC, tax-exempt bonds, HOME, NSP, Surtax program funds and HAP contracts.

Prior to joining A | P Community Management, Ms. Lusby accrued 15 years of onsite affordable housing experience that included Senior Management of multiple LIHTC assets. She gained her knowledge of HUD regulations and procedures as a Hope VI Case Management Specialist where she was responsible for tenant relations, services and relocation.

Ms. Lusby is accredited as a Public Housing Specialist, Section 8 Regulatory Management and LIHTC Compliance. She graduated from Polk College with a degree in Business Management. Ms. Lusby is an active member of SEFAA from 2006-2013, two of the three properties nominated for Property of the Year in 2013 in the affordable housing category were directly under Lynda's report.

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Jonathan Del Sol, Compliance Manager: Jonathan Del Sol is responsible for the compliance of all projects under management. Jonathan's career in tax credit compliance started in 2006 with a portfolio that grew to over 80 properties during his tenure with a Miami-based asset management company. He joined A|P Community Management in 2015 and performs tax credit compliance management duties for A|P's entire multi-state LIHTC portfolio. He works with key external vendors and collaborates with development and management staff on compliance requirements ensuring that all tax credit units adhere to the regulatory agreements. This includes tax-exempt bonds, HOME, NSP, as well as any other federal, state, and local land use restrictions. He manages the day-to-day compliance operations including file review, calculation of rents, audit preparation, utility allowance studies and analysis, training, and compliance reporting.

Historic Preservation: R.J. Heisenbottle Architects

Established in 1987, R.J. Heisenbottle Architects (RJHA) is an architecture, planning, interior design and historic preservation firm located in Coral Gables, Florida. The principal of the firm, Richard J. Heisenbottle, FAIA, as well as key employees, have an impressive record of experience in a wide range of projects in both the public and private sectors. Through the years, the firm has been known as a leader in quality, high profile, award-winning projects, with an emphasis on corporate, governmental and institutional clients. Projects range from complex historic preservation to educational facilities, office buildings, theaters, multi-family residential buildings and commercial interiors. The firm has worked on over 35 buildings listed on the National Register of Historic Places.

RJHA is well known in the State of Florida for the restoration of some of the area's oldest and most prestigious landmarks including the Vizcaya Museum and Gardens, Gusman Center for the Performing Arts, Colony Theater, Freedom Tower, City of Miami City Hall, Trinity Episcopal Cathedral and Miami Edison Middle School. **Throughout the years, RJHA has become well known for successful large-scale historic preservation** and adaptive use projects. They see historic preservation as a viable tool for community revitalization. Their work exemplifies sustainability through their commitment to the conservation of existing cultural and historical resources. RJHA respects these renewable resources by restoring special architectural features and details that make them a unique part of our urban fabric and create a sense of place in the community. Their unique approach has garnered the firm numerous preservation and design awards for Excellence in Architecture from the National Trust for Historic Preservation, Florida Trust for Historic Preservation, in addition to the American Institute of Architects Florida and Miami Chapters and the Dade Heritage Trust.



Richard J. Heisenbottle, FAIA, President: Mr. Heisenbottle is a Florida registered architect and would serve as the Historic Preservation Architect for The Barclay. **Richard is very familiar with The Barclay having worked with the City of Miami Beach on development of Design Criteria drawings for the redevelopment of The Barclays as a workforce housing project in 2016.**

He is the founding Principal of RJHA with over forty-seven years of experience in all aspects of architecture and interior design with a specialty in historic preservation and theater arts projects. Since founding R.J. Heisenbottle Architects, Mr. Heisenbottle has through both his business and personal activities consistently been at the forefront of preservation efforts throughout the State of Florida. In 2003, Mr. Heisenbottle was accorded the highest honor American Institute of Architects (AIA) Miami awards, the Silver

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Medal for Design. He has served as President of AIA Miami and Dade Heritage Trust, the area's largest historic preservation organization. He also served as a member of the City of Miami's Historic Preservation Board and Chairman of the City of Coral Gables Historic Preservation Board.

Architect: Corwil Architects, Inc.

Corwil Architects, located in Coral Gables, is licensed to provide professional architectural services in Miami-Dade County and has vast knowledge and experience working in South Florida. Established in 1992, Corwil Architects has established itself as a highly reputable, innovative, and cost-conscious design firm. The firm will work with the development team on the The Barclay Workforce Housing Project, participate in planning meetings, and execute all the drawings required through permitting and construction.

Since inception, they have designed over 52 multifamily and mixed-use residential projects across the public and the private sectors. While their experience is diverse, ranging from large mixed-use projects to private residences, new office buildings to tenant improvements, restaurants to fire stations, Corwil's portfolio is primarily comprised of affordable multifamily residential and mixed-use developments.

The company is thoroughly familiar with the Florida Building Code and other pertinent regulations of South Florida authorities having jurisdiction. Within the past ten years Corwil has successfully designed over 7,000 residential units of which over 4,000 have been affordable multifamily developments, including the award-winning, LEED For Homes Gold certified East Village in Davie, Florida. Corwil has been the architect of record on over a dozen deals for the A | P team, below are the most recent developments.

Development Name	Description	Date of Completion	Owner's Representative*
Audrey M. Edmonson Transit Village II	100-unit high rise, amenities, retail, parking garage	10-31-2017	Seventh Avenue II, Ltd.
Island Living Apartments	70-unit high rise, amenities, retail, parking garage	03-08-2016	Island Living Apartments, Ltd.
Northside Transit Village I	100-unit high rise, amenities, retail, parking garage	09-28-2015	Northside Property I, Ltd.
Northside Transit Village II	180-unit high rise, amenities, retail, parking garage	Pre-Development	Northside Property II, Ltd.
Northside Transit Village IV	120-unit high rise, amenities, retail, parking garage	Under construction	Northside Property IV, Ltd.
Residences at Dr. King Boulevard	120-unit high rise, amenities, retail, parking garage	Pre-Development	Residences At Dr. King Boulevard, Ltd.
Saratoga Crossings I	128-unit garden-style, amenities, surface parking	Under construction	Saratoga Crossings, Ltd.
Saratoga Crossings II	44-unit garden-style, amenities, surface parking	Under construction	Saratoga Crossings II, Ltd.
Washington Square	21-unit garden rehab, 1 SF rehab, 67-unit new high-rise	05-01-2015	Green Turnkey Plaza, Ltd.

***Owner's contact is Kenneth Naylor, Chief Operating Officer for A | P Communities.**

Corwil Architects is managed and operated by principals, Alberto M. Cordoves and Ena M. Cordoves. From the preliminary design phase through the development of the construction documents, all design concepts will be directly formulated by one of the firm's principals and a

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senior project manager. In addition, all Owner/Client coordination will be directly performed by the principals.



Alberto M. Cordoves, Principal: Mr. Cordoves, President and founding member of Corwil, brings over thirty years of experience in the design, architectural and construction industry. He manages all client relations, assists in the coordination of programmatic design requirements and with the selection and specification of systems and the overall design compliance. Albert Cordoves also assists the construction administration team, while providing experience and insight in the day-to-day operations of the firm.

Alberto Cordoves received his bachelor's in Architecture from the University of Miami, immediately thereafter he started his career in architecture as a designer and on-site Project Manager. He is a member of the Latin Builders Association and the Construction Specifications Institute.



Ena M. Cordoves, Vice President: Mrs. Cordoves was a member of the US Army and served active duty for six years. Upon honorable separation from the service, she attended the University of Miami and graduated with a Bachelor of Science in Engineering. Since graduation, Ena Cordoves has been working with Corwil Architects. She is a member of the Realtor Association of Miami-Dade County and the National Fire Protection Association.

Green Building Consultant: Abney+Abney Green Solutions

Award winning Abney+Abney Green Solutions ("AbneyGreen") guides project teams through the green building certification process. Through practical application and comprehensive knowledge. The firm delivers sustainable development consulting through a simple framework that is tailored to meet the needs of each project. With over a decade in the field, AbneyGreen guides owners, developers, architects and contractors in all aspects of the green building process. The A|P team and AbneyGreen have worked on several LEED or ICC 700 National Green Building certified developments.

The A|P team and AbneyGreen have worked on several LEED certified affordable housing developments, see below.

- Audrey M. Edmonson Transit Village, City of Miami – USGBC LEED for Homes Mid-Rise Silver
- Audrey M. Edmonson Transit Village II – ICC 700 NGBS Silver
- Northside Transit Village, Unincorporated Miami-Dade County – USGBC LEED Silver
- Northwest Gardens I - V Apartments, Fort Lauderdale – USGBC LEED for Homes Gold
- Dr. Kennedy Homes, Fort Lauderdale – USGBC LEED for Homes and LEED for Homes Mid-rise Gold
- East Village Apartments, Davie – USGBC LEED for Homes Gold

Kyle M. Abney, Principal, Vice President: Kyle Abney, is one of the most highly respected "built-environment" experts in the southeast. A **LEED Accredited Professional**, certified Green Globes professional and licensed general contractor, he has Green-Certified over 15,000 residential units. He is an active member of the US Green Building Council having recently served as Vice-Chair of the Florida Chapter (2016-2018). Mr. Kyle Abney graduated with a B.A. in Architectural Design and Master of Building Construction with a Concentration in Sustainable Construction from the University of Florida.

Tab 5 – Organizational Plan / Personnel

Land Use Counsel: Akerman LLP

With more than 70 lawyers and business professionals across 25 offices, Akerman is ranked among the top law firms in the United States and is recognized by Financial Times as among the most forward-thinking law firms in the industry. Akerman is known for helping clients achieve their most important business objectives in the financial services, real estate, and other dynamic sectors.



Neisen Kasdin, Miami Office Managing Partner: Neisen Kasdin serves as managing partner of Akerman's Miami office. A former mayor of Miami Beach and leader in the revitalization of South Beach, he brings extensive civic experience to his work on urban revitalization and the development of complex, large-scale, multi-use projects. Respected as a leader in urban development, he serves as vice chair of the board of directors for the Miami Downtown Development Authority and was responsible for leading the creation of Miami's Downtown Master Plan. Many of his clients' projects – from Brickell City Centre to Miami's Design District and the Faena District –

have been groundbreaking, transforming Miami's urban spaces with a blend of retail, office, and residential properties. In addition to large-scale projects, Mr. Kasdin has represented clients in developments in emerging Miami neighborhoods such as Little Haiti and Wynwood. Mr. Kasdin is recognized by Chambers USA and The Legal 500 as a leading land use and zoning lawyer in Florida.

Corporate Counsel: Stearns Weaver Miller Weissler Alhadeff & Sitterson, PA

Stearns Weaver Miller Weissler Alhadeff & Sitterson ("Stearns") is a full-service law firm serving clients throughout Florida, nationwide and internationally. With offices in Miami, Coral Gables, Fort Lauderdale, Tampa and Tallahassee, they offer multidisciplinary solutions with a focus on land development, zoning, real estate and tax, trusts & estates, environmental and government affairs, litigation & dispute resolution, bankruptcy & creditors' rights, corporate & securities, labor & employment. Since 2013, Stearns has represented A|P Communities in numerous affordable housing transactions and has worked with key staff at A|P for over 20 years.

Brian McDonough, Shareholder: Mr. McDonough is a Shareholder in the Real Estate Department. He is a member of the firm's Board of Directors and Executive Committee, and he is the Chairperson of the firm's Affordable Housing and Tax Credit Practice Group. He represents developers using government loan programs, community housing development organizations and 501(c)(3) organizations using qualified



501(c)(3) bonds for multifamily housing developments. Mr. McDonough assists clients with matters involving multifamily housing, low income housing tax credits, and loan programs implemented by HUD. Mr. McDonough also represents lenders in all types of Real Estate loans and in particular loans related to affordable housing. Mr. McDonough is a frequent lecturer and panelist on

current matters affecting affordable housing. In addition, Mr. McDonough has authored several articles on matters affecting affordable housing.

Special Counsel: Donna Blanton

Since 2006, Radey Law has successfully advised and represented A|P Communities in all matters related to the Florida Housing Finance Corporation funding applications. Their scope included research and writing Administrative Appeals and Petitions for Rule Waivers.

Tab 5 – Organizational Plan / Personnel



Donna E. Blanton, Shareholder: Ms. Blanton practices in the areas of administrative law and appellate advocacy. Ms. Blanton is Board Certified by The Florida Bar in the area of State and Federal Government and Administrative Practice.

Ms. Blanton has written a number of scholarly articles about Florida administrative procedure, several of which have been cited by Florida appellate courts. She graduated with high honors from the Florida State University of College of Law, where she was editor-in-chief of the law review.

She earned her undergraduate degree in journalism, with honors, from the University of Florida. Ms. Blanton was named to Florida Trend Magazine's annual listing of Florida Legal Elite in 2005, 2006, 2007, and 2009. She also was named in Florida Super Lawyers in 2006, 2007, 2008, 2009, 2010, and 2011, and recognized in the 2008, 2010, and 2011 editions of The Best Lawyers in America in the area of Administrative Law. 2008, 2010, and 2011 editions of The Best Lawyers in America in the area of Administrative Law.

Accountant: Tidwell Group

Tidwell has provided LIHTC, accounting and tax consulting services for all the affordable housing properties in A|P Communities portfolio. The firm and its professionals are familiar with affordable housing tax credits, bond and conventional financing, HUD compliance and reporting, along with numerous other areas of the industry and fully understand the reporting obligations of mixed finance transactions. Clients served include publicly held Fortune 100 companies, non-profit housing organizations, and developers across the United States.



Christopher N. Thomas, CPA, Managing Partner: Chris Thomas is the Office Managing Partner in Tidwell Group's Austin office. With over 20 years of public accounting experience, Mr. Thomas is responsible for federal and state compliance with partnership tax allocation requirements; tax planning and tax compliance for partnerships and corporations, with a focus on low-income housing tax credit projects and real estate developers.

Chris Thomas is a graduate of the University of Florida with a B.S. in Accounting and a M.S. in Taxation. He also served as a member of the University Of Texas McCombs School Of Business Advisory Council for the Department of Accounting

APC KEY STAFF EXPERIENCE

Development Name	Project Address	# of Units	Type & Source of Finance & Subsidy	Capital Raised	Market	Set-Asides AMF%	Year Built
1 PROSPECT PARK	5500 NW 31st Avenue Ft. Lauderdale, FL 33309 Broward County	125	Reilly Mortgage Group (Broward County MFRB) County HOME Loan 4% Housing Credits, John Hancock	\$ 6,000,000 \$ 700,000 \$ 3,456,836	Family	123 units @ 60% AMI 2 units @ 50% AMI	1999
2 TINSLEY COVE	12535 Tinsley Circle Tampa, FL 33612 Hillsborough County	172	Neighborhood Lending Partners, Inc. County SHIP Loan 9% Housing Credits, Lendlease	\$ 3,800,000 \$ 671,000 \$ 7,546,000	Family	26 units @ 35% AMI 146 units @ 60% AMI	1999
3 COLLEGE PARK	6450 College Park Circle Naples, FL 34104 Collier County	210	American Property Financing, Inc./Freddie MAC (FHFC Bonds) American Property Financing, Inc./Freddie MAC 4% Housing Credits, Richman Group	\$ 9,900,000 \$ 2,500,000 \$ 4,238,876	Family	42 units @ 50% AMI 168 units @ 60% AMI	1999
4 JUBILEE COURTYARDS <i>Join Venture with Jubilee CDC, a non-profit corporation</i>	119 Redland Road Florida City, FL 33034 Miami-Dade County	98	Charter/MAC (Dade County MFRB) County SHIP Loan 4% Housing Credits, Related Capital Company	\$ 4,150,000 \$ 900,000 \$ 2,858,000	Family	98 Units at 60% AMI	1999
5 OAKS TRAIL	1300 No. Oak Street Arcadia, FL 34266 Desoto County	123	MuniMae/MMA Financial (Fannie Mae DUS) County SHIP Loan 9% Housing Credits, Related Capital Company	\$ 1,550,000 \$ 462,500 \$ 7,202,000	Family	19 units @ 35% AMI 104 @ 60% AMI	2000
6 WESTVIEW GARDEN	2351 NW 119th Street Miami, FL 33167 Miami-Dade County	160	MuniMae/MMA Financial (Fannie Mae DUS) County SHIP Loan 9% Housing Credits, Related Capital Company	\$ 1,900,000 \$ 1,000,000 \$ 8,989,000	Elderly	24 units @ 35% AMI 136 units @ 60% AMI	2001
7 DOUGLAS POINTE	3840 NW 183rd Street Miami, FL 33055 Miami-Dade County	176	Charter/MAC (Dade County MFRB) County Loans FHFC State Apartment Incentive Loan 4% Housing Credits, Related Capital Company	\$ 7,100,000 \$ 1,250,000 \$ 1,825,000 \$ 5,015,000	Family	18 units @ 33% AMI 158 units @ 60% AMI	2001
8 SUMMERLAKE	5941 Summerlake Drive Davie, FL 33314 Broward County	108	Charter/MAC (Broward County MFRB) County SHIP Loan FHFC State Apartment Incentive Loan 4% Housing Credits, Related Capital Company	\$ 5,600,000 \$ 450,000 \$ 1,100,000 \$ 2,690,000	Family	17 units @ 25% AMI 91 units @ 60%	2001
9 CAMERON CREEK	1720 NW 3rd Terrace Florida City, FL 33034 Miami-Dade County	148	Neighborhood Lending of South Florida, Inc. FHFC State Apartment Incentive Loan County SHIP Loan County SURTAX Loan 9% Housing Credits, Related Capital Company	\$ 2,800,000 \$ 1,125,000 \$ 700,000 \$ 500,000 \$ 6,512,000	Family	24 units @ 33% AMI 21 units @ 50% AMI 103 units @ 60% AMI	2002
10 ORCHARD PARK	15th Street SE, 3rd Ave SE Ruskin, FL 33570 Hillsborough County	84	Neighborhood Lending Partners (Permanent) FHFC State Apartment Incentive Loan County SHIP Loan County SHIP/CDFI Loan 9% Housing Credits, Related Capital Company	\$ 2,000,000 \$ 870,000 \$ 700,000 \$ 600,000 \$ 2,688,000	Farmworker	13 units @ 30% AMI 4 units @ 50% AMI 67 units @ 60% AMI	2002
11 WILLOW CREEK	6801 Willow Creek Circle North Port, FL 34287 Sarasota County	120	Neighborhood Lending Partners, Inc. FHFC State Apartment Incentive Loan 9% Housing Credits, Related Capital Company	\$ 2,900,000 \$ 1,225,000 \$ 3,985,000	Elderly	18 units @ 30% AMI 102 units @ 60% AMI	2002
12 JACARANDA TRAIL	Hargrave Street Arcadia, FL 34266 DeSoto County	50	Neighborhood Lending Partners of West FL, Inc. FHFC State Apartment Incentive Loan 9% Housing Credits, Related Capital Company	\$ 450,000 \$ 519,000 \$ 3,042,000	Family	8 units @ 45% AMI 42 units @ 60% AMI	2002
13 SANTA CLARA <i>On the Santa Clara Metrorail Station</i>	2000 NW 12th Avenue Miami, FL 33142 Miami-Dade County 01-0100-000-0022	208	Neighborhood Lending Partner of So. FL, Inc. County HOME Loan County SURTAX Loan City HOME Loan 9% Housing Credits, Related Capital Company	\$ 4,100,000 \$ 1,750,000 \$ 250,000 \$ 750,000 \$ 12,000,000	Family	32 units @ 33% AMI 31 units @ 50% AMI 145 units @ 60% AMI	2004

APC KEY STAFF EXPERIENCE

Development Name	Project Address	# of Units	Type & Source of Finance & Subsidy	Capital Raised	Market	Set-Asides AMF%	Year Built
14 COUNTRY MANOR	315 State Road 62 Bowling Green, FL 33834 Hardee County	120	Neighborhood Lending Partners FHFC State Apartment Incentive Loan County Grant 9% Housing Credits, Related Capital Company	\$ 979,259 \$ 1,930,000 \$ 10,000 \$ 7,503,000	Farmworker	18 units @ 30% AMI 102 units @ 60% AMI	2004
15 WILLOW CREEK II	6551 Willow Creek Circle North Port, FL 34287 Sarasota County	104	Charter/MAC (Lee County MFRB) FHFC State Apartment Incentive Loan County SHIP/CDFI Loan 4% Housing Credits, Related Capital Company	\$ 4,130,000 \$ 800,000 \$ 600,000 \$ 1,970,000	Elderly	9 units @ 30% AMI 104 units @ 60% AMI	2003
16 HERON POND	1230 Village Lakes Blvd Lehigh Acres, FL 33916 Lee County	156	Regions Bank (Lee County MFRB) FHFC State Apartment Incentive Loan 4% Housing Credits, Guilford Capital	\$ 6,500,000 \$ 1,500,000 \$ 2,848,000	Elderly	7 units @ 35% AMI 149 units @ 60% AMI	2003
17 ALLAPATTAH GARDENS <i>On the Allapattah Metrorail Station Joint venture with New Century Development Corp., a non-profit</i>	3400 NW 11th Place Miami, FL 33127 Miami-Dade County	128	Charter/MAC (Dade County MFRB) FHFC State Apartment Incentive Loan City of Miami HOME Loan County HODAG & SURTAX Loan 4% Housing Credits, Related Capital Company	\$ 6,400,000 \$ 1,500,000 \$ 400,000 \$ 1,250,000 \$ 3,472,000	Family	6 units @ 35% AMI 122 units @ 60% AMI	2004
18 MERIDIAN WEST <i>Florida Keys (Lower Keys)</i>	6725 Shrimp Road Key West, FL 33040 Monroe County	102	Neighborhood Lending Partners FHFC State Apartment Incentive Loan County CDFI Loan Monroe County Land Authority County SHIP Loan 9% Housing Credits, Related Capital Company	\$ 3,800,000 \$ 2,000,000 \$ 500,000 \$ 1,500,000 \$ 75,000 \$ 8,210,000	Family	16 units @ 30% AMI 86 units @ 60% AMI	2004
19 SONRISE VILLAS <i>Joint ventures with Hope Properties, a non-profit</i>	New York Avenue Fellsmere, FL 32948 Indian River County	160	Neighborhood Lending Partners, Inc. FHFC State Apartment Incentive Loan Federal Home Loan Bank of Atlanta AHP Loan 9% Housing Credits, Alliant Asset Management	\$ 3,500,000 \$ 1,500,000 \$ 500,000 \$ 8,799,187	Farmworker	20 units @ 40% AMI 140 units @ 50% AMI	2004
20 TUSCANY LAKES	60th Ave & Mendoza Rd Ellenton, FL 34222 Manatee County	348	Bank fo America LOC (FHFC MFRB) Bank of America 4% Housing Credits, Related Capital Company	\$ 16,700,000 \$ 1,500,000 \$ 6,819,000	Family	348 units @ 60% AMI	2005
21 GOLF VIEW GARDENS	7300 NW 30th Place Sunrise, FL 33322 Broward County	160	Berkadia Commercial Mtg (Broward County MFRB) FHFC State Apartment Incentive Loan County HOME Loan County SHIP Loan 4% Housing Credits, Guilford Capital	\$ 8,850,000 \$ 2,000,000 \$ 194,043 \$ 500,000 \$ 3,444,000	Elderly	10 units @ 35% AMI 150 units @ 60% AMI	2005
22 VILLAS AT LAKE SMART <i>Joint Venture with Florence Villa CDC, a non-profit</i>	4225 Vista de Lago Dr. Winter Haven, FL 33881 Polk County	220	HUD Risk Sharing Program / Wachovia [LC] (MFRB) FHFC State Apartment Incentive Loan ELI Loan SHIP/CDFI Loan Polk County Hurricane Housing Rental Program Loan City Grant 4% Housing Credits, Alliant Asset Management	\$ 8,975,000 \$ 4,125,000 \$ 649,500 \$ 129,887 \$ 150,000 \$ 4,136,355	Family	11 units @ 50% AMI 209 units @ 60% AMI	2003
23 LAKE MIRROR TOWER <i>(Historic Rehabilitation)</i>	128 So Massachusetts Ave Lakeland, FL 33801 Polk County	76	Neighborhood Lending Partners City of Lakeland Historic Tax Credits, Guilford Capital	\$ 4,000,000 \$ 4,850,000 \$ 1,876,056	Market Rate	Market Rate	2005
24 SANTA CLARA II <i>On the Santa Clara Metrorail Station</i>	1250 NW 21st Street Miami, FL 33142 Miami-Dade County	204	Neighborhood Lending Partner of So. FL, Inc. County SURTAX Loan 9% Housing Credits, Related Capital Company	\$ 6,500,000 \$ 3,160,000 \$ 19,115,000	Family Youths Aging Out of Foster Care	27 units @ 30% AMI 177 units @ 60% AMI	2005
25 JACARANDA TRAIL II	Hargrave Street Arcadia, FL 34266 DeSoto County	50	Neighborhood Lending Partners of West Florida, Inc. DeSoto County Hurricane Housing Rental Program Loan Desoto County Grant	\$ 725,000 \$ 225,000 \$ 20,000	Family	5 units @ 30% AMI 45 units @ 60% AMI	2007

APC KEY STAFF EXPERIENCE

Development Name	Project Address	# of Units	Type & Source of Finance & Subsidy	Capital Raised	Market	Set-Asides AMI%	Year Built
			9% Housing Credits, Related Capital Company	\$ 4,099,000			
26 CHRISTINE COVE <i>Joint Venture with Urban Core Enterprises, a non-profit</i>	3730 Soutel Drive Jacksonville, FL 32208 Duval County	96	California Bank & Trust (Duval County MFRB) FHFC State Apartment Incentive Loan Duval County Loan Jacksonville Electric Authority Loan 4% Housing Credits, AIG/Sunamerica	\$ 6,000,000 \$ 4,000,000 \$ 1,000,000 \$ 130,867 \$ 3,693,000	Elderly	96 units @ 60% AMI	2007
27 COUNTRY WALK	250 Maxwell Drive Wauchula, FL 33873 Hardee County	64	Bank of America (FHFC MFRB) FHFC Rental Recovery Loan Program 4% Housing Credits, Richman Group	\$ 5,200,000 \$ 5,800,000 \$ 3,974,000	Family	16 units @ 45% AMI 48 units @ 60% AMI	2007
28 BELL RIDGE II	4932 Bell Ridge Lane Pace, FL 32571 Santa Rosa County	48	Bank of America (FHFC MFRB) FHFC Rental Recovery Loan Program FHFC Supplemental Loan Santa Rosa Hurricane Housing Rental Program Loan 4% Housing Credits, Richman Group	\$ 4,750,000 \$ 4,100,000 \$ 600,000 \$ 300,000 \$ 2,815,000	Family	12 units @ 35% AMI 36 units @ 60% AMI	2007
29 MAGNOLIA CROSSING	4312 Sally Street Pace, FL 32571 Santa Rosa County	56	Bank of America (FHFC MFRB) FHFC Rental Recovery Loan Program Santa Rosa Hurricane Housing Rental Program Loan 4% Housing Credits, Richman Group	\$ 5,750,000 \$ 5,700,000 \$ 300,000 \$ 3,118,000	Family	14 units @ 35% AMI 42 units @ 60% AMI	2007
30 SONRISE VILLAS II <i>Joint ventures with Hope Properties, a non-profit</i>	70 Sonrise Place Fellsmere, FL 32948 Indian River County	80	Neighborhood Lending Partners of West Florida, Inc 9% Housing Credits, Alliant Asset Management	\$ 5,496,639 \$ 8,575,285	Farmworker	80 units @ 60% AMI	2007
31 CRESTVIEW PARK	2903 Lake Trafford Road Immokalee, FL 34142 Collier County	208	PNC Bank 9% Housing Credits, PNC	\$ 13,000,000 \$ 12,413,759	Family	117 units @ 50% AMI 91 units @ 60%	2007
32 ARBOR CREST	On Cleveland St & King St. Quincy, FL 32351 Gadsden County	120	Neighborhood Lending Partners of West Florida, Inc. 9% Housing Credits, Richman Group	\$ 8,600,000 \$ 6,674,000	Family	12 units @ 30% AMI 108 units @ 60%	2006
33 VALENCIA GARDEN	635 South 5th Avenue Wauchula, FL Hardee County	104	Neighborhood Lending Partners of West Florida, Inc. CDFI Loan 9% Housing Credits, Richman Group	\$ 2,775,000 \$ 260,000 \$ 9,847,000	Family	8 units @ 30% AMI 96 units @ 50% AMI	2007
34 ROYALTON <i>(Historic Rehabilitation) Joint Venture with Carrfour Supportive Housing, non-profit</i>	131 SE 1 st Street Miami, FL 33130 Miami-Dade County	100	Wachovia FHFC State Apartment Incentive Loan County SURTAX Loan HOME County/City HUD Shelter Plus Care HUD Homeless Housing Assistance Grant 9% Housing Credits, Wachovia	\$ 4,750,000 \$ 3,000,000 \$ 2,250,000 \$ 2,330,000 \$ 2,000,000 \$ 750,000 \$ 9,674,413	Formerly Homeless	16 units @ 30% AMI 84 units @ 60% AMI 80 Units-Homeless	2008
35 ALABASTER GARDENS <i>Joint Venture with Circle, Inc., a non-profit</i>	929 Massachussettes Ave. Pensacola, FL 32505 Escambia County	147	California Bank & Trust (FHFC MFRB) FHFC State Apartment Incentive Loan Escambia County Hurricane Housing Rental Loan 4% Housing Credits, AIG/Sunamerica	\$ 9,000,000 \$ 4,000,000 \$ 2,000,000 \$ 5,089,590	Elderly	147 units @ 60% AMI	2007
36 BELL RIDGE	4500 Pace Lane Pace, FL 32571 Santa Rosa County	122	Bank of America Santa Rosa Hurricane Housing Rental Program Loan 9% Housing Credits, Richman Group	\$ 5,600,000 \$ 1,400,000 \$ 9,281,000	Family	122 units @ 60% AMI	2007
37 ST. LUKE'S LIFE CENTER <i>Joint venture with St. Luke's Ministries, Inc., non-profit</i>	909 Quincy Street Lakeland, FL 33815 Polk County	150	Neighborhood Lending Partners of West Florida, Inc Polk County Hurricane Housing Rental Program 9% Housing Credits, Richman Group	\$ 3,500,000 \$ 1,502,763 \$ 14,807,000	Elderly	27 units @ 30% AMI 123 units @ 60% AMI	2007

APC KEY STAFF EXPERIENCE

Development Name	Project Address	# of Units	Type & Source of Finance & Subsidy	Capital Raised	Market	Set-Asides AMF%	Year Built
38 AMBER GARDEN <i>APC acquired GP interest in 2019</i>	1320 NW 24th Street Miami, FL 33142 Miami-Dade County	110	Neighborhood Lending Partners of SO Florida, Inc. County SURTAX Loan City HOME Loan 9% Housing Credits, Wachovia	\$ 4,150,000 \$ 3,825,000 \$ 675,015 \$ 17,283,365	Elderly	15 units @ 30% AMI 95 units @ 60% AMI	2008
39 TALLMAN PINES <i>Joint venture with Broward County Housing Authority</i>	700 NE 41st Street Deerfield Beach, FL 33064 Broward County	176	Bank of America County HOME Loan 9% Annual Credits, Richman Group	\$ 6,400,000 \$ 1,000,000 \$ 26,051,895	Family	27 units @ 30% AMI 149 units @ 60% AMI	2009
40 VILLA PATRICIA I	234-42 NE 79th Street Miami, FL 33138 Miami-Dade County	125	Neighborhood Lending Partners of So. Florida, Inc. County SURTAX Loan City HOME Loan 9% Housing Credits, Richman Group	\$ 10,000,000 \$ 5,380,000 \$ 674,000 \$ 18,225,000	Elderly	23 units @ 30% AMI 102 units @ 60% AMI	2008
41 TALLMAN PINES II <i>Joint venture with Broward County Housing Authority</i>	NE 41st Street & NE 8th Ave Deerfield Beach, FL 33064 Broward County	24	Bank of America (FHFC MFRB) FHFC Rental Recovery Loan Program FHFC Supplemental Loan 4% Housing Credits, Richman Group	\$ 3,654,876 \$ 3,394,876 \$ 260,000 \$ 2,022,000	Family	4 units @ 30% 20 units @ 60%	2008
42 CRESTVIEW PARK II	2903 Lake Trafford Road Immokalee, FL 34142 Collier County	96	PNC Bank 9% Housing Credits, PNC	\$ 4,090,000 \$ 12,901,460	Family	96 units @ 60%	2008
43 DIXIE COURT <i>Joint venture with the Housing Authority of the City of Ft. Lauderdale</i>	950 NW 4th Street Fort Lauderdale, FL 33311 Broward County	122	PNC Bank Florida Housing Go Zone SAIL Loan Housing Authority of City of Ft. Lauderdale Loan Housing Authority of City of Ft. Lauderdale Grant 9% Housing Credits, PNC	\$ 2,650,000 \$ 1,025,000 \$ 965,000 \$ 250,000 \$ 12,009,000	Family	25 units @ 30% 97 units @ 60%	2008
44 VILLA PATRICIA II	7831 NE 2nd Avenue Miami, FL 33138 Miami-Dade County	125	Neighborhood Lending Partners of So. Florida, Inc. County SURTAX Loan 9% Housing Credits, Richman Group	\$ 7,100,000 \$ 3,825,000 \$ 22,093,000	Elderly	19 units @ 33% 106 units @ 60%	2009
45 VILLA PATRICIA III	7831 NE 2nd Avenue Miami, FL 33138 Miami-Dade County	89	Neighborhood Lending Partners of So. Florida, Inc. FHFC Rental Recovery Loan Program 9% Housing Credits, Richman Group	\$ 8,710,000 \$ 3,980,301 \$ 19,566,000	Family	14 units @ 33% 75 units @ 60%	2009
46 POINCIANA GROVE	5601 NW 2nd Avenue Miami, FL 33127 Miami-Dade County	80	Bank of America County SURTAX Loan 9% Housing Credits, Richman Group	\$ 6,800,000 \$ 3,200,000 \$ 18,821,000	Elderly	12 units @ 33% 68 units @ 60%	2009
47 MORRIS COURT II <i>Joint venture with Area Housing Commission (Housing Authority)</i>	1351 North K Street, Pensacola, FL 32501 Escambia County	74	PNC Bank Escambia County Hurricane Housing Rental Program 9% Housing Credits, PNC	\$ 1,100,000 \$ 1,240,000 \$ 10,009,000	Family	12 units @ 35% 62 units @ 60%	2008
48 VILLAGE ALLAPATTAH II <i>Mixed Use Development</i>	2370 NW 17th Avenue Miami, FL 33142 Miami-Dade County	90	Bank of America FHFC Rental Recovery Loan Program FHFC Supplemental Loan 9% Annual Credits, Richman	\$ 6,500,000 \$ 2,733,048 \$ 910,000 \$ 22,595,000	Elderly	14 units @ 33% 76 units @ 100%	2009
49 VILLAGE ALLAPATTAH I <i>+YMCA of Greater Miami Facility Mixed Use Development</i>	2370 NW 17th Avenue Miami, FL 33142 Miami-Dade County	110	Bank of America County SURTAX Loan 9% Housing Credits, Richman Group	\$ 8,000,000 \$ 4,886,541 \$ 22,558,000	Family	17 units @ 33% 93 units @ 60%	2009
50 MORRIS COURT III <i>Joint venture with Area Housing Commission (Housing Authority)</i>	1351 North K Street, Pensacola, FL 32501 Escambia County	50	PNC Bank (FHFC MFRB) FHFC Rental Recovery Loan Program Escambia County 4% Housing Credits, PNC	\$ 4,500,000 \$ 4,286,269 \$ 1,000,000 \$ 2,727,727	Elderly	8 units @ 35% 42 units @ 60%	2008
51 DIXIE COURT II	950 NW 4th Street	32	FHFC Rental Recovery Loan Program	\$ 5,346,305	Family	8 units @ 30%	2008

APC KEY STAFF EXPERIENCE

Development Name	Project Address	# of Units	Type & Source of Finance & Subsidy	Capital Raised	Market	Set-Asides AMP%	Year Built
Joint venture with the Housing Authority of the City of Ft. Lauderdale	Fort Lauderdale, FL 33311 Broward County		4% Housing Credits, PNC	\$ 2,237,446		24 units @ 60%	
52 HERON POND II	1230 Village Lakes Blvd Lehigh Acres, FL 33916 Lee County	100	PNC Bank 9% Housing Credits, PNC	\$ 2,100,000 \$ 11,487,000	Elderly	15 units @ 35% 85 units @ 60%	2009
53 SILURIAN POND Joint Venture with Circle, Inc., a non-profit	2800 Hollywood Avenue Pensacola, FL 32505 Escambia County	72	PNC Bank (FHFC MFRB) FHFC Rental Recovery Loan Program Escambia County Hurricane Housing Rental Program 4% Housing Credits, PNC	\$ 7,000,000 \$ 8,490,000 \$ 1,147,870 \$ 3,044,496	Family	12 units @ 30% 6 units @ 35% 54 units @ 60%	2009
54 DIXIE COURT III Joint venture with the Housing Authority of the City of Ft. Lauderdale	325 W Dixie Ct., 926 S Dixie Ct., & 301 NW 9th Ave Ft. Lauderdale, FL 33311 Broward County	100	Bank of America Housing Authority Loan Broward AHP Loan FHFC Supplemental Loan 9% Housing Credits, PNC	\$ 3,600,000 \$ 250,000 \$ 125,000 \$ 850,000 \$ 11,807,635	Family	20 units @ 30% 80 units @ 60%	2009
55 SEA GRAPE Florida Keys (Middle Keys) APC acquired GP interest in 2019	1001 & 1003 70th St Ocean Marathon, FL 33050 Monroe County	56	Neighborhood Lending Partners of So. Florida, Inc. Florida Housing SAIL Loan 9% Housing Credits, Wachovia Bank	\$ 2,400,000 \$ 1,854,549 \$ 12,196,280	Family	12 units @ 30% 44 units @ 60%	2009
56 SEA GRAPE II Florida Keys (Middle Keys) APC acquired GP interest in 2019	1001 & 1003 70th St Ocean Marathon, FL 33050 Monroe County	28	Neighborhood Lending Partners of So. Florida, Inc. Florida Housing SAIL Loan FHFC Supplemental Loan 9% Housing Credits, Wachovia Bank	\$ 320,022 \$ 991,033 \$ 255,000 \$ 5,914,409	Family	6 units @ 30% 5 units @ 45% 17 units @ 60%	2009
57 VILLAGE CARVER I	401 NW 71st Street Miami, FL 33150 Miami-Dade County	112	Bank of America Construction Loan County SURTAX Loan 9% Housing Credits, Richman Group	\$ 7,000,000 \$ 4,350,000 \$ 18,321,543	Family	17 units @ 33% 95 units @ 60%	2010
58 PALAFOX LANDING Joint venture w. non-profit, Community Enterprise Investment Inc.	7220 North Palafox Street Pensacola, FL 32503 Escambia County	96	County HOME Loan Escambia County Hurricane Housing Rental Program ARRA TCAP Loan ARRA Exchange Credits (TCEP Loan)	\$ 640,000 \$ 1,000,000 \$ 2,880,000 \$ 8,455,940	Family	15 units @ 35% 81 units @ 60%	2011
59 CHARLOTTE CROSSING	520 Rio De Janeiro Avenue Punta Gorda, FL 33983 Charlotte County	82	ARRA TCAP Loan Charlotte County Hurricane Housing Rental Program 9% Housing Credits, Richman Group	\$ 3,025,443 \$ 2,145,226 \$ 8,078,502	Elderly	10 units @ 40% 72 units @ 60%	2011
60 WAHNETA PALMS	116 2nd Wahneta Street E Winter Haven, FL Polk County	64	ARRA Exchange Credits (TCEP Loan) 9% Housing Credits, Raymond James	\$ 3,165,176 \$ 7,188,481	Family	7 units @ 40% 57 units @ 60%	2011
61 NORTHWEST GARDENS I Acquisition/Rehabilitation Joint venture with the Housing Authority of the City of Ft. Lauderdale	NW 10 Ave. & NW 7 & 8 Streets Fort Lauderdale, FL 33311 Broward County	143	First Housing Development Corporation Broward AHP Loan ARRA Exchange Credits (TCEP Loan)	\$ 3,700,000 \$ 500,000 \$ 18,232,500	Elderly	29 units @ 28% 114 units @ 60%	2011
62 LABRE PLACE	350 NW 4th Street Miami, FL 33128 Miami-Dade County	90	FHFC State Apartment Incentive Loan City HOME Loan ARRA Exchange Credits (TCEP Loan)	\$ 4,000,000 \$ 837,053 \$ 19,188,358	Formerly Homeless	50 units @ 33% 40 units @ 60%	2011
63 VILLAGE CARVER II	495 NW 71st Street Miami, FL 33150 Miami-Dade County	100	County SURTAX Loan FHFC Supplemental Loan ARRA Exchange Credits (TCEP Loan)	\$ 3,312,654 \$ 765,000 \$ 21,768,500	Elderly	20 units @ 33% 80 units @ 60%	2011
64 EVERETT STEWART SR. VILLAGE On the Brownsville Metrorail Station	5255 NW 29th Avenue Miami, FL 33142 Miami-Dade County	96	Citibank Community Capital County SURTAX Loan FHFC Supplemental Loan	\$ 1,380,000 \$ 951,627 \$ 765,000	Family	20 units @ 33% 76 units @ 60%	2011

APC KEY STAFF EXPERIENCE

Development Name	Project Address	# of Units	Type & Source of Finance & Subsidy	Capital Raised	Market	Set-Asides AMP%	Year Built
			ARRA Exchange Credits (TCEP Loan)	\$ 21,768,500			
65 BROWNSVILLE TRANSIT VILLAGE II <i>On the Brownsville Metrorail Station</i>	5225 NW 29th Avenue Miami, FL 33142 Miami-Dade County	100	Citibank Community Capital County SURTAX Loan ARRA Exchange Credits (TCEP Loan)	\$ 1,380,000 \$ 2,406,359 \$ 21,768,500	Elderly	10 units @ 33% 90 units @ 60%	2011
66 THE BEACON (fka Metro)	1000 NW 1st AVENUE Miami, FL 33136 Miami-Dade County	90	First Housing Development Corporation County SURTAX Loan ARRA Exchange Credits (TCEP Loan)	\$ 2,384,493 \$ 2,146,945 \$ 20,655,000	Family	9 units @ 33% 81 units @ 60%	2011
67 VANCE COMMONS	100 W Young Avenue Henderson, NC 27536 Vance County	40	North Carolina Housing Finance Agency SC Loan ARRA Exchange Credits	\$ 704,410 \$ 3,740,287	Elderly	16 units @ 50% 24 units @ 60%	2011
68 LOUIS E. BROWN I <i>Joint Venture with Virgin Islands Housing Authority</i>	2202 Louis E. Browns Apt Frederiksted, St. Croix US Virgin Islands, 00840	102	Public Housing Capital Funds Public Housing Development Grant 9% Housing Credits, Raymond James	\$ 6,267,659 \$ 5,601,322 \$ 20,097,990	Family	77 units @ 33% 25 units @ 60%	2011
69 BROWNSVILLE TRANSIT VILLAGE III <i>On the Brownsville Metrorail Station</i>	5275 NW 29th Avenue Miami, FL 33142 Miami-Dade County	103	Citibank Community Capital Construction Loan County SURTAX Loan ARRA Exchange Credits (TCEP Loan) FHFC ELI TCEP (Exchange) Loan 9% Housing Credits, Richman Group	\$ 16,600,000 \$ 300,000 \$ 5,000,000 \$ 850,000 \$ 19,857,567	Elderly	21 units @ 33% 82 units @ 60%	2012
70 BROWNSVILLE TRANSIT VILLAGE IV <i>On the Brownsville Metrorail Station</i>	5185 NW 29th Avenue Miami, FL 33142 Miami-Dade County	102	Citibank Community Capital Construction Loan County SURTAX Loan ARRA Exchange Credits (TCEP Loan) FHFC ELI TCEP (Exchange) Loan 9% Housing Credits, Richman Group	\$ 18,000,000 \$ 300,000 \$ 5,000,000 \$ 850,000 \$ 21,380,990	Family	21 units @ 33% 81 units @ 60%	2012
71 EAST VILLAGE (FKA EHLINGER) <i>Joint venture with Broward County Housing Authority</i>	7481 NW 33rd Street Davie, FL Broward County	155	Citibank Community Capital Construction Loan County HOME Loan Town of Davie SHIP Loan ARRA Exchange Credits (TCEP Loan) FHFC ELI TCEP (Exchange) Loan 9% Housing Credits, Richman Group	\$ 6,525,000 \$ 285,000 \$ 110,000 \$ 5,000,000 \$ 1,275,000 \$ 19,700,830	Family	31 units @ 28% 124 units @ 60%	2012
72 NORTHWEST GARDENS III <i>Joint venture with the Housing Authority of the City of Ft. Lauderdale</i>	NW 9th Street & NW 14 Ave Fort Lauderdale, FL 33311 Broward County	150	Gibraltar Private Bank & Trust County HOME Loan ARRA Exchange Credits (TCEP Loan) FHFC ELI TCEP (Exchange) Loan 9% Housing Credits, Raymond James	\$ 3,925,000 \$ 285,000 \$ 5,000,000 \$ 1,275,000 \$ 16,963,304	Family	30 units @ 28% 120 units @ 60%	2012
73 LAKE RIDGE COMMONS	4160 Lake Avenue Wilmington, NC 28406 New Hanover County	75	BB&T Bank Construction Loan North Carolina HFA Loan (State Tax Credit) City HOME Loan 9% Housing Credits, Boston Capital	\$ 6,677,493 \$ 1,031,029 \$ 650,000 \$ 7,931,000	Elderly	19 units @ 30% 18 units @ 50% 38 units @ 60%	2012
74 ARCADIA PARK	Kneece Road Columbia, SC 29223 Richland County	60	US Bank NA Construction Loan South Carolina HOME Loan 9% Housing Credits, US Bancorp	\$ 7,250,000 \$ 800,000 \$ 8,031,797	Family	15 units @ 50% 45 units @ 60%	2012
75 DR. KENNEDY HOMES <i>Joint venture with the Housing Authority of the City of Ft. Lauderdale</i>	1004 West Broward Boulevard Fort Lauderdale, FL Broward County	132	Bank of America Construction Loan ARRA Exchange Credits (TCEP Loan) FHFC ELI TCEP (Exchange) Loan County HOME Loan 9% Housing Credits, Richman Group	\$ 4,195,000 \$ 5,000,000 \$ 1,105,000 \$ 285,000 \$ 16,773,938	Family	27 units @ 28% 105 units @ 60%	2012
76 THE ANCHORAGE <i>Scott-Carver Expanded HOPE VI area</i>	2320 NW 62nd Street Miami, FL 33147	22	Citi Community Capital (FHFC MFRB) Neighborhood Stabilization Funds (NSP3)	\$ 2,750,000 \$ 5,000,000	Family & Youth Aging Out	11 units @ 50% 11 units @ 60%	2013

APC KEY STAFF EXPERIENCE

Development Name	Project Address	# of Units	Type & Source of Finance & Subsidy	Capital Raised	Market	Set-Asides AMI%	Year Built
	Miami-Dade County		4% Housing Credits, Matthew Greer	\$ 1,168,000	Of Foster Care		
77 NORTHWEST GARDENS II <i>Joint venture with the Housing Authority of the City of Ft. Lauderdale</i>	765 NW 12th AVE Fort Lauderdale, FL 33311 Broward County (Scattered sites)	128	Bank of America Construction Loan City of Fort Lauderdale Housing Authority Loan County HOME Loan 9% Housing Credits, Bank of America	\$ 18,483,479 \$ 2,700,000 \$ 160,000 \$ 22,783,099	Elderly	13 units @ 25% AMI 115 units @ 60% AMI	2014
78 NORTHWEST GARDENS IV <i>Joint venture with the Housing Authority of the City of Ft. Lauderdale</i>	781 NW 13 AVE Fort Lauderdale, FL 33311 Broward County (Scattered sites)	138	Bank of America Construction Loan City of Fort Lauderdale Housing Authority Loan County HOME Loan 9% Housing Credits, Bank of America	\$ 22,192,472 \$ 2,700,000 \$ 160,000 \$ 25,971,358	Family	14 units @ 25% AMI 124 units @ 60% AMI	2014
79 WASHINGTON SQUARE <i>Public Housing site: Miami-Dade Public Housing & Community Development</i>	1146 & 1500 NW 7 Court Miami, FL Miami-Dade County	89	Bank of America Construction Loan County SURTAX Loan 9% Housing Credits, Bank of America	\$ 18,229,061 \$ 175,000 \$ 24,370,000	Elderly	9 units @ 28% AMI 80 units @ 60% AMI	2014
80 NORTHSIDE TRANSIT VILLAGE I <i>On the Northside Metrorail Station Mixed-use development.</i>	3101 NW 77th Street Unincorp. Miami, FL 33147 Miami-Dade County	100	Wells Fargo Bank (MFRB Miami-Dade HFA) General Obligation Bonds-Building Better Communities County NSP3 Loan County SURTAX Loan 4% Housing Credits, Wells Fargo	\$ 15,500,000 \$ 4,000,000 \$ 7,500,000 \$ 2,750,000 \$ 11,482,920	Family	23 units @ 33% AMI 7 units @ 50% AMI 70 units @ 60% AMI	2015
81 SAILBOAT BEND (Rehabilitation) <i>Joint venture with the Housing Authority of the City of Ft. Lauderdale</i>	425 SW 4th Avenue Fort Lauderdale, FL Broward County	105	Wells Fargo Construction Loan County HOME Loan HACFL Loan 9% Housing Credits, Wells Fargo Bank NA	\$ 6,500,000 \$ 125,000 \$ 900,000 \$ 9,345,023	Elderly	21 units @ 28% AMI 84 units @ 60% AMI	2015
82 EASTBROOKE APARTMENT HOMES AT BEULAH CROSSING <i>Joint venture with UrbanMatters</i>	323 62nd Street NE Washington DC 20019	39	Wells Fargo Bank (MFRB Washington DC) DHCD HPTF Loan 4% Housing Credits, Wells Fargo Bank NA	\$ 4,850,000 \$ 3,000,000 \$ 3,895,673	Family	39 units @ 60% AMI	2015
83 AUDREY M. EDMONSON TRANSIT VILLAGE (fka Seventh Avenue Transit Village) <i>Mixed-use development Joint venture-BAME CDC, a non-profit</i>	6101 NW 7th Avenue Miami, FL Miami-Dade County	76	Wells Fargo Bank (MFRB Miami-Dade HFA) General Obligation Bonds-Building Better Communities County SURTAX Loan City of Miami HOME Loan General Obligation Bonds-Cultural Arts Federal Transit Administration Grant 4% Housing Credits, Wells Fargo NA	\$ 20,000,000 \$ 10,592,000 \$ 1,400,000 \$ 1,500,000 \$ 5,000,000 \$ 3,000,000 \$ 15,278,762	Family	12 Units @ 30% 14 units @ 50% 64 units @ 60%	2015
84 ISLAND LIVING APARTMENTS <i>Joint venture with Palmetto Homes of Miami, Inc.</i>	1201 NW 3 rd Avenue Miami, FL Miami-Dade County	70	Wells Fargo Bank (MFRB Miami-Dade HFA) Southeast Overtown/ Park West CRA County SURTAX Loan 4% Housing Credits, Wells Fargo Bank NA	\$ 12,400,000 \$ 9,000,000 \$ 1,400,000 \$ 10,293,618	Family	11 units @ 33% 59 units @ 60% AMI	2016
85 ARBOR AT CENTERBROOK <i>Joint venture with Dharma Development, a Historically Underutilized Business</i>	13905 Oak Meadows Live Oak, TX 78148 Bexar County	80	Community Bank of Texas Construction Loan Housing Authority of Bexar County 9% Housing Credits, Wells Fargo Bank NA	\$ 7,000,000 \$ 160,000 \$ 11,150,294	Family	8 units @ 30% AMI 40 units @ 50% AMI 32 units @ 60% AMI	2016
86 NORTHWEST GARDENS V (New) & SUNNYREACH ACRES (Rehabilitation) <i>Joint venture with the Housing Authority of the City of Ft. Lauderdale</i>	700 NW 12th Avenue Fort Lauderdale, FL Broward County	200	Bank of America (MFRB Broward HFA) FHFC SAIL Loan FHFC SAIL ELI Loan HACFL Loan 4% Housing Credits, Bank of America	\$ 14,000,000 \$ 4,960,000 \$ 1,500,000 \$ 3,500,000 \$ 11,103,028	Elderly	20 units @ 30% AMI 180 units @ 60% AMI	2017
87 VISTA POINTE AT WILD PINE <i>Joint venture w. A&E Housing Enterprises a Historically Underutilized Business</i>	11580 Wild Pine San Antonio ETJ, TX 78253 Bexar County	108	Wells Fargo Construction Loan Bexar County PHA Loan 9% Housing Credits, Wells Fargo Bank NA	\$ 14,000,000 \$ 1,620,000 \$ 16,948,305	Family	11 units @ 30% AMI 44 units @ 50% AMI 53 units @ 60% AMI	2017
88 SEVENTH AVENUE TRANSIT VILLAGE II <i>Joint venture-BAME CDC, a non-profit</i>	NW 7th Ave. & NW 62nd St. Miami, FL	100	Wells Fargo Construction Loan 9% Housing Credits, Wells Fargo Bank NA	\$ 15,100,000 \$ 28,168,180	Family	10 units @ 33% AMI 90 units @ 60% AMI	2017

APC KEY STAFF EXPERIENCE

Development Name	Project Address	# of Units	Type & Source of Finance & Subsidy	Capital Raised	Market	Set-Asides AMI%	Year Built
Miami-Dade County							
89 ST. ANDREW TOWER II <i>Preservation</i> <i>Joint venture-Catholic Health Services</i>	NW 99th Ave. & NW 26th St. Coral Springs, FL Broward County	219	Wells Fargo Construction Loan Catholic Health Services Seller Note 9% Housing Credits, Wells Fargo Bank NA	\$ 16,000,000 \$ 300,000 \$ 19,088,091	Elderly	44 units @ 33% AMI 175 units @ 60% AMI	2017
90 THE STUDIO AT THINKEAST <i>Joint venture-Austin Housing Authority</i>	1143 Shady Lane Austin, TX 78721 Travis County	182	Citi Community (MFRB Austin Housing Authority) 4% Housing Credits, Wells Fargo Bank NA	\$ 21,800,000 \$ 11,204,889	Family	180 units @ 60% AMI	2018
91 LAUREL GLEN <i>Joint venture with Adalia Development,</i> <i>a Historically Underutilized Business</i>	11043 W Loop 1604 N San Antonio, TX 78254 Bexar County	81	Community Bank of Texas Construction Loan 9% Housing Credits, Wells Fargo Bank NA	\$ 12,000,000 \$ 15,305,234	Family	8 units @ 30% AMI 29 units @ 50% AMI 34 units @ 60% AMI 10 units @ MKT	2018
92 THE TERRACES AT ARBORETUM <i>Joint venture with Adalia Development,</i> <i>a Historically Underutilized Business</i> <i>Under Construction</i>	15928 Old Richmond Road Houston, TX 77498 Fort Bend County	112	Community Bank of Texas Construction Loan 9% Housing Credits, Wells Fargo Bank NA	\$ 14,500,000 \$ 15,223,478	Family	10 units @ 30% AMI 40 units @ 50% AMI 48 units @ 60% AMI 14 units @ MKT	2019
93 THE BRISTOL <i>Joint venture with Adalia Development,</i> <i>a Historically Underutilized Business</i> <i>Under Construction</i>	7810 Old Texel Road San Antonio, TX 78250 Bexar County	96	Wells Fargo Construction Loan 9% Housing Credits, Wells Fargo Bank NA	\$ 13,100,000 \$ 15,148,485	Family	9 units @ 30% AMI 35 units @ 50% AMI 43 units @ 60% AMI 9 units @ MKT	2019
94 PATHWAYS AT GOODRICH PLACE <i>Joint venture-Austin Housing Authority</i> <i>Under Construction</i>	2126 Goodrich Avenue Austin, TX 78704 Travis County	120	Community Bank of Texas Construction Loan 9% Housing Credits, Wells Fargo Bank NA	\$ 19,000,000 \$ 14,359,628	Family	11 units @ 30% AMI 44 units @ 50% AMI 55 units @ 60% AMI 10 units @ MKT	2019
95 NORTHSIDE TRANSIT VILLAGE IV <i>On the Northside Metrorail Station</i> <i>Under Construction</i>	3160 NW 79th Street Unincorp. Miami, FL 33147 Miami-Dade County	120	Neighborhood Lending Partners Construction Loan Wells Fargo Bridge Loan County SURTAX Loan 9% Housing Credits, Wells Fargo Bank NA	\$ 3,670,000 \$ 21,500,000 \$ 2,500,000 \$ 25,991,551	Elderly	12 units @ 30% AMI 108 units @ 60% AMI	2019
96 MARIAN TOWERS <i>Preservation</i> <i>Joint venture-Catholic Health Services</i> <i>Rehabilitation Underway</i>	17505 N Bay Road Sunny Isles Beach, FL 33106 Miami-Dade County	220	Wells Fargo Construction Loan 9% Housing Credits, Wells Fargo Bank NA	\$ 22,000,000 \$ 16,764,323	Elderly	44 units @ 30% AMI 176 units @ 60% AMI	2019
97 ST. ELIZABETH GARDENS <i>Joint venture-Catholic Health Services</i> <i>Rehabilitation Underway</i>	801 NE 33rd Street Pompano Beach, FL 33064 Broward County	153	Neighborhood Lending Partners Construction Loan Wells Fargo Bridge Loan Catholic Health Services Seller Note 9% Housing Credits, Wells Fargo Bank NA	\$ 3,775,000 \$ 11,200,000 \$ 6,030,000 \$ 11,463,639	Elderly	31 units @ 30% AMI 120 units @ 60% AMI 3 units @ MKT	2019
98 SARATOGA CROSSINGS <i>Joint venture-Dania Beach HA</i> <i>Under Construction</i>	1105 West Dania Beach Blvd. Dania Beach, FL Broward County	128	Wells Fargo Construction Loan DBHA Lessor Note City of Dania Beach Loan Broward County HOME Loan 9% Housing Credits, Wells Fargo Bank NA	\$ 24,000,000 \$ 1,250,000 \$ 437,000 \$ 200,000 \$ 25,351,365	Family	13 units @ 30% AMI 115 units @ 60% AMI	2019
99 SARATOGA CROSSINGS II <i>Joint venture-Dania Beach HA</i> <i>Under Construction</i>	705 West Dania Beach Blvd. Dania Beach, FL Broward County	44	Wells Fargo Construction Loan DBHA Lessor Note Broward County HOME Loan 9% Housing Credits, Wells Fargo Bank NA	\$ 8,000,000 \$ 400,000 \$ 100,000 \$ 9,162,084	Elderly	5 units @ 30% AMI 35 units @ 60% AMI 4 units @ MKT	2019
TOTAL UNITS BUILT OR UNDER CONSTRUCTION		11,186	TOTAL CAPITAL FUNDS	\$ 2,203,866,688			

APC KEY STAFF EXPERIENCE

Development Name	Project Address	# of Units	Type & Source of Finance & Subsidy	Capital Raised	Market	Set-Asides AMI%	Year Built
IN CREDIT UNDERWRITING / PRE-DEVELOPMENT							
100 THE WOODLANDS AT REID TEMPLE <i>Joint Venture with Reid Temple AME Church & UrbanMatters Construction Finance Closing 3rd Qtr 2019</i>	11609 Facchina Place Glenn Dale, MD 20769 Prince George's County	252	PNC Bank (MFRB Maryland DHCD) CDA Rental Housing Works County HOME Loan State HOME Loan Lessor Note 4% Housing Credits, PNC Bank	\$ 32,850,000 \$ 2,500,000 \$ 618,490 \$ 2,000,000 \$ 2,520,000 \$ 17,676,069	Elderly	252 Units @ 60% AMI	2020
101 PROVIDENCE PLACE <i>Joint venture-Progressive National Baptist Convention & UrbanMatters Construction Finance Closing 3rd Qtr 2019</i>	5001 Fitch Place NE Washington DC 20019	93	Wells Fargo Loan (MFRB Washington DC) DMPED Loan PNBC Ground Lease Loan 4% Housing Credits, Wells Fargo Bank NA	\$ 19,700,000 \$ 10,390,000 \$ 1,400,000 \$ 13,658,887	Family	35 units @ 30% AMI 58 units @ 60% AMI	2020
102 SUNCREST COURT <i>Joint venture with the Housing Authority of the City of Ft. Lauderdale Construction Finance Closing 3rd Qtr 2019</i>	NW 16 St. & NW 23 Ave. Fort Lauderdale, FL Broward County (Scattered Sites)	116	TD Bank Construction Loan (MFRB FHFC) FHFC SAIL Loan FHFC SAIL-ELI Loan HACFL Loan Broward County HFA Grant 4% Housing Credits, Boston Financial	\$ 15,250,000 \$ 6,500,000 \$ 600,000 \$ 7,000,000 \$ 100,000 \$ 10,158,000	Family	12 units @ 30% AMI 104 units @ 60% AMI	2020
103 NORTHSIDE TRANSIT VILLAGE II <i>On the Northside Metrorail Station Joint Venture with 93rd St. CDC Construction Finance Closing 4th Qtr 2019</i>	NW 32 Ave. & NW 78 St. Unincorp. Miami, FL 33147 Miami-Dade County	180	Construction Loan (MFRB FHFC) FHFC SAIL Loan FHFC SAIL-ELI Loan FHFC NHTF Loan County SURTAX Loan County HOME Loan 4% Housing Credits	\$ 20,000,000 \$ 7,000,000 \$ 600,000 \$ 1,047,896 \$ 7,200,000 \$ 453,547 \$ 16,619,244	Elderly	18 units @ 28% AMI 162 units @ 60% AMI	2020
104 RESIDENCES AT DR. KING BOULEVARD <i>Joint Venture with Martin Luther King EDC Construction Finance Closing 1st Qtr 2020</i>	NW 62 St. & NW 15 Ave. Miami, FL Miami-Dade County	120	Construction Loan County SURTAX Loan County HOME Loan City of Miami Forever Bond Program Loan 9% Housing Credits	\$ 19,282,200 \$ 2,053,447 \$ 1,790,057 \$ 2,000,000 \$ 24,480,055	Family	12 units @ 28% AMI 12 units @ 30% AMI 84 units @ 60% AMI 12 units @ MKT	2020
105 SAILBOAT BEND APARTMENTS II <i>Joint venture with the Housing Authority of the City of Ft. Lauderdale Construction Finance Closing 1st Qtr 2020</i>	437 SW 4th Avenue Fort Lauderdale, FL Broward County	110	Construction Loan HACFL Loan City of Fort Lauderdale Loan Broward County Loan 9% Housing Credits	\$ 25,500,000 \$ 4,300,000 \$ 783,250 \$ 124,000 \$ 25,351,365	Elderly	11 units @ 28% AMI 90 units @ 60% AMI 9 units @ MKT	2020
106 ST ANDREW TOWER I <i>Joint venture-Catholic Health Services Construction Finance Closing 3rd Qtr 2019</i>	2700 NW 99 Avenue Coral Springs, FL Broward County	219	Wells Fargo Construction Loan Seller Note 9% Housing Credits, Wells Fargo Bank NA	\$ 22,025,000 \$ 7,500,000 \$ 16,515,348	Elderly	44 units @ 28% AMI 175 units @ 60% AMI	2020
107 POINCIANA CROSSING <i>Joint venture with the Housing Authority of the City of Ft. Lauderdale In credit Underwriting</i>	SW 1st Ave & SW 18th Street Fort Lauderdale, FL Broward County	113	Construction Loan Broward County Loan 9% Housing Credits	\$ 24,000,000 \$ 125,000 \$ 28,817,118	Family	18 units @ 30% AMI 60 units @ 60% AMI 27 units @ 80% AMI 8 units @ MKT	2021
108 THE VILLAGE OF CASA FAMILIA <i>Joint venture with Casa Familia, non-profit In credit Underwriting</i>	On SW 84 St & SW 109 Ave Unincorporated Miami, FL Miami-Dade County	50	Construction Loan FHFC Grant 9% Housing Credits	\$ 9,450,000 \$ 4,000,000 \$ 14,998,500	Developmental Disability	8 units @ 28% AMI 35 units @ 60% AMI 7 units @ MKT	2021
TOTAL UNITS IN UNDERWRITING		1,253	TOTAL CONSTRUCTION SOURCES	\$ 428,937,473			
TOTAL UNITS		12,439	TOTAL CAPITAL RAISED	\$2,632,804,161			

*Project names in bold were developed by Atlantic Pacific Communities, LLC, the balance represents the experience of key staff.

Tab 6: Financial Proposal

Tab 6 – Financial Proposal

As discussed in Tab 1 of this response, A|P can execute this development in a variety of ways, ranging from workforce housing to co-living to affordable housing while addressing the priority of the City of Miami Beach (the "City") to maximize the number of workforce housing units, and substantially rehabilitate a historic building. On the following page is a summary of the scenarios presented in Tab 1-Programming which includes a comparison of the benefits and tradeoffs to the City in each of the scenarios for the Evaluation Committee's consideration.

Scenarios 1 through 4 below do not provide rent payments in either a percentage rent from gross operating revenue or a fixed amount. Of the five scenarios only Scenario 5 provides a one-time ground lease payment to the City of Miami Beach in the amount of **\$750,000**.

Scenario 1: The Barclay Only Workforce Housing (Workforce)

This scenario includes only the rehabilitation of The Barclay into 41 workforce units targeting residents at or below 140% of the Area Medium Income ("AMI"). Funding would be required from the City of Miami Beach in the form of a grant and a real estate tax abatement.

Scenario 2: Barclay + New Building (Workforce)

This scenario includes the rehabilitation of The Barclay and the construction of a new five-story building on-site where the existing parking and pool are located. There will be a total of 71 workforce units for residents at or below 140% AMI. Funding would be required from the City in the form of a grant and a real estate tax abatement.

Scenario 3: The Barclay + 30 new units + Collins Park (Workforce)

This scenario includes the rehabilitation of The Barclay, the construction of a new five-story building on-site where the existing parking and pool are located and combining the project with an additional site nearby-Collins Park. There will be 143 total units for residents at or below 140% AMI. This scenario requires less funding from the City and yields the highest number of new workforce units.

Scenario 4: The Barclay Co-Living (Workforce)

This scenario includes the rehabilitation of The Barclay into a co-living concept. There will be 25 units serving a total of 78 individual residents at or below 140% AMI. This concept will provide the ability of individuals to have their own bedrooms and share the living room, kitchen, etc. No tax abatement nor contribution would be needed from the City, but a change to the city's ordinances regarding co-living and workforce housing will be required. Co-living can include an occupancy preference for the City of Miami beach staff, teachers and firefighters.

Scenario 5: The Barclay + Collins Park (Affordable)

This scenario includes the rehabilitation of The Barclay and combining the project with Collins Park to yield 113 total units for residents at or below 80% AMI. The development would be financed with 9% Low-Income Housing Tax Credits ("LIHTC") competitively obtained from the Florida Housing Finance Corporation ("FHFC") in a Request For Application currently scheduled to be issued on August 6, 2019 and due October 15, 2019. This source of funding is highly sought after and only three applicants will be selected for LIHTC funding.

The City would receive a capitalized ground lease payment at construction finance closing estimated to be \$750,000. No grant funds nor real estate tax abatement would be needed from the City.

The Barclay Scenarios Summary

THE BARCLAY RFP	Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5
Description	The Barclay Only Workforce Housing	The Barclay + 30 new units Workforce Housing	The Barclay + 30 new units + Collins Park Workforce Housing	The Barclay Co-Living Workforce Housing	The Barclay + Collins Park Affordable Housing
Total Units	41	71	143	25	113
Total Bedrooms	41	71	151	78	121
Average Unit SF	600 sf	599 sf	683 sf	815 sf	690 sf
Income Target	< 140% AMI	< 140% AMI	< 140% AMI	< 140% AMI	< 80% AMI
Amenities	Pool, restored Historic lobby, common area space	Restored Historic lobby, common area space	Restored Historic lobby, 4,000 sf of retail space, common area space	Pool, restored Historic lobby, co-working space, community kitchen and dining area	Pool, restored Historic lobby, 4,000 sf of retail space, common area space
Estimated Common Spaces	1,815 sf	3,800 sf	6,800 sf	1,973 sf	4,800 sf
Percentage Rent to CMB	0%	0%	0%	0%	0%
Annual Min Rent Payment to CMB	\$0	\$0	\$0	\$0	\$0
Other Payments to CMB	\$0	\$0	\$0	\$0	\$750,000
Benefits	- Clean historic rehab (no building blocking) - No regulatory changes required - Relatively quick completion - Maintain on-site parking and pool	- More workforce residents served - No regulatory changes required - Relatively quick completion	- Most workforce residents served - No regulatory changes required - Relatively quick completion	- Does not require any dollars from CMB - Clean historic rehab (no building blocking) - Relatively quick completion - Maintain on-site parking and pool - Co-living can include an occupancy preference for CMB staff, teachers and firefighters	- Only scenario with financial benefit to CMB / no CMB dollars required - Clean historic rehab (no building blocking) - Maintain on-site parking and pool - No regulatory changes required
Tradeoffs	- Requires significant dollars from CMB / no financial benefit to CMB - Fewer workforce residents served	- Requires significant dollars from CMB / no financial benefit to CMB - HPB and state historic tax credit agency may not like new building - Less on-site parking and - No pool	- Requires some dollars from CMB / no financial benefit to CMB - HPB and state historic tax credit agency may not like new building - Lose on-site parking - No pool	- Requires change to workforce ordinance - No financial benefit to CMB	- Serves residents up to 80% AMI - May require more time to obtain LIHTC

Acronyms: AMI – Area Median Income, LIHTC – Low Income Housing Tax Credits, CMB – City of Miami Beach, HPB – Historic Preservation Board

Tab 7: Finance Plan

The Barclay Scenarios Summary

THE BARCLAY RFP	Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5
Description	The Barclay Only Workforce Housing	The Barclay + 30 new units Workforce Housing	The Barclay + 30 new units + Collins Park Workforce Housing	The Barclay Co-Living Workforce Housing	The Barclay + Collins Park Affordable Housing
Total Units	41	71	143	25	113
Total Bedrooms	41	71	151	78	121
Average Unit SF	600 sf	599 sf	683 sf	815 sf	690 sf
Income Target	< 140% AMI	< 140% AMI	< 140% AMI	< 140% AMI	< 80% AMI
Amenities	Pool, restored Historic lobby, common area space	Restored Historic lobby, common area space	Restored Historic lobby, 4,000 sf of retail space, common area space	Pool, restored Historic lobby, co-working space, community kitchen and dining area	Pool, restored Historic lobby, 4,000 sf of retail space, common area space
Estimated Common Spaces	1,815 sf	3,800 sf	6,800 sf	1,973 sf	4,800 sf
Percentage Rent to CMB	0%	0%	0%	0%	0%
Annual Min Rent Payment to CMB	\$0	\$0	\$0	\$0	\$0
Other Payments to CMB	\$0	\$0	\$0	\$0	\$750,000
Benefits	- Clean historic rehab (no building blocking) - No regulatory changes required - Relatively quick completion - Maintain on-site parking and pool	- More workforce residents served - No regulatory changes required - Relatively quick completion	- Most workforce residents served - No regulatory changes required - Relatively quick completion	- Does not require any dollars from CMB - Clean historic rehab (no building blocking) - Relatively quick completion - Maintain on-site parking and pool - Co-living can include an occupancy preference for CMB staff, teachers and firefighters	- Only scenario with financial benefit to CMB / no CMB dollars required - Clean historic rehab (no building blocking) - Maintain on-site parking and pool - No regulatory changes required
Tradeoffs	- Requires significant dollars from CMB / no financial benefit to CMB - Fewer workforce residents served	- Requires significant dollars from CMB / no financial benefit to CMB - HPB and state historic tax credit agency may not like new building - Less on-site parking and - No pool	- Requires some dollars from CMB / no financial benefit to CMB - HPB and state historic tax credit agency may not like new building - Lose on-site parking - No pool	- Requires change to workforce ordinance - No financial benefit to CMB	- Serves residents up to 80% AMI - May require more time to obtain LIHTC

Acronyms: AMI – Area Median Income, LIHTC – Low Income Housing Tax Credits, CMB – City of Miami Beach, HPB – Historic Preservation Board

7.1 Finance Plan

Tab 7 – Financial Plan

Finance Plan

As discussed in Tabs 1 and 6 of this response, A|P can execute this development in a variety of ways, ranging from workforce housing to co-living to affordable housing. Depending on the scenario and programming the City determines is most beneficial, the financing plan would vary significantly. The financing plan for each scenario is summarized in the tables below including the types of debt and equity as well as the amounts and terms. We have attached a Letter of Intent from Wells Fargo Bank, which has conducted a preliminary underwriting of the development plans and has expressed eagerness to finance A|P's development of the Barclay site, whichever program is ultimately selected by the City. In all cases, A|P will be responsible for sourcing, guaranteeing and closing the necessary financing to proceed. In all scenarios except the co-living scenario, A|P will act as property manager; in the co-living scenario, an experienced co-living operator would manage the building with oversight from A|P.

The Barclay RFP	Scenario 1 Workforce	Scenario 2 Workforce	Scenario 3 Workforce	Scenario 4 Workforce	Scenario 5 Affordable
Description	The Barclay Only	The Barclay + New Building	The Barclay + New Building + Collins Park	The Barclay Co-Living	The Barclay + Collins Park
Total Units	41	71	143	25	113
Total Bedrooms	41	71	151	78	121
Average Unit SF	600 SF	599 SF	683 SF	815 SF	690 SF
Income Target	<140% AMI	<140% AMI	<140% AMI	<140% AMI	<80% AMI

Sources

The construction and permanent debt will be provided via HUD's Section 221(d)(4) Mortgage Insurance Premium Program. This debt product, in comparison to other long-term debt, offers a significantly lower interest rate and a longer amortization period. For the workforce housing programs (Scenarios 1-4), equity will be raised through the A|P affiliated general partner and/or limited partner investment equity. For the affordable housing program (Scenario 5), the equity will be obtained using 9% Low Income Housing Tax Credits (LIHTC). Scenarios 1-4 also leverage the Historic Tax Credit (HTC) to support the rehabilitation of The Barclay; while Scenario 5 may also be eligible for the HTC, additional guidance is required to pair the HTC with LIHTC. The first three scenarios will require gap financing from the City of Miami Beach as well as a real estate tax abatement from the City Center Historic Convention Village Redevelopment and Revitalization Area; due to those programs' restricted workforce rents coupled with cost premiums associated with LEED Gold, living wages and historic rehabilitation, a conventionally-financed transaction would not meet standard investor hurdle rates. The table below summarizes the sources required by scenario.

Sources	Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5
Permanent Loan	\$4,994,185	\$9,561,338	\$23,343,300	\$7,401,531	\$5,267,939
Historic Tax Credits	\$958,985	\$958,985	\$958,985	\$957,322	\$0
City Contribution	\$4,160,000	\$2,500,000	\$3,650,000	\$0	\$0
Private Equity or LIHTC	\$985,019	\$2,915,241	\$7,960,485	\$3,028,118	\$28,817,118
TOTAL	\$11,098,188	\$15,935,564	\$35,912,770	\$11,386,972	\$34,085,057

Tab 7 – Financial Plan

Scenarios 1, 2 and 3 require a 100% Real Estate Tax Abatement as well as a City Contribution (grant) listed in the Sources table. Scenario 4 only requires a 40% Real Estate Tax Abatement and no City Contribution and Scenario 5 (LIHTC scenario) is the only scenario that does not require a Real Estate Tax Abatement or a City Contribution. In addition, it is also the only scenario which can afford to make a land payment to the City.

Proposed financing terms and assumptions for the Workforce and LIHTC scenarios are summarized below and further described in the Letter of Intent from Wells Fargo Bank (see attached).

Workforce Scenarios

Sources	Description	Terms
Permanent Loan	221 (d) (4) (Wells Fargo)	4.85%; 40 Year Term
Historic Tax Credit Equity	Eligible Improvements Subsidy	20% of Qualified Rehab Expenses
City Contribution	Grant	TBD
Private Equity	Conventional (Proposer Equity)	25-35% of TDC

LIHTC Scenario

Sources	Description	Terms
Permanent Loan	221 (d) (4) (Wells Fargo)	4.85%; 40 Year Term
Tax Credit Equity	9% LIHTC	\$1.00 per credit

Financial Strength

Atlantic | Pacific and its Principals have the financial capacity and resources to undertake large scale development efforts and are able to meet significant net worth and liquidity requirements due to their very strong financial standing. A | P Companies has a proven track record with over \$2 billion in real estate assets under management, over 17,000 multifamily units owned, and over 40,800 units under management in 7 states. A | P and its Principals are well positioned to guarantee the financial obligations associated with the development of The Barclay site as well as the Collins Park site and have the capacity to provide all standard debt and equity guarantees.

In contrast to many other developers during the 2007 real estate downturn, A | P paid all its debts and was enlisted by its financing partners to become a receiver on dozens of high-profile distressed assets throughout the Southeast. As a result, it enjoys a “best in class” reputation in the financing community. Over many decades, A | P principals have established many excellent banking relationships, as evidenced by the direct investments banks have made in A | P developments, both in the affordable and market rate sectors. Because of the strength of A | P’s guarantors and our relationship with national lending institutions, we are able to achieve top of the market pricing, which allows us to further leverage the resources of our partners and local agencies.

Operating Proforma, Capital Cash Flows

Please see attached the 10-year Operating Proforma and Cash Flow Schedule for all 5 scenarios. The table below summarizes the underlying assumptions for the proformas.

Operating Assumptions	Workforce	LIHTC
Vacancy Rate	5.00%	5.00%
Rental Income AGR	3.00%	2.00%
Other Income AGR	2.00%	3.00%
Expense AGR	2.60%	3.00%
Real Estate Tax Abatement	40 – 100%	0.00%

Tab 7 – Financial Plan

Preliminary Development Budget

Please refer to Tab 7.4 for the Preliminary Development Budget.

Rates for the Conceptual Design Team

All members of our team are confident that we are the most qualified and appropriate group for this most important redevelopment effort and as such have offered to put their fees for conceptual design at risk until our team has been awarded the project. Fees will be determined once the City's preferred program is selected; development budgets include conservative fees that will cover all required design.

Vendor	Scope	Amount
R.J. Heisenbottle Architects	Historic Rehabilitation of The Barclay	TBD
Corwil Architects	New Construction	TBD



Wells Fargo Multifamily Capital
Horatio W. Jones IV
401 E. Jackson Street
Suite 1450
Tampa, FL 33602
919-397-7535

July 18, 2019

Mr. Kenneth Naylor
Chief Operating Officer
Atlantic Pacific Communities
3 Miami Central
161 NW 6th Street, suite 1020
Miami, FL 33136

Re: RFP 2019-098-KB for the Development of the Barclay Workforce Housing Project

Dear Mr. Naylor:

Wells Fargo Bank, N.A., through its division known as Wells Fargo Multifamily Capital ("WFMC"), has reviewed the information provided by you in connection with the referenced project. We understand that you are in the early stages of creating the development plan, and various scenarios are under consideration. We believe this opportunity would be an excellent candidate for financing under HUD's Section 221(d)(4) program and have structured this letter assuming construction and permanent financing utilizing that structure. To the extent this ultimately is not your preferred financing solution, we would be pleased to consider other financing options through the Bank.

It is our understanding that the property will be located on land owned by the City of Miami Beach with a long-term ground lease to the Borrower. We further understand that there will be no ongoing ground lease payment to the City. The ground lease will need to be acceptable to HUD and Wells Fargo. We anticipate that HUD will allow processing of the transaction as one loan, and that the two properties will be operated as one project. Alternatively, we can request separate mortgage transactions for the two parcels.

The two potential scenarios that we have reviewed include:

1. Approximately 143 units of workforce housing, without low-income housing tax credits, but with rents significantly below market. Based upon your pro forma, and assuming interest rates approximately 30bps above current market, we would expect to provide a loan in the approximately amount of \$30,000,000.
2. A 9% LIHTC transaction of approximately 113 units, incorporating income averaging such that targeting would range from 30% to 80% of median income. Based upon your pro forma, and assuming interest rates approximately 30bps above current market, we would expect to provide a loan in the approximately amount of \$6,500,000.



In determining the viability of the transactions for financing under the FHA mortgage insurance programs, Wells Fargo's FHA team has conducted a site visit and has completed a preliminary underwriting utilizing your assumptions, adjusting as necessary to incorporate HUD lending parameters to derive the mortgage amounts identified above.

LOAN AMOUNT: The final loan amounts will be as approved by HUD in their FHA Firm Commitments.

GNMA SECURITIES: The Loan, once approved by HUD, will be financed through the sale of GNMA Securities on a taxable basis. WFCM shall have the responsibility of obtaining the necessary approvals from GNMA.

LOAN AMOUNT –WORKFORCE HOUSING TRANSACTIONS – LESSER OF:

- 1.1765 Debt Service Coverage
- 85% of Mortgageable Cost
- Statutory Mortgage Limits (High Cost Factor waiver will be required, but not expected to be a controlling factor)
- No Loan to Value Test

LOAN CRITERIA – LIHTC TRANSACTION – LESSER OF:

- 1.15 Debt Service Coverage (most likely controlling factor)
- 87% of Mortgageable Cost
- Statutory Mortgage Limits (will not be controlling factor)
- No Loan to Value Test

THE MAP PROCESSING SYSTEM: Under HUD's Multifamily Accelerated Processing system, WFCM underwrites the loan in compliance with HUD's MAP Guide and will submit an application package to HUD for review. Our ability to finance the loan is subject to HUD's issuance of a Firm Commitment for mortgage insurance.

TERM: The Loan shall be a non-recourse construction loan that converts to a non-recourse permanent, fully amortizing 40-year loan.

INTEREST RATE: As of the date hereof, the current interest rate on the loans would be approximately 4.25% before HUD's Mortgage Insurance Premium (which is paid outside of the interest rate). We have assumed a 35bp cushion (i.e., a 4.60% mortgage rate) to account for increases that may occur due to passage of time. The final rate on each loan will be set subsequent to the issuance of each HUD Firm Commitment, and prior to initial endorsement of the Loan by HUD. The interest rate so determined will be for the full term of the loan (i.e., construction plus 40 years).



HUD MORTGAGE INSURANCE PREMIUM: HUD will charge an annual mortgage insurance premium in the amount of 0.25% annually. (Note: we have assumed each phase qualifies for reduced MIP based upon either affordability or Green status, as required under the RFP.)

HUD FEES:

- HUD Application Fee:
 - Workforce Housing transactions will require payment of an application fee in the amount of 30bps, half at preapplication and half at the time of submission of the Firm Application to HUD.
 - LIHTC transactions will require payment of an application fee in the amount of 30bps at the time of submission of the Firm Application to HUD;
- HUD Inspection Fee: HUD will charge an inspection fee in the amount of 0.5% of the loan amount, payable at loan closing.

WFMC FEES AND EXPENSES:

- WFMC Financing Fee: TBD depending upon final development plan
- WFMC App Fee: \$5,000 per transaction
- WFMC Legal: TBD (estimated to be \$40,000 per transaction)
- GNMA Fee: \$1,000 plus \$200 per \$1MM of loan amount over \$1.5MM

APPLICATION REQUIREMENTS: You shall furnish WFMC and HUD, at your expense, all exhibits and documents required by WFMC and HUD for processing each Firm Commitment Application and proceeding to Endorsement. Construction and final cost certification shall be performed in accordance with HUD program requirements.

DOCUMENTATION/EXECUTION: The Loan is conditioned upon execution and delivery to WFMC of a Promissory Note, Deed of Trust, Security Agreement, and any additional documentation required to evidence and close the Loan. These documents will be in form and substance acceptable to HUD and WFMC.

TITLE AND CLOSING: The Borrower will provide WFMC and HUD with acceptable title insurance in the amount of the Loan designed to insure WFMC as holder of the indebtedness secured by the First Deed of Trust, subject only to such exceptions deemed satisfactory to HUD and WFMC's counsel. WFMC reserves the right to approve the title company.

TAXES AND INSURANCE: All taxes and assessments affecting the above-mentioned properties, due and payable on the date of closing, will be paid prior to closing. Borrower will provide WFMC original paid policies of insurance and extended coverage as well as hazard and builder's risk insurance, issued by a company satisfactory to WFMC and HUD. Appropriate mortgagee and loss payee clauses naming WFMC will be included in all policies, which must meet WFMC and HUD requirements.



WORKING CAPITAL ESCROW: HUD will require a working capital escrow on each transaction in the amount of 2% of the loan amount, with any unused portion released at the later of final closing plus one year or 6 months of breakeven debt service coverage. In addition, for new construction transactions HUD requires an additional 2% escrow to cover the cost of potential change orders, with any unused amount released at final endorsement.

OPERATING DEFICIT ESCROW: HUD will require an operating deficit escrow in an amount determined during underwriting to fund anticipated deficits during the lease-up of the property.

PAYMENTS: Payments of interest only on the Loan will be due based upon the disbursed amount of the loan from the date of initial closing through the construction period plus five months, at which time commencement of amortization will occur. To the extent the loan is not fully funded by that time, interest will be based upon the outstanding balance until the loan is fully funded.

EQUITY CONTRIBUTION: Prior to Firm Commitment Application to HUD, Borrower shall provide evidence satisfactory to WFCM and HUD that the necessary equity contributions by Borrower, together with the Loan and any HUD-approved subordinate debt, will be adequate to complete the project in accordance with the HUD requirements. A minimum of 20% of tax credit equity must be funded at initial closing, with the schedule of the balance of the pay-in of tax credit equity approved by WFCM and HUD prior to loan closing. Owner equity must be posted at initial closing and disbursed prior to HUD loans proceeds.

ANNUAL STATEMENTS AND CASHFLOW DISTRIBUTION REQUIREMENTS: Annual audited financial statements will be required. Cashflow distributions will be permitted only on a semi-annual basis and only as permitted under the HUD Regulatory Agreement.

SUBORDINATE FINANCING: The HUD Section 221(d)(4) program allows secondary financing for projects only on a surplus cash basis and with a term not less than the term of the Loan. Any subordinate debt must meet HUD criteria and must be specifically approved by HUD. HUD's form of rider for subordinate debt is available upon request.

GROUND LEASE: The terms of the ground lease must be acceptable to HUD and WFCM. The form of rider typically required by HUD is available upon request.

OPINIONS: The Loan is conditioned upon the Borrower providing WFCM with legal opinions in form and substance acceptable to WFCM's counsel and HUD's counsel.

HUD FIRM COMMITMENT: This letter is subject to HUD's approval of each loan application for mortgage insurance, to be submitted by WFCM, as evidenced by their issuance of a Firm Commitment to insure an FHA Section 221(d)(4) mortgage. Nothing in this Agreement shall be construed as a guarantee or warranty on the part of WFCM that it can or will obtain a Firm Commitment with the terms and conditions as set forth herein or, on any other terms and conditions whatsoever.



TERM OF LETTER: This letter will expire at the earlier of (i) the date of award of the RFP to a party other than Atlantic Pacific Communities; (ii) closing of the financing of the transactions contemplated under this letter; or (iii) three years from the date hereof.

We believe WPMC's FHA team is well equipped to provide this financing, Wells Fargo is an approved FHA Lender and Ginnie Mae Seller Servicer in good standing, and has been so for over 35 years. Since January 1, 2017 we have been involved in the financing of over \$2.5 Billion in FHA-insured loans. Our team of dedicated FHA underwriters have extensive experience in the underwriting and structuring of 9% and 4% LIHTC transactions, including those that are completed under the RAD program. We also provided FHA-insured financing on many transactions that include complex ground lease structures with governmental entities, including SoLe Mia, a \$100MM loan for the new construction of 397 market rate units in North Miami Beach. A significant component of our work is in the Atlanta HUD Region that would be responsible for the processing of our request on the subject transactions. The Wells Fargo FHA team that would be involved in the underwriting of the FHA loan for this transaction works extensively with the Southeast HUD offices, which are managed out of Atlanta.

We look forward to working with you to provide financing for your project. Please feel free to contact me at 919-397-7535 or via email at horatio.jones@wellsfargo.com if you have any questions or would like additional information.

Sincerely,

WELLS FARGO BANK, N.A.



Horatio W. Jones IV
Director

Wells Fargo Disclosures

Agreed and Accepted this 18 day of July, 2019:

By: Atlantic Pacific Communities, LLC

By: 

Name: **Kenneth Naylor**

Title: Chief Operating Officer



Wells Fargo Multifamily Capital Disclosure Notices



Equal Credit Opportunity Act - Notice

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status; age (provided the Applicant has the capacity to enter into a binding contract). Or because all or part of the Applicant's income derives from any public assistance program, or because the Applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning Wells Fargo Bank is the Bureau of Consumer Financial Protection (CFPB), 1700 G Street NW, Washington, DC 20552.

If your application for business credit is denied, you have the right to a written statement of the specific reasons for the denial. To obtain the statement, please write to Wells Fargo Bank, Attention: Compliance Officer, 2010 Corporate Ridge, 10th Floor, McLean, VA 22102, within 60 days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request for the statement.

Appraisal - Notice

All STATES:

Regulation B [12 CFR 202.14]

In connection with an application for credit that is to be secured by real estate, you are entitled to receive a copy of the appraisal report used in connection with the application, provided you make your request for such copy in writing, submitted to the office where your loan request was submitted within 90 days of being provided notice of the action taken on the credit request or the application is withdrawn. The right to receive the report is conditioned upon your paying for all appraisal fees and all costs incurred in producing the report and all actual copying costs.

USA Patriot Act – Section 326

To help the government fight the funding of terrorism and money laundering activities, U.S. Federal law requires financial institutions to obtain, verify, and record information that identifies each person (individual or business entity) who opens an account.

What this means for you: When you open an account or add any additional service, we will ask you for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents. Applicant (if non-individual) shall provide Wells Fargo with their Tax Identification Number (TIN). If the TIN hasn't been issued, applicant will provide Wells Fargo with a copy of the TIN Application prior to loan closing. Applicant acknowledges that, if the TIN is not received by Wells Fargo within 6 weeks after loan closing, the loan may have to be paid off.

Other Notices that will be provided, if applicable.

- • California Hazard Insurance Requirements (California Civil Code 2955.5)
- • Loans in Areas Having Special Flood Hazards (Flood Disaster Protection Act of 1973 et seq.; 12 CFR 22)

Privacy of Consumer Financial Information & Gramm Leach Bliley Act of 1999

Please ensure a copy of the Privacy Notice (next page) is provided to all principals associated with this transaction for which we obtain non-public, personal confidential information. The Privacy Notice is provided below and embedded for ease of distribution.



FACTS

**WHAT DOES WELLS FARGO DO
WITH YOUR PERSONAL INFORMATION?**

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: - Social Security number and employment information - account balances and transaction history - credit history and investment experience
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Wells Fargo chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does Wells Fargo share?	Can you limit this sharing?
For our everyday business purposes — such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	Yes	No
For our marketing purposes — with service providers we use to offer our products and services to you (please see below to limit the ways in which we contact you)	Yes	No
For joint marketing with other financial companies	No	We don't share
For our affiliates' everyday business purposes — information about your transactions and experiences	Yes	No
For our affiliates' everyday business purposes — information about your creditworthiness	Yes	Yes
For our affiliates to market to you	Yes	Yes
For nonaffiliates to market to you	No	We don't share

To limit our sharing	• Call 1-888-528-8460—our menu will prompt you through your choices • Online banking customers - log on to a secure session at wells Fargo.com, and choose "Change Privacy Preferences" under the "Account Services" tab. Please note: If you are a <i>new</i> customer, we can begin sharing your information 30 days from the date we sent this notice. When you are <i>no longer</i> our customer, we can continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.
To limit direct marketing	• To limit our direct marketing to you by mail or telephone, call 1-888-528-8460--our menu will prompt you through your choices • Online banking customers - log on to a secure session at wells Fargo.com, and choose "Change Privacy Preferences" under the "Account Services" tab. Please note: A Do Not Call election is effective for five years, or while you are an active consumer customer, if longer than five years. The Do Not Mail election is effective for three years. You may continue to receive marketing information in regular account mailings and statements, when you visit us online or at an ATM. You may also be contacted to service your account or participate in surveys. If you have an assigned client manager or team, they may continue to contact you to assist you in managing your portfolio or account relationship.
Questions?	Call 1-800-TO-WELLS (1-800-869-3557) or go to wellsfargo.com/privacy_security

FACTS

WHAT DOES WELLS FARGO DO
WITH YOUR PERSONAL INFORMATION?

Who we are	
Who is providing this notice?	Wells Fargo U.S. companies that use Wells Fargo in their names and other companies listed in the <i>Wells Fargo U.S. legal entities</i> section.
What we do	
How does Wells Fargo protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. For more information visit wellsfargo.com/privacy_security
How does Wells Fargo collect my personal information?	We collect your personal information, for example, when you: - open an account or make deposits or withdrawals from your accounts - apply for a loan or use your credit or debit card - seek advice about your investments We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit only: - sharing for affiliates' everyday business purposes — information about your creditworthiness - affiliates from using your information to market to you - sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. See below for more on your rights under state law.
What happens when I limit sharing for an account I hold jointly with someone else?	Your choices will apply individually unless you tell us otherwise. Any account holder may express a privacy preference on behalf of the other joint account holders.
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and non-financial companies. Our affiliates include financial companies with Wells Fargo in their name such as Wells Fargo Bank, N.A., Wells Fargo Insurance, Inc., and Wells Fargo Clearing Services, LLC.
Nonaffiliates	Companies not related by common ownership or control. They can be financial and non-financial companies. - Wells Fargo does not share with nonaffiliates so they can market to you.
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. - Wells Fargo does not jointly market.

Other Important Information
Important Notice about Credit Reporting: We may report information about your account(s) to credit bureaus and/or consumer reporting agencies. Late payments, missed payments, or other defaults on your account(s) may be reflected in your credit report and/or consumer report.
Do Not Call Policy. This Privacy Policy constitutes Wells Fargo's Do Not Call Policy under the Telephone Consumer Protection Act for all consumers. Wells Fargo maintains an internal Do Not Call preference list. Do Not Call requests will be honored within 30 days and will be effective for at least five years from the date of request. No telemarketing calls will be made to residential or cellular phone numbers that appear on the Wells Fargo Do Not Call list.
Nevada residents. We are providing you this notice pursuant to state law. You may be placed on our internal Do Not Call List by following the directions in the <i>To limit direct marketing</i> section. For more information contact us at 1-800-869-3557; nevadanoticeinfo@wellsfargo.com , or Wells Fargo, P.O. Box 5110, Sioux Falls, SD 57117-5110. Or contact the Bureau of Consumer Protection, Office of the Nevada Attorney General, 555 E. Washington St., Suite 3900, Las Vegas, NV 89101; 702-486-3132; aginfo@ag.nv.gov .
Vermont: We automatically treat customers with a Vermont mailing address as having limited sharing with our affiliates as provided on page one.
Trust or fiduciary accounts for which Wells Fargo is the trustee or service provider, including employer-sponsored retirement accounts, are protected under special rules of confidentiality. Information on these accounts is not shared for marketing purposes without specific consent.
Wells Fargo Clearing Services, LLC Financial Advisors: If your financial advisor's affiliation with Wells Fargo Clearing Services, LLC ends and they join a non-affiliated securities broker-dealer, your financial advisor may be permitted to use limited information to contact you to join their new firm, as a usual means to continue to service and maintain your accounts. The information they may use is limited to your name, address, email address, phone number and account title.

Wells Fargo U.S. legal entities and businesses covered by this notice

Wells Fargo U.S. banks, except banks listed below as having their own privacy notice, and companies with "Wells Fargo" in their names, including Wells Fargo Clearing Services, LLC; Wells Fargo Clearing Services, LLC doing business as Wells Fargo Advisors or as First Clearing; Wells Fargo Bank, N.A. doing business as Flatiron Capital; as well as American Mortgage Network, LLC, doing business as Vertice; and Abbot Downing, a Wells Fargo Business.

The following legal entities and businesses are *not* covered by this notice and have separate privacy notices:

- Wells Fargo Financial National Bank
- the Wells Fargo Advantage Funds
- Wells Fargo Advisors Financial Network, LLC
- any insurance company, insurance agency, or insurance brokerage or other company, which has its own privacy disclosures



Wells Fargo U.S.
Consumer Privacy Notice



July 17, 2019

William Garviso, Contracting Officer II
Procurement Department
1755 Meridian Avenue, 3rd Floor
Miami Beach, FL 33139

RE: Request for Proposals (RFP) For the Development of the Barclay Workforce Housing Project RFP No. 2019-098-KB Phase II

To Whom It May Concern:

This letter will serve as a firm commitment evidencing that if Atlantic | Pacific (A | P) Communities is chosen as the Selected Proposer for Development of Barclay Workforce Housing, I, Howard D. Cohen, along with other family members, can provide the necessary equity for the development. This amount is currently projected to be approximately \$9 million.

A | P is a fourth-generation real estate company with an unblemished reputation for meeting its financial obligations. As a result, during times of economic downturn, investors have sought out A | P to become a receiver on dozens of high-profile distressed assets throughout the Southeast. I have the financial capacity to provide the equity that shall be necessary as well as the required guarantees for the construction and operation of this development.

We appreciate your consideration of our proposal for this exciting opportunity in Miami Beach.

Sincerely,

A handwritten signature in blue ink, appearing to read "H.D. Cohen".

Howard D. Cohen
Chief Executive Officer and Principal
Atlantic | Pacific Communities, LLC

161 NW 6TH STREET, SUITE 1020, MIAMI, FLORIDA 33136



THE PRIVATE BANK

100 S. Ashley Drive – 9th Floor
Suite 940
Z0307-101
Tampa, FL 33602

May 30, 2019

Mr. Howard Cohen
Atlantic|Pacific Communities
161 NW 6th Street, Ste. 1020
Miami, FL 33136

To whom it may concern:

We have an excellent lending and banking relationship with the Cohen family. Our past lending to the family for commercial and residential development has exceeded \$500 million. We confirm and acknowledge that all transactions during our relationship have been performed to our entire satisfaction with no event of default.

The Cohen family has in excess of \$30 million on deposit with Wells Fargo, which is more than the \$29 million of equity required for the market rate and townhome phases of development

We would most certainly entertain further lending and banking opportunities with Atlantic|Pacific Communities and the Cohen family.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul J. Ayotte", with a long, sweeping horizontal stroke extending to the right.

Paul J. Ayotte
Sr. Vice President
The Private Bank
Wells Fargo N.A.

7.2 Operating Pro-Forma

7.3 Capital Cash Flow

Scenario 1: The Barclay Workforce
Miami, FL

Operating Proforma & Cash Flow Schedule

	8/23/2021	8/23/2022	8/23/2023	8/23/2024	8/23/2025	8/23/2026	8/23/2027	8/23/2028	8/23/2029	8/23/2030
Number of Years: 10	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Revenues:										
Total Gross Potential Rental Income- Market	795,820	819,695	844,286	869,614	895,703	922,574	950,251	978,759	1,008,121	1,038,365
Total Other Income	49,200	50,184	51,188	52,211	53,256	54,321	55,407	56,515	57,646	58,799
Less: Vacancy Loss- Market	(39,791)	(40,985)	(42,214)	(43,481)	(44,785)	(46,129)	(47,513)	(48,938)	(50,406)	(51,918)
Less: Bad Debt	(3,979)	(4,098)	(4,221)	(4,348)	(4,479)	(4,613)	(4,751)	(4,894)	(5,041)	(5,192)
Effective Gross Revenue	801,250	824,796	849,038	873,997	899,695	926,153	953,394	981,442	1,010,320	1,040,054
Operating Expenses:										
Salaries	(183,804)	(188,583)	(193,486)	(198,517)	(203,678)	(208,974)	(214,407)	(219,982)	(225,701)	(231,569)
Administration	(7,175)	(7,362)	(7,553)	(7,749)	(7,951)	(8,158)	(8,370)	(8,587)	(8,811)	(9,040)
Marketing	(5,125)	(5,258)	(5,395)	(5,535)	(5,679)	(5,827)	(5,978)	(6,134)	(6,293)	(6,457)
Contract Services	(21,428)	(21,985)	(22,557)	(23,143)	(23,745)	(24,363)	(24,996)	(25,646)	(26,313)	(26,997)
Repairs and Main.	(20,500)	(21,033)	(21,580)	(22,141)	(22,717)	(23,307)	(23,913)	(24,535)	(25,173)	(25,827)
Utilities	(24,600)	(25,240)	(25,896)	(26,569)	(27,260)	(27,969)	(28,696)	(29,442)	(30,207)	(30,993)
Management Fee	(32,050)	(32,992)	(33,962)	(34,960)	(35,988)	(37,046)	(38,136)	(39,258)	(40,413)	(41,602)
Insurance	(49,200)	(50,479)	(51,792)	(53,138)	(54,520)	(55,937)	(57,392)	(58,884)	(60,415)	(61,986)
Taxes	-	-	-	-	-	-	-	-	-	-
Reserves	(10,250)	(10,517)	(10,790)	(11,070)	(11,358)	(11,654)	(11,957)	(12,267)	(12,586)	(12,914)
Total Operating Expenses	(354,132)	(363,448)	(373,010)	(382,823)	(392,896)	(403,234)	(413,844)	(424,735)	(435,912)	(447,384)
NOI Before Debt Service	447,118	461,348	476,028	491,174	506,799	522,919	539,550	556,708	574,408	592,669
Yield on Cost	6.44%	6.65%	6.86%	7.08%	7.30%	7.54%	7.78%	8.02%	8.28%	8.54%
Debt Service	(249,709)	(321,718)	(321,718)	(321,718)	(321,718)	(321,718)	(321,718)	(321,718)	(321,718)	(321,718)
Capital Cash Flow	197,409	139,629	154,310	169,455	185,081	201,201	217,832	234,989	252,690	270,951
Cash-on-Cash Return	20.04%	14.18%	15.67%	17.20%	18.79%	20.43%	22.11%	23.86%	25.65%	27.51%
DSCR	1.79	1.43	1.48	1.53	1.58	1.63	1.68	1.73	1.79	1.84

Scenario 2: The Barclay + New Building Workforce
Miami, FL

Operating Proforma & Cash Flow Schedule

	8/23/2021	8/23/2022	8/23/2023	8/23/2024	8/23/2025	8/23/2026	8/23/2027	8/23/2028	8/23/2029	8/23/2030
Number of Years: 10	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Revenues:										
Total Gross Potential Rental Income- Market	1,315,282	1,354,740	1,395,382	1,437,244	1,480,361	1,524,772	1,570,515	1,617,630	1,666,159	1,716,144
Total Other Income	85,200	86,904	88,642	90,415	92,223	94,068	95,949	97,868	99,825	101,822
Less: Vacancy Loss- Market	(65,764)	(67,737)	(69,769)	(71,862)	(74,018)	(76,239)	(78,526)	(80,882)	(83,308)	(85,807)
Less: Bad Debt	(6,576)	(6,774)	(6,977)	(7,186)	(7,402)	(7,624)	(7,853)	(8,088)	(8,331)	(8,581)
Effective Gross Revenue	1,328,141	1,367,133	1,407,278	1,448,610	1,491,164	1,534,977	1,580,086	1,626,529	1,674,346	1,723,578
Operating Expenses:										
Salaries	(185,904)	(190,738)	(195,697)	(200,785)	(206,005)	(211,361)	(216,857)	(222,495)	(228,280)	(234,215)
Administration	(12,425)	(12,748)	(13,079)	(13,420)	(13,768)	(14,126)	(14,494)	(14,871)	(15,257)	(15,654)
Marketing	(8,875)	(9,106)	(9,342)	(9,585)	(9,835)	(10,090)	(10,353)	(10,622)	(10,898)	(11,181)
Contract Services	(37,107)	(38,072)	(39,062)	(40,078)	(41,120)	(42,189)	(43,286)	(44,411)	(45,566)	(46,751)
Repairs and Main.	(35,500)	(36,423)	(37,370)	(38,342)	(39,339)	(40,361)	(41,411)	(42,487)	(43,592)	(44,725)
Utilities	(42,600)	(43,708)	(44,844)	(46,010)	(47,206)	(48,434)	(49,693)	(50,985)	(52,310)	(53,671)
Management Fee	(53,126)	(54,685)	(56,291)	(57,944)	(59,647)	(61,399)	(63,203)	(65,061)	(66,974)	(68,943)
Insurance	(60,350)	(61,919)	(63,529)	(65,181)	(66,875)	(68,614)	(70,398)	(72,229)	(74,106)	(76,033)
Taxes	-	-	-	-	-	-	-	-	-	-
Reserves	(17,750)	(18,212)	(18,685)	(19,171)	(19,669)	(20,181)	(20,705)	(21,244)	(21,796)	(22,363)
Total Operating Expenses	(453,637)	(465,610)	(477,900)	(490,515)	(503,464)	(516,756)	(530,399)	(544,404)	(558,780)	(573,536)
NOI Before Debt Service	874,504	901,523	929,378	958,095	987,700	1,018,221	1,049,686	1,082,125	1,115,566	1,150,042
Yield on Cost	6.51%	6.71%	6.92%	7.13%	7.35%	7.58%	7.81%	8.05%	8.30%	8.56%
Debt Service	(478,067)	(615,928)	(615,928)	(615,928)	(615,928)	(615,928)	(615,928)	(615,928)	(615,928)	(615,928)
Capital Cash Flow	<u>396,437</u>	<u>285,595</u>	<u>313,450</u>	<u>342,167</u>	<u>371,772</u>	<u>402,293</u>	<u>433,758</u>	<u>466,197</u>	<u>499,638</u>	<u>534,114</u>
Cash-on-Cash Return	13.60%	9.80%	10.75%	11.74%	12.75%	13.80%	14.88%	15.99%	17.14%	18.32%
DSCR	1.83	1.46	1.51	1.56	1.60	1.65	1.70	1.76	1.81	1.87

Scenario 3: The Barclay + New Building + Collins Park Workforce
Miami, FL

Operating Proforma & Cash Flow Schedule

	8/23/2021	8/23/2022	8/23/2023	8/23/2024	8/23/2025	8/23/2026	8/23/2027	8/23/2028	8/23/2029	8/23/2030
Number of Years: 10	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Revenues:										
Total Gross Potential Rental Income- Market	2,772,161	2,855,325	2,940,985	3,029,215	3,120,091	3,213,694	3,310,105	3,409,408	3,511,690	3,617,041
Total Retail Income	120,000	122,400	124,848	127,345	129,892	132,490	135,139	137,842	140,599	143,411
Total Other Income	171,600	175,032	178,533	182,103	185,745	189,460	193,249	197,114	201,057	205,078
Less: Vacancy Loss- Market	(138,608)	(142,766)	(147,049)	(151,461)	(156,005)	(160,685)	(165,505)	(170,470)	(175,584)	(180,852)
Less: Vacancy Loss Retail	(12,000)	(12,240)	(12,485)	(12,734)	(12,989)	(13,249)	(13,514)	(13,784)	(14,060)	(14,341)
Less: Bad Debt	(13,861)	(14,277)	(14,705)	(15,146)	(15,600)	(16,068)	(16,551)	(17,047)	(17,558)	(18,085)
Effective Gross Revenue	2,899,292	2,983,474	3,070,127	3,159,322	3,251,134	3,345,642	3,442,924	3,543,063	3,646,143	3,752,251
Operating Expenses:										
Salaries	(246,040)	(252,437)	(259,000)	(265,734)	(272,644)	(279,732)	(287,005)	(294,467)	(302,124)	(309,979)
Administration	(25,025)	(25,676)	(26,343)	(27,028)	(27,731)	(28,452)	(29,192)	(29,951)	(30,729)	(31,528)
Marketing	(17,875)	(18,340)	(18,817)	(19,306)	(19,808)	(20,323)	(20,851)	(21,393)	(21,950)	(22,520)
Contract Services	(74,738)	(76,681)	(78,674)	(80,720)	(82,819)	(84,972)	(87,181)	(89,448)	(91,774)	(94,160)
Repairs and Main.	(71,500)	(73,359)	(75,266)	(77,223)	(79,231)	(81,291)	(83,405)	(85,573)	(87,798)	(90,081)
Utilities	(85,800)	(88,031)	(90,320)	(92,668)	(95,077)	(97,549)	(100,086)	(102,688)	(105,358)	(108,097)
Management Fee	(115,972)	(119,339)	(122,805)	(126,373)	(130,045)	(133,826)	(137,717)	(141,723)	(145,846)	(150,090)
Insurance	(121,550)	(124,710)	(127,953)	(131,280)	(134,693)	(138,195)	(141,788)	(145,474)	(149,257)	(153,137)
Taxes	-	-	-	-	-	-	-	-	-	-
Reserves	(35,750)	(36,680)	(37,633)	(38,612)	(39,616)	(40,646)	(41,702)	(42,787)	(43,899)	(45,040)
Total Operating Expenses	(794,249)	(815,252)	(836,812)	(858,943)	(881,663)	(904,985)	(928,927)	(953,504)	(978,733)	(1,004,633)
NOI Before Debt Service	2,105,042	2,168,223	2,233,315	2,300,378	2,369,471	2,440,656	2,513,997	2,589,559	2,667,410	2,747,619
Yield on Cost	6.52%	6.04%	6.22%	6.41%	6.60%	6.80%	7.00%	7.21%	7.43%	7.65%
Debt Service	(1,167,165)	(1,503,743)	(1,503,743)	(1,503,743)	(1,503,743)	(1,503,743)	(1,503,743)	(1,503,743)	(1,503,743)	(1,503,743)
Capital Cash Flow	<u>937,877</u>	<u>664,480</u>	<u>729,573</u>	<u>796,635</u>	<u>865,729</u>	<u>936,914</u>	<u>1,010,255</u>	<u>1,085,817</u>	<u>1,163,667</u>	<u>1,243,876</u>
Cash-on-Cash Return	<u>11.78%</u>	<u>8.35%</u>	<u>9.16%</u>	<u>10.01%</u>	<u>10.88%</u>	<u>11.77%</u>	<u>12.69%</u>	<u>13.64%</u>	<u>14.62%</u>	<u>15.63%</u>
DSCR	<u>1.80</u>	<u>1.44</u>	<u>1.49</u>	<u>1.53</u>	<u>1.58</u>	<u>1.62</u>	<u>1.67</u>	<u>1.72</u>	<u>1.77</u>	<u>1.83</u>

Scenario 4: The Barclay Co-Living Workforce

Miami, FL

Operating Proforma & Cash Flow Schedule

	8/23/2021	8/23/2022	8/23/2023	8/23/2024	8/23/2025	8/23/2026	8/23/2027	8/23/2028	8/23/2029	8/23/2030
Number of Years: 10	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Revenues:										
Total Gross Potential Rental Income- Market	889,200	915,876	943,352	971,653	1,000,802	1,030,827	1,061,751	1,093,604	1,126,412	1,160,204
Total Other Income	30,000	30,600	31,212	31,836	32,473	33,122	33,785	34,461	35,150	35,853
Less: Bad Debt	(4,446)	(4,579)	(4,717)	(4,858)	(5,004)	(5,154)	(5,309)	(5,468)	(5,632)	(5,801)
Effective Gross Revenue	914,754	941,897	969,848	998,631	1,028,271	1,058,795	1,090,227	1,122,596	1,155,930	1,190,256
Operating Expenses:										
Salaries	-	-	-	-	-	-	-	-	-	-
Administration	(4,375)	(4,489)	(4,605)	(4,725)	(4,848)	(4,974)	(5,103)	(5,236)	(5,372)	(5,512)
Marketing	-	-	-	-	-	-	-	-	-	-
Contract Services	(12,500)	(12,825)	(13,158)	(13,501)	(13,852)	(14,212)	(14,581)	(14,960)	(15,349)	(15,748)
Repairs and Main.	(12,500)	(12,825)	(13,158)	(13,501)	(13,852)	(14,212)	(14,581)	(14,960)	(15,349)	(15,748)
Utilities	-	-	-	-	-	-	-	-	-	-
Management Fee	(18,295)	(18,838)	(19,397)	(19,973)	(20,565)	(21,176)	(21,805)	(22,452)	(23,119)	(23,805)
Insurance	(47,500)	(48,735)	(50,002)	(51,302)	(52,636)	(54,005)	(55,409)	(56,849)	(58,327)	(59,844)
Taxes	(81,094)	(83,203)	(85,366)	(87,585)	(89,863)	(92,199)	(94,596)	(97,056)	(99,579)	(102,168)
Reserves	(6,250)	(6,413)	(6,579)	(6,750)	(6,926)	(7,106)	(7,291)	(7,480)	(7,675)	(7,874)
Total Operating Expenses	(182,514)	(187,327)	(192,267)	(197,337)	(202,541)	(207,883)	(213,366)	(218,994)	(224,771)	(230,700)
NOI Before Debt Service	732,240	754,570	777,581	801,294	825,730	850,912	876,861	903,602	931,159	959,556
Yield on Cost	6.49%	6.69%	6.89%	7.10%	7.32%	7.54%	7.77%	8.01%	8.26%	8.51%
Debt Service	(366,571)	(472,280)	(472,280)	(472,280)	(472,280)	(472,280)	(472,280)	(472,280)	(472,280)	(472,280)
Capital Cash Flow	<u>365,669</u>	<u>282,290</u>	<u>305,301</u>	<u>329,014</u>	<u>353,450</u>	<u>378,632</u>	<u>404,582</u>	<u>431,323</u>	<u>458,879</u>	<u>487,276</u>
Cash-on-Cash Return	<u>12.23%</u>	<u>9.44%</u>	<u>10.21%</u>	<u>11.00%</u>	<u>11.82%</u>	<u>12.66%</u>	<u>13.53%</u>	<u>14.42%</u>	<u>15.34%</u>	<u>16.29%</u>
DSCR	<u>2.00</u>	<u>1.60</u>	<u>1.65</u>	<u>1.70</u>	<u>1.75</u>	<u>1.80</u>	<u>1.86</u>	<u>1.91</u>	<u>1.97</u>	<u>2.03</u>

Scenario 5: The Barclay + Collins Park Affordable - Miami, FL

Operating Proforma & Cash Flow Schedule

Income:	Year 1	Per Unit	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Net Rental Income	1,153,668	10,209	1,176,741	1,200,276	1,224,282	1,248,767	1,273,743	1,299,218	1,325,202	1,351,706	1,378,740
Reserve For Vacancy	(57,683)	510	(58,837)	(60,014)	(61,214)	(62,438)	(63,687)	(64,961)	(66,260)	(67,585)	(68,937)
Other Income	28,985	257	29,854	30,750	31,672	32,622	33,601	34,609	35,647	36,717	37,818
Total Income	1,124,969	9,955	1,147,758	1,171,012	1,194,740	1,218,951	1,243,657	1,268,866	1,294,589	1,320,837	1,347,621
Expenses:	Year 1	Per Unit	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Administrative	56,500	500	58,195	59,941	61,739	63,591	65,499	67,464	69,488	71,573	73,720
Management Fee (% of EGI)	67,498	597	68,865	70,261	71,684	73,137	74,619	76,132	77,675	79,250	80,857
Utilities	90,400	800	93,112	95,905	98,783	101,746	104,798	107,942	111,181	114,516	117,951
Payroll, Taxes & Benefits	142,272	1,259	146,540	150,936	155,464	160,128	164,932	169,880	174,977	180,226	185,633
R & M	90,400	800	93,112	95,905	98,783	101,746	104,798	107,942	111,181	114,516	117,951
Insurance	96,050	850	98,932	101,899	104,956	108,105	111,348	114,689	118,129	121,673	125,323
Real Estate Taxes	95,843	848	98,719	101,680	104,731	107,873	111,109	114,442	117,875	121,412	125,054
Replacement Reserves	33,900	300	34,917	35,965	37,043	38,155	39,299	40,478	41,693	42,944	44,232
Security	52,650	466	54,230	55,856	57,532	59,258	61,036	62,867	64,753	66,695	68,696
Total Expenses	725,514	6,420	746,621	768,349	790,716	813,739	837,440	861,837	886,951	912,804	939,418
Net Operating Income	399,456	3,535	401,137	402,663	404,024	405,212	406,217	407,029	407,638	408,033	408,203
Debt Service:	Year 1	Per Unit	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Permanent First Mortgage Service	332,877	2,946	332,877	332,877	332,877	332,877	332,877	332,877	332,877	332,877	332,877
Asset Management Fee	5,000	44	5,150	5,305	5,464	5,628	5,796	5,970	6,149	6,334	6,524
Deferred Developer Fee	0	0	0	0	0	0	0	0	0	0	0
Total Debt Service	337,877	2,990	338,027	338,181	338,340	338,504	338,673	338,847	339,026	339,211	339,401
Distributable Cashflow	61,579	545	63,110	64,481	65,684	66,708	67,544	68,182	68,612	68,822	68,802
Beginning DDF	0	0	0	0	0	0	0	0	0	0	0
DDF Repayment	0	0	0	0	0	0	0	0	0	0	0
Ending DDF	0	0	0	0	0	0	0	0	0	0	0
Debt Service Coverage:											
Permanent First Mortgage Service	1.20x		1.21x	1.21x	1.21x	1.22x	1.22x	1.22x	1.22x	1.23x	1.23x

7.4 Preliminary Development Budget

Tab 7 – Financial Plan

Preliminary Development Budget

The table below summarizes the costs associated with each scenario.

Uses	Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5
Hard Costs	\$5,696,853	\$9,022,234	\$23,501,488	\$5,678,678	\$19,716,106
Architecture/Engineering	\$1,050,000	\$1,050,000	\$1,200,000	\$1,050,000	\$1,140,000
FF & E	\$310,000	\$310,000	\$310,000	\$310,000	\$350,000
Working Capital	\$146,547	\$187,090	\$323,970	\$73,024	\$73,906
Art in Public Places	\$164,275	\$236,227	\$533,832	\$169,709	\$491,340
Contingencies	\$452,081	\$631,331	\$1,393,671	\$456,310	\$1,200,099
Other Soft Costs	\$1,889,556	\$2,330,430	\$3,634,313	\$2,059,922	\$3,336,655
Financing Costs	\$288,877	\$578,252	\$1,415,495	\$449,328	\$2,459,890
Land Costs	\$0	\$0	\$0	\$0	\$757,100
Development Fee	\$1,100,000	\$1,590,000	\$3,600,000	\$1,140,000	\$4,559,961
TOTAL	\$11,098,188	\$15,935,564	\$35,912,770	\$11,386,972	\$34,085,057

Note that our hard costs estimates are based on site visits and the documentation provided by the City; we have not performed any structural studies on The Barclay at this stage.

7.5 Additional Financial Information

7.5.1 Minimum Bonding Capacity



NIELSON, ROSENHAUS & ASSOCIATES

A NIELSON HOOVER GROUP COMPANY

July 17, 2019

William Garviso
City of Miami Beach
1755 Meridian Avenue, 3rd Floor
Miami Beach, FL 33139

RE: Atlantic Pacific Communities, LLC
Project: The Barclay Workforce Housing Project - RFP 2019-098-KB
Estimated Contract Amount: \$35,983,617.00

Dear William:

This is to advise you that our office provides Bid, Performance, and Payment Bonds for Atlantic Pacific Communities, LLC. Their surety company is Berkshire Hathaway Specialty Insurance Company which carries an A.M. Best Rating of A++ XV and is listed in the Department of the Treasury's Federal Register.

Based upon normal and standard underwriting criteria at the time of the request, we should be in a position to provide Performance and Payment Bonds for the referenced project. We obviously reserve the right to review final contractual documents, bond forms and obtain satisfactory evidence of funding prior to final commitment to issue bonds. We cannot assume liability to any third party, including you, if we do not execute said bonds.

Atlantic Pacific Communities, LLC is an excellent contractor and we hold them in the highest regard. We feel extremely confident in our contractor and encourage you to offer them an opportunity to execute any upcoming projects.

This letter is not an assumption of liability, nor is it a bid or performance and payment bond. It is issued only as a bonding reference requested by our respected client.

If you should have any questions, please do not hesitate to give me a call.

Sincerely,

Brett Rosenhaus
Florida Licensed Agent

220 Congress Park Drive
Suite 100
Delray Beach, FL 33445
Main: 561.454.8210
Fax: 561.455.4787

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NIELSON, ROSENHAUS & ASSOCIATES
A NIELSON HOOVER GROUP COMPANY

July 17, 2019

William Garviso
City of Miami Beach
1755 Meridian Avenue, 3rd Floor
Miami Beach, FL 33139

RE: Atlantic Pacific Community Builders, LLC
Project: The Barclay Workforce Housing Project - RFP 2019-098-KB
Estimated Contract Amount: \$35,983,617.00

Dear William:

This is to advise you that our office provides Bid, Performance, and Payment Bonds for Atlantic Pacific Community Builders, LLC. Their surety company is Berkshire Hathaway Specialty Insurance Company which carries an A.M. Best Rating of A++ XV and is listed in the Department of the Treasury's Federal Register.

Based upon normal and standard underwriting criteria at the time of the request, we should be in a position to provide Performance and Payment Bonds for the referenced project. We obviously reserve the right to review final contractual documents, bond forms and obtain satisfactory evidence of funding prior to final commitment to issue bonds. We cannot assume liability to any third party, including you, if we do not execute said bonds.

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Sincerely,

Brett Rosenhaus
Florida Licensed Agent

7.5.2 Examples of Innovative Financing Arrangements

Innovative Financing

A|P Communities has a strong background in financial analysis and extensive experience with housing developments that incorporate Low-Income Housing Tax Credits ("LIHTC") and other forms of affordable and workforce housing financing. A|P is uniquely adept at securing Low-Income Housing Tax Credits ("LIHTC") and other scarce subsidies in competitive solicitations, developing innovative financing strategies, raising capital at favorable terms, negotiating and closing complex deals with multiple sources of financing. The team will also analyze loan programs such as the FHA 221(d)(4) guaranteed by HUD as a feasible alternative. We also conduct due diligence to see if a site is located in an Opportunity Zone, Brownfield or CRA for potential sources; The Barclay is located in the Miami Beach City Center CRA (only).

Below is a brief summary of A|P staff's track record to date procuring financing for mixed-finance developments (for details see attached):

- Financed over **12,400** units of affordable multi-family housing using low-income housing tax credits in Florida, Texas, North and South Carolina, Maryland and Washington DC.
- Procured over **\$1.3 billion** in low-income housing tax credits.
- Closed over **\$1 billion** in numerous federal, state, local and city subsidies including HUD HOME, CDBG, HHAG loans and Shelter + Care operating subsidies, TCEP and TCAP loans, Federal Home Loan Bank AHP, Florida SHIP-SAIL loans and hurricane/disaster recovery loans.

Prior to and throughout the process of securing financing for a development, our team strategizes to ensure our sites rank competitively according to the requirements and scoring criteria for the various funding applications. A|P staff attends and participates in rule-making workshops and the application workshops hosted by various funding agencies, being continually well-informed on the different types of funding available, and abreast of any proposed changes to the regulations and rules. Before proceeding with any proposed development, we determine the types of funding for which the development will be eligible, and we structure the design and financing accordingly, in order to ensure we will be competitive across all the selected funding applications. Our financial optimization may entail modifying the number of units, the construction type, funding request amounts, target demographic, pairing financing to improve leveraging, or assembling scattered sites to ensure that our developments are competitive, below are a few case examples.

Block 45: This development will leverage Opportunity Zone tax incentives to provide workforce and affordable apartments in downtown Miami without reliance on LIHTC funding. A|P will build a minimum of 600 rental apartments next door to a multi-modal transit station with at least 60% of the total units affordable to households earning 140% of the Area Median Income ("AMI") or below. A conventional bank loan will be paired with approximately \$60M in equity raised via a Qualified Opportunity Zone (QOZ) investment fund. In 2017, Congress created the federal QOZ program to encourage economic growth in underserved communities through tax benefits to investors in U.S. states and territories nominated areas (by census tract) to be designated as QOZ in 2018. Investors in Qualified Opportunity Funds are eligible for significant tax benefits which makes these opportunities highly desirable. A|P capitalized on this newly created federal program to propose an innovative financing strategy that will enable the County to collect ground lease proceeds and make significant capital improvements to the adjacent Metrorail station which will also benefit the residential development. Additionally, A|P will work with the Southeast Overtown Park West CRA to obtain a real estate tax abatement while also establishing a robust hiring and

on the job training program for local residents and businesses. Construction is anticipated to begin in Q3 of 2020.

Washington Square: One example of an innovative approach to secure very competitive 9% LIHTC financing from the Florida Housing Finance Corporation ("FHFC") is our Washington Square development located in the City of Miami. The project included the rehabilitation of Green Turnkey Plaza, a 21-unit public housing site, and building a new 67-unit high rise tower across the street from the Culmer Metrorail station. The A|P team creatively structured this transaction by pairing the scattered sites



(one private and one public) in order to successfully compete for 9% tax credits. Neither site scored competitively on its own across all the scoring criteria outlined by FHFC, but when combined into a single development we were able to secure financing. The private site scored proximity points (awarded for distance to important community services such as transit, grocery store, medical facility, etc.) because it is adjacent to a Metrorail station, and met FHFC's goal to fund a Transit-Oriented Development. The public housing site allowed the application to earn the Public Housing Authority ("PHA") points (added to the proximity score of public housing sites) and to meet FHFC's goal to fund a Public Housing Revitalization Development. In addition to these benefits, combining the rehabilitation units with the new construction units improved the development's overall leveraging (determined by the amount of funding requested per unit) because rehabilitation units require less funding than new construction units. None of the sites would have been competitive as stand-alone projects; however, this innovative strategy allowed for the construction of 67 new affordable housing units, in addition to improving and preserving 22 public housing units. The rehabilitation and construction were completed on Washington Square (and Green Turnkey Plaza) in 2014 and it is currently 100% occupied.

Northwest Gardens V: This strategy of combining new construction with rehabilitation was also utilized for the successful State Apartment Incentive Loan ("SAIL") program application submitted to FHFC for Northwest Gardens V, a joint venture with the Housing Authority of the City of Fort Lauderdale. Because this application did not include a maximum distance between scattered sites, A|P included the housing authority's public housing site, Sunnyreach Acres, resulting in a better leveraged application. Northwest Gardens V consisted of the rehabilitation of 100 units of elderly public housing at Sunnyreach, and the new construction of 100 elderly garden-style units on scattered sites. The development was completed in 2017 and it is currently 100% occupied.

St. Andrew Tower II: In 2015, A|P joint ventured with Catholic Health Services, Inc. ("CHS") and was successful in procuring a competitive 9% LIHTC allocation for St. Andrew Tower II; this development was one half of a 438-unit project built by CHS in 1974, and originally financed under Section 236, with a HAP Contract covering 326 units. The intent was to preserve and rehabilitate the entire property using tax credits and other debt financing. However, the maximum total units allowed under FHFC's Preservation application prohibited the refinancing of the entire property as a single transaction. Thus, it was necessary to split the two towers and undertake the rehabilitation as two separate financing transactions with distinct owner entities for each tower.

Tab 7 – Finance Plan

One tower (Tower II) won a 9% LIHTC allocation in 2015 and the second tower won a 9% LIHTC allocation in 2018.

Saratoga Crossings I and II: The Dania Beach Housing Authority ("DBHA") selected A|P Communities via a competitive RFQ to raze 39 obsolete public housing units on 2 scattered sites and revitalize the local community in the Dania Beach CRA. A|P was able to secure 9% LIHTC for the redevelopment by splitting the scattered sites into two separate phases and submitting Phase I in the FHFC's Large County RFA and Phase II in the Local Revitalization RFA. The strategy was successful because we submitted the smaller phase in the Local Revitalization RFA and sized the 9% LIHTC request so that any remaining funds available after a first site was selected would be sufficient to fund Saratoga Crossings Phase II. Both projects are currently under construction and will be completed in 2019.

In addition, key staff at A|P have experience with **Historic Tax Credits** ("HTC") and except for the 9% LIHTC scenario we intend to pursue these funds for The Barclay. The federal HTC program, enacted in 1976, is an indirect subsidy to finance the rehabilitation of historic buildings with a 20% tax credit for qualified expenditures. It is administered by the National Park Service and the Internal Revenue Service. A|P Communities has engaged R.J. Heisenbottle Architects ("RJHA"), a renown historic preservation architectural firm, thoroughly familiar with The Barclay site, to work with Corwil Architects and the A|P team on the redevelopment of the historically designated Barclay. RJHA specializes in historic preservation design services including experience with submitting all forms and reports to the Compliance and Review Section of the Bureau of Historic Preservation to obtain final approvals. RJHA also prepares grant applications for historic preservation funding, as well as, submitting the Historic Preservation Certification Application for certifications required for HTC.

Leverage Soft Debt

A|P and its principals have been able to develop properties that would otherwise never get built by tapping into a variety of soft sources for second, third, fourth, fifth and even sixth and seventh position mortgages. A|P closed on the construction financing of two of the most complex housing finance structures ever seen in Florida (according to industry experts at Wells Fargo and FHFC): Northside Transit Village I and Seventh Avenue Transit Village I.



Both master-planned transit-oriented developments ("TOD") have long-term ground leases with Miami-Dade County, as well as multiple funding sources from federal, state, and local agencies. While a more typical LIHTC transaction would be financed with tax credit equity and conventional debt, these developments had four and five additional sources of financing, each with its own regulations. These developments would not have been possible without the support we were able to garner from local planning staff, commissioners, mayors, and state and federal government agencies.

For the Audrey M. Edmonson Transit Village we were able to classify the community theater and transit facility as **Community Service Facilities**. The costs associated with each use were deemed housing credit eligible costs under IRS Revenue Ruling 2003-77 and Section 42 of the Internal Revenue Code. This generated additional equity proceeds to build the mixed-use development.

Negotiate Excellent Debt and Equity Terms

Our team negotiates some of the best terms in the market for debt and equity. We seek to maximize the value of tax credits by pairing our developments with investors that provide strong pricing and terms and show a willingness to work within a risk-sharing framework that meets the needs of our collective team. It should be noted that since November 2016, the bottom has dropped out of the LIHTC equity market as investors reevaluate their yields using corporate tax rates of 20%, in lieu of the historical 35%. This has drastically affected tax credit pricing, moving our term sheets from the \$1.14-15 range to \$0.84-86 and then to \$0.95 in the span of days. While some investors have agreed to provide terms sheets at the former high-water mark, they can only do so with the caveat that the terms are “subject to market conditions,” or “subject to tax reform,” which essentially renders them meaningless at this point in time. This dislocation in the national equity market will increase the burden on local governments to help fill this gap with soft debt (HOME, FHLB AHP) or operating subsidy (e.g. Project Based Vouchers) in order to keep affordable housing development moving forward in the interim post tax reform, while other developers typically secure pricing of approximately \$0.92 per credit, we have been able to achieve housing credit prices at or above \$1.00 for the most recent developments in Florida and Texas.

Our ability to lock in financing at favorable terms ensures a development's financial feasibility during construction and beyond. When finalizing limited partnership agreements, we also ensure that capital contributions are not subject to “inside dates,” and to the extent that the investor is also the lender, we work to ensure that milestone dates conform across agreements. Additionally, because we're able to build on-time and on-budget, our credit adjusters are minimal (credit adjusters are incurred only after lease-up due to delayed delivery of occupied units). Finally, we work to ensure that guarantees within the limited partnership agreement are kept to reasonable timeframes and amounts.

The unique challenges faced by the A | P team over many years have helped us build a repository of institutional knowledge that enables our partners to achieve their goals. The team's affordable and mixed-income housing experience directly contributes to the overall technical capability to provide a variety of services to the Housing Authority of the City of Miami Beach.

Create New Revenue Streams

Wherever possible, A | P structures developments that provide our partners with revenue streams. In Fort Lauderdale, our ability to optimize financing for multiple deals yielded several million dollars of land lease payments to the Housing Authority of the City of Fort Lauderdale, which allowed them to extend their mission by reinvesting these dollars in their target neighborhoods.

For The Barclay site, our method of identifying and obtaining maximum financial funding would begin with a face-to-face collaborative meeting with the City of Miami Beach to determine the most important financial and risk management terms, special needs, deadlines, specific development requirements (i.e. Historic Preservation Board, National Park Service), income set-asides, and other detailed information. Answers to these items guide the financing process and may be adjusted as needs and markets change while we work collaboratively with the City.

Tab 8: Agreements

Tab 8 – Agreements

Atlantic | Pacific Communities, LLC acknowledges acceptance and respectfully submits the enclosed red-lined Development and Lease Agreements. Please note, if the Co-Living scenario is selected, we may have additional comments on these agreements.

DEVELOPMENT AGREEMENT

between

CITY OF MIAMI BEACH, FLORIDA

(“Owner”)

and

(“Developer”)

Dated as of _____, 20__

_____ **PROJECT**

Prepared By and Record and Return to::

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into as of the _____ day of _____, 20__ (the **“Commencement Date”**) by and between the **CITY OF MIAMI BEACH, FLORIDA (“Owner”)**, a municipal corporation duly organized and existing under the laws of the State of Florida, and _____, a Florida _____ (**“Developer”**).

DRAFTING NOTE: TO THE EXTENT OF OVERLAPPING PROVISIONS, ALL SUGGESTED REVISIONS TO THE GROUND LEASE ARE INCORPORATED HEREIN. ADDITIONAL COMMENTS TO THIS AGREEMENT MAY BE REQUESTED DEPENDING ON THE FINAL PROJECT PARAMETERS AGREED TO BY THE PARTIES.

RECITALS:

WHEREAS, on _____, pursuant to the authorization of the Mayor and City Commission, the Administration issued a Request for Proposals for the development of public-private [_____] facilities in the area of _____ (**“RFP”**); and

WHEREAS, the City issued the RFP in order to solicit qualified development teams to bid on certain publicly-owned sites identified in the RFP; and

WHEREAS, on _____, the City received proposals from five _____; and

WHEREAS, on _____, an Evaluation Committee appointed by the City Manager and approved by the Mayor and City Commission, heard presentations from the proposers; and

WHEREAS, in accordance with the criteria identified in the RFP, the Evaluation Committee ranked the proposals and provided their recommendations to the City Manager; and

WHEREAS, on _____, the City Commission adopted Resolution No. 2019-_____, authorizing the Administration to negotiate with _____, _____, a Florida Corporation, with regard to the site located at _____ in the City; and

WHEREAS, said negotiations have been concluded and the Mayor and City Commission, in Resolution No. _____, adopted after two (2) duly noticed public hearings held pursuant to the Development Agreement Act set forth in Chapter 163 of the Florida Statutes, and Sections 82-36 through 82-40 of the City Code, determined that it is in the best interest of the City to enter into an Agreement of Lease and Development Agreement with _____ for the development of the aforementioned Project site.

TERMS OF AGREEMENT:

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 1

DEFINITIONS

All capitalized terms used herein and not specifically defined herein shall have the meanings ascribed thereto in the Ground Lease. For all purposes of this Agreement the terms defined in this Article 1 shall have the following meanings and the other provisions of this Article 1 shall apply:

“Accounting Principles” shall have the meaning provided in the Ground Lease.

“Affiliate” or **“Affiliates”** means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such Person. For purposes hereof, the term **“control”** (including the terms **“controlled by”** and **“under common control with”**) shall mean the possession of a Controlling Interest. Unless the context otherwise requires, any reference to **“Affiliate”** in this Agreement shall be deemed to refer to an Affiliate of Developer.

“Affordable Housing” means housing affordable to natural persons or families whose total annual household incomes does not exceed 80% of the Area Median Income (“AMI”) of Miami-Dade County.

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“Architect” means a person or firm licensed to operate as an architect in Miami-Dade County, Florida.

“Building Permit” means a **“Full Building Permit”** as such term is defined in the Land Development Regulations, issued by the Building Department of the City, which allows building or structures to be erected, constructed, altered, moved, converted, extended, enlarged, or used, for any purpose, in conformity with applicable codes and ordinances.

“Building Equipment” has the meaning provided in the Ground Lease.

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

“City” means the City of Miami Beach, Florida, a municipal corporation duly organized and existing under the laws of the State of Florida. In all respects hereunder, the City’s obligations and performance is pursuant to the City’s position as the owner of the City Parcel acting in its proprietary capacity. In the event the City exercises its regulatory authority as a governmental body, the exercise

of such regulatory authority and the enforcement of any laws, rules, regulations, ordinances, and plans (including through the exercise of the City's building, fire, code enforcement, police department or otherwise), shall be deemed to have occurred pursuant to the City's regulatory authority as a governmental body and shall not be attributable in any manner to the City as a party to this Agreement or in any way deemed in conflict with, or a default under, the City's obligations hereunder.

"City Code" means the Code of the City of Miami Beach, Florida, as amended through the date hereof.

"City Commission" means the Mayor and City Commission of the City of Miami Beach, Florida the governing body of the City, or any successor commission, board or body in which the general legislative power of the City shall be vested.

"City Manager" means the chief administrative officer of the City, or his or her designee.

"Commence Construction" or "Commencement of Construction" means the commencement of major work (such as pilings or foundations) for construction of the Improvements in accordance with the Plans and Specifications to be performed in connection with Construction of the Project. Promptly after Commencement of Construction, Owner and Developer shall enter into an agreement acknowledging the date of Commencement of Construction. Any and all preliminary site work (including, without limitation, any environmental remediation and ancillary demolition) shall not be deemed to be Commencement of Construction.

"Commencement Date" has the meaning provided in the preamble of this Agreement.

"Completion Deadline" means the date that is _____ () months from the Construction Commencement Date (subject to extension due to Unavoidable Delay). |

"Comprehensive Plan" means the Comprehensive Plan which the City adopted and implemented for the redevelopment and continuing development of the City pursuant to Chapter 163, Part II, Florida Statutes.

"Concurrency Requirements" has the meaning provided in Section 2.4(b).

"Consenting Party" has the meaning provided in Section 20.2(c)(i).

"Construction" or "Construction of the Project" means the construction on the Land of the Project.

"Construction Agreement(s)" means, collectively, any general contractor's agreement, architect's agreement, engineers' agreements, or any other agreements for the provision of labor, materials or supplies entered into with respect to the Construction of the Project, as the same may be amended or otherwise modified from time to time.

“Construction Commencement Date” has the meaning provided in Section 2.7.

“Construction Work” means any construction work performed under any provision of this Agreement and/or the Construction Agreements with respect to the Construction of the Project.

“Contractor” means any contractor, subcontractor, supplier, vendor or materialman supplying services or goods in connection with the Construction of the Project.

“Controlling Interest” means the ownership of greater than fifty percent (50%) of the voting ownership interests in a Person or the ownership of greater than fifty percent (50%) of the votes necessary to elect a majority of the board of directors or other governing body of such Person.

“CPM” has the meaning provided in Section 4.2(b).

“CPM Schedule” has the meaning provided in Section 4.2(b).

“Default” means any condition or event, or failure of any condition or event to occur, which constitutes, or would after the giving of notice and lapse of time (in accordance with the terms of this Agreement) constitute, an Event of Default.

“Default Date” means the date which is _____ () months after the Construction Commencement Date.

“Default Notice” has the meaning provided in Section 19.1(b).

“Design Review Board” or **“DRB”** means the Design Review Board of the City created and established pursuant to the Land Development Regulations, or any board or body which may succeed to its function.

“Detailed Plans” has the meaning provided in Section 4.2(a)(iv)(2).

“Developer” means _____, a Florida _____ company.

“Development Agreement” (or this **“Agreement”**) means collectively, this Development 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 agreement of the parties.

“Development Agreement Act” means the Florida Local Government Development Agreement Act, Section 163.3220, et. seq., Florida Statutes (1998).

“Development Approval” includes any zoning, rezoning, conditional use special exception, variance or subdivision approval, concurrency approval under Section 163.3180, Florida Statutes, or any other official action of local government having the effect of approving development of land.

“Development Arbitrator” shall have the meaning provided in Section 22.1(j).

“Development Budget” has the meaning provided in Section 3.4(a).

“Development Dispute” has the meaning provided in Section 3.6.

“Economic Unavoidable Delay” means economic or political conditions or events that result in a significant decline in economic activity spread across the economy and materially impair access to debt or equity markets by developers for development of projects in the United States similar to the Project or allow a committed debt or equity participant to terminate its debt or equity commitment, such as a temporary or long term liquidity crisis or major recession. Tenant shall be entitled to an extension of time because of its inability to meet a time frame or deadline specified in this Lease due to Economic Unavoidable Delay equal to the duration of the Economic Unavoidable Delay.

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“Event of Default” has the meaning provided in Section 19.1.

“Fees” has the meaning provided in Section 6.2(a).

“Final CO” has the meaning provided in the Ground Lease.

“Final Completion” shall have occurred when the requirements of Sections 2.8(a), (b) and (c) shall have been satisfied.

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“Floor Area” means the floor area of any development (measured in square feet), as defined in, and measured in accordance with, the Land Development Regulations.

“Funded Equity” has the meaning provided in Section 3.4(b) of this Development Agreement.

“General Contractor” means the general contractor under that certain guaranteed maximum price contract for the Construction of the Project entered into by Developer and such general contractor.

“Governmental Authority or Authorities” means the United States of America, the State of Florida, Miami-Dade County, the City (in its governmental as opposed to proprietary capacity) and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, having jurisdiction over Developer or any owner, tenant or other occupant of, or over or under the Project Site or any portion thereof or any street, road, avenue or sidewalk comprising a part of, or in front of, the Project Site, or any vault in or under the Project Site, or airspace over the Project Site.

“Ground Lease” means, that certain Agreement of Lease between Owner and Developer dated as of the date hereof, pursuant to which Developer (as tenant) has agreed to lease the Land.

“Hearing” has the meaning provided in Section 22.1(b).

“Historic Preservation Board” or **“HPB”** means the Historic Preservation Board of the City created and established pursuant to the Land Development Regulations or any board or body which may succeed to its functions.

“Improvement(s)” means any building (including footings and foundations), Building Equipment and other improvements and appurtenances of every kind and description now existing or hereafter erected, constructed, or placed upon the Land (whether temporary or permanent), and any and all alterations and replacements thereof, additions thereto and substitutions therefor.

“Institutional Lender” has the meaning provided in the Ground Lease.

“Land” means the real property and air rights, if any, described in Exhibit A attached hereto and incorporated by reference herein and subject to the provisions of Section 2.1(a) in the Ground Lease.

“Land Development Regulations” means Subpart B (Chapters 114 through 142) of the Code of the City of Miami Beach, Florida, as the same was in effect as of the date of this Development Agreement.

“Late Charge Rate” has the meaning provided in the Ground Lease.

“Loan Documents” means, collectively, any loan agreement, promissory note, mortgage, guaranty or other document evidencing or securing a loan secured by, among other collateral, Developer’s interest in the Ground Lease or the Project.

“Mortgage” has the meaning provided in the Ground Lease.

“Mortgagee” means the holder of a Mortgage.

“Notice” has the meaning provided in Section 20.1(a).

“Notice of Failure to Cure” has the meaning provided in Section 10.1(b).

“Operating Equipment” has the meaning provided in the Ground Lease.

“Owner” means the City, acting in its proprietary capacity, and any assignee or transferee of the City of the entire Owner's Interest in the Premises, from and after the date of the assignment or transfer pursuant to which the entire Owner's Interest in the Premises was assigned or transferred to such assignee or transferee.

“Owner’s Consultant” means such Person as Owner may designate in writing to Developer from time to time. [For discussion – please let us know who is contemplated to be the consultant]

“Owner's Interest in the Premises” has the meaning provided in the Ground Lease.

“Payment and Performance Bond” has the meaning provided in Section 2.6(d).

“Permits and Approvals” shall mean any and all permits and approvals required to be issued by Governmental Authorities in connection with the Construction of the Project, including, without limitation, the City of Miami Beach building permits, the approvals of the City of Miami Beach Design Review Board, the Miami-Dade County Department of Environmental Resources Management permits, the Florida Department of Environmental Protection coastal construction permit, and any utility access agreements with all applicable utility companies.

“Person” means an individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, estate, trust, 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.

“Planning Board” means the Planning Board of the City or any board or body which may succeed to its functions.

“Plans and Specifications” means the final plans and specifications for the Project, including, foundation, structural, electrical, plumbing and HVAC plans, the finish schedule, the Project program, the differentiation schedule and such other plans and specifications customarily required to obtain a full building permit, each as established in accordance with Article 3, as the same may be modified from time to time in accordance with the provisions of Section 3.2.

“Preliminary Plans and Specifications” has the meaning provided in Section 2.3(a) of this Development Agreement.

“Project” has the meaning provided in the Ground Lease, and will consist of a development including either Affordable Housing or Workforce Housing.

“Project Construction Costs” means all hard and soft construction costs incurred in connection with the development and Construction of the Project. The projected Project Construction Costs are as set forth in the Development Budget, attached hereto and incorporated by reference herein as Exhibit 3.4(a).

“Project Opening Date” has the meaning provided in the Ground Lease.

“Project Site” means the Land and all portions of the Improvements.

“Proposal” means the development proposal submitted by Developer in response to the RFP.

“RFP” or “Request for Proposals” has the meaning provided in Article 1 of the Ground Lease.

“Recognized Mortgage” has the meaning provided in the Ground Lease.

“Recognized Mortgagee” means the holder of a Recognized Mortgage; provided, however, that, except to the extent permitted by the Ground Lease, a Recognized Mortgagee may not be an Affiliate of Developer (except if Developer is an Affiliate of a Recognized Mortgagee that has caused the Ground Lease to be assigned to such Affiliate in lieu of foreclosure of the Recognized Mortgage of such Recognized Mortgagee).

“Requirements” has the meaning provided in Section 13.1(b).

“Sale of the Project” has the meaning provided in the Ground Lease.

“Substantial Completion” or “Substantially Complete” or “Substantially Completed” means, with respect to the Project, that (1) it shall have been substantially completed in accordance with the Plans and Specifications, (2) the certificate of the Architect described in Section 2.8(b)(i) shall have been obtained, and (3) all of the Improvements therein shall have been issued temporary or permanent Certificates of Occupancy.

“Term” means the period commencing on the Commencement Date and, unless sooner terminated as provided hereunder, expiring on the issuance of a Final CO and the completion of all remaining punch list items with respect to completion of the Project in accordance with the terms of this Agreement, subject, however, to survival of any provisions of this Agreement that are expressly stated herein to survive such expiration or termination (as the case may be).

“Unanticipated Circumstances” means (a) concealed or subsurface conditions not reasonably anticipated by Tenant, including any Environmental Condition and any geothermal system located within or proximate to the Land, or under or within any existing improvements located on or within any portion of any of the foregoing, (b) off-site improvements required by any Governmental Authority other than those depicted on the renderings and diagrams attached hereto as Exhibit “ ”, (c) any relocation of underground utilities located on the Land and (d) any appeals of Governmental Approvals to a court of competent jurisdiction.

“Unavoidable Delays” means delays due to strikes, slowdowns, lockouts, acts of God, inability to obtain labor or materials, war, enemy action, civil commotion, fire, casualty, catastrophic weather conditions, eminent domain, a court order which actually 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), the application of any Requirement, the occurrence of any Economic Unavoidable Delay, City Delays, Unanticipated Circumstances, or another cause beyond such party's control or which, if susceptible to control by such party, shall be beyond the reasonable control of such party. Such party shall use reasonable good faith efforts to notify the other party not later than twenty (20)

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days after such party knows of the occurrence of an Unavoidable Delay; provided, however, that either party's failure to notify the other of the occurrence of an event constituting an Unavoidable Delay shall not alter, detract from or negate its character as an Unavoidable Delay or otherwise result in the loss of any benefit or right granted to the delayed party under this Development Agreement. In no event shall (i) any party's financial condition or inability to fund or obtain funding or financing constitute an **"Unavoidable Delay"** (except for an Institutional Lender's inability to fund, which inability is not caused by Tenant) with respect to such party and (ii) any delay arising from a party's (or its Affiliate's) default under this Development Agreement or any of the Project Agreements constitute an **"Unavoidable Delay"** with respect to such party's obligations hereunder. The times for performance set forth in this Development Agreement (other than for monetary obligations of a party) shall be extended to the extent performance is delayed by Unavoidable Delay, except as otherwise expressly set forth in this Development Agreement.

"Workforce Housing" means residential units suitable for artists, employees of artistic institutions and educators and other eligible occupants earning up to 140% of AMI.

ARTICLE 2.

CONSTRUCTION

Section 2.1 Consistency with City's Comprehensive Plan and Zoning Regulations.

The City has adopted and implemented the Comprehensive Plan. The City hereby finds and declares that the provisions of this Development Agreement dealing with the Land are consistent with the City's adopted Comprehensive Plan and Land Development Regulations, subject to all applicable Requirements, Permits and Approvals.

Section 2.2 Planning Board Approval. [Revise as applicable to Project]

(a) Developer has heretofore submitted an application to the Planning Board for its review of the Project, and the Planning Board has reviewed the Project.

(b) If at any time in the future it shall be necessary in connection with the construction, reconstruction or renovation of the Premises to apply to the Planning Board for its review or approval of any changes or modifications to the Premises, Developer shall be solely responsible for making such application.

Section 2.3 Design of the Project.

(a) The Developer shall be solely responsible for the design of the Project, and such design shall be (1) substantially in accordance with the design shown in Developer's response to the RFP, except to the extent that changes thereto have been negotiated with, and approved, by Owner, and (2) at the sole cost and expense of Developer. Developer shall be solely responsible for obtaining the approval of the City's Design Review Board, and the City's Historic Preservation Board, if applicable, and the City shall have no duty or obligation to approve any particular design.

Prior to submission of the Project design to the DRB or HPB, if applicable, Developer shall submit to Owner (acting in its proprietary capacity as owner of the Land) all of the Preliminary Plans and Specifications for the Project which shall include, but not be limited to, a detailed site plan, elevation drawings of each facade, a detailed floor plan for each of the floors of the Project, a calculation of the floor areas for each floor of the Project, and a calculation of the total floor area dedicated to each use within the Project (the "Preliminary Plans and Specifications") which shall be submitted to Owner's City Manager for approval within _____ () weeks of the Commencement Date. The City Manager shall have twenty (20) Business Days to review the Preliminary Plans and Specifications, and shall review the Preliminary Plans and Specifications solely for consistency with the Developer's response to the RFP. If Owner disapproves the Preliminary Plans and Specifications, then Developer shall, at its election, either (x) submit Owner's disapproval to expedited arbitration pursuant to Section 3.6 and Section 22.1 as to the reasonableness of the disapproval, or (y) submit a revised modification to the Preliminary Plans and Specifications to meet Owner's objections, which revised modification shall be submitted and reviewed as provided in Section 3.1(b). Failure of the Developer to submit Preliminary Plans and Specifications by the date which is _____ () weeks from the Commencement Date shall constitute a Default under this Development Agreement.

(b) Developer shall, within _____ () weeks of Owner's approval of the Preliminary Plans and Specifications, submit an application for approval of the Project design to the City's Design Review Board and to the Historic Preservation Board, if applicable. Failure of the Developer to submit its application, as provided in this Section, to the DRB or HPB, if applicable, by the date which is eight (8) weeks from the receipt of Owners Approval as above provided shall constitute a Default under this Development Agreement (unless otherwise agreed to by Owner).

~~(b)~~ Note – all deadlines should be subject to extension for Unavoidable Delay.

(c) Developer shall pursue approval of its application to the DRB or HPB, if applicable, diligently and in good faith.

Section 2.4 Public Facilities and Concurrency.

(a) **[Planning Dept to update, as applicable to each Project] For further review following update** Owner and Developer anticipate that the Project will be served by those roadway transportation facilities currently in existence as provided by state, county and local roadways. It is also anticipated that the Project will be served by public transportation facilities currently in existence, including those provided by Miami-Dade County, the City, and other governmental entities as may presently operate public transportation services within the City. Sanitary sewer, solid waste, drainage, and potable water services for the proposed Project are expected to be those services currently in existence and owned or operated by Miami-Dade County, the Miami-Dade County Water and Sewer Department, and the City. The Project will also be serviced by any and all public facilities, as such are defined in Section 163.3221(12), Florida Statutes, as such are described in the City's Comprehensive Plan, specifically including, but not limited to, those facilities described in the Infrastructure Element and Capital Improvements Element therein, a copy of which is available for public inspection in the offices of the Planning, Design and Historic Preservation Department of the City of Miami Beach. The foregoing, however, shall not be

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deemed to be an approval of, nor shall it be deemed to relieve Developer of the obligation to comply with, Section 163.3180, Florida Statutes.

(b) Developer shall be solely responsible for obtaining all land use permits, including, but not limited to, all permits and approvals required pursuant to Section 163.3180, Florida Statutes, with respect to concurrency requirements for roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation (the "Concurrency Requirements"). Developer shall, within _____ () weeks of the Commencement Date, apply to the appropriate Governmental Authorities for letters or other evidence that Developer is pursuing all applicable Concurrency Requirements, and shall diligently and in good faith pursue such letters or other evidence that the Project meets all applicable Concurrency Requirements, or shall attempt to negotiate agreements acceptable to Tenant to mitigate the impacts of developing the Project.

Section 2.5 Plans and Specifications.

(a) Upon receipt of the DRB's approval of the Project, or the HPB's approval if applicable, Developer shall prepare Plans and Specifications for construction of the Project, consistent with the Preliminary Plans and Specifications, as approved by the DRB or HPB, if applicable, for review by Owner. The Plans and Specifications shall be submitted to the Owner within _____ () weeks from the date on which the DRB or HPB, as applicable, approves the Project. Failure of the Developer to submit Plans and Specifications to the Owner within _____ () weeks from the date on which the DRB approves the Project shall constitute a Default under this Development Agreement. The Plans and Specifications shall be reviewed by the City Manager solely for consistency with the Preliminary Plans and Specifications as the same have been modified by the DRB or HPB, if applicable. If Owner disapproves the Plans and Specifications, then Developer shall, at its election, either (x) submit Owner's disapproval to expedited arbitration pursuant to Section 3.6 and Section 22.1 as to the reasonableness of the disapproval, or (y) submit a revised modification to the Plans and Specifications to meet Owner's objections, which revised modification shall be submitted and reviewed as provided in Section 3.1(b).

(b) Developer shall pursue approval by the City of the Plans and Specifications diligently and in good faith.

Section 2.6 Conditions Precedent to Developer's Commencement of Construction of the Project.

(a) ~~Developer shall obtain a Building Permit for the entire Project by not more than _____ () months from the Commencement Date and failure to do so shall constitute a Default under this Development Agreement.~~ Subject to Section 2.6(c), Developer shall not Commence Construction of the Project unless and until (i) Developer shall have obtained and delivered to Owner's Consultant copies of all Permits and Approvals required to Commence Construction and (ii) Developer shall have delivered to Owner original certificates of the policies of insurance required to be carried pursuant to the provisions of Article 7 of this Agreement.

(b) Owner (solely in its capacity as the owner of the Project Site and not in its governmental capacity) shall reasonably cooperate with Developer in obtaining the Permits and Approvals required by Sections 2.2(a) and 2.10(a) and any necessary utility access agreements, shall sign any application reasonably made by Developer which is required in order to obtain such Permits and Approvals and utility access agreements and shall provide Developer with any information and/or documentation not otherwise reasonably available to Developer (if available to Owner) which is necessary to procure such Permits and Approvals and utility access agreements. Any such accommodation by Owner shall be without prejudice to, and shall not constitute a waiver of, Owner's rights to exercise its discretion in connection with its governmental functions. Developer shall reimburse Owner, within ten (10) days after Owner's demand, for any reasonable out-of-pocket cost or expense payable to Owner's technical consultants (other than Owner's Consultant and Owner's employees), such as architects and engineers, so incurred by Owner in connection with Owner's assistance in obtaining the Permits and Approvals and utility access agreements required by Sections 2.6(a) and 2.10(a). provided that such expenses have been agreed to in advance by Developer.

(c) Developer shall not Commence Construction of the Project, or any portion thereof, unless and until Owner shall have approved the Plans and Specifications, as provided in Section 2.5. However, if Developer chooses to perform any Construction of the Project on a "fast-track" basis, Developer may request the necessary approval of Owner in stages and perform that portion of the Construction Work which has been approved (provided Developer shall comply with all other requirements with respect to such portion of the Construction Work), even if progress plans and specifications for other portions of the Construction Work have not yet been prepared.

(d) Payment and Performance Bond. Prior to Commencement of Construction of the Project, Developer shall cause the General Contractor to furnish to Owner a payment and performance bond (the "Payment and Performance Bond"), or other security reasonably acceptable to Owner, in a form reasonably acceptable to Owner, issued by a surety listed in the most recent United States Department of Treasury listing of approved sureties, guaranteeing the performance of the General Contractor under that certain guaranteed maximum price contract for the Construction of the Project. Owner shall be named as a dual obligee under the Payment and Performance Bond; provided, however, Owner's rights under the Payment and Performance Bond shall be subordinate to the Recognized Mortgagee's (as defined in the Ground Lease) rights under the Payment and Performance Bond and Owner shall agree in writing with such Recognized Mortgagee that Owner shall only seek to enforce its rights under the Payment and Performance Bond if the Ground Lease is terminated and such Recognized Mortgagee fails to exercise its rights under Section 11.6 of the Ground Lease for the execution of New Tenant's Documents (as defined in the Ground Lease).

~~(d)~~ For discussion: Is it clear that no rezoning would be required under any of the development options under consideration? If not, then time for rezoning needs to be incorporated into the foregoing sections.

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Section 2.7 Commencement and Completion of Construction of the Project.

Developer shall at its expense (a) Commence Construction on or before sixty (60) days after closing of construction financing has occurred and all Permits and Approvals necessary for the

Commencement of Construction are issued (the “Construction Commencement Date”) and (b) thereafter continue to prosecute Construction of the Project with diligence and continuity to completion. If, after Developer has Commenced Construction, Developer fails to diligently prosecute Construction of the Project (subject to Unavoidable Delays), and such failure continues (subject to Unavoidable Delays) for thirty (30) consecutive days after Developer’s receipt of notice of such failure, Owner shall, in addition to all of its other remedies under this Agreement and the Ground Lease, have the right to seek such equitable relief (either mandatory or injunctive in nature) as may be necessary to cause diligent and continuous prosecution of Construction of the Project (subject to Unavoidable Delays) by Developer, it being understood that Construction of the Project is a material inducement to Owner to enter into the Ground Lease and monetary damages shall be inadequate to compensate Owner for harm resulting from such failure. Notwithstanding anything to the contrary contained herein, if Developer fails to Substantially Complete Construction of the Project by the Default Date, then the same shall constitute a Default under this Agreement and under the Ground Lease.

Section 2.8 Completion of Construction of the Project.

(a) Substantial Completion of the Project shall be accomplished in a diligent manner, and in any event by the Completion Deadline, and ~~final completion~~Final Completion of the Construction of the Project, including but not limited to completion of all punch-list items, shall be accomplished in a diligent manner thereafter, in each case in a good and workerlike manner, in substantial accordance with the Plans and Specifications (with no material deviations except as expressly permitted herein), in accordance with all applicable Requirements and, except as provided in Article 6, at Developer’s sole cost and expense.

(b) Upon Substantial Completion of Construction of the Project, Developer shall furnish Owner with the following:

(i) a certification of the Architect (certified to Owner on the standard AIA certification form) that it has examined the Plans and Specifications and that, in its professional judgment, after diligent inquiry, Construction of the Project has been Substantially Completed in accordance with the Plans and Specifications applicable thereto and, as constructed, the Improvements comply with all applicable Requirements;

(ii) if Requirements require the same, a copy or copies of the temporary certificates of occupancy for the Project (or portion thereof, as applicable) issued by the City of Miami Beach Building Department;

(c) Upon Final Completion of Construction of the Project, Developer shall furnish Owner with the following:

(iii) lien waivers in form and substance reasonably satisfactory to Owner from each contractor, subcontractor, supplier or materialman retained by or on behalf of Developer in connection with the Construction of the Project, evidencing that such Persons have been paid in full for all work performed or materials supplied in connection with the Construction of the Project;

(iv) a complete set of “as built” plans and a survey showing the Improvement(s) (excluding personalty) for which the Construction of the Project has been completed. Owner shall have an unrestricted license to use such “as built” plans and survey for any purpose related to the Project Site without paying any additional cost or compensation therefor, subject to copyright and similar rights of the Architect to prohibit use of designs for purposes unrelated to the Project Site, as such rights exist in law or may appear in the Architect’s contract, and subject to applicable public records laws. The foregoing requirement with respect to “as built” plans shall be satisfied by Developer furnishing to Owner, at Developer’s expense, a complete set of Plans and Specifications, with all addenda thereto and change orders in respect thereof, marked to show all changes, additions, deletions and selections made during the course of the Construction of the Project; and

(v) a Contractor’s Final Affidavit in form and substance reasonably satisfactory to Owner executed by the General Contractor (i) evidencing that all contractors, subcontractors, suppliers and materialmen retained by or on behalf of Developer in connection with the Construction of the Project have been paid in full for all work performed or materials supplied in connection with the Construction of the Project and (ii) otherwise complying with all of the requirements under the Florida Construction Lien Law, Chapter 713, Florida Statutes, as amended.

~~(e)-(d)~~ In the event that Developer has not Substantially Completed construction of the Improvements by the Completion Deadline, Developer shall forfeit the Security Deposit held pursuant to Section 3.6 of the Lease to Owner as liquidated damages, and not as a penalty, the Parties agreeing that it is impossible to ascertain actual damages to Owner in the event that Developer does not Substantially Complete construction of the Improvements by the Completion Deadline.

Section 2.9 Confirmation of Land Development Regulations.

The City Commission held a duly noticed public hearing on _____, after which it determined, pursuant to Section _____ of the City Code, that the zoning district classification of the Land under the Lease is _____, as defined in the Land Development Regulations. See note above regarding zoning – is it clear that rezoning is not required under any of the development options?

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Section 2.10 Required Development Permits.

(a) Developer shall be solely responsible for obtaining the Development Approvals listed in Exhibit 2.10 attached hereto, if applicable.

(b) There are no reservations and/or dedications of land for public purposes that are proposed under the terms of this Development Agreement.

Section 2.11 Proposed Permitted Development.

The proposed permitted development on the Land shall not exceed a Floor Area Ratio (as defined in the City's Land Use Regulations) of _____, and the height of the development on the Land shall not exceed _____ (____) feet.

Section 2.12 Developer's Right of Termination.

Notwithstanding anything to the contrary contained herein, Developer shall have the right to be released from its liability and obligations, except the obligation to pay Rental and/or Impositions prior to the Possession Date pursuant to Section 3.2(a) of the Ground Lease, and to terminate this Development Agreement and the Ground Lease prior to the Possession Date because (a) changes to the Preliminary Plans and Specifications required by the DRB, HPB, or any other Governmental Authority (including the City), render the Project economically unfeasible in the reasonable business judgment of Developer, (b) the Project cannot meet concurrency requirements under Section 163.3180, Florida Statutes, or the costs of concurrency mitigation are, in the reasonable business judgment of Developer, economically unfeasible, (b) Developer determines in its sole but good faith discretion that debt and equity sources are not available in sufficient amounts and upon such terms as to make development feasible, or (de) Developer, after good faith efforts, has been unable to obtain a full building permit for the Project pursuant to the Plans and Specifications submitted by Developer. In the event of termination of this Development Agreement and the Ground Lease pursuant to this Section 2.12, each Party shall bear its own costs and expenses incurred in connection with this Development Agreement and the Ground Lease and neither Party shall have any further liability to the other.

ARTICLE 3.

PLANS AND SPECIFICATIONS

Section 3.1 Approval and Modification of Plans and Specifications.

(a) In accordance with Section 2.5, and prior to submitting its application for the required Building Permits, Developer shall prepare and submit to Owner (acting in its proprietary capacity as owner of the Land), the Plans and Specifications, which Plans and Specifications shall be used to obtain the required building permits. If such submitted Plans and Specifications are materially inconsistent with, or contain material modifications to, the Preliminary Plans and Specifications as approved by the DRB or HPB, if applicable, then such Plans and Specifications shall clearly indicate, by "ballooning", highlighting, blacklining or describing in writing in sufficient detail in a memorandum accompanying such Plans and Specifications, all such modifications to the Preliminary Plans and Specifications. Within ten (10) Business Days of its receipt of such Plans and Specifications, Owner shall notify Developer, in writing, describing, with specificity, the basis for such disapproval of any material inconsistencies or material modifications of which Owner disapproves between the proposed Plans and Specifications and the Preliminary Plans and Specifications, it being agreed however, that Owner's failure to so notify Developer of its disapproval within such time period shall be deemed to constitute Owner's conclusive approval of such Plans and Specifications; provided, however, that if Owner shall notify Developer within ten (10) Business Days following its receipt that any of such inconsistencies or modifications to the

Preliminary Plans and Specifications are not indicated as required by this Section 3.1(a) or that the complexity of such changes from the Preliminary Plans and Specifications necessitates an extension of such time period to complete Owner's review, such period shall be extended to the date which is thirty (30) days after Owner's receipt of the proposed inconsistencies or modifications; provided, further, however, that Owner shall not be responsible for, and shall not be deemed to have approved, any such material inconsistency or modification that is not indicated as required by this Section 3.1(a), except that when Developer advises Owner in writing, and Owner agrees with Developer in writing, that the Plans and Specifications, as approved as herein provided above, are complete and sufficient and suitable to construct, furnish and equip the entire Project in accordance with the provisions of this Agreement, such written agreement shall be deemed to constitute Owner's conclusive approval of all modifications and inconsistencies, whether or not the modifications are highlighted, in such Plans and Specifications; provided, however, that the foregoing exception relating to Owner's conclusive approval does not apply to those changes which, in Owner's opinion, (i) diminish any of the levels of quality of the Project, (ii) materially diminish, individually or in the aggregate, any of the physical components of the Project, or (iii) have a material adverse effect (a) on the ability of Developer to complete Construction of the Project or (b) on the financial feasibility of the Project. Notwithstanding anything to the contrary contained herein, Owner shall not object to any inconsistencies with or modifications to the Preliminary Plans and Specifications which are necessitated by Requirements or as a result of a drafting, coordination, mechanical or technical error in the Preliminary Plans and Specifications.

(b) If Developer desires to modify previously approved Plans and Specifications (as such may have been modified by approved Plans and Specifications), Developer shall submit any such modified Plans and Specifications to Owner for Owner's approval. Such modified Plans and Specifications shall clearly indicate, by "ballooning", highlighting, blacklining or describing in writing in sufficient detail in a memorandum accompanying such modified Plans and Specifications, all such proposed modifications to the Plans and Specifications. Within ten (10) Business Days of its receipt of the proposed modifications, Owner shall notify Developer in writing, with specificity of any material inconsistencies or material modifications of which Owner disapproves between the Plans and Specifications as modified and the Plans and Specifications previously approved by Owner, it being agreed however, that Owner's failure to so notify Developer of its disapproval during such time period shall be deemed to constitute Owner's conclusive approval of such Plans and Specifications; provided, however, that if Owner shall notify Developer within ten (10) Business Days following its receipt that any of the proposed modifications to the Plans and Specifications are not indicated as required by this Section 3.1(b) or that the complexity of the proposed modifications necessitates an extension of such time period to complete Owner's review, such period shall be extended to the date which is thirty (30) days after Owner's receipt of the proposed modifications; provided, further, however, that Owner shall not be responsible for, and shall not be deemed to have approved, any such proposed modification that is not indicated as required by this Section 3.1(b). Notwithstanding anything to the contrary contained herein, Owner shall not object to any modifications to the Plans and Specifications which are necessitated by Requirements or as a result of a drafting, coordination, mechanical or technical error in the Plans and Specifications.

(c) If Owner disapproves any material inconsistencies or material modification in the Plans and Specifications from the Preliminary Plans and Specifications pursuant to Section 3.1(a)

above, or Owner disapproves any of the material modifications to or material inconsistencies in the Plans and Specifications pursuant to Section 3.1(b) above, then Developer shall, at its election either: (x) submit Owner's disapproval to expedited arbitration pursuant to Section 3.6 and Section 22.1 as to the (i) materiality of the inconsistency or modification and/or (ii) the reasonableness of the disapproval or (y) within thirty (30) days after receiving Owner's disapproval notice, submit revised Plans and Specifications or a revised modification to the Plans and Specifications to meet Owner's objections, which revised Plans and Specifications or revised modification shall be reviewed as provided in Section 3.1 (a) or (b), as applicable.

Section 3.2 Reserved

Section 3.3 Compliance with Requirements; Construction Standards

(a) Notwithstanding anything to the contrary contained herein, the Plans and Specifications shall comply with all applicable Requirements. It is Developer's responsibility to assure such compliance. Owner's approval in accordance with this Article 3.3 of any Plans and Specifications shall be deemed to be a determination by Owner that the Plans and Specifications so approved are in substantial conformity with the Proposal, but shall not be, and shall not be construed as being, or relied upon as, a determination that such Plans and Specifications comply with other applicable Requirements, including, without limitation, any Requirements providing for the review and approval of the Plans and Specifications by any Governmental Authority (in its governmental capacity as opposed to its proprietary capacity).

(b) Construction of the Project shall be carried out pursuant to Plans and Specifications prepared by licensed architects and engineers, with controlled inspections conducted by a licensed architect or professional engineer as required by applicable Requirements.

Section 3.4 Project Budget

(a) Developer has previously submitted to Owner, and Owner has approved, a pre-construction budget and development budget for the Project (collectively, the "Development Budget"), copies of which are attached hereto and incorporated by reference herein as Exhibit 3.4(a). Information copies of any material modifications to the Development Budget shall be promptly delivered to Owner.

(b) Developer hereby covenants and agrees that:

(i) Developer shall initially invest or cause to be invested not less than _____ Dollars (\$_____) for the total initial Project cost, subject to any adjustments due to value engineering which do not change the design quality or scope of the Project and subject to Developer not expending all funds in the contingency line items of Exhibit 3.4(a); and

(ii) Not less than _____ Dollars (\$_____) shall be spent on hard construction costs of the initial Project, subject to any adjustments due to value engineering which do not change the design quality or scope of the Project; and

(iii) Developer (or a tax credit investor, if applicable) shall invest not less than _____ Dollars (\$ _____) as its equity contribution to the total initial Project cost (the "Funded Equity").

(c) Upon Substantial Completion of the Project, Developer shall certify to Owner that it has, in fact, expended not less than said amounts for total construction costs and hard construction costs.

Section 3.5 Design and Decor

Notwithstanding anything to the contrary contained in this Agreement, Owner shall not have any approval rights with respect to matters of interior design and decor of the Project except to the extent the same are reflected in the Plans and Specifications.

Section 3.6 Development Dispute

Any dispute or disagreement between Owner and Developer arising prior to the Project Opening Date with respect to the following matters (a "Development Dispute") shall be finally resolved in accordance with the provisions of Section 22.1:

(a) Any dispute as to whether Developer's modifications to the Preliminary Plans and Specifications or the Plans or Specifications pursuant to Section 2.3 or Section 2.5, or Section 3.1(a) or (b), respectively, are material and/or materially inconsistent and are therefore subject to Owner's approval; and

(b) Any contention by Developer that Owner has unreasonably failed to approve or give its consent to any modifications to the Preliminary Plans and Specifications pursuant to Section 2.3 or to the Plans and Specifications pursuant to Section 2.5, Section 3.1(a) or (b).

ARTICLE 4.

OWNER PARTICIPATION

Section 4.1 Owner's Right to Use Field Personnel

Owner reserves the right, at its sole cost and expense, to maintain one (1) on-site representative (from Owner's Consultant, Owner or another entity designated by Owner) at the Project Site to conduct inspections of the Project Site (provided, however, that Owner shall be entitled to maintain additional on-site representatives from time to time to the extent reasonably necessary to perform such inspections), and Developer agrees to provide safe access to the Project Site, including, without limitation, access to inspect the Construction Work, including, without limitation, the preparation work and work in progress wherever located. No such inspection by the Owner's on-site representatives shall impose upon Owner responsibility or liability for any failure by Developer to observe any Requirements or safety practices in connection with such Construction

Work, or constitute an acceptance of any work which does not comply with the provisions of this Agreement, and no such inspection shall constitute an assumption by Owner of any responsibility or liability for the performance of Developer's obligations hereunder, nor any liability arising from the improper performance thereof. The Owner's on-site representatives shall not interfere with any Construction Work being performed at the Project Site and shall comply with all safety standards and other job-site rules and regulations of Developer. Owner's on-site representative is an inspector only. The on-site representative shall make only such communications with Developer's construction manager(s), the General Contractor, its subcontractors, or any other Person involved in the Construction of the Project, as are reasonably necessary to enable such on-site representative to conduct its investigations, and in no event shall the on-site representative give directions to such Persons. Developer shall provide a reasonable work area and services for Owner's on-site representative as is customarily provided at similar construction sites. All expenses incurred by Owner's on-site representative shall be paid by Owner.

Section 4.2 Owner's Right to Notice, Access and Review

(a) Developer acknowledges that Owner has appointed the Owner's Consultant as the Owner's consultant in connection with the Construction of the Project in accordance with the terms of this Agreement. In connection therewith, Developer agrees to cooperate fully with the Owner's Consultant. In furtherance thereof, Developer agrees that the Owner's Consultant, and its authorized representatives, shall have such rights of notice, access and review with respect to the Project and the Construction Agreements as is reasonably necessary to achieve the foregoing (including, but not limited to verifying on Owner's behalf that the Construction of the Project is being conducted in accordance with the terms hereof), including, without limitation, the following:

(i) the opportunity for attendance by the Owner's Consultant at regularly scheduled Construction Work meetings (which shall be scheduled not less frequently than twice each month) and at any special meetings which Developer deems necessary in its reasonable discretion as to change orders, delays and other material issues concerning the Project;

(ii) the inspection by the Owner's Consultant of all Construction Work (in accordance with the provisions of Section 4.1);

(iii) the opportunity for attendance by the Owner's Consultant at the interior design presentations given to Developer (or an equivalent presentation);

(iv) the delivery by Developer to the Owner's Consultant of two (2) copies of:

(1) the executed contract between Developer and the General Contractor for the Project;

(2) the Plans and Specifications (and modifications thereto, with such modifications being clearly indicated, by "ballooning", highlighting, or blacklining on the Plans and Specifications or describing in writing in sufficient detail in a memorandum accompanying such

modified Plans and Specifications), working and other drawings, renderings, blueprints, specifications, layouts and change orders (collectively, the “Detailed Plans”);

(3) all insurance certificates required by Article 7 of this Agreement (including those of Developer and all contractors and subcontractors);

(4) a monthly construction cost-to-date report reasonably acceptable to Owner;

(5) all periodic (but not less than monthly) updates to the Development Budget, which updates shall show all variances; and

To the extent the exercise of the Owner’s rights hereunder requires the opportunity for review of any documents or the opportunity for participation in any meetings, Developer agrees, without request therefor by Owner, to promptly provide copies of such documents or notice of such meetings to Owner and the Owner’s Consultant, as applicable, after receipt of the same by Developer and reasonably in advance of any meetings to allow for appropriate travel arrangements to the extent practical under the circumstances. If Owner’s Consultant is not in attendance, the meeting will proceed and Developer will promptly provide Owner’s Consultant with minutes of the meeting. The Owner’s Consultant shall not interfere with any Construction Work being performed at the Project Site and shall comply with all safety standards and other job-site rules and regulations of Developer.

(b) Prior to the Commencement of Construction, Developer shall provide to Owner a construction schedule for each phase of the Project, which schedule shall be prepared using the critical path method (“CPM”); such schedule, as it shall be amended from time to time in accordance with the Construction Agreements, shall be referred to as the “CPM Schedule”), including a CPM network diagram, for use in scheduling and controlling the Construction. The CPM Schedule shall, at a minimum, show:

(i) the early and late start and stop times for each major construction activity;

(ii) all “critical path” activities and their duration;

(iii) the sequencing of all procurement, approval, delivery and work activities;

(iv) manpower levels;

(v) late order dates for all long lead time materials and equipment; and

(vi) critical Developer and Owner decision dates.

Developer shall promptly provide to the Owner’s Consultant information copies of the CPM Schedule. The CPM Schedule shall (1) be revised by Developer whenever there is a

material variance in the progress of the Construction from the then current CPM Schedule and otherwise at appropriate intervals, but in no event less frequently than monthly and (2) provide for expeditious and practicable execution of the Construction.

A copy of the CPM network diagram highlighting the completed and partially completed activities and manpower schedule shall be maintained by Developer on a current basis, at the Project Site, to accurately reflect the actual progress of the Construction and shall be displayed at all times in a manner that is readily accessible to the Owner's Consultant. Three (3) copies of the updated CPM Schedule, CPM network diagram and manpower schedule shall be delivered to the Owner's Consultant promptly after the same have been revised as required herein. The CPM network diagram shall reflect the actual progress of Construction to date. The manpower schedule shall reflect actual manpower levels each week compared to manpower levels set forth in the CPM Schedule.

Developer shall keep the Owner's Consultant informed on a periodic (but not less than twice per month) basis, unless circumstances dictate the need to do so more frequently, as to actual progress made. Developer shall provide the Owner's Consultant with reasonable access to the reports, logs and other systems in which Developer records or notes the daily progress of the Construction Work. Developer shall inform the Owner's Consultant of any deviation from the CPM Schedule which, in Developer's good faith determination, is likely to cause a material delay in the Substantial Completion of the Project (as shown on the current CPM Schedule), within three (3) Business Days after such deviation becomes apparent to Developer.

ARTICLE 5.

MISCELLANEOUS CONSTRUCTION PROVISIONS

Section 5.1 Reserved

Section 5.2 Names of Contractors, Materialmen, etc

All Persons employed by Developer with respect to Construction of the Project shall be paid, without subsequent deduction or rebate unless expressly authorized by Requirements, not less than the relevant prevailing wage as prescribed by the City of Miami Beach Prevailing Wage Ordinance, Miami Beach City Code, Section 31A-27, as amended, but only to the extent such Prevailing Wage Ordinance is applicable to the construction of the Improvements.

Section 5.3 Construction Agreements

(a) **Required Clauses** [For review by construction contract consultant] All Construction Agreements which provide for the performance of labor on the Project Site shall include the following provisions (or language substantially similar thereto which is approved in advance by Owner); provided, however, that any Construction Agreement having aggregate payments of Five Hundred Thousand Dollars (\$500,000) or less shall not be required to include the provisions set forth in paragraph (i) below:

(i) an agreement by the Contractor to provide, prior to the commencement of its portion of the work, and maintain during the performance thereof, the insurance set forth on Exhibit 5.3(a) attached hereto [Insurance consultant to review all insurance requirements and clauses] and incorporated by reference herein. Such Contractor shall procure an appropriate clause in, or endorsement on, any policy of insurance carried by it pursuant to which the insurance company waives subrogation or consents to a waiver of right of recovery consistent with the release, discharge, exoneration and covenants not to sue contained herein. Original Certificates of Insurance, in quadruplicate (all of which shall be original signed counterparts) and including the City of Miami Beach, Florida (and any successor Owner), as additional insureds (the "Certificate of Insurance"), shall be furnished to Developer by Contractor prior to commencement of work, denoting all insurance required of Contractor pursuant to the terms of the Contract. The Contractor shall secure an original Certificate of Insurance from each of its sub-contractors and/or suppliers with limits of liability equal to those carried by the Contractor;

(ii) "Contractor hereby waives all rights of recovery, claims, actions or causes of action against the City of Miami Beach, Florida (and any successor Owner), and their respective elected and appointed officials (including, without limitation, the City's Mayor and City Commissioners), directors, officials, officers, shareholders, members, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, lessees, mortgagees, trustees, partners, principals, invitees and affiliates, for any loss or damage to property of Contractor which may occur at any time in connection with the Project.";

(iii) "To the fullest extent permitted by law, Contractor shall and does hereby indemnify and hold harmless the City of Miami Beach, Florida (and any successor Owner), and their respective elected and appointed officials (including the City's Mayor and City Commissioners), directors, officials, officers, shareholders, members, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, lessees, mortgagees, trustees, partners, principals, invitees and affiliates, from and against any and all liability, claims, demands, damages, losses, fines, penalties, expenses and costs of every kind and nature, including, without limitation, costs of suit and attorneys' fees and disbursements (collectively, "Expenses"), resulting from or in any manner arising out of, in connection with or on account of: (1) any act, omission, fault or neglect of Contractor, or anyone employed by it in connection with the work or any phase thereof, or any of its agents, contractors, subcontractors, employees, invitees or licensees in connection with the work, or anyone for whose acts any of them may be liable, (2) claims of injury (including physical, emotional, economic or otherwise) to or disease, sickness or death of persons or damage to property (including, without limitation, loss of use resulting therefrom) occurring or resulting directly or indirectly from the work or any portion thereof or the activities of Contractor or anyone employed by it in connection with the work, or any portion thereof, or any of its respective agents, contractors, subcontractors, employees, invitees or licensees in connection with the work, or anyone for whose acts any of them may be liable, or (3) mechanics' or materialmen's or other liens or claims (and all costs or expenses associated therewith) asserted, filed or arising out of the work or any phase thereof other than liens or claims arising out of Developer's failure to make the required payments properly due Contractor. In no event shall Contractor be able to seek or be entitled to consequential damages (including, without limitation, loss of profits or loss of business opportunity) for claims arising under

this contract. This indemnification obligation shall not be limited in any way by: (x) any limitation on the amount or type of damages, compensation or benefits payable to Contractor under worker's compensation acts, disability benefit acts or other employee benefit acts or other insurance provided for by this contract; or (y) the fact that the Expenses were caused in part by a party indemnified hereunder. The Contractor further agrees that this indemnification shall be made a part of all contracts and purchase orders with sub-contractors or material suppliers. The indemnification agreement included in this contract is to be assumed by all sub-contractors.”;

(iv) (1) the right of Developer to assign to Owner, subject and subordinate to the rights of Lender, the contract and Developer's rights thereunder, at the Owner's request, without the consent of the Contractor, and (2) that without the necessity of such assignment and without thereby assuming any of the obligations of Developer under the contract occurring prior to such assignment and/or purchase order, except for Developer's payment obligations, Owner shall have the right to enforce the full and prompt performance by the Contractor of such Contractor's obligations under the contract;

(v) “Contractor agrees to comply with all laws and requirements applicable to Contractor and the Project, including, without limitation, the City of Miami Beach Prevailing Wage Ordinance, Miami Beach City Code, Section 31A-27, as amended, if such provision is applicable to construction of the Improvements.”;

(vi) “Upon an Event of Default by Developer resulting in a termination of that certain Agreement of Lease between Developer and Owner, dated as of _____, 20____, pursuant to which Developer (as tenant) has agreed to lease the Land on which the Project is to be constructed, Contractor shall, at the option of the City of Miami Beach, Florida, subject and subordinate to the rights of Lender, be terminated or Contractor will honor this agreement as if this agreement had been originally entered into with the City of Miami Beach, Florida.”;

(vii) “Nothing contained in this contract is in any way intended to be a waiver of the prohibition on Contractor's ability to file liens against property of the City of Miami Beach, Florida, or of any other constitutional, statutory, common law or other protections afforded to public bodies or governments.”;

(viii) “Upon an Event of Default by Developer resulting in a termination of that certain Agreement of Lease between Developer and Owner, dated as of _____, 2019, pursuant to which Developer (as tenant) has agreed to lease the Land on which the Project is to be constructed, all covenants, representations, guarantees and warranties of Contractor hereunder shall be, subject and subordinate to the rights of Lender, deemed to be made for the benefit of the City of Miami Beach, Florida, (and the City of Miami Beach, Florida, shall be deemed to be a third-party beneficiary hereof) and shall be, subject and subordinate to the rights of Lender, enforceable by the City of Miami Beach, Florida.”;

(ix) “Unless and until the City of Miami Beach, Florida, expressly assumes the obligations of Developer under this contract (and then only to the extent the same arise from and after such assumption), the City of Miami Beach, Florida, shall not be a party to this

contract and will in no way be responsible to any party for any claims of any nature whatsoever arising or which may arise in connection with such contract.”; and

(x) “Contractor hereby agrees that notwithstanding that Contractor performed work at the Project Site or any part thereof, the City of Miami Beach, Florida shall not be liable in any manner for payment or otherwise to Contractor in connection with the work performed at the Project Site, except to the extent the City of Miami Beach, Florida, expressly assumes the obligations of Developer hereunder (and then only to the extent such obligations arise from and after such assumption).”

Section 5.4 Demolition of the Project Site.

Except as necessary and as provided in the Plans and Specifications in connection with Construction of the Project or as part of a Casualty Restoration or Condemnation Restoration or as may be otherwise permitted under this Development Agreement or the Ground Lease, Developer shall not demolish any portion of the Project Site. Any demolition permitted hereunder shall be performed in accordance with all applicable Requirements.

ARTICLE 6.

FINANCING OF PROJECT CONSTRUCTION AND DISBURSEMENT PROCEDURES

Section 6.1 Developer's Contributions.

Developer shall provide the Funded Equity as set forth in Section 3.4(b). Developer shall also provide all of the funds necessary to complete Construction of the Project. [For discussion - revise to provide flexibility for various low income housing tax credit investment options.]

Section 6.2 Fees.

(a) City Permit Fees. Developer assumes payment responsibility for any and all Permits, now or hereafter, required to be obtained from the City for the construction of the Project, which include, without limitation, building permit applications, inspection, certification, impact, concurrency, transportation/mobility and connection fees that the City may levy (including, without limitation, water and sewer fees) and those fees, to the extent applicable, listed in the City of Miami Beach Building Department Fee Schedule, as amended through _____, or the most current edition adopted by the City, which fee schedule is hereby incorporated by reference and made a part of this Agreement (collectively, the “Fees”). Developer shall remain responsible for payment of the Fees notwithstanding any and all modifications or changes in price structure as imposed by the City or any other Governmental Authority authorized to impose such Fees.

(b) Non-City Permit Fees. Developer shall assume responsibility for payment of all fees charged by Governmental Authorities relating to the Project.

ARTICLE 7.

INSURANCE

Developer shall, in accordance with the Ground Lease, carry or cause to be carried the insurance required under Section 7.10 of the Ground Lease, including the relevant provisions of Sections 7.2, 7.3, 7.6 and 7.14 of the Ground Lease.

ARTICLE 8.

DAMAGE, DESTRUCTION AND RESTORATION

Section 8.1 Casualty.

If the Project Site is damaged or destroyed in whole or in part by fire or other casualty, the provisions of the Ground Lease applicable to damage or destruction by fire or other casualty to the "Premises" described under the Ground Lease shall govern the rights and obligations of Developer, Owner and any Recognized Mortgagee hereunder.

Section 8.2 Effect of Casualty on this Agreement.

Except as provided in Section 8.1 or the Ground Lease, this Development Agreement shall not terminate, be forfeited or be affected in any manner, by reason of any damage to, or total or partial destruction of, or untenantability of the Project Site or any part thereof resulting from such damage or destruction.

ARTICLE 9.

CONDEMNATION

Section 9.1 Taking.

If all or any portion of the Project Site is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Owner, Developer, any Recognized Mortgagee and those authorized to exercise such right, the provisions of the Ground Lease applicable to such taking of the "Premises" described under the Ground Lease shall govern the rights and obligations of Developer, Owner and any Recognized Mortgagee hereunder.

Section 9.2 Effect of Taking on this Agreement.

Except as provided in Section 9.1 or the Ground Lease, this Development Agreement shall not terminate, be forfeited or be affected in any manner, by reason of any taking of the Project Site or any part thereof.

ARTICLE 10.

RIGHTS OF RECOGNIZED MORTGAGEE

Section 10.1 Notice and Right to Cure Developer's Defaults.

(a) Owner shall give to the Recognized Mortgagee and/or Affiliate Mortgagee a copy of each notice of Default at the same time as it gives notice of such Default to Developer, and no such notice of Default shall be deemed effective with respect to any Recognized Mortgagee or Affiliate Mortgagee unless and until a copy thereof shall have been so received by or refused by such Recognized Mortgagee or Affiliate Mortgagee, as applicable. All such notices to a Recognized Mortgagee or Affiliate Mortgagee shall be sent as set forth in Section 11.4(a) of the Ground Lease. Owner shall also give the Recognized Mortgagee or Affiliate Mortgagee notice ("Notice of Failure to Cure") in the event Developer fails to cure a Default within the period, if any, provided in this Agreement for such cure, promptly following the expiration of such period (i.e., an Event of Default).

(b) The Recognized Mortgagee shall have a period of sixty (60) days after receipt of the Notice of Failure to Cure, in the case of any Event of Default, to (1) cure the Event of Default referred to in the Notice of Failure to Cure or (2) cause it to be cured, subject to the same additional time periods provided to Developer pursuant to the provisions of Section 19.1(b) unless such default is not susceptible of being cured by a Recognized Mortgagee (i.e., defaults stated in Section 19.1(e), (f) and (g)). Nothing contained herein shall be construed as imposing any obligation upon any Mortgagee to so perform or comply on behalf of Developer.

(c) Owner shall accept performance by a Mortgagee of any covenant, condition or agreement on Developer's part to be performed hereunder with the same force and effect as though performed by Developer.

(d) Notwithstanding any other provision of this Agreement, no payment made to Owner by any Mortgagee shall constitute the Mortgagee's agreement that such payment was, in fact, due under the terms of this Agreement.

(e) Notwithstanding the foregoing provisions of this Section 10.1, if a Recognized Mortgagee fails (for any reason) to cure any Event of Default by Developer within sixty (60) days following receipt of the Notice of Failure to Cure regarding such Event of Default, then Owner may, but shall be under no obligation to, perform the obligation of Developer the breach of which gave rise to such Event of Default (including, without limitation, the performance of any of the obligations of Developer under any Construction Agreement), without waiving or releasing Developer from its obligations with respect to such Event of Default. Developer hereby grants Owner access to the Project Site in order to perform any such obligation. Any amount paid by Owner in performing Developer's obligations as provided in this Section 10.1(e), including, without limitation, all costs and expenses incurred by Owner in connection therewith, shall be reimbursed to Owner within thirty (30) days following Owner's demand therefor, together with a late charge on amounts actually paid

by Owner, calculated at the Late Charge Rate from the date of notice of any such payment by Owner to the date on which payment of such amounts is received by Owner.

(f) If there is more than one Recognized Mortgagee, only that Recognized Mortgagee, to the exclusion of all other Recognized Mortgagees, whose Recognized Mortgage is most senior in lien shall be recognized as having rights under this Article 10, unless such first priority Recognized Mortgagee has designated in writing to Owner a Recognized Mortgagee whose Mortgage is junior in lien to exercise such right.

ARTICLE 11.

NO SUBORDINATION

Owner's Interest in the Premises, including, without limitation, Owner's interest in the Ground Lease and this Agreement, as the same may be modified, amended or renewed, shall not be subject or subordinate to (a) any Mortgage now or hereafter existing, (b) any other liens or encumbrances hereafter affecting Developer's Interest in the Premises and Developer's interest in this Development Agreement or (c) any sublease or any mortgages, liens, or encumbrances now or hereafter placed on any subtenant's interest in the Project Site. Developer's Interest in the Premises and this Development Agreement and all rights of Developer hereunder are and shall be subject to the Title Matters as set forth on Exhibit 2.1 to the Ground Lease.

ARTICLE 12.

MAINTENANCE AND REPAIR

Section 12.1 Maintenance of Project Site.

(a) Maintenance and Repair.

(i) Developer shall take good care of, and keep and maintain, the Project Site in good and safe order and condition, and shall make all repairs reasonably necessary to keep the Project Site in good and safe order and condition.

(ii) Developer shall not commit, and shall use all reasonable efforts to prevent waste, damage or injury to the Project Site, except with respect to the Construction of the Project (but subject, however, to the provisions of Section 12.1(a)(i)).

(b) Cleaning of Project Site. Developer shall keep clean and free from rubbish all areas of the Project Site.

(c) Other Areas. Developer shall promptly rectify any damage or interference caused by Developer to any improvements, equipment, structures or vegetation outside of the Project Site which is owned or controlled by Owner or the City. The City or Owner shall promptly rectify any damage or interference caused by the City or Owner to the Project Site.

Section 12.2 Waste Disposal.

Developer shall dispose of waste from all areas of the Project Site in accordance with Requirements and in a prompt, sanitary and aesthetically reasonably inoffensive manner.

ARTICLE 13.

REQUIREMENTS

Section 13.1 Requirements.

(a) Obligation to Comply. In connection with any Construction Work, and with the maintenance, management, use, construction and operation of the Project Site and Developer's performance of its obligations hereunder, Developer shall comply promptly with all Requirements, without regard to the nature of the work required to be done, whether extraordinary or ordinary, and whether requiring the removal of any encroachment (but Developer may seek to obtain an easement in order to cure an encroachment, if permitted by Requirements), or affecting the maintenance, use or occupancy of the Project Site, or involving or requiring any structural changes or additions in or to the Project Site and regardless of whether such changes or additions are required by reason of any particular use to which the Project Site, or any part thereof, may be put. No consent to, approval of or acquiescence in any plans or actions of Developer by Owner, in its proprietary capacity as Owner, or Owner's designee shall be relied upon or construed as being a determination that such are in compliance with the Requirements, or, in the case of construction plans, are structurally sufficient, prudent or in compliance with the Requirements. Failure of this Development Agreement to address a particular permit, condition, term or restriction shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, term or restriction.

(b) Definition.

"Requirements" means:

(i) any and all laws, constitutions, rules, regulations, orders, ordinances, charters, statutes, codes, executive orders and requirements of all Governmental Authorities having jurisdiction over a Person and/or the Project Site or any street, road, avenue or sidewalk comprising a part of, or lying in front of, the Project Site or any vault in, or under the Project Site (including, without limitation, any of the foregoing relating to handicapped access or parking, the Building Code of the City and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions);

(ii) the temporary and/or permanent certificate or certificates of occupancy issued for the Project Site as then in force;

(iii) the requirements of the City of Miami Beach Prevailing Wage Ordinance, Miami Beach City Code, Section 31A-27, as amended, if applicable; and

(iv) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Developer under this Agreement.

ARTICLE 14.

DISCHARGE OF LIENS

Section 14.1 Creation of Liens.

(a) Developer shall not create, cause to be created, or suffer or permit to exist (1) any lien, encumbrance or charge upon this Agreement, the Project Site or any part thereof or appurtenance thereto, which is not removed within the time period required pursuant to Section 14.2, (2) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Owner, or (3) any other matter or thing whereby Owner's Interest in the Premises or any part thereof or appurtenance thereto might be materially impaired. Notwithstanding the above, Developer shall have the right to execute Mortgages and other loan documents, subleases and other instruments (including, without limitation, equipment leases) as provided by, and in accordance with, the provisions of the Ground Lease.

(b) Owner shall not create, cause to be created, or suffer or permit to exist (i) any lien, encumbrance upon this Agreement, the Ground Lease or the income therefrom (except as expressly provided in the Ground Lease), the Project Site, or any part thereof or appurtenance thereto, which is not removed within the time period required pursuant to Section 14.2, (ii) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Developer, or (iii) any other matter or thing whereby Developer's Interest in the Premises any part thereof or appurtenant thereto might be materially impaired.

Section 14.2 Discharge of Liens.

(a) If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Developer by the Requirements or by a provision of this Development Agreement) is filed against the Project Site or any part thereof, or if any public improvement lien created, or caused or suffered to be created by Developer shall be filed against any assets of, or funds appropriated to, Developer or Owner, Developer shall, within thirty (30) days after Developer receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien or public improvement lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, Developer shall not be required to discharge any such lien if Developer shall have (i) furnished Owner with, at Developer's option, a cash deposit, bond, letter of credit from an Institutional Lender (in form reasonably satisfactory to Owner) or other security (such as a personal guaranty or title company indemnity) reasonably satisfactory to Owner, in an amount sufficient to pay the lien with interest and penalties; and (ii) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding with diligence and continuity; except that if, despite Developer's efforts to seek discharge of the lien, Owner reasonably believes that a court judgment or order foreclosing

such lien is about to be entered or granted and so notifies Developer, Developer shall, within ten (10) days of notice to such effect from Owner (but not later than three (3) Business Days prior to the entry or granting of such judgment or order of foreclosure), cause such lien to be discharged of record or Owner may thereafter discharge the lien in accordance with Section 18.2 and look to the security furnished by Developer for reimbursement of its cost in so doing. Notwithstanding anything to the contrary contained in this Section 14.2(a), in the case of a public improvement lien which provides for installment payments as a means of satisfying such lien, Developer shall be required only to pay, on a timely basis, all installments when due.

(b) Notwithstanding anything to the contrary contained in Section 14.2(a), if any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Developer by the Requirements or by a provision of this Development Agreement) is filed against the Project Site or any part thereof or Developer's Interest in the Premises or Owner's Interest in the Premises as a result of any action of Owner, its officers, employees, representatives or agents, Owner shall, within thirty (30) days after Owner receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, Owner shall not be required to discharge any such lien if Owner shall have (i) furnished Developer with, at Owner's option, a cash deposit, bond, letter of credit from an Institutional Lender (in form reasonably satisfactory to Developer) or other security (such as a personal guaranty or title company indemnity) reasonably satisfactory to Developer, in an amount sufficient to pay the lien with interest and penalties and (ii) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding with diligence and continuity; except that if, despite Owner's efforts to seek discharge of the lien, Developer reasonably believes that a court judgment or order foreclosing such lien is about to be entered or granted and so notifies Owner, Owner shall, within ten (10) days of notice to such effect from Developer (but not later than three (3) Business Days prior to the entry or granting of such judgment or order of foreclosure), cause such lien to be discharged of record or Developer may thereafter discharge the lien in accordance with Section 18.2 and look to the security furnished by Owner for reimbursement of its cost in so doing.

Section 14.3 No Authority to Contract in Name of Owner.

Nothing contained in this Article 14.3 shall be deemed or construed to constitute the consent or request of Owner, express or implied, by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of, the Project Site or any part thereof, nor as giving Developer any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against Owner's Interest in the Premises or any part thereof or against any assets of Owner. Notice is hereby given, and Developer shall cause all Construction Agreements to provide, that to the extent enforceable under Florida law, Owner shall not be liable for any work performed or to be performed at the Project Site or any part thereof for Developer or for any subtenant or for any materials furnished or to be furnished to the Project Site or any part thereof for any of the foregoing, and no mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials shall attach to or affect Owner's Interest in the Premises or any part

thereof or any assets of Owner. The foregoing shall not require Developer to request advance waivers of lien from contractors or subcontractors.

ARTICLE 15.

NO LIABILITY FOR INJURY OR DAMAGE, ETC.

The provisions of Article 19 of the Ground Lease shall be applicable to this Agreement as if the references to the “Premises” in such Article 19 were references to the “Project Site”.

ARTICLE 16.

INDEMNIFICATION

Section 16.1 Indemnification Generally.

The provisions of Article 20 of the Ground Lease shall be applicable to this Agreement as if the references to the “Premises” in such Article 20 were references to the “Project Site”.

Section 16.2 Governs Agreement.

The provisions of this Article 16 shall govern every other provision of this Agreement. The absence of explicit reference to this Article 16 in any particular provision of this Agreement shall not be construed to diminish the application of this Article 16 to such provision.

Section 16.3 Survival.

The provisions of this Article 16 shall survive the expiration of the Term of this Agreement.

ARTICLE 17.

CERTIFICATES BY OWNER AND DEVELOPER

Upon request for reasonable purposes, either party shall provide a written statement to the requesting party certifying as to the relevant information required pursuant to Article 27 of the Ground Lease with respect to this Agreement and the date to which amounts payable hereunder by either party have been paid.

ARTICLE 18.

RIGHT TO PERFORM THE OTHER PARTY’S COVENANTS

Section 18.1 Right to Perform Other Party’s Obligations.

(a) If an Event of Default shall occur, Owner may, but shall be under no obligation to, perform the obligation of Developer the breach of which gave rise to such Default, without waiving or releasing Developer from any of its obligations contained herein, provided that Owner shall exercise such right only in the event of a *bona fide* emergency or after five (5) Business Days notice, and Developer hereby grants Owner access to the Project Site in order to perform any such obligation.

(b) If a default by Owner under this Agreement shall occur and be continuing beyond any applicable grace period, Developer may, but shall be under no obligation to, perform the obligations of Owner (other than those which are governmental as opposed to proprietary obligations) the breach of which gave rise to such default, without waiving or releasing Owner from any of its obligations contained herein, provided that Developer shall exercise such right only in the event of a *bona fide* emergency or after five (5) Business Days notice to Owner or the City, as applicable.

Section 18.2 Discharge of Liens.

(a) If Developer fails to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Developer by the Requirements or by a provision of this Development Agreement) to be discharged of record in accordance with the provisions of Article 14, Owner may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings.

(b) If Owner fails to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Developer by the Requirements or by a provision of this Development Agreement) to be discharged of record in accordance with the provisions of Article 14, Developer may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. If Developer's Interest in the Premises (or any portion thereof) is threatened or a material interest of Developer is impaired, Developer may also, if Owner has not done so (or bonded such lien), compel the prosecution of an action for the foreclosure of such lien by the lienor and the payment of the amount of the judgment in favor of the lienor with interest, costs and allowances.

Section 18.3 Reimbursement for Amounts Paid Pursuant to this Article.

(a) Any amount paid by Owner in performing Developer's obligations as provided in this Article 18, including all costs and expenses incurred by Owner in connection therewith, shall constitute additional Rental under the Ground Lease and shall be reimbursed to Owner within thirty (30) days of Owner's demand, together with a late charge on amounts actually paid by Owner, calculated at the Late Charge Rate from the date of notice of any such payment by Owner to the date on which payment of such amounts is received by Owner.

(b) Any amount paid by Developer in performing Owner's obligations as provided in this Article 18, including all costs and expenses incurred by Developer in connection therewith, shall be reimbursed to Developer within thirty (30) days of Developer's demand, together with a late charge on amounts actually paid by Developer, calculated at the Late Charge Rate from the date of notice of any such payment by Developer to the date on which payment of such amounts is received by Developer.

Section 18.4 Waiver, Release and Assumption of Obligations.

(a) Owner's payment or performance pursuant to the provisions of this Article 18 shall not be, nor be deemed to constitute, Owner's assumption of Developer's obligations to pay or perform any of Developer's past, present or future obligations hereunder.

(b) Developer's payment or performance pursuant to the provisions of this Article 18 shall not be, nor be deemed to constitute, Developer's assumption of Owner's obligations to pay or perform any of Owner's past, present or future obligations hereunder.

ARTICLE 19.

EVENTS OF DEFAULT, CONDITIONAL
LIMITATIONS, REMEDIES, ETC.

Section 19.1 Definition.

Each of the following events shall be an "Event of Default" hereunder:

(a) an Event of Default under the Ground Lease shall have occurred and be continuing beyond any applicable cure period, including any cure period applicable to a Recognized Mortgagee; or

(b) if Developer shall default in the observance or performance of any term, covenant or condition of this Agreement on Developer's part to be observed or performed and, if no cure period is expressly provided for herein, Developer shall fail to remedy such Default within thirty (30) days after notice by Owner of such Default (the "Default Notice"), or if such a Default is of such a nature that it cannot reasonably be remedied within thirty (30) days (but is otherwise susceptible to cure), Developer shall not (i) within thirty (30) days after the giving of such Default Notice, advise Owner of Developer's intention to institute all steps necessary (and from time to time, as reasonably requested by Owner, Developer shall advise Owner of the steps being taken) to remedy such default (which such steps shall be reasonably designed to effectuate the cure of such Default in a professional manner), and (ii) thereafter diligently prosecute to completion all such steps necessary to remedy the same (in all cases subject to extension for Unavoidable Delays); or

(c) to the extent permitted by law, if Developer admits, in writing, that it is generally unable to pay its debts as such become due; or

(d) to the extent permitted by law, if Developer makes an assignment for the benefit of creditors; or

(e) to the extent permitted by law, if Developer files a voluntary petition under Title 11 of the United States Bankruptcy Code, or if Developer files a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Developer, of all or any substantial part of its properties, or of all or any part of Developer's Interest in the Premises, and the foregoing are not stayed or dismissed within one hundred fifty (150) days after such filing or other action; or

(f) to the extent permitted by law, if, within one hundred fifty (150) days after the commencement of a proceeding against Developer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, such proceeding has not been dismissed, or if, within one hundred eighty (180) days after the appointment, without the consent or acquiescence of Developer, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Developer, of all or any substantial part of its properties, or of all or any part of Developer's Interest in the Premises, such appointment has not been vacated or stayed on appeal or otherwise, or if, within one hundred eighty (180) days after the expiration of any such stay, such appointment has not been vacated; or

(g) if a levy under execution or attachment in an aggregate amount of ~~One-Five~~ Hundred Thousand Dollars (\$~~5~~400,000) (as adjusted for inflation in accordance with the Ground Lease) at any one time is made against the Project Site or any part thereof or rights appertaining thereto (except for a levy made in connection with actions taken by Owner (other than holding Owner's Interest in the Premises)), or this Agreement and such execution or attachment is not vacated or removed by court order, bonding or otherwise within a period of sixty (60) days, subject to Unavoidable Delays after such levy or attachment;

In the event of a Default which with the giving of notice to Developer and the passage of time would constitute an Event of Default, Owner's notice to Developer shall state with specificity the provision of this Agreement under which the Default is claimed, the nature and character of such Default, the facts giving rise to such Default, the date by which such Default must be cured pursuant to this Agreement, if applicable, and, if applicable, that the failure of Developer to cure such Default by the date set forth in such notice will result in Owner having the right to terminate this Agreement. With respect only to Development Disputes, Owner's allegation of a Default shall be subject to expedited arbitration in accordance with the provisions of Article 22, provided Tenant shall initiate any such arbitration within the applicable grace period provided in this Section 19.1 or within ten (10) Business Days after receipt of Owner's notice if no such grace period is provided therein.

Notwithstanding the foregoing, no Event of Default shall be deemed to have occurred until such time as Owner shall have given Developer notice of the occurrence of an Event of Default; provided, however, if Developer shall dispute, in accordance with the provisions of Article 22, Owner's assertion that an Event of Default has occurred within ten (10) Business Days after the giving of such notice by Owner, an Event of Default shall not be deemed to have occurred and Owner shall not be permitted to exercise any rights against Developer stated herein to arise out of an Event of Default until such time as the Arbitrator or a court, if applicable, has determined that an Event of Default has occurred.

Notwithstanding anything to the contrary contained herein, Owner shall be entitled to seek any injunctive or other equitable relief that may be available to Owner during the pendency of any Default.

Section 19.2 Enforcement of Performance; Damages and Termination.

If an Event of Default occurs, Owner may elect to (a) enforce performance or observance by Developer of the applicable provisions of this Agreement or (b) recover damages for breach of this Agreement or (c) in the circumstances described in Section 19.3(a), terminate this Agreement pursuant to Section 19.3(a). Owner's election of a remedy hereunder with respect to an Event of Default shall not limit or otherwise affect Owner's right to elect any of the remedies available to Owner hereunder with respect to any other Event of Default.

Section 19.3 Expiration and Termination of Agreement.

(a) If an Event of Default occurs under the Ground Lease which results in a termination of the Ground Lease, this Agreement shall terminate. This Agreement may not be terminated by Owner absent termination of the Ground Lease. If such termination is stayed by order of any court having jurisdiction over any case described in Sections 19.1(e) or 19.1(f) or by federal or state statute, then, following the expiration of any such stay, or if the trustee appointed in any such case, Developer or Developer as debtor-in-possession fails to assume Developer's obligations under this Agreement within the period prescribed therefor by law or within thirty (30) days after entry of the order for relief or as may be allowed by the court, Owner, to the extent permitted by law or by leave of the court having jurisdiction over such case, shall have the right, at its election, to terminate this Agreement on five (5) days notice to Developer, Developer as debtor-in-possession or the trustee. Upon the expiration of the five-day period this Agreement shall expire and terminate and Developer, Developer as debtor-in-possession and/or the trustee immediately shall quit and surrender Developer's Interest in the Premises and possession thereof.

(b) If this Agreement is terminated as provided in Section 19.3(a), Owner may, without notice, re-enter and repossess Developer's Interest in the Premises and may dispossess Developer by summary proceedings, writ of possession, proceedings in bankruptcy court or otherwise, subject to applicable Requirements.

Section 19.4 Strict Performance.

No failure by Owner or Developer 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 the other party's default or an Event of Default, shall constitute a waiver of any such Default or Event of 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 either party, 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 or Event of 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. Developer's compliance with any request or demand made by Owner shall not be deemed a waiver of Developer's right to contest the validity of such request or demand.

Section 19.5 Right to Enjoin Defaults.

With respect to Development Disputes and all other disputes, in the event of Developer's Default or an Event of Default, Owner shall be entitled to seek to enjoin the Default or Event of Default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent Owner's remedies are expressly limited by the terms hereof. With respect to Development Disputes and all other disputes, in the event of any default by Owner of any term, covenant or condition under this Agreement, Developer shall be entitled to seek to enjoin the default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent Developer's remedies are expressly limited by the terms hereof. Each right and remedy of Owner and Developer provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, except to the extent Owner's remedies and Developer's remedies are expressly limited by the terms hereof, and the exercise or beginning of the exercise by Owner or Developer of any one or more of the rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Owner or Developer of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, except to the extent Owner's remedies and Developer's remedies are expressly limited by the terms hereof.

Section 19.6 Remedies under Bankruptcy and Insolvency Codes.

If an order for relief is entered or if any stay of proceeding or other act becomes effective against Developer, Developer's Interest in the Premises, or Developer's interest in this Agreement, or Owner, Owner's Interest in the Premises, or Owner's interest in this Agreement, as applicable, in any proceeding which is commenced by or against Developer or Owner, as applicable, under the present or any future Federal Bankruptcy Code or in a proceeding which is commenced by or against Developer or Owner, as applicable, seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, Owner or Developer, as applicable, shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or

insolvency code, statute or law or this Agreement (except to the extent Owner's remedies and Developer's remedies are expressly limited by the terms hereof).

Section 19.7 Inspection.

Without in any way limiting Article 4, Owner and its representatives shall have the right, upon twenty-four (24) hours prior notice to Developer, to enter upon the Project Site to conduct inspections for the purpose of determining whether a Default or an Event of Default has occurred, provided that Owner shall be accompanied by a representative of Developer and provided further that such entry shall not unreasonably interfere with the Construction of the Project. Developer agrees to make a representative of Developer available to accompany Owner on any such inspection.

ARTICLE 20.

NOTICES, CONSENTS AND APPROVALS

Section 20.1 Service of Notices and Other Communications.

(a) In Writing. 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 any Recognized Mortgagee), 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 Site, each such notice, demand, request, consent, approval or other communication (referred to in this Section 20.1 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 U.S. Mail, postage prepaid, return receipt requested, (ii) personal delivery with a signed receipt, (ii) except in the case of notice of default, by electronic mail to the email addresses set forth below, or (iii) a recognized national courier service, addressed as follows:

if to Developer: c/o Atlantic Pacific Communities, LLC
161 NW 6th Street
Suite 1020
Miami, FL 33136
Attn: Lindsay Lecour
Email: Llecour@apcommunities.com

with a copy to:

if to Owner: City of Miami Beach
City Manager
1700 Convention Center Drive
Miami Beach, Florida 33139

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with a copy to:

City of Miami Beach
City Attorney
1700 Convention Center Drive
Miami Beach, Florida 33139

with a copy to:

Any Notice may be given, in the manner provided in this Section 20.1, (x) on either party's behalf by its attorneys designated by such party by Notice hereunder, and (y) at Developer's request, on its behalf by any Recognized Mortgagee designated in such request.

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

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

Section 20.2 Consents and Approvals.

(a) Effect of Granting or Failure to Grant Approvals or Consents. All consents and approvals which may be given under this Development Agreement shall, as a condition of their effectiveness, be in writing. The granting by a party of any consent to or approval of any act requiring consent or approval under the terms of this Development Agreement, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any other act.

(b) Standard. All consents and approvals which may be given by a party under this Development Agreement shall not (whether or not so indicated elsewhere in this Development Agreement) be unreasonably withheld or conditioned by such party and shall be given or denied within the time period provided, and if no such time period has been provided, within a reasonable time. In furtherance of the foregoing, in determining whether Owner has acted reasonably in not giving its consent or approval, the trier of fact shall take into consideration (for so long as Owner is the City or any Governmental Authority) that Owner is a political body governed by elected officials or persons that are appointed, directly or indirectly, by elected officials. Upon disapproval of any request for a consent or approval, the disapproving party shall, together with notice of such disapproval, submit to the requesting party a written statement setting forth with specificity its reasons for such disapproval.

(c) Deemed Approval.

(i) If a party entitled to grant or deny its consent or approval (the “Consenting Party”) within the specified time period shall fail to do so, then, except as otherwise provided in Section 20.2(c)(ii) below, and provided that the request for consent or approval (and the envelope in which such request is transmitted to the extent permitted by the carrier) bears the legend set forth below in capital letters and in a type size not less than that provided below, the matter for which such consent or approval is requested shall be deemed consented to or approved, as the case may be:

“FAILURE TO RESPOND TO THIS REQUEST WITHIN THE TIME PERIOD PROVIDED IN THE DEVELOPMENT AGREEMENT BETWEEN CITY OF MIAMI BEACH, FLORIDA AND _____ SHALL CONSTITUTE AUTOMATIC APPROVAL OF THE MATTERS DESCRIBED HEREIN WITH RESPECT TO SECTION [FILL IN APPLICABLE SECTION] OF SUCH DEVELOPMENT AGREEMENT.”

(ii) Notwithstanding anything to the contrary contained in Section 20.2(c)(i) above, if the “Owner” hereunder and the matter, other than a matter referred to in Section 20.2(c)(iii) below, to be consented to or approved requires the consideration of the City Commission, as applicable (whether pursuant to Requirements or the written opinion of the City Attorney, then, provided Owner gives Developer notice of such requirement within the time period provided for such consent or approval, such matter shall not be deemed approved or consented to unless Owner shall fail to respond to Developer’s request by the date which is five (5) Business Days after the first regular meeting of the City Commission which occurs no earlier than ten (10) days following the receipt of such request (or second request, as applicable); but in any event not later than sixty (60) days following such request (or second request), as applicable.

(iii) Owner hereby agrees, for so long as the City shall be the “Owner” hereunder, that, subject to Requirements, the City Manager, as applicable, shall be authorized to grant consents or approvals on behalf of the City with respect to Section 2.4(c) and Article 3 and Article 7.

(iv) The foregoing provisions of this Subsection shall not be construed to modify or otherwise affect a party’s right to arbitrate or litigate, as applicable, the failure of a party to act reasonably in granting or denying a request for consent or to timely respond to a request for a consent, but such right to arbitrate or litigate, as applicable, shall not serve to delay the time period within which a grant or denial of such request is required hereunder.

(d) Remedy for Refusal to Grant Consent or Approval. If, pursuant to the terms of this Agreement, any consent or approval by Owner or Developer is alleged to have been unreasonably withheld, conditioned or delayed, then any dispute as to whether such consent or approval has been unreasonably withheld, conditioned or delayed shall be settled by arbitration or litigation, as applicable. In the event there shall be a final determination that the consent or approval was unreasonably withheld, conditioned or delayed so that the consent or approval should have been granted, the consent or approval shall be deemed granted and the party requesting such consent or approval shall be entitled to any and all damages resulting therefrom, subject to the limitations

provided in this Agreement and shall also be entitled to a corresponding extension of time for performance hereunder and under the Ground Lease.

(e) No Fees, etc. Except as specifically provided herein, no fees or charges of any kind or amount shall be required by either party hereto as a condition of the grant of any consent or approval which may be required under this Agreement (provided that the foregoing shall not be deemed in any way to limit Owner acting in its governmental, as distinct from its proprietary, capacity from charging governmental fees on a nondiscriminatory basis).

(f) Governmental Capacity. Notwithstanding anything to the contrary contained in this Section 20.2, the City shall not be required by this Development Agreement to give its consent to any matter arising from or in connection with this Development Agreement when the City is acting in its governmental capacity.

Section 20.3 Notice of Detailed Plans.

Notwithstanding anything to the contrary contained in this Agreement (including without limitation Articles 3, 4 and 20):

(a) Copies of the Detailed Plans shall be submitted solely to Owner's Consultant.

(b) Copies of all Notices to Owner pursuant to Sections 3, 4 and 5 (whether or not such Notice includes Detailed Plans) shall be distributed to Owner's Consultant.

ARTICLE 21.

FINANCIAL REPORTS AND RECORDS

Section 21.1 Books and Records; Audit Rights.

(a) Developer shall at all times during the Term keep and maintain (separate from any of Developer's other books, records and accounts), accurate and complete records pertaining to the construction of the Project and such other matters referenced in this Agreement, in accordance with the Accounting Principles with such exceptions as may be provided for in this Agreement. Owner and its representatives shall have, during normal business hours and upon reasonable advance notice, access to the books and records of Developer pertaining to the Project for the purpose of examination and audit (including copying), including books of account properly reflecting the construction of the Project.

(b) The obligations of Developer under this Article to maintain, and to provide Owner and its representatives access to, the books and records related to the Project shall survive the expiration of this Agreement for a period of seven (7) years.

(c) The right of Owner to audit the books and records of Developer pertaining to the Project, including, without limitation, the books of account regarding the Construction Work,

shall be governed by the provisions of Article 28 of the Ground Lease as if such books and records were specifically described in such Article 28 as being part of the “books and records” described in such Article 28; provided, however, copying of all such “books and records” shall specifically be allowed.

ARTICLE 22.

ARBITRATION

Section 22.1 Expedited Arbitration of Development Disputes.

(a) If Developer or Owner asserts that a Development Dispute has arisen, such asserting party shall give prompt written notice thereof to the other party and to the Development Arbitrator.

(b) The Development Arbitrator shall no later than five (5) Business Days after receipt of such notice, hold a preliminary, informal meeting with Owner and Developer in an attempt to mediate such Development Dispute. If such Development Dispute shall not be resolved at that meeting, the Development Arbitrator shall at such mediation meeting establish a date, not earlier than five (5) Business Days after the mediation hearing nor later than twenty (20) Business Days after the mediation hearing for a hearing (a “Hearing”) to be held in accordance with this Agreement to resolve such Development Dispute.

(c) Developer and Owner shall have the right to make one (1) written submission to the Development Arbitrator prior to any Hearing. Such submission shall be received by the Development Arbitrator and the other party not later than two (2) Business Days prior to the Hearing Date. The parties agree that no discovery (as the term is commonly construed in litigation proceedings) will be needed and agree that neither party nor the Development Arbitrator shall have discovery rights in connection with a Development Dispute.

(d) Each Hearing shall be conducted by the Development Arbitrator. It is the intention of the parties that the Hearings shall be conducted in an informal and expeditious manner. No transcript or recording shall be made. Each party shall have the opportunity to make a brief statement and to present documentary and other support for its position, which may include the testimony of not more than four (4) individuals, two (2) of whom may be outside experts. There shall be no presumption in favor of either party’s position. Any procedural matter not covered herein shall be governed by the Amended 1993 edition of the CPR Rules for the Arbitration of Business Disputes and the Florida Arbitration Code to the extent not inconsistent with the CPR Rules and this Section 22.1.

(e) The Hearings shall be held in a location selected by the Development Arbitrator in Miami-Dade County, Florida. Provided the Development Arbitrator is accompanied by representatives of both Developer and Owner, the Development Arbitrator may, at its option, visit the work site to make an independent review in connection with any Development Dispute.

(f) For discussion – may need to be revised to conform to the particulars of this Project. Once it has been determined by the Development Arbitrator or by agreement of the parties with respect to any Development Dispute that Developer's proposed modifications are material with regard to, or materially inconsistent with, the Preliminary Plans and Specifications or the Plans or Specifications pursuant to Section 3.1 the Development Arbitrator shall take into account, in determining whether Owner has acted unreasonably in failing to grant an approval or consent as described in Section 3.6(b) such factors as he deems relevant which are not inconsistent with this Agreement (including items 1 through 7, below), which in all events shall include the following factors:

(1) Owner does not have any approval rights with respect to the matter of interior design and decor of the Project except to the extent the same is reflected in the Preliminary Plans and Specifications or pursuant to Section 3.6(b).

(2) The Project shall be a first class office building with retail space and Garage at a quality compatible with the quality set forth in the original approved Preliminary Plans and Specifications or the original approved Plans and Specifications (without regard to changes thereto).

(3) The mutual goal of Developer and Owner that Project Construction Costs overruns shall be minimized.

(4) The mutual goal of Developer and Owner that the Construction of the Project be completed within approximately twenty-four (24) months from the Possession Date.

(5) Applicability of any Requirement.

(6) The magnitude of the modification to the previously approved Preliminary Plans and Specifications or Plans and Specifications, as applicable.

(7) The magnitude of the consistency or inconsistency from the previously approved Preliminary Plans and Specifications or Plans and Specifications, as applicable.

(g) Pending resolution of the Development Dispute, Developer may not implement the matter which is the subject of such Development Dispute.

(h) The Development Arbitrator shall render a decision, in writing, as to any Development Dispute not later than two (2) Business Days following the conclusion of the Hearings regarding such Development Dispute and shall provide a brief written basis for its decision not later than five (5) Business Days thereafter. As to each Development Dispute, the Development Arbitrator's decision shall be limited to (i) whether or not Developer's proposed modification(s) to the Preliminary Plans and Specifications or the Plans or Specifications pursuant to Section 3.1 is material, (ii) whether or not Developer's proposed modification(s) to the Preliminary Plans and Specifications or the Plans or Specifications pursuant to Section 3.1(a) or (b), respectively, is materially inconsistent, (iii) whether or not Owner has unreasonably failed to approve or give its

consent to any modifications to the Preliminary Plans or Specifications or the Plans and Specifications pursuant to Section 3.1(a) or (b); and/or (iv) whether or not Developer or Owner is entitled to any extension of time for performance. The Development Arbitrator may not award any other or different relief.

(i) The decision of the Development Arbitrator shall be final and binding on the parties for all purposes and may be entered in any court of competent jurisdiction.

(j) The parties shall cooperate to select an independent, neutral, professional firm having hotel development or construction experience to serve as the arbitrator (the "Development Arbitrator"). If the parties cannot agree, then any party may ask the CPR Institute for Dispute Resolution to select a substitute who will act as Development Arbitrator of that Development Dispute.

Section 22.2 Litigation.

Any dispute between the parties, other than a Development Dispute, shall be subject to litigation and not arbitration.

ARTICLE 23.

NO PERMIT OR WAIVER OF FEES

This Development Agreement is not and shall not be construed as a Development Approval, Building Permit or authorization to commence development, nor shall it relieve Developer of the obligations to obtain necessary Development Approvals, Building Permits and other required permits that are required under applicable law and under and pursuant to the terms of this Development Agreement. Nothing contained in this Development Agreement shall be deemed to constitute a waiver of any fee, charge or cost imposed by the City in connection with the issuance of any Development Approval, Building Permit or other permit.

ARTICLE 24.

INVESTIGATIONS, ETC.

To the extent required by Requirements, Developer shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by any Governmental Authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by a Governmental Authority that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry. In addition, Developer shall promptly report in writing to the City Attorney of the City of Miami Beach, Florida any solicitation, of which Developer's officers or directors have knowledge, of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of Owner, City or other Person relating to the procurement

or obtaining of this Development Agreement by Developer or affecting the performance of this Development Agreement.

ARTICLE 25.

HAZARDOUS MATERIALS

Section 25.1 General Provision.

The provisions of Article 35 of the Ground Lease shall be applicable to this Agreement as if the references in such Article 35 to “Owner”, “Tenant” and the “Premises” were references to Owner, Developer and the Project Site, respectively.

Section 25.2 Survival.

The provisions of this Article 25 shall survive the expiration or sooner termination of this Agreement.

ARTICLE 26

MISCELLANEOUS

Section 26.1 Governing Law and Exclusive Venue.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court. The exclusive venue for any expedited arbitration arising out of this Agreement shall be as specified in Article 22 herein.

Section 26.2 References.

(a) Captions. The captions of this Development Agreement are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Development Agreement or in any way affect this Development Agreement. All captions, when referring to Articles or Sections, refer to Articles or Section in this Development Agreement, unless specified otherwise.

(b) Table of Contents. The Table of Contents is for the purpose of convenience of reference only, and is not to be deemed or construed in any way as part of this Agreement.

(c) Reference to Owner and Developer. The use herein of the neuter pronoun in any reference to Owner or Developer shall be deemed to include any individual Owner or Developer, and the use herein of the words “successors and assigns” or “successors or assigns” of Owner or Developer shall be deemed to include the heirs, legal representatives and assigns of any individual Owner or Developer.

(d) City’s Governmental Capacity. Nothing in this Agreement or in the parties’ acts or omissions in connection herewith shall be deemed in any manner to waive, impair, limit or otherwise affect the authority of the City in the discharge of its police or governmental power.

(e) Reference to “herein”, “hereunder”, etc. All references in this Agreement to the terms “herein”, “hereunder” and words of similar import shall refer to this Agreement, as distinguished from the paragraph, Section or Article within which such term is located.

(f) Reference to “Approval” or “Consent”, etc. All references in this Agreement to the terms “approval”, “consent” and words of similar import shall mean “reasonable written approval” or “reasonable written consent” except where specifically provided otherwise.

Section 26.3 Entire Agreement, etc.

(a) Entire Agreement. This Development Agreement, together with the attachments hereto, contains all of the promises, agreements, conditions, inducements and understandings between Owner and Developer concerning the development and construction of the Project on the Project Site and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as expressly set forth herein and in such attachments thereto or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the parties hereto. Notwithstanding anything to the contrary set forth in this Agreement, the terms of this Agreement shall supersede the terms of the Letter of Intent and the RFP and Developer’s response thereto. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall represent one instrument.

(b) Waiver, Modification, etc. No covenant, agreement, term or condition of this Development Agreement shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by Owner and Developer. No waiver of any Default or 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 or default thereof.

(c) Effect of Other Transactions. No Mortgage, whether executed simultaneously with this Agreement or otherwise, and whether or not consented to by Owner, shall be deemed to modify this Agreement in any respect, and in the event of an inconsistency or conflict between this Agreement and any such instrument, this Agreement shall control.

Section 26.4 Invalidity of Certain Provisions.

If any provision of this Agreement or the application thereof to any Person or circumstances is, to any extent, finally determined by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 26.5 Remedies Cumulative.

Each right and remedy of either party provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), and the exercise or beginning of the exercise by a party of any one or more of the rights or remedies provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement).

Section 26.6 Performance at Each Party's Sole Cost and Expense.

Unless otherwise expressly provided in this Agreement, when either party exercises any of its rights, or renders or performs any of its obligations hereunder, such party shall do so at its sole cost and expense.

Section 26.7 Recognized Mortgagee Charges and Fees.

Developer shall pay any and all fees, charges and expenses owing to a Recognized Mortgagee in connection with any services rendered by it as a depositary pursuant to the provisions of this Agreement.

Section 26.8 Time is of the Essence.

Time is of the essence with respect to all matters in, and requirements of, this Development Agreement as to both Owner and Developer including, but not limited to, the times within which Developer must commence and complete Construction of the Project.

Section 26.9 Successors and Assigns.

The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, Owner and Developer, and, except as otherwise provided herein, their respective successors and permitted assigns. If, while City is the Owner hereunder, the City shall cease to exist, the City, by its signature hereto, hereby agrees to be bound with respect to all of the terms, covenants and conditions of Owner hereunder and Developer agrees to recognize the City as Owner hereunder.

There can be no assignment by Developer of its rights or obligations hereunder or its interest in this Agreement, except Developer may assign all its rights hereunder to a Recognized Mortgagee as security for the performance of Developer's obligations under the Loan Documents. This Development Agreement, however, shall automatically transfer in connection with a transfer of Developer's (as Tenant) interest in the Ground Lease in accordance with the provisions of the Ground Lease.

Section 26.10 Notice of Defaults.

Notwithstanding anything to the contrary set forth in this Development Agreement, under no circumstances shall any party to this Development Agreement lose any right or benefit granted under this Agreement or suffer any harm as a result of the occurrence of any Default or default of such party as to which Default or default such party has not received notice thereof from the other party.

Section 26.11 No Representations.

Owner and City have made no representations herein as to the condition of the Project Site.

Section 26.12 Corporate Obligations.

It is expressly understood that this Development Agreement and obligations issued hereunder are solely corporate obligations, and, except as otherwise provided in Article 15 that no personal liability will attach to, or is or shall be incurred by, the incorporators, stockholders, officers, directors, elected or appointed officials (including, without limitation, the Mayor and City Commissioner of the City) or employees, as such, of Owner or Developer, or of any successor corporation, or any of them, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom; and, except as otherwise provided in Article 15, that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer, director, elected or appointed officials (including, without limitation, the Mayor and City Commissioner of the City) or employee, as such, or under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

Section 26.13 Nonliability of Officials and Employees.

Except as otherwise provided in Article 15, no member, official or employee of Owner shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by Owner or for any amount or obligation which may become due to Developer or successor under the terms of this Agreement; and, except as otherwise provided in Article 15, any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such Person, under or by reason of the obligations, covenants or agreements contained in this Development Agreement or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Development Agreement.

Section 26.14 Partnership Disclaimer.

Developer acknowledges, represents and confirms that it is an independent contractor in the performance of all activities, functions, duties and obligations pursuant to this Development Agreement.

The parties hereby acknowledge that it is not their intention to create between themselves a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship for the purpose of developing the Project, or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Agreement, the Ground Lease or the other documents executed by the parties with respect to the Project shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship of any kind or nature whatsoever between the parties hereto. The provisions of this Section 26.14 shall survive expiration of this Development Agreement.

Section 26.15 Time Periods.

Any time periods in this Agreement of less than thirty (30) days shall be deemed to be computed based on Business Days (regardless of whether any such time period is already designated as being computed based on Business Days). In addition, any time period which shall end on a day other than a Business Day shall be deemed to extend to the next Business Day.

Section 26.16 No Third Party Rights.

Nothing in this Development Agreement, express or implied, shall confer upon any Person, other than the parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement; provided, however, that a Recognized Mortgagee or its Designee (as such term is defined in the Ground Lease) shall be third party beneficiaries hereunder to the extent same are granted rights hereunder.

Section 26.17 No Conflict of Interest.

Developer represents and warrants that, to the best of its actual knowledge, no member, official or employee of the City has any direct or indirect financial interest in this Development Agreement nor has participated in any decision relating to this Development Agreement that is prohibited by law. Developer represents and warrants that, to the best of its knowledge, no officer, agent, employee or representative of the City has received any payment or other consideration for the making of this Agreement, directly or indirectly, from Developer. Developer represents and warrants that it has not been paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, and attorneys. Developer acknowledges that Owner is relying upon the foregoing representations and warranties in entering into this Agreement and would not enter into this Agreement absent the same.

Section 26.18 Recording of Development Agreement.

Within fourteen (14) days after the City executes this Development Agreement, the City shall record this Development Agreement with the Clerk of the Circuit Court of Miami-Dade County. The Developer shall submit a copy of the recorded Development Agreement to the State of Florida's Land Planning Agency within fourteen (14) days after this Development Agreement is recorded. This Development Agreement shall become effective only after (i) it has been recorded in the Public Records of Miami-Dade County, and (ii) thirty (30) days have elapsed after the State of Florida Land Planning Agency's receipt of a copy of the recorded Development Agreement. The Developer agrees that it shall be responsible for all recording fees and other related fees and costs related to the recording and delivery of this Development Agreement as described in this Section 26.18. The provisions hereof shall remain in full force and affect during the term hereto, and subject to the conditions of this Development Agreement shall be binding upon the undersigned, and all successors in interest to the parties to this Development Agreement. Whenever an extension of any deadline is permitted or provided for under the terms of this Development Agreement, at the request of either party, the other party shall join in a short-form recordable Memorandum of Agreement confirming such extension to be recorded in the Public Records of Miami-Dade County.

Section 26.19 Duration of This Development Agreement.

The duration of this Development Agreement shall not exceed ten (10) years from the date first written above; provided, however, that the duration of this Development Agreement may be extended by mutual agreement of the Owner and Developer. During the term of this Development Agreement, the City's laws and policies governing the development of land in effect as of the date hereof shall govern development of the Land. The City may apply subsequently adopted laws and policies to the Project only if the City has held a public hearing pursuant to Section 163.3225, Florida Statutes, and determined:

- (a) they are not in conflict with the laws and policies governing this Development Agreement and do not prevent development of the land uses, intensities, or densities in this Development Agreement; or
- (b) they are essential to the public health, safety, or welfare, and expressly state that they shall apply to a development that is subject to a development agreement; or
- (c) they are specifically anticipated and provided for in this Development Agreement; or
- (d) the City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of Development Agreement; or
- (e) this Development Agreement is based on substantially inaccurate information supplied by Developer.

[EXECUTION ON FOLLOWING PAGE]

EXECUTION

IN WITNESS WHEREOF, Owner and Developer intending to be legally bound, have executed this Development Agreement as of the day and year first above written.

WITNESSES: CITY OF MIAMI BEACH , FLORIDA
a municipal corporation of the State of Florida

Print Name: _____ By: _____
Dan Gelber, Mayor

ATTEST:

Print Name: _____ By: _____
Rafael E. Granado, City Clerk

[SEAL]

STATE OF FLORIDA)
)ss:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Dan Gelber, as Mayor, and Rafael E. Granado, as City Clerk, of the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, on behalf of such municipal corporation. They are personally known to me or produced valid Florida driver's licenses as identification.

My commission expires:

Notary Public, State of Florida
Print Name: _____

WITNESSES:

_____,
a Florida _____ company

Print Name _____

By: _____,
_____, President

Print Name _____

Attest: _____,
_____, Secretary

[CORPORATE SEAL]

STATE OF FLORIDA)
)ss:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____,
_____, by _____, as President and _____, as Secretary, of
_____, on behalf of such [limited liability company]. They are personally known to
me or produced valid Florida driver's licenses as identification.

My commission expires:

Notary Public, State of Florida
Print Name: _____

List of Exhibits

Exhibit A	Legal Description
Exhibit 2.10	List of Required Development Approvals
Exhibit 3.4(a)	Lincoln Place Development Costs
Exhibit 5.3(a)	Insurance Required of Contractor

EXHIBIT A
LEGAL DESCRIPTION

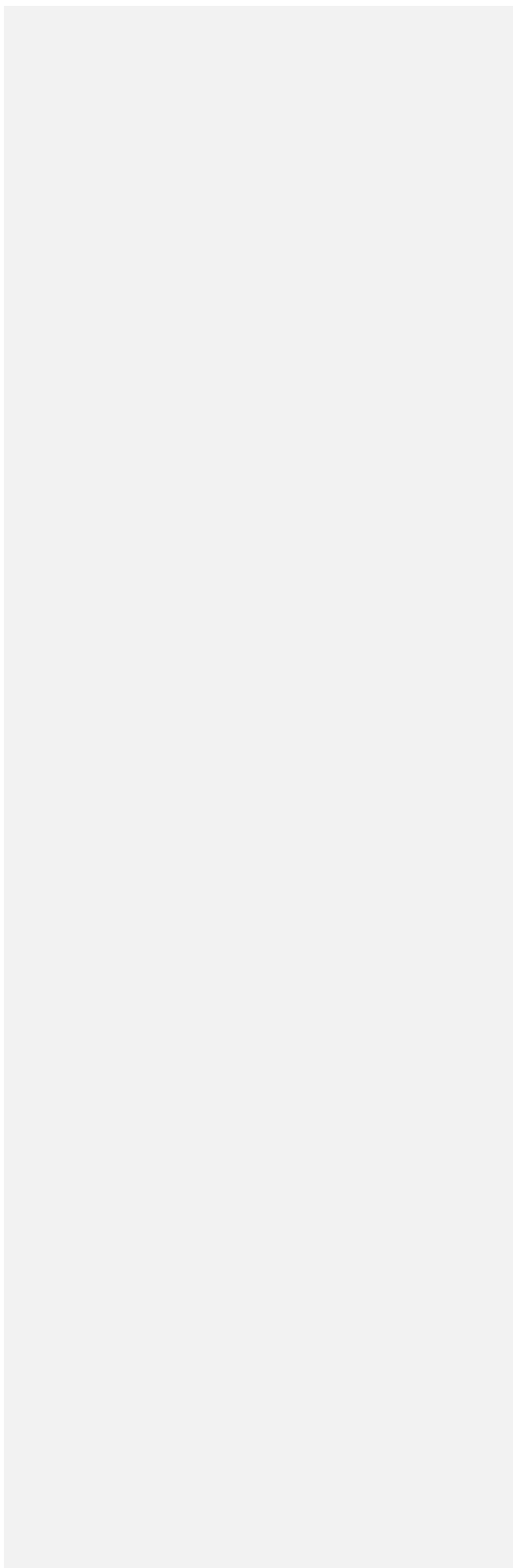


EXHIBIT 2.10

LIST OF REQUIRED DEVELOPMENT APPROVALS

[to be updated for each Project as applicable]

Certificate of Use and Occupancy
Demolition Permit
Department of Environmental Protection Permit
Department of Environmental Resource Management Permit
FDOP Permit
Full Building Permit, covering
 Foundation
 Electrical
 Plumbing
 Mechanical and Cooling Towers
 Elevator
 Fire/Life Safety Systems
 Roofing
 Glazing (Windows and Doors)
 Stair and Balcony Railings
 Signs
Miami-Dade County Public Works Department Permit
Miami-Dade Water and Sewer Authority Approval
Public Works Permit, Paving and Drainage
Public Works Permit, Water and Sewer
South Florida Water Management District Permit (Storm Water Management)
Such other permits as may be required by Federal, State and local law.

EXHIBIT 3.4(a)
DEVELOPMENT COSTS

EXHIBIT 5.3(a)

INSURANCE REQUIRED OF CONTRACTOR

[To be updated by City's Risk Management for each Project, as applicable]

(a) Worker's compensation insurance covering all employees of the Contractor as required by the laws of the State of Florida and employer's liability insurance of not less than ____ Million Dollars (\$____,000,000) per occurrence.

(b) Comprehensive general liability insurance in an amount of not less than ____ Million Dollars (\$____,000,000) per occurrence and ____ Million Dollars (\$____,000,000) annual aggregate covering personal injury and property damage. Such coverage shall include, but not be limited to, the following:

1. Blanket contractual liability insurance covering all indemnity or hold harmless agreements.
2. Protective liability insurance for the operation of the Independent Contractors.
3. XCU coverage (explosion, collapse or damage to underground property).
4. Products and completed operations (for two year extension beyond completion of project).

(c) Excess umbrella liability insurance with a limit of not less than ____ Million Dollars (\$____,000,000) per occurrence and in the aggregate in excess of the above mentioned insurance; which shall be required only in any "wrap up" policy.

(i) Developer may cause the insurance listed in this subsection (i) to be provided through an overall "wrap up" policy, in lieu of individual policies provided by Contractors.

(ii) Comprehensive automobile insurance in an amount of not less than ____ Million Dollars (\$____,000,000) combined single limit for bodily injury and property damage covering all owned, non-owned or hired vehicles, trailers or semi-trailers, including any machinery or apparatus attached thereto.

[General Contractor Builder's Risk Insurance. Risk Management to Specify]

AGREEMENT OF LEASE

between

**CITY OF MIAMI BEACH, FLORIDA
(Owner)**

and

(Tenant)

Dated as of _____, _____

_____ **PROJECT**

Prepared By and Record and Return to:

[_____]

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AGREEMENT OF LEASE

THIS AGREEMENT OF LEASE, dated as of the ____ day of _____, _____ (the “**Commencement Date**”), by and between the **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation duly organized and existing under the laws of the State of Florida, as Owner, and _____, **[to-be-formed affiliate of Atlantic Pacific Communities, LLC]**, a Florida _____, as Tenant.

RECITALS

WHEREAS, on _____, pursuant to the authorization of the Mayor and City Commission, the Administration issued a Request for Proposals for the development of public-private [_____] facilities in the area of _____ (“**RFP**”); and

WHEREAS, the City issued the RFP in order to solicit qualified development teams to bid on certain publicly-owned sites identified in the RFP; and

WHEREAS, on _____, the City received proposals from five _____; and

WHEREAS, on _____, an Evaluation Committee appointed by the City Manager and approved by the Mayor and City Commission, heard presentations from the proposers; and

WHEREAS, in accordance with the criteria identified in the RFP, the Evaluation Committee ranked the proposals and provided their recommendations to the City Manager; and

WHEREAS, on _____, the City Commission adopted Resolution No. 2019-_____, authorizing the Administration to negotiate with _____, _____, a Florida Corporation, with regard to the site located at _____ in the City; and

WHEREAS, said negotiations have been concluded and the Mayor and City Commission, in Resolution No. _____, adopted after two (2) duly noticed public hearings held pursuant to the Development Agreement Act set forth in Chapter 163 of the Florida Statutes, and Sections 82-36 through 82-40 of the City Code, determined that it is in the best interest of the City to enter into an Agreement of Lease with _____ for the development of the aforementioned Project site.

TERMS OF AGREEMENT

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

Article 1 – Definitions

Section 1.1. Definitions.

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For all purposes of this Lease the terms defined in this Article 1 shall have the following meanings and the other provisions of this Article 1 shall apply:

“Acceptable Operator” means any corporation or Person which has the following qualifications:

1. The Acceptable Operator must be, or have a management contract with, a Property Manager.

2. The Acceptable Operator or Property Manager must establish and maintain an onsite property management office within a portion of the Project.

3. The Acceptable Operator and any Property Manager hired by the Acceptable Operator shall have no outstanding building code violations for which notice has been served (other than those which are being corrected or contested diligently and in good faith) against any property owned or managed by such Acceptable Operator within the City of Miami Beach, Miami-Dade County and any cities located within Miami-Dade County.

4. The Acceptable Operator must have been in the business of operating similar [projects and parking garages] for the past five (5) years (or have management personnel who have been in the business of operating similar projects and parking garages for at least five (5) years).

5. The Acceptable Operator must have been in the business of managing retail or office space for at least five (5) years (or have management personnel who have been in the business of managing retail or office space for at least five (5) years).

Any entity contracted as an Acceptable Operator must continue to meet the above throughout its service as an Acceptable Operator hereunder unless certain of said qualifications were waived by the Owner, in writing.

6. An Acceptable Operator shall not be a Foreign Instrumentality.

“Accounting Principles” means generally accepted accounting principles as promulgated by the American Institute of Certified Public Accountants, except as otherwise provided by this Lease, with such changes as Owner and Tenant shall mutually agree are consistent with this Lease in order to reflect technologies and methodologies not addressed in the Accounting Principles.

“Affiliate” or **“Affiliates”** means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such Person. For purposes hereof, the term **“control”** (including the terms **“controlled by”** and **“under common control with”**) shall mean the possession of a Controlling Interest.

“Alterations” has the meaning provided in **Section 14.5(a)**.

“Annual Financial Statements” has the meaning provided in **Section 28.1(c)**.

“Annual Report” has the meaning provided in **Section 27.1(b)**.

“Assignee” has the meaning provided in **Section 10.2(b)**.

“Assignment” has the meaning provided in **Section 10.2(a)**.

“Back Rent” has the meaning provided in **Section 10.2(c)**.

“Base Rent” has the meaning provided in **Section 3.2(c)**.

“Building Equipment” means all installations incorporated in, located at or attached to and used or usable in the operation of, or in connection with, the Premises and shall include, but shall not be limited to, machinery, apparatus, devices, motors, engines, dynamos, compressors, pumps, boilers and burners, heating, lighting, plumbing, ventilating, air cooling and air conditioning equipment; chutes, ducts, pipes, tanks, fittings, conduits and wiring; incinerating equipment; elevators, escalators and hoists; washroom, toilet and lavatory plumbing equipment; window washing hoists and equipment; and all additions or replacements thereof, excluding, however, any personal property which is owned by subtenants, licensees, concessionaires or contractors (except to the extent any of the foregoing are Affiliates of Tenant).

“Building Index” has the meaning provided **Section 7.12(b)**.

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

“Casualty Restoration” has the meaning provided in **Section 8.2(a)**.

“Certificate of Occupancy” means the document by that name that is required prior to the occupancy of any premises by the Florida Building Code as amended from time to time; provided, however, [Such term shall include both Temporary CO for the entire Project and Final CO for the entire Project, as the context may require.]

“City” means the City of Miami Beach, Florida, a municipal corporation duly organized and existing under the laws of the State of Florida. In all respects hereunder, the City’s obligations and performance is pursuant to the City’s position as the owner of the City Parcel acting in its proprietary capacity. In the event the City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any laws, rules, regulations, ordinances, and plans (including through the exercise of the City’s building, fire, code enforcement, police department or otherwise), shall be deemed to have occurred pursuant to the City’s regulatory authority as a governmental body and shall not be attributable

in any manner to the City as a party to this Agreement or in any way deemed in conflict with, or a default under, the City's obligations hereunder.

"CO Date" means the date on which Tenant receives a temporary Certificate of Occupancy for any of the portion of the Project, whichever occurs first.

"Commencement Date" has the meaning provided in the preamble of this Lease.

"Commissioner" means a duly elected or appointed member of the City Commission of the City of Miami Beach.

"Condemnation Restoration" has the meaning provided in **Section 9.2(b)**.

"Condominium Tenant" has the meaning provided in **Section 23.1(b)(ii)**.

"Consenting Party" has the meaning provided in **Section 26.2(c)(i)**.

"Construction Agreements" means all agreements executed in connection with any Construction Work affecting the Premises and the Improvements, including, without limitation, a Restoration, Alteration or other Construction Work performed in connection with the use, maintenance or operation of the Premises.

"Construction Commencement Date" has the meaning provided in Section 2.7 of the Development Agreement.

"Construction Phase" means the period beginning on the Possession Date and ending on the CO Date.

"Construction Work" means any construction work performed under any provision of this Lease affecting the Premises and the Improvements, including, without limitation, the initial construction of the Project, a Restoration, Alteration or other construction work performed in connection with the use, maintenance or operation of the Premises.

"Controlling Interest" means the ownership of greater than fifty percent (50%) of the voting Equity Interests in a Person or the ownership of greater than fifty percent (50%) of the votes necessary to elect a majority of the Board of Directors or other governing body of such Person.

"CPI" means the Consumer Price Index for All Urban Consumers for the United States, all items, index base period 1982-84=100 (commonly referred to as CPI-U), as published periodically by the United States Bureau of Labor Statistics.

"Date of Taking" has the meaning provided in **Section 9.1(c)(i)**.

"Debt" has the meaning provided in **Section 11.2(a)**.

“Debt Service” means all payments in respect of principal and interest on Debt (including, without limitation, the net cost to Tenant of interest rate protection agreements and arrangements, and any and all fees paid to the lender(s), administrative fees and charges, extension fees, and the like). In the event, and only during the period in which, a Recognized Mortgagee or its Designee becomes Tenant under this Lease by virtue of a foreclosure of its Recognized Mortgage or by virtue of an assignment or conveyance in lieu thereof, Debt Service shall mean the payments that would have been due under the Recognized Mortgage if foreclosure or conveyance in lieu thereof had not occurred and there had been no acceleration of the Recognized Mortgage, and in the event that the maturity date of the Recognized Mortgage has occurred or occurs in such period, Debt Service shall mean the amount that would have been due in order to make monthly payments, calculated on a level debt service basis, of (a) interest on the remaining unpaid principal indebtedness (i.e., the “balloon”) secured by the Recognized Mortgage computed at the contract (i.e., non-default) rate specified in the maturing Recognized Mortgage, plus (b) principal payments using the same amortization period as the maturing Recognized Mortgage (i.e., if the maturing Recognized Mortgage had a ten (10) year term with a twenty-five (25) year amortization period, the amortization period for calculating the monthly principal payments on the remaining principal balance shall be twenty-five (25) years).

“Declaration” has the meaning provided for in **Section 23.1(a)**.

“Default” means any condition or event, or failure of any condition or event to occur, which constitutes, or would after the giving of notice and lapse of time (in accordance with the terms of this Lease) constitute, an Event of Default.

“Default Notice” has the meaning provided in **Section 25.1(b)**.

“Delay Date” means the earlier to occur of (i) the CO Date or (ii) the date which is _____ (____) months after the Possession Date (which date shall not be subject to Unavoidable Delay).

“DEP” means the State of Florida Department of Environmental Protection.

“DERM” means the Miami-Dade County Department of Environmental Resources Management.

“Economic Unavoidable Delay” means economic or political conditions or events that result in a significant decline in economic activity spread across the economy and materially impair access to debt or equity markets by developers for development of projects in the United States similar to the Project or allow a committed debt or equity participant to terminate its debt or equity commitment, such as a temporary or long term liquidity crisis or major recession. Tenant shall be entitled to an extension of time because of its inability to meet a time frame or deadline specified in this Lease due to Economic Unavoidable Delay equal to the duration of the Economic Unavoidable Delay.

“Environment” has the meaning provided in **Section 35.1(c)**.

“Environmental Compliance” has the meaning provided in **Section 35.5**.

“Environmental Condition” has the meaning provided in **Section 35.1(d)**.

“Environmental Damages” has the meaning provided in **Section 35.1(e)**.

“Environmental Laws” has the meaning provided in **Section 35.1(b)**.

“EPA” means the Environmental Protection Agency of the United States.

“Equity Interest” has the meaning provided in **Section 10.2(d)**.

“Event of Default” has the meaning provided in **Section 25.1**.

“Expiration of the Term” means the expiration of the initial Term of this Lease, or the expiration of any extensions thereof, as the case may be, or on such earlier date as this Lease may be terminated as provided herein.

“Fair Market Rent” means the rent that the Land should bring if it were raw and unimproved (i.e., all existing Improvements shall be disregarded) and if it were available for use only for the same uses as the Project as it is then being used, in a competitive and open market under all conditions requisite to a fair lease, Owner and Tenant each acting prudently, knowledgeably, and assuming the rent is not affected by undue stimulus. Implicit in this definition is consummation of a lease as of a specified date under conditions whereby:

- (i) Owner and Tenant are typically motivated;
- (ii) Both parties are well-informed or well-advised and acting in what they consider their own best interests;
- (iii) A reasonable time is allowed for exposure in the open market;
- (iv) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- (v) The rent represents the normal consideration for property leased unaffected by special or creative financing or concessions granted by anyone associated with the lease.

“Final CO” means a certificate(s) of occupancy issued by the City's Building Department for all or a portion of the Improvements, other than a Temporary CO(s).

“First Transferee” has the meaning provided in **Section 11.12(e)**.

“Fixed Expiration Date” means the date which is the last day of the month in which the _____ (____th) anniversary of the Delay Date shall occur, provided, however, that in the

event the Term is extended as provided herein, Fixed Expiration Date shall mean the last day of any extension or extensions of the Term in accordance with the provisions of **Section 2.1** hereof.

“Florida Building Code” means the Florida Building Code (Revised _____), as amended from time to time, or any successor thereto.

“Foreclosed Tenant” has the meaning provided in **Section 11.12(e)**.

“Foreclosure Transferee” and **“Foreclosure Transfer”** have the meanings provided in **Section 11.12(c)**.

“Foreign Instrumentality” means a foreign (i.e., non-United States of America) government or instrumentality thereof or a Person controlled thereby. A Person shall be deemed to be “controlled” by a foreign government or instrumentality if such government or instrumentality, directly or indirectly, directs or causes the direction of the management and policies of such Person.

[If applicable to the Project: “Garage” means the part of the Premises consisting of approximately _____ parking spaces, a portion of which shall be available as a public parking facility subject to the terms and conditions of **Section 6.1(b)**.]

“Governmental Authority or Authorities” means the United States of America, the State of Florida, the City (acting in its governmental, not proprietary, capacity), Miami-Dade County, and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, having jurisdiction over Tenant, or any owner, tenant or other occupant of, or over or under the Premises or any portion thereof or any street, road, avenue or sidewalk comprising a part of, or in front of, the Premises, or any vault in or under the Premises, or airspace over the Premises.

“Imposition(s)” has the meaning provided in **Section 3.4(b)**.

“Improvement(s)” means any building (including footings and foundations), Building Equipment, and other improvements and appurtenances of every kind and description now existing or hereafter erected, constructed, or placed upon the Land (whether temporary or permanent), and any and all alterations and replacements thereof, additions thereto and substitutions therefor.

“Institutional Lender” means a Person which, at the time it becomes an Institutional Lender, is a state or federally chartered savings bank, savings and loan association, credit union, commercial bank or trust company or a foreign banking institution [in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity]; an insurance company organized and existing under the laws of the United States of America or any state thereof or a foreign insurance company [in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity]; an institutional investor such as a publicly held real estate investment trust, an entity that qualifies as a “REMIC” under the

Internal Revenue Code of 1986, as amended, or other public or private investment entity in each case whether acting as principal or agent); a brokerage or investment banking organization [in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity as principal or agent]; an employees' welfare, benefit, pension or retirement fund; an institutional leasing company; a financing subsidiary or division of a New York Stock Exchange listed company; any governmental agency or entity insured by a governmental agency or any combination of Institutional Lenders; provided that each of the above entities shall qualify as an Institutional Lender only if (at the time it becomes an Institutional Lender) it (on a consolidated basis with its affiliates) shall (a) have assets of not less than Two Hundred Million Dollars (\$200,000,000) adjusted for inflation and (b) not be an Affiliate of Tenant (it being further agreed that none of the standards set forth in this definition shall be applicable to participants or co-lenders in a loan secured by a Mortgage which is held by an Institutional Lender [whether acting individually or in a fiduciary or representative (such as an agency) capacity]. The term **"Institutional Lender"** also includes an Affiliate of an Institutional Lender as described in this paragraph.

"Land" means the real property and air rights, if any, described on **Exhibit A** attached hereto and incorporated by reference herein.

"Late Charge Rate" has the meaning provided in **Article 4**.

"Lease" means, collectively, this Agreement of Lease 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 Lease or by mutual agreement of the parties.

"Lease Year" means (a) the period commencing on the Delay Date, and expiring on the last day of the next occurring December which is at least twelve (12) months thereafter; (b) each succeeding 12-month period during the Term; and (c) the final shorter period, if any, ending on the last day of the Term.

"Major Alteration" has the meaning provided in **Section 14.5(a)(vi)**.

"Management Agreement" means a written agreement between Tenant and Acceptable Operator pursuant to which Acceptable Operator has agreed to manage and operate the Premises in accordance with the terms thereof, and any replacements, substitutions, restatements or modifications thereof.

"Managing Member(s)" means the Member(s) who can legally bind the limited liability company. [IF APPLICABLE]

"Master Sublease(s)" has the meaning provided in **Section 10.2(f)**.

"Master Subtenant" has the meaning provided in **Section 10.2(g)**.

"Mayor" means the Mayor of the City.

“Member(s)” means a Person who owns an Equity Interest in a limited liability company.

“Membership Interest(s)” means the Equity Interest of a Member.

“Mortgage” has the meaning provided in **Section 11.2(b)**.

“Mortgagee” means the holder of a Mortgage.

“Net Condemnation Award” has the meaning provided in **Section 9.1(c)(iii)**.

“Net Insurance Proceeds” has the meaning provided in **Section 8.2(a)**.

“Notice” has the meaning provided in **Section 26.1**.

“Notice of Failure to Cure” has the meaning provided in **Section 11.4(a)**.

“Operating Expense(s)” means, without duplication, all costs and expenses incurred in owning, maintaining, conducting and operating the Premises, other than Debt Service and any other payments of principal or interest [whether or not permitted hereunder (and this reference thereto not constituting consent or approval thereof)], Rental, depreciation, amortization and the original costs of constructing the Improvements pursuant to this Lease. Operating Expenses shall include, without limitation, all operating costs; all wages and benefits and payroll taxes; other goods, supplies, utilities and services; all repairs and maintenance; all professional fees and expenses; all costs of advertising, marketing and promotion; all costs incurred by Tenant or any Affiliate of Tenant under any leasing agreement, management agreement, or other similar agreement regarding the leasing or management of the Project entered into by Tenant or any Affiliate of Tenant; any declaration of covenants, conditions and restrictions encumbering the Project, all Impositions, all insurance costs; all payments under equipment leases; all real estate, personal property and other taxes, assessments, governmental charges and other Impositions (other than income taxes, unless imposed in lieu of any of the foregoing taxes, assessments, charges or Impositions); provided, however, that no deduction shall be permitted for Alterations which under this Lease require the consent of Owner (unless such consent has been obtained or is deemed to be obtained). Any Operating Expense payable to an Affiliate of Tenant or Acceptable Operator shall be deemed an Operating Expense only to the extent of the fair market value of the goods or services supplied by such Affiliate.

“Owner” means the City, acting in its proprietary capacity, and any assignee or transferee of the entire Owner's Interest in the Premises, from and after the date of the assignment or transfer pursuant to which the entire Owner's Interest in the Premises was assigned or transferred to such assignee or transferee.

“Owner Indemnified Parties” means, collectively, the City (and any successor Owner), and their respective elected and appointed officials (including the City's Mayor and City Commissioners), directors, officials, officers, shareholders, members, partners, holders of other

ownership interests, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, Tenants, mortgagees, trustees, partners, principals, invitees and Affiliates. An **“Owner Indemnified Party”** shall mean any of the foregoing.

“Owner's Interest in the Premises” means Owner's interest in the Land and Owner's interest in this Lease.

“Parties” means Owner and Tenant.

“Permit” has the meaning provided in **Section 35.1(f)**.

“Permitted Transfer” has the meaning provided in **Section 16.3(c)(iii)**.

“Person” means an individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, estate, trust, 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.

“Plans and Specifications” means the final plans and specifications for the Project, including, foundation, structural, electrical, plumbing and HVAC plans, the finish schedule, the Project program, the differentiation schedule and such other plans and specifications customarily required to obtain a full building permit, each as established in accordance with the Development Agreement, as the same may be modified from time to time in accordance with the provisions of this Lease.

“Possession Date” means the date the City delivers possession of the Land to Tenant according to this Lease, as designated by the City to Tenant in writing, earlier to occur of (i) _____ [months] (which is not subject to Unavoidable Delays) from the Commencement Date.

“Premises” means, collectively, the Land and the Improvements.

“Prohibited Uses” has the meaning provided in **Section 6.2(a)**.

“Project” has the meaning provided in **Section 13.1**.

“Project Opening Date” means the date on which the Project is opened to the public for business, but not later than the date that is thirty (30) days following the issuance of a CO for the entire Project.

“Project Revenue(s)” has the meaning provided in **Section 3.3(c)**.

“Project Site” means the Land and all portions of the Improvements.

“Property Manager” means a commercial real estate property manager licensed to do business in the State of Florida and the City.

“Public Company” means a Person that is required to comply with the reporting requirements under the Securities Exchange Act of 1934, as amended, or any successor statute.

“Recognized Accounting Firm” means Price Waterhouse Coopers, Ernst & Young, Deloitte, MBAF, Kaufman Rossin, Marcum LLP, or Crowe LLP, Tidwell Group LLP; or any successor entity of any of the foregoing or any other certified public accountants mutually acceptable to Tenant and Owner.

“Recognized Mortgage” has the meaning provided in **Section 11.2(c)**.

“Recognized Mortgagee” means the holder of a Recognized Mortgage; provided, however, that, except to the extent permitted by **Section 11.2(c)**, a Recognized Mortgagee may not be an Affiliate of Tenant (except if Tenant is an Affiliate of a Recognized Mortgagee that has caused this Lease to be assigned to such Affiliate in lieu of foreclosure of the Recognized Mortgage of such Recognized Mortgagee). [Please clarify that there may be one or more subordinate mortgages, and that they are each entitled to be recognized (with priority being given as their interests appear).]

“Reinstatement Date” has the meaning provided in **Section 11.5(a)**.

“Release” has the meaning provided in **Section 35.1(g)**.

“Replacement Value” has the meaning provided in **Section 7.12(a)**.

“Rental” means rent, Base Rent, Percentage Rent, adjustments and any other sums, costs, expenses or deposits which Tenant is obligated, pursuant to any provisions of this Lease, to pay and/or deposit.

“Request for Proposals” or **“RFP”** means Request for Proposals (RFP No. _____ issued by the City on _____, with respect to the Land.

“Requesting Party” has the meaning provided in **Section 26.2(c)(ii)**.

“Requirements” has the meaning provided in **Section 15.2**.

“Reserve Account” has the meaning provided in **Section 16.5(a)**.

“Restoration” means either a Casualty Restoration or a Condemnation Restoration, or both.

“Sale of the Project” has the meaning provided in **Section 10.2(e)**.

“Security Deposit” has the meaning provided in **Section 3.6**.

“**Significant Alteration**” has the meaning provided in **Section 14.5(a)(i)**.

“**Substantial Completion**” or “**Substantially Complete**” or “**Substantially Completed**” means, with respect to the Project, that (1) it shall have been substantially completed in accordance with the Plans and Specifications, (2) the certificate of the Architect described in Section 2.8(b)(i) shall have been obtained, and (3) all of the Improvements therein shall have been issued temporary or permanent Certificates of Occupancy.

“**Substantial Controlling Interest**” means the ownership of greater than fifty percent (50%) of the Equity Interests in a Person and the ownership of greater than fifty percent (50%) of the votes necessary to elect a majority of the Board of Directors or other governing body of such Person.

“**Temporary CO**” means a temporary certificate of occupancy, as the same may be amended from time to time, issued by the City's Building Department for all or a portion of the Improvements.

“**Tenant**” means _____, a Florida _____, and any assignee, transferee or subtenant of the entire Tenant's Interest in the Premises that is permitted under this Lease from and after the date of the permitted assignment, transfer or sublease pursuant to which the entire Tenant's Interest in the Premises was assigned, transferred or sublet to such assignee, transferee or subtenant.

“**Tenant's Interest in the Premises**” means Tenant's interest in this Lease and Tenant's ownership of the Improvements as provided in **Section 29.3**.

“**Term**” means the term of years commencing on the Commencement Date and, subject to earlier termination as provided hereunder, expiring at 11:59 p.m. on the Fixed Expiration Date. “**Term**”, as the context may require, shall include the initial period from the Commencement Date to the Fixed Expiration Date and any extensions or renewals thereof.

“**Threat of Release**” has the meaning provided in **Section 35.1(h)**.

“**Title Matters**” has the meaning provided in **Section 2.1**

“**Transfer**” has the meaning provided in **Section 10.2(h)**.

“**Transferee**” has the meaning provided in **Section 10.2(i)**.

“Unanticipated Circumstances” means (a) concealed or subsurface conditions not reasonably anticipated by Tenant, including any Environmental Condition and any geothermal system located within or proximate to the Land, or under or within any existing improvements located on or within any portion of any of the foregoing, (b) off-site improvements required by any Governmental Authority other than those depicted on the renderings and diagrams attached hereto as Exhibit “_____”, (c) any relocation of

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underground utilities located on the Land and (d) any appeals of Governmental Approvals to a court of competent jurisdiction.

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“Unavoidable Delays” means delays due to strikes, slowdowns, lockouts, acts of God, inability to obtain labor or materials, war, enemy action, civil commotion, fire, casualty, eminent domain, catastrophic weather conditions, a court order which actually 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), the application of any Requirement, the occurrence of any Economic Unavoidable Delay, City Delays, Unanticipated Circumstances, or another cause beyond such party's control or which, if susceptible to control by such party, shall be beyond the reasonable control of such party. Such party shall use reasonable good faith efforts to notify the other party not later than twenty (20) days after such party knows of the occurrence of an Unavoidable Delay; provided, however, that either party's failure to notify the other of the occurrence of an event constituting an Unavoidable Delay shall not alter, detract from or negate its character as an Unavoidable Delay or otherwise result in the loss of any benefit or right granted to the delayed party under this Lease. In no event shall (i) any party's financial condition or inability to fund or obtain funding or financing constitute an “Unavoidable Delay” (except for an Institutional Lender’s inability to fund, which inability is not caused by Tenant) with respect to such party and (ii) any delay arising from a party's (or its Affiliate's) default under this Lease constitutes an “Unavoidable Delay” with respect to such party's obligations hereunder. The times for performance set forth in this Lease (other than for monetary obligations of a party) shall be extended to the extent performance is delayed by Unavoidable Delay, except as otherwise expressly set forth in this Lease.

“U.S. Government” means the federal government of the United States of America, including all agencies and departments thereof.

Article 2 - Demise of Land and Term of Lease

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Section 2.1. Demise of Land for Term

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(a) From and after the [Possession Date], Owner does hereby demise and lease to Tenant, and Tenant does hereby lease and take from Owner, the Land, together with all the appurtenances, rights, privileges and hereditaments thereto, “AS IS” subject to (i) the terms and conditions of this Lease and (ii) the matters set forth in **Exhibit 2.1** (the “**Title Matters**”) attached hereto and incorporated by reference herein, to have and to hold unto Tenant, its successors and assigns for an initial Term commencing on the Commencement Date and continuing until the _____ (____th) anniversary [For Discussion – due to current LIHTC requirements and lender underwriting preferences we ask the City to consider a term longer than the 50 years provided in the Invitation to Negotiate. We suggest 99 years] of the Delay Date unless sooner terminated pursuant to the terms hereof. The demised premises shall also include easements over, under and across Owner’s adjacent land for access, ingress, egress, construction (including construction staging) during the construction period, and utilities, if applicable. ||f

applicable to this RFP: Unless (A) this Lease has been previously terminated in accordance with the provisions hereof, or (B) ~~there exists an uncured Event of Default of Tenant on the date the current Term is scheduled to end, or (C)~~ Tenant notifies the City within the last twenty-four (24) months of the end of the Term in question that it is not going to elect to extend this Lease for each extension provided in this **Section 2.1** on the terms and conditions provided herein, this Lease shall be automatically extended for ~~an two~~ additional Terms of ~~twenty (20) years each~~ [note, this is provided for in the Invitation to Negotiate]_____, for a total possible maximum Term of for discussion_____ (plus the period from the Commencement Date to the Delay Date).]

(b) Notwithstanding anything to the contrary contained herein, Tenant shall have the right to be released from its liability and obligations ~~[except the obligation to pay Rental and/or Impositions prior to the Possession Date pursuant to Section 3.2(a)]~~ and to terminate this Lease prior to the Possession Date because (i) changes to the Preliminary Plans and Specifications required by the DRB, or any other Governmental Authority (including the City), render the Project economically unfeasible in the ~~reasonable sole~~ business judgment of Tenant, (ii) the Project cannot meet concurrency requirements under Section 163.3180, Florida Statutes, or the costs of concurrency mitigation are, in the reasonable business judgment of Tenant, economically unfeasible, or (iii) Tenant, after good faith efforts, has been unable to obtain a full building permit for the Project pursuant to the Plans and Specifications submitted by Tenant. In the event of termination of this Lease pursuant to this Section 2.1, each Party shall bear its own costs and expenses incurred in connection with this Lease and neither Party shall have any further liability to the other.

(c) **Possession Date; Conditions Precedent to Possession.** The Parties recognize that as of the Commencement Date there remain various items and matters to be satisfied, obtained and approved in order that the Project may proceed as intended by the Parties. Owner shall not be obligated to deliver possession of the Land and Tenant's rights as tenant hereunder shall not become effective until each of the events described in this Section 2.1(c) irrevocably shall have occurred, at which time, the Owner shall deliver possession of the Land to Tenant, Tenant shall take possession thereof and the lease provisions of this Lease shall become effective. The conditions precedent to possession (collectively, the "**Possession Conditions**") are as follows:

(i) There exists no uncured Event of Default;

(ii) Tenant shall have entered into, and delivered to the Owner a duly executed copy of, the Project General Construction Contract (and all then existing change orders thereto), in form and substance and with a Project General Contractor approved by the City Manager reflecting the guaranteed maximum price for completion of the Improvements; For discussion: general provision that all approvals or consent of Landlord, City Manger etc. shall not be unreasonably withheld, conditioned or delayed. In some cases there will be a lesser standard (such as (iii) below)

(iii) Tenant shall have provided to Owner, and City Manager shall have Approved [undefined – see note above], any changes to the Development Budget (as that term is

defined in the Development Agreement), provided that City Manager shall not withhold its approval so long as Tenant has obtained and delivered to the Owner written evidence of the existence and availability of (A) liquid assets to fund the Tenant's Funded Equity (as that term is defined in the Development Agreement), and (B) the construction loan commitment that demonstrate sufficient funds will be in place to complete the Project;

(iv) Tenant shall have obtained, and shall have delivered to Owner a copy of, all permits and governmental approvals necessary for the Commencement of Construction and for the demolition of all improvements currently located on the Land;

(v) Tenant shall have delivered to Owner, and City Manager shall have approved, a schedule of performance for the Project setting forth the dates and times of delivery of the Project, including milestones for development and approval of the Plans and Specifications, preparation and filing of applications for and obtaining all applicable Governmental Approvals and the schedule for completion of the Project (the "Schedule of Performance"). Owner agrees that it shall not withhold approval thereof so long as the same reflects Completion of Construction by the Project Opening Date and Tenant has provided reasonable evidence that such schedule is reasonable;

(vi) Tenant shall have presented evidence reasonably acceptable to the Owner that all insurance coverages required under this Lease are in place;

(vii) Tenant shall have delivered to the City Manager reasonable evidence that the Plans and Specifications have been approved by the Recognized Mortgagee;

(viii) Tenant shall have delivered to the Owner, a duly executed assignment of Plans and Specifications, and a duly executed assignment of Project General Construction Contract and assignment of Construction Agreements;

(ix) Tenant has provided to the Owner reasonable evidence that the closing of the Construction Loan has occurred;

(d) **Pre-Possession Period.** From and after the Commencement Date, the Parties shall each use their respective diligent and commercially reasonable efforts to achieve the Possession Date timely.

(e) **Site Inspections.** From and after the Commencement Date and thereafter until this Lease is terminated or the Possession Date occurs, the Owner shall permit Tenant commercially reasonably access to the Project Site to conduct at Tenant's sole cost and expense, physical inspections, tests, studies, samplings and analyses (including soil borings and invasive environmental testing) of the Project Site and such other areas and to the extent necessary to carry out the provisions of this Lease; provided, however, that such access shall not materially interfere with any ongoing operations thereon. Tenant, at all times and at its sole cost and expense, shall maintain or shall cause its Project General Contractor or other contractors in privity with Tenant to maintain, comprehensive general liability insurance as required in this Lease (or otherwise under the Development Agreement). Tenant shall restore any damage to the

site and such other areas caused by any such inspections, tests or studies; provided that in no event shall Tenant be responsible for the discovery, exposure or release of hazardous substances or materials in, on or about the Project Site that are not introduced to the Project Site by Tenant, its agents, representatives, contractors, invitees or employees.

(f) **Indemnification.** Whether or not the Possession Date occurs, Tenant shall indemnify, defend and hold Owner and its respective officers, employees, agents, representatives, consultants, counsel and contractors (of any tier) harmless from and against all claims, actions, suits, charges, complaints, orders, liability, damages, loss, costs and expenses (including any attorneys' fees and costs of litigation) related to, arising from or in connection with the acts or omissions of Tenant, its agents, representatives, contractors or employees, including injury or death to persons or damage to their property, while exercising Tenant's right to access the ~~Hotel~~-Site and performance of such inspections, tests or studies pursuant hereto, except to the extent resulting from the negligence or willful misconduct of Owner or its officers, employees, agents, representatives, consultants, counsel and contractors, and except as limited in paragraph (d) above. The indemnification obligations of Tenant set forth in this paragraph shall expressly survive the expiration or termination of this Lease and notwithstanding any provision of this Lease to the contrary, Owner shall have all rights and remedies available at law or in equity in the enforcement of such indemnification obligations of Tenant or arising from Tenant's failure to perform such indemnification obligations.

(g) **Failure to Satisfy Conditions.** Notwithstanding anything contained in this Lease to the contrary, if: (i) any of the Possession Conditions have not occurred by the Possession Date; or (ii) the Project Opening Date does not occur within the time specified in this Lease, then notwithstanding anything to the contrary set forth in this Lease and not in limitation of any of the Owner's remedies set forth in this Lease, Tenant hereby waives any further right to cure, and the Owner shall be entitled to immediately revoke the licenses granted to Tenant pursuant to the assignment of Plans and Specifications, the assignment of ~~Hotel~~-Project General Construction Contract and the assignment of Construction Agreements upon written notice to the Tenant. This needs to be modified by unavoidable delays, acts of Landlord, notice and cure, etc.

Section 2.2. No Encumbrances.

Owner will not permit or suffer any encumbrance, mortgage, pledge or hypothecation of Owner's Interest in the Premises except with respect to those matters (such as utility easements and nonmonetary reciprocal easement agreements) reasonably approved by Tenant in writing and which do not adversely affect the operation or development of the Project. At Tenant's request, Owner shall join in any utility easements and other easements necessary for the Project. Tenant shall pay all of Owner's reasonable attorneys' fees and costs associated therewith and shall indemnify and hold harmless Owner from any and all liability and expenses associated therewith. Notwithstanding the foregoing, Owner shall have the absolute right to mortgage its leasehold interest and to pledge its interest in the Rental and/or Impositions payable hereunder so long as such pledge does not include a pledge of Owner's Interest in the Premises (other than the Rental and/or Impositions payable hereunder), and the pledgee shall have no rights under this Lease other than the right to receive payments of Rental and/or Impositions [add reference to

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mortgagee protections, since these pledges will typically given to such mortgagees in addition to the mortgage]. Any pledge of Rental and/or Impositions permitted hereunder shall not create any rights in the pledgee thereunder to enforce any of the provisions of this Lease. Owner shall deliver to Tenant and any Recognized Mortgagee, within fifteen (15) days after the effective date thereof, a true and correct copy of any pledge instrument permitted hereunder.

Section 2.3. Sale of Entire Interest.

Owner shall not sell, transfer, convey or assign Owner's Interest in the Premises, except for a sale, transfer, conveyance or assignment of the entire Owner's Interest in the Premises.

Article 3 - Rent

Section 3.1 Method and Place of Payment.

Except as otherwise specifically provided herein, all Rental and/or Impositions shall be paid without notice or demand. Unless otherwise specified by Owner's designee in writing, all Rental and/or Impositions payable to Owner (except Impositions, if the Requirements governing such payments are to the contrary) shall be paid by good checks (payable upon presentment) drawn on a United States or state chartered bank, in currency of the United States of America. Rental and/or Impositions that are payable to Owner (other than Impositions, if the Requirements governing such payments are to the contrary) shall be payable at the address of Owner set forth herein or at such other place as Owner shall direct by notice to Tenant. Impositions that are not payable directly to Owner shall be payable in the form and at the location provided by Requirements governing the payment of such.

Section 3.2 Rent. [Note, although some specific comments to particular provisions are included below, all provisions regarding rent are subject to discussion.]

(a) ~~If applicable to the Project: Rent Prior to the Possession Date. On the Commencement Date, in consideration of the execution of this Lease by Owner, Tenant shall pay Owner the lump sum of _____ (\$_____,_____.), which sum shall be full and complete consideration for the period from the Commencement Date to the Possession Date, and a portion of which represents reimbursement to Owner for certain expenses incurred by Owner pursuant to Section 82-39 of the Miami Beach City Code, as amended.]~~

(b) [For Discussion] ~~If applicable to the Project: Rent After the Possession Date.~~ Tenant and Owner agree that Owner will lose significant revenues during the Construction Phase. In order to compensate Owner for said lost revenues, Tenant shall pay _____ (\$_____) _____ (\$_____,_____.) per year as rent, commencing on the Possession Date and ending on the earlier to occur of (i) the CO Date and (ii) the Delay Date.]

(c) **Rent After the Delay Date.** Tenant shall pay Owner annual rent for each Lease Year, including any adjustments thereto (the "**Base Rent**"), during the Term commencing on the Delay Date. The initial Base Rent shall be _____ Dollars (\$_____),

_____, (\$_____.____), and shall be increased as described in **Sections 3.2(d), 3.2(e) and 3.2(f)** hereof, until the Expiration of the Term. In no event shall Base Rent during an adjustment period be less than the Base Rent during any prior period.

(d) **Adjustments to Base Rent.** (i) The Base Rent shall be increased to _____ Dollars (\$_____) _____ (\$_____.____) per annum, commencing on the first month of the sixth (6th) _____ (____th) Lease Year, and (ii) the Base Rent shall be further increased by the lesser of _____ percent (____%) _____ percent (____%) or the cumulative CPI over the previous five (5) year period and shall be adjusted commencing with the first (1st) month of the eleventh (11th) Lease Year and every five (5) Lease Years thereafter.

(e) **Appraisal Adjustments to Base Rent.** Sometime during the _____th and _____th Lease Years, the Parties shall cause to be made appraisals of the Fair Market Rent according to the provisions set forth below, for the purpose of adjusting the Base Rent, which adjustments shall be effective at the beginning of the _____ (____th) and _____ (____th) Lease Years, while maintaining the Percentage Rent payments as provided in **Section 3.3** herein:

(i) Appraisals shall be made by three (3) real estate appraisers, each of which (i) shall be a member of the American Institute of Real Estate Appraisers, and (ii) shall have not less than ten (10) years' experience in managing and appraising real estate. One appraiser shall be selected and appointed by Owner (the "Owner's Appraiser"), and shall be paid by Owner, one shall be selected and appointed by Tenant (the "Tenant's Appraiser") and shall be paid by Tenant; and the third shall be selected and appointed by the first two (2) appraisers so appointed (the "Third Appraiser"). The cost of the Third Appraiser shall be evenly split between Tenant and Owner. In the event of a failure of Owner's Appraiser and Tenant's Appraiser to agree on the Third Appraiser within fifteen (15) days after their appointment, the Third Appraiser shall be appointed by the President of the American Institute of Real Estate Appraisers (or its successor) on the application of either appraiser appointed by Owner or Tenant on ten (10) days= notice to the other appraiser so appointed.

(ii) In the event either Owner or Tenant shall fail to appoint an appraiser within fifteen (15) days after demand from the other to make the appointment, then the appraiser appointed by the party not in default shall appoint the second appraiser, and the two (2) appraisers so appointed shall appoint the Third Appraiser. If the first two (2) appraisers so appointed shall fail to agree on such Third Appraiser within fifteen (15) days after their appointment, the Third Appraiser shall be appointed in the same manner provided in **Subsection 3.2(e)(i)** herein.

(iii) After appointment, the three (3) appraisers, after having been duly sworn to perform their duties with impartiality, shall proceed promptly to prepare an appraisal of the Fair Market Rent. The Fair Market Rent determined by the appraisers shall be binding and conclusive on Owner and Tenant. The appraisers shall have the right, by majority vote among them, to determine the procedure to be adopted in arriving at the Fair Market Rent (but in so doing they must apply the definition of Fair Market Rent as provided herein), and may, in their discretion, dispense with formal hearings, it being agreed that their task will be solely that of appraisal.

(iv) If prior to the expiration of the initial Term or any extended Term the Fair Market Rent has not been determined for any reason, Tenant shall continue to pay rent as calculated pursuant to **Section 3.2(c)** utilizing the Base Rent in effect for the year prior to the expiration date of the initial Term or any extended Term. When the Fair Market Rent has been determined, the Base Rent will be increased as provided retroactively to the expiration date of the initial Term [or any extended Term, if applicable,] and the rent payments shall be recalculated in accordance with **Section 3.2(c)**. If the adjusted Base Rent results in rent due Owner, Tenant shall pay to Owner with the next installment of rent, the amount of rent due, if any. In no event shall the adjusted Base Rent result in a decrease in the Base Rent in effect for the year prior to the expiration of the initial Term, or any extended Term, as applicable.

(f) **Additional Adjustment to Base Rent.** For discussion. It is the intention of Owner, and Tenant acknowledges, that the City will derive an additional benefit from the Premises being placed on the tax roll. Therefore, as a condition to Owner's agreement to enter into this Lease and subject to the provisions of **Section 3.4(h)** hereof, Tenant agrees that the Premises shall be subject to real estate taxes which Tenant is required to pay hereunder and Tenant shall not seek, based on immunity from taxation, exemption from taxation, classified use, restrictive covenant, applicable judicial limitation, local or state land use regulation, historic preservation ordinance, moratorium or other limitation, to reduce or eliminate the assessed value of the Premises nor reduce, eliminate, abate or defer the real estate taxes thereon. If after the CO Date, the Premises are not subject to real estate taxes or if the real estate taxes are reduced, waived, abated, deferred or exempted due to legislation, judicial action or otherwise, Tenant shall, for each applicable year during the remaining Term of this Lease and any extensions thereof, make payments to the City in lieu of real estate taxes, in an amount equal to the City's portion for every year as if they had been imposed. Payment in lieu of real estate taxes will be added to Base Rent under this Lease. For the purposes of this **Section 3.2(f)**, the amount of the payment in lieu of real estate taxes for any calendar year shall be equal to the sum of the assessed value (in use) of the Land, plus an amount equal to the value of the Improvements determined in accordance with the assessment methodology used for other comparable non-exempt, non-classified commercial properties in the area multiplied by the then applicable millage rate for that calendar year.

(g) **Payment of Rent and Base Rent.** On and after the [Possession Date], rent and Base Rent shall be paid in monthly installments equal to one-twelfth of the then applicable annual rent and Base Rent and shall be paid in advance, on the first day of each and every calendar month thereafter during the Term. All rent and Base Rent which is due for any period of less than a full month or a full calendar year shall be appropriately apportioned.

(h) **[If applicable to the Project: Interim Garage Rent.** Notwithstanding anything to the contrary contained in this Lease, in the event that the Garage is substantially completed and receives a temporary certificate of occupancy prior to the office portion of the Project, for the period commencing on the date such temporary certificate of occupancy is issued and ending on the earlier of (i) twelve (12) months from the date such certificate of occupancy is issued, (ii) the CO Date or (iii) the Delay Date, Tenant shall pay to Owner an additional _____ Dollars (\$____,____.____) per year as Base Rent, prorated on a

monthly basis with respect to the Garage.] [We would expect that this would likely not be applicable to any Project that is currently being considered]

(i) **[If applicable to the Project: Interim Retail Rent.** Notwithstanding anything to the contrary contained in this Lease, in the event that the retail portion of the Project is substantially completed and receives a temporary certificate of occupancy prior to the office portion of the Project, for the period commencing on the date such temporary certificate of occupancy is issued and ending on the earlier of (i) twelve (12) months from the date such certificate of occupancy is issued, (ii) the CO Date or (iii) the Delay Date, Tenant shall pay to Owner an additional _____ (\$_____) _____ Dollars (\$____,_____.____) per year as Base Rent, prorated on a monthly basis, with respect to the retail portion of the Project. [As in the case above, we would expect that this would likely not be applicable to any Project that is currently being considered]

Section 3.3 **Percentage Rent.**

(a) Tenant shall pay Owner annual percentage rent for each Lease Year (the **“Percentage Rent”**) during the Term in an amount equal to _____ percent (____ %) _____ percent (____ %) of the amount of Project Revenue for each Lease Year commencing on the earlier to occur of (i) the _____ (____th) Lease Year or (ii) the Sale Date; provided, however, for the initial and final Lease Years, the Percentage Rent shall be prorated according to the actual number of days in such Lease Year. [For discussion. We would prefer that any percentage rent be based on net income rather than gross revenue.]

(b) **Payment of Percentage Rent.** Tenant shall pay the full amount of Percentage Rent due in annual installments, in arrears, within sixty (60) days after the end of each Lease Year for the preceding Lease Year; provided, however, that in the event that Project Revenue in the _____ (____th) Lease Year is less than _____ Dollars (\$_____) _____ Dollars (\$____,_____.____), the Percentage Rent that accrues in the _____ (____th) Lease Year shall be payable in five (5) equal annual installments, without interest. Each of such five (5) annual installments of the Percentage Rent for the _____ (____th) Lease Year shall be paid to Owner at the same time as the Percentage Rent that is due and payable for the _____ (____th) through _____ (____th) Lease Years is paid pursuant to this **Section 3.3(b)**. The obligation to pay Percentage Rent shall survive Expiration of the Term as to Percentage Rent which accrued prior to the Expiration of the Term, subject to **Article 28**.

(c) **Definition.**

“Project Revenue” means (without duplication):

(i) all revenue, payments, income received, escalation adjustments, rental and operating cost reimbursements reserved under any lease, sublease, concession, license, or other arrangement or from the operation of the Project (including any reimbursements for Operating Expenses and common area maintenance) and paid to Tenant for the use or occupancy of any portion of the Project; provided, however, that for purposes of calculating Project

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Revenue (i) if any leasable space in the Project other than the Project management office (which shall be limited to a maximum of _____ (____) square feet) is leased to, or used by, Tenant, any Affiliate of Tenant, subtenant, ~~or any other Person~~ at a rental which is less than fair market rental value of such space (determined as of the date such lease is signed), the rent shall be increased by an amount equal to the difference between the rent being paid and the fair market rental value; and (ii) ~~[if any space in the Project is leased to, or used by Tenant, any Affiliate of Tenant, subtenant, or any other Person on a basis whereby the Tenant pays real estate taxes, common area maintenance charges or operating costs other than utilities directly to the taxing authority or service provider rather than to Tenant, the rent under such leases shall be increased by the amount of such taxes; common area maintenance charges and/or operating costs (other than utilities) paid directly to the taxing authority or service provider by the Tenant]~~ [for discussion - if our proposal includes a percentage rent payment, the portion of rent attributable to pass throughs for operating expenses should be excluded from project revenue, but without double counting. Not clear that this last clause accomplishes that.]; and

(ii) **[If applicable to the Project:** all revenue, receipts, or other income derived by Tenant from the Garage or any other parking service, including revenue derived by Tenant from valet service; and]

(iii) Proceeds of rental loss insurance to the extent that such proceeds replace items of revenue referenced in (i) and (ii) above.

If Tenant shall enter into a Master Sublease of all or substantially all of the Project [or of twenty percent (20%) or more of the Garage to a single tenant], "Project Revenue" with respect to the space included in the Master Sublease shall be computed with respect to the revenues received by the Master Subtenant (but in such case the rental payments made by the Master Subtenant to Tenant shall be excluded) this should be expanded to prevent double counting at all master lease and sublease levels, regardless of size of lease or type of occupancy.

Project Revenue shall be computed on a cash basis in accordance with the Accounting Principles.

The following shall, however, be excluded from Project Revenue:

(1) Federal, state and municipal excise, sales, resort, use, and other taxes collected from patrons or guests as a part of or based upon the sales price of any goods or services, including with limitation, gross receipts, room, bed, admission, cabaret, or similar taxes;

(2) Any gratuities collected;

(3) Allowances, rebates and refunds not included in Project Revenue in accordance with the Accounting Principles;

(4) The proceeds of any financing or refinancing;

(5) Interest on funds in the Reserve Account;

- (6) Proceeds from the Sale of the Project;
- (7) Real estate commissions and management fees;
- (8) any reimbursements paid by the tenants to Tenant for increases in amounts paid by Tenant to Owner pursuant to the terms of this Lease (to the extent such increases occur during the term of the respective tenant's lease); and
- (9) Payments to the Reserve Account.

Section 3.4 Impositions.

(a) **Obligation to Pay Impositions.** In addition to the payment of Rental, from and after the Possession Date, Tenant shall pay or cause to be paid, in the manner provided in this **Section 3.4**, all Impositions that at any time thereafter are assessed, levied, confirmed, imposed upon, or charged to Owner or Tenant with respect to (i) the Premises, or (ii) any vault, passageway or space in, over or under any sidewalk or street in front of or adjoining the Premises, or (iii) any other appurtenances of the Premises, or (iv) any personal property, Building Equipment or other facility used in the operation thereof, or (v) any document to which Tenant is a party creating or transferring an interest or estate in the Premises of, by or to Tenant, or (vi) the use and occupancy of the Premises, or (vii) this transaction.

(b) **Definition.**

"Imposition" or "Impositions" means the following imposed by a Governmental Authority:

- (i) real property taxes and general and special assessments (including, without limitation, any special assessments for business improvements or imposed by any special assessment district);
- (ii) personal property taxes;
- (iii) sales and/or use taxes on Rental;
- (iv) water, water meter and sewer rents, rates and charges;
- (v) excises;
- (vi) levies;
- (vii) license and permit fees;

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(viii) any other governmental levies of general application, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, now or hereafter enacted of any kind whatsoever;

(ix) service charges of general application with respect to police and fire protection, street and highway maintenance, lighting, sanitation and water supply; and

(x) any fines, penalties and other similar governmental charges applicable to the foregoing, together with any interest or costs with respect to the foregoing.

(c) Payment of Impositions.

(i) Subject to the provisions of **Section 32.2** hereof, from and after the Possession Date, Tenant shall pay each Imposition or installment thereof not later than the date the same may be paid without interest or penalty (which is the date of delinquency). However, if by law of the applicable Governmental Authority any Imposition may at the taxpayer's option be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the Imposition in such installments and shall be responsible for the payment of such installments with interest, if any.

(ii) If Tenant twice fails within any thirty-six (36) month period to make any payment of an Imposition (or installment thereof) on or before the date the same may be paid without penalty, Tenant shall, at Owner's request, and notwithstanding paragraph (i) above, pay all Impositions or installments thereof thereafter payable by Tenant not later than twenty (20) days before the date of delinquency. However, if Tenant thereafter makes all such payments as required in this paragraph (ii) for thirty-six (36) consecutive months without failure, the Imposition payment date in paragraph (i) above shall again become applicable, unless and until there are two further failures within a thirty-six (36) month period, in which case Tenant shall again have the right to cure the failure so that the payment date in paragraph (i) above shall again be applicable, and this provision shall continue to be applicable to each situation in which there are two further failures within a thirty-six (36) month period. Nothing in this paragraph shall be construed to limit Owner's Default remedies as set forth elsewhere in this Lease after failure by Tenant timely to pay any Imposition.

(d) **Evidence of Payment.** Tenant shall furnish to Owner, within thirty (30) days after the date of Owner's request therefor, an official receipt of the appropriate taxing authority or other proof reasonably satisfactory to Owner, evidencing the payment thereof.

(e) **Evidence of Non-Payment.** Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein. Tenant shall, immediately upon receipt of any such certificate, advice or bill, deliver a copy of the same to Owner.

(f) **Apportionment of Imposition.** Any Imposition relating to a fiscal period of the taxing authority, a part of which occurs after the Possession Date and a part of which occurs before the Possession Date or after the Expiration of the Term, shall be apportioned pro rata between Owner and Tenant.

(g) **Exclusions from Impositions.** Except as expressly set forth above, nothing contained herein shall be construed to require Tenant to pay or to be charged for any portion of (i) municipal, state or federal income or gross receipts taxes assessed against Owner (other than sales or use taxes imposed on Rental, notwithstanding that Owner may be primarily liable by law for the payment thereof); (ii) municipal, state or federal capital levy, estate, succession, inheritance, transfer or gains taxes, of Owner; (iii) corporation or franchise taxes imposed on Owner or any corporate owner of the fee of the Land; or (iv) any penalties or late charges assessed against Owner (unless the same result from Tenant's failure to timely pay Impositions).

(h) **Tax Abatements and Reductions.** Subject to the provisions of **Section 3.2(f)** which shall control over this **Section 3.4(h)** when in conflict, Tenant shall be entitled to the benefit of any tax abatements and reductions as are, or may be, available under applicable law as if Tenant were the fee owner of the Premises. Owner shall not be required to join in any action or proceeding in connection with such abatement or reduction unless the provisions of any Requirement at the time in effect require that such action or proceeding be brought by and/or in the name of Owner. If so required, Owner shall join and cooperate in such proceedings or permit them to be brought by Tenant in Owner's name, in which case Tenant shall pay all reasonable costs and expenses (including, without limitation, attorneys' fees and disbursements) incurred by Owner in connection therewith.

Section 3.5 Net Lease.

It is the intention of Owner and Tenant that (a) Rental be absolutely net to Owner without any abatement, diminution, reduction, deduction, counterclaim, setoff or offset whatsoever, except to the extent expressly set forth in this Lease, and (b) Tenant pay all costs, expenses and charges of every kind or nature (except as expressly provided for herein to the contrary) relating or allocable to the Premises that may arise or become due or payable during or after (but attributable to a period falling within) the Term.

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Section 3.6 Security Deposit.

For discussion. On the Possession Date and continuing until the CO Date, Tenant shall either (i) deposit with Owner the sum of _____ Dollars (\$____,____.____) in cash or (ii) post an irrevocable standby letter of credit in form and substance reasonably acceptable to Owner, payable on presentation, in favor of Owner in the amount of _____ Dollars (\$____,____.____) (the "**Security Deposit**") and payable according to the following:

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"This letter of credit may be drawn upon in full by the beneficiary hereunder upon the presentation to the bank of a statement signed by the Mayor, City Manager or

any Assistant City Manager of beneficiary that an uncured Event of Default exists under the Agreement of Lease between the beneficiary and _____ dated _____ [insert date].”

If Tenant elects to post the Security Deposit in cash, it shall be placed by Owner in an interest bearing account with interest earned to follow the money. The Security Deposit shall be considered as security for the payment of all of Tenant’s obligations, covenants and agreements under this Lease. Within thirty (30) days after the CO Date, Owner shall (provided that Tenant is not in Default under the terms of this Lease) return the Security Deposit to Tenant less any portion that Owner shall have used to make good any Default of Tenant. In the event of any such Default by Tenant, Owner shall have the right, but not the obligation, to apply all or any portion of the Security Deposit to cure the Default, in which event the Tenant shall be obligated to deposit with Owner the amount necessary to restore the Security Deposit to the amount in effect prior to the deduction. If a Default exists on the CO Date and if Tenant diligently and in good faith proceeds to cure the Default and, in fact, cures the Default, then, in that event, the Security Deposit shall be returned to Tenant.

Article 4 - Late Charges

Section 4.1 Late Charges

If Tenant shall fail to make any payment of Base Rent, Percentage Rent, or other Rental and/or Impositions within thirty (30) days after the same shall be due, the late payment shall bear interest from the date due until the date paid at a rate (the “Late Charge Rate”) equal to the lesser of (a) five percent (5%) per annum above the highest annual prime rate (or base rate) published from time-to-time in The Wall Street Journal under the heading "Money Rates" or any successor heading as being the rate in effect for corporate loans at large U.S. money center commercial banks (whether or not such rate has actually been charged by any such bank) or if such rate is no longer published, then the highest annual rate charged from time-to-time at a large U.S. money center commercial bank, selected by the City, on short term, unsecured loans to its most creditworthy large corporate borrowers; or (b) the maximum interest rate permitted by law. All interest payable under this Section 4.1 shall be deemed Rental (but shall not be compounded) and shall be due and payable by Tenant on fifteen (15) days demand. The collection by Owner of any interest under this Section 4.1 shall not be construed as a waiver of Tenant's default or of Tenant's obligation to perform any term, covenant or condition of this Lease nor shall it affect any other right or remedy of Owner under this Lease.

Article 5 - Inflation Adjustment

Section 5.1 Inflation Adjustment

Unless otherwise expressly provided hereunder, any dollar amount described in this Lease as “adjusted for inflation” or “subject to adjustment for inflation” (or words of similar import) shall be adjusted by multiplying such amount by a fraction, the numerator of which shall be the CPI for the calendar year immediately preceding the date of such adjustment, and the denominator of which shall be the CPI for the calendar year during which the Delay Date

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occurred. All amounts subject to adjustment hereunder shall be adjusted effective as of January 1 of each year pursuant to the formula described above. If the CPI ceases to be published, and there is no successor thereto, such other reasonably similar index as Owner and Tenant mutually designate shall be substituted for the CPI. No such adjustment shall result in Base Rent being an amount that is less than the Base Rent prior to the adjustment.

Article 6 - Use

Section 6.1 Use

(a) **Continuous Legal Use.** Tenant shall use and operate the Premises throughout the Term only as permitted by this Lease. In any event, the Premises shall be used only in accordance with the final Certificate[s] of Occupancy therefor which from time to time exist (or temporary Certificate[s] of Occupancy, to the extent that final Certificate[s] of Occupancy have not been issued therefor).

(b) **Scope of Use.** In accordance with Tenant's obligations to meet and comply with the maintenance and operating standards set forth in Article 14 and other provisions of this Lease, Tenant shall, from and after the Project Opening Date, operate the Premises as **[as applicable to the Project:** an office, retail and commercial (excluding any apartments, hotels, apartment hotels or residential uses) project and parking garage containing not less than ____ parking spaces.]

[If applicable to the Project: The parking spaces in the Garage shall be available for use by members of the general public at all times and all of the spaces in the Garage shall be available for use by members of the general public.]

(c) **Character and Operation of the Premises.** The parties recognize and acknowledge that the manner in which the Premises are developed, operated and maintained are matters of critical concern to the City, and Tenant hereby agrees to develop, operate and maintain the Premises and all other property and equipment located thereon which are owned, leased or maintained by Tenant in a manner consistent with other comparable first class projects of similar age and in good order, condition, repair and appearance, and in compliance with **Article 14**. To accomplish this result, Tenant shall establish such reasonable rules and regulations governing the use and operation of the Premises by subtenants as Tenant shall deem necessary or desirable in order to comply with **Article 16** and assure the level of quality and character of operation of the Premises required herein, and it will use all reasonable efforts to enforce such rules and regulations.

Section 6.2 Prohibited Uses

(a) Without limiting the provisions of **Section 6.1**, Tenant shall not use or occupy the Premises or any part of the Premises, and neither permit nor suffer the Premises to be used or occupied, for any of the following ("**Prohibited Uses**"):

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(1) [Note – these are generally acceptable except as indicated, but may need to be revisited and adjusted slightly if the Project includes a retail/commercial component.]
 for the sale by Tenant, as its principal business purpose, of any merchandise which Tenant, in the course of its normal business practice, purchases at manufacturers' clearances or purchases of ends-of-runs, bankruptcy stock, seconds, or other similar merchandise; (2) for the sale of insurance salvage stock, fire sale stock, merchandise damaged by or held out to be damaged by fire; (3) for a bankruptcy sale or going-out-of-business sale or liquidation sale or any similar sale, unless Tenant is in fact in bankruptcy or is going out of business or is in liquidation, in which case such sale shall not continue beyond thirty (30) days; (4) for the sale of medical marijuana or paraphernalia incidental thereto; (5) for any business in which Tenant is engaged in intentionally deceptive or fraudulent advertising or selling practices or any other act or business practice contrary to honest retail practices; (6) for coin box entertainment (pinball, video games, moving pictures operated by coins); (7) casino gambling or games of chance or reward; (8) any unlawful or illegal business, use or purpose, or for any business, use or purpose which is immoral or disreputable (including "adult entertainment establishments" and "adult" bookstores) or extra-hazardous, or in such manner as to constitute a nuisance of any kind (public or private), or for any purpose or in any way in violation of Tenant's Certificate(s) of Occupancy (or other similar approvals of applicable governmental authorities); (9) medical facilities and offices; (10) check cashing facilities (except as a use ancillary to a bank branch); (11) pawn shops; (12) the sale of firearms; (13) tattoo parlors, fortune tellers, psychics, palm readers, body piercing shops; (14) the sale of religious artifacts and religious books; (15) places of worship; (16) political offices; (17) military recruiting; (18) consular, legation or any other offices of foreign governments; (19) tire sales; (20) the sale of animals or birds of any kind and/or products of a nature typically sold in pet shops; (21) offices for the practice of veterinary medicine; (22) the sale of major appliances as a primary business; (23) **[unless applicable to the Project: housing or sleeping quarters];** (24) **[unless applicable to the Project: ~~grocery stores (other than specialty gourmet or "artisanal" products);~~** or (25) in any manner that will violate any Conditional Use Approval, Certificate of Occupancy or Certificate of Use for the Premises, or which will violate any laws, ordinances, or other rules or regulations applicable to the Premises.

(b) Immediately upon its discovery of any Prohibited Use, Tenant shall take all reasonably necessary steps, legal and equitable, to compel discontinuance of such business or use, including, if necessary, the removal from the Premises of any subtenants, licensees, invitees or concessionaires, subject to applicable Requirements.

Section 6.3 Garage Parking Rates

[To be addressed if applicable to the Project]

Article 7 – Insurance

[Insurance Requirements below subject to review by City's Risk Management]

Section 7.1 Insurance Requirements

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(a) **Liability Insurance.** At all times during the Term, Tenant, at its sole cost and expense, shall carry or cause to be carried insurance against liability with respect to the Premises and the operations related thereto, whether conducted on or off the Premises in an amount of not less than _____ Dollars (\$____,000,000) per occurrence, subject to adjustment for inflation, combined single limit, and designating Tenant as a named insured, and Owner and, if required by a Recognized Mortgage, a Recognized Mortgagee as additional insureds. Such insurance shall meet all of the standards, limits, minimums and requirements described in **Section 7.7**.

(b) **Property Insurance.** At all times during the Term, Tenant at its sole cost and expense, shall carry or cause to be carried “**All Risk**” (or its equivalent) property damage insurance protecting Tenant, Owner and any Recognized Mortgagees as their interests may appear against loss to the Premises and Improvements and meeting all of the standards, limits, minimums and requirements described in **Section 7.8**.

(c) **Other Insurance.** At all times during the Term, Tenant shall procure and carry insurance meeting all of the standards, limits, minimums, and requirements described in **Section 7.9**.

(d) **Construction Insurance.** Prior to the commencement of any Construction Work, Tenant shall procure or cause to be procured, and after such dates shall carry or cause to be carried, until final completion of such work, in addition to and not in lieu of the insurance required by the foregoing subsections (a), (b), and (c), the insurance described in **Section 7.10**.

Section 7.2 Treatment of Proceeds.

(a) **Proceeds of Casualty Insurance in General.** Insurance proceeds payable with respect to a property loss shall be payable either to ~~Owner-Tenant~~ or any Recognized Mortgagee or other Institutional Lender pursuant to a mutually acceptable insurance trust agreement, either of which shall hold such proceeds in trust for the purpose of paying the cost of the Casualty Restoration, ~~or shall be payable to Tenant with respect to insurance proceeds not exceeding _____ Dollars (\$_____); adjusted for inflation, per occurrence;~~ and such proceeds shall be applied to the payment in full of the cost of such Casualty Restoration in accordance with the provisions of **Article 8**.

~~(b) **Proceeds of Rent Insurance.** Rent Insurance referred to in **Section 7.9** shall be carried in the name of Tenant as named insured and shall be payable to Owner and Tenant to be applied to Rental and/or Impositions for the period from the occurrence of the damage or destruction until completion of the Restoration as determined in accordance with the provisions of **Article 8**. Without limiting the foregoing provisions of this **Section 7.2(b)**, if required by a Recognized Mortgage, such amounts shall be paid to a Recognized Mortgagee so long as all Rental and/or Impositions are first paid to Owner subject to the provisions of **Section 12.1** herein.~~

~~(e)-(b)~~ **Cooperation in Collection of Proceeds.** Tenant, Owner and any Recognized Mortgagee shall cooperate in connection with the collection of any insurance

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proceeds that may be due in the event of a loss, and Tenant, Owner and any Recognized Mortgagee shall as soon as practicable execute and deliver such proofs of loss and other instruments as may be required of Tenant, Owner or any Recognized Mortgagee, respectively, for the purpose of obtaining the recovery of any such insurance proceeds.

~~(d)~~(c) **Adjustments for Claims.** All property insurance policies required by this **Article 7** shall provide that all adjustments for claims with the insurers involving a loss in excess of _____ Dollars (\$ _____) adjusted for inflation be made jointly with Tenant, Owner and the Recognized Mortgagee.

Section 7.3 General Provisions Applicable to All Policies.

(a) **Insurance Companies.** All of the insurance policies required by this Article shall be procured from companies licensed or authorized to do business in the State of Florida that have a rating in the latest edition of “**Best's Key Rating Guide** of “**A:VIII**” or better or another comparable rating reasonably acceptable to Owner, considering market conditions.

(b) **Required Forms.** All references to forms and coverages in this **Article 7** shall be those used by the Insurance Services Organization (ISO) or equivalent forms reasonably satisfactory to Owner in all material respects.

(c) **Required Certificates.** Certificates of insurance evidencing the issuance of all insurance required by this **Article 7** to the extent then required, describing the coverage and providing for thirty (30) days prior notice to Owner by the insurance company of cancellation or non-renewal, shall have been delivered to Owner by the Possession Date, and in the case of any policies replacing or renewing any policies expiring during the Term, not later than fifteen (15) days before the expiration dates of any expiring policies. The certificates of insurance shall be issued by or on behalf of the insurance company and shall bear the original signature of an officer or duly authorized agent having the authority to issue the certificate. The insurance company issuing the insurance, or its duly authorized agent, shall also deliver to Owner proof reasonably satisfactory to Owner that the premiums for at least the first year of the term of each policy (or installment payments to the insurance carrier then required to have been paid on account of such premiums) have been paid. During the performance of any Construction Work, Tenant shall deliver to Owner an entire duplicate original or a copy (certified by Tenant to be true, complete and correct) of each policy. At all other times, Tenant shall deliver to Owner an entire duplicate original or a copy (certified by Tenant to be true, complete and correct) of each policy within a reasonable period of time after Owner's request therefor. Tenant shall notify Owner of any material changes in the coverage provided under any policy promptly after requesting an insurance company to make such change or receiving any notice from an insurance company advising Tenant of any such change; provided, however, that no such change may reduce or otherwise modify the insurance coverage required under this Lease.

(d) **Compliance with Policy Requirements.** Tenant shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Article, and Tenant shall perform, satisfy and comply with, or cause to be

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performed, satisfied and complied with, all conditions, provisions and requirements of all insurance policies.

(e) **Required Insurance Policy Clauses.** Each policy of insurance required to be carried pursuant to the provisions of this Article and each certificate issued by or on behalf of the insurer shall contain (i) a provision stating substantially that no act or omission of Tenant (or any other Person) or any use or occupation of the Premises for purposes more hazardous than are permitted by the policy shall invalidate the policy as to Owner or affect or limit the obligation of the insurance company to pay to Owner the amount of any loss sustained and that no act or omission of Owner shall invalidate the policy as to Tenant or affect or limit the obligation of the insurance company to pay to Tenant the amount of any loss; (ii) a written waiver of the right of subrogation against all of the named insureds and additional insureds, including Owner in its capacity as owner of the Land and any Recognized Mortgagee named in such policy, with respect to losses payable under such policy; (iii) a clause designating Owner, and any Recognized Mortgagee as loss payee or additional insured, as their interests may appear for losses in excess of _____ Dollars (\$ _____), adjusted for inflation; and (iv) an agreement by the insurer that such policy shall not be canceled, materially modified, or denied renewal without at least thirty (30) days prior written notice to Owner and the holder of the Recognized Mortgage named under a standard New York form of mortgagee endorsement or its equivalent, specifically covering, without limitation, cancellation or non-renewal for non-payment of premium, except that ten (10) days= notice or statutory notice, whichever is greater, shall be given with respect only to non-payment of premium.

(f) **Separate Insurance.** Tenant shall not carry separate liability or property insurance concurrent in form or contributing in the event of loss with that required by this Lease to be furnished by Tenant, unless Owner and any Recognized Mortgagee are included therein as additional insureds with respect to liability or loss payee with respect to property, as their interests may appear, with loss payable as in this Lease provided. Tenant shall immediately notify Owner of the carrying of any such separate insurance and shall cause the same to be delivered as in this Lease hereinbefore required.

(g) **Duration of Policies.** Tenant shall procure policies for all insurance required by any provision of this Lease for periods of not less than one (1) year and shall procure renewals thereof from time to time at least fifteen (15) days before the expiration thereof, except that Builders' Risk Insurance shall only be renewed for the term of any construction period.

Section 7.4 Additional Coverage.

(a) **Other Insurance.** Tenant shall maintain such other insurance, in such amounts as from time to time reasonably may be required by Owner, against such other insurable hazards as at the time are commonly insured against in the case of projects in South Florida of a size, nature and character similar to the size, nature and character of the Project.

(b) **Adjustment of Limits.** All of the limits of insurance required pursuant to this Article 7 shall be subject to review by Owner and, in connection therewith, Tenant shall carry or cause to be carried such additional amounts as Owner may reasonably require from time

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to time, but Owner may not impose such new limits any more frequently than once in every five (5) year period from the CO Date. Any request by Owner that Tenant carry or cause to be carried additional amounts of insurance shall not be deemed reasonable unless such additional amounts are commonly carried in the case of similar projects in South Florida of a size, nature and character similar to the size, nature and character of the Project; provided, however, that the provisions of this subsection (b) shall not relieve Tenant of its obligation to carry or to cause to be carried All Risk insurance in an amount not less than the Replacement Value as provided in **Section 7.12(a)**. Tenant shall be responsible for all deductibles.

Section 7.5 No Representation as to Adequacy of Coverage.

The requirements set forth herein with respect to the nature and amount of insurance coverage to be maintained or caused to be maintained by Tenant hereunder shall not constitute a representation or warranty by Owner or Tenant that such insurance is in any respect adequate.

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Section 7.6 Blanket or Umbrella Policies.

The insurance required to be carried by Tenant pursuant to the provisions of this Lease may, at Tenant's election, be effected by blanket, wrap-up and/or umbrella policies issued to Tenant covering the Premises and other properties owned or leased by Tenant or its Affiliates, provided such policies otherwise comply with the provisions of this Lease and allocate to the Premises the specified coverage, including, without limitation, the specified coverage for all insureds required to be named as insureds or additional insureds hereunder, without possibility of reduction or coinsurance by reason of, or because of damage to, any other properties named therein. If the insurance required by this Lease shall be effected by any such blanket or umbrella policies, Tenant shall furnish to Owner, upon Owner's request, certificates of insurance and copies (certified by Tenant to be true, complete and correct) of such policies as provided in **Section 7.3(c)**, together with schedules annexed thereto setting forth the amount of insurance applicable to the Premises.

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Section 7.7 Liability Insurance Requirements.

The insurance required by **Section 7.1(a)** shall consist of commercial general liability insurance protecting against liability for bodily injury, death, property damage and personal injury. Such insurance shall (within the limits of the insurance required by **Section 7.1(a)**):

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(a) include a broad form property damage liability endorsement with fire legal liability limit of not less than Fifty Thousand Dollars (\$50,000), subject to adjustment for inflation;

(b) contain blanket contractual liability insurance covering written and oral contractual liability;

(c) contain contractual liability insurance specifically covering Tenant's indemnification obligations under **Article 20**, to the extent such indemnification obligation is for an insurable risk;

- (d) contain independent contractors coverage;
- (e) contain a notice of occurrence clause;
- (f) contain a knowledge of occurrence clause;
- (g) contain an errors and omissions clause;
- (h) contain coverage for suits arising from the use of reasonable force to protect persons and property;
- (i) contain an endorsement providing that excavation and foundation work are covered and the “XCU” exclusions have been deleted;
- (j) contain a waiver of completion and occupancy condition;
- (k) contain no exclusions unless specifically approved in each instance by Owner, other than the industry standard exclusions for projects of similar size and location;
- (l) contain Products Liability/Completed Operations coverage; and
- (m) provide for a deductible determined by Tenant, but not more than Fifty Thousand Dollars (\$50,000) per loss, subject to adjustment for inflation.

Section 7.8 Property Insurance Requirements.

The insurance required by **Section 7.1(b)** shall consist at least of property damage insurance under an “**All Risk**” policy or its equivalent covering the Premises and all Improvements with replacement cost valuation and an Agreed Amount Endorsement (to be effective not later than promptly following the CO Date) in an amount not less than the full Replacement Value (determined in accordance with **Section 7.12**) and including the following coverages or clauses:

- (a) coverage for physical loss or damage to the Improvements;
- (b) a replacement cost valuation without depreciation or obsolescence clause;
- (c) debris removal coverage;
- (d) provision for a deductible determined by Tenant, but not more than Fifty Thousand Dollars (\$50,000) per loss (for other than flood or windstorm, with regard to which the deductible shall be a commercially reasonable amount), subject to adjustment for inflation;
- (e) contingent liability from operation of building laws;

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- (f) demolition cost for undamaged portion coverage;
- (g) increased cost of construction coverage;
- (h) an Agreed Amount Endorsement (to be effective not later than promptly following the CO Date) in an amount not less than the full Replacement Value negating any coinsurance clauses;
- (i) flood coverage (to the extent available at commercially reasonable rates, limits and deductibles);
- (j) windstorm coverage (to the extent available at commercially reasonable rates, limits and deductibles);
- (k) coverage for explosion caused by steam pressure-fired vessels (which coverage may be provided under a separate policy reasonably approved by Owner);
- (l) business interruption coverage in accordance with **Section 7.9**;
- (m) a clause designating Owner and a Recognized Mortgagee as additional insureds, as their interests may appear; and
- (n) contain no exclusions unless approved in writing by Owner, other than the industry standard exclusions for projects of similar size and location.

Tenant shall be named insured, and Owner and any Recognized Mortgagee shall be additional insureds, as their interests may appear. The Recognized Mortgagee or Owner shall be designated loss payee on such **“All Risk”** policy for the benefit of Owner, Tenant and any Recognized Mortgagee. If not included within the **“All Risk”** coverage above, Tenant shall also carry or cause to be carried coverage against damage due to (i) water and sprinkler leakage and collapse, which shall be written with limits of coverage of not less than the full Replacement Value per occurrence, with a deductible of not more than Fifty Thousand Dollars (\$50,000), subject to adjustment for inflation and (ii) flood, which shall be written with limits of coverage of not less than _____ Dollars (\$ _____), with a deductible of not more than _____ Dollars (\$ _____), subject to adjustment for inflation, to the extent available at commercially reasonable rates and deductibles.

If Tenant elects to insure Tenant's personal property used in connection with the Premises, the replacement value of such personal property shall be added to the amount of insurance required by this Section.

For the purposes of this **Section 7.8**, any rate, limit or deductible shall be “commercially reasonable” if such rate, limit or deductible is comparable to the rates, limits or deductibles in the insurance carried by similar projects in South Florida of a size, nature and character similar to the size, nature and character of the Project.

Section 7.9 Other Insurance Requirements.

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The insurance required by **Section 7.1(c)** shall consist at least of the following:

~~(a) Business Interruption Insurance to include Rent Insurance on an "All Risk" basis in an amount equal to (i) prior to the CO Date, not less than the annual Base Rent and (ii) following the CO Date, not less than the aggregate amount of annual Rental and/or Impositions. The insurance specified in this subsection shall:~~

~~(i) provide coverage against all reasonably insurable risks of physical loss or damage to the Improvements;~~

~~(ii) Extra Expense coverage, with a limit of at least One Million Dollars (\$1,000,000), adjusted for inflation, to cover overtime and other extra costs incurred to expedite repairing or rebuilding the damaged portion of the Premises;~~

~~(iii) provide for coverage through the attainment of pre-existing business levels;~~

~~(iv) contain flood and windstorm coverage to the extent available at commercially reasonable rates, limits and deductibles;~~

~~(v) contain explosion caused by steam pressure fired vessels coverage (which coverage may be provided under a separate policy reasonably approved by Owner);~~

~~(vi) provide for a deductible determined by Tenant, but for not more than Fifty Thousand Dollars (\$50,000) per loss (other than for flood or windstorm, with regard to which the deductible shall be a commercially reasonable amount), subject to adjustment for inflation;~~

~~(vii) designate Owner, Tenant and any Recognized Mortgagee as loss payee but shall be payable only to Tenant with respect to Business Interruption proceeds not exceeding One Hundred Thousand Dollars (\$100,000), subject to adjustment for inflation, per occurrence; and~~

~~(viii) contain no exclusions, unless approved by Owner, other than industry standard exclusions for projects of similar size and location.~~

~~(b)(a)~~ Statutory Workers' Compensation and any other insurance required by law covering all employees of Tenant or any entity performing work on or for the Premises or the Improvements (unless and to the extent provided by such other parties), including Employers Liability coverage, all in amounts not less than the statutory minimum, except that Employers Liability coverage shall be in an amount not less than One Million Dollars (\$1,000,000), subject to adjustment for inflation.

~~(e)(b)~~ After CO Date, Boiler and Machinery Insurance, covering the entire heating, ventilating and air-conditioning systems, in all its applicable forms, including Broad

Form, boiler explosion, extra expense and loss of use in an amount not less than the replacement cost of such heating, ventilating and air conditioning systems, located on any portion of the Premises and other machinery located on any portion of the Premises, which shall designate Tenant as named insured and loss payee and designate Owner and any Recognized Mortgagee as additional insureds.

~~(d)~~(c) Automobile liability insurance covering any automobile or other motor vehicle used in connection with the Project in an amount not less than Twenty-Five Million Dollars (\$25,000,000), subject to adjustment for inflation, per occurrence, with a deductible determined by Tenant of not more than Ten Thousand Dollars (\$10,000) per loss, subject to adjustment for inflation.

Section 7.10 Construction Insurance Requirements.

The insurance required by **Section 7.1(d)** shall consist at least of the following:

(a) Builder's Risk Insurance (standard "All Risk" or equivalent coverage) in an amount not less than the cost of construction, written on a completed value basis or a reporting basis, for property damage protecting Tenant, Owner, the general contractor, and any Recognized Mortgagee, with a deductible determined by Tenant of not more than Fifty Thousand Dollars (\$50,000), subject to adjustment for inflation (except as to flood and windstorm, with regard to which the deductible shall be a commercially reasonable amount), to include rental payment coverage from the date of projected completion and extending for at least twelve (12) months following such date of projected completion.

(b) Automobile liability insurance covering any automobile or other motor vehicle used in connection with work being performed on or for the Premises in an amount not less than Five Million Dollars (\$5,000,000), subject to adjustment for inflation, per occurrence, with a deductible determined by Tenant of not more than Ten Thousand Dollars (\$10,000), subject to adjustment for inflation.

(c) The insurance required pursuant to **Section 7.7**.

Section 7.11 Annual Aggregates.

Excluding Umbrella/Excess Liability Insurance, if there is imposed under any liability insurance policy required hereunder an annual aggregate which is applicable to claims other than products liability and completed operations, such an annual aggregate shall not be less than two (2) times the per occurrence limit required for such insurance.

Section 7.12 Determination of Replacement Value.

(a) **Definition.** The current replacement value of the Improvements (the "Replacement Value") shall be the full cost of replacing the Improvements according to Requirements in effect at that time, including, without limitation, all hard costs of construction as well as the costs of post-casualty debris removal, and soft costs, including without limitation,

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architects', engineers', surveyors', assessors' and other professional fees and development fees. On the CO Date, Replacement Value of the Improvements shall be deemed to be an amount equal to the actual costs incurred or expended in connection with the construction of the Premises as certified by the architect upon completion of the Premises, other than foundations and financing and other soft costs not applicable to replacement, adjusted for each year after completion of the Premises in accordance with the percentage change in the Building Index. If the insurance required by **Section 7.8** above is not sufficient to cover the Replacement Value, then within fifteen (15) days after such adjustment, said insurance shall be increased or supplemented to fully cover such Replacement Value. In no event shall such Replacement Value be reduced by depreciation or obsolescence of the Improvements.

(b) **Building Index.** As used herein, the “**Building Index**” shall mean the Marshall and Swift Cost Index or such other published index of construction costs which shall be selected from time to time by Owner and reasonably agreed to by Tenant, provided that such index shall be a measure of construction costs widely recognized in the insurance industry and appropriate to the type and location of the Improvements.

Section 7.13 Master Subleases.

All Master Subleases shall require the Master Subtenant to carry liability insurance naming Tenant, Owner and any Recognized Mortgagee as additional insureds with limits reasonably prudent under the circumstances.

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Section 7.14 Additional Interests.

All insurance policies in this **Article 7** shall contain a provision substantially to the effect that the insurance provided under the policy is extended to apply to Owner, as its interests may appear. Any holder of a Recognized Mortgage which, pursuant to the Recognized Mortgage, is required to be named under any of the insurance carried hereunder shall be named under a standard New York form of mortgagee endorsement or its equivalent.

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Article 8 - Damage, Destruction and Restoration

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Section 8.1 Notice to Owner.

If the Premises are damaged or destroyed in whole or in any material part by fire or other casualty, Tenant shall notify Owner of same as soon as reasonably possible after Tenant's discovery of same.

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Section 8.2 Casualty Restoration.

(a) **Obligation to Restore.** If all or any portion of the Premises are damaged or destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen, whether prior to or after completion of the initial construction of the Project, Tenant shall, in accordance with the provisions of this **Article 8** and **Article 2** of the Development Agreement (a copy of which is attached hereto as **Exhibit 8.2**; the provisions of which shall be deemed to apply to all

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Construction Work necessary to complete the Casualty Restoration, to the extent the same are not inconsistent with the terms hereof) restore the Premises to the condition thereof as it existed immediately before such casualty (“**Casualty Restoration**”), regardless of whether the Net Insurance Proceeds shall be sufficient therefor. “**Net Insurance Proceeds**” shall mean the actual amount of insurance proceeds paid following a fire or other insured casualty.

(b) **Commencement of Construction Work.** Subject to Unavoidable Delays, Tenant shall commence the Construction Work in connection with a Casualty Restoration within ninety (90) days after receipt of the Net Insurance Proceeds ~~by the Recognized Mortgagee or Owner~~ arising from the damage or destruction which caused the need for such Casualty Restoration and shall diligently pursue the completion of such Casualty Restoration.

(c) **Pay Down of Mortgages Prohibited.** No Mortgagee (Recognized or otherwise) shall have the right to apply any insurance proceeds paid in connection with any casualty toward payment of the sum secured by its Mortgage to the extent that this Lease requires that Tenant effect a Casualty Restoration with such proceeds. This and other provisions will need to be worked out with mortgagees. For example, the lender may not agree to make the insurance proceeds available near the end of the lease term, or near the end of the mortgage term (in which case we would need extra time to refinance).

Section 8.3 Restoration Funds.

(a) Except as may be otherwise required by any Recognized Mortgage, all Net Insurance Proceeds shall, if in an amount equal to Five Hundred Thousand Dollars (\$500,000), adjusted for inflation, or less per occurrence, be paid to Tenant and applied as provided herein. If greater than Five Hundred Thousand Dollars (\$500,000), adjusted for inflation, then all Net Insurance Proceeds shall be deposited with the Recognized Mortgagee, or, if none, with another Institutional Lender pursuant to a mutually acceptable trust agreement. Provided Tenant is conducting the Casualty Restoration in accordance with this Lease, the Net Insurance Proceeds shall be paid out from time to time as the Casualty Restoration progresses, upon the written request of Tenant, which request shall be accompanied by the following:

(i) A certificate signed by Tenant and the architect or engineer in charge of the Casualty Restoration, reasonably satisfactory to Owner, dated not more than fifteen (15) days prior to such request, setting forth:

(1) that the sum then requested either has been paid by Tenant or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons who have rendered services or furnished materials for the work specified, and stating that no part of such expenditures has been or is being made the basis of any previous or then pending request for the withdrawal of the Net Insurance Proceeds;

(2) a brief description of the services and materials;

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(3) that, except for the amount described in **Section 8.3(a)(i)(1)**, there is no outstanding indebtedness actually known to the persons signing such certificate, after due inquiry, which is then due for labor, materials, or services in connection with the Casualty Restoration;

(4) that the cost, as estimated by the persons signing such certificate, of the work required to complete the Casualty Restoration does not exceed the amount of the remaining Net Insurance Proceeds, plus any amount deposited by Tenant to defray the expenses of the Casualty Restoration; and

(5) that the work described has been completed in accordance with the plans and specifications applicable thereto, in a good and workmanlike manner and in accordance with all Requirements.

(ii) Lien waivers, title insurance company reports or such other evidence, reasonably satisfactory to Owner, to the effect that there has not been filed with respect to the Premises, any vendor's, mechanic's, laborer's, materialman's or other lien which has not been discharged of record, except such as will be discharged by payment of the amount then requested; and

(iii) Such other documentation regarding the Casualty Restoration as Owner or the Recognized Mortgagee shall reasonably require.

(b) Tenant shall, prior to the commencement of the Casualty Restoration, furnish to Owner an estimate of the total cost of the Casualty Restoration certified by the architect or engineer in charge of the Casualty Restoration. If such cost estimate or any subsequent estimate provided pursuant to **Section 8.3(a)** shall show that the cost of completing the Casualty Restoration is in excess of the amount of the Net Insurance Proceeds then available, Tenant shall promptly deposit with the holder of the Net Insurance Proceeds an amount equal to such excess. The amount so deposited shall be included in the Net Insurance Proceeds for all purposes of this **Article 8**.

(c) Upon compliance by Tenant with the foregoing provisions of this **Article 8**, the holder of the Net Insurance Proceeds shall pay, to Tenant or the persons named in the certificate referred to in **Section 8.3(a)**, from the Net Insurance Proceeds, an amount equal to ninety percent (90%) of the cost of the Casualty Restoration which is evidenced by the request. At the completion of each contract or subcontract in connection with the Casualty Restoration, the balance of the Net Insurance Proceeds relating to that portion of the work, to the extent of and as required to complete the payment of Casualty Restoration costs relating to that portion of the work, shall be paid to Tenant and Tenant shall provide to Owner reasonable evidence that the Casualty Restoration relating to that portion of the work has been paid for in full.

(d) If the amount of any Net Insurance Proceeds, excluding deposits made by Tenant pursuant to **Section 8.3(b)** above, shall exceed the entire cost of the Casualty Restoration, such excess, upon completion of the Casualty Restoration, shall, ~~if this Lease shall be in full force and effect, and not in default, be disbursed to Tenant, or if this Lease is no longer in full~~

~~force and effect or is in default, such excess shall be paid to and retained by Owner and shall be (i) credited against any amounts due hereunder which are in default, or (ii) deemed to be Percentage Rent hereunder to the extent that Percentage Rent was reduced during Casualty Restoration and not reimbursed from insurance proceeds and if any balance remains then, in that event, said remaining balance to Tenant as Project Revenue. Any amounts deposited by Tenant pursuant to Section 8.3(b) hereof shall be returned to Tenant to the extent the same are not necessary to fund the cost of the Casualty Restoration be disbursed to Tenant.~~

Section 8.4 Effect of Casualty on This Lease.

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This Lease shall not terminate, be forfeited or be affected in any manner, and there shall be no reduction or abatement of Rental (except to the extent Owner receives the net proceeds of the insurance described in **Section 7.8**), by reason of damage to, or total or partial destruction of, or untenantability of, the Premises or any part thereof resulting from such damage or destruction. Tenant's Rental obligations hereunder shall continue as though the Premises had not been damaged or destroyed and shall continue without abatement, suspension, diminution or reduction whatsoever. Subject to Unavoidable Delays and taking into account Tenant's Casualty Restoration obligations (including, without limitation, the effect of the casualty and the Casualty Restoration on the Tenant's ability to comply with the maintenance obligations under **Article 14** hereof), Tenant's non-Rental obligations hereunder shall continue as though the Premises had not been damaged or destroyed and shall continue without abatement, suspension, diminution or reduction whatsoever.

Section 8.5 Collection of Proceeds.

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Each of the parties shall execute such documents as may be reasonably required to facilitate collection of any insurance proceeds paid or payable in connection with any casualty affecting the Premises.

Article 9 - Condemnation

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Section 9.1 Substantial Taking.

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(a) **Termination of Lease for Substantial Taking.** If all or Substantially All of the Premises are taken (excluding a taking of the fee interest in the Premises if, after such taking, Tenant's rights under this Lease are not affected and no rights of any Recognized Mortgagee are affected) for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Owner, Tenant, Recognized Mortgagee and those authorized to exercise such right, this Lease shall terminate on the Date of Taking and the Rental and/or Impositions payable by Tenant hereunder shall be apportioned and paid to the Date of Taking.

(b) **Disbursement of Award.** If all or Substantially All of the Premises are taken or condemned as provided in **Section 9.1(a)**, the Net Condemnation Award paid or payable to Owner, Tenant or any lender or mortgagee claiming through either of them in connection with such taking or condemnation shall be paid as follows: (1) there shall first be paid to Owner an

amount equal to the Net Condemnation Award multiplied by a fraction, the numerator of which is the appraised value of the Land immediately prior to such condemnation, and the denominator of which is the appraised value of the Premises immediately prior to such condemnation; (2) there shall next be paid to the Recognized Mortgagee so much of the Net Condemnation Award as shall equal the unpaid principal indebtedness secured by such Recognized Mortgagee with interest thereon at the rate specified therein to the date of payment (including any prepayment fees thereon and any so-called “yield maintenance” or “make-whole” amounts or other sums intended to assure to the Recognized Mortgagee a certain rate of return under the loan secured by the Recognized Mortgage, if any, as well as any costs payable by Tenant in connection with such Recognized Mortgage pursuant to any “swap” or other interest rate protection or hedging mechanism); and (3) the remaining Net Condemnation Award shall be disbursed to Tenant. The appraised values referred to in **Section 9.1(b)(1)** shall be determined using the appraisal process outlined in **Section 3.2(e)**, except that the appraised values shall be based upon fair market value and not Fair Market Rent.

(c) **Definitions.**

(i) **“Date of Taking”** means the earlier of (1) the date on which actual possession of all or Substantially All of the Premises, or any part thereof, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of applicable law or (2) the date on which title to all or Substantially All of the Premises, or any part thereof, as the case may be, has vested in any lawful power or authority pursuant to the provisions of applicable law.

(ii) **“Substantially All of the Premises”** means such portion of the Premises as, when so taken, would leave, in Tenant's good faith determination, a balance of the Premises that, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not, under economic conditions, physical constraints, zoning laws, building regulations and other Requirements then existing, readily accommodate a new or reconstructed building or buildings and other improvements of a type fully comparable to the Improvements existing at the Date of Taking. Tenant shall notify Owner, on or about the Date of Taking, in writing of its determination as to whether or not “Substantially All of the Premises” has been taken. If Tenant does not determine that “Substantially All of the Premises” has been taken, then this Lease shall not terminate and expire but shall continue in force and effect, subject to the other provisions of this **Article 9**. If Tenant determines that “Substantially All of the Premises” has been taken, then this Lease shall terminate and expire on the Date of Taking pursuant to **Section 9.1(a)**.

(iii) **“Net Condemnation Award”** shall mean the actual amount of the award paid in connection with or arising from the acquisition or other taking of all or Substantially All of the Premises or any portion of the Premises by any authority, less all reasonable out-of-pocket expenses incurred by Owner, Tenant or Recognized Mortgagee in connection with obtaining such award, including, without limitation, all reasonable attorneys' fees and disbursements incurred in connection therewith.

Section 9.2 Less Than Substantial Taking.

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(a) **Taking of Less than Substantially All of the Premises.** If less than Substantially All of the Premises are taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Owner, Tenant, any Recognized Mortgagee and the entity authorized to exercise such right, whether prior to or after the completion of the initial construction of the Project, this Lease shall continue for the remainder of the Term (subject to paragraph (b) below) without diminution of any of Tenant's obligations hereunder, but with a fair and equitable abatement of Rental and, in the event Tenant is then making payments to Owner pursuant to **Section 3.2(f)**, such payments, taking into account, amongst other things, that the Net Condemnation Award (if not sufficient for the Condemnation Restoration) is insufficient to complete the Condemnation Restoration.

(b) **Obligation to Restore the Premises.** If less than Substantially All of the Premises are taken as provided in **Section 9.2(a)**, whether prior to or after the completion of the initial construction of the Project, Tenant shall, in accordance with the provisions of this **Article 9** and **Article 2** of the Development Agreement (a copy of which is attached hereto as **Exhibit 8.2**); the provisions of which shall be deemed to apply to all Construction Work necessary to complete the Condemnation Restoration, to the extent the same are not inconsistent with the terms hereof) restore the remaining portion of the Premises, to the extent feasible, to the condition thereof as it existed immediately before such taking (a **"Condemnation Restoration"**), regardless of whether the Net Condemnation Award shall be sufficient therefor.

(c) **Disbursement.** If less than Substantially All of the Premises are taken as provided in **Section 9.2(a)**, the Net Condemnation Award payable to Owner, Tenant and any lender or mortgagee claiming through either of them shall be paid as follows: (1) first to the cost of the Condemnation Restoration; (2) second to Owner for payment of any amounts due and payable hereunder which are in default other than Percentage Rent; (3) third to the Recognized Mortgagee for any amounts due and payable under its Recognized Mortgage which are in default; (4) fourth to Owner for any accrued, but unpaid, Percentage Rent; (5) fifth to Recognized Mortgagee to the extent required by the Recognized Mortgage as a result of the less than Substantial Taking; and (6) sixth pursuant to **Section 9.1(b)(1)**.

(d) **Commencement of Construction Work.** Subject to Unavoidable Delays, Tenant shall commence the Construction Work in connection with a Condemnation Restoration within ninety (90) days after receipt of the Net Condemnation Award arising from the taking which caused the need for such Condemnation Restoration and shall diligently pursue the completion of such Condemnation Restoration.

(e) **Pay Down of Mortgages Prohibited.** No Mortgagee (Recognized or otherwise) shall have the right to apply any award proceeds paid in connection with any taking toward payment of the sum secured by its Mortgage to the extent that this Lease requires that Tenant effect a Condemnation Restoration with such proceeds.

Section 9.3 Restoration Funds

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(a) If in connection with a taking the Net Condemnation Funds are in excess of Five Hundred Thousand Dollars (\$500,000), adjusted for inflation, then the Net Condemnation Award shall be deposited with the Recognized Mortgagee, or, if none, with an Institutional Lender pursuant to a mutually acceptable trust agreement. Except as may otherwise be required by a Recognized Mortgagee, if such Net Condemnation Funds are less than Five Hundred Thousand Dollars (\$500,000) adjusted for inflation, the same shall be paid directly to Tenant to be applied as provided herein. Provided Tenant is conducting the Condemnation Restoration in accordance with this Lease, the Net Condemnation Award shall be paid out from time to time as the Condemnation Restoration progresses, upon the written request of Tenant, which request shall be accompanied by the following:

(i) A certificate signed by Tenant and the architect or engineer in charge of the Condemnation Restoration, reasonably satisfactory to Owner, dated not more than fifteen (15) days prior to such request, setting forth:

(1) that the sum then requested either has been paid by Tenant or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons who have rendered services or furnished materials for the work specified, and stating that no part of such expenditures has been or is being made the basis of any previous or then pending request for the withdrawal of the Net Condemnation Award;

(2) a brief description of the services and materials;

(3) that, except for the amount described in **Section 9.3(a)(i)(1)**, there is no outstanding indebtedness actually known to the persons signing such certificate, after due inquiry, which is then due for labor, materials, or services in connection with the Condemnation Restoration;

(4) that the cost, as estimated by the persons signing such certificate, of the work required to complete the Condemnation Restoration does not exceed the amount of the remaining Net Condemnation Award, plus any amount deposited by Tenant to defray the expenses of the Condemnation Restoration; and

(5) that the work described has been completed in accordance with the plans and specifications applicable thereto, in a good and workmanlike manner and in accordance with all Requirements;

(ii) Lien waivers, title company reports or such other evidence, reasonably satisfactory to Owner, to the effect that there has not been filed with respect to the Premises, any vendor's, mechanic's, laborer's, materialman's or other lien which has not been discharged of record, except such as will be discharged by payment of the amount then requested; and

(iii) Such other documentation regarding the Condemnation Restoration as Owner or the Recognized Mortgagee shall reasonably require.

(b) Tenant shall, prior to the commencement of the Condemnation Restoration, furnish to Owner an estimate of the total cost of the Condemnation Restoration certified by the architect or engineer in charge of the Condemnation Restoration. If such cost estimate or any subsequent estimate provided pursuant to **Section 9.3(a)(i)(4)** shall show that the cost of completing the Condemnation Restoration is in excess of the amount of the Net Condemnation Award then available, Tenant shall promptly deposit with the holder of the Net Condemnation Award an amount equal to such excess. The amount so deposited shall be included in the Net Condemnation Award for all purposes of this **Article 9**.

(c) Upon compliance by Tenant with the foregoing provisions of this Article, the holder of the Net Condemnation Award shall pay, to Tenant or the persons named in the certificate referred to in **Section 9.3(a)(i)**, from the Net Condemnation Award, an amount equal to ninety percent (90%) of the cost of the Condemnation Restoration which is evidenced by the request. At the completion of each contract or subcontract in connection with the Condemnation Restoration, the balance of the Net Condemnation Award relating to that portion of the work, to the extent of and as required to complete the payment of Condemnation Restoration costs relating to that portion of the work, shall be paid to Tenant and Tenant shall provide to Owner reasonable evidence that the Condemnation Restoration relating to that portion of the work has been paid for in full.

(d) If the amount of any Net Condemnation Award, excluding deposits made by Tenant pursuant to **Section 9.3(b)** above, shall exceed the entire cost of the Condemnation Restoration, such excess, upon completion of the Condemnation Restoration, shall, if this Lease shall be in full force and effect, be disbursed to Tenant or if this Lease shall not be in full force and effect, such excess shall be paid to and retained by Owner and shall be deemed to be Percentage Rent to the extent that Percentage Rent was reduced during Casualty Restoration and not reimbursed from insurance proceeds and if any balance remains then, in that event, said remaining balance to Tenant as Project Revenue hereunder. Any amounts deposited by Tenant pursuant to **Section 9.3(b)** above shall be returned to Tenant to the extent the same are not necessary to fund the cost of the Condemnation Restoration.

Section 9.4 Temporary Taking

(a) **Notice of Temporary Taking.** If the temporary use of the whole or any portion of the Premises is taken for a public or quasi-public purpose by a lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Tenant and those authorized to exercise such right, Tenant shall give Owner notice within five (5) Business Days thereof. The Term shall not be reduced or affected in any way by reason of such temporary taking and Tenant shall continue to pay to Owner the Rental and/or Impositions without reduction or abatement; provided, however, if such temporary taking is for a period in excess of ninety (90) days, then such taking shall be deemed a permanent taking and the provisions of **Sections 9.1** and **9.2**, as applicable, shall apply.

(b) **Temporary Taking Not Extending Beyond the Term.** If the temporary taking is for a period not extending beyond the Term (including a taking restricted entirely to Tenant's Interest in the Premises and not affecting Owner's interest in any way), Tenant shall

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apply the award it receives in compensation therefor toward a Condemnation Restoration in accordance with **Section 9.3**, and Tenant shall, subject to the rights of any Recognized Mortgagee, be entitled to retain any remaining amount of such award.

(c) **Temporary Taking Extending Beyond the Expiration of the Term.** If the temporary taking is for a period extending beyond the Expiration of the Term, the award or payment shall first be disbursed pursuant to **Section 9.3** to be applied toward such restoration of the Improvements as may have been necessitated by such taking, and the remainder shall be equitably apportioned between Owner and Tenant as of the Expiration of the Term.

Section 9.5 Governmental Action Not Resulting in a Taking.

In case of any governmental action not resulting in the taking or condemnation of any portion of the Premises but creating a right to compensation therefor, then this Lease shall continue in full force and effect without reduction or abatement of Rental and/or Impositions. Any award payable thereunder shall be applied (i) first to reimburse Tenant for any Construction Work performed by Tenant resulting from such governmental action and for attorneys' fees and costs related thereto as well as to Owner for its attorneys' fees and costs related thereto; provided, however, that Owner was not acting in its governmental capacity, (ii) second, any remaining amount shall be used to cure any monetary defaults under this Lease, and (iii) the remainder shall be paid to Tenant.

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Section 9.6 Collection of Awards.

Each of the parties shall execute such documents as may be reasonably required to facilitate collection of any awards made in connection with any condemnation proceeding referred to in this **Article 9**.

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Section 9.7 Negotiated Sale.

In the event of a negotiated sale of all or a portion of the Premises in lieu of condemnation, the proceeds shall be distributed as provided in cases of condemnation.

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Section 9.8 Intention of Parties.

The existence of any present or future law or statute notwithstanding, Tenant waives all rights to quit or surrender the Premises or any part thereof by reason of any condemnation or taking of less than Substantially All of the Premises.

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Section 9.9 No Waiver.

Notwithstanding anything to the contrary contained herein, the City, acting in its governmental capacity, does not waive, and hereby reserves, its right to consent or withhold consent to any acquisition of property owned by or belonging to the City, including the Premises.

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Section 9.10 Effect of Taking on This Lease.

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Except as provided in **Section 9.1**, this Lease shall not terminate, be forfeited or be affected in any manner, and there shall be no reduction or abatement of Rental and/or Impositions, by reason of any taking of the Premises or any part thereof. Except as provided in **Section 9.2(a)**, Tenant's Rental and/or Imposition obligations hereunder shall continue as though the Premises had not been taken and shall continue without abatement, suspension, diminution or reduction whatsoever. Subject to Unavoidable Delays and taking into account Tenant's Condemnation Restoration obligations, Tenant's non-Rental obligations hereunder shall continue as though the Premises had not been taken and shall continue without abatement, suspension, diminution or reduction whatsoever.

Article 10 - Sale of the Project, Transfer and Subletting

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Section 10.1 Purpose of Restrictions on Transfer.

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Subject to the provisions of this Article 10, this Lease is granted to Tenant solely for the purpose of development of the Land and its subsequent use in accordance with the terms hereof, and not for speculation in landholding. Tenant recognizes that, in view of the importance of the development of the Land to the general welfare of the community, the qualifications and identity of Tenant are of particular concern to the community and Owner. Tenant further recognizes that it is because of such qualifications and identity that Owner is entering into this Lease with Tenant and, in so doing, is further willing to accept and rely on the obligations of Tenant for the faithful performance of all undertakings and covenants by it to be performed.

Section 10.2 Definitions.

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(a) **“Assignment”** means a sale, exchange, assignment, transfer or other disposition by Tenant of all or a portion of Tenant's Interest in the Premises, whether by operation of law or otherwise, which is not a Transfer or a Master Sublease. The creation or granting of a Mortgage shall not constitute an Assignment or a Transfer.

(b) **“Assignee”** means a purchaser, assignee, transferee, or other Person which acquires all or any portion of Tenant's Interest in the Premises.

(c) **“Back Rent”** means the amount of unpaid Rental (other than accrued, but unpaid, Percentage Rent) as of the Reinstatement Date, including accrued simple interest on the unpaid Rental (other than accrued, but unpaid, Percentage Rent) from the date due at the default rate specified in the Recognized Mortgage, as well as reasonable attorneys' fees and costs at the trial court and all appellate levels and other expenses incurred by Owner in connection with enforcing this Lease.

(d) **“Equity Interest”** means, with respect to any entity, (1) the legal (other than as a nominee) or beneficial ownership of outstanding voting or non-voting stock of such entity if such entity is a business corporation, a real estate investment trust or a similar entity, (2) the legal (other than as a nominee) or beneficial ownership of any partnership, Membership Interest or other voting or non-voting ownership interest in a partnership, joint venture, limited

liability company or similar entity, (3) a legal (other than as a nominee) or beneficial voting or non-voting interest in a trust if such entity is a trust and (4) any other voting or non-voting interest that is the functional equivalent of any of the foregoing.

(e) **“Sale of the Project”** means (i) any Assignment or Master Sublease by Tenant of fifty percent (50%) or more of Tenant’s Interest in the Premises or (ii) any change, by operation of law or otherwise, in the ownership of an Equity Interest in Tenant wherein such change in ownership, directly or indirectly, produces any change in the Substantial Controlling Interest of Tenant.

(f) **“Master Sublease(s)”** means any sublease (including a sub-sublease or any further level of subletting) of all or any portion of the Premises, but does not include subleases serving the functional equivalent of a Recognized Mortgage or subleases to actual space users or other subleases entered into in the ordinary course of business for parking, retail, office or other space at the Premises (none of which shall require Owner consent); provided, however, that in the event of a sublease of greater than Twenty Percent (20%) of the parking on the Premises (other than to subtenants of space in the Project to meet their parking needs), Owner shall have the right to approve the subtenant.

(g) **“Master Subtenant”** means any party granted rights by Tenant under a Master Sublease or by any other Master Subtenant (immediate or remote) under a Master Sublease.

(h) **“Transfer”** means (i) any change, by operation of law or otherwise, in the ownership of an Equity Interest in Tenant, wherein such change in ownership, directly or indirectly, does not produce any change in the Substantial Controlling Interest of Tenant, or (ii) any transaction or series of transactions, by operation of law or otherwise, including, without limitation, the issuance of additional Equity Interests or the direct or indirect revision of the beneficial ownership or control structure of the management or operation of Tenant or any direct or indirect constituent entity of Tenant, which, in either case, does not produce any change, by operation of law or otherwise, in the Substantial Controlling Interest in Tenant.

(i) **“Transferee”** means a Person to which a Transfer is made.

Section 10.3 Restrictions on Sale of the Project or Transfer.

(a) **No Sale of the Project or Transfer Prior to CO Date.** There shall not be any Sale of the Project or Transfer prior to the CO Date other than as permitted by the provisions in **Section 10.4** and other than a Foreclosure Transfer.

(b) **No Sale of the Project or Transfer to a Foreign Instrumentality.** Notwithstanding anything in this Lease to the contrary, there shall not be any Sale of the Project or any Transfer to a Foreign Instrumentality.

(c) **Restriction on Sale of the Project.** Subject to the provisions of **Section 10.3(a)** and **(b)** herein, Tenant may not effect a Sale of the Project except to a permitted buyer

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(the “Permitted Buyer”) which shall mean any of the following [For discussion – we are not accustomed to seeing transfers restricted quite to the extent provided herein. Also, Tenant should have the right to enter into subleases, sub-subleases and master subleases without Owner consent]:

(i) a real estate investor or real estate investment entity (including without limitation, a real estate investment trust) investing funds for its own account,

(ii) a pension fund, pension fund advisor or investment advisor investing on behalf of others, or

(iii) a Tenant who either invests, for its own account (with or without additional equity investors investing with said Tenant), in or develops commercial real estate projects located within or outside the United States; provided, however, that such Permitted Buyer in fact meets or exceeds and certifies to Tenant and Owner that it meets or exceeds the criteria described in subsections (A) through (G) below. For purposes of the Sale of the Project being permitted under this **Section 10.3(c)**, Owner shall rely solely on Permitted Buyer’s certification that the Permitted Buyer meets such criteria, together with the financial statements described in (A) below. At any time within the thirty (30) day period described in the last paragraph of this **Section 10.3(c)**, Owner shall be entitled to engage an independent accounting firm to review the books, records and other information upon which the certifications and financial statements described below were based for the purpose of determining whether the certifications or the financial statements described below are accurate and complete.

(A) Together, with the Permitted Buyer’s Affiliates, has equity ownership in real estate (or, in the case of pension fund advisors or investment advisors, current real estate equity under management) plus cash and/or cash equivalent of at least Twenty Million Dollars (\$20,000,000), adjusted for inflation, [of which not less than Ten Million Dollars (\$10,000,000), adjusted for inflation, must be equity ownership in real estate] (such real estate may either be owned or, in the case of pension fund advisors or investment advisors, under management by Affiliates owned or controlled by such Permitted Buyer or its principals), as set forth in the most recent year-end financial statements of the persons or entities used to arrive at said Twenty Million Dollars (\$20,000,000), adjusted for inflation. Said financial statements shall be examined by an independent certified public accounting firm and shall be accompanied by such independent certified public accounting firm’s “examined special report,” in accordance with attestation standards established by the American Institute of Certified Public Accountants, stating that the sum of the Permitted Buyer’s equity ownership in real estate based upon current fair market value and cash or cash equivalent (of which at least Ten Million Dollars (\$10,000,000), adjusted for inflation, consists of equity ownership in real estate) exceeds Twenty Million Dollars (\$20,000,000), adjusted for inflation, (or, if such examined financial statements are not available, such equity may alternatively be established by evidence reasonably satisfactory to Owner’s independent certified public accounting firm, however, such alternative evidence must be submitted to Owner and approved by Owner’s independent certified public accounting firm prior to any Sale of the Project being effective. Such approval shall be deemed given if the alternative evidence has not been disapproved in writing, with reasons given for disapproval, within forty-five (45) days of all such evidence being submitted to Owner);

(B) Is not (nor is any of the individuals or entities included for purposes of the calculation of the Twenty Million Dollars (\$20,000,000), adjusted for inflation, equity plus cash and/or cash equivalent described in (A) above), a Foreign Instrumentality;

(C) Must not have been (nor are any of the individuals or entities included for purposes of the calculation of the Twenty Million Dollars (\$20,000,000), adjusted for inflation, equity plus cash and/or cash equivalent described in (A) above) within the seven (7) years preceding the date of the Sale of the Project, in an adversarial relationship in litigation or are not in an adversarial relationship in litigation currently pending with Owner, in both cases including but not limited to, litigation with respect to ordinances, charter provisions or resolutions of the City, including building codes or tax code violations (but excluding zoning appeals and appeals of property tax assessments);

(D) Must not be owned, controlled or run by entities or individuals (including for this purpose, all entities and individuals included for purposes of the calculation of the Twenty Million Dollars (\$20,000,000), adjusted for inflation, equity plus cash and/or cash equivalent described in (A) above) who have been convicted, or are presently under indictment, for felonies under the laws of any foreign or domestic jurisdiction;

(E) Must not (including for this purpose all entities and individuals included for purposes of the calculation of the Twenty Million Dollars (\$20,000,000), adjusted for inflation, equity plus cash and/or cash equivalent described in (A) above) have filed or been discharged from bankruptcy, reorganization or insolvency proceedings within the past seven years (bankruptcy filings by Affiliates shall not disqualify an assignee, unless such Affiliates were included for purposes of determining the Twenty Million Dollars (\$20,000,000), adjusted for inflation, equity plus cash and/or cash equivalent calculation described in (A) above);

(F) Must not in its charter or organizational documents (defined as the articles of incorporation and bylaws for any corporation, the operating agreement of any limited liability company, the partnership agreement and partnership certificate for any partnership, the trust agreement for any trust and the constitution of the relevant government for any governmental entity, but expressly excluding any statements, positions, actions or allegations not contained in such charter organizational documents) expressly advocate or have as its stated purpose: (x) the violent overthrow of, or armed resistance against, the U.S. Government; or (y) genocide, violence, hatred or animosity toward persons based solely on their race, religion, creed, color, sexual orientation or national origin; and

(G) Unless the Permitted Buyer is publicly held, must have an entity within the group of entities included for purposes of the calculation of the Twenty Million Dollars (\$20,000,000), adjusted for inflation, equity plus cash and/or cash equivalent described in (A) above which has not less than a five (5) years' operating history or must have entered into a Management Agreement with an Acceptable Operator.

In any Sale of the Project under this **Section 10.3(c)**, Tenant agrees to provide Owner, at least thirty (30) days in advance of the actual Sale of the Project, with the certifications of the Permitted Buyer referred to above, together with the financial statements described in (A) above, and if the Permitted Buyer is a real estate investment trust that is not publicly held, the identity of the principal owners of such trust and the proposed documentation required by **Section 10.5** below; provided, however, such delivery shall be for informational purposes only and shall not require any consent or other action by Owner (other than the approval of Owner of the form of assumption document as contemplated by **Section 10.6**) below which approval shall be deemed given unless Owner responds in writing within ninety (90) days of receipt specifying changes to such document).

(d) **Foreclosure Transfer.** A Foreclosure Transfer pursuant to the provisions of **Section 11.12** shall not require the consent of Owner [and the transferee need not be a Permitted Buyer].

Section 10.4 Transfers.

Tenant represents and warrants that Tenant has not made, created or suffered any Transfers as of the Commencement Date and that the entities and individuals who or which have an ownership interest in Tenant on the Commencement Date are listed, together with their percentage and character of ownership, in **Exhibit 10.4** attached hereto and incorporated by reference herein. Except as permitted, pursuant to **Sections 10.4(a)-(c)** herein, no Transfer may or shall be made, suffered or created by Tenant, its successors, assigns or transferees without complying with the terms of **Sections 10.5** and **10.6** and other sections herein applicable thereto. The following Transfers shall be permitted hereunder without the consent of Owner or any other action by Owner:

(a) Any Transfer of a Member's interest in Tenant or the admission of additional Members to Tenant provided that, after all such Transfers, the previous Managing Member(s) of Tenant shall maintain, under the operating agreement of Tenant, control over the development and day to day operation and leasing of the Project (subject, however, to any contract made with an Acceptable Operator);

(b) Any Transfer by a Person who is a Member of Tenant of his Membership interest in Tenant into a charitable trust, a blind trust, or for estate planning purposes; and

(c) A Transfer from the holder of an Equity Interest in Tenant (1) to his or her mother, father, spouse, brother, sister or child (an **"Immediate Family Member"**), or any combination thereof, of that holder; (2) to a trust whose sole beneficiary(ies) is (y) a holder of an Equity Interest in Tenant or (z) an Immediate Family Member of a holder of an Equity Interest in Tenant; (3) to a personal representative of the estate of a deceased holder of an Equity Interest in Tenant; (4) to a Person in which a holder of an Equity Interest in Tenant holds, directly or indirectly, the Substantial Controlling Interest; or (5) to any other holder of an Equity Interest in Tenant in which Transferee does not become (unless such Transferee already was) the holder of a Substantial Controlling Interest as a result of such Transfer; (for purposes of this **Section**

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10.4(c) only, the term **ATransfer** shall include a transfer of an Equity Interest in a Person or Persons having an Equity Interest, directly or indirectly, in Tenant).

(d) If, at the time of a requested Transfer under **Sections 10.4(a) or 10.4(b)**, Tenant is a corporation or other type of entity, then the references to limited liability company shall be changed to the type entity in question and the Membership Interest being transferred shall be changed to the appropriate ownership interest.

Any consent to a Transfer shall not waive any of Owner's rights to consent to a subsequent Transfer. Any Transfer made in violation of the terms hereof shall be null and void and of no force and effect.

Section 10.5 Required Notices.

(a) Tenant shall give notice to Owner of every proposed Transfer and/or Sale of the Project, which notice shall contain the following information: (i) the name and address of proposed Transferee; (ii) the name and address of proposed transferor; (iii) the nature of the transaction; (iv) the percentage interest conveyed; and (v) such other additional information as Owner shall reasonably request in connection with the proposed Transfer and/or proposed Sale of the Project; provided, however, Owner shall make such request within ten (10) Business Days after receipt of Tenant's information. In addition, with respect to any proposed Transfer other than those described in **Sections 10.4(a) through 10.4(c)** above and with respect to any Sale of the Project, Tenant shall give or cause to be given to Owner written notice requesting approval of the proposed Transfer and/or proposed Sale of the Project and submit all information necessary for Owner to make an evaluation of the proposed Transferees and/or proposed purchaser of a Substantial Controlling Interest and the proposed Transfer and/or Sale of the Project and to obtain Owner's consent to same. Owner shall, within sixty (60) days of its receipt of such information, advise Tenant if it shall consent to same. If Owner shall fail to respond during such sixty (60) days, it shall be deemed to have consented to the proposed Transfer and/or proposed Sale of the Project in question. If Owner shall not consent to a proposed Transfer and/or proposed Sale of the Project, Owner shall state all of its reasons for such disapproval in its notice to Tenant withholding its consent.

(b) In addition to all other obligations imposed upon Tenant hereunder, Tenant shall reimburse Owner, upon demand, for any reasonable costs incurred by Owner in connection with any such Transfer and/or Sale of the Project and/or Master Sublease, including without limitation, the out-of-pocket cost of making inquiries and investigations into the acceptability of the proposed Transferee and/or purchaser of a Substantial Controlling Interest and/or Master SubTenant, and the reasonable legal costs incurred, if any, in connection therewith.

Section 10.6 Effectuation of Transfers and Sales of the Project.

No Sale of the Project or Transfer of the nature described in **Sections 10.3 and 10.4** shall be effective unless and until:

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(a) executed copies of the documents and other agreements between the parties to effectuate the Sale of the Project and/or Transfer are delivered to Owner; and

(b) in the case of a Sale of the Project, the entity to which a Sale of the Project is made, by instrument in writing and in form and substance satisfactory to Owner and in form recordable among the land records, shall, for itself and its successors and assigns, and especially for the benefit of Owner, expressly assume all of the obligations of Tenant under this Lease and agree to be personally liable and subject to all conditions and restrictions to which Tenant is subject; provided, however, that a Recognized Mortgagee shall not be liable under this Lease with respect to any matter arising prior to its actual ownership of the Project, except:

(i) unpaid Rental and/or Impositions (but Percentage Rent, Back Rent and/or Impositions only to the extent the Recognized Mortgagee is obligated to pay such Percentage Rent, Back Rent and/or Impositions pursuant to **Article 11**), other monetary obligations of Tenant under this Lease, including defaults which can be cured by the payment of money and are in a liquidated amount, non-monetary defaults which a Recognized Mortgagee can cure or remedy without title and possession, (all such defaults to include any then existing event, matter or occurrence which, with the passage of time or the happening of future events, matters or occurrences, becomes an Event of Default),

(ii) as provided in **Article 11** (it being understood, nevertheless, that the limitation of any such liability of Recognized Mortgagee shall not impair, impede or prejudice any other right or remedy available to Owner for default by Tenant and/or the then current transferee).

Recognized Mortgagee shall not be liable under this Lease with respect to any matter arising subsequent to the period of its actual ownership of the Project; provided however, that the fact that Recognized Mortgagee has no liability for matters arising subsequent to the period of its actual ownership shall not relieve or except any subsequent transferee or successor of or from such obligations, conditions or restrictions, or deprive or limit Owner of or with respect to any rights, remedies or controls with respect to the Project or the construction of the Improvements.

Section 10.7 Office and Retail Master Subleases.

Subject to the terms and conditions of this Lease, Tenant shall have the right to enter into individual office, retail, parking and commercial subleases at any time and from time to time during the term of this Lease with such subtenants, but only for uses that are not prohibited under **Article 6**, and upon such commercially reasonable terms and conditions as Tenant shall, in its sole discretion, deem fit and proper. At Owner's request, Tenant shall allow Owner to review and inspect any and all subleases for individual office, retail, commercial and parking spaces in the Project. Upon receipt of a written request from Tenant or any subTenant under an office or retail sublease, Owner shall enter into attornment and non-disturbance agreements with subTenants in the office, retail, commercial and parking spaces of the Premises. Such attornment and non-disturbance agreements shall be entered into upon such terms and conditions as are customary for such agreements.

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Article 11 - Mortgages

Section 11.1 Right to Mortgage.

(a) [While these provisions seem reasonable and comprehensive, we must reserve the right of potential mortgagees and tax credit investors to review and request additions or revisions to these Mortgagee protection provisions.] Except as otherwise expressly provided for in this Lease, Tenant shall not mortgage, pledge, hypothecate or otherwise encumber Tenant's Interest in the Premises.

(b) Tenant shall have the right to mortgage, pledge, ~~hypothecate~~ hypothecate or otherwise encumber Tenant's Interest in the Premises to secure Debt by a Recognized Mortgage(s) without Owner's approval.

Section 11.2 Definitions.

(a) **"Debt"** means the principal amount of debt and interest thereon secured by Tenant's Interest in the Premises, together with any other amounts owed by Tenant under a Recognized Mortgage to a Recognized Mortgagee. In addition, Debt shall include any debt obtained in connection with (i) a required Casualty Restoration or Condemnation Restoration, as applicable, if the Net Insurance Proceeds are, or the Net Condemnation Award is, inadequate to achieve the required Casualty Restoration or Condemnation Restoration, as applicable and (ii) any advances made by a Recognized Mortgagee with respect to Tenant's Interest in the Premises for the payment of taxes, assessments, insurance premiums or other costs incurred for the protection of Tenant's Interest in the Premises or the liens created by the Recognized Mortgage, and reasonable expenses incurred by such Recognized Mortgagee, by reason of a default by Tenant under such Recognized Mortgage or under this Lease.

(b) **"Mortgage"** means any mortgage or deed of trust, and all extensions, spreaders, splitters, consolidations, restatements, replacements, modifications and amendments thereof, that constitutes a lien on all or a portion of Tenant's Interest in the Premises, and any security interest in or assignment of the Lease or the rents, issues or profits related thereto.

(c) **"Recognized Mortgage"** means a Mortgage (which may include one or more subordinate mortgages) (i) that is held by a Person (other than an Affiliate) which is an Institutional Lender, (ii) which expressly provides that it is subject and subordinate to the terms of this Lease and, except as expressly set forth herein regarding Owner's subordination in certain circumstances of its right to Percentage Rent, to Owner's Interest in the Premises, and (iii) a photostatic copy of which is, following the execution and delivery thereof, delivered to Owner, together with a certification by Tenant confirming that the photostatic copy is a true copy of the Mortgage and a certification by the Recognized Mortgagee thereunder confirming the address of such Recognized Mortgagee for notices. Notwithstanding anything contained herein to the contrary, an Affiliate may be part of a lending group constituting a Recognized Mortgagee for so long as such Affiliate (i) does not own more than a forty-nine percent (49%) beneficial interest in the debt held by such Recognized Mortgagee with respect to Tenant or the Project and (ii) is not the lead lender or agent for the lending group.

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Section 11.3 Effect of Mortgages.

(a) **Owner's Interest.** No Mortgage shall extend to or be a lien or encumbrance upon, Owner's Interest in the Premises or any part thereof or any appurtenant rights thereto which have not been granted to Tenant under this Lease. A Mortgage may extend to and be a lien or encumbrance upon the entire Tenant's Interest in the Premises.

(b) **Mortgagee's Rights Not Greater than Tenant's.** The execution and delivery of a Recognized Mortgage shall not give or be deemed to give a Recognized Mortgagee any greater rights against Owner than those granted to Tenant hereunder, except as otherwise expressly provided in this Lease.

Section 11.4 Notice and Right to Cure Tenant Defaults.

(a) **Notice to Recognized Mortgagee.** Owner shall give to ~~the each~~ Recognized Mortgagee, in the manner provided by the provisions of **Section 26.1** at such address as such Recognized Mortgagee may confirm to Owner in the certification delivered to Owner pursuant to **Section 11.2(c)** or given by notice to Owner in accordance with **Section 26.1**, a copy of each notice of Default at the same time as it gives notice of Default to Tenant, and no such notice of Default shall be deemed effective with respect to any Recognized Mortgagee unless and until a copy thereof shall have been so received by or refused by such Recognized Mortgagee, as applicable. Owner shall also give the Recognized Mortgagee notice ("**Notice of Failure to Cure**") in the event Tenant fails to cure a Default within the period, if any, provided in this Lease for such cure, promptly following the expiration of such period (i.e., an Event of Default). Only Events of Default expressly described in the Notice of Failure to Cure may give rise to a termination of this Lease by Owner pursuant to its termination rights hereunder.

(b) **Right and Time to Cure.** The Recognized Mortgagee shall have a period of sixty (60) days after receipt of the Notice of Failure to Cure, in the case of any Event of Default, to (1) cure the Event of Default referred to in the Notice of Failure to Cure or (2) cause it to be cured, subject to the provisions of **Section 25.1(b)**. Nothing contained herein shall be construed as imposing any obligation upon any Mortgagee to so perform or comply on behalf of Tenant. Anything contained in this Lease to the contrary notwithstanding, Owner shall have no right to terminate this Lease prior to the delivery of a Notice of Failure to Cure or following the delivery of a Notice of Failure to Cure if, within sixty (60) days after receipt of Owner's Notice of Failure to Cure, any Recognized Mortgagee shall:

(i) notify Owner of such Recognized Mortgagee's desire to cure the matter described in such Notice of Failure to Cure;

(ii) pay or cause to be paid all Rental and/or Impositions then due and in arrears as specified in the Default Notice from Owner to such Recognized Mortgagee (provided, however, that such Recognized Mortgagee shall not be required to pay or cause to be paid any amounts payable by Tenant under **Section 28.1(b)** to the extent such amounts relate to any Lease Year other than the Lease Year for which the most recent Annual Financial

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Statements have been made available to Owner; provided further, however, in the event that the Recognized Mortgagee (A) provides notice to Owner pursuant to **Section 11.4(b)(i)**, and (B) files a foreclosure action, application for appointment of a receiver or other similar action which would afford such Recognized Mortgagee with possessory rights with respect to the Property within sixty (60) days of its receipt of the Notice of Failure to Cure and diligently prosecutes such foreclosure, the Recognized Mortgagee's curative obligations with regard to an Event of Default as provided in this **Section 11.4(b)(ii)** shall be excused, subject to the provisions of **Section 11.4(b)(iv)**, which shall be applicable during the pendency of a foreclosure);

(iii) cure all Defaults by Tenant in the observance or performance of any term, covenant or condition of this Lease on Tenant's part to be observed or performed (other than the payment of Rental and/or Impositions), or if any such Default is of such a nature that it cannot reasonably be remedied within such sixty (60) day period (but is otherwise reasonably susceptible to cure), Recognized Mortgagee shall, (i) within sixty (60) days after the giving of such Notice of Failure to Cure, advise Owner of such Recognized Mortgagee's intention to institute all steps (and from time to time, as reasonably requested by Owner, such Recognized Mortgagee shall advise Owner of the steps being taken) necessary to remedy such Default (which such steps shall be reasonably designed to effectuate the cure of such Default in a professional manner), and (ii) thereafter diligently prosecute to completion all such steps necessary to remedy the same, it being acknowledged by Owner that, if possession or control of the Premises is required to effect such cure, the diligent prosecution of a foreclosure of a Recognized Mortgage, and the continuing efforts by such Recognized Mortgagee to effect such cure following completion of such foreclosure, shall constitute a part of the steps necessary to remedy such Default. Nothing in this Lease shall require a Recognized Mortgagee or its Designee or Foreclosure Transferee to cure any default of Tenant not reasonably susceptible of being cured by such Person (*e.g.*, defaults stated in **Section 25.1(e), (f), (g), (h), (j) and (k)**); and

(iv) if such Recognized Mortgagee files a foreclosure, during the pendency of such foreclosure, pays or causes to be paid all current monthly Rental and/or Impositions due beginning upon the filing of such foreclosure; provided, however, Percentage Rent shall be due only if, and to the extent that, Project Revenues are sufficient to pay Percentage Rent after the payment of Operating Expenses and Debt Service, and the Recognized Mortgagee shall provide to Owner a monthly statement setting forth Project Revenues and Operating Expenses.

Notwithstanding the foregoing provisions of this **Section 11.4(b)**, following the delivery of a Notice of Failure to Cure, within five (5) Business Days following the written request of any Recognized Mortgagee (which request may be contained in the notice from such Recognized Mortgagee to Owner given pursuant to **Section 11.4(b)(i)**), Owner shall deliver to such Recognized Mortgagee a statement certifying the aggregate amount of Rental and/or Impositions then due and in arrears hereunder and the estimated per diem increase in such amount, but no such request shall increase any of the time periods provided for in this **Section 11.4(b)**.

(c) **Acceptance of Mortgagee's Performance.** Owner shall accept performance by a Mortgagee of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant.

(d) **Other Rights of Mortgagees.** Notwithstanding any other provision of this Lease, no payment made to Owner by any Mortgagee shall constitute the Mortgagee's agreement that such payment was, in fact, due under the terms of this Lease.

(e) **Owner's Self-Help Rights.** Notwithstanding the foregoing provisions of this **Section 11.4**, if a Recognized Mortgagee fails (for any reason) to cure any Default by Tenant described in **Section 11.4(b)(iii)** within sixty (60) days following receipt of the Notice of Failure to Cure regarding such Default, then Owner may upon notice, but shall be under no obligation to, perform the obligation of Tenant the breach of which gave rise to such Default, without waiving or releasing Tenant from its obligations with respect to such Default. Tenant hereby grants Owner access to the Premises in order to perform any such obligation. Any amount paid by Owner in performing Tenant's obligations as provided in this **Section 11.4(e)**, including all costs and expenses incurred by Owner in connection therewith, shall constitute Rental hereunder and shall be reimbursed to Owner within thirty (30) days following Owner's demand therefor, together with a late charge on amounts actually paid by Owner, calculated at the Late Charge Rate from the date of notice of any such payment by Owner to the date on which payment of such amounts is received by Owner.

(f) **Acceptance of Owner's Performance.** Tenant shall cause all Mortgages to contain a provision requiring that all Mortgagees shall accept performance by Owner, within the applicable grace periods available to Tenant, to cure defaults under any covenant, condition or agreement on Tenant's part to be performed under such Mortgages with the same force and effect as though performed by Tenant.

Section 11.5 Recognized Mortgagee or its Designee as Tenant Under this Lease.

If a Recognized Mortgagee or its Designee becomes Tenant under this Lease, then, in that event, such Recognized Mortgagee or such Designee shall, during the period of its tenancy:

(a) pay all current Rental and/or Impositions less the Percentage Rent commencing as of the date such Recognized Mortgagee or such Designee becomes Tenant (the "**Reinstatement Date**"); Percentage Rent which was due for periods prior to the Reinstatement Date shall be forgiven and shall not thereafter be payable;

(b) comply with all the covenants and conditions of this Lease, except that the payment of Rental and/or Impositions shall be as specified in this **Section 11.5**;

(c) pay all Back Rent and/or Impositions as of the Reinstatement Date in the following manner:

(i) Monthly, but only to the extent sufficient funds are received by such Recognized Mortgagee or such Designee from Project Revenue after deducting Operating

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Expenses, Debt Service (which shall be retained by the Recognized Mortgagee or its Designee) and amounts paid in **Section 11.5(a)**;

(ii) Back Rent and/or Impositions shall continue as an obligation of the Recognized Mortgagee or its Designee until paid in full; and

(d) pay all Percentage Rent which accrues subsequent to the Reinstatement Date as follows:

(i) For so long as the Recognized Mortgagee or its Designee is Tenant under this Lease, Percentage Rent shall be payable monthly, but only to the extent that funds are available therefor after making the payments set forth in **Section 11.5(a), (b) and (c)** above. Percentage Rent shall be waived (and not accrued) to the extent that Project Revenue in any Lease Year is not sufficient to pay Percentage Rent after payments have been made with respect to amounts set forth in **Sections 11.5(a)-(c)**.

(ii) Upon a Foreclosure Transfer, any amounts of Percentage Rent accrued, but unpaid, shall be forgiven.

Section 11.6 Execution of New Tenant's Documents.

(a) **Notice of Termination.** If this Lease is terminated by reason of an Event of Default, or by reason of the rejection thereof by or on behalf of Tenant in bankruptcy or for any other reason, Owner shall give prompt notice thereof to each Recognized Mortgagee.

(b) **Request for and Execution of New Tenant's Documents.** If, within sixty (60) days of receipt of the notice referred to in **Section 11.6(a)**, the Recognized Mortgagee shall request, in writing, a new lease for the remainder of the Term, on the same terms and conditions as set forth in the Agreement of Lease (the "**New Tenant's Documents**"), to the Recognized Mortgagee or to a Designee or Foreclosure Transferee identified in such request (other than a Foreign Instrumentality (if the Premises are owned by the City or any instrumentality of the Agency or the City) or an Affiliate of Tenant), then, subject to the provisions of **Sections 11.6(c)** and **11.7**, within ninety (90) days after Owner shall have received such request, Owner shall execute and deliver New Tenant's Documents covering the remainder of the Term to the Recognized Mortgagee or to any Designee or Foreclosure Transferee that has satisfied the requirements set forth in **Section 10.3, 10.4**, and such Recognized Mortgagee (or its Designee or Foreclosure Transferee) shall execute and deliver such New Tenant's Documents to Owner within thirty (30) days following receipt thereof by such Recognized Mortgagee (or Designee or Foreclosure Transferee). Such New Tenant's Documents shall be effective upon the execution thereof by both Owner and such Recognized Mortgagee or its Designee or Foreclosure Transferee. The New Tenant's Documents shall be at the then current Rental and/or Impositions (subject, however, to **Sections 11.4** and **11.5** as to Percentage Rent, Back Rent and/or Impositions) and otherwise contain all of the covenants, conditions, limitations and agreements, and all of Tenant's rights and remedies, contained in this Lease (including, without limitation, a conveyance by Owner of all then-existing Improvements); provided, however, Owner shall not be deemed to have represented or covenanted that such New Tenant's Documents are superior to

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claims of Tenant, its other creditors or a judicially appointed receiver or trustee for Tenant; provided further, however, such New Tenant's Documents will have the same priority over any encumbrances on the estate of Owner which Tenant has or had by virtue of this Lease and the Recognized Mortgagee (or its Designee or Foreclosure Transferee) will not have any obligation to perform any acts under this Lease which shall at such time have already been performed by Tenant. Simultaneously with the making of such New Tenant's Documents, the party obtaining such New Tenant's Documents and all other parties junior in priority of interest in the Premises shall, at the option the Recognized Mortgagee or its Designee or Foreclosure Transferee, execute, acknowledge and deliver such new instruments, including new mortgages and new Master Subleases, as applicable, and shall make such payments and adjustments among themselves, as shall be necessary and proper for the purposes of restoring to each of such parties as nearly as reasonably possible, the respective interest and status with respect to the Premises which was possessed by the respective parties prior to the termination of this Lease as aforesaid.

Concurrently with the execution and delivery of such New Tenant's Documents, Owner shall assign to the tenant, declarant or co-declarant (the "**New Tenant**") named therein all of its right, title and interest in and to moneys (including, without limitation, (i) subrents collected which have not been applied or are not being held for application to Rental and/or Impositions and the costs incurred by Owner to operate, maintain and repair the Premises and (ii) insurance and condemnation proceeds which have not been applied or are not being held for application to the costs incurred by Owner to restore the Premises), if any, then held by or payable to Owner which Tenant would have been entitled to receive but for termination of this Lease or Owner's exercise of its rights upon the occurrence of an Event of Default; provided, however, that Owner shall not be required to assign such moneys to such New Tenant unless and until such New Tenant shall have cured all Events of Default that existed under this Lease prior to the execution of such New Tenant's Documents to the extent such Events of Default are reasonably susceptible to cure by such New Tenant.

Upon the execution and delivery of New Tenant's Documents under this **Section 11.6(b)**, all Master Subleases which theretofore may have been assigned to Owner shall be assigned and transferred, without recourse, representation or warranty, by Owner to the New Tenant named in such New Tenant's Documents. Between the date of termination of this Lease and the date of execution and delivery of the New Tenant's Documents (but not later than thirty (30) days following receipt of such New Tenant's Documents by such Recognized Mortgagee, as provided in **Section 11.6(b)**), if a Recognized Mortgagee shall have requested such New Tenant's Documents as provided in this **Section 11.6(b)**, Owner shall not enter into any new Master Subleases, cancel or modify any then existing Master Subleases or accept any cancellation, termination or surrender thereof (unless such termination shall be effected as a matter of law on the termination of this Lease) without the written consent of a Recognized Mortgagee, except as permitted in the Master Subleases.

For so long as the Recognized Mortgagee (or its Designee or Foreclosure Transferee) shall have the right to enter into a new ground lease with Owner pursuant to this **Section 11.6(b)**, Owner shall not enter into a new lease of the Land with any Person other than the Recognized Mortgagee (or its Designee or Foreclosure Transferee), without the prior written consent of the Recognized Mortgagee. The provisions of **Section 11.6(b)** shall survive the termination,

rejection or disaffirmance of this Lease and shall continue in full force and effect thereafter to the same extent as if **Section 11.6(b)** were a separate and independent contract made by Owner, Tenant and any Recognized Mortgagee and, from the effective date of such termination, rejection or disaffirmance of this Lease to the date of execution and delivery of such new ground lease if such Recognized Mortgagee (or its Designee or Foreclosure Transferee) has requested the New Tenant's Documents within sixty (60) days after receipt of the aforesaid notice from Owner, the Recognized Mortgagee may use and enjoy the leasehold estate created by this Lease without hindrance by Owner. The aforesaid agreement of Owner to enter into a new ground lease with the Recognized Mortgagee shall be deemed a separate agreement between Owner and such Recognized Mortgagee, separate and apart from this Lease as well as a part of this Lease, and shall be unaffected by the rejection of this Lease in any bankruptcy proceeding by any party.

(c) **Conditions Precedent to Owner's Execution of New Tenant's Documents.** The provisions of **Section 11.6(b)** notwithstanding, Owner shall not be obligated to enter into New Tenant's Documents with a Recognized Mortgagee or its Designee or Foreclosure Transferee unless:

(i) the Recognized Mortgagee or its Designee or Foreclosure Transferee shall pay to Owner, concurrently with the execution and delivery of the New Tenant's Documents, all unpaid Rental and/or Impositions due under this Lease (subject, however, to **Sections 11.4** and **11.5** as to Percentage Rent, Back Rent and/or Impositions) up to and including the date of the commencement of the term of the New Tenant's Documents and all reasonable out-of-pocket expenses, as evidenced by receipted bills therefor, including, without limitation, reasonable attorneys' fees and disbursements and court costs, incurred in connection with the Default or Event of Default, the termination of this Lease and the preparation of such New Tenant's Documents, less the net revenue of the Premises actually received by Owner from the date of termination of this Lease to the date of execution of the New Tenant's Documents, with any excess of the total of such sums and expenses to be applied by Owner to the payment of Base Rent and Percentage Rent (subject to **Sections 11.4** and **11.5**) due under such New Tenant's Documents; and

(ii) in the case of a Default or Event of Default, the Recognized Mortgagee or its Designee or Foreclosure Transferee shall promptly after execution of the New Tenant's Documents, satisfy all obligations and cure all Events of Defaults existing or continuing under this Lease at the time of its termination (as though the Term had not been terminated) and which are reasonably susceptible to cure by such Recognized Mortgagee (or its Designee or Foreclosure Transferee).

(d) **No Waiver of Default.** The execution of New Tenant's Documents shall not constitute a waiver of any Default existing or continuing immediately before termination of this Lease and, except as to a Default which is not reasonably susceptible of being cured by the Recognized Mortgagee or its Designee or Foreclosure Transferee (e.g., the insolvency of Tenant), the New Tenant under the New Tenant's Documents shall cure, within the applicable periods in such New Tenant's Documents (which periods shall be identical to the periods set forth in **Section 25.1**), all Defaults existing under this Lease immediately before its termination. Nothing in this Lease shall require a Recognized Mortgagee or its Designee or Foreclosure

Transferee, as a condition to the exercise of its right to enter into New Tenant's Documents, to cure any default of Tenant not reasonably susceptible of being cured by such Person (e.g., a bankruptcy-related default).

(e) **Payments under Lease.** If the Recognized Mortgagee or its Designee or Foreclosure Transferee shall enter into New Tenant's Documents pursuant to this Article and if, upon such termination of this Lease, Tenant, but for such termination, would have been entitled to receive any amount pursuant to the provisions of this Lease, then Owner agrees that, subject to any rights of setoff Owner may have, the same shall be paid to the Recognized Mortgagee or its Designee or Foreclosure Transferee, as the New Tenant under the New Tenant's Documents, in the same manner and to the same extent as it would have been paid or apply the same to or for the benefit of the Recognized Mortgagee or its Designee or Foreclosure Transferee as if this Lease had not been terminated.

(f) The provisions of this **Section 11.6** shall survive the Expiration of the Term.

Section 11.7 Application of Proceeds from Insurance or Condemnation Awards.

To the extent that this Lease requires that insurance proceeds paid in connection with any damage or destruction to the Premises, or the proceeds of an award paid in connection with a taking referred to in **Article 9**, be applied to restore any portion of the Premises, no Mortgagee shall have the right to apply the proceeds of insurance or awards toward the payment of the sum secured by its Mortgage, except for the reasonable costs of collection thereof.

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Section 11.8 Appearance at Condemnation Proceedings.

A Recognized Mortgagee shall have the right to appear in any condemnation proceedings and to participate in any and all hearings, trials and appeals in connection therewith.

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Section 11.9 Rights Limited to Recognized Mortgagees.

The rights granted to a Recognized Mortgagee under the provisions of this Lease shall not apply in the case of any Mortgagee that is not a Recognized Mortgagee.

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Section 11.10 No Surrender or Modification.

Owner agrees not to accept a voluntary surrender, termination or modification of this Lease at any time while such Recognized Mortgage(s) shall remain a lien on Tenant's leasehold estate. It is further understood and agreed that any such Recognized Mortgage(s) shall not be bound by any surrender, termination or modification of this Lease unless such surrender, termination or modification is made with the prior written consent of such Recognized Mortgagee, and this Lease shall not terminate by merger or otherwise as long as the lien of the Recognized Mortgage(s) remains undischarged. The foregoing is not meant to and shall not prohibit a sale of the fee to Tenant so long as no merger of estates shall result therefrom unless all Recognized Mortgagees are satisfied concurrently therewith. Notwithstanding the foregoing,

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Owner's waiver or postponement of any obligation of Tenant or any remedy Owner may have under this Lease shall not constitute a modification for purposes hereof.

Section 11.11 Recognition by Owner of Recognized Mortgagee Most Senior in Lien.

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If there is more than one Recognized Mortgagee, only that Recognized Mortgagee, to the exclusion of all other Recognized Mortgagees, whose Recognized Mortgage is most senior in lien shall be recognized as having rights under **Sections 11.4, 11.5 or 11.6**, unless such first priority Recognized Mortgagee has designated in writing to Owner a Recognized Mortgagee whose Mortgage is junior in lien to exercise such right.

Section 11.12 Recognized Mortgagee's Assignment Rights.

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(a) Notwithstanding anything contained in **Article 10** or elsewhere in this Lease to the contrary, a Foreclosure Transfer (other than to a Foreign Instrumentality for so long as the City is Owner) shall not require the consent of Owner or constitute a breach of any provision of or a Default under this Lease. Upon any such Foreclosure Transfer, Owner shall recognize the Foreclosure Transferee as Tenant hereunder, provided, however, that such new Tenant shall deliver to Owner, or shall cause to be delivered to Owner, within thirty (30) days after the execution thereof, the appropriate instruments provided in **Sections 10.5 and 10.6** (subject to the provisions of **Section 11.12(b)**).

(b) Except as expressly provided otherwise in this Lease, no Mortgagee or other Foreclosure Transferee shall be liable under this Lease unless and until such time as it becomes Tenant hereunder, and then only for so long as it remains Tenant hereunder.

(c) Definitions:

(i) **"Foreclosure Transfer"** means a transfer occurring as a result of the foreclosure of a Recognized Mortgage, or any sale of Tenant's Interest in the Premises, or any other transfer or assignment of Tenant's Interest in the Premises by judicial proceedings pertaining to a Recognized Mortgage or by virtue of the exercise of any power contained in a Recognized Mortgage, or by an assignment-in-lieu or other consensual conveyance, or otherwise:

(x) by or on behalf of Tenant or pursuant to foreclosure proceedings to a Recognized Mortgagee (or its Designee or Foreclosure Transferee); or

(y) by or on behalf of Tenant or a Recognized Mortgagee (or its Designee or Foreclosure Transferee) or pursuant to foreclosure proceedings to a purchaser of Tenant's Interest in the Premises at a foreclosure sale pursuant to a Recognized Mortgage or by a Recognized Mortgagee (or its Designee or its Foreclosure Transferee) after consummating a Foreclosure Transfer as described in clause (x) above or after such foreclosure sale.

(ii) **"Foreclosure Transferee"** means the purchaser, transferee or other assignee in a Foreclosure Transfer.

(iii) **“Designee”** means an Affiliate of a Recognized Mortgagee that is the designee or nominee of such Recognized Mortgagee.

(d) If a Recognized Mortgagee or its Designee acquires Tenant’s Interest in the Premises pursuant to a Foreclosure Transfer, all accrued but unpaid Percentage Rent shall be forgiven and shall not thereafter be due and payable [except to the extent that the Recognized Mortgagee has failed to pay amounts it was required to pay pursuant to **Section 11.4(b)(iv)**].

(e) If a Recognized Mortgagee or its Designee acquires Tenant’s Interest in the Premises and thereafter conveys or assigns Tenant’s Interest in the Premises to a third party (the **“First Transferee”**) then, in that event,

(i) all accrued but unpaid Percentage Rent at the time of the conveyance to the First Transferee shall be forgiven and shall not thereafter be due and payable [except to the extent the Recognized Mortgagee has failed to pay amounts it was required to pay pursuant to **Section 11.5(d)**];

(ii) for a period of five (5) years after the First Transferee acquires the Tenant’s Interest in the Premises, Percentage Rent shall not accrue or be due and payable (it being understood that Percentage Rent shall be waived during such five year period); and

(iii) Subsequent to the five (5) year period referenced in **Section 11.12(e)(ii)** above, Percentage Rent shall thereafter accrue and be due and payable in accordance with the provisions of this Lease.

(f) Notwithstanding the provisions of **Section 11.12(e)**, there shall be no abatement of Percentage Rent if any portion of the Equity Interest in the Person that is the First Transferee is owned, either legally or beneficially, by the tenant under this Lease that was foreclosed upon (the **“Foreclosed Tenant”**) or any Person who had a legal or beneficial interest in the Foreclosed Tenant.

Section 11.13 Notices Under a Mortgage.

Tenant shall give to Owner copies of all notices of default received from a Mortgagee within ten (10) days after receiving written notice of same from Mortgagee.

(a) **Notices.** Tenant shall cause all Mortgages to contain a provision requiring that all Mortgagees shall send to Owner, simultaneously with the sending of such default notices to Tenant, copies of all default notices or other notices relating to the failure of Tenant to keep any Mortgage in good standing, which notices are sent pursuant to any loan document or security document to Tenant.

(b) **Estoppel Requests.** Tenant shall cause all Mortgages to contain a provision requiring that the Mortgagee shall comply with all reasonable estoppel requests of Owner. Owner shall comply with all reasonable estoppel requests of any Mortgagee.

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Article 12 - Subordination

Section 12.1 Subordination of Percentage Rent

In the event of a foreclosure under the Recognized Mortgage, Owner's right to Percentage Rent shall be subordinate, expressly as described in this Lease. This subordination shall not extend to (a) any Mortgage, other than a first mortgage by a Recognized Mortgagee on Tenant's Interest in the Premises, now or hereafter existing, (b) any other liens or encumbrances hereafter affecting Tenant's Interest in the Premises or (c) any Master Sublease or any mortgages, liens or encumbrances now or hereafter placed on any Master Subtenant's interest in the Premises.

Section 12.2 No Subordination of Owner's Proprietary Interest in Land

Owner's proprietary interest in the Land, including, without limitation, Owner's interest in this Lease, as the same may be modified, amended or renewed in accordance with the provisions of this Lease, shall not be subject or subordinate to (a) any Mortgage now or hereafter existing, (b) any other liens or encumbrances hereafter affecting Tenant's Interest in the Premises or (c) any Master Sublease or any mortgages, liens or encumbrances now or hereafter placed on any Master Subtenant's interest in the Premises.

Section 12.3 Tenant's Interest in the Premises Subject to Title Matters

Tenant's Interest in the Premises, including, without limitation, this Lease and the leasehold estate of Tenant hereby created and all rights of Tenant hereunder are and shall be subject to the Title Matters.

Article 13 - Project Construction

Section 13.1 Tenant's Obligation to Construct Project

The parties acknowledge that Tenant shall construct the Improvements on the Land described in **Section 13.2** and other improvements described in the Plans and Specifications in accordance with the terms hereof (together with any and all permitted additions and/or alterations thereto and replacements thereof, the "Project").

Section 13.2 Description of the Project

Subject to the provisions of **Section 14.5**, the Project will consist of _____; provided, however, that in no event shall the Project exceed the floor area ratio permitted under applicable City Requirements.

Article 14 - Maintenance, Repair and Alterations

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Section 14.1 Maintenance Standards.

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(a) Tenant shall, at its own cost and expense, take good care of, and keep and maintain, the Premises in good and safe order and condition, and shall make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the Premises in good and safe order and condition, as other comparable first class projects in similar usage and of similar age are kept (reasonable wear and tear excepted).

(b) Tenant shall not commit, and shall use all reasonable efforts to prevent, waste, damage or injury to the Premises.

(c) All repairs, replacements and renovations made by Tenant shall be substantially equal in quality and class to the original quality of the Improvements being repaired and shall be made in compliance with the Requirements.

(d) Tenant shall keep clean and free from dirt, mud, standing water, rubbish, obstructions and physical encumbrances all areas of the Premises.

Section 14.2 Removal of Building Equipment.

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Tenant shall not, without the consent of Owner, remove or dispose of any Building Equipment from the Premises unless such Building Equipment (i) is promptly replaced by Building Equipment of at least equal utility and quality, or (ii) is removed for repairs, cleaning or other servicing, provided Tenant reinstalls such Building Equipment with reasonable diligence; except, however, Tenant shall not be required to replace any Building Equipment that performed a function that has become obsolete, unnecessary or undesirable in connection with the operation of the Premises in accordance with the terms of this Lease.

Section 14.3 No Obligation to Repair or to Supply Utilities.

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Owner (in its proprietary capacity only) shall not be required to supply any facilities, services or utilities whatsoever to the Premises. Owner shall not have any duty or obligation to make any alteration, change, improvement, replacement, Restoration or repair with respect to the Premises.

Section 14.4 Waste Disposal.

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Tenant shall dispose of waste from all areas of the Premises in accordance with Requirements and in a prompt and sanitary manner.

Section 14.5 Alterations.

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(a) Subject to the terms and conditions of this **Article 14** and the other applicable provisions of this Lease, Tenant may, at any time and from time to time, at its sole cost and expense, make alterations, additional installations, substitutions, improvements,

renovations or betterments (collectively, “**Alterations**”); in and to the Premises or any portion thereof provided that:

(i) no Alterations (or series of related Alterations) estimated to cost more than [One Hundred Fifty Thousand Dollars (\$150,000)], adjusted for inflation (as estimated by Tenant’s architect or engineer) (a “**Significant Alteration**”) and no Alteration affecting the structural portions, roofs or the heating, air conditioning, elevator, plumbing, electrical, sanitary, mechanical or other service or utility systems shall be undertaken except under the supervision of a licensed architect or licensed professional engineer;

(ii) the Alterations will not result in a violation of any Requirement or change the use permitted in **Section 6.1** or violate any other provision of this Lease;

(iii) the outside appearance, character or permitted use of the Premises shall not be materially adversely affected unless approved pursuant to the provisions of **Section 14.5(d)**, and the Alterations shall not materially (1) weaken or impair the structure, (2) reduce the size or (3) lessen the value of, the Premises;

(iv) the proper functioning of any of the heating, air conditioning, elevator, plumbing, electrical, sanitary, mechanical and other service or utility systems of the Premises shall not be materially adversely affected;

(v) if any Alteration (excluding interior subtenant improvements that do not materially affect the major building components) is (or related series of Alterations are) estimated to cost more than [One Million Five Hundred Thousand Dollars (\$1,500,000)], adjusted for inflation (as estimated by Tenant’s architect or engineer), Tenant shall obtain the prior written consent of Owner for such Alterations (a “**Major Alteration**”) in accordance with the provisions of 26.2 below; and

(vi) no Major Alteration in excess of One Million Five Hundred Thousand Dollars (\$1,500,000), adjusted for inflation, shall be undertaken prior to Tenant’s delivering to Owner, at Tenant’s option, either (x) a performance bond and a labor and materials payment bond (issued by a surety company reasonably satisfactory to Owner and licensed to do business in the State of Florida), each in an amount equal to one hundred percent (100%) of the estimated cost and otherwise in form reasonably satisfactory to Owner or (y) such other security for the completion of the Major Alteration, as may be reasonably satisfactory to Owner; provided, however, this **Section 14.5** shall not apply to a Recognized Mortgagee or its Designee during the period that it is Tenant under this Lease.

(b) **Reimbursement of Owner’s Expenses.** Tenant shall reimburse Owner for all actual out-of-pocket architectural and engineering expenses for architectural and engineering review reasonably incurred by Owner in connection with its decision to grant or withhold consent to a proposed Major Alteration and inspecting the Major Alteration to determine whether the same is being or has been performed in accordance with the terms of this Lease, including only the actual reasonable fees and expenses of any architect or engineer employed for such purposes. Any Major Alteration for which consent has been received shall be

performed substantially in accordance with the approved Plans and Specifications, and no material amendments or material additions to the Plans and Specifications shall be made without the prior consent of Owner in accordance with the terms hereof.

(c) **Approvals.** Tenant, at its expense, shall obtain all necessary permits and certificates from Governmental Authorities for the commencement and prosecution of any Alterations and final approval from Governmental Authorities upon completion, promptly deliver copies of the same to Owner and cause the Alterations to be performed in compliance with all applicable Requirements and requirements of Mortgagees and insurers of the Premises, and any Board of Fire Underwriters, Fire Insurance Rating Organization, or other body having similar functions, and in good and workman like manner, using materials and equipment at least equal in quality and class to the original quality of the installations at the Premises that are being replaced.

(d) **Submission and Review of Alterations.** Tenant shall submit to Owner plans and specifications showing in reasonable detail any proposed Major Alteration. Owner shall review the plans and specifications for any proposed Major Alteration and shall approve the same provided that the proposed Major Alteration will not:

(i) impair the structural integrity of the Premises; or

(ii) ~~reduce Project Revenues after completion of the Major Alterations;~~

or

(iii) reduce Floor Area or parking spaces, unless Tenant agrees, in writing, to restore the portion of the Premises so modified to the original condition upon request of Owner prior to the Expiration of the Term; or

(iv) materially change any exterior of the building, unless the DRB or HPB, as applicable, approves the change; or

(v) deviate from any approved uses of the Premises.

Within thirty (30) days after Owner's receipt of such plans and specifications, the City Manager of Owner shall notify Tenant of its approval or disapproval thereof and, in the event of the Owner's disapproval, the reasons therefor. If Tenant desires to modify in any material respect previously approved plans and specifications (as such may have been modified by approved plans and specifications), Tenant shall submit any such proposed modifications to Owner for Owner's approval. Within fifteen (15) days of its receipt of the proposed modifications, Owner shall notify Tenant in writing with specificity of any material inconsistencies of which Owner disapproves between the plans and specifications as modified and the plans and specifications previously approved by Owner. Tenant shall, at its election, have the option of (x) submitting Owner's disapproval to arbitration as to the (i) materiality of the inconsistency and/or (ii) reasonableness of disapproval or (y) submitting revised modifications to the plans and specifications to meet Owner's objections (which revised plans and specifications shall be reviewed as herein above provided).

(e) **Costs of Alterations.** The costs of all Alterations shall be borne by Tenant.

(f) **Prevailing Wages.** All Persons employed by Tenant with respect to Alterations of the Project shall be paid, without subsequent deduction or rebate unless expressly authorized by Requirements, not less than the relevant prevailing wage as prescribed by the City of Miami Beach Prevailing Wage Ordinance, Miami Beach City Code, Section 31A-27, as amended, but only to the extent such Prevailing Wage Ordinance is applicable to the Alteration of the Improvements.

Article 15 - Requirements

Section 15.1 Tenant's Obligation to Comply With Requirements

In connection with any Construction Work, and with the maintenance, management, use and operation of the Premises and Tenant's performance of its obligations hereunder, Tenant shall comply promptly with all Requirements, without regard to the nature of the work required to be done, whether extraordinary or ordinary, and whether requiring the removal of any encroachment (but Tenant may seek to obtain an easement in order to cure an encroachment, if permitted by Requirements), or affecting the maintenance, management, use or occupancy of the Premises, or involving or requiring any structural changes or additions in or to the Premises and regardless of whether such changes or additions are required by reason of any particular use to which the Premises, or any part thereof, may be put. No consent to, approval of or acquiescence in any plans or actions of Tenant by Owner, in its proprietary capacity as landlord under this Lease, or Owner's designee shall be relied upon or construed as being a determination that such are in compliance with the Requirements, or, in the case of construction plans, are structurally sufficient, prudent or in compliance with the Requirements.

Section 15.2 Definition

"Requirements" means:

(a) any and all laws, rules, regulations, constitutions, orders, ordinances, charters, statutes, codes, executive orders and requirements of all Governmental Authorities having jurisdiction over a Person and/or the Premises or any street, road, avenue or sidewalk comprising a part of, or lying in front of, the Premises or any vault in, or under the Premises (including, without limitation, any of the foregoing relating to handicapped access or parking, the Building Code of the City and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions);

(b) the temporary and/or permanent certificate or certificates of occupancy issued for the Premises as then in force; and

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(c) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Tenant under this Lease.

Section 15.3 Owner's Obligation to Comply With Requirements,

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In connection with the performance of Owner's obligations hereunder, Owner shall comply promptly with all Requirements.

Article 16 - Management and Operation of Project

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Section 16.1 Management of Project

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(a) Following the Project Opening Date, and continuing throughout the Term of this Lease, Tenant shall be an Acceptable Operator or shall enter into one (1) or more Management Agreement(s) with an Acceptable Operator(s) and shall prudently manage and operate, or cause the Premises to be prudently operated and managed by the Acceptable Operator pursuant to **Section 16.3(d)** and in accordance with the terms and conditions of this Lease, and pursuant to a written Management Agreement:

(i) Providing for services, and containing terms and conditions, reasonable and customary for the operation of comparable first-class buildings of similar age and design;

(ii) Providing that the Premises are operated and maintained in good order and condition, including such repair, replacement, renovation, and maintenance, as necessary, reasonable wear and tear excepted, and in accordance with Owner's Maintenance Standards, attached hereto as **Exhibit 14.1(a) [exhibit to be developed by City staff]**, as the same may be revised from time to time by mutual consent of Owner and Tenant; and

(1) Owner's Operating Standards, as set forth in Exhibit 14.1(c), as same may be revised from time to time by mutual consent of Owner and Tenant.[exhibit to be developed by City staff]

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(b) The services to be performed by the Acceptable Operator shall include, without limitation, the following:

(i) Acceptable Operator will provide technical services to assist Tenant in the furnishing and equipping, maintenance and operation of the Premises. These services will include, among other things, (1) review and approval of architectural plans, plans for design, and plans for fixtures and equipment to ensure that the Garage will meet the standards set forth in this Lease; (2) develop criteria for fixtures and equipment and assist in obtaining sources of supply; and (3) assistance in coordinating purchases and installation of fixtures and equipment.

(ii) Acceptable Operator will provide required services to Tenant to prepare the Garage for opening, including, without limitation, (1) recruiting, training and employing personnel; (2) pre-opening marketing and advertising; (3) negotiating contracts for

supplies and similar items; (4) assistance in obtaining necessary licenses and permits; and (5) assistance in purchasing initial operating supplies.

(c) Tenant shall provide in the Management Agreement that Acceptable Operator shall operate and manage the Premises in accordance with the provisions of this Lease, including without limitation, **Article 6** hereof. Acceptable Operator shall have authority to operate the Premises in the name of, and for the account of, Tenant.

(d) Tenant hereby agrees to incorporate the covenants and agreements contained in this Article in the Management Agreement as covenants and agreements of the Acceptable Operator.

(e) The Acceptable Operator's interest in the Management Agreement shall be subject and subordinate to (i) the Owner's Interest in the Premises; and (ii) the terms and conditions of this Lease. As between Owner and Tenant, in the event of any conflict between the terms of this Lease and the terms of the Management Agreement, the terms of this Lease shall govern. Tenant shall remain responsible for performing all of its obligations hereunder notwithstanding the fact that the Premises is being managed by the Acceptable Operator.

(f) Notwithstanding anything to the contrary contained in this **Section 16.1**, the Premises may be managed by an operator (including Tenant) that is not an Acceptable Operator, provided that such operator is approved by the Owner, which approval may be granted or withheld in Owner's sole and absolute discretion, for any reason or for no reason whatsoever. Any operator approved by Owner pursuant to this **Section 16.1(f)** shall be deemed to be an Acceptable Operator for all purposes of this Lease.

Section 16.2 [NOT USED]

Section 16.3 Transfer of Acceptable Operator's Interest in the Management Agreement.

If Acceptable Operator effectuates a (i) transfer of the Management Agreement; (ii) termination of Management Agreement or (iii) engagement of a new Manager for the Premises, Owner shall be notified in writing ten (10) days prior to the date thereof. The notice required by this **Section 16.3** shall contain the following information:

(i) the name and address of the new Acceptable Operator or transferee;

(ii) the nature of such transaction and the percent interest to be conveyed;

(iii) in the case of a Management Agreement, a true and complete copy of the instrument effectuating such transaction; and

(iv) a copy of any new Management Agreement or any modifications to an existing Management Agreement.

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Section 16.4 Owner's Rights and Remedies.

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(a) Tenant will (i) perform or cause to be performed Tenant's material obligations under the Management Agreement, (ii) enforce the performance by Acceptable Operator of all of Acceptable Operator's material obligations under the Management Agreement; and (iii) give Owner prompt written notice and a copy of any notice of default, event of default, termination or cancellation sent or received by Tenant.

(b) Upon termination of this Lease, Acceptable Operator shall:

(i) to the extent of Acceptable Operator's interest and to the extent permitted by Requirements, surrender and assign to Owner or its designee any and all licenses, permits and/or governmental authorizations required for the operation of the Premises;

(ii) deliver to Owner any and all of Owner's properties within the possession of Acceptable Operator, including, without limitation, all keys, locks and safe combinations, ledgers, bank statements for the Premises accounts, books and records, insurance policies, bonds and other documents, agreements, leases and licenses required for the operation of the Premises; and

(iii) remit to Owner the balance of any account of the Premises.

(iv) Owner shall not incur any liability to Project Manager under the Management Agreement except to the extent Owner has liability under this Lease;

(c) The rights of Owner set forth in this **Section 16.4** shall, to the extent in conflict with the rights of any Recognized Mortgage, be subject to the rights of such Recognized Mortgagee provided such Recognized Mortgagee is in the process of, and is diligently, exercising its rights under the applicable Recognized Mortgage.

Section 16.5 Repair, Renovation and Replacement Reserve Account.

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~~(a) Maintenance and operation of the Premises will be at no cost to Owner, and Tenant shall itself, or cause (and the Management Agreement shall so provide) the Acceptable Operator, in Tenant's name and for the benefit of Tenant, to establish a separate interest bearing account (the "Reserve Account") for the purpose of funding the repair, renovation and replacement of fixtures and equipment required for the operation of the Premises in accordance with the terms of this Lease, as well as to assure that funds are available for maintenance of the Premises from and after the CO Date, such account to maintained as required by the tax credit investor and the Recognized Mortgagees. To fund the Reserve Account, Tenant shall deposit, or shall cause the Acceptable Operator to deposit, within thirty (30) days after the end of each month during the Term of this Lease from and after the CO Date for such month one twelfth (1/12th) of an amount which is equal to the sum of [as applicable to the Project: (\$0.) per square foot annually of office space (including common areas) times the number of square feet of office space in the Premises, plus Cents (\$0.) per square foot~~

annually times the number of square feet in the Garage (including common areas).] No deposit need be made to the Reserve Account for the square footage of retail space within the Premises. Owner, in its sole and absolute discretion, for any reason and for no reason whatsoever, may consider a reduction of the required payments to the Reserve Account as set forth in this Section 16.5(a) above any time after the CO Date.

(b) Tenant shall cause the Acceptable Operator to make expenditures from the Reserve Account for the purposes permitted hereunder as is necessary to maintain or improve the Premises in accordance with this Lease (including capital expenditures); provided, however, that in the event that a Recognized Mortgage provides for a method or procedure for making or authorizing expenditures from the Reserve Account, the provisions of such Recognized Mortgage shall control over the provisions hereof.

(c) Tenant hereby grants to Owner a security interest in the Reserve Account, and all profits and proceeds thereof, in order to secure Tenant's obligations under this Section 16.5, which security interest in such Reserve Account shall be automatically fully subject and subordinate only to the rights of the Recognized Mortgagee and any purchase money lender with regard to Reserve Account. Tenant hereby agrees not to grant a security interest in the Reserve Account to any Person other than a Recognized Mortgagee, Owner or a purchase money lender. Owner shall execute and deliver all such instruments as any Recognized Mortgagee or purchase money lender shall reasonably require in order to confirm Owner's subordination of its security interest as aforesaid.

(d) Funding of Reserve Account during Foreclosure or while Recognized Mortgagee or its Designee is Tenant. During the period that (i) a Recognized Mortgagee is pursuing a foreclosure against Tenant; or (ii) a Recognized Mortgagee or its Designee is the Tenant under this Lease, such Recognized Mortgagee or its Designee shall have the option of (1) not funding the Reserve Account; provided, however, such relief from funding shall not be deemed to affect in any way the operational and maintenance standards imposed upon the Project pursuant to this Lease (including, without limitation, Section 6.4); provided further, however, such relief from funding, in any event, shall end upon the earlier to occur of (A) four (4) years after the date of the earlier to occur of (i) the filing of such foreclosure, or (ii) the date upon which such Recognized Mortgagee or its Designee becomes the Tenant under this Lease; or (B) the date a Foreclosure Transferee other than a Recognized Mortgagee or its Designee becomes the Tenant under this Lease; or (2) funding the Reserve Account as provided in this Section 16.5.

(e)(a) Notwithstanding anything to the contrary herein contained, to the extent that a Recognized Mortgage contains provisions requiring Tenant to maintain a Reserve Account for the same purpose as this Section 16.5, the provisions of this Section 16.5 shall be waived and the provisions of the Recognized Mortgage shall be controlling. In no event shall Tenant be required to maintain more than one (1) Reserve Account for the purposes set forth herein.

Section 16.6 More Than One Acceptable Operator,

Tenant may, in its discretion, cause different components of the Premises to be operated and maintained by different Acceptable Operators.

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Article 17 - Discharge of Liens

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Section 17.1 Creation of Liens

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(a) Tenant shall not create, cause to be created, or suffer or permit to exist (i) any lien, encumbrance or charge upon this Lease, the leasehold estate created hereby, the income therefrom or the Premises or any part thereof or appurtenance thereto, which is not removed within the time period required pursuant to **Section 17.2**, (ii) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Owner, or (iii) any other matter or thing whereby the estate, rights or interest of Owner in and to the Premises or any part thereof or appurtenance thereto might be materially impaired. Notwithstanding the above, Tenant shall have the right to execute Mortgages, subleases and other instruments (including, without limitation, equipment leases) as provided by, and in accordance with, the provisions of this Lease.

(b) Owner shall not create, cause to be created, or suffer or permit to exist (i) any lien, encumbrance or charge upon this Lease, the leasehold estate created hereby, the income therefrom (except as otherwise set permitted in **Article 2**) or the Premises or any part thereof or appurtenance thereto, which is not removed within the time period required pursuant to **Section 17.2**, (ii) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Tenant, or (iii) any other matter or thing whereby the estate, rights or interest of Tenant in and to the Premises or any part thereof or appurtenance thereto might be materially impaired.

Section 17.2 Discharge of Liens

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(a) If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Tenant by law or by a provision of this Lease) is filed against the Premises or any part thereof, or if any public improvement lien created, or caused or suffered to be created by Tenant shall be filed against any assets of, or funds appropriated to, Tenant or Owner, Tenant shall, within thirty (30) days after Tenant receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien or public improvement lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, Tenant shall not be required to discharge any such lien if Tenant shall have (a) furnished Owner with, at Tenant's option, a cash deposit, bond, letter of credit from an Institutional Lender (in form reasonably satisfactory to Owner) or other security (such as a personal guaranty or title company indemnity) reasonably satisfactory to Owner, in an amount sufficient to pay the lien with interest and penalties and (b) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding with diligence and continuity; except that if, despite Tenant's efforts to seek discharge of the lien, Owner reasonably believes that a court judgment or order foreclosing such lien is about to be entered or granted and so notifies Tenant, Tenant shall, within ten (10) days after notice to such effect from Owner (but not later than three (3) business days prior to the entry or granting of such judgment or order of foreclosure), cause such lien to be discharged of record or Owner may thereafter discharge the lien in accordance with **Section 24.2** and look to the security furnished by Tenant for reimbursement of its cost in so doing. Notwithstanding anything to the contrary contained in this **Section 17.2(a)**, in the case of a public improvement

lien which provides for installment payments as a means of satisfying such lien, Tenant shall be required only to pay, on a timely basis, all installments when due.

(b) Notwithstanding anything to the contrary contained in **Section 17.2**, if any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Owner by law or by a provision of this Lease) is filed against the Premises or any part thereof or Tenant's interest therein as a result of any action of Owner, its officers, employees, representatives or agents, Owner shall, within thirty (30) days after Owner receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, Owner shall not be required to discharge any such lien if Owner shall have (i) furnished Tenant with, at Owner's option, a cash deposit, bond, letter of credit from an Institutional Lender (in form reasonably satisfactory to Tenant) or other security (such as a personal guaranty or title company indemnity) reasonably satisfactory to Tenant, in an amount sufficient to pay the lien with interest and penalties and (ii) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding with diligence and continuity; except that if, despite Owner's efforts to seek discharge of the lien, Tenant reasonably believes that a court judgment or order foreclosing such lien is about to be entered or granted and so notifies Owner, Owner shall, within ten (10) days of notice to such effect from Tenant (but not later than three (3) business days prior to the entry or granting of such judgment or order of foreclosure), cause such lien to be discharged of record or Tenant may thereafter discharge the lien in accordance with **Section 24.2** and look to the security furnished by Owner for reimbursement of its cost in so doing.

Section 17.3 No Authority to Contract in Name of Owner.

Nothing contained in this Article shall be deemed or construed to constitute the consent or request of Owner, express or implied, by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of, the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against Owner's interest in the Land or any part thereof or against assets of Owner, or Owner's interest in any Rental and/or Impositions. Notice is hereby given, and Tenant shall cause all Construction Agreements to provide, that to the extent enforceable under Florida law, Owner shall not be liable for any work performed or to be performed at the Premises or any part thereof for Tenant or any Master Subtenant or for any materials furnished or to be furnished to the Premises or any part thereof for any of the foregoing, and no mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials shall attach to or affect Owner's interest in the Land or any part thereof or any assets of Owner, or Owner's interest in any Rental and/or Impositions. The foregoing shall not require Tenant to request advance waivers of lien from contractors or subcontractors.

Article 18 - Representations

Section 18.1 No Brokers.

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Each of Owner and Tenant represents to the other that it has not dealt with any broker, finder or like entity in connection with this Lease 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 indemnifying party in connection with this Lease or the transactions contemplated hereby.

Section 18.2 No Other Representations.

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Tenant acknowledges, represents and confirms that it or its authorized representatives have visited the Premises and are fully familiar therewith, the physical condition thereof (including but not limited to subsurface conditions) and Title Matters affecting the Premises. Tenant accepts the Premises in existing condition and state of repair and Tenant confirms that: except for the representation contained in **Section 18.1** (and any other representation expressly set forth in this Lease), (i) no representations, statements, or warranties, express or implied, have been made by, or on behalf of, Owner with respect to the Premises or the transactions contemplated by this Lease, the status of title thereto (except as set forth in Exhibit 2.1), the physical condition thereof, the zoning, wetlands or other laws, regulations, rules and orders applicable thereto or the use that may be made of the Premises, or the presence or absence of **“hazardous substances”** (as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USCA § 9601 et seq.) on or under the Premises, (ii) Tenant has relied on no such representations, statements or warranties, and (iii) Owner shall not be liable to Tenant, in any event whatsoever, to correct any latent or patent defects in the Premises.

Article 19 - No Liability for Injury or Damage.

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Section 19.1 Liability of Owner or Tenant.

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(a) **Owner Not Liable for Injury or Damage, Etc.** The Owner Indemnified Parties shall not be liable to Tenant for, and Tenant shall indemnify and hold Owner Indemnified Parties harmless from and against, any loss, cost, liability, claim, damage, expense (including, without limitation, reasonable attorneys' fees and disbursements), penalty or fine incurred in connection with or arising from any injury (whether physical (including, without limitation, death), economic or otherwise) to Tenant or to any other Person in, about or concerning the Premises or any damage to, or loss (by theft or otherwise) of, any of Tenant's property or of the property of any other Person in, about or concerning the Premises, irrespective of the cause of injury, damage or loss (including, without limitation, the acts or negligence of any tenant or occupant of the Premises or of any owners or occupants of adjacent or neighboring property or caused by any Construction Work or by operations in construction of any private, public or quasi-public work) or any latent or patent defects in the Premises, except to the extent any of the foregoing is due to the gross negligence or willful misconduct of any Owner Indemnified Party. The Owner Indemnified Parties shall not be liable, to the extent of insurance proceeds paid by insurance carriers under Tenant's insurance policies, for any loss or damage to any Person or property even if due to the gross negligence or willful misconduct of any Owner Indemnified Party and, to that extent, Tenant relieves Owner Indemnified Parties from such liability. Without

limiting the generality of the foregoing, except to the extent caused by the gross negligence or willful misconduct of any of Owner Indemnified Parties (and then only in such Owner Indemnified Party's proprietary capacity as opposed to its governmental capacity), Owner Indemnified Parties shall not be liable for (i) any failure of water supply, gas or electric current, (ii) any injury or damage to person or property resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, act of God, act of war, enemy action, flood, wind or similar storms or disturbances, water, rain or ice, or (iii) leakage of gasoline or oil from pipes, appliances, sewer or plumbing works.

(b) **Zoning Changes.** Except when Owner (if Owner, at the time of application is the City), acting in its proprietary capacity, is the applicant, Owner hereby assigns to Tenant any and all rights of Owner, as owner of the Land, under Requirements to execute objections or waivers of objections to applications for variances or other exceptions or exemptions from zoning or other Requirements by the owner of any property with respect to which, under applicable Requirements, the owner of the Land would have the right to object or consent to variances or other exceptions or exemptions from zoning or other Requirements. Such assignment shall in no way limit or otherwise restrict any other rights of the City, any instrumentalities of the City, or any elected or appointed officials or employees of the City, in its respective governmental capacities, from taking or refraining from taking any action or expressing any views and opinions in connection with such application. If Owner is required to join in such application by Requirements, Owner shall do so provided Tenant pays all costs, including reasonable attorneys' fees, for same.

Section 19.2 Owner's Exculpation

(a) Except as such liability may be eliminated or reduced by any constitutional, statutory, common law or other protections afforded to public bodies or governments (for such time as Owner is a Governmental Authority), including, but not limited to, sovereign immunity statutes, the liability of Owner (including, without limitation, with respect to any gross negligence or willful misconduct), or of any other Person who has at any time acted as Owner (for such time as Owner is a Governmental Authority) hereunder, for damages or otherwise, arising out of or in connection with any breach of this Lease or any injury (whether physical (including death) economic or otherwise) incurred in connection with this Lease or the Premises, shall be limited to Three Hundred Thousand Dollars (\$300,000), adjusted for inflation, under this Lease, in the aggregate. As used in the preceding sentence, the terms "**breach**" and "**injury**" shall include all breaches and injuries arising out of the facts and circumstances resulting in such breach or injury.

(b) Except for conversion, fraud or willful misconduct (and then only to the extent such party acted in its proprietary capacity as opposed to its governmental capacity), none of the Owner Indemnified Parties (except Owner as provided in **Section 19.2(a)**) shall have any liability (personal or otherwise) hereunder, and except for Owner's Interest in the Premises (to the extent permitted by applicable Requirements), no property or assets of the Owner Indemnified Parties shall be subject to enforcement procedures for the satisfaction of Tenant's remedies hereunder or any other liability of the Owner Indemnified Parties arising from or in

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connection with this Lease or the Premises. Nothing contained herein shall be deemed a waiver of any equitable remedies available to Tenant.

(c) Nothing contained in this **Section 19.2** or elsewhere in this Lease is in any way intended to be a waiver of the limitation placed upon Owner's liability as set forth in § 768.28, Fla. Stat., or of any other constitutional, statutory, common law or other protections afforded to public bodies or governments.

Section 19.3 Notice of Injury or Damage.

Tenant shall notify Owner within thirty (30) days of any occurrence at the Premises of which Tenant has notice and which Tenant believes could give rise to a claim of One Hundred Thousand Dollars (\$100,000), adjusted for inflation, or more, whether or not any claim has been made, complaint filed or suit commenced; however, Tenant's failure to so notify Owner shall not constitute or result in a breach or default of any of the terms or conditions of this Lease or result in a loss of any benefit or right granted to Tenant under this Lease.

Section 19.4 Tenant's Exculpation.

Except for (a) Tenant's liability for conversion, willful misconduct or fraud, (b) liabilities of Tenant arising under applicable Requirements when Owner is acting in or pursuant to its governmental capacity, and (c) liability with respect to Tenant's obligation to pay Rental and/or Impositions that is past due but not yet paid, and except with respect to any rights or remedies for non-monetary relief (including, without limitation, equitable relief), the liability of Tenant under this Lease and with respect to the Premises for damages or other monetary amounts shall be limited to ___ Million Dollars (\$ __, 000,000) adjusted for inflation, under this Lease, in the aggregate. Notwithstanding anything to the contrary in this Lease, Owner's right to terminate this Lease and force Tenant to surrender title to and possession of the Improvements to Owner shall not be subject to the limitation of liability contained in this **Section 19.4**. Other than Tenant's Interest in the Premises, no other property or assets of Tenant shall be subject to levy of execution or enforcement procedure for the satisfaction of Owner's remedies hereunder or any other liability of Tenant arising from or in connection with this Lease or the Premises. Without limiting the preceding sentence, if, and only if, Tenant [or principals thereof] engages in conversion, fraud or willful misconduct, then Tenant shall have personal liability hereunder and the property and assets of Tenant shall be subject to levy of execution or enforcement procedure for the satisfaction of Owner's remedies hereunder with respect to such conversion, fraud or willful misconduct. Nothing contained herein shall be deemed a waiver of any equitable remedies available to Owner.

Section 19.5 No Punitive Damages.

Neither Owner nor Tenant shall be liable to the other for any punitive damages in connection with this Lease and Owner and Tenant agree not to seek punitive damages from each other in connection with any lawsuit or other claim relating to this Lease.

Section 19.6 Survival.

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The provisions of this **Article 19** shall survive the Expiration of the Term.

Article 20 - Indemnification

Section 20.1 Indemnification of Owner

(a) Tenant shall indemnify and hold Owner Indemnified Parties harmless from all loss, cost, liability, claim, damage and expense (including, without limitation, reasonable attorneys' fees and disbursements), penalties and fines, incurred in connection with claims by a Person against an Owner Indemnified Party arising from (a) the use or occupancy or manner of use or occupancy of the Premises by Tenant or any Person claiming through or under Tenant or (b) any acts, omissions or negligence of Tenant or any Person claiming through or under Tenant, or of the contractors, agents, servants, employees, guests, invitees or licensees of Tenant or any Person claiming through or under such Person, in each case to the extent in, about or concerning the Premises either during or after the expiration of, the Term, including, without limitation, any acts, omissions or negligence in connection with any Construction Work or in the making or performing of any repairs, restoration, alterations or improvements, except to the extent any of the foregoing is caused by the gross negligence or willful misconduct of any of the Owner Indemnified Parties.

(b) In the event that any suit, action or proceeding is brought against Owner to compel disclosure of any document described in **Article 27** or **Article 28**, whether such suit, action or proceeding is brought under Chapter 119, Florida Statutes or any other provision of law, Tenant agrees to defend, indemnify and hold the Owner Indemnified Parties harmless from and against any loss, claim, damage, expense (including, without limitation, reasonable attorneys' fees and disbursements, including both in-house and outside counsel, and also including any attorneys' fees and disbursements which any court of competent jurisdiction may award to the plaintiff in such suit, action or proceeding, in all cases including any appeals thereof or post-judgment proceedings relating thereto), penalty or fine incurred in connection with or arising from such suit, action or proceeding. Owner shall notify Tenant of any such public records request but failure to give such notice shall not impose any liability on Owner. Notwithstanding the foregoing, in the event that Owner receives a proper notice under Chapter 119, Florida Statutes, as amended, to produce a document, and Owner has such document in its possession and Owner fails to produce such document due to Owner's own negligence, malfeasance or misfeasance, Tenant shall not be liable for any loss, claim, damage, penalty or fine as aforesaid.

Section 20.2 Contractual Liability

(a) The obligations of Tenant under this **Article 20** or **Article 19** shall not be affected in any way by the absence or presence of insurance coverage (or any limitation thereon, including any statutory limitations with respect to Workers' Compensation insurance), or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Premises; provided, however, that if Owner actually receives any proceeds of Tenant's insurance with respect to an obligation of Tenant under this Article, the amount

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thereof shall be credited against, and applied to reduce, any amounts paid and/or payable hereunder by Tenant with respect to such obligation.

(b) The obligations of Owner under this **Article 20** or **Article 19** shall not be affected in any way by the absence or presence of insurance coverage, or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Premises; provided, however, that if Tenant actually receives any proceeds of Owner's insurance with respect to an obligation of Owner under this Article, the amount thereof shall be credited against, and applied to reduce, any amounts paid and/or payable hereunder by Owner with respect to such obligation.

Section 20.3 Defense of Claim, Etc.

(a) If any claim, action or proceeding is made or brought against any Owner Indemnified Party by reason of any event to which reference is made in **Section 20.1** or **Article 19**, then, upon demand by Owner or such Owner Indemnified Party, Tenant shall either resist, defend or satisfy such claim, action or proceeding in such Owner Indemnified Party's name, by the attorneys for, or approved by, Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance) or such other attorneys as Owner shall reasonably approve. The foregoing notwithstanding, such Owner Indemnified Party may at its own expense engage its own attorneys to defend such Owner Indemnified Party, or to assist such Owner Indemnified Party in such Owner Indemnified Party's defense of such claim, action or proceeding, as the case may be.

Section 20.4 Notification and Payment.

(a) Each Owner Indemnified Party shall promptly notify Tenant of the imposition of, incurrence by or assertion against such Owner Indemnified Party of any cost or expense as to which Tenant has agreed to indemnify such Owner Indemnified Party pursuant to the provisions of this **Article 20**. Tenant agrees to pay such Owner Indemnified Party, as Rental hereunder, all amounts due under this **Article 20** within sixty (60) days after receipt of the notice from such Owner Indemnified Party.

Section 20.5 Governs Lease.

The provisions of this **Article 20** shall govern every other provision of this Lease. The absence of explicit reference to this **Article 20** in any particular provision of this Lease shall not be construed to diminish the application of this **Article 20** to such provision.

Section 20.6 Survival.

The provisions of this **Article 20** shall survive the Expiration of the Term.

Article 21 - Covenant Against Waste and Inspection

Section 21.1 Waste.

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Except as otherwise permitted by this Lease, Tenant covenants not to do or suffer any demolition, waste or damage, disfigurement or injury to the Premises or any part of it. The provisions of this **Section 21.1** shall not apply to any demolition or disfigurement involved with repairs, renovations, upgrading or new construction.

Section 21.2 Inspection of Premises.

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Owner, its agents, employees and authorized representatives may enter the Premises at any time in response to an emergency, and at reasonable times as Owner deems necessary to, incident to, or connected with the performance of Owner duties and obligations hereunder or in the exercise of its rights and functions, in all cases subject to the rights of tenants in possession of any portion of the Premises, and (except in the case of emergency) upon notice to, and accompanied by, Tenant or Approved Operator.

Article 22 - Owner's Security Interest in Building Equipment

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Section 22.1 Grant of Security Interest.

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[We propose deleting this provision, as it is unacceptable to most lenders.] Solely for the purpose of securing Tenant's obligations to deliver to Owner the Improvements upon Expiration of the Term, Tenant hereby grants to Owner a security interest in all of the Building Equipment now or hereafter located on the Premises and owned by Tenant, and in all products and proceeds thereof; provided, however, that Owner's security interest shall be automatically fully subordinate and subject to any purchase money financing permitted hereunder and any Recognized Mortgagee's security interest in the Building Equipment. Upon the Expiration of the Term, Owner shall be entitled to all of the rights, remedies, powers and privileges available to a secured party under (and subject to the provisions of) the Uniform Commercial Code enacted by the State of Florida. Tenant shall execute and deliver all such instruments and take all such action as Owner, from time to time, may reasonably request in order to obtain the full benefits of the security interest described in this **Section 22.1** and of the rights and powers herein created and to maintain and perfect the security interest granted above. To the extent permitted by Requirements, Tenant irrevocably authorizes Owner to file financing statements and continuation statements with respect to the foregoing collateral without the signature of Tenant. Owner shall execute and deliver all such instruments as any Recognized Mortgagee or permitted purchase money lender shall reasonably require in order to confirm Owner's subordination of its security interest as aforesaid. Subject to **Section 14.2**, Tenant may, during the Term, remove, replace and otherwise deal with the Building Equipment in the ordinary course of the operation of the Project.

Article 23 -Leasehold Condominium

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Section 23.1 Creation of Leasehold Condominium.

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(a) Tenant shall have the right to create a leasehold condominium for all or any portion of Tenant's Interest in the Project, provided that at the time of creation of said

leasehold condominium, the declaration of condominium (the **"Declaration"**) is in compliance with Chapter 718, Florida Statutes, as amended, and this **Article 23**; and further provided that the original Tenant, the declarant, shall not sell, convey, assign or otherwise transfer any of the condominium units until Substantial Completion of the Project. Owner shall consent to the Declaration, provided, however, that Owner shall have the right to approve the form and substance of the Declaration. Tenant shall pay all reasonable costs of Owner's review of the proposed Declaration, including, but not limited to reasonable fees and costs of Owner's outside counsel.

(b) For purposes of this Lease, in the event of the creation of a leasehold condominium, the following terms and provisions shall apply to said leasehold condominium and the Declaration shall so provide:

(i) The leasehold condominium shall be limited to three (3) units consisting of an office unit, a retail unit and a garage unit. The garage unit shall be the Garage, as defined in this Lease.

(ii) Unless otherwise provided in the Declaration, the new Tenant (the **"Condominium Tenant"**) shall be a Florida not-for-profit condominium association, created to operate and maintain the leasehold condominium. The Declaration may provide, as agreed to by Owner and Tenant prior to the recording of the Declaration, that Rental and/or, if payable to Owner, Impositions shall be paid directly by unit owners to Owner, rather than to the condominium association, in proportions reasonably acceptable to Owner; provided, however, that in no event shall the mechanism or procedure for the payment of Rental and/or Impositions, or any other amounts required by this Lease to be paid to Owner, affect the priority of Owner's right to receive Rental and/or, if payable to Owner, Impositions or any other payments due under this Lease. Tenant shall, at Tenant's sole cost and expense, provide Owner with an opinion of counsel (which counsel shall be acceptable to Owner) to the effect that the aforementioned provisions of the Declaration do not affect the priority of Owner's right to receive Rental and/or Impositions or any other payments under this Lease.

(iii) There shall be an Acceptable Operator for each unit and there may be a Property Manager and a Management Agreement for each unit.

(iv) There may be a Recognized Mortgagee and a Recognized Mortgage for each unit, and the rights and obligations of said Recognized Mortgagees shall be limited to the units burdened by their respective Recognized Mortgages.

(v) If a lease of a unit meets the definition of Master Sublease as to such unit, such lease shall be treated as a Master Sublease for purposes of this Lease.

(vi) Percentage Rent shall be based upon Project Revenue derived from the operations of each of the three (3) units, individually.

(vii) **Article 10** relating to transfers and sales shall be separately applied to each of the individual condominium units; provided, however, that the ~~Twenty Million Dollar~~

(\$20,000,000), adjusted for inflation, equity requirement described in **Section 10.3(c)(A)**, shall be changed to Ten Million Dollars (\$10,000,000), adjusted for inflation, for each unit at the time of acquisition, and provided further, however, if a Person acquires two (2) units, the aggregate equity requirement computed pursuant to **Section 10.3(c)(A)** for such Person shall be Ten Million Dollars (\$10,000,000), adjusted for inflation, or if a Person acquires three (3) units, such aggregate equity requirement shall be Twenty Million Dollars (\$20,000,000), adjusted for inflation. All other provisions of this Lease shall be separately applied to each of the individual condominium units.

(viii) A Recognized Mortgagee holding a Recognized Mortgage on a unit shall not become the Tenant under this Lease; provided, however, the Condominium Tenant's obligation to pay Percentage Rent derived from a condominium unit which has been transferred to a Recognized Mortgagee pursuant to a Foreclosure Transfer shall be subordinated as provided in this Lease, and Percentage Rent derived from such unit, when payable, shall be paid to Owner in accordance with **Article 11** and **Article 12** of this Lease. The rights and obligations of a Designee and a First Transferee from such Recognized Mortgagee relative to Percentage Rent shall similarly apply.

(ix) For discussion – this and several other provisions would appropriately be deleted if the final deal does not include percentage rent. Owner's rights to review financial records of Condominium Tenant shall include the right to review corresponding financial records of all of the unit owners. To the extent Condominium Tenant is obligated to pay costs and fees to Owner relating to such review, Condominium Tenant shall pay such additional costs and fees resulting from reviews of the financial records of three (3) unit owners as opposed to a single Tenant.

(x) The Declaration shall provide for appropriate easements, covenants and restrictions such that the operation, use and management of the condominium is consistent with this Lease including, without limitation, **Article 6** hereof and all applicable City Land Development Regulations.

(xi) A unit owner which is in default of its obligations under the Declaration, after reasonable notice and grace periods as provided in the Declaration, shall lose its right to vote as a member, officer, director or in any other capacity of the condominium association so long as the default remains uncured.

(xii) In the event a unit owner fails to pay any condominium assessment to Owner or Condominium Tenant, as applicable, which includes that unit's proportionate share of Rental and/or, if payable to Owner, Impositions, Owner shall accept payments of Rental and/or Impositions to the extent paid to Condominium Tenant and/or by the other unit owners, and the balance of the Rental and/or Impositions shall be treated as Back Rent and/or Impositions, and Owner shall not proceed with remedies available to Owner for non-payment of Rental and/or Impositions unless and until Condominium Tenant and the Recognized Mortgagee holding a Recognized Mortgage on the defaulting unit have failed to diligently proceed with their respective remedies against the defaulting unit owner. In the event the Condominium Tenant by foreclosure or deed in lieu of foreclosure of its lien for assessments, or a Recognized Mortgagee

or its Designee, obtains title to the unit after such a default, the obligations of such new unit owner relative to payment of Back Rent and/or Impositions and Percentage Rent under such circumstances shall be governed by the applicable provisions of this Lease.

(xiii) The condominium association's lien for the payment of assessments for common expenses, including Rental and/or Impositions, shall be subordinate to the lien of any and all Recognized Mortgages on the respective units, provided, however, that in no event shall the relative priority of said condominium association's lien affect the superior priority of Owner's right to receive Rental and/or Impositions or any other payments due under this Lease. Tenant shall, at Tenant's sole cost and expense, provide Owner with an opinion of counsel (which counsel shall be acceptable to Owner) to the effect that the aforementioned provisions of the Declaration concerning the relative priority of said condominium association's lien do not affect the superior priority of Owner's right to receive Rental and/or Impositions or any other payments due under this Lease.

(xiv) The Declaration shall cease to exist and shall become null and void as of the Fixed Expiration Date.

The Declaration provided for in this **Article 23** shall not alter the legal effect of any of the provisions of this Lease which were in effect prior to the recording of such Declaration (i.e., the legal rights of Owner shall not be impaired, diminished or improved after the recording of such Declaration except as otherwise specifically provided in this **Article 23**). Therefore, to effectuate the provisions of this **Section 23.1**, all legal issues and interpretations under this Lease regarding the rights and obligations of Owner, including but not limited to all payments due Owner, shall be made as if the Declaration did not exist subject to the provisions of this **Article 23**.

Article 24 - Right to Perform the Other Party's Obligations.

Section 24.1 Right to Perform the Other Party's Obligations.

(a) If a Default shall occur and be continuing beyond any applicable grace period, Owner may, but shall be under no obligation to, perform the obligation of Tenant the breach of which gave rise to such Default, without waiving or releasing Tenant from any of its obligations contained herein, provided that Owner shall exercise such right only in the event of a *bona fide* emergency or after five (5) Business Days notice, and Tenant hereby grants Owner access to the Premises in order to perform any such obligation.

(b) If a default by Owner under this Lease shall occur and be continuing beyond any applicable grace period, Tenant may, but shall be under no obligation to, perform the obligations of Owner (other than those which are governmental as opposed to proprietary obligations) the breach of which gave rise to such default or event of default, without waiving or releasing Owner from any of its obligations contained herein, provided that Tenant shall exercise such right only in the event of a *bona fide* emergency or after five (5) Business Days notice to Owner or the City, as applicable.

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Section 24.2 Discharge of Liens.

(a) If Tenant fails to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, providing the underlying tax is an obligation of Tenant by law or by a provision of this Lease) to be discharged of record in accordance with the provisions of **Article 17**, Owner may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. If Owner's title is threatened or a material interest of Owner is impaired, Owner may also, if Tenant has not done so (or bonded such lien), compel the prosecution of an action for the foreclosure of such lien by the lienor and the payment of the amount of the judgment in favor of the lienor with interest, costs and allowances.

(b) If Owner fails to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, providing the underlying tax is an obligation of Owner by law or by a provision of this Lease) to be discharged of record in accordance with the provisions of **Article 17**, Tenant may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. If Tenant's leasehold interest in the Premises (or any portion thereof) is threatened or a material interest of Tenant is impaired, Tenant may also, if Owner has not done so (or bonded such lien), compel the prosecution of an action for the foreclosure of such lien by the lienor and the payment of the amount of the judgment in favor of the lienor with interest, costs and allowances.

Section 24.3 Reimbursement for Amounts Paid Pursuant to this Article.

(a) Any amount paid by Owner in performing Tenant's obligations as provided in this **Article 24**, including all costs and expenses incurred by Owner in connection therewith, shall constitute Rental hereunder and shall be reimbursed to Owner within thirty (30) days of Owner's demand, together with a late charge on amounts actually paid by Owner, calculated at the Late Charge Rate from the date of notice of any such payment by Owner to the date on which payment of such amounts is received by Owner.

(b) Any amount paid by Tenant in performing Owner's obligations as provided in this **Article 24**, including all costs and expenses incurred by Tenant in connection therewith, shall be reimbursed to Tenant within thirty (30) days of Tenant's demand, together with a late charge on amounts actually paid by Tenant, calculated at the Late Charge Rate from the date of notice of any such payment by Tenant to the date on which payment of such amounts is received by Tenant.

Section 24.4 Waiver, Release and Assumption of Obligations.

(a) Owner's payment or performance pursuant to the provisions of this **Article 24** shall not be, nor be deemed to constitute, Owner's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder.

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(b) Tenant's payment or performance pursuant to the provisions of this **Article 24** shall not be, nor be deemed to constitute, Tenant's assumption of Owner's obligations to pay or perform any of Owner's past, present or future obligations hereunder.

Article 25 - Events of Default, Conditional Limitations, Remedies, Etc.

Section 25.1 Definition.

Each of the following events shall be an **"Event of Default"** hereunder:

(a) if Tenant fails to make any payment (or any part thereof) of Rental and/or Impositions due hereunder and such failure continues for a period of thirty (30) days after notice is given by Owner that the same is past due;

(b) if Tenant shall default in the observance or performance of any term, covenant or condition of this Lease on Tenant's part to be observed or performed (other than the covenants for the payment of Rental and/or Impositions or as expressly set forth below) and Tenant shall fail to remedy such Default within thirty (30) days after notice by Owner of such Default (the **"Default Notice"**), or if such a Default is of such a nature that it cannot reasonably be remedied within thirty (30) days (but is otherwise susceptible to cure), Tenant shall not (i) within thirty (30) days after the giving of such Default Notice, advise Owner of Tenant's intention to institute all steps (and from time to time, as reasonably requested by Owner, Tenant shall advise Owner of the steps being taken) necessary to remedy such Default (which such steps shall be reasonably designed to effectuate the cure of such Default in a professional manner), and (ii) thereafter diligently prosecute to completion all such steps necessary to remedy the same;

(c) [NOT USED]

(d) **[If applicable to the Project:** if Tenant fails to operate the Garage as a parking facility as described in **Section 6.1(b)** in which event such failure shall be treated as a Default as described in **Section 25.1(b);**

(e) to the extent permitted by law, if Tenant admits, in writing, that it is generally unable to pay its debts as such become due;

(f) to the extent permitted by law, if Tenant makes an assignment for the benefit of creditors;

(g) to the extent permitted by law, if Tenant files a voluntary petition under Title 11 of the United States Bankruptcy Code, or if Tenant files a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, of all or any substantial part of its properties, or of all or any part of Tenant's Interest in the Premises, and the

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foregoing are not stayed or dismissed within one hundred and fifty (150) days after such filing or other action;

(h) to the extent permitted by law, if, within one hundred and fifty (150) days after the commencement of a proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, such proceeding has not been dismissed, or if, within one hundred and eighty (180) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, of all or any substantial part of its properties, or of all or any part of Tenant's Interest in the Premises, such appointment has not been vacated or stayed on appeal or otherwise, or if, within one hundred and eighty (180) days after the expiration of any such stay, such appointment has not been vacated;

(i) if a levy under execution or attachment in an aggregate amount of One Hundred Thousand Dollars (\$100,000), adjusted for inflation, at any one time, is made against the Premises or any part thereof or rights appertaining thereto (except for a levy made in connection with actions taken by Owner (other than solely as holder of Owner's Interest in the Premises)), the income therefrom, this Lease or the leasehold estate created hereby and such execution or attachment is not vacated or removed by court order, bonding or otherwise within a period of sixty (60) days after Tenant becomes aware of such levy or attachment, subject to Unavoidable Delays; or

(j) if any of the representations made by Tenant in **Article 18** is proved to be or becomes false or incorrect in any material respect and the circumstances are not cured or modified so as to eliminate such material incorrectness within thirty (30) days after notice;

(k) any event described in **Section 35.8** which is not cured by Tenant as provided in **Section 35.8**.

In the event of a Default which with the giving of notice to Tenant and the passage of time would constitute an Event of Default, Owner's notice of such Default to Tenant shall state with specificity the provision of this Lease under which the Default is claimed, the nature and character of such Default, the facts giving rise to such Default, the date by which such Default must be cured, and that the failure of Tenant to cure such Default by the date set forth in such notice will result in Owner having the right to terminate this Lease.

Notwithstanding the foregoing, no Event of Default shall be deemed to have occurred until such time as Owner shall have given Tenant notice of the occurrence of an Event of Default (an "Event of Default Notice").

Section 25.2 Enforcement of Performance; Damages and Termination.

If an Event of Default occurs and Owner chooses to pursue a remedy with respect to that Event of Default, Owner shall elect to: (a) enforce performance or observance by Tenant of the

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applicable provisions of this Lease; (b) recover damages for breach of this Lease; or (c) terminate this Lease pursuant to **Section 25.3(a)**. Owner's election of a remedy hereunder with respect to an Event of Default shall not limit or otherwise affect Owner's right to elect any of the remedies available to Owner hereunder with respect to any other Event of Default.

Section 25.3 Expiration and Termination of Lease.

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(a) If an Event of Default occurs, provided Owner has elected the remedy of termination, Owner may, within ten (10) Business Days after the date of entry by a court of a final judgment that an Event of Default exists (but without Tenant waiving any rights it may have to stay the termination pending appeal), give Tenant and any Recognized Mortgagee notice stating that this Lease and the Term shall terminate on the date specified in such notice, which date shall not be less than ten (10) days after the giving of the notice, and this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as if the date specified in the notice were the Fixed Expiration Date, and Tenant shall quit and surrender Tenant's Interest in the Premises and possession thereof forthwith. If such termination is stayed by order of any court having jurisdiction over any case described in **Sections 25.1(h)** or **25.1(i)**, or by federal or state statute, then, following the expiration of any such stay, or if the trustee appointed in any such case, Tenant or Tenant as debtor-in-possession fails to assume Tenant's obligations under this Lease within the period prescribed therefor by law or within thirty (30) days after entry of the order for relief or as may be allowed by the court, Owner, to the extent permitted by law or by leave of the court having jurisdiction over such case, shall have the right, at its election, to terminate this Lease on five (5) days' notice to Tenant, Tenant as debtor-in-possession or the trustee. Upon the expiration of the five (5) day period, this Lease shall expire and terminate and Tenant, Tenant as debtor-in-possession and/or the trustee immediately shall quit and surrender Tenant's Interest in the Premises and possession thereof forthwith.

(b) If this Lease is terminated as provided in **Section 25.3(a)**, Owner may, without notice, re-enter and repossess Tenant's Interest in the Premises (which may include, but not be limited to, re-entering and repossessing the Premises) and may dispossess Tenant by summary proceedings, writ of possession, proceedings in bankruptcy court or otherwise, subject to applicable Requirements.

(c) If this Lease is terminated as provided in **Section 25.3(a)**:

(i) Tenant shall pay to Owner all Rental and/or Impositions payable under this Lease by Tenant to Owner to the date upon which the Term shall have expired and come to an end and Tenant shall surrender to Owner Tenant's Interest in the Premises (and possession thereof) in the manner required by this Lease, and both parties shall be relieved of all further obligations hereunder, except to the extent this Lease expressly provides that an obligation hereunder shall survive the Expiration of the Term; and

(ii) In no event shall Tenant be entitled to receive any credit or payment with respect to the value of the Land and Improvements, title to which shall automatically vest in Owner upon such termination.

Section 25.4 Waiver of Rights of Tenant and Owner.

To the extent not prohibited by law, Owner and Tenant hereby waive and release all rights now or hereafter conferred by statute or otherwise that would have the effect of limiting or modifying any of the provisions of this Article. Notwithstanding the foregoing, (i) neither party shall be deemed to have waived the benefit of any automatic stay provisions under any present or future bankruptcy code and (ii) Owner shall not be deemed to have waived or released any rights conferred by any sovereign immunity conferred by statute or otherwise, as provided in **Section 19.2(c)** hereof.

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Section 25.5 Receipt of Moneys After Notice or Termination.

No receipt of money by Owner from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease, shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Owner to recover Tenant's Interest in the Premises (which may include, but not be limited to, recovering possession of the Premises) by proper remedy. After the service of notice to terminate this Lease or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of Tenant's Interest in the Premises (which may include, but not be limited to, a judgment for possession of the Premises), Owner may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of Tenant's Interest in the Premises (including, without limitation, the use and occupation of the Premises) or, at the election of Owner, on account of Tenant's liability hereunder.

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Section 25.6 Strict Performance.

No failure by Owner or Tenant to insist upon strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy available to such party by reason of the other party's default or an Event of Default, and no payment or acceptance of full or partial Rental and/or Impositions during the continuance (or with Owner's knowledge of the occurrence) of any Default or Event of Default, shall constitute a waiver of any such Default or Event of Default or of such covenant, agreement, term or condition or of any other covenant, agreement, term or condition. Subject to **Section 11.11**, no covenant, agreement, term or condition of this Lease to be performed or complied with by either party, 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 or Event of Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default. Payment by Tenant to Owner of any Rental and/or Impositions shall be without prejudice to, and shall not constitute a waiver of, any rights of Tenant against Owner provided for under this Lease or at law or in equity. Tenant's compliance with any request or demand made by Owner shall not be deemed a waiver of Tenant's right to contest the validity of such request or demand.

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Section 25.7 Right to Enjoin Defaults.

In the event of Tenant's Default or Event of Default, Owner shall be entitled to seek to enjoin the Default or Event of Default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent Owner's remedies are expressly limited by the terms hereof. In the event of any default by Owner of any term, covenant or condition under this Lease, Tenant shall be entitled to seek to enjoin the default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent Tenant's remedies are expressly limited by the terms hereof. Provided however, in the event of any such default, Tenant shall be required to give Owner notice of such default and Owner shall have thirty (30) days from receipt of such notice to effect a cure of such default or if such default is not reasonably susceptible of being cured within such thirty (30) day period, Owner shall have a reasonable time to effect a cure of such default so long as Owner is diligently prosecuting such cure. Each right and remedy of Owner and Tenant provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise except to the extent Owner's remedies and Tenant's remedies are expressly limited by the terms hereof, and the exercise or beginning of the exercise by Owner or Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Owner or Tenant of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, except to the extent Owner's remedies and Tenant's remedies are expressly limited by the terms hereof.

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Section 25.8 Remedies Under Bankruptcy and Insolvency Codes.

If an order for relief is entered or if any stay of proceeding or other act becomes effective against Tenant or Tenant's Interest in the Premises or Owner or Owner's Interest in the Premises as applicable, in any proceeding which is commenced by or against Tenant or Owner, as applicable, under the present or any future Federal Bankruptcy Code or in a proceeding which is commenced by or against Tenant or Owner, as applicable, seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, Owner or Tenant, as applicable, shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law or this Lease, including, without limitation, such rights and remedies as may be necessary to adequately protect Owner's or Tenant's, as applicable, right, title and interest in and to the Premises or this Lease or any part thereof and adequately assure the complete and continuous future performance of the other party's obligations under this Lease. Owner or Tenant, as applicable, may petition the Bankruptcy Court to determine that adequate protection of Owner's or Tenant's, as applicable, right, title and interest in and to the Premises or this Lease, and adequate assurance of the complete and continuous future performance of the other party's obligations under this Lease, shall include, without limitation, all of the following requirements:

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(a) that the other party shall comply with all of its obligations under this Lease;

(b) in the case of a proceeding concerning Tenant, that Tenant shall continue to use the Premises in the manner required by this Lease;

(c) in the case of a proceeding concerning Tenant, that Owner shall be permitted to supervise the performance of Tenant's obligations under this Lease;

(d) in the case of a proceeding concerning Tenant, that Tenant shall hire such security personnel as may be necessary to insure the adequate protection and security of the Premises;

(e) in the case of a proceeding concerning Tenant, that Tenant shall have and will continue to have unencumbered assets after the payment of all secured obligations and administrative expenses to assure Owner that sufficient funds will be available to fulfill the obligations of Tenant under this Lease; and

(f) in the case of a proceeding concerning Tenant, that Owner shall be granted a security interest acceptable to it in property of Tenant to secure the performance of Tenant's obligations under this Lease, subject to the rights of any Recognized Mortgagee under the Recognized Mortgage.

Section 25.9 Funds Held By Tenant.

From and after the date, if any, on which an Event of Default (including, without limitation, any Event of Default that occurs during the course of the Construction Work for the initial construction of the Project) has been deemed to have occurred and while such Event of Default shall be continuing, Tenant shall not pay, disburse or distribute any rents, issues or profits of the Premises, or portion thereof, the proceeds of any insurance policies covering or relating to the Premises or any portion thereof, or any awards payable in connection with the condemnation of the Premises or any portion thereof (except to the extent such insurance proceeds or condemnation awards are required in connection with any Restoration to be performed pursuant to **Article 8 or 9**) or any undistributed proceeds from any sale or financing except to (i) creditors which are not Affiliates, in payment of amounts then due and owing by Tenant to such creditors with respect to work at the Premises, (ii) Affiliates, in payment of amounts then due and owing by Tenant to such Affiliates for items and services provided to Tenant in connection with its operations conducted at the Premises or any portion thereof, only to the extent such amounts do not exceed that which is customarily and reasonably paid in arms-length transactions to Persons who are not Affiliates for comparable items and services, and (iii) the holder of a Recognized Mortgage, in payment of the principal amount of, and all unpaid and accrued interest then outstanding under, such Recognized Mortgage and any other amounts payable pursuant to such Recognized Mortgage and any instruments and documents related thereto.

Section 25.10 Inspection.

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Owner and its representatives shall have the right, upon twenty-four (24) hours prior notice to Tenant, to enter upon the Premises (a) to inspect the operation, sanitation, safety, maintenance and use of the same (but Owner shall not thereby assume any responsibility or liability for the performance of Tenant's obligations hereunder, nor any liability arising from the improper performance thereof) and (b) to conduct inspections for the purpose of determining whether a Default or Event of Default has occurred, provided that Owner shall be accompanied by a representative of Tenant (in areas of the Project other than areas readily available to the general public), and provided further that such entry shall not unreasonably interfere with the operation of the Premises. Tenant agrees to make a representative of Tenant available to accompany Owner on any such inspection.

Article 26 - Notices, Consents and Approvals

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Section 26.1 Service of Notices and Other Communications.

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(a) **In Writing.** 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 any Recognized Mortgagee), 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 Premises, each such notice, demand, request, consent, approval or other communication (referred to in this **Section 26.1** as a “**Notice**”) shall be in writing (whether or not so indicated elsewhere in this Lease) and shall be effective for any purpose only if given or served by certified or registered U.S. Mail, postage prepaid, return receipt requested, personal delivery with a signed receipt or a recognized national courier service, addressed as follows:

if to Tenant: c/o Atlantic Pacific Communities, LLC
161 NW 6th Street
Suite 1020
Miami, FL 33136
Attn: Lindsay Lecour
Email: Llecour@apcommunities.com

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with a copy to:

if to Owner: City of Miami Beach
City Manager
1700 Convention Center Drive
Miami Beach, Florida 33139

with a copy to:

City of Miami Beach
City Attorney
1700 Convention Center Drive
Miami Beach, Florida 33139

Any such Notice may be given, in the manner provided in this **Section 26.1**, (x) on either party's behalf by its attorneys designated by such party by notice hereunder, and (y) at Tenant's request, on its behalf by any Recognized Mortgagee designated in such request.

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

(c) **References.** All references in this Lease to the date of Notice shall mean the effective date, as provided in the preceding **Section 26.1(b)**.

~~(c)~~ (d) **Notice By Email.** Except in the case of notice of default, notices may also be given by electronic mail to the email addresses set forth above.

Section 26.2 Consents and Approvals.

(a) **Effect of Granting or Failure to Grant Approvals or Consents.** All consents and approvals which may be given under this Lease shall, as a condition of their effectiveness, be in writing. The granting by a party of any consent to or approval of any act requiring consent or approval under the terms of this Lease, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any other act.

(b) **Standard.** All consents and approvals which may be given by a party under this Lease shall not (whether or not so indicated elsewhere in this Lease) be unreasonably withheld or conditioned by such party and shall be given or denied within the time period provided, and if no such time period has been provided, within a reasonable time. In furtherance of the foregoing, in determining whether Owner has acted reasonably in not giving its consent or approval, the trier of fact shall take into consideration (for so long as Owner is the City or any Governmental Authority) that Owner is a political body governed by elected officials or persons that are appointed, directly or indirectly, by elected officials. Upon disapproval of any request for a consent or approval, the disapproving party shall, together with notice of such disapproval, submit to the requesting party a written statement setting forth with specificity its reasons for such disapproval.

(c) **Deemed Approval.**

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(i) If a party entitled to grant or deny its consent or approval (the **“Consenting Party”**) within the specified time period shall fail to do so, then, except as otherwise provided in **Section 26.2(c)(ii)** and **(iii)**, and provided that the request for consent or approval (and the envelope in which such request is transmitted to the extent permitted by the carrier) bears the legend set forth below in capital letters and in a type size not less than that provided below, the matter for which such consent or approval is requested shall be deemed consented to or approved, as the case may be:

FAILURE TO RESPOND TO THIS REQUEST WITHIN THE TIME PERIOD PROVIDED IN THE LEASE AGREEMENT BETWEEN CITY OF MIAMI BEACH, FLORIDA AND _____ [NAME OF CURRENT TENANT] SHALL CONSTITUTE AUTOMATIC APPROVAL OF THE MATTERS DESCRIBED HEREIN WITH RESPECT TO SECTION _____ [FILL IN APPLICABLE SECTION] OF SUCH LEASE AGREEMENT.

(ii) If the matter to which consent or approval is requested pertains to **Article 10** or **Article 16**, then such matter shall not be deemed consented to or approved unless (i) the Consenting Party fails to timely respond to the other party's (the **“Requesting Party's”**) initial request, which request (and the envelope in which such request is transmitted to the extent permitted by the carrier) shall bear the legend set forth above and (ii) the Requesting Party shall thereafter send a second request to the Consenting Party which request (and the envelope in which such request is transmitted to the extent permitted by the carrier) conspicuously bears the legend set forth above, and Owner shall fail to timely respond to such second request.

(iii) Notwithstanding anything to the contrary contained in this Lease, including, without limitation, **Sections 26.2(c)(i)** and **26.2(c)(ii)** above, if the City or any instrumentality of the City shall be the **“Owner”** hereunder and the matter (other than a matter referred to in **Section 26.2(c)(iv)**) to be consented to or approved requires the consideration of the City Commission and/or the governing body of such instrumentality of the City as applicable (whether pursuant to Requirements or the written opinion of the City Attorney, or the chief legal officer of such other instrumentality of the City) then, provided Owner gives Tenant notice of such requirement within the time period provided for such consent or approval, such matter shall not be deemed approved or consented to unless Owner shall fail to respond to Tenant's request (or second request if the provisions of **Section 26.2(c)(ii)** are applicable) by the date which is fifteen (15) days after the first regular meeting of the City Commission (and/or such other instrumentality's governing body, as applicable) which occurs no earlier than ten (10) days following the receipt of such request (or second request, as applicable); but in any event not later than sixty (60) days following such request (or second request), as applicable.

(iv) Owner hereby agrees, for so long as the City or any other Governmental Authority shall be the **“Owner”** hereunder, that, subject to Requirements, the City Manager or the chief operating officer of such other Governmental Authority, as applicable, shall be authorized to grant consents or approvals on behalf of the City and/or other Governmental Authority as applicable, with respect to the following Sections of this Lease: **Article 7** and

Sections 8.3, 9.3, 10.7 (for execution of instruments), **FOR DISCUSSION – CAN THIS LIST BE EXPANDED?** 14.2, 14.5, 16.1, 20.3, 27.2, 32.2(b) and 32.3.

(v) The foregoing provisions of this **Section 26.2(c)** shall not be construed to modify or otherwise affect a party's right to litigate the failure of a party to act reasonably in granting or denying a request for consent or to timely respond to a request for a consent, but such right to litigate shall not serve to delay the time period within which a grant or denial of such request is required hereunder.

(d) **Remedy for Refusal to Grant Consent or Approval.** If, pursuant to the terms of this Lease, any consent or approval by Owner or Tenant is alleged to have been unreasonably withheld, conditioned or delayed, then any dispute as to whether such consent or approval has been unreasonably withheld, conditioned or delayed shall be settled by litigation. In the event there shall be a final determination that the consent or approval was unreasonably withheld, conditioned or delayed so that the consent or approval should have been granted, the consent or approval shall be deemed granted and the Requesting Party shall be entitled to any and all damages resulting therefrom, subject to the limitations provided in this Lease, Tenant shall also be entitled to seek injunctive relief on an interim basis.

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(e) **No Fees, etc.** Except as specifically provided herein, no fees or charges of any kind or amount shall be required by either party hereto as a condition of the grant of any consent or approval which may be required under this Lease (provided that the foregoing shall not be deemed in any way to limit Owner acting in its governmental, as distinct from its proprietary, capacity from charging governmental fees on a nondiscriminatory basis).

(f) **Governmental Capacity.** Notwithstanding anything to the contrary contained in this **Section 26.2**, the City shall not be required by this Lease to give its consent to any matter arising from or in connection with this Lease when the City is acting in its governmental capacity.

Article 27 - Certificates By Owner and Tenant

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Section 27.1 Certificate of Tenant,

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(a) Tenant shall, within fifteen (15) days after notice by Owner, execute, acknowledge and deliver to Owner, or any other Person specified by Owner, a written statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications) (and, if so requested, that the annexed copy of this Lease is a true, correct and complete copy of this Lease), and (ii) the date to which each item of Rental and/or Impositions payable by Tenant hereunder has been paid, and (b) stating (i) whether Tenant has given 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, by Owner in the performance of any covenant, agreement, obligation or condition contained in this Lease, which default or event has not been cured, and (ii) whether, to the actual knowledge of Tenant (but without independent

inquiry), Owner is in default in performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying in detail each such default.

(b) Tenant shall file with Owner at least annually, a sworn affidavit, signed by an authorized officer of Tenant, to the effect that since the date of the last such affidavit (or in the case of the first such affidavit, since the Commencement Date) (1) no changes have been made to the operating agreement or other organic document under which Tenant is organized (the “**Tenant Document**”), or, if changes shall have been made to the Tenant Document, a statement as to the specific nature of the changes and a notification to Owner that the amended or modified Tenant Document is on file at the office of Tenant located in Miami-Dade County, Florida, and that it is available for inspection by Owner, (2) the full names and addresses of holders of membership interests in Tenant (who hold at least two percent (2%) interest in Tenant) are only those that are listed in such affidavit, and that the Managing Member(s) confirms its continued ownership in Tenant (if Tenant is an entity different than a limited liability company, this provision shall apply to the nature of the appropriate ownership interests for the entity in question), and (3) the obligation of Tenant’s Members to each other related thereto under the operating agreement have not been amended or modified in any way that is materially adverse to Owner, and (4) if the Managing Member of Tenant is a corporation, it remains a Florida corporation in good standing and the annual report of said corporation, required to be filed with the Department of State of the State of Florida pursuant to Chapter 607, Florida Statutes, as amended (the “**Annual Report**”), and any fees required for the filing thereof, are not delinquent; or, if not a Florida corporation, it is a corporation properly authorized to do business in the State of Florida, and a statement to the effect that the Substantial Controlling Interest in said Managing Member or any successor thereto has not changed. A copy of the latest Annual Report of the Managing Member of Tenant shall be attached to the aforesaid certificate.

Section 27.2 Certificate of Owner.

Owner shall, within fifteen (15) days after notice by Tenant, execute, acknowledge and deliver to Tenant, or such other Person specified by Tenant, a written statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications) (and, if so requested, that the annexed copy of this Lease is a true, correct and complete copy of this Lease), and (ii) the date to which each item of Rental and/or Impositions payable by Tenant hereunder has been paid, and (b) stating (i) whether an Event of Default has occurred or whether Owner has given Tenant notice of any event that, with the giving of notice or the passage of time, or both, would constitute an Event of Default, which Default or Event of Default has not been cured, and (ii) whether, to the actual knowledge of Owner (but without independent inquiry), Tenant is in default in the performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying, in detail, each such Default or Event of Default.

Article 28 - Financial Reports and Records

Section 28.1 Books and Records; Audit Rights. Most of this Article can be modified or eliminated if there is not a percentage rent component.

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(a) Tenant shall at all times during the Term of this Lease keep and maintain (separate from any of Tenant's other books, records and accounts), and shall cause the Project Manager to keep and maintain, accurate and complete records pertaining to the Premises related thereto, including, without limitation, books of account reflecting the Project Revenue of the Acceptable Operator and such other matters referenced in this Lease, in accordance with the Accounting Principles with such exceptions as may be provided for in this Lease, and provided that Tenant (and the Acceptable Operator) may make such reasonable modifications in such books of account as are consistent with Acceptable Operator's standard practice in accounting for its operations under management contracts generally. Owner and its representatives shall have, during normal business hours and upon reasonable advance notice, access to inspect the books and records of Tenant and the Acceptable Operator pertaining to the Project Revenue, including, without limitation, books of account properly reflecting the operations of the Premises, which books and records shall be kept at the Premises. Owner shall have the right to cause an audit by Owner's internal auditors (in accordance with the Accounting Principles) of such books and records to be made at any time (but not more frequently than one (1) time in any twelve (12) month period and only with respect to Project Revenue), at Owner's expense (a copy of which shall be delivered to Tenant). Such right of inspection and audit may be exercised at any time within three (3) years after the end of the Lease Year to which such books and records relate, and Tenant and Acceptable Operator shall maintain all such books and records for at least such period of time and, if any Dispute between the parties has arisen and remains unresolved at the expiration of such period of time, for such further period of time until the resolution of such Dispute. Notwithstanding anything to the contrary contained herein, at Tenant's option, the audit described in this **Section 28.1(a)** shall be performed by Owner's external auditors (which shall be a Recognized Accounting Firm), in which case Tenant shall pay the reasonable fees and expenses of said external auditors; and, provided further that in the event that Owner determines to have such audit performed by its external auditors, Owner shall pay the fees and expenses of said external auditors.

(b) If, upon any audit by Owner as described above of the books or records of Tenant or Acceptable Operator, (i) an error (which shall mean a mistake in calculation of Project Revenue, an accounting error, but shall exclude any error based on assertions that Tenant acted imprudently or unwisely in connection with the collection of the Project Revenue) shall be revealed which results in there being due to Owner Percentage Rent for any Lease Year for which Annual Financial Statements are being audited pursuant to **Section 28.1(a)**, the amounts of any such underpayments of Percentage Rent which may be disclosed by such audit, together with interest accrued thereon at the Late Charge Rate from the date on which such underpayment was made until the date of payment of the correct amount, shall be paid to Owner upon thirty (30) days demand or (ii) an error (as defined in clause (i) above) shall be revealed which resulted in an overpayment by Tenant to Owner of Percentage Rent, Owner shall remit the amount of such overpayment (less the cost of such audit) to Tenant within thirty (30) days after the completion of such audit. If Owner does not notify Tenant of any error in the calculation of Percentage Rent within three (3) years after the end of any Lease Year, then Owner shall be deemed to have conclusively waived any and all objections with respect to any Percentage Rent payments with respect to such Lease Year.

(c) As soon as available, but in no event later than the date which is one hundred fifty (150) days after the end of each Lease Year, Tenant shall make available at the Premises for inspection and examination (or photocopying) by Owner or its representatives a copy of the annual financial statements (the “**Annual Financial Statements**”) for such Lease Year (which statements shall be audited by any Recognized Accounting Firm) accurately reflecting receipt of Project Revenue prepared and certified by Tenant and such independent certified public accountant in accordance with the Accounting Principles.

(d) As soon as available, but in no event later than thirty (30) days after the end of each month, Tenant shall make available at the Project for inspection and examination (or photocopying) by Owner or its representatives an unaudited statement of Project Revenue for both the current month and Lease Year to date.

(e) As soon as available, but in no event later than thirty (30) days prior to the commencement of each Lease Year, Tenant shall make available at the Project for inspection and examination (or photocopying) by Owner or its representatives an informational copy of a projected income and expense statement reflecting the budget for the Project for such coming Lease Year (the “**Budget**”).

(f) Notwithstanding any of the foregoing provisions of this **Article 28**, so long as Owner is the City or any instrumentality of the City, the following provisions shall be applicable to the books and records of the Project, the Annual Financial Statements, the Budget and any other documents (collectively, the “**Project Documents**”) required to be delivered or made available to Owner under this **Article 28**:

(i) All Project Documents shall be maintained at the Premises.

(ii) All Project Documents shall be made available to Owner and its representatives as provided above.

(iii) If a copy of any Project Document is made by Owner or any of its representatives and delivered to Owner’s offices, there shall be attached to the front of the first page of such Project Document a sheet of paper bearing the legend set forth below in capital letters and in a type size not less than that provided below:

THE ATTACHED DOCUMENT CONTAINS BUSINESS OR FINANCIAL INFORMATION. THE ATTACHED DOCUMENT IS TO BE KEPT SOLELY IN THE OFFICE OF THE CITY ATTORNEY OF THE CITY OF MIAMI BEACH, FLORIDA. THE ATTACHED DOCUMENT IS TO BE REVIEWED ONLY IN SUCH OFFICE AND SHALL BE RELEASED SOLELY IN ACCORDANCE WITH APPLICABLE LAW.

(g) Any third party representatives (including, without limitation, any Recognized Accounting Firm) of Owner that review any Project Documents shall execute a confidentiality agreement mutually acceptable to Owner and Tenant. If a copy of any Project Document is made by any such representative for use in the offices of such representative, there

shall be attached to the front of the first page of such Project Document a sheet of paper bearing the legend set forth below in capital letters and in a type size not less than that provided below:

THE ATTACHED DOCUMENT CONTAINS BUSINESS OR FINANCIAL INFORMATION. THE ATTACHED DOCUMENT IS SUBJECT TO A CONFIDENTIALITY AGREEMENT AND SHALL BE KEPT SOLELY IN THE OFFICES OF [INSERT NAME OF REPRESENTATIVE]. THE ATTACHED DOCUMENT IS TO BE REVIEWED ONLY IN SUCH OFFICES AND SHALL BE RELEASED SOLELY IN ACCORDANCE WITH SUCH CONFIDENTIALITY AGREEMENT AND APPLICABLE LAW.

(h) Promptly following receipt of a request under any Requirement for the release of a copy of any Project Document, Owner shall send notify Tenant of such request, but neither Owner nor any Owner Indemnified Party shall incur any liability to Tenant if Owner fails to provide any such notice.

(i) Neither Owner nor any Owner Indemnified Party shall incur any liability to Tenant in the event any Project Document is stolen, misplaced or otherwise released in violation of the foregoing provisions of this **Section 28.1**.

(j) The obligations of Tenant and Owner under this **Article 28** shall survive the Expiration of the Term.

(k) Any third party representatives (including, without limitation, any Recognized Accounting Firm) of Owner that review any Project Documents shall execute a confidentiality agreement mutually acceptable to Owner and Tenant. If an extract of any Project Document is made by any such representative for use in the offices of such representative, there shall be attached by Owner or its representative to the front of the first page of such Project Document a sheet of paper bearing the legend set forth below in capital letters and in a type size not less than that provided below:

THE ATTACHED DOCUMENT CONTAINS BUSINESS OR FINANCIAL INFORMATION THAT HAS BEEN DESIGNATED AS CONFIDENTIAL BY _____[INSERT NAME OF TENANT]. THE ATTACHED DOCUMENT IS SUBJECT TO A CONFIDENTIALITY AGREEMENT AND SHALL BE KEPT SOLELY IN THE OFFICES OF _____[INSERT NAME OF REPRESENTATIVE]. THE ATTACHED DOCUMENT IS TO BE REVIEWED ONLY IN SUCH OFFICES AND SHALL BE RELEASED SOLELY IN ACCORDANCE WITH SUCH CONFIDENTIALITY AGREEMENT AND APPLICABLE LAW.

Article 29 - Surrender at End of Term

Section 29.1 Surrender of Premises.

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Upon the Expiration of the Term (or upon a re-entry by Owner upon the Premises pursuant to **Article 25**), Tenant, without any payment or allowance whatsoever by Owner, shall surrender the Premises to Owner in good order, condition and repair, reasonable wear and tear excepted and (subject to the provisions of **Article 8**) damage from casualty excepted, free and clear of all Master Subleases, liens and encumbrance other than as set forth below and the Title Matters. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on the Expiration of the Term.

Section 29.2 Delivery of Subleases, Etc.,

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Upon the Expiration of the Term (or upon a re-entry by Owner upon the Premises pursuant to **Article 25**), Tenant shall deliver to Owner the following (to the extent then in Tenant's possession or control): Tenant's original executed counterparts, if available (and if not available, true and correct copies thereof), of all subleases then in effect, any service and maintenance contracts then affecting the Premises, true and complete maintenance records for the Premises, all original licenses and permits then pertaining to the Premises, permanent or temporary certificates of occupancy then in effect for the Premises, and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Building Equipment installed in the Premises (such to be delivered without representation or warranty by Tenant), together with a duly executed assignment thereof (without recourse) to Owner in form suitable for recording, and all financial reports required by **Article 28** and any and all other documents of every kind and nature whatsoever relating to the operation of the Premises and the condition of the Improvements.

Section 29.3 Title to Improvements,

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Owner recognizes and agrees that until Expiration of the Term, ownership of and title to the Improvements shall be in Tenant and that until such time, Tenant has, and shall be entitled to, all rights and privileges of ownership of such Improvements. Ownership of and to all Improvements shall automatically vest in Owner upon the Expiration of the Term, without the payment of consideration therefor, and without the necessity for the execution and delivery by Tenant of any instrument transferring title. Notwithstanding the foregoing, Tenant covenants and agrees that upon the Expiration of the Term, Tenant shall, upon Owner's request, execute and deliver to Owner any instrument or document reasonably requested by Owner to confirm title to said Improvements in Owner.

Section 29.4 Title to Reserve Account,

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Ownership of and to the Reserve Account and all proceeds thereof shall automatically vest in Owner (subject to the lien therein of the Recognized Mortgagee) upon the Expiration of the Term, without the payment of consideration therefor, and without the necessity for the execution and delivery by Tenant of any instrument transferring title thereto. Notwithstanding the foregoing, Tenant covenants and agrees that upon the Expiration of the Term, Tenant shall, upon Owner's request, execute and deliver to Owner any instrument or document reasonably requested by Owner to confirm title to said Reserve Account and proceeds thereof in Owner.

Section 29.5 Cash and Accounts Receivable.

Tenant shall retain the right to all cash and accounts receivable on or in connection with the Premises existing as of the Expiration of the Term and Owner shall pay Tenant for all unopened consumable supplies located at the Premises upon the Expiration of the Term (based on Tenant's actual cost therefor); provided, however that Tenant shall turn over to Owner all deposits, accounts receivables and other payments for periods after the Expiration of the Term. If, after the Expiration of the Term, Owner collects any accounts receivable to which Tenant is entitled, Owner shall promptly remit such amounts to Tenant, subject to the rights of any Recognized Mortgagee.

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Section 29.6 Personal Property.

Any personal property of Tenant or of any Master Subtenant which remains on the Premises after the termination of this Lease or after the removal of Tenant or such Master Subtenant from the Premises, may, at the option of Owner, be deemed to have been abandoned by Tenant or such Master Subtenant, and either may be retained by Owner as its property or be disposed of, without accountability, in such manner as Owner may see fit, in its absolute and sole discretion, but in compliance with applicable Requirements. Owner shall not be responsible for any loss or damage occurring to any such property owned by Tenant or any Master Subtenant.

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Section 29.7 Survival Clause.

The provisions of this **Article 29** shall survive the Expiration of the Term.

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Article 30 - Quiet Enjoyment.

Section 30.1 Quiet Enjoyment.

Owner covenants that, as long as this Lease is in full force and effect without an Event of Default existing hereunder, Tenant shall and may (subject to the exceptions, reservations, terms and conditions of this Lease) peaceably and quietly have, hold and enjoy Tenant's Interest in the Premises for the Term without molestation or disturbance by or from Owner (solely in its proprietary capacity) or any Person claiming by, under or through Owner (solely in its proprietary capacity).

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Article 31 - Reserved.

Article 32 - Administrative and Judicial Proceedings, Contests, Etc.

Section 32.1 Tax Contest Proceedings.

Tenant shall have the right (subject to the provisions of **Section 32.2**), at its sole cost and expense, to seek reductions in the valuation of the Premises assessed for real property tax

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purposes and to prosecute any action or proceeding in connection therewith by appropriate proceedings diligently conducted in good faith and in accordance with applicable Requirements.

Section 32.2 Imposition Contest Proceedings.

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Tenant shall have the right to contest, at its sole cost and expense, the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event payment of such Imposition may be postponed, subject to Requirements, if, and only as long as:

(a) Neither the Premises nor any part thereof would, by reason of such postponement or deferment, be, in the reasonable judgment of Owner, in danger of being forfeited to a Governmental Authority and Owner is not in danger of being subjected to criminal liability or penalty or civil liability or penalty in excess of the amount for which Tenant has furnished security as provided in **Section 32.2(b)** by reason of nonpayment thereof; and

(b) Tenant has deposited with a Recognized Mortgagee, if any (or if not, with a third party escrow agent proposed by Tenant, subject to Owner's consent, not to be unreasonably withheld (failure to respond within fifteen (15) days after notice being conclusively deemed approval)), cash in the amount so contested and unpaid or, alternatively, at Tenant's option, a surety company bond or an irrevocable letter of credit issued by an Institutional Lender (in form reasonably satisfactory to Owner) or other security (for example, a personal guaranty) reasonably satisfactory to Owner, in the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges relating to such contested Imposition that may or might, in Owner's reasonable judgment, be assessed against, or become a charge on, the Premises or any part thereof in or during the pendency of such proceedings; provided, however, any amount deposited with any governmental entity, the making of which deposit is required by law in order for Tenant to contest such matters, shall be considered part of the amount so required of Tenant by Owner (the intent being that Tenant shall not be required to make duplicitous deposits under this **Section 32.2(b)**). Upon the termination of such proceedings, Tenant shall pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which was deferred during the prosecution of such proceedings, together with any costs, fees (including, without limitation, reasonable attorneys' fees and disbursements), interest, penalties or other liabilities in connection therewith, and, upon such payment, any Recognized Mortgagee or escrow agent holding any amount or other security deposited with it with respect to such Imposition shall (subject to the terms of any agreement between Tenant and any Recognized Mortgagee or escrow agent) return the same, together with the interest, if any, earned thereon. However, if such Recognized Mortgagee or escrow agent is so requested by Tenant, such Recognized Mortgagee or escrow agent shall disburse said moneys on deposit with it directly to the Person to whom or to which such Imposition is payable. If at any time during the continuance of such proceedings Owner, in its reasonable judgment, deems insufficient the amount or nature of the security deposited, Tenant, within ten (10) days after Owner's demand, shall make an additional deposit of such additional sums or other acceptable security as Owner may request, and upon failure of Tenant to so do, the amount theretofore deposited, together with the interest, if any, earned thereon, shall, upon demand by Owner, be applied by such Recognized Mortgagee or escrow agent to the payment,

removal and discharge of such Imposition and the interest and penalties in connection therewith and any costs, fees (including, without limitation, reasonable attorneys' fees and disbursements) or other liability accruing in any such proceedings and the balance, if any, remaining thereafter, together with the interest, if any, earned thereon and remaining after application by Owner as aforesaid, shall be returned to Tenant or to the Person entitled to receive it. If there is a deficiency, Tenant shall pay the deficiency to Owner or the Person entitled to receive it, within ten (10) days after Owner's demand.

Section 32.3 Requirement Contest.

Tenant shall have the right to contest the validity of any Requirement or the application thereof. During such contest, compliance with any such contested Requirement may be deferred by Tenant provided that before instituting any such proceeding, Tenant shall furnish such Recognized Mortgagee, if any (or if not, with a third party escrow agent proposed by Tenant, subject to Owner's consent, not to be unreasonably withheld (failure to respond within fifteen (15) days after notice being conclusively deemed approval)), with a surety company bond or, alternatively at Tenant's option, a cash deposit, an irrevocable letter of credit issued by an Institutional Lender or other security (e.g., a personal guaranty), in form and amount reasonably satisfactory to Owner, securing compliance with the contested Requirement and payment of all interest, penalties, fines, civil liabilities, fees and expenses in connection therewith; provided, however, any amount deposited with any governmental entity, the making of which deposit is required by law in order for Tenant to contest such matters, shall be considered part of the amount so required of Tenant by Owner (the intent being that Tenant shall not be required to make duplicitious deposits under this **Section 32.3**). Any such proceeding instituted by Tenant shall be commenced as soon as possible after the issuance of any such contested Requirement and shall be prosecuted with diligence to final adjudication, settlement, compliance or other mutually acceptable disposition of the Requirement so contested. The furnishing of any bond, deposit, letter of credit or other security notwithstanding, Tenant shall comply with any such Requirement in accordance with the provisions of **Section 15.1** if, in Owner's reasonable judgment, (i) noncompliance therewith would create an emergency condition involving the health or safety of persons, (ii) the Premises, or any part thereof, are in material danger of being forfeited to an authority (other than Owner when the Agency or the City or an instrumentality thereof is Owner) or (iii) Owner is in danger of being subjected to criminal liability or penalty, or civil liability in excess of the amount for which Tenant shall have furnished security as hereinabove provided by reason of noncompliance therewith, and any security posted by Tenant shall (subject to the terms of any agreement between Tenant and any Recognized Mortgagee or escrow agent) be returned to Tenant with any interest accrued thereon.

Section 32.4 Owner's Participation in Contest Proceedings.

Owner shall not be required to join in any action or proceeding referred to in this **Article 32.4** unless the provisions of any law, rule or regulation at the time in effect require that such action or proceeding be brought by and/or in the name of Owner. If so required, Owner shall join and cooperate in such proceedings or permit them to be brought by Tenant in Owner's name, in which case Tenant shall pay all reasonable costs and expenses (including, without limitation, attorneys' fees and disbursements) incurred by Owner in connection therewith. Notwithstanding

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the foregoing, Owner's joinder and cooperation shall be limited to actions necessary to enable Tenant to satisfy technical requirements of any such action or proceeding and in no event shall Owner be required to join in any such action or proceeding in any substantive capacity.

Section 32.5 Nonapplicability of this Article 32.

None of the rights granted to Tenant in this **Article 32** shall apply to any matters covered by **Section 3.2(f)**. The provisions of **Section 3.2(f)** shall govern and control over the provisions of this **Article 32** when in conflict.

Article 33 - Nondiscrimination

Section 33.1 Nondiscrimination.

Tenant shall be an equal opportunity employer, and shall not engage in any unlawful discrimination against any Person on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

Article 34 - Indictment, Investigations, Etc.

Section 34.1 Cooperation in Investigations.

To the extent required by Requirements, Tenant shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by any Governmental Authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by a Governmental Authority that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry. In addition, Tenant shall promptly report in writing to the City Attorney of the City of Miami Beach, Florida any solicitation, of which Tenant's officers or directors have knowledge, of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other Person relating to the procurement or obtaining of this Lease by Tenant or affecting the performance of this Lease.

Article 35 - Environmental Matters

Section 35.1 Definitions.

For the purposes of this Lease, the following terms shall have the following definitions:

(a) **“Hazardous Materials”** shall mean (i) petroleum and its constituents; (ii) radon gas, asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of federal, state or local safety guidelines, whichever are more stringent; (iii) any substance, gas, material or chemical which is or may hereafter be defined as or included in the definition of **“hazardous substances,” “hazardous materials,”**

“hazardous wastes,” “pollutants or contaminants,” “solid wastes” or words of similar import under any Requirement including the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9061 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; and Florida Statutes, Chapters 376 and 403; and (iv) any other chemical, material, gas or substance, the exposure to or release of which is regulated by any governmental or quasi-governmental entity having jurisdiction over the Premises or the operations thereon;

(b) **“Environmental Laws”** shall mean all Requirements relating to the protection of human health or the Environment, including:

(i) all Requirements relating to reporting, licensing, permitting, investigation and remediation of Releases or Threat of Release into the Environment, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials; and

(ii) all Requirements pertaining to the protection of the health and safety of employees or the public;

(c) **“Environment”** shall mean soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata and ambient air;

(d) **“Environmental Condition”** shall mean any condition with respect to the Premises, whether or not yet discovered, which could or does result in any Environmental Damages, including any condition resulting from the operation of Tenant's business or the operation of the business of any subtenant or occupant of the Premises or that of any other property owner or operator in the vicinity of the Premises or any activity or operation formerly conducted by any Person on or off the Premises;

(e) **“Environmental Damages”** shall mean all claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, any of which are incurred at any time as a result of the assessment, monitoring, remediation or mitigation of an Environmental Condition (and shall include any damages for the failure to do so), including, without limitation, fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with investigation and remediation, including the preparation of any feasibility studies or reports and the performance of any remedial, abatement, containment, closure, restoration or monitoring work;

(f) **“Permit”** shall mean any environmental permit, license, approval, consent or authorization issued by a federal, state or local governmental or quasi-governmental entity;

(g) **“Release”** shall mean any releasing, seeping, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of a Hazardous Material into the Environment; and

(h) **“Threat of Release”** shall mean a substantial likelihood of a Release which requires action to prevent or mitigate damage to the Environment which may result from such Release.

Section 35.2 Representations and Warranties of Tenant.

Tenant represents and warrants that it has made such physical inspection of the Land, and has inspected such records of the City, Miami-Dade County, Florida, the State of Florida, and the United States of America, as Tenant deemed necessary to make an informed business decision that it would enter into this Lease with the knowledge that Tenant shall be solely responsible for the remediation and abatement of any Environmental Condition existing as of the Commencement Date, including any Environmental Condition caused by Owner or any prior owner of the Land, that must be remediated and/or abated pursuant to any Environmental Laws. Tenant agrees to expeditiously undertake such assessment, remediation, and monitoring of the soil and ground water as required under applicable Environmental Laws; and to take such action as necessary to obtain a No Further Action determination from DERM or DEP, if required under Environmental Laws as soon as may be practical after the Possession Date, and, in any event, prior to the commencement of construction of the Project. Tenant agrees that in connection with any remediation or abatement pursuant to this **Section 35.2** it will provide to Owner all correspondence, reports, studies and other documents exchanged between Owner, its consultants, and DERM or DEP promptly after those documents are provided to or received from DERM or DEP.

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Section 35.3 Use of Hazardous Materials.

Tenant shall not cause or permit any Hazardous Material to be brought on, kept or used in or about the Premises except as necessary or useful to Tenant's business and in compliance with all Environmental Laws.

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Section 35.4 Tenant Indemnification of Owner.

For Discussion – We suggest that Landlord agree to be responsible for pre-existing environmental conditions, perhaps with a dollar cap on exposure. Tenant hereby indemnifies and holds harmless the Owner Indemnified Parties from and against any and all Environmental Damages to the Premises during the term of this Lease except for Environmental Damages to the Premises caused by any of the Owner Indemnified Parties during the Term. Such obligation of Tenant shall include the burden and expense of defending all claims, suits and administrative proceedings (with counsel reasonably satisfactory to Owner), even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against any of the Owner Indemnified Parties. Without limiting the foregoing, if the presence or Release on or from the Premises caused or permitted by

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Tenant results in contamination of the Premises, Tenant shall promptly take all actions at its sole cost and expense as are necessary to remediate the Premises in compliance with Environmental Laws in effect from time to time and to comply with any requirements imposed by any Governmental Authorities; provided that Owner's approval of such actions shall first be obtained.

Section 35.5 Compliance.

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Tenant, at its sole cost and expense (except as otherwise provided in this Lease), shall comply and cause the Acceptable Operator, all Master Subtenants and all subtenants to comply with all Environmental Laws with respect to the use and operation of the Premises.

Section 35.6 Notices.

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If Tenant or Owner receives any notice of a Release, Threat of Release or Environmental Condition or a notice with regard to air emissions, water discharges, noise emissions, recycling, violation of any Environmental Law or any other environmental, health or safety matter affecting Tenant or the Premises (an “**Environmental Complaint**”) independently or by notice from any Governmental Authority having jurisdiction over the Premises, including the EPA, or with respect to any litigation regarding Environmental Conditions at or about the Premises, then such party shall give prompt oral and written notice of same to the other party detailing all relevant facts and circumstances.

Section 35.7 Owner's Remedies.

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Provided Tenant does not diligently commence to remediate the applicable Environmental Conditions promptly after becoming aware of the same and thereafter diligently pursue the completion thereof in a reasonable time (and in any event in accordance with Requirements), Owner shall have the right, but not the obligation, to enter onto the Premises and remediate the Premises in compliance with Environmental Laws in effect from time to time and to comply with any requirements imposed by any Governmental Authorities, at Tenant's sole cost and expense, upon its obtaining knowledge of such matters independently or by receipt of any notice from any Person, including the EPA.

Section 35.8 Defaults.

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From and after the Possession Date, the occurrence of any of the following events shall constitute an Event of Default under this Lease:

(a) if the EPA or any other federal, state or local body or agency creates a lien upon the Premises which is not discharged by payment or bonding within ninety (90) days except in the event said lien is the result of Environmental Damages caused by any of the Owner Indemnified Parties during the Term; or

(b) if the EPA or any other federal, state or local body or agency makes a claim (which shall mean, for the purposes of this **Section 35.8**, issuance of a warning notice, citation, notice of violation or administrative complaint) against Tenant (or any subtenant,

licensee or other occupant of the Premises), the Premises or Owner, for damages or cleanup costs related to a Release or an Environmental Complaint on or pertaining to the Premises; provided however, such claim shall not constitute an Event of Default if, within thirty (30) days of the lien or claim:

(i) Tenant has commenced and is diligently pursuing either: (x) cure or correction of the event which constitutes the basis for the lien or claim and continues diligently to pursue the cure or correction to the satisfaction of the Governmental Authority that asserted the lien or claim and obtains the discharge of any lien, or (y) proceedings for an injunction, restraining order, administrative or other appropriate emergency relief contesting the validity of the claim and, if such relief is granted, the emergency relief is not thereafter dissolved or reversed on appeal; and

(ii) Tenant has posted a bond, letter of credit or other security satisfactory in form and substance to Owner to secure the proper and complete cure or correction of the event which constitutes the basis of the claim. The amount of the bond, letter of credit or other security shall be determined in the following manner: (A) Owner, Tenant and their respective consultants shall use their best efforts to agree upon the most probable cost to cure or correct the event which constitutes the basis of the claim; (B) in the event Owner and Tenant are unable to agree despite their best efforts, Owner's consultant and Tenant's consultant shall select a third consultant who shall provide an estimate of the most probable cost of curing or correcting the event which constitutes the basis of the claim. Owner and Tenant shall each pay the cost of their own consultant under this **35.8(b)(ii)** and shall share evenly the cost of the third consultant should use of a third consultant become necessary.

Section 35.9 Owner Responsibility.

Owner (in its proprietary capacity) is responsible for all Environmental Damages resulting from an Environmental Condition caused by any of the Owner Indemnified Parties during the Term, and is also responsible for all Environmental Conditions which exist as of the effective date of this Lease [see comment above].

Section 35.10 Survival.

The provisions of this **Article 35** shall survive the Expiration of the Term.

Article 36 - Reciprocal Rights of First Refusal.

Section 36.1 Tenant's Reciprocal Right of First Offer.

(a) If, during the Term, Owner shall desire to sell, convey or otherwise transfer, directly or indirectly, all of such Owner's estate in and to the Premises (a **"Right of First Offer Transaction"**), such Owner shall first deliver to Tenant a Notice (an **"Offer Notice"**) thereof setting forth the material terms of such proposed Right of First Offer Transaction. For a period of forty-five (45) days after Tenant's receipt of the Offer Notice, Tenant shall have the right to elect in writing to consummate the Right of First Offer Transaction

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described therein at the price and upon such other material terms set forth in the Offer Notice. As used in this **Section 36.1**, the material terms of a Right of First Offer Transaction shall be the terms set forth in **Exhibit 36.1(a)** attached hereto and incorporated by reference herein.

(b) If Tenant does not consummate a Right of First Offer Transaction pursuant to this **Section 36.1**, Owner shall have the right to consummate the proposed transaction with any other Person upon such terms and conditions as shall be no less favorable to Owner than those which are set forth in the Offer Notice, within one hundred eighty (180) days following the earlier of (i) the expiration of such forty-five (45) day period or (ii) the receipt by Owner of a notice from Tenant stating that Tenant does not elect to consummate such Right of First Offer Transaction. If Owner shall fail to consummate the Right of First Offer Transaction as set forth in such Offer Notice within such one hundred eighty (180) day period (subject to extensions not to exceed, in the aggregate, sixty (60) days), the provisions of this **Section 36.1** shall be applicable to any future Right of First Offer Transaction. Notwithstanding anything to the contrary contained herein, Owner may, in good faith, negotiate with any other Person the terms and conditions of a Right of First Offer Transaction that Tenant has elected not to consummate; provided, however, that if the material terms of such Right of First Offer Transaction are modified so that such terms, when so modified, are less favorable to Owner, then such transaction shall be deemed a new Right of First Offer Transaction and the provisions of this **Section 36.1** (including, without limitation, **Section 36.1(a)**), shall be applicable with respect to such Right of First Offer Transaction; provided, further, however, that such Owner may modify the material terms of any such Right of First Offer Transaction and provide notice thereof to Tenant as provided herein, only once. Owner shall give twenty (20) days= notice to Tenant of the terms of any Right of First Offer Transaction as so modified prior to consummating the same, so that Tenant may determine whether such modifications are sufficiently material that Tenant now desires to consummate such Right of First Offer Transaction. If Tenant does not elect to consummate a Right of First Offer Transaction pursuant to this **Section 36.1**, Owner shall provide Tenant with a true, complete and correct copy of the executed purchase agreement for such Right of First Offer Transaction not less than ten (10) days prior to the closing of such Right of First Offer Transaction.

(c) Owner and Tenant shall diligently undertake to consummate any Right of First Offer Transaction involving Tenant under this **Section 36.1** as soon as practicable after Tenant's election as hereinabove described. If Tenant defaults in its obligation to close the Right of First Offer Transaction in accordance with the terms thereof (subject to reasonable extensions not to exceed, in the aggregate, sixty (60) days), the foregoing right of first offer shall be null and void with respect to any future Right of First Offer Transaction.

(d) In addition, Owner may not sell such interest in the Premises together with any other interests or other assets. Any sale of the Premises together with any other interests or other assets, shall be null and void and of no effect.

(e) If Tenant does not exercise its right of first offer and Owner consummates its Right of First Offer Transaction, the purchaser shall be deemed to have acquired the Premises subject to the provisions of this Lease and the purchaser shall be deemed to have assumed the obligations of Owner hereunder accruing from and after the effective date of such

consummation, and Owner shall deliver to Tenant, or shall cause to be delivered to Tenant, within ten (10) business days after the execution thereof, a true, complete and correct copy of an executed instrument of transfer and a true, complete and correct copy of an instrument of assumption by the transferee of Owner's obligations under this Lease accruing from and after the date of such transfer.

(f) If an owner does not comply with the terms of this **Section 36.1**, any Right of First Offer Transaction entered into by such owner shall have no validity and shall be null and void and without effect.

(g) Notwithstanding the foregoing provisions of this **Section 36.1**, Owner may not institute the procedures set forth herein for a Right of First Offer Transaction more than once in any fiscal year, except with respect to any modifications of the Right of First Offer Transaction as provided in **Section 36.1(b)**.

Section 36.2 Owner's Reciprocal Right of First Refusal.

(a) [For Discussion – we don't believe that a landlord right of first refusal is feasible under most low-income or workforce housing financing structures and regulatory framework.] If, during the Term, Tenant shall desire to sell, convey or otherwise transfer, directly or indirectly, all of such Tenant's estate in and to the Premises (a "**Right of First Offer Transaction**"), such Tenant shall first deliver to Owner a Notice (an "**Offer Notice**") thereof setting forth the material terms of such proposed Right of First Offer Transaction. For a period of forty-five (45) days after Owner's receipt of the Offer Notice, Owner shall have the right to elect in writing to consummate the Right of First Offer Transaction described therein at the price and upon such other material terms set forth in the Offer Notice. As used in this **Section 36.2**, the material terms of a Right of First Offer Transaction shall be the terms set forth in **Exhibit 36.2(a)** attached hereto and incorporated by reference herein.

(b) If Owner does not consummate a Right of First Offer Transaction pursuant to this **Section 36.2**, Tenant shall have the right to consummate the proposed transaction with any other Person upon such terms and conditions as shall be no less favorable to Tenant than those which are set forth in the Offer Notice, within one hundred eighty (180) days following the earlier of (i) the expiration of such forty-five (45) day period or (ii) the receipt by Tenant of a notice from Owner stating that Owner does not elect to consummate such Right of First Offer Transaction. If Tenant shall fail to consummate the Right of First Offer Transaction as set forth in such Offer Notice within such one hundred eighty (180) day period (subject to extensions not to exceed, in the aggregate, sixty (60) days), the provisions of this **Section 36.2** shall be applicable to any future Right of First Offer Transaction. Notwithstanding anything to the contrary contained herein, Tenant may, in good faith, negotiate with any other Person the terms and conditions of a Right of First Offer Transaction that Owner has elected not to consummate; provided, however, that if the material terms of such Right of First Offer Transaction are modified so that such terms, when so modified, are less favorable to Tenant, then such transaction shall be deemed a new Right of First Offer Transaction and the provisions of this **Section 36.2** (including, without limitation, **Section 36.2(a)**), shall be applicable with respect to such Right of First Offer Transaction; provided, further, however, that such Tenant may modify

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the material terms of any such Right of First Offer Transaction, and provide notice thereof to Owner as provided herein, only once. Tenant shall give twenty (20) days= notice to Owner of the terms of any Right of First Offer Transaction as so modified prior to consummating the same, so that Owner may determine whether such modifications are sufficiently material that Owner now desires to consummate such Right of First Offer Transaction. If Owner does not elect to consummate a Right of First Offer Transaction pursuant to **Section 36.2**, Tenant shall provide Owner with a true, complete and correct copy of the executed purchase agreement for such Right of First Offer Transaction not less than ten (10) days prior to the closing of such Right of First Offer Transaction.

(c) Tenant and Owner shall diligently undertake to consummate any Right of First Offer Transaction involving Owner under this **Section 36.2** as soon as practicable after Owner's election as hereinabove described. If Owner defaults in its obligation to close the Right of First Offer Transaction in accordance with the terms thereof (subject to reasonable extensions not to exceed, in the aggregate, sixty (60) days), the foregoing right of first offer shall be null and void with respect to any future Right of First Offer Transaction.

(d) In addition, Tenant may not sell such interest in the Premises together with any other interests or other assets. Any sale of the Premises together with any other interests or other assets, shall be null and void and of no effect.

(e) If Owner does not exercise its right of first offer and Tenant consummates its Right of First Offer Transaction, the purchaser shall be deemed to have acquired the Premises subject to the provisions of this Lease and the purchaser shall be deemed to have assumed the obligations of Tenant hereunder accruing from and after the effective date of such consummation, and Tenant shall deliver to Owner, or shall cause to be delivered to Owner, within ten (10) business days after the execution thereof, a true, complete and correct copy of an executed instrument of transfer and a true, complete and correct copy of an instrument of assumption by the transferee of Tenant's obligations under this Lease accruing from and after the date of such transfer.

(f) If a tenant does not comply with the terms of this **Section 36.2**, any Right of First Offer Transaction entered into by such tenant shall have no validity and shall be null and void and without effect.

(g) Notwithstanding the foregoing provisions of this **Section 36.2**, Tenant may not institute the procedures set forth herein for a Right of First Offer Transaction more than once in any fiscal year, except with respect to any modifications of the Right of First Offer Transaction as provided in **Section 36.2(b)**.

Section 36.3 Assignment.

The rights of Tenant pursuant to **Sections 36.1 and 36.2** above shall not be severed from Tenant's Interest in the Premises and shall be assigned, transferred or otherwise conveyed to the transferee only upon a Sale of the Project or a Foreclosure Transfer.

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Section 36.4 No Merger.

Notwithstanding anything set forth to the contrary in Sections 36.1 through 36.3, under no circumstances shall the fee estate of Owner and the leasehold estate created hereby merge, even though owned by the same party, without the prior written consent of the holder of a Recognized Mortgage.

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Article 37 - Miscellaneous

Section 37.1 Governing Law.

This Lease shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Lease shall be Miami-Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court.

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Section 37.2 References and Interpretation of Lease.

(a) **Captions.** The captions of this Lease are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease. All captions, when referring to Articles or Sections, refer to Articles or Sections in this Lease, unless specified otherwise.

(b) **Table of Contents.** The Table of Contents is for the purpose of convenience of reference only, and is not to be deemed or construed in any way as part of this Lease.

(c) **Reference to Owner and Tenant.** The use herein of the neuter pronoun in any reference to Owner or Tenant shall be deemed to include any individual Owner or Tenant, and the use herein of the words “successors and assigns” or “successors or assigns” of Owner or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual Owner or Tenant.

(d) **City's Governmental Capacity.** Nothing in this Lease or in the parties' acts or omissions in connection herewith shall be deemed in any manner to waive, impair, limit or otherwise affect the authority of the City in the discharge of its police or governmental power.

(e) **Reference to “herein,” “hereunder,” etc.** All references in this Lease to the terms “herein,” “hereunder” and words of similar import shall refer to this Lease, as distinguished from the paragraph, Section or Article within which such term is located.

(f) **Reference to “Approval” or “Consent,” etc.** All references in this Lease to the terms “approval,” “consent” and words of similar import shall mean reasonable written approval or reasonable written consent except where specifically provided otherwise.

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(g) **Singular and Plural, Gender, Etc.** Words importing singular number shall include the plural number in each case and vice versa, and words importing “persons” shall include firms, associations, corporations, and other entities, including governments and governmental bodies, as well as natural persons, unless the context shall otherwise indicate. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and vice versa, as the context may require.

Section 37.3 Entire Agreement.

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This Lease, together with the attachments hereto, contains all of the promises, agreements, conditions, inducements and understandings between Owner and Tenant concerning the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as expressly set forth herein and in such attachments hereto or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the parties hereto. Notwithstanding anything to the contrary set forth in this Lease, the terms of this Lease shall supersede the terms of the RFP and Tenant’s response thereto.

Section 37.4 Counterparts.

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This Lease may be executed in counterparts, each of which shall be deemed an original but all of which together shall represent one instrument.

Section 37.5 Waiver, Modification, Etc.

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No covenant, agreement, term or condition of this Lease shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by Owner and Tenant. No waiver of any Default or default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default or default thereof.

Section 37.6 Effect of Other Transactions.

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No Master Sublease, Mortgage or other agreement of any kind, whether executed simultaneously with this Lease or otherwise, and whether or not consented to by Owner, shall be deemed to modify this Lease in any respect, and in the event of an inconsistency or conflict between this Lease and any such instrument, this Lease shall control, except where specifically stated otherwise herein.

Section 37.7 Severability.

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If any provision of this Lease or the application thereof to any Person or circumstances is, to any extent, finally determined by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Lease, and the application of such provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be

affected thereby and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 37.8 Merger.

Unless Owner, Tenant, any master subtenant and all Mortgagees execute and record an agreement to the contrary, there shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease and the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises.

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Section 37.9 Remedies Cumulative.

Each right and remedy of either party provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Lease), and the exercise or beginning of the exercise by a party of any one or more of the rights or remedies provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise, except as otherwise expressly limited by the terms of this Lease, shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise except as otherwise expressly limited by the terms of this Lease.

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Section 37.10 Performance at Each Party's Sole Cost and Expense.

Unless otherwise expressly provided in this Lease, when either party exercises any of its rights, or renders or performs any of its obligations hereunder, such party shall do so at its sole cost and expense.

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Section 37.11 Recognized Mortgagee Charges and Fees.

Tenant shall pay any and all fees, charges and expenses owing to a Recognized Mortgagee in connection with any services rendered by it as a depository pursuant to the provisions of this Lease.

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Section 37.12 Successors and Assigns.

The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, Owner and Tenant and, except as otherwise provided herein, their respective permitted successors and permitted assigns and shall be construed as covenants running with the Land.

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Section 37.13 Recording of Lease.

Tenant shall cause this Lease (or a memorandum of lease) and any amendments hereto to be recorded in the Public Records of Miami-Dade County, Florida promptly after the execution

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and delivery of this Lease or any such amendments and shall pay and discharge all costs, fees and taxes in connection therewith.

Section 37.14 Notice of Defaults.

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Notwithstanding anything to the contrary set forth in this Lease, under no circumstances shall any party to this Lease lose any right or benefit granted under this Lease or suffer any harm as a result of the occurrence of any Default or default of such party as to which Default or default such party has not received notice thereof from the other party.

Section 37.15 No Liability of Officials and Employees of Owner or Tenant.

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It is expressly understood that this Lease and obligations issued hereunder are solely corporate obligations, and, except as otherwise provided in **Article 19**, that no personal liability will attach to, or is or shall be incurred by, the incorporators, stockholders, officers, members, partners, holders of other ownership interests, directors, elected or appointed officials (including, without limitation, the Mayor and Commissioners of the City and the members of any other governing body of Owner) or employees, as such, of Owner or Tenant, or of any successor corporation or other successor entity, or any of them, under or by reason of the obligations, covenants or agreements contained in this Lease or implied therefrom; and, except as otherwise provided in **Article 19**, that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer, member, partner, holder of other ownership interest, director, elected or appointed official (including, without limitation, the Mayor and Commissioners of the City and the members of any other governing body of Owner) or employee, as such, or under or by reason of the obligations, covenants or agreements contained in this Lease or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Lease.

Section 37.16 Conflict of Interest.

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Tenant represents and warrants that, to the best of its actual knowledge, no member, official or employee of the City has any direct or indirect financial interest in this Lease, nor has participated in any decision relating to this Lease that is prohibited by law. Tenant represents and warrants that, to the best of its knowledge, no officer, agent, employee or representative of the City has received any payment or other consideration for the making of this Lease, directly or indirectly, from Tenant. Tenant represents and warrants that it has not been paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Lease, other than normal costs of conducting business and costs of professional services such as architects, engineers, and attorneys. Tenant acknowledges that Owner is relying upon the foregoing representations and warranties in entering into this Lease and would not enter into this Lease absent the same.

Section 37.17 No Partnership or Joint Venture.

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The parties hereby acknowledge that it is not their intention under this Lease to create between themselves a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship for the purpose of developing the Project, or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Lease or the other documents executed by the parties with respect to the Project, whether based on the calculation of Rental or otherwise, shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship of any kind or nature whatsoever between the parties hereto. The provisions of this **Section 37.17** shall survive Expiration of the Term.

Section 37.18 Time Periods.

Any time periods in this Lease of less than thirty (30) days shall be deemed to be computed based on business days (regardless of whether any such time period is already designated as being computed based on business days). In addition, any time period which shall end on a day other than a Business Day shall be deemed to extend to the next Business Day.

Section 37.2 Time is of the Essence.

Time is of the essence with respect to all matters in, and requirements of, this Lease as to both Owner and Tenant, including, but not limited to, the times within which Tenant must commence and complete construction of the Project.

Section 37.19 Radon Notice.

Chapter 88-285, Laws of Florida, requires the following notice to be provided with respect to the contract for sale and purchase of any building, or a rental agreement for any building:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

Section 37.20 NOT USED.

Section 37.21 No Third Party Beneficiaries.

Nothing in this Lease shall confer upon any Person, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this Lease; provided, however, that a Recognized Mortgagee or its Designee shall be an intended third party beneficiary hereunder to the extent such Recognized Mortgagee or such Designee is granted rights hereunder.

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EXECUTION

IN WITNESS WHEREOF, Owner and Tenant, intending to be legally bound, have executed this Lease as of the day and year first above written.

WITNESSES: CITY OF MIAMI BEACH , FLORIDA,
a municipal corporation of the State of Florida

Print Name: _____ By: _____
Dan Gelber, Mayor

ATTEST:

Print Name: _____ By: _____
Rafael E. Granado, City Clerk

[SEAL]

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE) ss:

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by _____, as Mayor, and _____, as City Clerk, of the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, on behalf of such municipal corporation. They are personally known to me or produced valid Florida driver's licenses as identification.

My commission expires:

Notary Public, State of Florida
Print Name: _____

WITNESSES:

By: [Tenant Name]

Print Name _____

By: _____
_____, President

Print Name _____

Attest: _____
Print Name: _____
Title: _____

[CORPORATE SEAL]

STATE OF FLORIDA)
)ss:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____,
_____, by _____, as _____ and _____, of _____
_____, a _____ corporation, as _____ of _____
_____, a Florida _____, on behalf of such
_____. They are personally known to me or produced valid Florida
driver's licenses as identification.

My commission expires:

Notary Public, State of Florida
Print Name: _____

List of Exhibits

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Exhibit A	Legal Description of the Land
Exhibit 2.1	Title Matters
Exhibit 8.2	Article 2 of the Development Agreement
Exhibit 10.4	Ownership Interest in Tenant
Exhibit 14.1(b)	Premises Maintenance Schedule [City staff to provide]
Exhibit 14.1(c)	Owner's Operating Standards [If applicable]
Exhibit 36.1(a)	Terms of Tenant's Right of First Offer Transaction
Exhibit 36.2(a)	Terms of Owner's Right of First Offer Transaction

EXHIBIT “A”
LEGAL DESCRIPTION

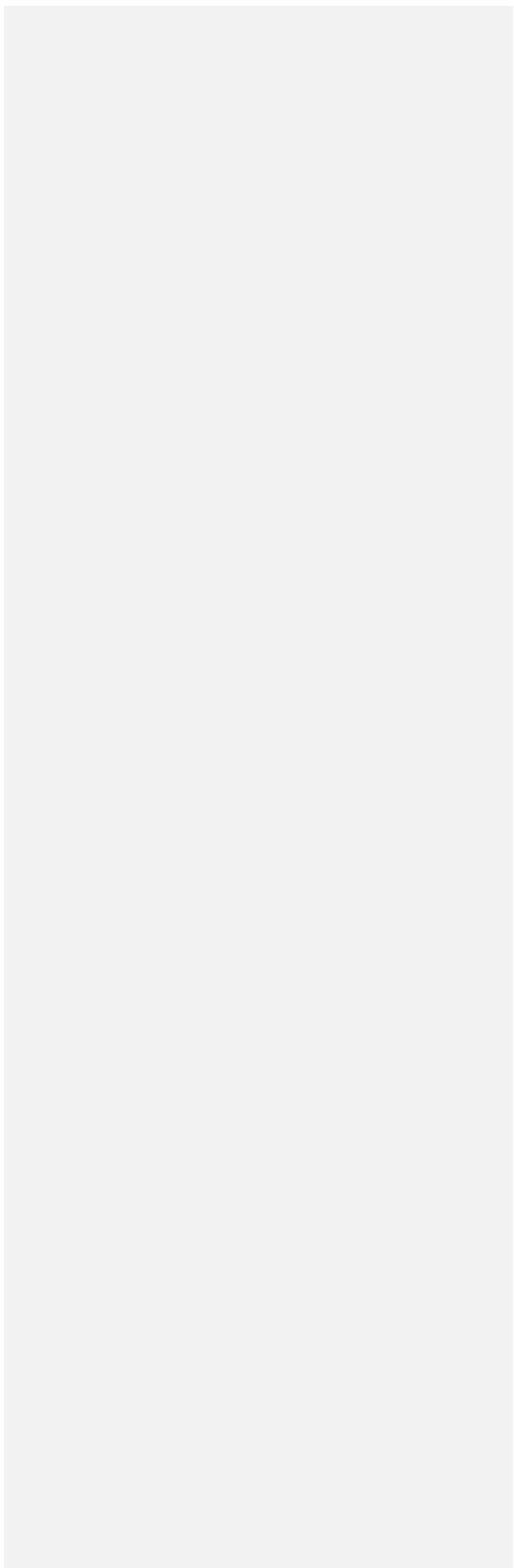


EXHIBIT 2.1
TITLE MATTERS

EXHIBIT 8.2

[Final to be conformed to final Article 2 of Development Agreement]

ARTICLE 38.

CONSTRUCTION

Section 38.1 Consistency with City's Comprehensive Plan and Zoning Regulations.

The City has adopted and implemented the Comprehensive Plan. The City hereby finds and declares that the provisions of this Development Agreement dealing with the Land are consistent with the City's adopted Comprehensive Plan and Land Development Regulations, subject to all applicable Requirements, Permits and Approvals.

Section 38.2 Planning Board Approval. [Revise as applicable to Project]

(a) Developer has heretofore submitted an application to the Planning Board for its review of the Project, and the Planning Board has reviewed the Project.

(b) If at any time in the future it shall be necessary in connection with the construction, reconstruction or renovation of the Premises to apply to the Planning Board for its review or approval of any changes or modifications to the Premises, Developer shall be solely responsible for making such application.

Section 38.3 Design of the Project.

(a) The Developer shall be solely responsible for the design of the Project, and such design shall be (1) substantially in accordance with the design shown in Developer's response to the RFP, except to the extent that changes thereto have been negotiated with, and approved, by Owner (which approval shall be required only in the case of material changes to the "Major Elements" of the Project, defined as _____), and (2) at the sole cost and expense of Developer. Developer shall be solely responsible for obtaining the approval of the City's Design Review Board, and the City's Historic Preservation Board, if applicable, and the City shall have no duty or obligation to approve any particular design. Prior to submission of the Project design to the DRB or HPB, if applicable, Developer shall submit to Owner (acting in its proprietary capacity as owner of the Land) all of the Preliminary Plans and Specifications for the Project which shall include, but not be limited to, a detailed site plan, elevation drawings of each facade, a detailed floor plan for each of the floors of the Project, a calculation of the floor areas for each floor of the Project, and a calculation of the total floor area dedicated to each use within the Project (the "Preliminary Plans and Specifications") which shall be submitted to Owner's City Manager for approval within _____ () weeks of the Commencement Date. The City Manager shall have twenty (20) Business Days to review the Preliminary Plans and Specifications, and shall review the Preliminary Plans and Specifications solely for consistency with the Developer's response to the RFP. If Owner disapproves the Preliminary Plans and Specifications, then Developer shall, at its election, either (x) submit Owner's disapproval to expedited arbitration pursuant to Section 3.6 and Section 22.1 as to the reasonableness of the disapproval, or (y) submit a revised modification to the Preliminary Plans and Specifications to

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meet Owner's objections, which revised modification shall be submitted and reviewed as provided in Section 3.1(b). Failure of the Developer to submit Preliminary Plans and Specifications by the date which is ____ () weeks from the Commencement Date shall constitute a Default under this Development Agreement.

(b) Developer shall, within ____ () weeks of Owner's approval of the Preliminary Plans and Specifications, submit an application for approval of the Project design to the City's Design Review Board and to the Historic Preservation Board, if applicable. Failure of the Developer to submit its application, as provided in this Section, to the DRB or HPB, if applicable, by the date which is eight (8) weeks from the receipt of Owners Approval as above provided shall constitute a Default under this Development Agreement.

(c) Developer shall pursue approval of its application to the DRB or HPB, if applicable, diligently and in good faith.

Section 38.4 Public Facilities and Concurrency.

(a) [Planning Dept to update, as applicable to each Project]Owner and Developer anticipate that the Project will be served by those roadway transportation facilities currently in existence as provided by state, county and local roadways. It is also anticipated that the Project will be served by public transportation facilities currently in existence, including those provided by Miami-Dade County, the City, and other governmental entities as may presently operate public transportation services within the City. Sanitary sewer, solid waste, drainage, and potable water services for the proposed Project are expected to be those services currently in existence and owned or operated by Miami-Dade County, the Miami-Dade County Water and Sewer Department, and the City. The Project will also be serviced by any and all public facilities, as such are defined in Section 163.3221(12), Florida Statutes, as such are described in the City's Comprehensive Plan, specifically including, but not limited to, those facilities described in the Infrastructure Element and Capital Improvements Element therein, a copy of which is available for public inspection in the offices of the Planning, Design and Historic Preservation Department of the City of Miami Beach. The foregoing, however, shall not be deemed to be an approval of, nor shall it be deemed to relieve Developer of the obligation to comply with, Section 163.3180 , Florida Statutes.

(b) Developer shall be solely responsible for obtaining all land use permits, including, but not limited to, all permits and approvals required pursuant to Section 163.3180, Florida Statutes, with respect to concurrency requirements for roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation (the "Concurrency Requirements"). Developer shall, within ____ () weeks of the Commencement Date, apply to the appropriate Governmental Authorities for letters or other evidence that Developer is pursuing all applicable Concurrency Requirements, and shall diligently and in good faith pursue such letters or other evidence that the Project meets all applicable Concurrency Requirements, or shall attempt to negotiate agreements acceptable to Tenant to mitigate the impacts of developing the Project.

Section 38.5 Plans and Specifications.

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(a) Upon receipt of the DRB's approval of the Project, or the HPB's approval if applicable, Developer shall prepare Plans and Specifications for construction of the Project, consistent with the Preliminary Plans and Specifications, as approved by the DRB or HPB, if applicable, for review by Owner. The Plans and Specifications shall be submitted to the Owner within _____ () weeks from the date on which the DRB or HPB, as applicable, approves the Project. Failure of the Developer to submit Plans and Specifications to the Owner within _____ () weeks from the date on which the DRB approves the Project shall constitute a Default under this Development Agreement. The Plans and Specifications shall be reviewed by the City Manager solely for consistency with the Preliminary Plans and Specifications as the same have been modified by the DRB or HPB, if applicable. If Owner disapproves the Plans and Specifications, then Developer shall, at its election, either (x) submit Owner's disapproval to expedited arbitration pursuant to Section 3.6 and Section 22.1 as to the reasonableness of the disapproval, or (y) submit a revised modification to the Plans and Specifications to meet Owner's objections, which revised modification shall be submitted and reviewed as provided in Section 3.1(b).

(b) Developer shall pursue approval by the City of the Plans and Specifications diligently and in good faith.

Section 38.6 Conditions Precedent to Developer's Commencement of Construction of the Project.

(a) Developer shall obtain a Building Permit for the entire Project by not more than _____ () months from the Commencement Date and failure to do so shall constitute a Default under this Development Agreement. Subject to Section 2.6(c), Developer shall not Commence Construction of the Project unless and until (i) Developer shall have obtained and delivered to Owner's Consultant copies of all Permits and Approvals required to Commence Construction and (ii) Developer shall have delivered to Owner original certificates of the policies of insurance required to be carried pursuant to the provisions of Article 7 of this Agreement.

(b) Owner (solely in its capacity as the owner of the Project Site and not in its governmental capacity) shall reasonably cooperate with Developer in obtaining the Permits and Approvals required by Sections 2.2(a) and 2.10(a) and any necessary utility access agreements, shall sign any application reasonably made by Developer which is required in order to obtain such Permits and Approvals and utility access agreements and shall provide Developer with any information and/or documentation not otherwise reasonably available to Developer (if available to Owner) which is necessary to procure such Permits and Approvals and utility access agreements. Any such accommodation by Owner shall be without prejudice to, and shall not constitute a waiver of, Owner's rights to exercise its discretion in connection with its governmental functions. Developer shall reimburse Owner, within ten (10) days after Owner's demand, for any reasonable out-of-pocket cost or expense payable to Owner's technical consultants (other than Owner's Consultant and Owner's employees), such as architects and engineers, so incurred by Owner in connection with Owner's assistance in obtaining the Permits and Approvals and utility access agreements required by Sections 2.6(a) and 2.10(a).

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(c) Developer shall not Commence Construction of the Project, or any portion thereof, unless and until Owner shall have approved the Plans and Specifications, as provided in Section 2.5. However, if Developer chooses to perform any Construction of the Project on a “fast-track” basis, Developer may request the necessary approval of Owner in stages and perform that portion of the Construction Work which has been approved (provided Developer shall comply with all other requirements with respect to such portion of the Construction Work), even if progress plans and specifications for other portions of the Construction Work have not yet been prepared.

(d) Payment and Performance Bond. Prior to Commencement of Construction of the Project, Developer shall cause the General Contractor to furnish to Owner a payment and performance bond (the “Payment and Performance Bond”), in a form reasonably acceptable to Owner, issued by a surety listed in the most recent United States Department of Treasury listing of approved sureties, guaranteeing the performance of the General Contractor under that certain guaranteed maximum price contract for the Construction of the Project. Owner shall be named as a dual obligee under the Payment and Performance Bond; provided, however, Owner’s rights under the Payment and Performance Bond shall be subordinate to the Recognized Mortgagee’s (as defined in the Ground Lease) rights under the Payment and Performance Bond and Owner shall agree in writing with such Recognized Mortgagee that Owner shall only seek to enforce its rights under the Payment and Performance Bond if the Ground Lease is terminated and such Recognized Mortgagee fails to exercise its rights under Section 11.6 of the Ground Lease for the execution of New Tenant’s Documents (as defined in the Ground Lease).

Section 38.7 Commencement and Completion of Construction of the Project.

Developer shall at its expense (a) Commence Construction on or before sixty (60) days after all Permits and Approvals necessary for the Commencement of Construction are issued (the “Construction Commencement Date”) and (b) thereafter continue to prosecute Construction of the Project with diligence and continuity to completion, in both cases, subject to Unavoidable Delays. If, after Developer has Commenced Construction, Developer fails to diligently prosecute Construction of the Project (subject to Unavoidable Delays), and such failure continues (subject to Unavoidable Delays) for thirty (30) consecutive days after Developer’s receipt of notice of such failure, Owner shall, in addition to all of its other remedies under this Agreement and the Ground Lease, have the right to seek such equitable relief (either mandatory or injunctive in nature) as may be necessary to cause diligent and continuous prosecution of Construction of the Project (subject to Unavoidable Delays) by Developer, it being understood that Construction of the Project is a material inducement to Owner to enter into the Ground Lease and monetary damages shall be inadequate to compensate Owner for harm resulting from such failure. Notwithstanding anything to the contrary contained herein, if Developer fails to Substantially Complete Construction of the Project by the Default Date, then the same shall constitute a Default under this Agreement and under the Ground Lease.

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Section 38.8 Completion of Construction of the Project.

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(a) Substantial Completion of the Project shall be accomplished in a diligent manner, and in any event by the Completion Deadline, and final completion of the Construction of the Project, including but not limited to completion of all punch-list items, shall be accomplished in a diligent manner thereafter, in each case in a good and workerlike manner, in substantial accordance with the Plans and Specifications (with no material deviations except as expressly permitted herein), in accordance with all applicable Requirements and, except as provided in Article 6, at Developer's sole cost and expense.

(b) Upon Substantial Completion of Construction of the Project, Developer shall furnish Owner with the following:

(i) a certification of the Architect (certified to Owner on the standard AIA certification form) that it has examined the Plans and Specifications and that, in its professional judgment, after diligent inquiry, Construction of the Project has been Substantially Completed in accordance with the Plans and Specifications applicable thereto and, as constructed, the Improvements comply with all applicable Requirements;

(ii) if Requirements require the same, a copy or copies of the temporary certificates of occupancy for the Project (or portion thereof, as applicable) issued by the City of Miami Beach Building Department;

(iii) lien waivers in form and substance reasonably satisfactory to Owner from each contractor, subcontractor, supplier or materialman retained by or on behalf of Developer in connection with the Construction of the Project, evidencing that such Persons have been paid in full for all work performed or materials supplied in connection with the Construction of the Project;

(iv) a complete set of "as built" plans and a survey showing the Improvement(s) (excluding personalty) for which the Construction of the Project has been completed. Owner shall have an unrestricted license to use such "as built" plans and survey for any purpose related to the Project Site without paying any additional cost or compensation therefor, subject to copyright and similar rights of the Architect to prohibit use of designs for purposes unrelated to the Project Site, as such rights exist in law or may appear in the Architect's contract, and subject to applicable public records laws. The foregoing requirement with respect to "as built" plans shall be satisfied by Developer furnishing to Owner, at Developer's expense, a complete set of Plans and Specifications, with all addenda thereto and change orders in respect thereof, marked to show all changes, additions, deletions and selections made during the course of the Construction of the Project; and

(v) a Contractor's Final Affidavit in form and substance reasonably satisfactory to Owner executed by the General Contractor (i) evidencing that all contractors, subcontractors, suppliers and materialmen retained by or on behalf of Developer in connection with the Construction of the Project have been paid in full for all work performed or materials supplied in connection with the Construction of the Project and (ii) otherwise complying with all

of the requirements under the Florida Construction Lien Law, Chapter 713, Florida Statutes, as amended.

(c) In the event that Developer has not Substantially Completed construction of the Improvements by the Completion Deadline (as same may be extended by Unavoidable Delays), Developer shall forfeit the Security Deposit held pursuant to Section 3.6 of the Lease to Owner as liquidated damages, and not as a penalty, the Parties agreeing that it is impossible to ascertain actual damages to Owner in the event that Developer does not Substantially Complete construction of the Improvements by the Completion Deadline.

Section 38.9 Confirmation of Land Development Regulations.

The City Commission held a duly noticed public hearing on _____, after which it determined, pursuant to Section _____ of the City Code, that the zoning district classification of the Land under the Lease is _____, as defined in the Land Development Regulations.

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Section 38.10 Required Development Permits.

(a) Developer shall be solely responsible for obtaining the Development Approvals listed in Exhibit 2.10 attached hereto, if applicable.

(b) There are no reservations and/or dedications of land for public purposes that are proposed under the terms of this Development Agreement.

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Section 38.11 Proposed Permitted Development.

The proposed permitted development on the Land shall not exceed a Floor Area Ratio (as defined in the City's Land Use Regulations) of _____, and the height of the development on the Land shall not exceed _____ (____) feet.

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Section 38.12 Developer's Right of Termination.

This seems to have been duplicated from the Development Agreement. Terms need to be conformed (for example, change "Developer" to "Tenant" where appropriate.) Notwithstanding anything to the contrary contained herein, Developer shall have the right to be released from its liability and obligations, except the obligation to pay Rental and/or Impositions prior to the Possession Date pursuant to Section 3.2(a) of the Ground Lease, and to terminate this Development Agreement and the Ground Lease prior to the Possession Date because (a) changes to the Preliminary Plans and Specifications required by the DRB, HPB, or any other Governmental Authority (including the City), render the Project economically unfeasible in the reasonable business judgment of Developer, (b) the Project cannot meet concurrency requirements under Section 163.3180, Florida Statutes, or the costs of concurrency mitigation are, in the reasonable business judgment of Developer, economically unfeasible, or (c) Developer, after good faith efforts, has been unable to obtain a full building permit for the Project pursuant to the Plans and Specifications submitted by Developer. In the event of termination of this Development Agreement and the Ground Lease pursuant to this Section 2.12,

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each Party shall bear its own costs and expenses incurred in connection with this Development Agreement and the Ground Lease and neither Party shall have any further liability to the other.

EXHIBIT 10.4
OWNERSHIP INTEREST IN TENANT

<u>Member</u>	<u>Percentage Membership Interest Owned</u>
<i>TOTAL</i>	<u>100</u>

EXHIBIT 14.1(b)

PREMISES MAINTENANCE SCHEDULE

[TO BE UPDATED BY CITY STAFF]

DAILY TASKS:

[Delete or limit to exterior, or to the public entity spaces, as appropriate depending on final Project description]

A. General Cleaning:

1. Trash pick up: all ramps, stairwells, elevators, common areas and landscaped areas
2. Empty trash receptacles: in facility and on-site replace trash bag and secure same
3. Clean restrooms: sweep and mop floors, clean toilet basin and sink with disinfectant cleanser, clean mirrors stock all paper goods, empty trash receptacles
4. Stairs and Stairwells: stairs swept, handrails dusted, signage and lighting checked, doors to stairs dusted/cleaned if needed
5. Clean all glass: office and/or booth windows, elevators (as applicable)
6. Office area: work areas dusted (cleaned if necessary), floors mopped, rugs vacuumed, bathrooms cleaned and supplies in bathrooms checked and replenished as needed
7. Sweep and hose off sidewalks, loading dock, trash room
8. Sweep and mop all lobby areas

B. Lighting, Fire Extinguishers and Fire Protection System, Signage and Security System(s):

1. Check all light fixtures: in facility and on-site (replace bulbs as needed)
2. Inventory all fire extinguishers: report any vandalism or missing fire extinguishers
3. Check all signage: both informational and illuminated
4. Check security system: test all radio control boxes, call boxes and speaker horns
5. Check placement of all cameras and reception of camera shots in security office (as applicable)
6. Check elevator cab communication devices and alarms (as applicable)
7. Check elevator lights and replace bulbs as needed

C. [If Applicable to Project: Parking Control Equipment and Attendant Booths:

1. Check for proper operation of gate arms, ticket spitters, power pads and proximity readers
2. Dust all booth equipment (power pad, verifier, cash drawer and other, as applicable)
3. Sweep all booths and shake out floor mats]

D. Elevators:

1. Mop floors, clean walls and panels with polish, clean or replace ceiling tiles
2. Dust doorframe and sweep door tracks clear of debris

WEEKLY TASKS:

A. General Cleaning:

1. Wash trash receptacles: in facility and on-site
2. Pressure wash stairwells and landings
3. Mop and sanitize attendant booths and/or cashier office
4. Removal of infestations: cobwebs, nests, etc. as applicable

B. Lighting, Fire Extinguishers and Fire Protection System, Signage and Security System(s):

1. Assure replacement/repair of all lighting: in facility and on-site
2. Assure replacement of all fire extinguishers: in facility and on-site
3. Assure replacement/repair of all emergency fire protection and security system components
4. Repair or replace any broken ballasts
5. Check that all illuminated directional signage is in working order

C. If applicable to the Project: Parking Control Equipment:

1. Repair any needs reported re: proper operation of gate arms, ticket spitters, power pads and proximity readers, verifier, cash drawer and other, as applicable
2. Clean and dust all ticket spitters and check for moisture intrusion]

D. Elevators:

1. Perform any necessary maintenance for optimum performance of each unit
2. Check all panels for vandalism and repair as needed
3. Dust bulbs, fixtures and diffusers
4. Polish metal work throughout

E. Doors and Hardware:

1. Check all door components for proper closure, locking and latching
2. Re-calibrate door components as needed
3. Lubricate overhead door devices

F. Painted surfaces and signage:

1. Inspect the condition of all painted surfaces and facility signage (interior and exterior) and remove any stickers, gum or other foreign objects
2. Prepare work order for areas needing painting or signs that need replacement

MONTHLY TASKS:

General Cleaning:

1. Power sweep all ramps and common concrete slab areas
2. Inspect all joints and condition of sealants, prepare work order to address needed deficiencies
3. Hose down all ramps (if using pressure, adhere to PSI recommended by builder)
4. Pressure clean stairwells and landings and all sidewalks
5. Seal and wax all tile floors in facility and common areas
6. Clean or replace all air conditioning filters in facility and common areas
7. Check all drains and remove any foreign objects in facility and common areas
8. Check for any leaks in facility or common areas, offices or booths and repair as needed
9. Check condition of stucco in facility and common areas and repair as needed
10. Remove carbon build up from all exposed surfaces in facility and common areas

B. Lighting, Fire Extinguishers and Fire Protection System, Signage and Security System(s):

1. Replace all missing signage in facility and common areas
2. Inspect all fire extinguisher housings in facility and common areas, and repair or replace as needed
3. Test security system as per manufacturers= specifications and report any variances or need for repair
4. Check fire protection, standpipes and smoke detectors in facility and common areas, repair and replace components as needed to assure optimum performance

C. [If applicable to the Project: Parking Control Equipment:

1. Monthly maintenance of all gate arms, ticket spitters, power pads and proximity readers
2. Repair or replace components as needed]

D. Painted surfaces and signage:

1. Prepare surfaces of handrails and apply a fresh coat of paint
2. Inspect all painted surfaces in facility and common area, and prepare and paint, or touch-up surfaces as needed
3. Replace all missing signage and order back up inventory

QUARTERLY TASKS:

A. General Cleaning:

1. Degrease all floors and ramps and clean all expansion joints
2. Power scrub or power wash all ramps and concrete slab surfaces (use PSI recommended by builder)

B. Lighting, Fire Extinguishers and Fire Protection System, Signage and Security System(s):

1. Check all light fixtures and exposed conduit. Repair and replace as needed.
2. Check distribution and switchgear
3. Check that all timers and photocells are working properly. Repair or replace as needed.

C. Landscape Maintenance:

1. Trim shrubs and prune all planted materials in facility and on-site
2. Test all irrigation systems in facility and common areas, and repair as needed
3. Replace flowering plants in facility and common areas seasonally as needed
4. Inspect all landscape lighting and uplighting and repair or replace bulbs, photocells or other components as needed

D. Checklist for leaks and water intrusion:

1. Check for leaks at drain basins, inlet grates, leaders, downspouts, floor sleeves, stairwells, elevator roofs, expansion joints, floor joints and cracks, and check basin for buildup
2. Inspect the ceiling below for signs of active leaks
3. Repair and address as required

E. Checklist for structural inspections:

1. Check for cracks and spalls at beams, columns, brick and or block work
2. Check floors and ceilings for cracks, spalls, abrasion and [sealingscaling](#)
3. Check expansion joints for deterioration, failed or splitting rubber glands and failed nosing materials
4. Check for roofing material deterioration
5. Check and repair all sealants and caulking
6. Check any waterproofing membrane (if applicable)
7. Repair and replace materials as required

ANNUAL TASKS:

1. Test fire protection systems and complete annual inspection with City
2. Test all elevator system operations and complete annual inspection with City
3. Perform annual inspections by maintenance/supply contractors of:
 - a. Revenue control equipment
 - b. Air conditioning equipment
 - c. All maintenance vehicles/equipment

BI-ANNUAL TASKS

1. Check floor striping for signs of wear and fading and if warranted, restripe all painted surfaces (stalls, floor directional painting etc.)

2. Inspection of facility for structural integrity by a qualified engineering firm. Firm shall prepare a condition survey which shall at a minimum contain information on:
 - a. Deterioration of concrete (spalling, corrosion etc.)
 - b. Longevity of concrete sealer
 - c. Water leakage
 - d. Condition of precast connections
 - e. Cracking of concrete
 - f. Rusting of steel
 - g. Condition of waterproofing membrane

EXHIBIT 14.1(c)

OWNER'S OPERATING STANDARDS

[TO BE DEVELOPED DURING NEGOTIATIONS]

EXHIBIT 36.1(a)

TERMS OF TENANT'S RIGHT OF FIRST OFFER TRANSACTION

1. Purchase Price.

The Purchase Price shall be as set forth by Owner in the Offer Notice and shall be payable at the closing of the purchase by wire transfer of immediately available funds to an account designated in writing by Owner. The Purchase Price may not include seller-financing unless Owner is an Institutional Lender or an Affiliate of an Institutional Lender. The purchaser shall not be permitted to make its obligation to close contingent on obtaining third-party financing.

2. Closing Date.

The closing of the purchase shall take place on a date designated by Owner, but in any event not less than sixty (60) days nor more than ninety (90) days following the date such Owner executes a purchase agreement with the purchaser.

3. Deed; Title.

At the closing of the purchase, Owner shall convey to the purchaser (i) all of Owner's right, title and interest in and to the Premises by a special warranty deed and (ii) all of Owner's right, title and interest in and to this Lease by an assignment of lease. The form of such deed and assignment of lease shall be mutually acceptable to Owner and Tenant but shall not in any event provide for any representations by Owner other than a representation that Owner has not theretofore transferred or assigned the items being transferred or conveyed thereby and the representations and warranties customarily contained in a special warranty deed. Owner's Interest in the Premises and the Lease shall be conveyed to Tenant subject to all liens, encumbrances and other matters then affecting the title thereto and any state of facts a survey may reveal (but in all cases subject to Owner's obligations under Section 2.2 of the Lease). Owner shall also execute all other documents customarily used in real estate transactions in Miami-Dade County, Florida; provided, however, that if Owner is a Governmental Authority, (x) such documents shall not include those documents from which Governmental Authorities are exempt pursuant to applicable Requirements and (y) with respect to any title affidavit required of Owner, (i) Owner shall not be required to make any statement or certification regarding parties-in-possession and (ii) any statement or certification regarding mechanics' or materialmen's liens shall cover only work or materials directly contracted for by Owner in writing.

4. Rent; Prorations.

At the closing of the purchase, all Rental and/or Impositions shall be prorated through the date of closing and paid to the party entitled thereto. No other prorations shall be made.

5. Expenses.

Each party shall pay its own attorneys= fees. All transfer taxes, title charges, recording fees, survey charges and other expenses incurred in connection with the purchase shall be paid by Tenant; provided, however, that Owner shall pay all documentary stamp taxes and surtax, if any, payable in connection with the purchase.

EXHIBIT 36.2(a)

TERMS OF OWNER'S RIGHT OF FIRST OFFER TRANSACTION

SEE COMMENTS IN BODY OF LEASE

1. **Purchase Price.**

The Purchase Price shall be as set forth by Tenant in the Offer Notice and shall be payable at the closing of the purchase by wire transfer of immediately available funds to an account designated in writing by Tenant. The Purchase Price may not include seller-financing unless Tenant is an Institutional Lender or an Affiliate of an Institutional Lender. The purchaser shall not be permitted to make its obligation to close contingent on obtaining third-party financing.

2. **Closing Date.**

The closing of the purchase shall take place on a date designated by Tenant, but in any event not less than sixty (60) days nor more than ninety (90) days following the date such Tenant executes a purchase agreement with the purchaser.

3. **Deed; Title.**

At the closing of the purchase, Tenant shall convey to the purchaser (i) all of Tenant's right, title and interest in and to the Premises by a special warranty deed and (ii) all of Tenant's right, title and interest in and to this Lease by an assignment of lease. The form of such deed and assignment of lease shall be mutually acceptable to Tenant and Owner but shall not in any event provide for any representations by Tenant other than a representation that Tenant has not theretofore transferred or assigned the items being transferred or conveyed thereby and the representations and warranties customarily contained in a special warranty deed. Tenant's Interest in the Premises and the Lease shall be conveyed to Owner subject to all liens, encumbrances and other matters then affecting the title thereto and any state of facts a survey may reveal (but in all cases subject to Tenant's obligations under Section 2.2 of the Lease). Tenant shall also execute all other documents customarily used in real estate transactions in Miami- Dade County, Florida; provided, however, that if Tenant is a Governmental Authority, (x) such documents shall not include those documents from which Governmental Authorities are exempt pursuant to applicable Requirements and (y) with respect to any title affidavit required of Tenant, (i) Tenant shall not be required to make any statement or certification regarding parties-in-possession and (ii) any statement or certification regarding mechanics' or materialmen's liens shall cover only work or materials directly contracted for by Tenant in writing.

4. **Rent; Prorations.**

At the closing of the purchase, all Rental and/or Impositions shall be prorated through the date of closing and paid to the party entitled thereto. No other prorations shall be made.

5. Expenses.

Each party shall pay its own attorneys' fees. All transfer taxes, title charges, recording fees, survey charges and other expenses incurred in connection with the purchase shall be paid by Owner; provided, however, that Tenant shall pay all documentary stamp taxes and surtax, if any, payable in connection with the purchase.