

This instrument was prepared by (record and return to):

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(Space reserved for Clerk)

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## **DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the CITY OF MIAMI BEACH, a Florida municipal corporation (the "City"), and SERVITAS, LLC (the "Developer"). City and Developer are each a "Party" and collectively are the "Parties" to this Agreement.

### **Introduction**

A. The property that is the subject of this Agreement lies in Miami Beach, Miami-Dade County, Florida. This Agreement, among other things, is intended to and shall constitute a development agreement between the parties pursuant to Sections 163.3220-163.3243, Florida Statutes, the "Florida Local Government Development Agreement Act" (the "Act") and Section 118-4 of the City Code.

B. The City owns the property located at 224 23<sup>rd</sup> Street, Miami Beach, Florida, more specifically described in Exhibit "A" (the "Property"), and intends to redevelop the Property as a mixed use residential workforce housing development (as defined in Section 3.48, the "Project").

C. The City also owns the adjacent property located at 227 22<sup>nd</sup> Street, Miami Beach, Florida (the "Adjacent City Parcel"), which was previously treated as a unified development site, together with the Property, for purposes of the development and construction of the Miami Beach Regional Library building located on the Adjacent City Parcel.

D. The Developer desires to develop, design, permit and complete, the Project, substantially as shown on the concept plan (as defined in Section 3.43, the "Project Concept Plan"), on the Property, in accordance with this Agreement. The Developer anticipates that the financing for the development, design and construction of the Project would be obtained through tax-exempt revenue bonds to be issued by Community Finance Corp. (as defined in Section 3.45, the "Project Financing"), pursuant to a long-term lease ground lease between Community Finance Corp. and the City for the operation and management of the Project, upon completion of construction thereof (as defined in Section 3.29, the "Ground Lease").

E. The City is a Florida municipal corporation with powers and authority conferred under the Florida Constitution, the Municipal Home Rule Powers Act, Florida Statutes and the Miami Beach City Charter and City Code. The City has all governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal and

governmental functions, and render municipal services, including the authority to adopt, implement and enforce (together with any other required governmental approvals) comprehensive plans, zoning ordinances, redevelopment plans, and other police power and legislative measures necessary to assure the health, safety and general welfare of the City and its inhabitants.

F. Having fully considered this Agreement at two duly noticed public hearings in compliance with Section 163.3225 of the Act; having determined that the Project, and this Agreement are in compliance with the City's Comprehensive Plan and Land Development Regulations as of the Effective Date; and having further determined that it is in the City's best interest to address the issues covered by this Agreement in a comprehensive manner, in compliance with all applicable laws, ordinances, plans, rules and regulations of the City, the City has agreed to enter into this Agreement with the Developer.

G. In accordance with Section 163.3227(1)(h) of the Florida Statutes, the City has determined that the Project will benefit the City and the public, and that the conditions, terms, restrictions and requirements herein are necessary for the public health, safety and welfare of its citizens. The Project will advance the City's policy goals of developing affordable workforce housing options within the City, and of increasing the presence of cultural organizations and artists within the City, while improving the character and appearance of the surrounding neighborhood.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby-agree as follows:

1. Recitations. The foregoing recitations are true and correct and are incorporated herein by this reference.

2. Authority. This Agreement is entered into pursuant to the authority and procedures provided by the Act and Section 118-4 of the City Code.

3. Definitions. All capitalized terms in this Agreement shall have the definitions set forth in this Section unless such terms are defined elsewhere in this Agreement.

3.1 "Act" shall mean the Florida Local Government Development Agreement Act (Sections 163.3220 - 163.3243, Florida Statutes (2018)).

3.2 "Affiliate" shall mean any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with another 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.

3.3 "Architect" shall mean Shulman + Associates in collaboration with Pierce Goodwin Alexander & Lineville, or any other comparably qualified and duly licensed architectural and engineering firm(s) selected by Developer as the architect of record for the Project ("Architect") in accordance with this Agreement.

3.4 "Area Educators" shall mean any person earning less than 120% of the then-applicable area median income (AMI) for Miami-Dade County (as such AMI is determined

from time to time in accordance with Chapter 58 of the City Code), who is employed as a teacher or teacher's aide at any public or private school in Miami-Dade County, on a full-time or part-time basis.

3.5 "Artists" shall mean any person earning less than 120% of the then-applicable area median income (AMI) for Miami-Dade County (as such AMI is determined from time to time in accordance with Chapter 58 of the City Code), and who is either (1) actively involved in the practice of creative arts, including, without limitation, in the area of music, dance, drama or other performing arts; creative writing; painting, sculpture, photography, or other fine arts; graphic arts/web design; craft arts; industrial design; costume design; fashion design; and film, television, radio and/or print production; or (2) an employee of a non-profit or governmentally owned museum or other cultural organization works with, displays, or promotes the creative arts.

3.6 "Assignment of Construction Agreements" means a secondary assignment by Developer to the City of all of Developer's right, title and interest in and to the Construction Agreements, which assignment shall include a duly executed consent by the Contractor and architect/engineer of record and all other Persons having any interests therein, and shall otherwise be in form and substance reasonably satisfactory to the Parties, which assignment shall be executed by Developer solely for the purpose of providing additional security to the City for the performance and discharge of Developer's obligations in this Agreement with respect to the Project, and shall only be exercisable by the City upon the occurrence of an uncured Event of Default by the Developer (if the default occurs prior to the Financial Closing) or the Ground Lessee under the Ground Lease (if the default occurs after the Financial Closing), pertaining to the Project. The Assignment to the City shall be secondary to the step-in rights of the Bond Holders and Trustee in the event of a default under the Loan Agreement.

3.7 "Assignment of Plans, Permits and Approvals" means an assignment by Developer to the City of all of Developer's right, title and interest in and to the approved Permit Plans and Specifications and all Permits and Approvals for the Project, which assignment shall include a duly executed consent by the architect/engineer of record and all other Persons having any interests therein, and shall otherwise be in form and substance reasonably satisfactory to the Parties, which assignment shall be executed by Developer solely for the purpose of providing additional security to the City for the performance and discharge of Developer's obligations in this Agreement with respect to the Project, and shall only be exercisable by the City upon the occurrence of an uncured Event of Default by Developer under this Agreement pertaining to the Project (if the default occurs prior to the Financial Closing) or the Ground Lessee under the Ground Lease (if the default occurs after the Financial Closing). The Assignment to the City shall be subordinate to the step in rights of the Bond Holders and Trustee in the event of default under the Loan Agreement.

3.8 "Bond" or "Bonds" means the Series 2021 Bonds (as such term is defined in the Ground Lease).

3.9 "Bond Holders" means a person in whose name any Bond is registered on the registration book maintained by the bond registrar in accordance with the Indenture (as such term is defined in the Ground Lease).

3.10 “Borrower” means [\_\_\_\_], a \_\_\_\_\_ entity organized and existing under the laws of the State of \_\_\_\_\_ and, to the extent permitted under the Loan Agreement and Ground Lease, its successors and assigns.

3.11 “Building Permit” shall mean any permit issued by the City of Miami Beach Building Department or Building Official, including any foundation, building, or phase permits.

3.12 “Business Day” shall mean any day other than a Saturday, Sunday, and any federal or state holiday. If any period expires on a day that is not a Business Day, or any event or condition is required by the terms of this Agreement to occur or be fulfilled on a day that is not a Business Day, then such period shall expire, or such event or condition shall occur or be fulfilled, as the case may be, on the next succeeding Business Day.

3.13 “City” shall mean the City of Miami Beach, a Florida municipal corporation, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida 33139. In all respects hereunder, City’s obligations and performance is pursuant to City’s position as the owner of the Property acting in its proprietary capacity. In the event City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances (including through the exercise of the City’s building, fire, code enforcement, police department or otherwise) shall be deemed to have occurred pursuant to City’s regulatory authority as a governmental body and shall not be attributable in any manner to City as a party to this Agreement or in any way deemed in conflict with, or a default under, the City’s obligations hereunder.

3.14 “City Code” shall mean the Code of Ordinances of the City.

3.15 “City’s Consultant” has the meaning provided in Section 19.

3.16 “Commence Construction,” “Commencement of Construction” and terms of similar import mean, with respect to the Project, the commencement of bona-fide site work for the Project, including, without limitation, clearing, grubbing, erection of construction fencing, and drainage improvements.

3.17 “Comprehensive Plan” shall mean the comprehensive plan which the City has adopted and implemented for the redevelopment and continuing development of the City pursuant to Chapter 163 Part II, of the Florida Statutes.

3.18 “Construction Agreements” shall mean those contracts between the Developer and the Contractor, architects, and engineers with whom Developer is in direct privity of contract for the construction of the Project.

3.19 “Contractor” shall mean the Developer’s general contractor for the construction of the Project, to be selected by Developer in compliance with the requirements of Section 62 of this Agreement.

3.20 “Controlling Interest” means the power to direct the management and decisions (both major decisions and day-to-day operational decisions) of any Person.

3.21 “Developer” means the persons or entities undertaking the development of the Development Site and the Project, as defined in the preamble to this Agreement, or any permitted successors, assigns, transferees, or heirs thereof.

3.22 “Development Default Deadlines” shall mean those default deadlines set forth in Sections 39(b) through (g) of this Agreement.

3.23 “Development Dispute” shall mean any contention by Developer that City has unreasonably failed to approve or give its consent to any modifications to any Plans and Specifications pursuant to Sections 10 or 11 of this Agreement, or any contention by City that Developer has not complied with its obligations or responsibilities set forth in those sections.

3.24 “Development Order” means any order granting, denying, or granting with conditions an application for a Development Permit.

3.25 “Development Site” shall mean the area described in Exhibit “B,” including, the Property and the Adjacent City Parcel, which would be joined via a Unity of Title (as such term is defined in Section 3.51 below).

3.26 “Development Permit” shall have the meaning set forth in Section 163.3221(5), Florida Statutes (2018).

3.27 “Dormitory Housing” shall have the meaning ascribed to it in Section 3.48(c) of this Development Agreement.

3.28 “Effective Date” is the date when the City or Developer records the executed Agreement in the Public Records of Miami-Dade County, as provided in Section 163.3239, Florida Statutes (2018), and Section 34 of this Agreement.

3.29 “Eligible Residents” shall have the meaning set forth in Section 3.48(f).

3.30 “Execution Date” is the date the last of the required Parties executes this Agreement.

3.31 “Final Approval” shall mean, with respect to the Project Zoning Approval, or any other Permits and Approvals for the Project, that such permit or approval has been finally approved by the issuing governmental or regulatory body. With respect to the Project Zoning Approval, and any other discretionary Permit or Approval requiring a public hearing, it shall further mean that all appeal and limitations periods have expired, with no challenges or appeals having been made or with all challenges and appeals having been finally disposed of (by judgement, settlement or otherwise).

3.32 “Final Completion” means when all of the work and physical components of the Project have been completed, as evidenced on the date Developer has (1) obtained a final certificate of occupancy for the Project; (2) obtained a certificate from the Developer’s Architect, stating that all work for the Project has been performed and punch list items have been corrected and completed; and (3) submitted to the City evidence of (A) the closure of all permits issued by any governmental authority relating to the Project, (B) final lien waivers from the Contractor and subcontractors on the Project, (C) a consent of surety to final payment; (D) a copy of the final “as built” drawings in digital format reflecting final completion of the Project work, and (E) a copy of

warranties, guarantees, duly assigned to the Ground Lessee, and all maintenance and operating instructions, if any for the work.

3.33 “Financial Closing” shall refer to the formal exchange of documents between the parties, as further described in Section 7 of this Agreement, which closing shall, among other provisions, complete the transaction for the Project Financing and thereby secure the funding for the development, design, permitting and construction of the Project.

3.34 “Force Majeure Events” include, without limitation, floods, storms, hurricanes, and other acts of God (including reasonable preparation therefor); war, terrorism, riots, civil commotion, fire, and other casualty; epidemics; pandemics; strikes, lockouts, labor disputes, and any inability to procure, or a general shortage of, labor, equipment, facilities, materials, or supplies in the open market; breakdown of transmission or other systems or facilities; the pendency of any Lawsuit (as defined below) and any unexpired appeal periods thereof at all levels of appeal; and all other causes and circumstances similar to the foregoing.

3.35 “Ground Lease” shall mean that certain Collins Park Artist/Workforce Housing Project lease by and between the City, as Lessor, and Community Finance Corp. or an affiliate thereof, substantially in the form attached hereto as Exhibit “C”, as approved via City Resolution No. \_\_\_\_\_, which Ground Lease is to be effective as of the date of the Financial Closing.

3.36 “Ground Lessee” shall mean \_\_\_\_\_, a wholly-owned affiliate of Community Finance Corp., a not-for-profit corporation headquartered at 333 N. Wilmot Rd., Suite 227, Tucson, AZ 85711.

3.37 “GU Height Waiver Resolution” shall mean Resolution No. 2016-29679, approving a maximum height of up to seventy-five (75) feet for the Project, attached as part of Composite Exhibit “D” hereto.

3.38 “GU Waiver Resolution” shall mean Resolution No. \_\_\_\_\_, adopted by the City Commission following a duly noticed public hearing in accordance with Section \_\_\_\_\_ of the City Code, approving the following waivers of the City’s Land Development Regulations, for the benefit of the Project (and attached hereto as part of Composite Exhibit “D”):

a. A waiver of the 400 SF minimum unit size requirement in the City Code applicable to the 22 studio units, with such studio units consisting of 387 square feet.

b. A waiver of required parking applicable to the Project pursuant to Chapter 130 of the City Code.

3.39 NOT USED.

3.40 “Land Development Regulations” shall have the meaning set forth in Section 163.3221(8), Florida Statutes (2018) and shall also include, without limitation, the definition of “land development regulations” in Section 114-1 of the City Code.

3.41 “Laws” means all ordinances, resolutions, regulations, the Comprehensive Plan, Land Development Regulations, and rules adopted by a local government having jurisdiction affecting the development of land, specifically including the City’s Comprehensive Plan and the City’s Land Development Regulations.

3.42 “Loan Agreement” means the [Agreement, Promissory Note, and Mortgage] between \_\_\_\_\_ and the Borrower, with respect to the loan by \_\_\_\_\_ to Borrower of the proceeds received from the sale of the Bonds.

3.43 “Material Modification” and words of similar import shall mean (i) any modification that reduces the total area of the Project from that shown on the Project Concept Plan or on any subsequently approved Plans and Specifications, as applicable; (ii) any modification that introduces uses at the Project that have not been previously approved by the City and are incompatible with the Project Concept Plan or with any subsequently approved Plans and Specifications, as applicable; or (iii) any modification that substantially diminishes the physical quality of the improvements shown on the Project Concept Plan or on any subsequently approved Plans and Specifications, as applicable. Any disagreement between the Parties as to whether a proposed modification is a Material Modification shall be resolved by expedited arbitration pursuant to Section 32 of this Agreement.

3.44 “Miami City Ballet” or “MCB” shall mean Miami City Ballet, Inc., a not-for-profit charitable cultural organization headquartered at 2200 Liberty Avenue, Miami Beach, Florida.

3.45 “Permits and Approvals” shall mean the Project Zoning Approval, all Building Permits (including, without limitation, a “full building permit,” as defined in the Land Development Regulations), and any other Development Orders, Development Permits, or other local, state, or federal permits or approvals required by applicable Laws or Requirements, for the Project, as applicable.

3.46 “Person” means any individual, firm, general or limited partnership, corporation, limited liability company, association, joint venture, estate, trust, unincorporated association, or other entity, and any fiduciary acting in such capacity on behalf of any of the foregoing.

3.47 “Plans and Specifications” shall mean the plans and specifications for the design, development, and construction of the Project, including fully detailed drawings showing the location, character, dimensions, details, and specifications of the work to be done, and comprising all of the written directions, provisions, and requirements for the Project, including detailed technical requirements as to labor, materials, supplies, equipment, and standards to which such work is to be performed, prepared by the Architect for the Project, in each case, consistent with the approved Project Concept Plan. As used in this Agreement, the “Plans and Specifications” include, without limitation, the Preliminary Plans and Specifications, the Final Plans and Specifications, the Permit Plans and Specifications, and any approved modifications thereto.

3.48 “Project” shall mean the development, design and construction of the mixed use residential workforce and dormitory housing project known as the “Collins Park Artist/Workforce Housing Project,” awarded pursuant to ITN 2019-099-KB. The Project shall include up to [89,399] sq. ft. of floor area and the following elements:

a. Height. A maximum height of 75 feet, approved via the GU Height Waiver Resolution for the Project.

b. Ground Floor. A ground floor revenue-generating retail or cultural space (which shall be designed and constructed to meet the Baseline Shell requirements)[**parties continuing to discuss baseline shell and will include as an exhibit, if necessary**] containing approximately 5,400 gross square feet, along with an approximately 2,100 sq. ft. lobby space for the Workforce Housing Units (as such term is defined in section 3.48(e) below) and a separate lobby area for the Dormitory Housing, as provided in Section 3.48(c) below. If necessary, the ground floor shall accommodate the Florida Power & Light transformer and/or related electrical systems providing power to the Adjacent City Parcel.

c. Dormitory Housing. Up to thirty-two (32) beds of dormitory housing (intended to be occupied by the Miami City Ballet, pursuant to a Master Sublease between the MCB and the Ground Lessee (the "Dormitory Housing"). The Dormitory Housing areas shall have exclusive elevator access to its floor(s) via keycard or other electronic means, along with a dedicated entrance or lobby space, as provided in 3.48(b) above. Subject to design development, the Dormitory Housing is intended to be located entirely on the second floor of the Project. In the event the Lessee is unable to reach agreement with MCB with respect to the Dormitory Housing, such areas would be developed so as to provide up to sixteen (16) additional residential Workforce Housing Units with such additional Workforce Housing Units subject to the requirements of Section 3.48(e), and with 50% of the units consisting of studios, 25% of the units consisting of one-bedrooms, and 25% of the units consisting of (2) bedrooms.

d. Workforce Housing Units. Approximately 80 residential units, and not more than [96] residential units, satisfying the criteria for workforce housing set forth below in Section 3.48(e) below, consisting of:

i. Fifty percent (50%) of the units consisting of studios with an average of 403 sq. ft. each;

ii. Twenty-five percent (25%) of the units consisting of one (1) bedroom / one (1) bath units with approximately 518 square feet each; and

iii. Twenty-five percent (25%) of the units consisting of two (2) bedroom / one (1) bath units with approximately 640 sq. ft. each; and

iv. with the final mix of studios, one (1) bedrooms, and two (2) bedrooms subject to City Manager approval, as the design progresses through permitting (collectively, all of the foregoing residential units, along with any residential units that may be developed on the second and/or third floor if such areas are not leased to MCB for Dormitory Housing, the "Workforce Housing Units").

e. All Workforce Housing Units shall be marketed and rented solely to eligible individuals earning less than 120% of the area median income for Miami-Dade County ("AMI"), consistent with all applicable requirements relating to workforce housing as provided in Chapter 58 of the City Code, with approximately fifty percent (50%) of such units rented to tenants earning less than 80% of AMI, and the remaining units rented to tenants earning between 80% and 120% AMI. The monthly rent for the Workforce Housing Units shall not exceed 30% of the then applicable AMI.

f. The Ground Lease shall include provisions providing for outreach to eligible tenants for the Workforce Housing Units, along with priority of booking of tenants for the Workforce Housing Units as follows:



i. Tier 1 – Artists and Area Educators, nurses, law enforcement personnel, firefighters, and other personnel employed in the City of Miami Beach;

ii. Tier 2 – Eligible workers employed in the City of Miami Beach in the hospitality and entertainment industries; and

iii. Tier 3 – Any other income-eligible workers employed within Miami-Dade County, with priority for income-eligible workers employed within the City of Miami Beach (collectively, the “Eligible Residents”).

g. Any Workforce Housing Unit remaining vacant for at least sixty (60) consecutive days may be offered and leased to any other eligible individuals earning less than 120% of AMI in a subsequent tier (whether or not such individuals are Artists or Area educators).

h. The Project Budget and Project Financing shall be expressly structured to comply with all requirements set forth in his Agreement and the Ground Lease with respect to the Workforce Housing Units.

i. With respect to the Workforce Housing Units, any rentals for a period of less than six months and one day shall be strictly prohibited.

3.49 “Project Budget” shall mean the good-faith estimate for the Project Costs to be paid to any Party or third parties not Affiliates of Developer or Ground Lessee (unless such Project Costs paid to Affiliates of Developer or Ground Lessee are at fair market value and with notice to the City), in the design, permitting, development, construction and equipping of the Project, with the final proposed budget being subject to approval by the City Manager.

3.50 “Project Concept Plan” shall mean the plans, designs, and drawings, illustrating the proposed concept for the Project, which approved plans are attached in Exhibit “E.”

3.51 “Project Costs” shall mean all of the actual, verifiable costs and expenses directly related to the development, design, permitting, financing, construction, furnishing, equipping and maintenance of the Project.

3.52 “Project Financing” shall mean the financing obtained by the Ground Lessee to fund the design, development, permitting, construction, furnishing and equipping of the Project, and which financing shall be non-recourse to the City and subordinate to City’s fee interest in the Property.

3.53 “Project Opening” shall mean the date the Project is open to the general public for occupancy by Project tenants (including MCB and tenants of the Workforce Housing Units).

3.54 “Project Proceeds” shall mean the annual surplus or net revenues of the Project, if any, after payment of all Project operating expenses and satisfaction of all debt service and maintenance reserve requirements for the Project, and more fully described as the Net Available Cash Flow in the Ground Lease and Indenture.

3.55 “Recognized Lender(s)” or “Issuer” shall mean the chosen bond issuer for the Financial Closing.

3.56 “Requirements” shall mean 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, the Project, and/or the Property or the Development Site.

3.57 “Substantial Completion” and words of similar import shall mean, with respect to the Project, that such component has been completed in accordance with the Permit Plans and Specifications and the requirements of Section 17 have been satisfied, and such component is able to be occupied for its intended purpose, except for so-called “punch list” items (including, without limitation, adjustments to equipment, fixtures, landscaping, and similar items of work) that can be completed after occupancy has been taken without causing substantial interference with the use of such component.

3.58 “Trustee” shall mean [ ] [a national banking association], and any successor trustee under the Indenture, acting in its trust capacity.

3.59 “Unity of Title” shall mean the unity of title joining the Property and Adjacent City Parcel as part of the Development Site, substantially in the form attached as Exhibit “F.” Except for the participation of the Adjacent City Parcel under the Unity of Title, nothing in this Agreement or in any other agreement relating to the Project shall in any way affect or alter the continued use of the Adjacent City Parcel as a public library, pursuant to the City’s Amended and Restated Library Interlocal Agreement with Miami-Dade County, approved via Resolution No. 2020-31386.

## **PROJECT DEVELOPMENT**

### **4. Initial Rights and Obligations of City and Developer.**

a. Subject to the terms herein, Developer shall cooperate with the City and shall be responsible for: (a) the selection, contracting, and supervision of the Architect, Contractor, and any other design, engineering, construction, or other professionals necessary for the planning, design, permitting, financing, construction, and overall development of the Project. As Developer for the Project, Developer shall have the exclusive right to develop the Project in accordance with this Agreement.

b. Following approval by the City Manager of a plan for the Project Financing (as described more fully in Section 7 below), Developer will: (a) endeavor to satisfy the requirements of the proposed Project Financing; (b) negotiate of the terms of the financing documents; and (c) achieve Financial Closing as expeditiously as possible, subject to mutual agreement of the Parties, Ground Lessee, and the Recognized Lenders.

c. The Parties agree to pursue all development activities pertaining to the Project with a cooperative, good faith effort, with due diligence, including without limitation, the development services to be performed by Developer (the “Development Services,” as set forth in Exhibit “G”).

d. As described more fully throughout this Agreement, Developer shall: (i) enter into and administer contractual agreements with Project consultants, (ii) work with the Architect to complete the design of the Project, which shall be designed to the maximum extent possible to permit construction of the Project within the approved final Project Budget; (iii) secure the necessary Final Approvals of all Permits and Approvals for the Project; (iv) work with the Contractor to price the Plans and Specifications; (v) work with the Bond Underwriter to create a plan of finance for the Project; (vi) arrange for the Ground Lessee (or other parties, as applicable) to execute acceptable construction, architecture, financing, management, and/or other appropriate contracts (as applicable) at Financial Closing, (vii) submit a final Project Budget to City, and (viii) arrange the Project's Financing and the Financial Closing, the terms and conditions of each of the agreements and other matters identified in the foregoing items (i) through (viii) being subject in all respects to the prior approval of City. Subject to the occurrence of the Financial Closing, Developer shall thereafter schedule and monitor the commencement and completion of the Project construction, in accordance with all applicable Requirements, this Agreement, the Ground Lease, and other Project related agreements.

e. City GU Waiver Resolution. The Parties acknowledge that in addition to the previously approved GU Height Waiver Resolution for the Project, the Parties anticipate that the City Commission will consider adoption of the GU Waiver Resolution, at its sole discretion, contemporaneously with the City Commission's final approval of this Agreement. This Agreement is subject to and contingent upon the adoption of the GU Waiver Resolution, as the Project, as currently contemplated, cannot proceed without the waivers of the City's Land Development Regulations set forth in the GU Waiver Resolution and GU Height Waiver Resolution. The Parties acknowledge that this Agreement does not obligate the City Commission to adopt the GU Waiver Resolution, and that the City Commission retains the sole and absolute discretion, subject to applicable Laws and Requirements, whether to adopt, adopt with changes, or decline to adopt the GU Waiver Resolution. In the event the GU Waiver Resolution is not adopted, or is adopted with terms or conditions that are inconsistent with this Agreement, the Administration and Developer will either (i) determine whether any such terms or conditions could be accommodated within the Project, (ii) submit a revised request for consideration of a waiver of any applicable Land Development Regulations; or (iii) terminate this Agreement in accordance with Section \_\_\_\_ hereof.

f. Preliminary/Target Project Schedule. The Developer agrees to the following target schedule for Project milestones, provided, however, that failure to meet the target milestones set forth in this Section 4(f) shall not constitute an Event of Default under this Agreement.

i. *Project HPB Approval:* within five (5) months following execution of the Development Agreement;

ii. *Financial Closing:* within three (3) months following all Final Approvals of all Permits and Approvals for the Project;

iii. *Commencement of Construction:* within one (1) month following Financial Closing;

iv. *Substantial Completion of Project:* within twenty-two (22) months following Commencement of Construction; and

v. Project Opening: within two (2) months following Substantial Completion of the Project.

g. Miami City Ballet's Participation in the Project. The intent of the Parties is for MCB to participate in the Project pursuant to a master sublease with the Ground Lessee for the rental of the Dormitory Housing areas for the Project, with MCB to be solely responsible for coordinating the use of the Dormitory Housing areas by MCB dancers, registered MCB program participants, and MCB personnel only.

i. To the fullest extent possible under applicable law, the Parties will structure MCB's participation so that the Dormitory Housing is exempt from ad valorem taxation. MCB is also intended to be a designee of a portion of the Project Proceeds, as provided in the Ground Lease.

ii. Short-term leases of the Dormitory Housing areas shall be permitted, provided such short-term leases are available only to MCB dancers or MCB-registered program participants.

iii. As an alternative to the MCB using the Dormitory Housing, if needed, in the future, the Dormitory Housing area will be designed for conversion to additional workforce housing. The Development Agreement will include an outside date by which the MCB must confirm its binding participation in the Project, to permit the Ground Lessee/Developer to obtain the appropriate HPB approvals (for either Dormitory Housing or Workforce Housing Units) and required financing for the Project.

iv. The Ground Lease shall specify that the City and MCB shall be designated as the beneficiaries of the Project Proceeds, subject to City's priority right to reimbursement of any Project Costs advanced or funded by the City pursuant to this Agreement or the Ground Lease, prior to the distribution of any Project Proceeds to the MCB or any other party, or for any other purpose.

v. The MCB shall have a right to request an expansion of the master sublease for Dormitory Housing, so as to cover the entire second and third floor of the Project (the "Additional Dormitory Housing"), provided, however, that any such expanded sublease shall not cause for any reduction in anticipated Project Proceeds, or otherwise require Project reserves to be expended (i.e., if the conversion involves vacancies prior to the turn over to MCB). Such request shall be filled by allowing any then-existing Occupancy Agreements to naturally expire, and leasing individual units to MCB as they become available, until the entirety of both floor(s) may be master sub-leased to the MCB. Any costs associated with the conversion of such spaces to Dormitory Housing, including unification of the second floor and third floor areas, shall be at the MCB's sole expense. Subject to final agreement with respect to the Additional Dormitory Housing in MCB's master sublease, the proposed structure contemplates that the MCB will enter into the master sublease for the Additional Dormitory Housing and begin making payments thereon upon the expiration of the first Occupancy Agreement, with MCB receiving a credit against such rent payments in the amount of all rents received, dollar-for-dollar, under then-existing Occupancy Agreements covering the Additional Dormitory Housing areas, until such time as all such Occupancy Agreements have expired.

h. Tax Exempt Status of Project / Exemptions from Ad Valorem. The parties expressly agree to structure the transaction (and the terms thereof) so that, to the fullest extent possible under applicable law, the Project will be exempt from ad-valorem taxes. In order

to obtain such exemptions, the Project may, if necessary, be subdivided as a leasehold condominium (subject to the Ground Lease), to provide for:

i. one leasehold condominium unit for the entire ground floor space (which will be either retail or cultural space, subject to City Commission approval);

ii. one leasehold condominium unit for the MCB Dormitory Housing; and

iii. one leasehold condominium unit for the Workforce Housing Units of the Project.

iv. If a leasehold condominium must be created to accomplish the exemption from ad valorem taxes for the Project, all costs associated with creating the condominium structure for the Project shall be included as Project Costs, payable by Developer and/or Ground Lessee.

#### **PROJECT FINANCING, PROJECT BUDGET AND FINANCIAL CLOSING**

5. Project Financing. Subject to City approval of the final proposed financing agreements and plan of finance for the Project, and the Financial Closing, all of the Project Costs shall be paid by the proceeds of the Project Financing. The Project Financing will involve Ground Lessee use of tax-exempt revenue bonds (with the exception of a small taxable portion, should taxable debt be required) issued by a local authority, with the bonds secured by a pledge of the rental and other revenues received by Ground Lessee in connection with the operation of the Project. Citigroup, Inc., or any other comparable firm selected by Servitas, shall serve as the bond underwriter for the Project (the "Bond Underwriter").

a. Rights of Ground Lessee and Recognized Lenders. The financing documents and Ground Lease will contain certain step-in rights and cure provisions for the bond holders and Recognized Lenders for the Project. Pursuant to the Ground Lease, City shall maintain its fee interest in the Property, and the Ground Lessee shall maintain ownership and control of the leasehold improvements during the Ground Lease term.

b. No Affordable Housing Tax Credit/Subsidy Arrangements. The Project Financing does not contemplate any affordable housing governmental subsidy, grant or tax credit arrangements as part of the plan of finance.

c. Responsibility for Project Financing. In no event shall Developer have any financial obligations with respect to the Project Financing, except to guaranty the completion of construction, as such financial obligations shall be the sole responsibility of the Ground Lessee, pursuant to the Ground Lease, subject to and contingent upon the Financial Closing. Similarly, in no event shall City have any financial obligations with respect to the Project Financing, including, without limitation, any pledge of City revenues unrelated to the Project, or any City guarantee or covenant to budget and appropriate from non-ad valorem or other sources.

d. City's Fee Interest in the Property. City's fee interest in the Property shall be senior, and not subordinated to, any Project Financing obtained by the Ground Lessee,

and all Project Financing shall be non-recourse to the City and MCB. Under no circumstances shall the Project Financing include any mortgage or lien on City's fee interest in the Property.

6. Project Budget.

a. The initial Project Budget, including the budget for Project Costs to be incurred prior to the Financial Closing ("Pre-Closing Expenses") and a general timeline for when the Pre-Closing Expenses will be expended, is attached hereto as Exhibit "H".

b. Developer's Fee. The development fee payable to Developer for all services provided by the Developer until the Final Completion of the Project shall be equal to 7% of the total costs of design, construction, furnishing and equipping of the Project ("Development Fee"). Based on current pricing, the total Development Fee will be approximately \$968,000, with the final Development Fee subject to adjustment based on the final approved Project Budget for the Project. The Development Fee shall be earned throughout the development process leading to Financial Closing (and payable as provided in Section 6(c) below, as follows:

<b>Milestone Description</b>	<b>Development Fee Earned</b>
Schematic Design Approval	20%
Design Development Approval	40%
HPB Approval	60%
100% Construction Drawings Approval	80%
Issuance of the Preliminary Offering Statement	100%

c. Payment of Development Fee. Though deemed fully earned as of the date of Financial Closing, the Development Fee shall be payable by the Ground Lessee from the proceeds of the Financial Closing, as follows: 50% at Financial Closing, 40% in equal monthly installments during construction and 10% at Final Completion of the Project.

d. Project Costs Covered By Developer Prior to Financial Closing. Except for such Project Costs as may be advanced by the City pursuant to this Agreement, the Developer shall advance, and pay for, all Pre-Closing Expenses or other Project Costs incurred by the Developer, with all such Pre-Closing Expenses or other Project Costs to be reimbursed to Developer at Financial Closing. Following the Financial Closing, all Project Costs shall be paid from the proceeds of the bonds issued as part of the Project Financing, in accordance with the Project Financing agreements and the Ground Lease.

e. Project Costs Covered by City Prior to Financial Closing. Subject to reimbursement to the City as provided in Section 6(f) below, the City shall be responsible for those mutually agreed-upon Project Costs relating to environmental remediation expenses, as provided in Section 14 below, and (ii) any other Project Costs the City agrees to advance for the Project with the prior written approval of the City Manager and Developer, including City's appraisal costs and the F.A.R. survey prepared by MC Harry & Associates. Except to the limited

extent as specified in this Section 6(e), the City shall not have any liability or responsibility for the payment of any Project Costs, and all such Project Costs shall be payable from the proceeds of the Project Financing, and otherwise borne by either Developer or the Ground Lessee, at their sole risk.

f. Reimbursement to City for Project Costs. All Project Costs advanced or covered by the City shall be reimbursed to the City at the Financial Closing, to the fullest extent that such City expenses could be capitalized along with other Project Costs as part of the principal aggregate par amount of the bonds issued as part of the Project Financing, subject to satisfaction of debt coverage requirements. Any Project Costs paid by the City that remain unreimbursed at the Financial Closing shall be reimbursed to the City from the annual Project Proceeds, prior to use of Project Proceeds for any other purpose.

7. Financial Closing. The Financial Closing shall occur on a date mutually agreed upon by City, Developer, and Ground Lessee, but in no event later than ninety (90) Business Days after the date on which Developer has obtained Final Approval of the Project Zoning Approval, and Final Approval of all Permits and Approvals to Commence Construction of the Project, subject to the termination provisions in Section 42 below. At the Financial Closing, the Developer and City shall perform the following:

a. City and Ground Lessee shall deliver a duly executed copy of the Ground Lease, to be effective as of the date of the Financial Closing.

b. MCB and Ground Lessee shall deliver a duly executed copy of the Master Sublease for the MCB Dormitory Housing;

c. The City shall execute the Unity of Title, to be recorded by the Developer simultaneously with the Ground Lease.

d. Developer shall deliver the executed Construction Agreements for the Project.

e. Ground Lessee, Issuer and Trustee shall deliver executed Loan Agreement and Trust Indenture and all other documents necessary for the sale of the Bonds.

f. Declaration of Leasehold Condominium, if applicable.

8. City's Continued Use of the Property Until Financial Closing. The City shall continue to use the Property as a surface parking lot, open to the general public, until the Financial Closing, unless the City Manager, at the City Manager's sole discretion, agrees to authorize any early access work on the Property, prior to the Financial Closing. The Developer shall not commence construction of the Project prior to the Financial Closing.

### **DESIGN AND DISCRETIONARY APPROVALS**

9. City Cooperation.

a. Developer acknowledges that applications for design review approval for the Project may lawfully be approved only with the City's joinder. The City, in its proprietary capacity, hereby covenants to cooperate with Developer and agrees to join and

execute all applications and supporting documents as Developer may reasonably request of the City in connection with Developer's pursuit of any Permits and Approvals for the Project, so long as the same are not materially inconsistent with this Agreement. Notwithstanding the foregoing, the City may revoke such proprietary consent if the Developer terminates or is in material default of this Agreement, and, upon such revocation, the City may, in its governmental capacity, withhold issuance of any Permits and Approvals for the Project that require the City's proprietary consent for issuance.

10. Project Approvals.

a. Developer shall be responsible for the development, design, permitting, and construction of the Project, as part of the reimbursable Project Costs, and for obtaining any development approvals that may be required in connection with the Project.

b. The design of the Project shall be substantially in accordance with the design shown in the Project Concept Plan, except to the extent that changes thereto have been negotiated with, and approved, by City. To the maximum extent possible, the Project shall be designed to permit construction of the Project within the approved Project Budget.

c. Developer acknowledges that development of the Project, based on the Project Concept Plan, will require design review approval by the City's Historic Preservation Board ("HPB") (the "Project Zoning Approval"). Developer shall be solely responsible for obtaining the approval of the City's Historic Preservation Board, and, subject to applicable Laws and Requirements, the HPB shall have no duty or obligation to approve any particular design.

d. Developer shall diligently prepare an application seeking design review approval of the Project (the "Project Zoning Application"). The application, prepared by Developer, shall be submitted on behalf of Community Finance Corporation, as the not-for profit entity with a controlling interest in the Lessee (a wholly-owned affiliate of Community Finance Corp.), and accordingly, the application shall be co-signed by a representative of Developer, Community Finance Corporation and the City. Prior to submission of the Project design to the HPB, Developer shall submit to City (acting in its proprietary capacity as owner of the Property) all of the preliminary Plans and Specifications for the Project, which shall include, but not be limited to, a detailed site plan, elevations, and landscape plan for the Project (the "Preliminary Plans and Specifications"), which shall be submitted to the City Manager for approval. At a minimum, the Preliminary Plans and Specifications shall be developed in accordance with the Project elements and other requirements set forth in this Agreement, and to ensure that the security needs for the Dormitory Housing areas are accommodated (including, without limitation, a separate entrance area, with exclusive elevator access via keycard or other electronic means for the Dormitory Housing area).

e. The City Manager shall review the Preliminary Plans and Specifications for general consistency with the Project Concept Plan and the requirements of this Agreement. The City Manager (or the City Commission pursuant to Section 60) will not withhold, delay, or condition the City's proprietary approval so long as the proposed Project substantially accords with the Project Concept Plan, Ground Lease, and this Agreement in all material respects, or contains only those material changes that were previously negotiated with, and approved, by City in its proprietary capacity. If the City Manager (or the City Commission pursuant to Section 60) disapproves the Preliminary Plans and Specifications, then Developer shall, at its election, either (x) submit the City's disapproval to expedited arbitration pursuant to Section 32



as to the reasonableness of the disapproval, or (y) submit a revised modification to the Preliminary Plans and Specifications to meet the City's objections, which revised modification shall be submitted and reviewed as provided in Section 10. The Developer may not file, and the City shall not join, the Project Zoning Application until the City Manager (or the City Commission pursuant to Section 60) has approved the design of the Project in the City's proprietary capacity.

f. After the City Manager has approved the design of the Project in its proprietary capacity, the Developer shall diligently pursue the approval of the Project Zoning Application through the issuance of an HPB Order (the "Project Zoning Approval"). Developer will endeavor to have the Project Zoning Applications heard by HPB within twelve (12) months following the Effective Date of this Agreement, but the failure to do so will not be deemed an Event of Default.

g. Developer acknowledges that review of the Project Zoning Application by the City and its boards is quasi-judicial, and that nothing in this Agreement obligates the City to approve that application or limits the quasi-judicial authority of the City and its boards to impose conditions or take any action on the Project Zoning Application as provided by the City Code. If the Project Zoning Application is denied by the City, or if it is approved by the City with any terms, conditions, or obligations that were not reasonably foreseeable and significantly increase the anticipated Project Costs and therefore render the Project economically unfeasible, then the Developer may elect to: (i) diligently prepare revised applications requesting the Project Zoning Approval for a revised Project after proprietary approval by the City Manager as set forth above; (ii) exercise any rights of appeal or redress the Developer may have; or (iii) terminate this Agreement in accordance with Section 42.

h. Upon receipt of the HPB's approval of the Project, Developer shall prepare plans and specifications for construction of the Project, consistent with the Preliminary Plans and Specifications, as approved by the HPB, if applicable, for confirmatory review by the City Manager (the "Final Plans and Specifications"). Developer shall pursue approval by the City Manager of the Final Plans and Specifications diligently and in good faith. The Final Plans and Specifications shall be reviewed by the City Manager for consistency with the Preliminary Plans and Specifications as the same have been modified by the HPB, if applicable. If the City Manager (or the City Commission pursuant to Section 60) disapproves the Final Plans and Specifications, then Developer shall, at its election, either (x) submit the City Manager's disapproval to expedited arbitration pursuant to Section 32 as to the reasonableness of the disapproval, or (y) submit a revised modification to the Final Plans and Specifications to meet the City Manager's objections, which revised modification shall be submitted and reviewed as provided in Section 10. Nothing in this paragraph shall obligate the City to accept Final Plans and Specifications that are inconsistent with the Preliminary Plans and Specifications except for those inconsistencies that are necessitated by the Project Zoning Approval or by the Requirements.

#### 11. Material Modifications to Plans and Specifications.

a. If Developer desires to implement Material Modifications to previously approved Plans and Specifications, Developer shall submit any such modified Plans and Specifications to the City Manager for approval in the City's proprietary capacity. 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 Material Modifications to the Plans and Specifications. Promptly after its receipt of the proposed Material Modifications, the City Manager shall notify Developer in writing, with specificity of any Material Modifications of which City disapproves, it

being agreed, however, that the City Manager's failure to notify Developer of its disapproval within fifteen (15) Business Days of its receipt of the proposed Material Modifications shall be deemed to constitute City's conclusive approval of such modified Plans and Specifications. Notwithstanding anything to the contrary, City shall not unreasonably withhold, condition, or delay the City's approval of any modifications to the Plans and Specifications that, regardless of materiality, are necessitated by Requirements or as a result of a drafting, coordination, mechanical or technical error in the Plans and Specifications, and all such modifications shall be deemed approved by the City in its proprietary capacity.

b. If the City Manager (or the City Commission pursuant to Section 60) disapproves any proposed Material Modifications to the Plans and Specifications, then Developer shall submit revised Plans and Specifications or a revised modification to the Plans and Specifications to meet the City Manager's objections, which revised Plans and Specifications or revised modification shall be reviewed as provided in Section 11(a), as applicable.

### **BUILDING PERMITS**

12. City Joinder. The Developer acknowledges that until the Financial Closing, no Building Permit may be issued without the City's joinder to such application, as the owner of the Property. The City agrees, upon Developer's request, to join any application for a Building Permit for the Project, so long as the same are not materially inconsistent with this Agreement. Notwithstanding the foregoing, the City may revoke such proprietary consent if the Financial Closing does not take place within six (6) months following the Final Approval of all Permits and Approvals, or if Developer terminates or is otherwise in material default of this Agreement, and, upon such revocation, the City may, in its governmental capacity, withhold issuance of any Building Permits for the Project that require the City's proprietary consent for issuance.

13. Prerequisites to Project Building Permit. Prior to submitting an application for a Building Permit for the Project, Developer shall prepare and submit to City (acting in its proprietary capacity as owner of the Property), for review and approval by the City Manager, the Plans and Specifications intended to be used to obtain the required Building Permit (the "Permit Plans and Specifications"). If such submitted Permit Plans and Specifications contain Material Modifications to the Final Plans and Specifications approved by the City Manager following HPB approval in accordance with Section 10(e) above (or any more recently modified Plans and Specifications approved in accordance with Section 11(a) above), then such Permit Plans and Specifications shall clearly indicate, by "ballooning", highlighting, blacklining or describing in writing in sufficient detail in a memorandum accompanying such Permit Plans and Specifications, all such Material Modifications. Promptly after its receipt of such Permit Plans and Specifications, and not later than fifteen (15) days of City's receipt of the proposed Permit Plans and Specifications, the City Manager shall notify Developer, in writing, of the City's proprietary approval of the Permit Plans and Specifications, or otherwise describing, with specificity, the basis for such disapproval of any Material Modifications of which the City Manager disapproves. Further, whenever Developer advises the City Manager in writing, and the City Manager agrees with Developer in writing, that the Permit 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 City's conclusive approval of all modifications and inconsistencies, whether or not the modifications are highlighted, in such Permit Plans and Specifications. Notwithstanding anything to the contrary, City shall not object to any modifications to any Plans and Specifications (i) that are not Material Modifications, or (ii) that, regardless of materiality, are necessitated by Requirements or as a

result of a drafting, coordination, mechanical or technical error in the Plans and Specifications, and all such modifications shall be deemed approved by the City in its proprietary capacity.

### **CONSTRUCTION OF PROJECT**

14. Environmental Conditions. As part of the services provided by Developer under this Agreement, the Developer shall be responsible for performing any environmental remediation which may be required for the Project to proceed, subject to reimbursement of environmental-related expenses either as part of the Project Costs, or otherwise as provided herein. The Developer shall accept the property in its "AS IS" condition, subject to review of the environmental Phase I and II and geotechnical reports to be obtained for the Project.

a. The Phase I, Phase II and geotechnical report (collectively, the "Environmental Reports"), shall be completed as early as possible, to permit the parties to budget accordingly and/or determine whether the costs of environmental remediation or related work render the Project unviable. Developer shall be responsible for obtaining and paying for the Environmental Reports, subject to City's approval of the costs thereof (which costs shall be subject to reimbursement as provided below).

b. Following completion of the Environmental Reports, Developer shall promptly, and not later than forty-five (45) days following receipt of the Environmental Reports, estimate the costs for all work that may be reasonably anticipated for any environmental restoration, stabilization or remediation for the Project, including an appropriate contingency (the "Environmental Costs"), which estimate shall be subject to City's review and approval.

c. The Environmental Costs shall be treated as reimbursable Project Costs, with payment for such Environmental Costs covered as follows:

i. The Developer shall be responsible for the initial Environmental Costs for the Project (inclusive of the costs of the Environmental Reports), up to the aggregate amount of \$20,000.00 (the "Baseline Environmental Costs"), which costs shall be reimbursable as Project Costs.

ii. City shall be responsible for Environmental Costs in excess of the Baseline Environmental Costs, up to the aggregate amount of \$200,000.00 ("City's Maximum Contribution"). The City's Maximum Contribution, or any portion thereof, spent on the environmental-related Project Costs, shall be reimbursable to the City as Project Costs, either at the Financial Closing (to the fullest extent possible in accordance with Section 6(d)) or from the Project Proceeds, with City to be reimbursed for Environmental Costs prior to the use of Project Proceeds for any other purpose.

iii. Following receipt of Developer's estimate of the Environmental Costs for the Project, if the City determines that the estimated Environmental Costs are likely to exceed the City's Maximum Contribution, City shall promptly provide Developer with notice thereof, to permit Developer the opportunity to determine whether financing may be obtained sufficient to cover any amounts in excess of City's Maximum Contribution, as part of the Project Financing. If such financing cannot be obtained, either Party shall have the right to terminate this Agreement for lack of funding. In the event of termination of this Agreement for lack of funding pursuant to this subsection (c), City shall reimburse Developer in accordance with Section 42(a) of this Agreement.

iv. If the Agreement is not terminated and the Project otherwise proceeds, in no event shall City be responsible for any Environmental Costs in excess of City's Maximum Contribution.

15. Conditions Precedent to Commencement of Construction of the Project.

a. Developer shall not Commence Construction of the Project or any Phase thereof unless and until:

i. the Financial Closing shall have occurred;

ii. Developer shall have obtained and delivered to City's Consultant copies of all Permits and Approvals required to Commence Construction of the Project;

iii. Developer shall have delivered to City original certificates of the policies of insurance required to be carried pursuant to the provisions of Exhibit "I" to this Agreement;

iv. Contractor shall have furnished to City the Payment Bond and Performance Bond required by Section 15(d);

v. City Manager (or the City Commission, pursuant to Section 60) shall have approved the Permit Plans and Specifications, as provided in Section 11;

vi. City Manager (or the City Commission, pursuant to Section 60) shall have approved the Project Budget (including the final estimate for Environmental Costs, and City's contribution for Environmental Costs in accordance with Section 14 of this Agreement);

vii. Developer shall have delivered to the City a duly executed original Assignment of Construction Agreements for the Project, and a duly executed original Assignment of Plans, Permits and Approvals for the Project; and

viii. Contractor shall have submitted to Developer and City a construction schedule as provided in Section 20.

b. In addition to the City's cooperation obligations set forth elsewhere in this Agreement, the City (solely in its capacity as the owner of the Property and not in its governmental capacity) hereby covenants to fully cooperate with Developer (at no cost to the City) in obtaining any and all Permits and Approvals required for the Project and the Project, and any necessary utility access agreements, including, without limitation, by signing all applications reasonably made by Developer that are required to obtain such Permits and Approvals and utility access agreements. In addition, the City shall provide Developer with any information and/or documentation not otherwise reasonably available to Developer (if available to City) which is necessary to procure such Permits and Approvals and utility access agreements. Any such accommodation by City shall be without prejudice to, and shall not constitute a waiver of, City's rights to exercise its discretion in connection with its governmental functions.

c. City shall be entitled to reimbursement (as provided in Section 6(d)) for any actual, documented out-of-pocket cost and expenses paid by the City to any outside technical consultants (other than City's Consultant and City's employees), such as architects and engineers, in connection with City's assistance in obtaining any such Permits and Approvals and utility access agreements, provided the expenses are approved by the City and Developer as necessary for the Project. In addition, upon request of the Developer from time to time, the City hereby agrees to furnish Developer with a financial report detailing, with specificity, expenditures by the City. Developer shall have the right to audit all City Consultant expenditures.

d. Prior to Commencement of Construction of the Project, Developer shall cause the Contractor to furnish to City a payment bond ("Payment Bond") and performance bond ("Performance Bond") naming the City, Ground Lessee, Trustee, Issuer and Developer as co-obligees, substantially in the form attached as Exhibit "J" hereto (with any modifications approved in advance by the City), issued by a surety satisfying the bonding requirements set forth in Exhibit "I" attached hereto, guaranteeing the performance of the Contractor under that certain lump sum or guaranteed maximum price contract for the construction of the Project. If the Contractor fails to complete the construction of the Project as required by this Agreement, the City may make demand upon the Surety to perform its obligations under the Payment Bond and Performance Bond, including completion of the work; or (ii) in the alternative and provided that same does not render the Payment Bond and Performance Bonds void or otherwise voidable by the Surety, the City may take over and complete the work, or any portion thereof, by its own devices, by entering into a new contract or contracts for the completion of the work, or using such other methods as in the City's reasonable opinion shall be required for the proper completion of the work, including succeeding to the rights of the Developer and/or Contractor. Subject to the terms and conditions of the Payment Bond and the Performance Bond, as applicable, the City may also charge against the Performance Bond and Payment Bond all fees and expenses for services incidental to ascertaining and collecting losses under the Performance Bond and Payment Bond including, without limitation, accounting, engineering, and legal fees, together with any and all costs incurred in connection with renegotiation of the Agreement.

16. Commencement of Construction of the Project. Developer shall at its expense (subject to reimbursement as part of the Project Costs) (a) Commence Construction of the Project no later than ninety (90) Business Days after Developer (i) achieves Financial Closing, or (ii) obtains Final Approval of all Permits and Approvals for the Project, whichever occurs last, and (b) thereafter continue to prosecute construction of the Project with reasonable good faith diligence and continuity to completion.

17. Substantial Completion/Final Completion of Construction of the Project.

a. Developer shall achieve Substantial Completion of the construction of the Project within the time specified in Section 39(e) of this Agreement. Substantial Completion of the Project shall be accomplished in a diligent manner, 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 worker like manner, in substantial accordance with the Plans and Specifications (with no Material Modifications except as expressly permitted herein), in accordance with all applicable Requirements and, except as provided in Section 6, at Developer's sole cost and expense (subject to reimbursement as part of the Project Costs).

b. Upon Substantial Completion of the Project or any Phase thereof, Developer shall furnish City with the following:

i. certification of the architect (certified to City on the standard AIA certification form) that it has examined the Plans and Specifications and that, in its professional judgment, after diligent inquiry, the Project (or the relevant Phase thereof, as applicable) have been Substantially Completed in accordance with the Plans and Specifications applicable thereto and, as constructed, the Project comply with all applicable construction Requirements;

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

iii. a complete set of "as built" plans and a survey showing the Project (or the relevant Phase thereof, as applicable) as Substantial Completed. City shall have an unrestricted license to use such "as built" plans and survey for any purpose related to the Project 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, 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 City, at Developer's expense (subject to reimbursement as a Project Cost), a complete electronic 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 up to Substantial Completion.

c. Upon Developer's delivery to City of items 17.(b)(i) through (iii) above, the Project shall be deemed to be Substantially Complete and City shall be deemed to have accepted the Project in their then condition.

d. Developer shall achieve Final Completion of the Project within the time specified in Section 39(f) of this Agreement. The lien waivers required at Final Completion shall be in form and substance reasonably satisfactory to City from the Contractor and any other contractor, subcontractor, supplier or materialman retained by 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;

#### 18. 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. City's approval in accordance with this Section 18 of any Plans and Specifications shall be deemed to be a determination by City that the Plans and Specifications so approved are in substantial conformity with this Agreement, 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. In connection with any work related to the construction of the Project, Developer shall comply promptly with all Requirements. No consent to, approval of or acquiescence in any plans or actions of Developer by City, in its proprietary capacity, or City'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 Agreement to address a particular governmental or regulatory permit, condition, term or restriction shall not relieve the Developer of the necessity of complying with the Laws governing said permitting requirements, conditions, term or restriction.

### **CITY PARTICIPATION**

19. City's Right to Use Field Personnel. City reserves the right, at its sole cost and expense, to maintain on site-representative(s) at the Property to observe the progress of the construction of the Project (provided, however, that City shall be entitled to maintain additional on-site representatives from time to time to the extent reasonably necessary to perform such progress reviews), and Developer agrees to provide access to the Property for such limited purpose, including, without limitation, access to the preparation work and work in progress wherever located. No such progress review by the City's on-site representative(s) shall impose upon City 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 progress review shall constitute an assumption by City of any responsibility or liability for the performance of Developer's obligations hereunder, nor any liability arising from the improper performance thereof. The City's on-site representative(s) shall not interfere with any construction work being performed at the Property, shall comply with all safety standards and other job-site rules and regulations of Developer, and shall make entry upon the Property in its "as-is" condition, with all faults, whether latent or apparent. The City's on-site representative(s) will observe the progress of the construction of the Project only. Further, the City shall designate, by written notice to Developer, one on-site representative as the City's principal representative (such individual, the "City's Consultant"). The City's Consultant shall serve as Developer's direct point of contact with the City for construction matters regarding the Project and shall be responsible for coordinating all progress reviews by the City's other representative(s) with Developer under this Section 19 and gathering and submitting to Developer all comments provided by such other representative(s). The City's on-site representative(s) shall communicate only with the City's Consultant and shall make only such communications as are reasonably necessary to enable the City's on-site representative to conduct its investigations under this Section 19. In no event shall the City's Consultant or the other on-site representative(s) give directions to Developer, to the Developer's representative, or to any member of the Developer's construction team. Developer shall endeavor to provide a reasonable work area for use by the City's Consultant and on-site representative(s) during such progress reviews as is customarily provided at similar construction sites for such purposes. All expenses incurred by City's Consultant and on-site representative(s) shall be paid by City.

20. City's Right to Notice, Access and Review.

a. Developer acknowledges that City has appointed the City's Consultant as the City'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 with the reasonable requests of the City's Consultant. In furtherance thereof, Developer agrees that the City'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 City'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 City's Consultant at regularly scheduled construction work status meetings between the Developer and the Contractor (which Developer will endeavor to have scheduled not less frequently than once each month following Commencement of Construction until Substantial Completion of the Project) 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 City's Consultant of all construction work (in accordance with the provisions of Section 19);

iii. the opportunity for attendance by the City's Consultant at the design presentations given to Developer for the Project;

iv. upon the City's prior written request, the delivery by Developer to the City's Consultant of a copy of:

1. the executed contract between Developer and the 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 to be provided following Substantial Completion of the Project), working and other drawings, renderings, blueprints, specifications, layouts and change orders; and

3. all insurance certificates required by Exhibit "I" of this Agreement.

To the extent the exercise of the City's rights hereunder requires the opportunity for review of any documents or the opportunity for participation in any meetings, as determined by Developer in its reasonable discretion, Developer agrees, without request therefor by City, to promptly provide copies of such documents or notice of such meetings to City and the City'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 City's Consultant is not in attendance, the meeting will proceed and, upon the City's prior written request, Developer will provide City's Consultant with minutes of the meeting. The City's Consultant shall not interfere with any construction work being performed at the Property and shall comply with all safety standards and other job-site rules and regulations of Developer and shall make entry upon the site in its as-is condition, with all faults, whether latent or apparent. The City shall require the City's Consultant to maintain, at no cost to the Developer, commercial general liability insurance naming the City and the Developer as additional insureds.

b. Prior to the Commencement of Construction of the Project, Developer shall provide to City 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 of the Project. Developer shall, upon the City's prior written request, promptly provide to the City'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 of the Project from the then-current CPM Schedule and otherwise at appropriate intervals, but no more frequently than monthly unless Developer elects, in its sole discretion, to undertake more frequent updates; and (2) provide for expeditious and practicable execution of the construction of the Project. Developer shall promptly inform the City'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).

21. Construction Agreements; Required Clauses.

a. All Construction Agreements which provide for the performance of labor for the construction of the Project shall, to the extent applicable to the scope of work governed by such Construction Agreement, include the following provisions (or language substantially similar thereto which is approved in advance by City); provided, however, that any Construction Agreement having aggregate payments of Two Hundred and Fifty Thousand Dollars (\$250,000.00) or less shall not be required to include the provisions set forth in paragraph (i) below:

i. “Contractor shall provide, prior to the commencement of its portion of the work, and maintain during the performance thereof, the insurance set forth on Exhibit “I” attached hereto 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 shall name the City of Miami Beach, Florida (and any successor City), as additional insureds (the “Certificate of Insurance”), and shall be furnished to Developer by the Contractor prior to Commencement of Construction of the Project, denoting all insurance required of the Contractor pursuant to the terms of the contract. The Contractor shall secure an original Certificate of Insurance from each of its sub-contractors with limits of liability appropriate to such sub-contractor's scope of work”;

ii. “Contractor hereby waives all rights of recovery, claims, actions or causes of action against the City of Miami Beach, Florida (and any successor City), 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, except to the extent arising out of or related to the gross negligence or willful misconduct of the City, the City's Consultant, the City's officers, directors, officials, employees, contractors, or agents, and/or any of the City Indemnified Parties.”;

iii. “To the fullest extent permitted by law, Contractor shall and does hereby indemnify and hold harmless the City of Miami Beach, Florida, and its respective officers and employees, from liabilities, damages, losses and costs including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of Contractor and persons employed or utilized by Contractor in the

performance of this Agreement. Notwithstanding anything to the contrary, Contractor shall not be required to indemnify, defend or hold the City of Miami Beach, Florida or any of its respective officers and employees from liabilities, damages, losses or costs to the extent caused by the acts, omissions, negligence of the City of Miami Beach, Florida or any of its officers or employees. The indemnification obligations set forth in this Section shall survive the termination and/or expiration of this Agreement.”

iv. “Developer shall have the right to assign to City, subject and subordinate to the rights of Lender, Ground Lessee, and Trustee the Construction Agreement and Developer’s rights thereunder, at the City’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 Construction Agreement occurring prior to such assignment and/or purchase order, except for Developer’s payment obligations, City shall have the right to enforce the full and prompt performance by the Contractor of such Contractor’s obligations under the Construction Agreement; and (3) the City is a third party beneficiary of the Construction Agreement”;

v. “Contractor agrees to comply with all laws and requirements applicable to Contractor and the Project”;

vi. “Upon an Event of Default by Developer resulting in a termination of that certain Agreement between Developer and City, dated as of \_\_\_\_\_, 20\_\_, pursuant to which \_\_\_\_\_, 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 record 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 between Developer and City, dated as of \_\_\_\_\_, 20\_\_, pursuant to which \_\_\_\_\_, all covenants, representations, guarantees and warranties of Contractor hereunder shall be, subject and subordinate to the rights of Lender, Ground Lessee and Trustee 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, Ground Lessee and Trustee 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 Property 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 Property, 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)."

xi. "Contractor warrants that all materials and equipment included in the work will be new except where indicated otherwise in Permit Plans and Specifications or the Construction Agreement (collectively, the "Contract Documents"), and that such work will be of good quality, free from improper workmanship and defective materials and in conformance with the Contract Documents, and that such work will provide proper and continuous service under all conditions of service required by, specified in, or which may be reasonably inferred from the Contract Documents. With respect to the same work, Contractor further agrees to correct all work found by Developer, Ground Lessee, Trustee or the City of Miami Beach, Florida to be defective in material and workmanship or not in conformance with the Contract Documents for a period of one year from Substantial Completion of the work or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Contract Documents, as well as any damage to the work resulting from defective design, materials, equipment, or workmanship which develop during construction or during the applicable warranty period. Contractor shall collect and deliver to Developer and the City of Miami Beach, Florida any specific written warranties given by subcontractors or others as required by the Contract Documents (and such warranties shall be in addition to, and not substitutes for, those warranties mandated to be obtained pursuant to the Contract Documents). All such warranties shall commence upon Substantial Completion or such other dates as provided for in the Contract Documents, or unless the warranted work is not completed or has been rejected, in which case the warranty for the work shall commence on the completion or acceptance of the work."

## 22. Fees.

a. City Fees. The Parties acknowledge that the Project and the Project may require payment of certain fees, which include, without limitation, application fees for the Project Zoning Approval or other matters, notice fees, development review fees, building permit fees, inspection, certification, impact, concurrency, transportation/mobility and connection fees, and other fees that the City may levy under applicable Laws (including, without limitation, water and sewer fees), as well as those fees, to the extent applicable, listed in the most current edition of the City of Miami Beach Building Department Fee Schedule adopted by the City, which fee schedule is hereby incorporated by reference and made a part of this Agreement (collectively, the "City Fees"). Developer shall remain responsible for the City Fees, as reimbursable Project Costs.

b. Waivable City Fees. The Developer shall not be obligated to pay any City Fees for the Project that can currently be waived under the City Code, and the City shall accept Developer's filing of applications for Permits and Approvals for the Project, and process the same to Final Approval, without payment of any such City Fees by Developer.

c. Future City Fee Waivers and Refunds. The City may, in its sole and absolute discretion, adopt amendments to the City Code that permit the waiver or refund of all or part of the City Fees for the Project. Promptly following the adoption of such amendments, the City shall waive all applicable City Fees to be paid for the Project to the maximum extent permitted by such amendments, and, the City shall refund Developer the cost of all such applicable City Fees to the maximum extent permitted by such amendments.

d. Non-City Fees. Developer shall assume responsibility for payment of all fees charged by Governmental Authorities relating to the Project, reimbursable to Developer as Project Costs.

23. Notice and Right to Cure Developer's Defaults.

a. City shall give to the Recognized Lender a copy of each Developer Default Notice at the same time as it gives such notice to Developer, and no such notice shall be deemed effective with respect to any Recognized Lender unless and until a copy thereof shall have been so received by or refused by such Recognized Lender, as applicable. All such notices to a Recognized Lender shall be sent as set forth in Section 44 of this Agreement. City shall also give the Recognized Lender notice (each, a "Notice of Failure to Cure") in the event Developer fails to cure an Event of Default within the cure period, if any, provided in this Agreement for such cure, promptly following the expiration of such cure period.

b. The Recognized Lender shall have a period of sixty (60) Business 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 39 or elsewhere in this Agreement, unless such default is not susceptible of being cured by a Recognized Lender. Nothing contained herein shall be construed as imposing any obligation upon any Mortgagee to so perform or comply on behalf of Developer.

c. City shall accept performance by a Recognized Lender 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 the foregoing provisions of this Section 23, if a Recognized Lender 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 City 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 City access to the Property in order to perform any such obligation. Any amount paid by City in performing Developer's obligations as provided in this Section 23, including, without limitation, all costs and expenses incurred by City in connection therewith, shall be reimbursed to City within thirty (30) days following City's demand therefor, together with a late charge on amounts actually paid by City, from the date of notice of any such payment by City to the date on which payment of such amounts is received by City.

e. If there is more than one Recognized Lender, only that Recognized Lender, to the exclusion of all other Recognized Lenders, whose Recognized Mortgage is most senior in lien shall be recognized as having rights under this Section 23, unless such first priority Recognized Lender has designated in writing to City a Recognized Lender whose Mortgage is junior in lien to exercise such right.

**PROJECT PARKING**

24. Parking passes for Workforce Housing Unit Tenants. As part of the Ground Lease, the City will provide access to up to fifty-eight (58) monthly parking passes at the Collins Park

Garage located at \_\_\_\_\_, with the monthly parking passes available for purchase by the Project's workforce housing residents, at the then applicable City rate, on a first-come-first-served basis.

## **GENERAL PROVISIONS**

25. Applications for Development Approvals and Development Permits. This Agreement contemplates that the Developer will file applications for Development Orders and Development Permits. The City shall process all Development Permit and Development Order applications as expeditiously as possible. Notwithstanding the foregoing, Developer shall be solely responsible for obtaining Final Approval of all development Orders and Development Permits for the Project.

26. Laws Governing this Agreement. For the entire term of this Agreement, the City hereby agrees that the City's Law's and Requirements governing the development of the Development Site as they exist as of the Execution Date of this Agreement shall govern the development of the Development Site and the Project during the Term. Notwithstanding the foregoing, the City may apply subsequently adopted laws or policies to the Development Site and the Project (particularly as they may relate to quality of life issues such as, but not limited to noise, litter, and hours of operation) as permitted or required by the Act, including, without limitation, Section 163.3233(2), Florida Statutes, as same may be amended from time to time; provided, however, that in no event shall the City apply any subsequently adopted laws or policies in a manner that requires any alterations or modifications to the Project or any amendments or modifications to the Project Zoning Approval, or in a manner that renders the Project "nonconforming" as to any Laws or Requirements.

27. Compliance with Local Regulations Regarding Development Permits. This Agreement is not and shall not be construed as a Development Permit, Development Order, approval or authorization to commence any development, fill, or other land modification. The Developer and the City agree that the failure of this Agreement to address a particular permit, approval, procedure, condition, fee, term or restriction in effect on the Execution Date of this Agreement shall not relieve Developer of the necessity of complying with the regulation governing said permitting requirements, conditions, fees, terms or restrictions, subject however to the terms and provisions of this Agreement.

28. Reservation of Rights. This Agreement shall not affect any rights that may have accrued to any Party to this Agreement under applicable Laws or Requirements and each Party hereto reserves any and all of such rights.

29. Consistency with the City's Comprehensive Plan. The City has adopted and implemented the Comprehensive Plan. The City hereby finds and declares that the provisions of this Agreement dealing with the Development Site and the Project are consistent with the City's Comprehensive Plan and Land Development Regulations (subject to all applicable requirements, permits and approvals).

30. Concurrency. 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 (2018), with respect to concurrency requirements for roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation, and schools for the Project (the "Concurrency Requirements"). Prior to applying for its full Building Permit for the Project, Developer shall apply to the appropriate Governmental Authorities and obtain letters or other

evidence that Developer has satisfied all applicable Concurrency Requirements, and shall diligently and in good faith obtain such letters or other evidence that the Project meets all applicable Concurrency Requirements and shall pay such impact fees as may then be due or applicable to meet Concurrency Requirements for the Project.

31. Books and Records; Audit Rights; Public Records.

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 development, design, permitting and construction of the Project. City 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 City and its representatives access to, the books and records related to the Project shall survive the expiration of this Agreement for a period of five (5) years.

c. The City will be solely responsible for responding to all requests for public records in accordance with Florida law. In the event that a third party submits a request to the City for records of the Developer regarding this Agreement, the City shall notify the Developer of the public records request, to provide Developer the opportunity to determine whether any documents responsive to the request contain confidential trade secret information entitled to protection from disclosure under Florida law. If the Developer certifies to the City that any specific documents responsive to the request contain confidential trade secrets information (with such certification specifying the basis for the trade secret assertions, and the steps taken by the Developer to otherwise protect the confidentiality of such information), City shall withhold the subject documents, and shall provide the requestor with a copy of the Developer's trade secret certification. If the requestor objects and continues to make demand for the release of such records, City shall notify the Developer of the requestor's objection, to permit the Developer to file an action in a court of competent jurisdiction within fourteen (14) calendar days, seeking a protective order barring disclosure of any confidential trade secret information. If Developer fails to file an action for injunctive relief within the time period specified, or fails to submit the trade secret certification referenced herein, the City shall treat such failure as a waiver of any claim of trade secret protection, and the City shall thereafter release the document as requested, in accordance with Florida law.

32. Expedited Arbitration of Development Disputes.

a. If Developer or City 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 City 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 meeting nor later than twenty (20) Business Days after the mediation meeting, for a mediation hearing (a "Hearing") to be held in accordance with this Agreement to resolve such Development Dispute.

c. Developer and City 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.

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 City, the Development Arbitrator may, at its option, visit the work site to make an independent review in connection with any Development Dispute.

f. Once it has been determined by the Development Arbitrator or by agreement of the parties that the disputed matter is a Development Dispute under this Agreement, the Development Arbitrator shall take into account, in resolving such Development Dispute, such factors as he deems relevant which are not inconsistent with this Agreement, which in all events shall include the following factors:

i. City does not have any approval rights with respect to the matter of design and decor of the Project except to the extent the same is reflected in the Plans and Specifications.

ii. The Project shall be of first-class quality, compatible with the quality set forth in the original approved Plans and Specifications (without regard to changes thereto).

iii. The mutual goal of Developer and City that cost overruns for the construction of the Project shall be minimized.

iv. Applicability of any Requirement.

v. The magnitude of the modification to the previously approved Plans and Specifications.

vi. The magnitude of the consistency or inconsistency from the previously approved Plans and Specifications.

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 Plans and Specifications is a Material Modification; (ii) whether or not City has unreasonably failed to approve or give its consent to any modifications to the Plans and Specifications pursuant to Sections 10 and/or 11; (iii) whether or not Developer has complied with its obligations or responsibilities set forth in Sections 10, 11 or 12; and (iv) whether or not Developer or City 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 reasonably cooperate to select an independent, neutral, professional firm having multi-unit housing development or construction experience to serve as the arbitrator (the "Development Arbitrator"). If the Parties cannot agree on the selection of a Development Arbitrator, 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. The cost of the Development Arbitrator shall be equally shared by the Parties, but each Party shall bear its own costs, including those of its experts and legal fees, associated with the arbitration.

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

34. Effective Date and Duration (Term).

a. Within fourteen (14) days following approval at two public hearings and execution by the Parties, the City shall record the Agreement in the Public Records of Miami-Dade County. This Agreement shall become effective only after it has been recorded in the Public Records of Miami-Dade County, Florida. The Developer agrees that the Project shall be responsible for all recording fees and other customary fees and costs related to the recording of this Agreement as described in this Section.

b. This Agreement shall run for a term of ten (10) years from the Effective Date (the "Term"). The Term of this Agreement may be extended only by the mutual consent of the City and the Developer subject to a public hearing pursuant to Section 163.3225, Florida Statutes; and (ii) consent to any extension of this Agreement is within the sole discretion of each party to this Agreement. No notice of termination shall be required by either Party upon the expiration of this Agreement, and after the expiration of this Agreement the Parties shall have no further obligations under this Agreement, except for those obligations that expressly survive the expiration of this Agreement.

c. Upon Financial Closing, this agreement shall merge into the Ground Lease and the obligations of the Developer identified in this Agreement shall become those of the Ground Lessee. As between the Ground Lease and the Developer, Ground Lessee shall enter into a separate agreement with the Developer, effective as of the date of Financial Closing, for



the delivery of the completed Project to the Ground Lessee, including, design, construction, furnishing and equipping of the Project.

35. Presently Permitted Development. The development that is presently permitted on the Development Site, including population densities, and building intensities and height, which are subject to this Agreement, is more specifically set forth in Exhibit "K" hereto.

36. Public Facilities to Serve the Development Site. A description of the public facilities that will service the Project of the properties subject to this Agreement, including who shall provide such facilities; the date any new facilities, if needed, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of the development is included as Exhibit "L" hereto.

37. Public Reservations and/or Dedications. A description of the reservations and/or dedications of land for public purposes that are proposed under the terms of this Agreement is included as Exhibit "M" hereto.

38. Required Development Permits. Attached and made a part hereof as Exhibit "N" is a listing and description of all local development permits approved or needed to be approved for the development of the Project.

39. Developer Defaults. Each of the following shall be an "Event of Default" by Developer hereunder:

a. If Developer shall fail to observe or perform any term, covenant or condition of this Agreement on Developer's part to be observed or performed and Developer shall fail to cure or remedy the same within ten (10) Business Days following Developer's receipt of written notice from the City, with respect to monetary defaults, or within thirty (30) Business Days following Developer's receipt of written notice from the City with respect to non-monetary defaults (each, a "Developer Default Notice"). If such non-monetary default is susceptible to cure but cannot reasonably be cured within said thirty (30) Business Day period, then Developer shall have any additional sixty (60) Business Day period to cure such failure and no Event of Default shall be deemed to exist hereunder so long as Developer commences such cure within the initial thirty (30) Business Day period and diligently and in good faith pursues such cure to completion within such resulting ninety (90) Business Day period from the date the Developer receives the Developer Default Notice.

b. If Developer shall fail to obtain the Project Zoning Approval within one hundred and eighty days (180) Business Days after the Effective Date of this Agreement.

c. If Developer shall fail to achieve the Financial Closing within ninety (90) Business Days after Developer obtains the Final Approval of all Permits and Approvals for the Project.

d. If Developer shall fail to Commence Construction of the Project within thirty (30) Business Days after Financial Closing.

e. If Developer shall fail to achieve Substantial Completion of the construction of the Project within forty-five (45) months after the Effective Date.

f. If Developer shall fail to achieve Final Completion of the construction of the Project within forty-eight (48) months after the Effective Date.

g. If Developer shall fail to open the Project for rentals of the Workforce Housing Units by eligible tenants within ninety (90) Business Days after Substantial Completion of the Project.

h. If, prior to Substantial Completion of the Project, Developer shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all of its property or the major part thereof or if all or a substantial part of the assets of Developer are attached, seized, subjected to a writ or distress warrant, or are levied upon, or come into the possession of any receiver, trustee, custodian or assignee for the benefit of creditors.

i. If, prior to Substantial Completion of the Project, Developer shall commence a voluntary case under the Title 11 of the United States Code (the "Bankruptcy Code"); or an involuntary proceeding is commenced against Developer under the Bankruptcy Code and relief is ordered against Developer, or the petition is controverted but not dismissed or stayed within one hundred fifty (150) days after the commencement of the case, or a custodian (as defined in the Bankruptcy Code) is appointed for or takes charge of all or substantially all of the property of Developer and is not discharged or dismissed within one hundred fifty (150) days; or Developer commences any other proceedings under any reorganization, arrangement, readjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar Law of any jurisdiction whether now or hereafter in effect relating to Developer; or there is commenced against Developer any such proceeding which remains undismissed or unstayed for a period of one hundred fifty (150) days; or Developer fails to controvert in a timely manner any such case under the Bankruptcy Code or any such proceeding, or any order of relief or other order approving any such case or proceeding is entered; or Developer consents to or approves of, in any such case or proceeding or the appointment of any custodian or the like of or for it for any substantial part of its property or suffers any such appointment to continue undischarged or unstayed for a period of one hundred fifty (150) days.

j. If, prior to Substantial Completion of the Project, Developer shall assign or transfer its rights and/or delegate the performance of its obligations under this Agreement to anyone, at any time, other than a Recognized Lender or the Ground Lessee, without the City's prior written consent and approval, as governed by Section 51.

40. Effect of Cure. Notwithstanding Section 39 or anything else to the contrary, Developer will not be deemed to be in default of this Agreement for any Event of Default that is cured by the Developer, by the Ground Lessee and/or Recognized Lender.

41. Enforcement of Performance; Damages and Termination. In the event the City shall claim any Event of Default shall have occurred hereunder, the Developer Default Notice shall state with specificity the provisions of this Agreement under which the Default is claimed, the nature and character of such Event of Default, the date by which such Event of Default must be cured pursuant to this Agreement, if applicable, and, if elected by the City, that the failure of Developer to cure such Default by the date set forth in such notice will result in the City having

the right to terminate this Agreement. If an Event of Default occurs hereunder, the City may elect any one or more of the following remedies:

- a. Enforce strict performance by Developer; or
- b. Exercise and enforce the City's rights pursuant to each of the Assignment of Plans, Permits and Approvals and the Assignment of Construction Agreements; or
- c. Terminate this Agreement; or
- d. Pursue any other remedy available to the City at law or in equity.

In the event City elects to exercise its remedies pursuant to Section 41(b), Developer shall:

- i. Promptly deliver to the City all submittals and Project records in their original/native electronic format (i.e. CAD, Word, BIM, Excel, etc.), any and all other unfinished documents, and any and all warranties for work, equipment or materials already installed or purchased, to the extent the same are in Developer's possession;
- ii. As directed by the City, transfer or cause the Contractor to transfer title and deliver or demand that the Contractor deliver to the City (1) the fabricated and non-fabricated parts, work in progress, completed work, supplies and other material produced or required for the work; and (2) the completed or partially completed project records that, had the work been completed, would be required to be furnished to the City, to the extent the same are in Developer's possession; and
- iii. Take any action that may be reasonably necessary, or that the City may reasonably direct, for the protection and preservation of the property related to this Development Agreement that is in Developer's possession and in which the City has or may acquire an interest.

The rights and remedies of the City in this Section 41 shall apply to all Events of Default that fail to be cured within the applicable cure period or are cured but in an untimely manner, and the City shall not be obligated to accept such late cure.

In addition, if the City violates, breaches or defaults on any term, covenant, condition or other provision of this Agreement (a "City Default"), then the Developer shall have all rights and remedies available to it under this Agreement, at law, and/or in equity (including, without limitation, an action for specific performance and injunctive relief to enforce the terms, covenants, conditions and other provisions of this Agreement) against the City as a result of or arising out of such City Default. The Developer's election of a right or remedy under this Agreement, at law, and/or in equity with respect to any City Default shall not limit or otherwise affect the Developer's right to elect any other right or remedy available to it under this Agreement, at law, and/or in equity with respect to the same or any other City Default.

#### 42. Termination Outside of Default.

- a. If prior to Financial Closing, the Parties determine that the viability of the Project is jeopardized due to (i) the Environmental Costs exceeding the City's Maximum

Contribution; (ii) failure to obtain reasonable construction pricing or financing for the Project; (iii) changes in entitlements, zoning or other Laws that significantly increase the costs of the Project; or (iv) the inability to achieve Financial Closing, due to unforeseen economic events or conditions that materially impair access to debt or equity markets by developers of projects similar to the Project, such as a liquidity crisis or major recession or other event causing major disruptions in the economy, which events significantly increase Project costs or severely limit the ability to raise liquidity and/or capital (the "Closing Risks"), the Parties shall work together in good faith to maintain the viability of the Project to the extent possible. To mitigate Closing Risks, each Party shall consider potential modifications to various aspects of the Project or the Project agreements, provided, however, that any such modifications shall be made at each Party's sole discretion. If despite such efforts of the Parties, the Parties mutually determine in good faith that the Project is no longer viable due to the Closing Risks, the Parties shall agree to terminate this Agreement pursuant to this section, as follows:

i. If such termination occurs prior to the Project receiving the Project Zoning Approval, the City shall, within 30 days after the effective date of such termination: (a) reimburse Developer in an amount equal to 100% of the Pre-Development Expenses incurred through the effective date of such termination; and (b) any of the accrued Development Fee, pursuant to Section 6(b) of this Agreement (collectively, subsection 42(a)(i)(a) and (b), the "Termination Costs"); provided, however, that City's maximum liability under this Agreement for the Termination Costs pursuant to this Section 42(a)(i) shall not exceed the aggregate total amount of Five Hundred Thousand Dollars and 00/100 (\$500,000.00), plus Environmental Costs for which the City is responsible for pursuant to Section 14 of this Agreement. Upon reimbursement to Developer for termination costs pursuant to this Section, Developer shall assign and transfer to the City ownership of all plans, specifications, permits or other approvals, and any other work product developed to date in connection with the Project (the "Work Product"), along with a copy of all such Work Product, in an electronic or other format as mutually agreed upon by the Parties. Developer shall have no obligation to transfer ownership of the Work Product, until Developer receives the payment described herein.

ii. If such termination occurs after the Project Zoning Approval, but prior to Financial Closing, the City shall, within 30 days after the effective date of such termination: (a) reimburse Developer for the Termination Costs, provided, however, that City's maximum liability under this Agreement for the Termination Costs pursuant to this Section 42(a)(ii) shall not exceed the aggregate total amount of Eight Hundred Thousand Dollars and 00/100 (\$800,000.00), plus Environmental Costs for which the City is responsible for pursuant to Section 14 of this Agreement. Upon reimbursement to Developer pursuant to this Section, Developer shall assign and transfer to the City ownership of the Work Product, along with a copy of all such Work Product, in an electronic or other format as mutually agreed upon by the Parties. Developer shall have no obligation to transfer ownership of the Work Product, until Developer receives the payment described herein.

43. Termination for Convenience. The City may terminate this agreement for its own convenience at any time prior to the Project Zoning Approval. In the event of such termination, the City shall within 30 days after the effective date of such termination, reimburse Developer for the Termination Costs Developer shall have no obligation to transfer ownership of the plans, designs, or other work product as set forth in herein until Developer receives the payment described herein. After the Project has received Project Zoning Approval, , the City may not terminate this Agreement for its convenience. In no event shall Developer or City have any right

to terminate this Agreement for convenience after the Financial Closing has occurred. Upon reimbursement to Developer pursuant to this Section, Developer shall assign and transfer to the City ownership of the Work Product, along with a copy of all such Work Product, in an electronic or other format as mutually agreed upon by the Parties. Developer shall have no obligation to transfer ownership of the Work Product, until Developer receives the payment described herein.

44. Effect. In the event that either Party chooses to exercise its express right to terminate this Agreement for convenience (including, without limitation, under Section 42(a) above), but apart from such Party's right to terminate in an Event of Default by the other Party, then each Party shall bear its own costs and expenses incurred in connection with this Agreement and the Project, and neither Party shall have or owe any further liability to the other Party, except as set forth in Sections 42 or 43 of this Agreement, as applicable.

45. Strict Performance; Waiver. No failure by the City 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 hereunder shall constitute a waiver of any such default, Event of Default or of such other covenant, agreement, term or condition hereunder.

46. Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if (i) delivered by hand, (ii) sent by electronic mail, (iii) sent by recognized overnight courier (such as Federal Express), or (iv) mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, in each case addressed as follows or to such other addresses as either Party may from time to time designate for itself by notice to the other Party in accordance with this Section:

If to the City at: City of Miami Beach, City Hall  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attn: City Manager

With a copy to: City of Miami Beach, City Hall  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attn: City Attorney

If to Developer at: Servitas, LLC  
5525 N. MacArthur Blvd  
Suite 760  
Irving, TX 75038  
Attn: Denise Hauck

With a copy to: Weinberg Wheeler Hudgins Gunn & Dial  
2601 S. Bayshore Drive  
Suite 1500  
Miami, Florida 33133  
Attn: Steven D. Gonzalez

Notices personally delivered or sent by electronic mail or by overnight courier shall be deemed given on the date of delivery (or upon refusal of such delivery), and notices mailed in accordance with the foregoing shall be deemed given three (3) Business Days after deposit in the U.S. mails. The terms of this Section 44 shall survive the termination of this Agreement.

47. Governing Laws, Construction and Litigation. This Agreement shall be governed and construed in accordance with the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws that would require the application of any other law. The Developer and the City agree that Miami-Dade County, Florida is the appropriate and exclusive state court venue, and that the U.S. District Court, Southern Division of Florida is the appropriate and exclusive federal court venue, in connection with any litigation between the parties with respect to this Agreement. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof; accordingly, this Agreement shall not be more strictly construed against any of the parties hereto. In construing this Agreement, captions, and section and paragraph headings shall be disregarded and the use of any gender shall include every other and all genders. All of the exhibits referenced in this Agreement are incorporated in, and made a part of, this Agreement. In the event of any litigation between the parties under this Agreement for a breach thereof, the prevailing party shall be entitled to reasonable attorney's fees and court costs at all trial and appellate levels. BY ENTERING INTO THIS AGREEMENT THE CITY AND DEVELOPER EXPRESSLY WAIVE ANY RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT. The terms of this Section shall survive the termination of this Agreement.

48. Severability. In the event any term or provision of this Agreement be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or construed as deleted, as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

49. Time of Essence. Time shall be of the essence for each and every provision hereof.

50. Entire Agreement. This Agreement, together with its exhibits and all other documents referenced herein, constitutes the entire agreement and understanding among the parties with respect to the subject matter hereof, and there are no other agreements, representations or warranties other than as set forth herein. Neither party shall be bound by any agreement, condition, warranty nor representation other than as expressly stated in this Agreement. This Agreement may not be changed, altered or modified except by an instrument in writing signed by both parties hereto, subject to the requirements for the amendment of development agreements in the Act.

51. Other Agreements. This Agreement has no effect on any other agreement, Development Order, or declaration of restrictions encumbering the Development Site as of the Effective Date. Any and all agreements in the public records as of the Effective Date remain valid. The parties incorporate by reference each and every applicable requirement set forth in the Act.

52. Binding Effect. The obligations imposed pursuant to this Agreement upon the Developer and upon the Development Site shall run with and bind the Development Site as covenants running with the Development Site, and this Agreement shall be binding upon and enforceable by and against the parties hereto and their personal representatives, heirs, successors, grantees and assigns.

53. Transfer, Assignment, and Delegation.

a. By Developer. With respect to transfers, assignments, and delegations of Developer's rights and obligations pertaining to the Project, the following shall apply:

i. Prior to Substantial Completion of the Project, Developer may not assign or transfer its rights, or delegate the performance of its obligations, pertaining to the Project under this Agreement, in whole or in part, to any third party, unless Developer first obtains the City Commission's prior approval, at its sole discretion.

ii. Following Substantial Completion of the Project, Developer may, in its sole discretion, assign or transfer its rights or delegate the performance of its obligations pertaining to the Project under this Agreement, in whole or in part, to Ground Lessee or an Affiliate of Ground Lessee, without the City's prior written consent or other approval.

Notwithstanding the foregoing or anything else to the contrary, the City's prior written consent shall not be required to allow (i) the transfer, assignment or delegation of this Agreement to a Recognized Lender or designee thereof by deed or assignment in lieu of foreclosure.

b. By City. The City may not assign or transfer its rights, or delegate the performance of its obligations under this Agreement, in whole or in part, to any third party other than a successor municipal corporation, unless City first obtains Developer's prior written consent, which consent Developer may withhold in its sole discretion.

c. Effect; Invalidity. Any transferee, assignee, or delegatee (including through foreclosure or deed-in-lieu thereof) approved by City or Developer pursuant to this Agreement shall assume all of the obligations expressly transferred, assigned, or delegated. Upon any transfer, assignment, or delegation carried out in accordance with this Section, the obligations transferred, assigned, or delegated shall be binding only on such Party's transferee, assignee, or delegatee, as the case may be, and the other Party shall look only to such transferee, assignee, or delegatee for performance of the obligations being transferred, assigned, or delegated. Any purported assignment or transfer of rights, or delegation of performance, in violation of this Section is void.

54. Force Majeure; and Third-Party Challenges. Neither Party shall be liable for damages, for breach of contract or otherwise, for any failure, suspension, diminution, or other variation of service or performance occasioned by or arising from a Force Majeure Event. In addition, all time periods in this Agreement and/or in any Permits and Approvals issued in connection with the Project and/or the Project, whether express or implied, will be tolled automatically to account for Force Majeure Events, and the Party against whom enforcement of a time period is sought will not be considered to have missed a deadline or to be in breach or default of this Agreement for so long as such Party is unable to complete any work or take any action required by this Agreement due to such Force Majeure Event(s).

In the event that a third party (unrelated or unaffiliated with the City, Developer or Ground Lessee) institutes any action, suit, or proceeding relating to the Project (including, without limitation, any action, suit, or proceeding challenging the validity of this Agreement or any element of the proposed transaction, the GU Height Waiver Resolution, GU Waiver Resolution, the Project Zoning Approval, or any other Permits and Approvals relating to the Project or to the Project (in

each instance, including any related appeals and appeal periods, a "Lawsuit"), then the Developer shall, at its option, either: (i) attempt to defend such Lawsuit at its sole cost and using legal counsel reasonably acceptable to the City, in which case all time periods in this Agreement and in any Permits and Approvals issued in connection with the Project, whether express or implied, shall be tolled automatically through all levels of appeal until such Lawsuit has been finally disposed of (by judgement, settlement or otherwise) to Developer's satisfaction; or (ii) terminate this Agreement in accordance with Section 42. Developer shall indemnify and hold the City harmless from and against all actual claims, injury, damage, loss and liability, cost and expense (including attorneys' fees, costs and expenses) of any and every kind arising out of or relating to any such Lawsuit, except to the extent arising out of or related to the City's negligence or misconduct. Developer shall be entitled to control the defense and conduct of any such Lawsuit and to compromise, settle, or abandon the Lawsuit, in its sole discretion, and the City agrees to reasonably cooperate with Developer (at no expense to the City) in connection with the conduct of any such Lawsuit. This Section shall survive the termination or expiration of this Agreement.

55. Indemnification. In addition to the indemnification obligations provided elsewhere in this Agreement, and subject to the City's liability limitations as set forth herein and in Section 57 below, each Party hereby agrees to defend, indemnify and hold harmless the other Party, its agents and employees, from and against all actual, documented loss, cost, expense, claim, demand or cause of action of whatever kind or nature arising out of or related to the gross negligence or willful misconduct of such Party and/or its officers, directors, officials, employees, contractors, and agents, related to (i) this Agreement, and/or (iii) the Project, except to the extent arising out of or related to the gross negligence or willful misconduct of the other Party and/or its officers, directors, officials, employees, contractors, or agents (collectively, "Losses"). The indemnifying Party shall directly pay all actual, documented costs and expenses related to any cost charged or legal defense required by the other Party, using legal counsel reasonably acceptable to the other Party (but subject to the requirements of the indemnifying Party's insurers), pursuant to the foregoing indemnification obligation. The non-indemnifying Party shall notify the indemnifying Party of any Losses promptly after receiving notice of same and shall reasonably cooperate and collaborate (but at no expense to the non-indemnifying Party) with the indemnifying Party in connection with any legal proceeding in which the indemnifying Party is defending the other Party hereunder. This Section shall survive termination or expiration of this Agreement. City's indemnity obligations herein shall be solely to the extent and limits permitted by Section 768.28 of the Florida Statutes, and without waiver of any rights or defenses thereunder or any privileges or immunities afforded to the City under the laws of the State of Florida.

56. Corporate Obligations. It is expressly understood that this Agreement and the obligations issued hereunder are solely corporate obligations, and 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 Developer, City, or any 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 that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any of all such rights and claims against, every such incorporator, stockholder, officer, director, elected or appointed official (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 consideration for, the execution of this Agreement.



57. No Conflict of Interest. Developer represents and warrants that, to Developer's knowledge, no member, official or employee of the City has any direct or indirect financial interest in this Agreement nor has participated in any decision relating to this Agreement that is prohibited by law. Developer represents and warrants that, to Developer's 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.

58. No Third-Party Beneficiaries. This Agreement is not intended to, and shall not be construed to give, any third party (including, without limitation, any homeowners association, condominium association, or neighborhood association in the surrounding area, or any individual members thereof) any rights or interests whatsoever, nor is it intended that any third party shall be a third party beneficiary of any provisions hereof.

59. Limitations of Liability.

a. Any tort liability to which the City is exposed under this Agreement shall be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, and City expressly does not waive any of its rights and immunities thereunder.

b. City will not in any event whatsoever be liable for any injury or damage to Developer (unless caused by the gross negligence or willful misconduct of City, its agents, contractors or employees) or to any other person happening on, in or about the Property and its appurtenances, nor for any injury or damage to the Property (unless caused by the gross negligence or willful misconduct of City, its agents, contractors or employees) or to any other person which may be caused by any fire or breakage, or by the use, misuse or abuse of any of the Property, or which may arise from any other cause whatsoever (unless caused by the gross negligence or willful misconduct of City, its agents, contractors or employees).

c. City will not be liable to Developer or to any other person for any injury or damage to any property of Developer or to any person or to the City Parcel caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Property, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by any person (unless caused by the gross negligence or willful misconduct of City, its agents, contractors or employees).

d. Except as may be otherwise expressly provided herein, no approval to be made by the City in its proprietary capacity under this Agreement or any inspection of the Project or Project by the City under this Agreement, shall render the City liable for its failure to discover any defects or nonconformance with any governmental requirement.

60. Mutual Waiver of Consequential Damages. Notwithstanding anything to the contrary contained in this Agreement, in no event whatsoever shall either Party be liable to the other Party for any indirect, special, incidental, consequential, punitive, economic damages, lost

profits or similar damages, whether or not foreseeable or advised of the possibility of the same, in connection with, arising from or in connection with this Agreement.

61. Police Power.

a. The Parties recognize and agree that certain provisions of this Agreement require the City and its boards, departments or agencies, acting in their governmental capacity, to consider governmental actions, as set forth in this Agreement. All such considerations and actions shall be undertaken in accordance with established requirements of state statutes and municipal ordinances, in the exercise of the City's jurisdiction under the police power. Nothing contained in this Agreement shall entitle the Developer to compel the City to take any such actions, save and except the consents, if applicable, to the filing of such applications for Development Permits or Development Orders, as more fully set forth herein, and to process such applications as expeditiously as possible.

b. The Parties further recognize and agree that these proceedings shall be conducted openly, fully, freely and fairly in full accordance with law and with both procedural and substantive due process to be accorded the applicant and any member of the public. Nothing in this Agreement shall be construed to prohibit the City from duly acting under its police power to approve, approve with conditions, or reject any public hearing application dealing with the Development Site.

62. City Manager's Delegated Authority. Notwithstanding any provision to the contrary in this Agreement, nothing herein shall preclude either Party from seeking direction from or electing to have the City Commission determine any matter arising out of or related to the Project, including, without limitation, any approval contemplated under this Agreement (within the timeframe specified therefor as if the Approval was being determined by the City Manager).

63. Conflict. In the event of an inconsistency or conflict between the terms of this Agreement and the Ground Lease, the terms of this Ground Lease shall control.

64. Developer's Contractors/Vendors. Except as is otherwise expressly provided in this Agreement, Developer shall be responsible for the following specific matters:

i. the selection, approval, hiring, and discharge of architects, engineers, contractors, subcontractors, professionals, and other third parties on such terms and conditions as Developer deems appropriate in its sole discretion, provided that the Contractor for the Project must be duly licensed by the State of Florida, must satisfy the insurance and bonding requirements set forth in Exhibit "I" to this Agreement, must have completed at least two (2) projects with an estimated value of at least Twenty Million Dollars (\$20,000,000.00) each during the five (5) years immediately preceding the Contractor's engagement for the Project, and has not otherwise been debarred or suspended pursuant to the City Code.

ii. (ii) the negotiation and execution of contracts, agreements, instruments, covenants, and other documents with third parties, in form and substance satisfactory to Developer in its sole discretion.

65. Art in Public Places. Developer shall comply with the City's Art In Public Places program requirements under Section 82-536 through 82-612 of the City Code, as applicable (the "AIPP Ordinance"), and shall pay to the City's Art in Public Places fund the total of 2% of the "construction cost" (as such term is defined in Section 82-537 of the City Code) of the Project (the

"Public Art Funds") no later than the date of execution of Construction Agreement with the Contractor for the Project. The full amount of the Public Art Funds shall be dedicated to public art either as part of the exterior of the Project, or within the vicinity of the Project, in the Collins Park neighborhood, with the final AIPP work selected in accordance with the usual and customary procedures for the selection of AIPP works, pursuant to the AIPP Ordinance.

66. Joinder by Borrower. By executing this Agreement below, Borrower joins in and consents to this Agreement for purposes of acknowledging and confirming its agreement to the terms hereof. Borrower further acknowledges and agrees that, upon Financial Closing and execution of the Ground Lease, this Agreement shall be merged into, and be incorporated by reference in, the Ground Lease, and that as of the Commencement Date (as such term is defined in the Ground Lease), Borrower shall be subject to and shall assume all of the obligations of the Developer in this Agreement, and may avail itself of all rights and remedies available to the Developer herein.

*[Signatures Follow]*

**EXECUTED** as of the date first above written in several counterparts, each of which shall be deemed an original, but all constituting only one agreement.

Signed, sealed and delivered  
in the presence of:

CITY OF MIAMI BEACH,  
a Florida municipal corporation

\_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
Dan Gelber, Mayor

\_\_\_\_\_  
Name: \_\_\_\_\_

Attest: \_\_\_\_\_  
Rafael E. Granado, City Clerk

STATE OF FLORIDA            )  
  )SS  
COUNTY OF MIAMI-DADE    )

The foregoing instrument was acknowledged before me, me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Dan Gelber, as Mayor of the City of Miami Beach, a municipal corporation, on behalf of the Corporation. He is personally known to me or has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
Typed or Printed Name of Notary  
My Commission expires:  
Serial No., if any: \_\_\_\_\_

\_\_\_\_\_, a  
\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me, by means of ☐ physical presence  
or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_ by \_\_\_\_\_, as \_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of  
the company. He is personally known to me or has produced  
\_\_\_\_\_ as identification and who did/did not take an oath.

\_\_\_\_\_  
NOTARY PUBLIC  
Typed or printed Name of Notary  
My Commission expires:  
Serial No., if any \_\_\_\_\_

Joinder:

\_\_\_\_\_, a  
\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me, by means of ☐ physical presence  
or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_ by \_\_\_\_\_, as \_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of  
the company. He is personally known to me or has produced  
\_\_\_\_\_ as identification and who did/did not take an oath.

\_\_\_\_\_  
NOTARY PUBLIC

Typed or printed Name of Notary

My Commission expires:

Serial No., if any \_\_\_\_\_

## **EXHIBIT LIST**

Exhibit "A"	The Property
Exhibit "B"	The Unified Development Site
Exhibit "C"	Ground Lease
Exhibit "D"	GU Waivers
Exhibit "E"	Concept Plan
Exhibit "F"	Unity of Title
Exhibit "G"	Servitas Development Services
Exhibit "H"	Budget
Exhibit "I"	Insurance
Exhibit "J"	Performance and Payment Bond
Exhibit "K"	Presently Permitted Development
Exhibit "L"	Public Facilities to Serve Development Site
Exhibit "M"	Public Reservations and/or Dedications
Exhibit "N"	Development Permits

**Exhibit "A"**  
**The Property**

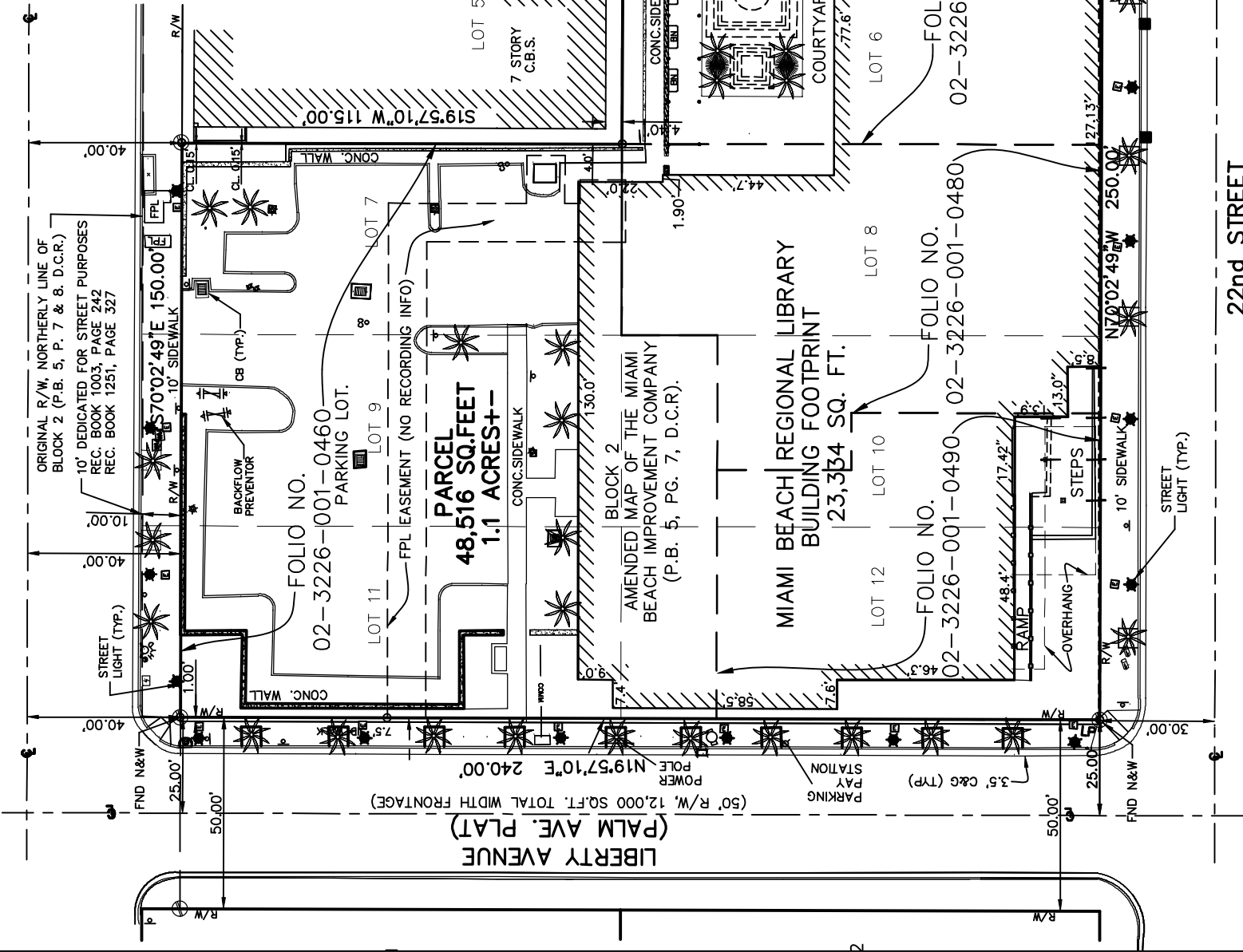
Lots 7, 9 and 11, less the northern 10 feet for right-of-way, and the northern 25 feet of Lots 10 and 12, Block 2, Miami Beach Improvement Company Subdivision, as recorded in Plat Book 5, Page 7 of the Public Records of Miami-Dade County, Florida.

Folio Number: 02-3226-001-0460



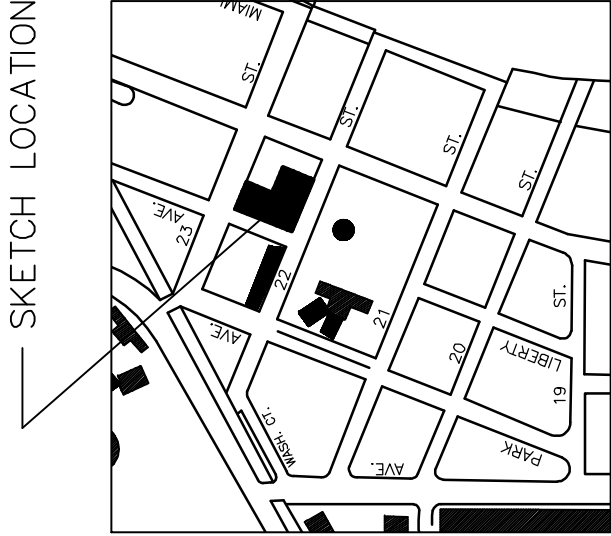
**Exhibit “B”**  
**The Unified Development Site**

23rd STREET  
(ATLANTIC AVE PLAT)  
(80' R/W, 12,000 SQ.FT. TOTAL WIDTH FRONTAGE)



LEGEND & ABBREVIATIONS:

- |       |                          |        |                             |
|-------|--------------------------|--------|-----------------------------|
| ASPH. | ASPHALT                  | L      | ARC LENGTH                  |
| BM    | BENCH MARK               | WH     | MANHOLE                     |
| BW    | BACK OF SIDEWALK         | PAY.   | PAVEMENT                    |
| CB    | CATCH BASIN              | PCC    | POINT OF COMPOUND CURVATURE |
| CBS   | CONCRETE BLOCK STRUCTURE | E      | PROPERTY LINE               |
| C&G   | CURB AND GUTTER          | POB    | POINT OF BEGINNING          |
| C     | CENTER LINE              | POC    | POINT OF COMMENCE           |
| CL    | CLEARANCE                | PP     | POWER POLE                  |
| CLF   | CHAIN LINK FENCE         | PRC    | POINT OF REVERSE CURVE      |
| CM    | CONCRETE MONUMENT        | PT     | POINT OF TANGENCY           |
| CONC. | CONCRETE                 | R      | RADIUS                      |
| DH    | DRILL HOLE               | R/W    | RIGHT-OF-WAY                |
| EL    | ELEVATION                | T.B.M. | TEMPORARY BENCH MARK        |
| ENC.  | ENCROACHMENT             | TC     | TOP OF CURB                 |
| FD IP | FOUND IRON PIPE          | WM     | WATER METER                 |
| FL    | FLOW LINE                | Δ      | CENTRAL ANGLE               |
| IP    | IRON PIPE                | ☼      | LIGHT POLE                  |
|       | BUILDING HATCH           | WM     | WATER METER                 |
|       |                          | E      | ELECTRIC BOX                |



LOCATION SKETCH

DESCRIPTION OF LANDS

(BY COMBINED PARCEL FOLIOS)

LOTS 7, 9, AND 11 BLOCK 2, ACCORDING TO THE "AMENDED MAP OF THE OCEAN FRONT PROPERTY OF THE MIAMI BEACH IMPROVEMENT COMPANY", AS RECORDED IN PLAT BOOK 5 AT PAGE 7, THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; LESS THE NORTHERLY 10 FEET THEREOF FOR RIGHT OF WAY.

AND

LOTS 4, 8, 10 AND 12, BLOCK 2, OF SAID "AMENDED MAP OF THE OCEAN FRONT PROPERTY OF THE MIAMI BEACH IMPROVEMENT COMPANY", ALL LYING IN THE CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA

CONTAINING 48,516 SQUARE FEET OR 1.11 ACRES MORE OR LESS.

SURVEYORS NOTES:

1. THE DESCRIPTION OF LANDS AS SHOWN HEREON WAS PREPARED BY THE SURVEYOR AND IS NOT THE LEGAL DESCRIPTION BY THE CONVEYANCE DEED(S).
2. A TITLE SEARCH AND/OR REPORT WAS NOT PREPARED FOR THE PROPERTY SURVEYED.
3. UNDERGROUND UTILITIES AND/OR IMPROVEMENTS HAVE NOT BEEN LOCATED.
4. ELEVATIONS IF SHOWN HEREON ARE RELATIVE TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88) AND ARE BASED UPON CITY OF MIAMI BEACH BENCHMARK ID NO. MDC D-160 ELEVATION 3.80. BENCHMARK LOCATED ATOP A CB ALONG THE EAST CURB OF COLLINS AVE.
5. THIS IS NOT A BOUNDARY SURVEY. THIS "RECORD SURVEY" IS TO UPDATE A SURVEY PERFORMED BY THIS OFFICE, (CITY PROJECT NO. SM-2002S). THE RIGHT OF WAY LINES WERE CALCULATED FROM THE "AMENDED MAP OF THE MIAMI BEACH IMPROVEMENT COMPANY" (PLAT BOOK 5, PAGE 7). THIS "RECORD SURVEY" HAS BEEN PERFORMED TO MAP THE EXISTING IMPROVEMENTS FOR PLANNING PURPOSES.
6. COORDINATES (NORTHING AND EASTING) AND/OR BEARINGS IF DEPICTED ON THIS SURVEY MAP ARE BASED UPON THE FLORIDA STATE PLANE COORDINATE SYSTEM, FLORIDA EAST ZONE, RELATIVE TO THE NORTH AMERICAN DATUM (NAD) 1983/2011 ADJUSTMENT. (GPS) MEASUREMENTS WERE CONDUCTED IN THE FIELD TO ACQUIRE LOCATIONS OF IMPROVEMENTS AND ARE REFERENCED TO: THE FLORIDA DEPARTMENT OF TRANSPORTATION, FLORIDA PERMANENT REFERENCE NETWORK (FPRN). BASED ON THE FOLLOWING CONTINUOUSLY OPERATING REFERENCE STATIONS: MIAMI BEACH (FLMB) AND DISTRICT 6 (FLD6).
7. DATE OF SURVEY/DATA ACQUISITION IS JANUARY 20, 2017.

CERTIFICATION:

I HEREBY CERTIFY: THAT THIS "RECORD SURVEY" IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS SURVEYED AND DRAWN UNDER MY DIRECTION, AND THAT THIS SURVEY MEETS THE STANDARDS AND PRACTICES AS SET FORTH BY THE FLORIDA STATE BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 354, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027 FLORIDA STATUTES.

01-26-17  
DATE OF SIGNATURE

BRIAN T. BELLINO, P.S.M.  
CITY SURVEYOR MANAGER  
FLORIDA LICENSE NO.4973

<div>MIAMI BEACH</div> <div>PUBLIC WORKS DEPARTMENT</div> <div>1700 CONVENTION CENTER DRIVE, MIAMI BEACH, FL 33139</div>		NEIGHBORHOOD: NO. 9 CITY CENTER		CITY MANAGER: JIMMY L. MORALES DIRECTOR: ERIC T. CARPENTER, P.E. CITY ENGINEER: BRUCE A. MOWRY, Ph.D., P.E.	ENGINEER OF RECORD: ..... DESIGN ENGINEER: ..... DRAWN BY: J.F. CHECKER: B.T.B. SCALE: AS SHOWN	ACCEPTED BY:					File Name: <b>SM 2017W.dwg</b>	
		TITLE: MIAMI BEACH REGIONAL LIBRARY				NO. DATE REVISION					5 4 3 2 1	
						BRIAN T. BELLINO, P.S.M. CITY SURVEYOR MANAGER					Survey Reference: _____ Field Book: <u>N/A</u> Page: <u>N/A</u> Work Order: <u>N/A</u>	
						APPD. BY _____					Date: <u>01/25/17</u> Sheet: <u>1</u> of <u>1</u> Drawing: <b>SM 2017W</b>	

**Exhibit "C"**  
**Ground Lease**

**[Note: The Lease is a separate exhibit to the accompanying  
Planning Board/City Commission Memorandum.]**

**Exhibit "D"**  
**GU Waiver Resolutions**

**RESOLUTION NO.                    2016-29679**

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, ON SECOND AND FINAL READING OF THIS RESOLUTION AND FOLLOWING A DULY NOTICED PUBLIC HEARING, GRANTING A WAIVER OF CERTAIN DEVELOPMENT REGULATIONS, PURSUANT TO SECTION 142-425(d) OF THE CITY'S ZONING ORDINANCE, FOR THE COLLINS PARK GARAGE, LOCATED ON 23RD STREET BETWEEN PARK AVENUE AND LIBERTY AVENUE AND COLLINS PARK ARTIST HOUSING, LOCATED ON THE NORTHEAST CORNER OF 23RD STREET AND LIBERTY AVENUE, WITHIN THE MUSEUM HISTORIC DISTRICT AND COLLINS PARK NEIGHBORHOOD; SAID WAIVERS REGARDING THE MAXIMUM BUILDING HEIGHT.**

**WHEREAS**, on April 13, 2016, the Mayor and City Commission approved the issuance of Request for Qualifications No. 2016-124-KB (RFQ) for Architectural and Engineering Design Criteria Professional Services for mixed use parking garages, including the Collins Park Garage Project (Project); and

**WHEREAS**, the RFQ was issued on April 20, 2016, and on June 8, 2016, the City Commission approved Resolution No. 2016-29425, authorizing the City to negotiate with Desman, Inc., and if successful, execute an agreement with the Consultant; and

**WHEREAS**, on May 11, 2016, the City Commission approved to issue the Request for Qualifications (RFQ) No. 2016-097-KB for Consulting Services for Public-Private Partnerships (P3) for Workforce/Affordable Housing Projects and on May 16, 2016, the RFQ was issued; and

**WHEREAS**, on September 14, 2016, the City Commission adopted Resolution No. 2016-29547, authorizing the administration to enter into negotiations with the Concourse Group and to execute an agreement upon conclusion of successful negotiations by the Administration; and

**WHEREAS**, a Design Criteria Package (DCP) is being prepared and will be provided to the Design Build Team for the design development and subsequent construction of the Collins Park Garage Project; and

**WHEREAS**, the proposed parking garage will be constructed on the property currently occupied by two surface parking lots located on 23rd Street, immediately behind the Miami City Ballet building, between Park Avenue and Liberty Avenue; and

**WHEREAS**, the ground level of the proposed structure, between Park and Liberty Avenues, will provide approximately 7,300 sq. ft. of retail space, while the upper six (6) levels of the parking garage will accommodate approximately 521 parking spaces; and

**WHEREAS**, the required building height necessary to accommodate the retail spaces and upper parking deck levels is approximately 70 feet; and

**WHEREAS**, the required 70-foot height limit takes into account sufficient clearance for vans, mechanical services, future modifications to accommodate sea level rise and the potential conversion from parking use to affordable housing, artist housing, workforce housing or other uses, should parking decline in the future; and

**WHEREAS**, the firm selected for consulting services for Public Private Partnerships (P3) will assist the City in identifying and creating opportunities to partner with the private sector to develop workforce/affordable housing for the Collins Park Artist Housing Project; and

**WHEREAS**, the proposed Collins Park Artist Housing Project will be constructed on the property currently occupied by a surface parking lot located on 23rd Street, immediately behind the Miami Beach Regional Library building, and east of Liberty Avenue; and

**WHEREAS**, the ground level will incorporate commercial retail spaces, art studios or other permitted uses and the balance of the upper floors will accommodate workforce housing units that will target artist; and

**WHEREAS**, in order to provide the optimal clear height for the retail spaces and the required parking levels, and to allow for maximum capacity for artist housings, it is necessary to waive certain development regulations, pertaining to the maximum allowable building height within a local historic district, which has been determined to be fifty (50) feet, and allow a new maximum height up to seventy five (75) feet for the two buildings; and

**WHEREAS**, pursuant to Sections 142-425(d) and (e) of the City Code, the Mayor and City Commission may waive development regulations in the GU government use district, following a noticed public hearing advertised in the newspaper at least fifteen (15) days prior to the hearing.

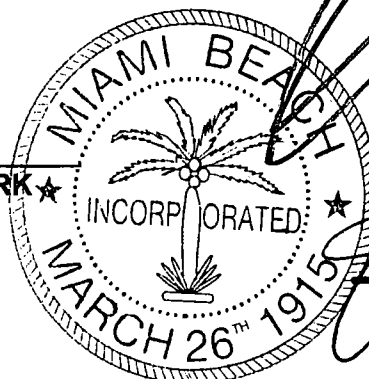
**NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA** that the Mayor and City Commission approve, on second and final reading of this Resolution and following a duly noticed public hearing, granting a waiver of certain development regulations, pursuant to section 142-425(d) of the city's zoning ordinance, for the Collins Park Garage, located on 23rd Street between Park Avenue and Liberty Avenue and Collins Park Artist Housing, located on the Northeast corner of 23rd Street and Liberty Avenue, within the Museum Historic District and Collins Park Neighborhood; said waivers regarding the maximum building height.

**PASSED and ADOPTED** this 14 day of December, 2016.

**ATTEST:**

  
PHILIP LEVINE, MAYOR

  
RAFAEL E. GRANADO, CITY CLERK



APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
City Attorney

12/1/16  
Date

# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission  
FROM: Jimmy L. Morales, City Manager  
DATE: December 14, 2016

1:55 p.m. Public Hearing

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, ON SECOND AND FINAL READING OF THIS RESOLUTION AND FOLLOWING A DULY NOTICED PUBLIC HEARING, GRANTING A WAIVER OF CERTAIN DEVELOPMENT REGULATIONS, PURSUANT TO SECTION 142-425(D) OF THE CITY'S ZONING ORDINANCE, FOR THE COLLINS PARK GARAGE, LOCATED ON 23RD STREET BETWEEN PARK AVENUE AND LIBERTY AVENUE AND COLLINS PARK ARTIST HOUSING, LOCATED ON THE NORTHEAST CORNER OF 23RD STREET AND LIBERTY AVENUE, WITHIN THE MUSEUM HISTORIC DISTRICT AND COLLINS PARK NEIGHBORHOOD; SAID WAIVERS REGARDING THE MAXIMUM BUILDING HEIGHT.

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### RECOMMENDATION

The Administration recommends that the City Commission approve the resolution.

### ANALYSIS

On April 13, 2016, the Mayor and City Commission approved the issuance of Request for Qualifications No. 2016-124-KB (RFQ) for Architectural and Engineering Design Criteria Professional Services for mixed use parking garages, including the Collins Park Garage Project (Project).

The RFQ was issued on April 20, 2016, and on June 8, 2016, the City Commission approved Resolution No. 2016-29425 authorizing the City to negotiate with DESMAN, INC.(Consultant); negotiations were successful, and an agreement was executed with the Consultant.

On May 11, 2016, the City Commission approved to issue the Request for Qualifications (RFQ) No. 2016-097-KB for Consulting Services for Public-Private Partnerships (P3) for Workforce/Affordable Housing Projects. On May 16, 2016, the RFQ was issued.

On September 14, 2016, the City Commission adopted Resolution No. 2016-29547, authorizing the administration to enter into negotiations with the Concourse Group and to execute an agreement upon conclusion of successful negotiations by the Administration.

A Design Criteria Package (DCP) is being prepared and will be provided to the Design Build Team for the design development and subsequent construction of the Collins Park Garage Project.

The proposed parking garage will be constructed on the property currently occupied by two surface parking lots located on 23rd Street, immediately behind the Miami City Ballet building, between Park Avenue and Liberty Avenue. The ground level of the proposed structure will provide approximately 7,300 sq. ft. of retail space, while the upper six (6) levels of the parking garage will accommodate approximately 521 parking spaces (Exhibit A).

The required building height necessary to accommodate the retail spaces and upper parking deck levels is approximately 70 feet. This takes into account sufficient clearance for vans, mechanical services, future modifications to accommodate sea level rise and the potential conversion from parking use to affordable housing, workforce housing or other uses, should parking decline in the future.

The firm selected for consulting services for Public Private Partnerships (P3) will assist the City in identifying and creating opportunities to partner with the private sector to develop workforce/affordable housing for the Collins Park Artist Housing Project.

The proposed Collins Park Artist Housing Project will be constructed on the property currently occupied by a surface parking lot located on 23rd Street, immediately behind the Miami Beach Regional Library building, and east of Liberty Avenue. The ground level will incorporate commercial retail spaces along with art studios or other permitted uses. The balance of the upper floors will accommodate workforce housing units that will target artist.

In order to provide the optimal clear height for the retail spaces and the required parking levels, and to allow for maximum capacity for artist housing, it is necessary to waive certain development regulations, pertaining to the maximum allowable building height within a local historic district, which has been determined to be fifty (50) feet, and allow a new maximum height up to seventy five (75) feet for the two buildings.

Pursuant to Section 142-425(d) of the City's Zoning Ordinance, the Mayor and City Commission may waive development regulations following a noticed public hearing advertised in the newspaper at least fifteen (15) days prior to the hearing.

#### UPDATE

On November 9, 2016 the City Commission approved to schedule a Public Hearing to consider the waiver of Development Regulations pursuant to Section 142-425(d) of the City's Zoning Ordinance, for the Collins Park Garage Project and for the Collins Park Artist Housing Project for December 14, 2016.

#### CONCLUSION

The Administration recommends that the City Commission approve the resolution.



**KEY INTENDED OUTCOMES SUPPORTED**

Build And Maintain Priority Infrastructure With Full Accountability

**Legislative Tracking**

Capital Improvement Projects

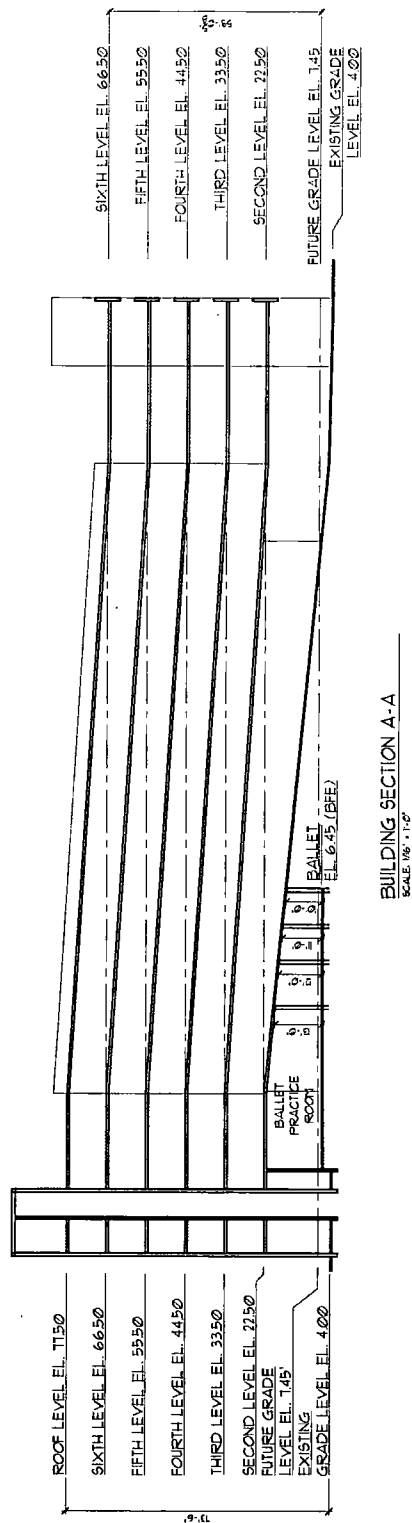
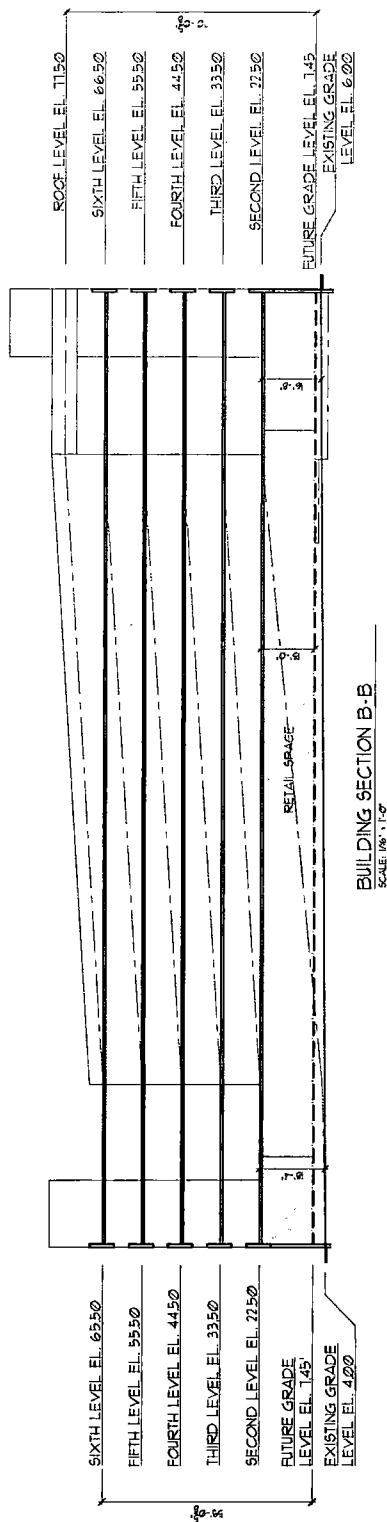
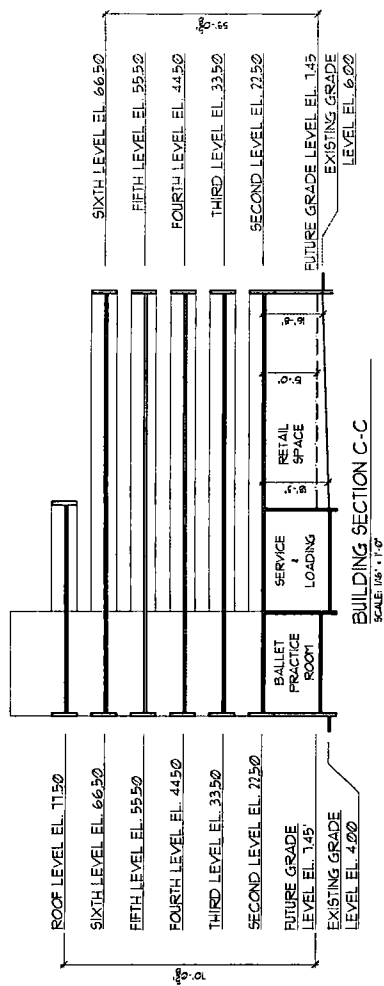
**ATTACHMENTS:****Description**

- Exhibit A - Collins Park Garage Site Plan
- Resolution

DESIGN

CITY OF MIAMI - COLLINS PARK  
PARKING GARAGE  
MIAMI  
FLORIDA

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**Exhibit “E”  
Concept Plan**

**Exhibit “F”**  
**Unity of Title**

**This instrument was prepared by:**

**Name:**

**Address:**

**(Space Reserved for Clerk)**

---

### **UNITY OF TITLE**

**WHEREAS**, the **City of Miami Beach** is the Owner of the properties more particularly described in Exhibit A hereto (the "Property"); and

**WHEREAS**, Owner recognizes and acknowledges that for the public health, safety and welfare, the Property shall not be divided into separate parcels owned by several Owners so long as the same is put to the hereinafter use; and

**NOW THEREFORE**, in consideration of the issuance of permits for the subject property and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner hereby agrees to restrict the use of the subject property in the following manner:

1. That the Property shall be treated as a "unified development site," as defined in City Code Section 118-5, for all purposes under the City's Land Development Regulations and other applicable laws, and subject to all restrictions applicable to a unified development site. No portion of the fee interest in the Property shall be sold or conveyed separately, except in its entirety as one unified development site, provided, however, that nothing herein shall preclude the Owner from separately leasing the respective parcels comprising the Property, or otherwise limit the Owner's ability to create separate leasehold interests in connection with the Property.

2. **Covenant Running with the Land.** This Unity of Title on the part of the Owner shall constitute a covenant running with the land and shall be recorded, at the Owner's expense, in the public records of Miami-Dade County, Florida and shall remain in full force and effect and be binding upon the undersigned Owner, and its heirs, successors and assigns until such time as the same is modified or released. These restrictions during their lifetime shall be for the benefit of, and limitation upon, all present and future owners of the real property and for the public welfare.

Further provided, however, that a release will be executed when the premises are made to conform with applicable zoning regulations or the use or structure is removed from the premises and there is no further reason to maintain the Unity of Title on the public records.

3. **Term.** This Unity of Title is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years from the date this Unity of Title is recorded after which time it shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by the, then, owner(s) of the Property has been recorded

agreeing to change the covenant in whole, or in part, provided that the Unity of Title has first been modified or released by the City of Miami Beach (if the then-Owner is a person or entity other than the City of Miami Beach).

4. **Modification, Amendment, Release.** This Unity of Title may be modified, amended or released as to the land herein described, or any portion thereof, by a written instrument executed by the, then, owner(s) of all of the Property, including joinders by all mortgagees, if any, provided that the same is also approved by the Director of the Miami Beach Department of Planning, or the executive officer of the successor of such Department, or in the absence of such director or executive officer by his assistant in charge of the office in his absence.

Should this Unity of Title be so modified, amended or released, the Director of the Department of Planning, or the executive officer of the successor of such Department, or in the absence of such director or executive officer by his assistant in charge of the office in his absence, shall forthwith execute a written instrument effectuating and acknowledging such modification, amendment or release.

5. **Presumption of Compliance.** Where construction has occurred on the Property or any portion thereof, pursuant to a lawful permit issued by the City, and inspections made and approval of occupancy given by the City, then such construction, inspection and approval shall create a rebuttable presumption that the buildings or structures thus constructed comply with the intent and spirit of this Unity of Title.

6. **Severability.** Invalidation of any one of these covenants, by judgment of Court, shall not affect any of the other provisions which shall remain in full force and effect.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK –  
SIGNATURE PAGES TO FOLLOW]**

Signed, witnessed, executed and acknowledged on this \_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_.

**WITNESSES:**

\_\_\_\_\_

Signature

\_\_\_\_\_

Print Name  
Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Print Name

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me, by means of ( ) physical presence or ( ) online notarization.

Witness my signature and official seal this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, in the County and State aforesaid.

My Commission Expires:

**OWNER:**

\_\_\_\_\_

Individual Signature

\_\_\_\_\_

Print

\_\_\_\_\_

Address:

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\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Notary Public-State of \_\_\_\_\_

\_\_\_\_\_

Print Name

**Approved:**

\_\_\_\_\_

Director of Planning

\_\_\_\_\_

Date

**Approved as to form & language & for execution:**

\_\_\_\_\_

City Attorney

\_\_\_\_\_

Date



**Exhibit "G"**  
**Servitas Services**

The following shall constitute the Services to be performed in accordance with, and subject to, the terms of the Development Agreement:

1. Architectural and design services;
2. Marketing studies;
3. Geo-technical exploration;
4. Surveying;
5. Feasibility studies;
6. Financial planning and forecasting;
7. Legal and consulting fees;
8. Constructability studies;
9. Estimating;
10. Scope determination;
11. Value engineering;
12. Advertising and marketing expenses;
13. Reasonable expenses for travel and out of pocket costs; and
14. Other services or costs not specifically listed in this Exhibit "G" but approved in writing by an authorized representative of City.

**Exhibit “H”  
Budget**



**Exhibit "I"**

**INSURANCE AND BONDING REQUIREMENTS**  
**FOR PROJECT**

**I. BONDING REQUIREMENTS**

1. Developer shall submit all supporting documentation and detailed invoices with respect to insurance and bond premiums required for the Project. City's reimbursement of insurance and bond premiums shall be for the portion of insurance and bond premiums directly attributable to this Agreement. Premiums shall be net of trade discounts, volume discounts, dividends and other adjustments.

2. The Performance Bond and the Payment Bond must each be executed by a surety company in good standing with the Florida Office of Insurance Regulation and an adequate rating from A.M. Best indicated in this Exhibit, which surety is authorized to do business in the State of Florida as a surety, having a resident agent in the State of Florida and having been in business with a record of successful, continuous operation for at least five (5) years.

3. The surety company that is bound by the Performance Bond and Payment Bond, respectively, shall be responsible for Contractor's acceptable performance of the work under Construction Contract for the Project, and/or for the payment of all debts pertaining thereto in accordance with Section 255.05, Florida Statutes.

4. The surety company that is bound by the Developer's Surety Bond (if any is provided pursuant to Section 5 of the Agreement), shall be responsible for Developer's acceptable performance of the work under Construction Contract for the Project, and/or for the payment of all debts pertaining thereto in accordance with Section 255.05, Florida Statutes.

5. The surety company shall hold a current Certificate of Authority as an acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the Performance Bond and Payment Bond exceeds the underwriting limitation set forth in the Circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other acceptable methods in accordance with Treasury Circular 297, revised September 1, 1978 (31 CFR Section 223.10, Section 223.11.) Further, the surety company shall provide City with evidence satisfactory to City, that such excess risk has been protected in an acceptable manner.

6. The City will accept a surety bond from a company in accordance with the requirements set forth below; provided however, that if any surety company appears on the watch list that is published quarterly by Intercom of the Office of the Florida Insurance Commissioner, the City shall review and either accept or reject the surety company based on the financial information available to the City. The following sets forth, in general, the acceptable parameters for bonds:

Policy- Financial Holder's Size

Amount of Bond	Ratings	Category
\$500,001 to \$1,000,000	A-	Class I
\$1,000,001 to \$2,000,000	A-	Class II
\$2,000,001 to \$5,000,000	A	Class III
\$5,000,000 to \$10,000,000	A	Class IV
\$10,000,001 to \$25,000,000	A	Class V
\$25,000,001 to \$50,000,000	A	Class VI
\$50,000,001 or more	A	Class VII

## **II. INSURANCE REQUIREMENTS**

Developer, Contractor and Architect shall provide, pay for and maintain in force at all times (unless otherwise provided) and any extensions thereof, the following insurance policies:

- A. **Worker's Compensation Insurance** for all employees as required by Florida Statute 440, and Employer Liability Insurance with a limit in an amount not less than \$1,000,000 per accident for bodily injury or disease.
- B. **Builder's Risk Insurance.** Developer shall obtain and maintain or cause the General Contractor to obtain and maintain in full force and effect All Risk and Builder's Risk - Completed Value Form Property Insurance insuring all buildings, structures, boilers, equipment, facilities, fixtures, supplies, and other property constituting the Project on an "all risk of loss or damage basis," currently referred to as "special form," including coverage for soft costs (in an amount equal to or greater than the anticipated excess debt coverage anticipated for the first full year of operations) and lost rents (in an amount equal to or greater than the anticipated net rental revenue for the first full year of operations) due to damage and destruction prior to completion, including perils of theft, vandalism, malicious mischief, transit, materials stored off site, collapse, falsework, temporary buildings, debris removal, testing, and damage resulting from defective design, workmanship, or material, fire, lightning, earth movement, (including, but not limited to earthquake, landslide, subsidence, and volcanic eruption), flood, windstorm (including tornados), collapse, boiler and machinery accidents, strikes, riot, civil commotion, sabotage, and all other risks covered by the extended coverage endorsement then in use in the State to the full replacement cost of the Project with a deductible provision not to exceed Twenty-Five Thousand Dollars (\$25,000.00) per occurrence, except in the event of a named windstorm, earthquake, or flood in which case the deductible shall not exceed three percent (3%) of the value at risk), but shall in any case be a minimum of One Hundred Thousand Dollars (\$100,000). Such policy or policies of insurance shall name the Issuer, the Lessee, the

Developer, the City, and the Trustee as insureds, as their respective interests may appear, and shall name the Trustee as mortgagee/loss payee under a standard loss payable endorsement providing that no act or omission or any breach or violation by any of the named insureds or any other person of any warranties, declarations, or conditions contained in the insurance policy or policies, any action or inaction by any of the named insureds or any other person, or any foreclosure relating to the Project shall in any way prejudice the rights the Trustee thereunder, and all Net Proceeds received under such policy or policies by the Borrower or the Issuer shall be paid over to the Trustee and deposited into the Construction Fund to be applied to the restoration and/or completion of the Project or to the redemption of Series 2021 Bonds.

- C. **Commercial General Liability Insurance** on an occurrence basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits in an amount not less than \$1,000,000 per occurrence.
- D. **As to Developer and Contractor only: Umbrella Liability Insurance** with limits in an amount not less than \$5,000,000 per occurrence. The umbrella coverage must be as broad as the primary General Liability coverage.

The total limits for the Commercial General Liability and Umbrella Liability Insurance (set forth in Sections II.B and II.C above) shall be in an amount not less than \$7,000,000, and may be provided through a combination of primary and excess/umbrella liability policies.

- E. **Automobile Liability Insurance** covering any automobile, if vendor has no owned automobiles, then coverage for hired and non-owned automobiles, with limits in an amount not less than \$1,000,000 combined per accident for bodily injury and property damage.
- F. **As to Developer and Architect only: Design Professional Liability (Errors & Omissions) Insurance** with limits in an amount not less than \$2,000,000 per occurrence or claim, and \$\_\_\_\_,000,000 policy aggregate **[parties continuing to discuss]**, subject to a maximum deductible acceptable to the City, and not-to-exceed \$100,000. Developer and Architect shall maintain the claims made form coverage with a minimum of 10 years extended reporting following Final Completion and shall annually provide City with evidence of renewal coverage. Developer and Architect are responsible for all deductibles in the event of a claim. Developer and Architect shall indicate the deductible for this coverage on its Certificate of Insurance. Developer and Architect shall notify City in writing within thirty (30) days of any claims filed or made against the Design Professional Liability Insurance Policy(ies). Consultant and Design Subconsultants shall each maintain commercially reasonable Errors & Omissions Liability coverages, as reasonably determined by Developer.
- G. **As to Contractor: Contractors' Pollution Legal Liability** with limits in an amount not less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate, subject to a maximum deductible acceptable to the City.
- H. **As to Contractor only: Installation Floater Insurance** including coverage for material & equipment to be installed during the course of this Project. City shall be

included as a Named Insured on this policy, as its insurable interest may appear. This policy shall remain in force until acceptance of the Project by the City.

### **III. ADDITIONAL TERMS AND CONDITIONS:**

1. **Notice to City.** If the initial insurance expires prior to the completion of the work, certificates of insurance evidencing the renewal of the coverage required shall be furnished to the City ten (10) days prior to the date of their expiration. The insurance policy(ies) must be endorsed to require the relevant insured to provide the City with at least thirty (30) days' notice of cancellation and/or restriction, except for non-payment of premium, which shall be subject to ten (10) days' notice.
2. **Certificates of Insurance.** Developer shall furnish to the City Certificates of Insurance or endorsements evidencing the insurance coverage required of Developer hereunder prior to entering upon the Property, and shall also furnish to the City a copy of each insurance policy required of Developer by this Agreement. Developer shall provide the City with Certificates of Insurance from its Contractor and Architect prior to the commencement of any work or services by any such entity. The Certificates of Insurance shall be in form acceptable to, and subject to, reasonable approval by City. Developer's failure to timely provide the Certificates of Insurance as required by this paragraph, and failure to cure within fifteen (15) days following receipt of written notice of such failure from the City, shall be the basis for the rescission of this Agreement by the City, without any liability to Developer. The official title of the certificate holder is City of Miami Beach, Florida. This official title shall be used in all insurance documentation.
3. **Right to revise or reject.** City's Risk Management Division reserves the right, but not the obligation, to review and revise any insurance requirements at the time of insurance contract renewal and/or any amendments, not limited to deductibles, limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work/specifications affecting the scope and applicability of coverage.
4. **Additional Insured.** City shall be expressly included as an Additional Insured on all policies (except Professional Liability and workers' Compensation), and with an endorsement that is acceptable to the City. Additional insured certificates for the City shall read "City of Miami Beach, Florida", 1700 Convention Center Drive, Miami Beach, FL, 33139, Attn: Risk Management, 3<sup>rd</sup> Floor.
5. **Notice of Cancellation and/or Restriction.** The policy(ies) must be endorsed to require the relevant insured to provide City with at least thirty (30) days' notice of cancellation or non-renewal and/or restriction, except for non-payment of premium, which shall be subject to ten (10) days' notice. A copy of the endorsement(s) shall be provided with the Certificates of Insurance.
6. **Duty of Care.** Developer's furnishing insurance coverage shall in no way relieve or limit, or be construed to relieve or limit, Developer or any of its contractors of any responsibility, liability, or obligation imposed under this Agreement or the applicable contract documents relating to the Project, or by Applicable Laws, including, without limitation, any indemnification obligations which Developer or any of its contractors have to City thereunder.
7. **Developer's Failure to Procure.** Developer's failure to procure or maintain the insurance required by this Exhibit "J" during the entire term of the work shall constitute a material breach and Default of this Agreement, as long as it is available based on prevalent market conditions. In the event of such a breach (and following all notice and right to cure periods have expired), the

City may exercise all available rights and remedies hereunder, including the right to immediately suspend or terminate this Agreement without any further notice to or liability to Developer or, at its discretion, procure or renew such insurance to protect the City's interests and pay any and all premiums in connection therewith, and withhold or recover all monies so paid by the City from the Developer.

8. **Waiver of Subrogation.** Where permitted by law, Developer hereby waives and shall cause the Contractor to waive all rights of recovery by subrogation or otherwise (including, without limitation, claims related to deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage), against City, and its respective officers, agents, or employees. Certificates of insurance shall evidence the waiver of subrogation in favor of the City, and that coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium payment by the City.



EXHIBIT "J"

FORM OF PERFORMANCE BOND

By this Bond, We \_\_\_\_\_ as Principal, whose principal business address is \_\_\_\_\_, as the [Contractor] under the agreement dated \_\_\_\_\_, 20\_\_\_\_, between Principal and the [Developer Entity] (hereinafter referred to as "Developer") for the construction of the Collins Park Artist/Workforce Housing Project on behalf of the City of Miami Beach, Florida ("City") (which agreement and the other Contract Documents referenced therein are hereinafter referred to as "Contract"), the terms of which Contract are incorporated by reference in its entirety into this Bond, and \_\_\_\_\_, a corporation, whose principal business address is \_\_\_\_\_ as Surety, are bound to Developer, as co-obligee, and City, as co-obligee, in the sum of \_\_\_\_\_ U.S. dollars (\$\_\_\_\_\_), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs all the work under the Contract, including but not limited to guarantees, warranties and the curing of latent defects, said Contract being made a part of this Bond by reference, and at the times and in the manner prescribed in the Contract; and
2. Pays Developer and City all losses, damages, expenses, costs and attorney's fees, including appellate proceedings, that Developer and City sustains as a result of default by Principal under the Contract, including but not limited to a failure to honor all guarantees and warranties or to cure latent defects in the work or materials within the time period provided in Section 95.11(2)(b), Florida Statutes; and
3. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, including all warranties and curing all latent defects within the time period provided in Section 95.11(2)(b), Florida Statutes;

then this bond is void; otherwise it remains in full force.

Surety specifically assumes liability for any and all damages, including but not limited to liquidated damages set forth in the Contract, arising from Principal's default of the Contract, as well as all latent defects uncovered in the work of the Principal after final acceptance of the work by the City.

If no specific periods of warranty are stated in the Contract for any particular item or work, material or equipment, the warranty shall be deemed to be a period of one (1) year from the date of final acceptance by the City; provided, however, that this limitation does not apply to suits seeking

damages for latent defects in materials or workmanship, such actions being subject to the limitations found in Section 95.11(2)(b), Florida Statutes.

Whenever the Principal shall be, and is declared by Developer to be, in default under the Contract, Developer having performed Developer's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) Complete the Contract in accordance with its terms and conditions; or
- (2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if Developer elects, upon determination by City, Developer and Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Developer, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Price" as used in this paragraph, shall mean the total amount payable by Developer to Principal under the Contract and any amendments thereto, less the amount properly paid by Developer to Principal.

The Surety hereby waives notice of and agrees that any changes in or under the Contract and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect Surety's obligation under this Bond.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Developer and City named herein. Any action under this Bond must be instituted in accordance with the notice and time limitations provisions prescribed in Section 255.05(2), Florida Statutes.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

WITNESSES:

<hr/> <p>Secretary</p> <p>(CORPORATE SEAL)</p>	<hr/> <p>(Name of Corporation)</p> <p>By: _____</p> <p>(Signature)</p> <hr/> <p>(Print Name and Title)</p>
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Countersigned by Resident  
Florida Agent of Surety

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
[attach copy of Agent's ID card  
Issued by Fla. Ins. Commissioner]

[Atty in fact power of atty must be attached]

INSURANCE COMPANY:

By: \_\_\_\_\_  
Attorney-in-Fact

Address: \_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City/State/Zip Code)

Telephone No.: \_\_\_\_\_

## **FORM OF PAYMENT BOND**

By this Bond, We \_\_\_\_\_ as Principal, whose principal business address is \_\_\_\_\_, and whose telephone number is \_\_\_\_\_, as the [Contractor] under the agreement dated \_\_\_\_\_, 20\_\_\_\_, between Principal and the [Developer entity] (hereinafter referred to as "Developer") for the construction of the Collins Park Artist/Workforce Housing Project on behalf of the City of Miami Beach, Florida ("City") (which agreement and the other Contract Documents referenced therein are hereinafter referred to as "Contract"), the terms of which Contract are incorporated by reference in its entirety into this Bond, and \_\_\_\_\_, a corporation, whose principal business address is \_\_\_\_\_ as Surety, are bound to Developer, as co-obligee, and City, as co-obligee, in the sum of \_\_\_\_\_ U.S. dollars (\$\_\_\_\_\_), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if the Principal:

1. Promptly makes payments to all claimants, as defined by Florida Statute 255.05(1), providing Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract, and in the times and in the manner prescribed in the Contract; and
2. Pays Developer and City all losses, damages, expenses, costs and attorney's fees including appellate proceedings, that Developer and City sustain because of a failure by Principal to make any payments required under the Contract;

then this bond is void; otherwise it remains in full force.

A claimant shall have a right of action against the Principal and the Surety for the amount due it. Such action shall not involve the Developer or City in any expense.

A claimant, except a laborer, who is not in privity with Principal and who has not received payment for its labor, materials, or supplies shall, within forty-five (45) days after beginning to furnish labor, materials, or supplies for the prosecution of the work, furnish to Principal a notice that he intends to look to the bond for protection. A claimant who is not in privity with Principal and who has not received payment for its labor, materials, or supplies shall, within ninety (90) days after performance of the labor or after complete delivery of the materials or supplies, deliver to Principal and to the Surety, written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment.

No action for the labor, materials, or supplies may be instituted against Principal or the Surety unless both of the above-referenced notices have been given. Any action under this Bond must

be instituted in accordance with the notice and time limitations prescribed in Section 255.05(2), Florida Statutes.

The Surety hereby waives notice of and agrees that any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect the Surety's obligation under this Bond.

**Signature page to follow**

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Principal

ATTEST:

\_\_\_\_\_  
(Name of Corporation)

\_\_\_\_\_  
(Secretary)

By: \_\_\_\_\_  
(Signature)

(Corporate Seal)

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Countersigned by Resident  
Florida Agent of Surety

INSURANCE COMPANY:

By: \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
[attach copy of Agent's ID card  
Issued by Fla. Ins. Commissioner]

Address: \_\_\_\_\_  
(Street)  
\_\_\_\_\_  
(City/State/Zip Code)

[Atty in fact power of atty must be attached]

Telephone No.: \_\_\_\_\_

**Exhibit “K”**  
**Presently Permitted Development**

**Exhibit “L”**  
**Public Facilities to Serve Development Site**

**[This exhibit is under review.]**

The proposed development will be serviced by those roadway transportation facilities currently in existence as provided by state, county, and local roadways. The proposed development will also be serviced by public transportation facilities currently in existence, as provided by Miami- Dade County, the City of Miami Beach, and such other governmental entities as may presently operate public transportation services within the City of Miami Beach. Sanitary sewer, solid waste, drainage, and potable water services for the proposed development shall be those services currently in existence and owned or operated by Miami-Dade County, the Miami-Dade County Water and Sewer Department, the City of Miami Beach, and State of Florida. The proposed development shall be serviced by those existing educational facilities owned or operated by the Miami-Dade Public Schools District, if applicable. The proposed development shall be serviced by those existing parks and recreational facilities owned or operated by the United States Government within Miami Dade County, by the State of Florida, by Miami-Dade County, and by the City of Miami Beach. The proposed development shall be serviced by those existing health systems and facilities operated by the United States Government within Miami-Dade County, by the State of Florida, by Miami-Dade County, and by the City of Miami Beach.

The proposed development will also be serviced by any and all public facilities, as such are defined in Section 163.3221(13) of the Act, that are described in the Comprehensive Plan, specifically including those facilities described in the Infrastructure Element and the Capital Improvements Element therein, a copy of which is available for public inspection in the offices of the City Clerk of the City of Miami Beach. Notwithstanding the foregoing, the Project may be required to provide for some of its own services, including solid waste removal and stormwater drainage. 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.



**Exhibit "M"**  
**Public Reservations and/or Dedications**

**None.**

**Exhibit “N”  
Development Permits**

**REQUIRED DEVELOPMENT PERMITS AND VARIANCES**

**[This exhibit remains under review]**

The following constitutes a generalized list of local permits anticipated as necessary to be approved by the terms of this Agreement:

1. Design Review Board, Planning Board, and/or Board of Adjustment approvals, pursuant to Chapter 118 of the City of Miami Beach Code.
2. Utility Permits
3. Demolition Permits
4. Building Permits
5. Environmental Permits
6. Hazardous Materials Removal Permit, if removal of hazardous materials is found necessary.
7. Public Works Permit, Paving and Drainage
8. Public Works Permit, Water and Sewer
9. Public Works Revocable Permits
10. Certificates of Use and/or Occupancy, or any Conditional Use Approval, if required by the City of Miami Beach Code
11. Any variances or waivers that may be required pursuant to Chapters 114 through 142 of the City of Miami Beach Code
12. All other governmental approvals as may be applicable to the subject property from time to time pursuant to the terms of this Development Agreement