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MIAMI BEACH

Development Agreement

2021-173-KB
FOR MIXED-USE DEVELOPMENTS INCORPORATING
CLASS A OFFICE SPACE WITH RESPECT TO
CITY-OWNED PARKING LOTS P25 AND P26

DEVELOPMENT AGREEMENT

between

CITY OF MIAMI BEACH, FLORIDA

(“Owner”)

and

LINCOLN ROAD PROPERTY OWNER, L.P.

and

LINCOLN ROAD PROPERTY OWNER II, L.P.

(collectively, “Developer”)

Dated as of _____, 2022

LINCOLN LANE P25 AND P26 PROJECT

TABLE OF CONTENTS

	Page
ARTICLE 1 VOTER REFERENDUM, EFFECTIVE DATE, DUE DILIGENCE	
AND DEFINITIONS	2
Section 1.1 Voter Referendum Requirement.	2
Section 1.2 Effective Date.	2
Section 1.3 Due Diligence.	4
Section 1.4 Definitions.....	5
ARTICLE 2 CONSTRUCTION.....	21
Section 2.1 Consistency with City’s Comprehensive Plan and Zoning Regulations.	21
Section 2.2 Design of the Project.....	21
Section 2.3 Plans and Specifications.	22
Section 2.4 Pre-Construction Obligations.....	23
Section 2.5 Conditions Precedent to Developer’s Commencement of Construction of the Project.	27
Section 2.6 Parking Mitigation.	27
Section 2.7 Commencement and Completion of Construction of the Project.	29
Section 2.8 Construction Obligations.	30
Section 2.9 Connection of Buildings to Utilities.	30
Section 2.10 Completion of Construction of the Project.	31
Section 2.11 Economic Force Majeure.	33
Section 2.12 Developer’s Right of Termination.	33
Section 2.13 Representations.	34
Section 2.14 Developer’s Project Obligations.	35
Section 2.15 Art in Public Places.....	35
ARTICLE 3 PLANS AND SPECIFICATIONS.....	36
Section 3.1 Approval and Modification of Plans and Specifications.	36
Section 3.2 Compliance with Requirements; Construction Standards.	37
Section 3.3 Budget.	38
Section 3.4 Design and Decor.....	39
Section 3.5 Development Dispute.....	39
ARTICLE 4 LAND USES AND DEVELOPMENT OBLIGATIONS.....	40
Section 4.1 Covenant Regarding Land Uses.....	40
Section 4.2 Concurrency.....	40
Section 4.3 Compliance with Local Regulations Regarding Development Permits.	41
Section 4.4 Presently Permitted Development.....	41
Section 4.5 Public Facilities to Serve the Project Site.	41
Section 4.6 Public Reservations, Dedications.....	41
Section 4.7 Required Development Permits.	41
Section 4.8 Duration of This Development Agreement.....	42
Section 4.9 Confirmation of Land Development Regulations.....	42
Section 4.10 Tax Exempt Status of the Public Parking Replacement Component.....	42

Section 4.11	Project Approvals Expiration.....	43
ARTICLE 5	OWNER PARTICIPATION	43
Section 5.1	Owner’s Right to Use Field Personnel.....	43
Section 5.2	Owner’s Right to Notice, Access and Review.....	44
ARTICLE 6	MISCELLANEOUS CONSTRUCTION PROVISIONS.....	46
Section 6.1	Prevailing Wage and Local Workforce Participation.....	46
Section 6.2	Construction Agreements.....	46
Section 6.3	Demolition of the Project Site.....	46
ARTICLE 7	FINANCING OF PROJECT CONSTRUCTION AND	
	DISBURSEMENT PROCEDURES.....	46
Section 7.1	Developer’s Contributions.....	46
Section 7.2	Fees.....	47
ARTICLE 8	INSURANCE.....	47
ARTICLE 9	DAMAGE, DESTRUCTION AND RESTORATION.....	47
Section 9.1	Casualty.....	47
Section 9.2	Effect of Casualty on this Agreement.....	47
ARTICLE 10	CONDEMNATION	48
Section 10.1	Taking.....	48
Section 10.2	Effect of Taking on this Agreement.....	48
ARTICLE 11	RIGHTS OF RECOGNIZED MORTGAGEE AND RECOGNIZED	
	MEZZANINE LENDER	48
ARTICLE 12	NO SUBORDINATION	48
ARTICLE 13	WASTE DISPOSAL.....	49
ARTICLE 14	REQUIREMENTS	49
Section 14.1	Requirements.....	49
ARTICLE 15	DISCHARGE OF LIENS.....	49
Section 15.1	Creation of Liens.....	49
Section 15.2	Discharge of Liens.....	50
Section 15.3	No Authority to Contract in Name of Owner.....	51
ARTICLE 16	NO LIABILITY FOR INJURY OR DAMAGE, ETC.....	51
ARTICLE 17	INDEMNIFICATION	52
Section 17.1	Indemnification Generally.....	52
Section 17.2	Governs Agreement.....	52
Section 17.3	Survival.....	52
ARTICLE 19	OWNER’S RIGHT TO PERFORM DEVELOPER’S OBLIGATIONS.....	52
Section 19.1	Owner’s Right to Perform Developer’s Obligations.....	52
Section 19.2	Discharge of Liens.....	52
Section 19.3	Reimbursement for Amounts Paid Pursuant to this Article.....	53
Section 19.4	Waiver, Release and Assumption of Obligations.....	53
ARTICLE 20	EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS,	
	REMEDIES, ETC.....	53
Section 20.1	Events of Default.....	53
Section 20.2	Enforcement of Performance and Termination.....	55
Section 20.3	Expiration and Termination of Agreement.....	56
Section 20.4	Strict Performance.....	57
Section 20.5	Right to Enjoin Defaults.....	57

Section 20.6	Remedies under Bankruptcy and Insolvency Codes.....	58
Section 20.7	Inspection.....	58
ARTICLE 21	NOTICES, CONSENTS AND APPROVALS.....	58
Section 21.1	Service of Notices and Other Communications.....	58
Section 21.2	Consents and Approvals.	59
Section 21.3	Notice of Detailed Plans.	62
ARTICLE 22	FINANCIAL REPORTS AND RECORDS.....	62
Section 22.1	Books and Records; Audit Rights.	62
ARTICLE 23	ARBITRATION.....	62
Section 23.1	Expedited Arbitration of Development Disputes.....	62
Section 23.2	Litigation.....	65
ARTICLE 24	NO PERMIT OR WAIVER OF FEES.....	65
ARTICLE 25	INVESTIGATIONS, ETC.	65
ARTICLE 26	HAZARDOUS MATERIALS.....	66
Section 26.1	General Provision.....	66
Section 26.2	Survival.	66
ARTICLE 27	MISCELLANEOUS	66
Section 27.1	Governing Law and Exclusive Venue.	66
Section 27.2	References.....	66
Section 27.3	Entire Agreement, etc.	67
Section 27.4	Invalidity of Certain Provisions	68
Section 27.5	Remedies Cumulative	68
Section 27.6	Performance at Each Party’s Sole Cost and Expense.	68
Section 27.7	Recognized Mortgagee Charges and Fees.	68
Section 27.8	Time is of the Essence.	68
Section 27.9	Successors and Assigns.....	68
Section 27.10	City Manager’s Delegated Authority.....	69
Section 27.11	Corporate Obligations.....	69
Section 27.12	Nonliability of Officials and Employees.	69
Section 27.13	Partnership Disclaimer.....	70
Section 27.14	Time Periods.	70
Section 27.15	No Third Party Rights.....	70
Section 27.16	No Conflict of Interest.	70
Section 27.17	Recording of Development Agreement	71
Section 27.18	Waiver of Trial by Jury.....	71

LIST OF EXHIBITS

Exhibit A-1	Legal Description of the P25 Land
Exhibit A-2	Legal Description of the P26 Land
Exhibit B	Project Concept Plan
Exhibit C	[Reserved]
Exhibit D	Construction Agreements Required Clauses
Exhibit E	Mandatory Project Elements
Exhibit F	Form of Unity of Title
Exhibit G	Resiliency Standards
Exhibit H	Forms of P25 Ground Lease and P26 Ground Lease
Exhibit I	Prevailing Wage Requirements and Local Workforce Participation Program
Composite Exhibit J	Presently Permitted Development
Composite Exhibit K	Public Facilities
Exhibit L	Public Reservations and Dedications
Exhibit M	Required Development Approvals

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into as of the _____ day of _____, 2022 by and between the **CITY OF MIAMI BEACH, FLORIDA (“Owner”)**, a municipal corporation duly organized and existing under the laws of the State of Florida, and **LINCOLN ROAD PROPERTY OWNER, L.P.**, a Delaware limited partnership and **LINCOLN ROAD PROPERTY OWNER II, L.P.**, a Delaware limited partnership (collectively, **“Developer”**).

RECITALS:

WHEREAS, on June 23, 2021, pursuant to the authorization of the Mayor and City Commission, the City administration (the **“Administration”**) issued a Request for Proposals 2021-173-KB for mixed-use developments incorporating Class A office space on City-owned parking lots P25, P26, P27 and G5 (the **“RFP”** or **“Request for Proposals”**); and

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

WHEREAS, on January 12, 2022, the City received proposals from three (3) firms: Developer; Lincoln Road Holdings LLC, a Florida limited liability company (**“TPC Developer”**); and Infinity Collective LLC; and

WHEREAS, on February 1, 2022, an Evaluation Committee appointed by the City Manager and approved by the Mayor and City Commission, reviewed and evaluated all proposals; and

WHEREAS, upon review of the results of the Evaluation Committee and an assessment of the proposals, the City Manager recommended that the Mayor and City Commission authorize the Administration to (a) negotiate with Developer (a joint venture among Integra Investments, LLC, Starwood Capital Group Holdings, L.P. and The Comras Company) with regards to P25 and P26 as a single project, and if the Administration is not successful in negotiating an agreement with Developer, authorizing the Administration to negotiate with TPC Developer in regard to this option and (b) negotiate with TPC Developer (a joint venture among The Peebles Corporation, Scott Robins Companies, Inc. and the Baron Corporation) with regards to P27 (the **“Option 3 Project”**), and if the Administration is not successful in negotiating an agreement with TPC Developer, authorizing the Administration to negotiate with Developer in regard to that option; and

WHEREAS, on February 23, 2022, the City Commission adopted Resolution No. 2022-32054 authorizing the Administration to negotiate with Developer in regard to P25 and P26 and to negotiate with TPC Developer in regard to P27; and

WHEREAS, said negotiations have been concluded and the Mayor and City Commission, in Resolution No. 2022-_____, adopted after two (2) duly noticed public hearings held pursuant to the Development Agreement Act set forth in Chapter 163 of the Florida Statutes, and Sections 82-36 through 82-40 of the City Code, determined that it is in the best interest of the City to enter into a Development Agreement with Developer for the

development of the Project, an Agreement of Ground Lease for the P25 Land (as hereinafter defined), and an Agreement of Ground Lease for the P26 Land (as hereinafter defined).

TERMS OF AGREEMENT:

NOW, THEREFORE, for and in consideration of the foregoing, and of the mutual covenants and agreements contained herein, the Parties agree as follows:

ARTICLE 1

VOTER REFERENDUM, EFFECTIVE DATE, DUE DILIGENCE AND DEFINITIONS

Section 1.1 Voter Referendum Requirement.

The Parties acknowledge and agree that, pursuant to Section 1.03(b)(2) of the City Code, the Ground Lease (as hereinafter defined), and the rights and obligations therein, are subject to and contingent upon the approval of the Ground Lease and by vote of a majority of the voters voting thereon in a City-wide referendum on November 8, 2022 (the “**2022 Referendum**”) or such later date in 2023 as further described in this Section (each, a “**2023 Referendum**” and together with the 2022 Referendum, each, a “**Referendum**”). The effectiveness of this Agreement shall be contingent upon voter approval of the Ground Lease in the Referendum. In the event that the 2022 Referendum is not successful, or if the ballot question is removed or election results are invalidated by a court of competent jurisdiction, then Developer may, within ninety (90) days after the date on which it is determined that the 2022 Referendum was not successful, request that the City Commission consider adopting a resolution calling for a special election for approval of the Ground Lease in a 2023 Referendum, and Developer shall pay its pro rata share (based on the total number of questions on the ballot) of the costs of such special election. If (a) the City Commission declines to adopt a resolution calling for approval of the Ground Lease in a 2023 Referendum or (b) within such ninety (90) day period, Developer either fails to so notify the City or notifies the City that it wishes to terminate the Ground Lease and this Agreement, then in any such event, the Ground Lease and this Agreement shall be deemed null and void and the Parties shall have no obligations or liabilities of any kind or nature whatsoever hereunder. In the event that, following Developer’s request, the City Commission adopts a resolution calling for a 2023 Referendum and the 2023 Referendum is not successful, or if the ballot question is removed or election results are invalidated by a court of competent jurisdiction, in each case following the last date on which a 2023 Referendum occurred, the Ground Lease and this Agreement shall be deemed null and void and the Parties shall have no obligations or liabilities of any kind or nature whatsoever hereunder.

Section 1.2 Effective Date.

(a) If a Referendum is successful and all requirements of the City Code and applicable law are satisfied, this Agreement shall be effective upon the latest to occur of (i) the Parties’ execution and delivery of this Agreement, (ii) the approval of this Agreement by the City Commission in accordance with the City Code, (iii) the City Commission’s adoption of a resolution accepting the certification of the official results of the applicable election with respect to the applicable Referendum, (iv) the Parties’ execution and delivery of the Ground Lease and (v) the Parties recording and delivery of this Agreement in accordance with Section 27.17 below

("Effective Date"). Upon approval of this Agreement and the Ground Lease by the City Commission in accordance with the City Code, the Parties shall each execute this Agreement and the Ground Lease and deliver original signatures of this Agreement and the Ground Lease to an escrow agent reasonably approved by the Parties to be held in escrow and released upon certification of the official results of a successful Referendum.

(b) Developer acknowledges and agrees that the Project and Option 3 Project will likely be phased at the City's direction, taking into account all factors the City deems appropriate, including, by way of example and not limitation, the construction of the Miami Beach Convention Center Hotel, parking mitigation, traffic circulation, financial benefits to City, job creation, positive impact of the Project for existing Lincoln Road businesses. Developer may submit to the City such information as Developer deems may be useful to the City in making its determination regarding the commencement order of the Project and the Option 3 Project, and any necessary phasing within the Project, including the viability and feasibility of the Project. Within sixty (60) days after the Effective Date, the City, acting in its reasonable discretion and in the best interests of the City and its residents, shall notify Developer and TPC Developer in writing whether (i) the Project and the Option 3 Project may be developed in tandem or otherwise simultaneously without having a material adverse impact on the City's residents, businesses and visitors, or if not, (ii) whether the Project or the Option 3 Project will be the first to receive a Notice to Proceed with the Early Work (as hereinafter defined) and corresponding construction of such project in accordance with the respective development agreement and ground lease for such project. The City's determination as to phasing and order of commencement shall be final and binding. City acknowledges and agrees that unless and until the Notice to Proceed is issued for the Project, no rent or other payments due under the Ground Lease shall be made by Developer and all of Developer's obligations hereunder with respect to development of the Project and corresponding deadlines therefor shall be tolled and delayed until the Notice to Proceed for the Project is issued by the City. Promptly following the City's issuance of the Notice to Proceed for the Project, the Parties shall execute and deliver to the other the Confirmation of Dates Certificate (the "**Confirmation of Dates Certificate**") substantially in the form attached hereto as **Exhibit N**. Upon notice from either Developer or Owner that any Unavoidable Delay, City Delay and/or Economic Force Majeure has occurred in accordance with this Agreement, in the event the other Party does not dispute the existence of such Unavoidable Delay, City Delay and/or Economic Force Majeure, or such Unavoidable Delay, City Delay and/or Economic Force Majeure has been finally determined to exist following resolution of a Development Dispute in accordance with this Agreement, City Manager (or his or her designee) and Developer shall promptly update the Confirmation of Dates Certificate to reflect any extension(s) of the Target Dates, Outside Dates, and/or Permitted Transfer Date (as defined in the Ground Lease) as a result of such Unavoidable Delay, City Delay and/or Economic Force Majeure, as applicable.

(c) City acknowledges that Developer contemplates developing the Project in two separate and distinct phases for each of the P25 Project and the P26 Project (each, a "**Phase**;" and collectively, the "**Phases**") in order to minimize the extent and duration of displacement of the existing public parking spaces on the P25 Land and the P26 Land during construction. Subject to the improvements to be made to the P26 Land to convert it to a valet operated surface parking lot, Developer shall construct the P25 Project as the first Phase and the P26 Project as the second Phase. Each Phase will include a sub-phase for the development and construction of

the Parking Component for such Phase, which shall be completed and opened to the public in accordance with this Agreement prior to the final completion of such Phase. Developer and Owner acknowledge and agree that Developer intends to obtain the P26 Project Building Permit not earlier than six (6) months prior to the anticipated issuance of the Temporary Certificate of Completion for the P25 Project. Each of the Phases may be further bifurcated into the Construction Stages as described herein. Owner acknowledges and agrees that Developer shall pursue the Permits and Approvals required by the terms of this Agreement for the development of the Project to allow for such phased construction in an expeditious manner.

Section 1.3 Due Diligence.

During the Due Diligence Period, Developer, its employees, agents, consultants and representatives, shall be entitled, at Developer's sole cost and expense, to investigate and evaluate the Project Site. Such right of investigation shall include the right to enter the Project Site, and perform any studies, tests or inspections of the Project Site as Developer may deem necessary or appropriate, including, without limitation, assessments of soil and subsurface conditions, utility services, environmental audits (including Phase I, Phase II and any other audit recommended by Developer's environmental consultant), title review, reports and commitments and surveys of the Project Site that Developer, in its reasonable discretion, determines to be necessary or prudent. If the results of Developer's inspections reflect unforeseen site conditions that could not reasonably have been identified prior to execution of this Agreement (each, an "**Unforeseen Condition**" and collectively, "**Unforeseen Conditions**") that would require Developer (i) to remediate the Project Site or any portion thereof (such as, by way of example and not limitation, remediation of any environmental condition) to develop and use the Project Site as contemplated in this Agreement and the Ground Lease, (ii) to materially increase the scope of development work or redesign the Project or any portion thereof to address such Unforeseen Conditions (such as, by way of example and not limitation, the discovery of underground conditions or facilities that require relocation and/or cannot be relocated), and/or (iii) to incur any material unforeseen cost or suffer any other unanticipated delays or materially adverse impacts relative to the Project, in each case, in Developer's reasonable judgment, Developer shall, within ten (10) Business Days of first becoming aware of each such Unforeseen Condition, provide written notice to Owner of such Unforeseen Conditions setting forth all known details concerning such Unforeseen Condition (each, an "**Unforeseen Condition Notice**") and the estimated amount of the costs, delays or other material adverse impacts resulting therefrom. Within thirty (30) calendar days after Owner's receipt of each such Unforeseen Condition Notice, Owner and Developer shall negotiate in good faith, to determine if any (A) reasonable extensions of the dates of Commencement of Construction, completion of Construction and other construction timeframes, which shall be subject to approval by the City Manager, and/or (B) reasonable adjustments to the economic or any other terms of this Agreement and the Ground Lease shall be made (such as, by way of example and not limitation, credits against Rent (as defined in the Ground Lease), contributions by Owner to the increased costs resulting from the Unforeseen Conditions, extensions of the dates of commencement of Rent, and/or other adjustments to the economic or other terms of this Agreement and the Ground Lease), which adjustments shall be subject to City Commission approval and, if necessary, as determined by the City Attorney of the City of Miami Beach, Florida (the "**City Attorney**"), by vote of a majority of the voters voting thereon in a City-wide referendum. Notwithstanding the foregoing, the Parties are under no obligation to make any adjustments to this Agreement and the

Ground Lease. If the Parties are unable to achieve a mutually acceptable agreement in writing within sixty (60) days after Owner's receipt of each Unforeseen Condition Notice, then Developer shall have the right, in its sole discretion, by written notice to Owner delivered within thirty (30) calendar days following the expiration of said 60-day period, either (x) to terminate this Agreement and the Ground Lease and its obligations hereunder as to the Project, in which event Owner and Developer shall be released from all further obligations under this Agreement and the Ground Lease, subject to Section 2.12 below, or (y) to proceed with the Project under the terms and conditions of this Agreement and the Ground Lease with Developer being responsible to remediate any Unforeseen Conditions, at its sole cost and expense. If Developer fails to notify Owner in writing that Developer has elected to terminate this Agreement (in whole or in part) within said 30-day period, Developer's right to terminate this Agreement and the Ground Lease (in whole or in part) under this Section 1.3 shall conclusively be deemed waived and Developer shall conclusively be deemed to have elected to proceed with the Project under clause (y) hereof. For the avoidance of doubt, this Section shall not limit any other termination rights of Developer under this Agreement, including, without limitation Section 2.12.

Section 1.4 Definitions.

All capitalized terms used herein and not specifically defined herein shall have the meanings ascribed thereto in the Ground Lease. For all purposes of this Agreement the terms defined in this Section 1.3 shall have the following meanings and the other provisions of this Section 1.3 shall apply:

“Accounting Principles” has the meaning provided in the Ground Lease.

“Administration” has the meaning provided in the recitals to this Agreement.

“Affiliate” or **“Affiliates”** has the meaning provided in the Ground Lease. Unless the context otherwise requires, any reference to **“Affiliate”** in this Agreement shall be deemed to refer to an Affiliate of Developer.

“Approved Preliminary Plans” shall have the meaning provided in Section 2.2(c).

“Architect” means a duly qualified, insured and reputable architect selected by Developer as the architect for the Project and licensed to operate as an architect in Miami-Dade County, Florida.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy,” as amended.

“Bankruptcy or Judicial Action” has the meaning provided in Section 20.3(c).

“Building Equipment” has the meaning provided in the P25 Ground Lease and P26 Ground Lease, as applicable.

“Building Official” means the “Building Official” as defined in the City Code.

“Building Permit” means a **“Full Building Permit”** as such term is defined in the Land Development Regulations, issued by the Building Department of the City, which allows building or structures to be erected, constructed, altered, moved, converted, extended, enlarged, or used, for any purpose, in conformity with applicable codes and ordinances; provided however, to the extent Developer is permitted to obtain a phased building permit in accordance with this Agreement, then for purposes of meeting the milestones set forth herein, the **“Building Permit”** shall mean the building permit for completion of the Core and Shell Stage for the applicable Phase of the Project.

“Buildout Stage” has the meaning provided in Section 2.4(a).

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

“Certificate of Completion” means a certificate of completion issued by the applicable Governmental Authority for the applicable Improvements, including any such certificate designated as **“Temporary”** or **“Partial”** in nature (referred to herein as a **“Temporary Certificate of Completion”**), provided such Certification of Completion (including any Temporary Certificate of Completion) allows for the beneficial use and occupancy of the applicable Improvement in accordance with applicable Laws and Ordinances. A Certificate of Completion (or Temporary Certificate of Completion) may be issued separately for (a) the P25 Parking Component, (b) the P25 Project, (c) the P26 Parking Component, and (d) the P26 Project or such other portions of the Project as may be authorized by the Building Official.

“Certificate of Occupancy” means a certificate of occupancy issued by the applicable Governmental Authority for the applicable Improvements, including any such certificate designated as **“Temporary”** or **“Partial”** in nature (referred to herein as a **“Temporary Certificate of Occupancy”**), provided such Certificate of Occupancy (including any Temporary Certificate of Occupancy) allows for the beneficial use and occupancy of the applicable Improvement in accordance with applicable Laws and Ordinances. A Certificate of Occupancy (or Temporary Certificate of Occupancy) may be issued separately for (a) the P25 Parking Component, (b) the P25 Project, (c) the P26 Parking Component, and (d) the P26 Project or such other portions of the Project as may be authorized by the Building Official.

“City” means the City of Miami Beach, Florida, a municipal corporation duly organized and existing under the laws of the State of Florida. In all respects hereunder, the City’s obligations and performance is pursuant to the City’s position as the owner of the Land acting in its proprietary capacity. In the event the City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any laws, rules, regulations 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 the City’s regulatory authority as a governmental body and shall not be attributable in any manner to the City as a party to this Agreement or in any way deemed in conflict with, or be a default of, the City’s obligations hereunder.

“City Attorney” has the meaning provided in **Section 1.3**.

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

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

“City Delay” means the number of days in excess of the number of days specified in Sections 2.2(a) and 2.3 for the City’s review of the Preliminary Plans and Specifications and the Plans and Specifications, respectively.

“City Land Development Boards” means, collectively, the Design Review Board and the Planning Board.

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

“City Parties” has the meaning provided in the Ground Lease.

“Cold Grey Shell” means an unfinished space that has, at a minimum, utility connections but without distributed HVAC or finishes.

“Commence Construction” or **“Commencement of Construction”** means, with respect to each Phase of the Project, the commencement of major work (such as pilings or foundations) for construction of such Phase in accordance with the Plans and Specifications for such Phase to be performed in connection with Construction of such Phase. Promptly after Commencement of Construction of each Phase of the Project, Owner and Developer shall enter into an agreement acknowledging the date of Commencement of Construction of such Phase. Any and all Early Work shall not be deemed to be Commencement of Construction.

“Commencement Date” means, with respect to each Phase of the Project, the date on which the term of the Ground Lease for such Phase commences, which is the NTP Date, or if the NTP Date is not the first day of a calendar month, then the first day of the calendar month immediately following the calendar month in which the NTP Date occurs.

“Community Benefit Suite” has the meaning provided in the Ground Lease.

“Components” means, as applicable, any of the P25 Office Component, the P25 Retail Component, the P25 Public Parking Replacement Component, the P25 Additional Parking Component, the P26 Office Component, the P26 Retail Component, the P26 Public Parking Replacement Component, the P26 Additional Parking Component and the P26 Pocket Park, each as defined on **Exhibit E** attached hereto and which, collectively, constitute the Mandatory Project Elements.

“Comprehensive Plan” means the Comprehensive Plan which the City adopted and implemented for the redevelopment and continuing development of the City pursuant to Chapter 163, Part II, Florida Statutes, as amended as of the date of this Agreement.

“Concurrency Requirements” has the meaning provided in Section 4.2.

“Confirmation of Dates Certificate” has the meaning provided in Section 1.2(b).

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

“Construction” means, with respect to each Phase of the Project, the construction of such Phase on the applicable Land.

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

“Construction Lender” means, with respect to each Phase of the Project, the Institutional Lender, which must be the Recognized Mortgagee, selected by Developer to provide the Construction Loan in accordance with the applicable Ground Lease.

“Construction Loan” means, with respect to each Phase of the Project, the loan to be provided by the Construction Lender to Developer for development and construction of such Phase in accordance with the applicable Ground Lease.

“Construction Stage” has the meaning provided in Section 2.4(a).

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

“Core and Shell Stage” has the meaning provided in Section 2.4(a).

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

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

“Declaration” has the meaning provided in Section 4.10.

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

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

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

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

“Developer” means, collectively, Lincoln Road Property Owner, L.P., a Delaware limited partnership and Lincoln Road Property Owner II, L.P., a Delaware limited partnership.

“Developer’s Books and Records” has the meaning provided in Section 22.1.

“Developer’s Interest in the Premises” means the “Tenant’s Interest in the Premises” as defined in the Ground Lease.

“Development Agreement” or this **“Agreement”** means collectively, this Development Agreement and all exhibits and attachments hereto, as any of the same may hereafter be supplemented, amended, restated, severed, consolidated, extended, revised and otherwise modified, from time to time, either in accordance with the terms of this Agreement or by mutual agreement of the parties.

“Development Agreement Act” means the Florida Local Government Development Agreement Act, Section 163.3220, et. seq., Florida Statutes (2021), as may be amended.

“Development Arbitrator” shall have the meaning provided in Section 23.1(j).

“Development Budget” has the meaning provided in Section 3.3(a).

“Development Dispute” has the meaning provided in Section 3.5.

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

“Development Permit” includes any building permit (including the Building Permit), zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land, as provided in the Development Agreement Act.

“Due Diligence Period” shall mean the period commencing on the NTP Date and ending on the date on the date that is ninety (90) days after NTP Date or earlier termination of this Agreement.

“Early Work” means, collectively, (i) design and permitting of the Project, including all design, architectural, landscaping, civil engineering, engineering and other professional services; (ii) physical inspections, site visits and surveying; (iii) invasive tests, studies, samplings, and analyses (including soil borings and invasive environmental testing); (iv) preliminary site work, including utility work; (v) environmental remediation; and (vi) ancillary demolition.

“Economic Force Majeure” means economic conditions or events that materially impair access to debt or equity markets by developers for development of projects in the United States similar to the Project or allow a committed debt or equity participant to terminate its debt or equity commitment, such as a temporary or long term liquidity crisis or major recession occurring prior to the Commencement of Construction of either Phase of the Project.

“Event of Default” has the meaning provided in Section 20.1.

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

“Final Certificate of Occupancy” means final Certificate of Occupancy or final Certificate of Completion as determined by the Building Official and issued by the City’s Building Department for the P26 Project, as the second Phase of the Project.

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

“Force Majeure Event” means the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies, whether actual or threatened; orders of any civil or military authority; insurrections; riots; acts of terrorism; war; epidemics; pandemics; any public health emergency requiring quarantine, business closures mandated by Governmental Authorities or shelter in place orders; any governmental moratorium preventing the issuance of Permits and Approvals; landslides; earthquakes; lightning; fires; hurricanes; storms; floods; washouts and other natural disasters; inability to procure or a general shortage of labor, equipment, utilities, facilities, materials or supplies in the open market, or failure or unavailability of transportation generally; or other similar extraordinary causes beyond the commercially reasonable control of the Party claiming such inability. In no event shall “Force Majeure Event” include economic hardship or financial inability to perform specific to the Party nor shall it include Economic Force Majeure.

“Foundation Stage” has the meaning provided in Section 2.4(a).

“Foundation Stage Possession Conditions” has the meaning provided in Section 2.4(a).

“Funded Equity” has the meaning provided in Section 3.3(b).

“General Construction Contract” means, with respect to each Construction Stage or Phase of the Project, the construction contract between Developer and the General Contractor for the construction of such Construction Stage Phase in accordance with the approved Plans and Specifications for such Phase, within the contract time specified therein for completion of the Work for such Construction Phase, for a guaranteed maximum price that as of the date of Commencement of Construction of such Construction Stage or Phase will, in the aggregate, equal or exceed the sum allocated for construction of the Work for such Phase as reflected in the Development Budget for such Phase (except to the extent that any reduction is reasonably attributable to a reduction in local area construction costs, as established by a published construction price index or otherwise approved by the City Manager) and that includes provisions requiring a Performance Bond and Payment Bond and all other terms or conditions required under this Agreement.

“General Contractor” means, with respect to each Construction Stage or Phase of the Project, the duly licensed general contractor engaged by Developer for the construction of such Construction Stage or Phase and completion of the Work for such Construction Stage or Phase and approved by the City in accordance with this Agreement; provided, however, that Developer shall be required to engage the same general contractor for all Construction Stages of a Phase except for (i) the Foundation Stage, but only to the extent that construction of the Foundation

Stage is completed prior to the commencement of the next Construction Stage and (ii) the Buildout Stage.

“Governmental Authority” or “Governmental Authorities” means the United States of America, the State of Florida, Miami-Dade County, the City (in its governmental as opposed to proprietary capacity) and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, having jurisdiction over Developer, the Project Site, the Improvements or the Work.

“Ground Lease” means, individually or collectively as the context may require, the P25 Ground Lease and the P26 Ground Lease, substantially in the forms that are attached as **Exhibit H-1 and H-2** to this Agreement, respectively.

“Hearing” has the meaning provided in Section 23.1(b).

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

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

“Land” means individually or collectively as the context may require, the P25 Land and the P26 Land.

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

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

“Laws and Ordinances” means any and all laws, constitutions, rules, regulations, orders, ordinances, charters, statutes, codes, executive orders and requirements of all Governmental Authorities having jurisdiction over Developer, the Project Site, the Improvements or the Work (including, without limitation, any of the foregoing relating to handicapped access or parking, the Florida Building Code and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions, the Americans with Disabilities Act, Title VII of the Civil Rights Act, the EEOC Uniform Guidelines, and all EEO regulations and guidelines).

“Lawsuit” means any lawsuit, action, proceeding, appeal or petition for writ of certiorari challenging the validity, legal propriety, issuance or execution, as applicable, of the Project Approvals, the Project Amendments, this Agreement or the Ground Lease or any such challenge relating to any approval required under the City Code and/or the City Charter.

“Mandatory Project Elements” means, with respect to each Phase of the Project, the elements and components of such Phase to be developed by the Developer as further described on **Exhibit E**, as the same may be modified by Developer from time to time in accordance with this Agreement.

“Material Design Change” means a change to the design of any Phase of the Project that (a) reduces by more than ten percent (10%) the Floor Area of any element or component from that indicated in the Mandatory Project Elements, provided that at all times the P25 Office Component shall constitute not less than 50% of the available Floor Area ratio (FAR) of the P25 Project and the P26 Office Component shall constitute not less than 50% of the available Floor Area ratio (FAR) of the P26 Project, (b) reduces the number of parking spaces included in the P25 Public Parking Replacement Component or P26 Public Parking Replacement Component provided in the Mandatory Project Elements, or (c) increases the height of the Improvements by more than five percent (5%) from that depicted in the Project Concept Plan, or (d) does not substantially conform to the Project Concept Plan, as the same may be revised by the Design Review Board and reasonably approved by the City Manager, and in each case, subject to compliance with all applicable Laws and Ordinances.

“Mezzanine Lender” means, with respect to each Phase of the Project, if applicable, the Institutional Lender selected by Developer to provide the Mezzanine Loan for such Phase and which is receiving a pledge of all of the direct and/or indirect equity interests in Developer.

“Mezzanine Loan” means, with respect to each Phase of the Project, if applicable, the mezzanine loan to be made by the Mezzanine Lender(s) to the borrower thereof to provide financing for such Phase in accordance with the applicable Ground Lease, subordinate to the mortgage to the applicable Construction Lender, which may be secured by a pledge on all or any portion of the direct and/or indirect ownership interests in Developer.

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

“Mortgage Loan Documents” means, collectively, with respect to each Phase of the Project, any loan agreement, promissory note, mortgage, guaranty or other document evidencing or securing a loan secured by, among other collateral, Developer’s interest in the applicable Ground Lease or such Phase and entered into between Developer and the applicable Recognized Mortgagee.

“Mortgagee” means the holder of a Mortgage.

“NTP Date” means the date on which the City issues the Notice to Proceed to Developer with respect to the Project.

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

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

“Notice to Proceed” or **“NTP”** means a written letter or directive issued by the City Manager, or his or her designee, to Developer to commence and proceed with its due diligence pursuant to Section 1.3 of this Agreement, the Early Work and corresponding construction of the

Project in accordance with this Agreement. The date of issuance of NTP shall be determined by the City in its reasonable discretion in the best interests of the City and its residents.

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

“Outside Dates” means the following outside dates by which the following activities or events must have occurred, as each such Outside Date may be reasonably extended for (i) Unavoidable Delays and/or (ii) City Delays, each in accordance with this Agreement:

(a) **“Outside Approvals Date”** means the date by which Developer shall obtain all final, non-appealable Project Approvals, which is twelve (12) months (inclusive of one month to allow all appeal periods to expire) after the Commencement Date;

(b) **“Outside P25 Building Permit Date”** means the date by which Developer shall obtain the Building Permit for the P25 Project, which is twenty (20) months after the date of issuance of all final Project Approvals for the P25 Project and not later than thirty-two (32) months after the Commencement Date;

(c) **“Outside P25 Commencement Date”** means the date by which Developer shall Commence Construction of the P25 Project, which is three (3) months after the issuance of the Building Permit for the P25 Project and not later than thirty-five (35) months after the Commencement Date;

(d) **“Outside P25 Parking Completion Date”** means the date by which the Temporary Certificate of Completion for the P25 Parking Component shall have been issued, which is nineteen (19) months after Commencement of Construction of the P25 Project and not later than fifty-four (54) months after the Commencement Date;

(e) **“Outside P26 Commencement Date”** means the date by which Developer shall Commence Construction of the P26 Project, [which is nineteen (19) months after Commencement of Construction of the P25 Project and not later than fifty-four (54) months after the Commencement Date;

(f) **“Outside P25 Completion Date”** means the date by which Developer shall Substantially Complete Construction of the P25 Project and the Temporary Certificate of Completion for the P25 Project shall have been issued, which is twenty-eight (28) months after Commencement of Construction of the P25 Project and not later than sixty-three (63) months after the Commencement Date;

(g) **“Outside P26 Completion Date”** means the date by which Developer shall Substantially Complete Construction of the P26 Project and the Temporary Certificate of Completion for the P26 Project shall have been issued, which is twenty-eight (28) months after Commencement of Construction of the P26 Project and not later than eighty-two (82) months after the Commencement Date;

“Owner” means the City, acting in its proprietary capacity, and any assignee or transferee of the City of the entire Owner’s Interest in the Premises, from and after the date of

the assignment or transfer pursuant to which the entire Owner's Interest in the Premises was assigned or transferred to such assignee or transferee.

"Owner's Consultant" means such Person or Persons as Owner may designate in writing to Developer from time to time to act as Owner's representative in consultation with Owner and performing inspections at each Project Site.

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

"P25 Ground Lease" means that certain Agreement of Ground Lease between Owner and Developer dated of even date herewith, pursuant to which Developer, as tenant, has agreed to lease the P25 Land from Owner, as landlord.

"P25 Improvements" means any building (including footings and foundations), Building Equipment and other improvements and appurtenances of every kind and description now existing or hereafter erected, constructed, or placed upon the P25 Land (whether temporary or permanent), and any and all alterations and replacements thereof, additions thereto and substitutions therefor.

"P25 Land" means the real property described in **Exhibit A-1** attached hereto and incorporated by reference herein and subject to the provisions of Section 2.1(a) in the P25 Ground Lease.

"P25 Parking Component" means, collectively, the P25 Public Parking Replacement Component and the P25 Additional Parking Component.

"P25 Project" means the development, design and construction of the P25 Improvements and their subsequent use and completion of the Work relating to the P25 Improvements substantially in accordance with the Plans and Specifications for the P25 Project, including (1) all associated infrastructure (including all on-site parking and supporting facilities and amenities) and (2) the installation of other improvements and appurtenances of every kind and description (including any and all landscaping, planting and other improvements of any type) now located or hereafter erected, constructed or placed upon the P25 Land.

"P25 Project Site" means the P25 Land and all portions of the P25 Improvements, which must be joined via a Unity of Title.

"P26 Ground Lease" means that certain Agreement of Ground Lease between Owner and Developer dated of even date herewith, pursuant to which Developer, as tenant, has agreed to lease the P26 Land from Owner, as landlord.

"P26 Improvements" means any building (including footings and foundations), Building Equipment and other improvements and appurtenances of every kind and description now existing or hereafter erected, constructed, or placed upon the P26 Land (whether temporary or permanent), and any and all alterations and replacements thereof, additions thereto and substitutions therefor.

“P26 Land” means the real property described in **Exhibit A-2** attached hereto and incorporated by reference herein and subject to the provisions of Section 2.1(a) in the P26 Ground Lease.

“P26 Parking Component” means, collectively, the P26 Public Parking Replacement Component and the P26 Additional Parking Component.

“P26 Project” means the development, design and construction of the P26 Improvements and their subsequent use and completion of the Work relating to the P26 Improvements substantially in accordance with the Plans and Specifications for the P26 Project, including (1) all associated infrastructure (including all on-site parking and supporting facilities and amenities) and (2) the installation of other improvements and appurtenances of every kind and description (including any and all landscaping, planting and other improvements of any type) now located or hereafter erected, constructed or placed upon the P26 Land.

“P26 Project Site” means the P26 Land and all portions of the P26 Improvements, which must be joined via a Unity of Title.

“P26 Temporary Use Conditions” has the meaning provided in Section 2.4(g).

“Parking Component” means, individually or collectively as the context may require, the P25 Parking Component and the P26 Parking Component.

“Parties” means the City and Developer and **“Party”** is a reference to either City or Developer, as the context may indicate or require.

“Payment and Performance Bond” has the meaning provided in Section 2.4(a).

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

“Person” means an individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, estate, trust, unincorporated association or other entity; any Federal, state, county or municipal government or any bureau, department, political subdivision or agency thereof; to the extent expressly permitted pursuant to this Agreement and/or the Ground Lease, a foreign government or any bureau, department, political subdivision or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

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

“Plans and Specifications” means, with respect to each Phase of the Project or Construction Stage thereof, the final plans and specifications for such Phase, including, as

applicable, foundation, structural, electrical, plumbing and HVAC plans, the finish schedule, the Project program, in each case, substantially conforming to the approved Project Concept Plan (unless otherwise expressly approved in writing by Owner in accordance with this Agreement) and such other plans and specifications customarily required to obtain a full building permit in the City of Miami Beach, Florida, each as established in accordance with Article 3, as the same may be modified from time to time in accordance with the provisions of Section 3.2.

“Possession Conditions” has the meaning provided in the Ground Lease.

“Preliminary Plans and Specifications” has the meaning provided in Section 2.2(a).

“Premises” has the meaning provided in the applicable Ground Lease.

“Project” means individually or collectively as the context may require, the P25 Project and the P26 Project.

“Project Amendments” means, collectively, (a) an amendment to Chapter 130 of the Land Development Regulations to create a minimum off-street public parking requirement for certain developments in City-owned land in parking district No. 2 and to create the ability for developments in parking districts No. 2 and No. 3 to provide additional parking spaces in accordance with the requirements set forth in parking district No. 1 and (b) an amendment to Chapter 142 of the Land Development Regulations to allow for a maximum building height of 100 feet for GU properties developed by the private sector that incorporate public parking spaces owned by and/or operated for the City within the structure for the area bounded by 17th Street on the North, North Lincoln Lane on the South, Alton Road on the West and Washington Avenue on the East.

“Project Approvals” has the meaning provided in Section 2.2(a).

“Project Approvals Delays” means the number of days in excess of ninety (90) days (with such 90-day period being measured from the date of Developer’s submission of its initial application to the City Land Development Boards) after which Developer obtains approvals from the City Land Development Boards but only to the extent such additional days in excess of ninety (90) days are the result of the City Land Development Boards’ requirement of any revisions to the Preliminary Plans and Specifications that were approved by Owner in accordance herewith and that would constitute a Material Design Change.

“Project Concept Plan” means the site plan for, and design renderings of, the Project (including elevation, exterior and cross-section renderings of the Improvements (including height) and showing the locations of the each of the Components) prepared by the Architect, which Project Concept Plan has been approved by the City Commission in the form attached hereto as **Exhibit B**.

“Project Construction Costs” means, with respect to each Phase of the Project, all hard and soft construction costs, fees and expenses incurred or to be incurred in connection with the design, permitting, development and Construction of such Phase.

“Project Opening Date” with respect to each Phase of the Project has the meaning provided in the Ground Lease for such Phase.

“Project Site” means, individually or collectively as the context may require, the P25 Project Site and the P26 Project Site.

“Public Parking Opening Date” has the meaning provided in Section 2.10(c)(iii).

“RFP” or **“Request for Proposals”** has the meaning provided in the recitals to this Agreement.

“Recognized Mezzanine Lender” has the meaning provided in the Ground Lease.

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

“Recognized Mortgagee” means, with respect to each Phase of the Project, the holder of the applicable Recognized Mortgage; provided, however, that, the applicable Recognized Mortgagee may not be an Affiliate of Developer (except if Developer is an Affiliate of the Recognized Mortgagee that has caused this Agreement to be assigned to such Affiliate in lieu of foreclosure of the Recognized Mortgage of such Recognized Mortgagee).

“Reimbursement Agreement” means that certain Reimbursement Agreement by and between Owner and Developer dated as of March 7, 2022.

“Requirements” means:

- (a) All Laws and Ordinances;
- (b) the Certificates of Occupancy or Certificate of Completion issued for the Project Site as then in force;
- (c) the requirements of the City of Miami Beach Prevailing Wage Ordinance, Miami Beach City Code, Section 31-27, as amended;
- (d) the requirements of the City of Miami Beach Local Workforce Participation Program, Miami Beach City Code, Section 31-40, as amended; and
- (e) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Developer under this Agreement.

“Surface Parking Condition” means, for the Project Site (for one or both Phases, as applicable), the same condition as a surface parking lot with curb cuts, driveways and other improvements that is existing as of the Effective Date, including installation and repair of any concrete and/or asphalt paving.

“Substantial Completion” or **“Substantially Complete”** or **“Substantially Completed”** means, with respect to each Phase of the Project, that (1) it shall have been substantially completed in accordance with the Plans and Specifications for such Phase and all

conditions of permits and regulatory agencies to obtain a Temporary Certificate of Occupancy or Temporary Certificate of Completion for such Phase have been satisfied, (2) all of the Improvements (including the Public Parking Replacement Component and all common spaces within the Office Component and Retail Component, all of which must be completed with all utilities, facilities (including finished restrooms) and finishes allowing beneficial use and occupancy thereof for their intended purposes) for such Phase shall have been issued a Temporary Certificate of Occupancy or Temporary Certificate of Completion, excluding, however, any specific tenant improvements to be constructed in accordance with the lease agreements for interior tenant spaces within such Phase during the Buildout Stage, which tenant spaces shall be in Cold Grey Shell condition, and(3) except to the extent relating to the Parking Component, the certificate of the Architect described in Section 2.10(b)(i) shall have been obtained.

“**Target Dates**” means the following dates that have been targeted by Developer to achieve, through Developer’s use of diligent, good faith efforts, the following activities or events, as each such Target Date may be reasonably extended for (i) Unavoidable Delays and/or (ii) City Delays, each in accordance with this Agreement:

(a) “**Target Approvals Date**” means the date targeted for obtaining the Project Approvals, which is eight (8) months after the Commencement Date;

(b) “**Target P25 Building Permit Date**” means the date targeted for issuance of the Building Permit for the P25 Project, which is seventeen (17) months after the date of issuance of all final Project Approvals for the P25 Project and twenty-five (25) months after the Commencement Date;

(c) “**Target P25 Commencement Date**” means the date targeted for Commencement of Construction of the P25 Project, which is two (2) months after the issuance of the Building Permit for the P25 Project and twenty-seven (27) months after the Commencement Date;

(d) “**Target P25 Parking Completion Date**” means the date targeted for the issuance of the Temporary Certificate of Completion for the P25 Parking Component, which is fifteen (15) months after Commencement of Construction of the P25 Project and forty-two (42) months after the Commencement Date;

(e) “**Target P26 Commencement Date**” means the date targeted for Commencement of Construction of the P26 Project, which is fifteen (15) months after Commencement of Construction of the P25 Project and forty-two (42) months after the Commencement Date, which Target Date is dependent upon the Target P25 Parking Completion Date;

(f) “**Target P25 Completion Date**” means the date targeted for Substantial Completion of Construction and issuance of a Temporary Certificate of Completion for the P25 Project, which is twenty-four (24) months after Commencement of Construction of the P25 Project and fifty-one (51) months after the NTP Date; and

(g) **“Target P26 Completion Date”** means the date targeted for Completion of Construction and issuance of a Temporary Certificate of Completion for the P26 Project, which is twenty-four (24) months after Commencement of Construction of the P26 Project and sixty-six (66) months after the NTP Date.

“Temporary Replacement Parking” has the meaning provided in Section 2.6(a).

“Term” means the period commencing on the Effective Date and, unless sooner terminated as provided hereunder, expiring on the later of (a) achievement of Substantial Completion of the P25 Project and the P26 Project and (b) issuance of a Final Certificate of Occupancy and the completion of all remaining punch list items with respect to completion of the Public Parking Replacement Component in accordance with the terms of this Agreement, subject, however, to survival of any provisions of this Agreement that are expressly stated herein to survive such expiration or termination (as the case may be), but in no event shall the Term exceed the period set forth in Section 4.8 hereof.

“Termination Fee” has the meaning provided in Section 2.12(a)(i).

“TPC Developer” has the meaning provided in the recitals to this Agreement.

“Unanticipated Site Conditions” means (a) concealed or subsurface conditions within or proximate to the Premises that could not have been reasonably anticipated by Developer or reasonably discoverable and/or is not actually discovered by Developer through customary diligence during the Due Diligence Period, including, for example, unmapped utilities or any unknown Environmental Condition (as defined in the Ground Lease), geothermal system, geotechnical condition, or similar concealed condition not reasonably discoverable prior to the commencement of Construction Work; and (b) encumbrances on the Premises that are either unrecorded or revealed by any title update obtained by Developer following the Effective Date (and were not disclosed in any prior title report or commitment or otherwise contemplated by the Ground Lease and/or this Development Agreement), which materially and adversely impact the development of the Project.

“Unavoidable Delays” means a delay arising out of (a) a Force Majeure Event; (b) Unanticipated Site Conditions; (c) a Project Approvals Delay, and/or (d) a Lawsuit, in each case, which actually prevents or delays performance and that (i) is beyond the reasonable control of such Party incurring the delay, (ii) is not due to the negligent or intentional act, error or omission of such Party and (iii) if occurring after Commencement of Construction, impacts the progress of the Work. **“Unavoidable Delay”** shall not include technological interruption or malfunction, failure of equipment supplied by Developer or any Contractor, receipt of and incorporation of defective materials into the Work, shortage of funds, failure of suppliers to deliver equipment and materials except where such failure is itself the result of an Unavoidable Delay, or failure of Developer or any Contractor to secure the required permits for prosecution of the Work (except to the extent caused or contributed to by a City Delay or a Project Approvals Delay); provided that the Party claiming such Unavoidable Delay delivers written notice to the other Party of such Unavoidable Delay within ten (10) Business Days after first becoming aware of the occurrence thereof, which notice shall describe in reasonable detail the events giving rise to the Unavoidable Delay, and such Party shall diligently attempt to remove, resolve or otherwise seek to mitigate

such delay and keep the other Party advised with respect thereto. Time is of the essence with respect to this provision, and any failure by a Party to timely deliver such notice of an Unavoidable Delay shall be deemed a waiver of such Party's right to delay performance as a result of such Unavoidable Delay. Notwithstanding the provisions of Section 21.1(a), for purposes hereof, notice by Developer shall be deemed sufficiently given to Owner if transmitted via electronic transmission to the City Manager and City Attorney; provided that as soon as reasonably practicable thereafter a copy of such notice is delivered pursuant to the terms of Section 21.1(a) hereof. The times for performance set forth in this Development Agreement (other than for monetary obligations of a Party) shall be extended to the extent performance is delayed by Unavoidable Delay, except as otherwise expressly set forth in this Development Agreement. If two or more separate events of Unavoidable Delay are concurrent with each other, the Parties shall only be entitled to an extension of time for each day of such concurrent critical path delay, and the Parties shall not be entitled to double recovery thereon. For illustration purposes only, if two events of Unavoidable Delay are concurrent for two days, the Parties shall only receive an extension of time, if at all, of a total of two days, and not four days. In no event shall (i) any Party's financial condition or inability to fund or obtain funding or financing constitute an Unavoidable Delay with respect to such Party, or (ii) any delay arising from a Party's default under this Agreement, the General Construction Contract or any other Construction Agreements, constitute an Unavoidable Delay with respect to such Party's obligations hereunder.

“Unforeseen Condition” has the meaning provided in Section 1.3.

“Unforeseen Condition Notice” has the meaning provided in Section 1.3.

“Unity of Title” means the unity of title or covenant in lieu of unity of title joining the P25 Land as a unified development site or the unity of title or covenant in lieu of unity of title joining the P26 Land as a unified development site, as applicable, each of which shall be substantially in the form attached hereto as **Exhibit F**.

“Work” means, with respect to each Phase of the Project, the design, permitting, development and construction of such Phase substantially in accordance with the Plans and Specifications for such Phase approved by Owner in accordance herewith, including all design, architectural, engineering and other professional services, demolition and construction services, supervision, administration and coordination services and the provision of all drawings, specifications, labor, materials, equipment, supplies, tools, machinery, utilities, fabrication, transportation, storage, insurance, bonds, permits and conditions thereof, zoning approvals, changes required to comply with building codes and Permits and Approvals for such Phase, licenses, tests, inspections, surveys, studies, and other items, work and services that are necessary or appropriate for the demolition of existing structures and other preparatory or remediation work on the applicable portion of the Project Site; utility relocations, installations, hook-ups or other infrastructure as may be required in connection with such Phase and to obtain Certificates of Occupancy or Certificates of Completion for such Phase; total design, construction, installation, and functioning of such Phase to the extent necessary to obtain Certificates of Occupancy for such Phase, and together with all additional, collateral and incidental items, work and services required for completion of construction of such Phase.

ARTICLE 2 CONSTRUCTION

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

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

Section 2.2 Design of the Project.

(a) The Developer shall be solely responsible for the design of each Phase of the Project, and such design shall (1) substantially conform to the Project Concept Plan attached hereto as **Exhibit B** relating to such Phase, (2) include all Mandatory Project Elements for such Phase, except to the extent that changes thereto have been negotiated with, and approved, by Owner in accordance with in this Agreement, and (3) be at the sole cost and expense of Developer. Developer shall be solely responsible for obtaining the approval of the applicable City Land Development Boards for each Phase of the Project (collectively, the "**Project Approvals**") and Owner shall have no duty or obligation to approve any particular design which does not substantially conform to the Project Concept Plan or include all of the Mandatory Project Elements; provided, however, that Owner's approval shall not be required for any changes that do not constitute a Material Design Change. The Parties anticipate that the Project Approvals will be a single phased approval by the City Land Development Boards for both Phases of the Project and Developer shall submit the application for approval for both Phases of the Project to the City Land Development Boards at the same time. Prior to submission of the application for both Phases of the Project to the applicable City Land Development Boards, Developer shall submit to Owner (acting in its proprietary capacity as owner of the Land) all of the preliminary plans and specifications for both Phases which shall include, for each Phase, a site plan and all items constituting architectural plans and exhibits and landscape plans and exhibits that are required by the City Land Development Boards to be included in the application for Project Approvals (the "**Preliminary Plans and Specifications**"). Owner shall have no duty or obligation to approve any particular design which does not substantially conform to the Project Concept Plan or which constitutes a Material Design Change. The City Manager shall have twenty (20) Business Days to review the Preliminary Plans and Specifications and shall review the Preliminary Plans and Specifications for each Phase solely for substantial conformity with the Project Concept Plan for such Phase and to confirm that the Preliminary Plans and Specifications for such Phase include all Mandatory Project Elements for such Phase, except to the extent that changes thereto have been negotiated with, and approved, by Owner, or otherwise permitted, in accordance with in this Agreement. The City Manager shall not unreasonably withhold or delay his or her approval if the Preliminary Plans and Specifications for each Phase of the Project include all Mandatory Project Elements for such Phase and substantially conform to the Project Concept Plan for such Phase; it being agreed however, that Owner's failure to so notify Developer of its disapproval within ten (10) Business Days after a second written request pursuant to Section 21.2(c)(ii) of this Agreement shall be deemed to constitute Owner's conclusive approval of such Preliminary Plans and Specifications for such Phase

(subject to Developer's compliance with Section 21.2(c) of this Agreement). If the City Manager disapproves the Preliminary Plans and Specifications for either Phase of the Project, then Developer shall, at its election, either (x) submit the City Manager's disapproval to expedited arbitration pursuant to Section 3.5 and Section 23.1 as to the reasonableness of the disapproval, or (y) within thirty (30) days after such disapproval, submit a revised modification to the Preliminary Plans and Specifications for such Phase so that they substantially conform to the Project Concept Plan for such Phase, include all Mandatory Project Elements and then re-submit them to the City Manager pursuant to the foregoing process until such Preliminary Plans and Specifications for such Phase have been approved by the City Manager. Notwithstanding anything contained herein to the contrary, Owner acknowledges and agrees that Developer shall have the right to modify the Mandatory Project Elements without Owner's prior approval, but with prior written notice to Owner, to the extent that such modifications do not constitute a Material Design Change.

(b) Promptly following the City Manager's approval of the Preliminary Plans and Specifications for both Phases of the Project in accordance with clause (a) above, Developer shall submit same to the applicable City Land Development Boards and deliver a copy of such submittal to Owner. Thereafter, Developer shall use diligent, good faith efforts to obtain all Project Approvals on or before the Target Approvals Date. Developer shall obtain final, non-appealable Project Approvals on or before the Outside Approvals Date. Failure to obtain final, non-appealable Project Approvals for each Phase of the Project on or before the Outside Approvals Date shall constitute an Event of Default under this Agreement. If the Outside Approvals Date would occur less than ten (10) business days following final, non-appealable unfavorable resolution of a Lawsuit challenging the Project Approvals, then the Outside Approvals Date shall be extended to the date that is ten (10) business days following final non-appealable resolution of such Lawsuit to provide the Parties with sufficient time to consider the status of the Project Approvals for such Phase and to exercise their respective rights hereunder.

(c) Owner and Developer acknowledge and agree that the City Land Development Boards and/or any other applicable Governmental Authority may require revisions to the Preliminary Plans and Specifications for each Phase of the Project as a condition to the issuance of the Project Approvals; provided, however, that any revisions to the Mandatory Project Elements or Project Concept Plan that constitute a Material Design Change shall be subject to approval by the City Manager in his or her reasonable discretion. Developer shall submit the Preliminary Plans and Specifications to the City Manager for approval pursuant to the foregoing process until the Preliminary Plans and Specifications have been approved by the City Manager. The Preliminary Plans and Specifications for each Phase of the Project, as revised to conform to conditions to the issuance of the Project Approvals and, if applicable, any such revisions to the Mandatory Project Elements and/or Project Concept Plan that have been approved by the City Manager to the extent required herein, are referred to in this Agreement as the "**Approved Preliminary Plans**" for such Phase.

Section 2.3 Plans and Specifications.

Upon receipt of the Project Approvals for each Phase of the Project, Developer shall prepare the Plans and Specifications for construction of such Phase, substantially consistent with

the Approved Preliminary Plans for such Phase, for review by Owner (acting in its proprietary capacity as owner of the Land). The City Manager shall have twenty (20) Business Days to review the Plans and Specifications for each Phase of the Project and shall review the Plans and Specifications for such Phase solely for substantial consistency with the Approved Preliminary Plans for such Phase; it being agreed however, that Owner's failure to so notify Developer of its disapproval within ten (10) Business Days after a second written request pursuant to Section 21.2(c)(ii) of this Agreement shall be deemed to constitute Owner's conclusive approval of such Plans and Specifications for such Phase (subject to Developer's compliance with Section 21.2(c) of this Agreement). If the City Manager disapproves the Plans and Specifications for either Phase of the Project, then Developer shall, at its election, either (x) submit the City Manager's disapproval to expedited arbitration pursuant to Section 3.5 and Section 23.1 as to the reasonableness of the disapproval, or (y) within thirty (30) days after such disapproval, submit a revised modification to the Plans and Specifications for such Phase so that they substantially conform to the Approved Preliminary Plans and then re-submit them to the City Manager pursuant to the foregoing process until such Plans and Specifications for such Phase have been approved by the City Manager. Developer shall pursue approval by the City of the Plans and Specifications for each Phase of the Project diligently and in good faith.

Section 2.4 Pre-Construction Obligations.

(a) Developer shall have the right, in its reasonable discretion, and in consultation with the Building Official, to develop each Phase of the Project in three separate and/or overlapping construction stages consisting of (i) an infrastructure and foundation stage prior to construction of any vertical improvements (the "**Foundation Stage**"), (ii) a core and shell stage through Substantial Completion of such Phase, provided that interior tenant spaces shall be completed to a Cold Grey Shell condition (the "**Core and Shell Stage**"), and (iii) an interior build-out stage for specific tenant improvements to be constructed in accordance with the lease agreements for interior tenant spaces ("**Buildout Stage**" and together with the Foundation Stage and Core and Shell Stage, each, a "**Construction Stage**"). In furtherance thereof, Owner acknowledges and agrees that Developer may proceed with the Commencement of Construction of the Foundation Stage of each Phase prior to obtaining the Full Building Permit for such Phase provided (A) Developer shall have obtained and delivered to Owner copies of the required Permits and Approvals for the applicable Foundation Stage, (B) Developer shall have entered into, and delivered to Owner, a duly executed copy of, the General Construction Contract for the applicable Foundation Stage, (C) Developer shall have delivered evidence reasonably acceptable to Owner that all applicable insurance coverages required under this Agreement and the Ground Lease are in place with respect to such Foundation Stage, (E) Developer shall have delivered to Owner satisfactory documentation of the estimated cost to restore the Project Site, after completion of the Foundation Stage, to the Surface Parking Condition and, for the benefit of Owner, an irrevocable letter of credit in an amount equal to one hundred ten percent (110%) of the estimated cost of such restoration and otherwise in form and substance reasonably satisfactory to Owner or such other security satisfactory to Owner in its sole and absolute discretion, after consultation with the City Attorney, (F) Developer shall have caused the General Contractor for the applicable Foundation Stage to furnish to Owner the Payment and Performance Bond required under **Section 2.4(b)** below for the applicable Foundation Stage, (G) Developer shall have delivered to Owner the applicable Development Budget with respect to such Phase, and (H) Developer

shall have delivered to Owner the CPM Schedule for the applicable Phase (the foregoing being referred to herein as the “**Foundation Stage Possession Conditions**”). Owner shall be entitled to draw upon such letter of credit to the extent required to complete the restoration of the Project Site to the Surface Parking Condition in the event that Owner terminates this Agreement and the Ground Lease for the applicable Phase prior to Commencement of the Core and Shell Stage and Developer does not thereafter promptly commence and diligently pursue and complete the restoration of the Project Site to the Surface Parking Condition, which shall be Developer’s obligation, at Developer’s sole cost and expense. Developer’s restoration obligations pursuant to this Section shall survive expiration or earlier termination of this Agreement. Prior to Commencement of Construction of the Core and Shell Stage, Developer shall satisfy all Possession Conditions pursuant to and in accordance with the Ground Lease.

(b) Prior to Commencement of Construction of each Construction Stage, Developer shall cause the General Contractor for such Construction Stage to furnish to Owner a payment and performance bond (the “**Payment and Performance Bond**”), in a form reasonably acceptable to Owner, issued by a surety listed in the most recent United States Department of Treasury listing of approved sureties, in the amount of the contract price for such Construction Stage, guaranteeing the performance of the applicable General Contractor under the applicable General Construction Contract through completion of such Construction Stage or such other security as is reasonably acceptable to the City Manager, after consultation with the City Attorney. Owner shall be named as a dual obligee under the Payment and Performance Bond for each Construction Stage of each Phase of the Project; provided, however, Owner’s rights under the Payment and Performance Bond for such Construction Stage shall be subordinate to the applicable Recognized Mortgagee’s rights under the Payment and Performance Bond for such Construction Stage and Owner shall agree in writing with such Recognized Mortgagee that Owner shall only seek to enforce its rights under the Payment and Performance Bond for such Construction Stage if the applicable Ground Lease is terminated and such Recognized Mortgagee fails to exercise its rights under Section 11.6 of the applicable Ground Lease for the execution of New Tenant’s Documents (as defined in the Ground Lease).

(c) Developer’s selection of the General Contractor for each Phase or Construction Stage of the Project shall be subject to the advance approval of the City Manager, which approval shall not be unreasonably withheld, conditioned or delayed provided the proposed General Contractor satisfies the qualifications listed below, after consultation with the City Attorney, as to the qualifications and responsibility of the proposed General Contractor to perform the contract, based on the contractor’s licensure, bonding capacity, financial capacity, history of compliance with laws, and satisfactory past performance on similar projects. Provided that the General Contractor proposed by Developer for such Phase does not have a significant history of material non-compliance with the law, Owner agrees to approve any General Contractor proposed by Developer that satisfies each of the following:

- (i) Has a State of Florida Building and Business License;
- (ii) Has completed at least five projects of similar size and scope as the Project within the last ten (10) years; and

(iii) Has total bonding capacity in excess of \$100,000,000.00.

(d) All Construction Agreements shall include the provisions set forth on **Exhibit D** (or language substantially similar thereto which is approved in advance by the City Manager).

(e) Owner (solely in its capacity as the owner of the Land and not in its governmental capacity) shall reasonably cooperate with Developer in obtaining the Permits and Approvals for each Phase of the Project, including but not limited to building permits (including phased permits) and any other building and development permits, curb cut permits, site plan approvals, and water and sanitary sewer tap permits and/or such other permits, licenses, or approvals as may be necessary for the development, construction and operation of such Phase and any Construction Stage within such Phase, and any necessary utility access agreements, shall sign any applications, joinders, consents and/or other authorizations reasonably requested by Developer which is required in order to obtain such Permits and Approvals for such Phase and shall provide Developer with any information and/or documentation not otherwise reasonably available to Developer (if reasonably available to Owner) which is necessary to procure such Permits and Approvals and utility access agreements for such Phase. Further, if applicable, Owner shall, and the City Manager shall have the delegated authority to, grant and join in any plat, covenants in lieu of unity of title, temporary and permanent easements, restrictive covenants, easement vacations or modifications and such other documents, including, but not limited to, estoppel certificates, as may be necessary for the development, construction and operation of each Phase of the Project. Developer shall reimburse Owner, within thirty (30) days after Owner's demand, for any reasonable out-of-pocket cost or expense payable to Owner's technical consultants (other than Owner's Consultant and Owner's employees), such as architects and engineers, so incurred by Owner in connection with Owner's reasonable cooperation in obtaining the Permits and Approvals as set forth in this Article 2. Owner shall identify a City point person or persons (the make-up of which may change over time) liaise with the various City departments in connection with the Project. Any such cooperation, accommodation or other action by Owner pursuant to this Section shall be without prejudice to, and shall not constitute a waiver of, Owner's rights to exercise its discretion in connection with its governmental or regulatory functions and any failure to do so shall not constitute or result in a breach or default by Owner of any of the terms or conditions of this Agreement.

(f) Developer shall use diligent, good faith efforts to obtain the Full Building Permit for the P25 Project on or before the Target P25 Building Permit Date. Developer shall obtain the Full Building Permit for the P25 Project on or before the Outside P25 Building Permit Date. Failure to obtain the Full Building Permit for the P25 Project on or before the Outside P25 Building Permit Date shall constitute an Event of Default under this Agreement.

(g) At all times prior to Commencement of Construction of the Foundation Stage of the P25 Project and commencement of any Work on the P26 Land to construct the Temporary Replacement Parking, each in accordance with this Agreement, City and the public shall have right to use each of the P25 Land and the P26 Land, respectively, as self-park surface parking lots and the City shall continue to retain all revenues therefrom. Notwithstanding the foregoing, from and after the NTP Date, Owner shall permit Developer

commercially reasonable access to the Land to perform, at Developer's sole cost and expense, certain Early Work to the extent reasonably necessary to carry out the provisions of this Agreement; provided, however, (x) Developer must not conduct any Early Work described in clauses (iii), (iv), (v) and (vi) of the definition thereof without Owner's prior written consent, which shall not be unreasonably withheld, conditioned or delayed and shall coordinate such Early Work with Owner in a manner that minimizes the impact of such Early Work on Owner's ongoing operations on the Land, including use as surface parking lots and (y) (A) all Early Work must be performed in accordance with the requirements of the City Code and all other applicable Laws and Ordinances, (B) Developer shall have obtained, and shall have delivered to Owner copies of, all Permits and Approvals to the extent necessary for the commencement of such Early Work, (C) if applicable, Developer shall have entered into, and delivered to Owner, a duly executed copy of, the construction contract between Developer and the contractor performing such Early Work and (D) prior to commencing any Early Work on the Land, Developer shall have presented evidence reasonably acceptable to Owner that all applicable insurance coverages required under this Agreement and the Ground Lease are in place. Following satisfaction of the conditions set forth in clauses (y)(A), (B), (C) and (D) above with respect to the Work to develop and construct the Temporary Replacement Parking and provided that Developer delivers to Owner (E) a schedule for completion of construction of the Temporary Replacement Parking, in form and substance reasonably acceptable to Owner (and which may be updated from time to time by Developer provided that Developer delivers copies of such updates promptly to Owner) and (F) satisfactory documentation of the estimated cost to restore the P26 Land, after construction of the Temporary Replacement Parking, to the Surface Parking Condition and, for the benefit of Owner, an irrevocable letter of credit in an amount equal to one hundred ten percent (110%) of the estimated cost of such restoration and otherwise in form and substance reasonably satisfactory to Owner or such other security satisfactory to Owner in its sole and absolute discretion, after consultation with the City Attorney (the foregoing clauses (E) and (F) and clauses (y)(A), (B), (C) and (D) above being referred to herein, collectively, as, the "**P26 Temporary Use Conditions**"). Owner shall be entitled to draw upon such letter of credit to the extent required to complete the restoration of the P26 Land to the Surface Parking Condition in the event that Owner terminates this Agreement prior to Commencement of Construction of the P26 Project and Developer does not thereafter promptly commence and diligently pursue and complete the restoration of the P26 Land to the Surface Parking Condition, which shall be Developer's obligation, at Developer's sole cost and expense. Developer's restoration obligations pursuant to this Section shall survive expiration or earlier termination of this Agreement. Developer shall have the right to access the P26 Land to construct and operate the Temporary Replacement Parking on the P26 Land during construction of the P25 Parking Component pursuant to Section 2.6 of this Agreement.

(h) Developer, in coordination with Owner, shall be responsible for development and implementation of community outreach and public information campaigns for the Project and each Phase thereof.

Section 2.5 Conditions Precedent to Developer’s Commencement of Construction of the Project.

(a) The term of Developer’s possession of the P26 Land for purposes of performing the Work to develop the Temporary Replacement Parking shall commence immediately following, and commencement of such Work shall be subject to, satisfaction of the P26 Temporary Use Conditions.

(b) The term of Developer’s possession of the P25 Land shall commence immediately following, and Commencement of Construction of the P25 Project shall be subject to, Developer’s satisfaction of each of the Possession Conditions for the P25 Project set forth in the P25 Ground Lease; provided that Developer may commence the Foundation Stage of the P25 Project prior to issuance of the Full Building Permit for the P25 Project subject to Developer’s satisfaction of the Foundation Stage Possession Conditions for such Phase.

(c) Commencement of Construction of the P26 Project (which specifically excludes the Temporary Replacement Parking) shall be subject to Substantial Completion of the P25 Parking Component, the issuance of the Temporary Certificate of Completion for the P25 Parking Component, the opening of the P25 Parking Component to the public for parking purposes and satisfaction of the Possession Conditions set forth in the P26 Ground Lease[]; provided that Developer may commence the Foundation Stage of the P26 Project prior to issuance of the Full Building Permit for the P26 Project subject to Developer’s satisfaction of the Foundation Stage Possession Conditions for such Phase.

Section 2.6 Parking Mitigation.

(a) Subject to satisfaction of the P26 Temporary Use Conditions, Developer shall have the right to access the P26 Land following the issuance of the Notice to Proceed for the purpose of constructing and operating a temporary valet-operated parking lot on the P26 Land that will accommodate parking for one hundred ninety-two (192) vehicles to temporarily replace the public parking spaces on the P25 Land during construction of the P25 Project and on the P26 Land (the “**Temporary Replacement Parking**”). In its proprietary capacity as owner of the P26 Land, Owner shall reasonably cooperate with Developer, at Developer’s sole cost and expense, in connection with the permitting and construction of the Temporary Replacement Parking, including, but not limited to, joining in any applications for Permits and Approvals required for the development and construction of the Temporary Replacement Parking in accordance with applicable Laws and Ordinances or, if requested by Developer, executing a temporary easement, license or similar agreement with respect to the Temporary Replacement Parking in a recordable form and as agreed by the Parties. Developer shall fully defend, protect, indemnify and hold harmless the City Parties with respect to all aspects of the development, construction, use and operation of the Temporary Replacement Parking. In the event that this Agreement is terminated prior to commencement of construction of the P26 Project, the Temporary Replacement Parking shall be promptly removed from the P26 Land by Developer, at Developer’s sole cost and expense, and at Owner’s election in its sole and absolute discretion, either (i) any permanent structures located on the P26 Land approved by Owner shall, upon termination, become the property of Owner at no cost to Owner or (ii)

Developer shall remove any and all structures or improvements made to the P26 Land and restore the P26 Land to the Surface Parking Condition. Developer's restoration obligations pursuant to this Section shall survive expiration or earlier termination of this Agreement.

(b) At all times during construction of the P25 Project and until the opening of the P25 Parking Component to the public for public parking purposes, Developer, at Developer's sole cost and expense, shall operate the P26 Land solely as a valet-operated public parking lot at rates not higher than the City's then applicable rates for similar parking facilities and with a valet operator designated by Owner and reasonably approved by Developer (which, for the avoidance of doubt, may be withheld if the valet operator's management and operating fees are not consistent with market rates). Owner shall receive all revenues from the operation of the P26 Land as a public parking lot until Substantial Completion of the P25 Parking Component and opening thereof to the public for public parking purposes, which revenues shall be collected in the manner determined by Owner. Owner, at Owner's sole cost and expense, shall be responsible for maintaining the asphalt and paying for all utilities serving the valet-operated lot. In the event that Developer receives any revenues from the operation of the P26 Land as a valet-operated public parking lot or otherwise (other than tips to valet attendants), Developer shall remit all such gross revenues to Owner, on or before the fifteenth (15th) day of each calendar month for such revenues received during the prior calendar month, together with documentation reasonably acceptable to Owner for Owner to verify that the amount remitted to Owner accurately represents all such revenues for the prior calendar month.

(c) Promptly following Substantial Completion of the P25 Parking Component consisting of not less than one hundred ninety-two (192) parking spaces, and opening thereof to the public for public parking purposes, the use of the P26 Land for public parking purposes shall be discontinued, and contemporaneously therewith, Developer, at its sole cost and expense, shall operate the P25 Parking Component as a public parking garage at rates not higher than the City's then applicable rates for similar parking facilities until Substantial Completion of the P26 Parking Component and opening thereof to the public for public parking purposes; provided, however, to the extent that the P25 Parking Component consists of less than one hundred ninety-two (192) parking spaces, Developer, at its sole cost and expense, shall cause a portion of the P25 Parking Component to be valet-operated solely to the extent reasonably necessary to accommodate one hundred ninety-two (192) vehicles and with a valet operator designated by Owner and reasonably approved by Developer (which, for the avoidance of doubt, may be withheld if the valet operator's management and operating fees are not consistent with market rates) and to permit self-parking to the fullest extent practicable. Owner shall receive all net revenues from the operation of the P25 Parking Component as a public parking garage until Substantial Completion of the P26 Parking Component and opening thereof to the public for public parking purposes, which revenues are intended to be collected through the use of the ParkMobile® application or other technology or method by which Owner collects parking fees and directly remitted to Owner, as more particularly set forth in a mutually agreeable interim parking operating agreement with respect thereto to be entered into by Developer and Owner, each acting reasonably and in good faith. In the event that Developer receives any revenues from the operation of the P25 Parking Component (other than tips to valet attendants), Developer shall remit all net revenues to Owner, on or before the fifteenth (15th) day of each calendar month for such revenues

received during the prior calendar month, together with documentation reasonably acceptable to Owner for Owner to verify that the amount remitted to Owner accurately represents all such revenues for the prior calendar month. In the event Developer fails to make any payments as required under the provisions of this Agreement, within fifteen (15) days of the same being due, the late payment shall bear interest at the Late Charge Rate (as defined in the Ground Lease).

Section 2.7 Commencement and Completion of Construction of the Project.

(a) Developer, at its sole cost and expense, (a) shall use diligent, good faith efforts to satisfy all Possession Conditions for the P25 Project and Commence Construction of the P25 Project on or before the Target P25 Commencement Date and (b) shall Commence Construction of the P25 Project on or before the Outside P25 Commencement Date. Failure to Commence Construction of the P25 Project on or before the Outside P25 Commencement Date shall constitute an Event of Default under this Agreement.

(b) Developer, at its sole cost and expense, (a) shall use diligent, good faith efforts to complete Construction of the P25 Parking Component on or before the Target P25 Parking Completion Date and (b) shall Substantially Complete the P25 Parking Component on or before the Outside P25 Parking Completion Date. Failure to Substantially Complete the P25 Parking Component on or before the Outside P25 Parking Completion Date shall constitute an Event of Default under this Agreement.

(c) Developer, at its sole cost and expense, (a) shall use diligent, good faith efforts to Commence Construction of the P26 Project on or before the Target P26 Commencement Date and (b) shall Commence Construction of the P26 Project on or before the Outside P26 Commencement Date. Failure to Commence Construction of the P26 Project on or before the Outside P26 Commencement Date shall constitute an Event of Default under this Agreement.

(d) From and after satisfaction of the Possession Conditions of each Phase of the Project and Commencement of Construction of such Phase, Developer shall prosecute Construction of such Phase with diligence and continuity through completion. If, after Developer has Commenced Construction of either Phase of the Project, Developer fails to diligently prosecute Construction of such Phase (subject to Unavoidable Delays and City Delays), and such failure continues (subject to Unavoidable Delays and City Delays) for more than thirty (30) consecutive days after Developer's receipt of notice of such failure from Owner, Owner shall, in addition to all of its other remedies under this Agreement and the applicable Ground Lease, have the right to seek such equitable relief (either mandatory or injunctive in nature) as may be necessary to cause diligent and continuous prosecution of Construction of such Phase (subject to Unavoidable Delays and City Delays) by Developer, it being understood that Construction of each Phase of the Project is a material inducement to Owner to enter into each of the P25 Ground Lease and P26 Ground Lease and monetary damages shall be inadequate to compensate Owner for harm resulting from such failure.

Section 2.8 Construction Obligations.

During Construction of each Phase of the Project, Developer shall, or shall cause its General Contractor for such Phase to:

- (a) Select the means and methods of construction. Only adequate and safe procedures, methods, structures and equipment shall be used;
- (b) Furnish, erect, maintain and remove such construction plant and such temporary work as may be required; and be responsible for the safety, efficiency and adequacy of the plant, appliance and methods used and any damage which may result from failure, improper construction, maintenance or operation of such plant, appliances and methods;
- (c) Provide all architectural and engineering services, scaffolding, hoists, or any temporary structures, light, heat, power, toilets and temporary connections, as well as all equipment, tools and materials and whatever else may be required for the proper performance of the Work for such Phase;
- (d) Order and have delivered all materials required for the Work for such Phase and shall be responsible for all materials so delivered to remain in good condition;
- (e) Protect all Work for such Phase prior to its completion and acceptance;
- (f) Maintain the Project Site for such Phase and adjacent streets, properties and sidewalks in good and safe order and condition and promptly make any repairs necessary to keep in good and safe order and condition;
- (g) Maintain the Project Site for such Phase and adjacent streets, properties and sidewalks in a clean and orderly manner at all times and free from vandalism (including graffiti), waste materials, debris and rubbish;
- (h) Restore and repair any streets, properties and sidewalks adjacent and leading to the Project Site for such Phase damaged as a result of Construction of such Phase, whether such streets, properties or sidewalks are publicly or privately owned; and
- (i) Promptly rectify any damage or interference caused by Developer to any improvements, equipment, structures or vegetation outside of the Project Site for such Phase which is owned or controlled by the City; and
- (j) Implement, and maintain in place at all times, a comprehensive hurricane and flood plan for the Project Site and the Work for such Phase and provide a copy of same to the City.

Section 2.9 Connection of Buildings to Utilities.

- (a) Developer, at its sole cost and expense for the Project Site for each Phase of the Project and in compliance with all Permits and Approvals and Laws and Ordinances, shall

install or cause to be installed all necessary connections between the Improvements for such Phase, and the water, sanitary and storm drain mains and mechanical and electrical conduits whether or not owned by the City.

(b) Developer shall pay for the cost, if any, of locating, relocating, grounding and installing within the Project Site for each Phase of the Project, as applicable, new facilities for sewer, water, electrical, and other utilities as needed to service such Phase, and, at its sole cost and expense, will install or cause to be installed inside the property line of the Project Site for such Phase, any and all necessary utility lines, with adequate capacity for such Phase and with the sizing of utility lines for such Phase to conform with the Plans and Specifications for such Phase approved by Owner in accordance with this Agreement.

(c) Owner shall reasonably cooperate with Developer in connection with this Section 2.9 to the extent that Developer needs Owner to (i) join in any agreements or documents for installation of any connections necessary for the Improvements for each Phase of the Project or required to comply with its obligations hereunder, or (ii) grant easements to public utility providers across the applicable Land and other property owned by Owner as may be required to serve such Phase.

Section 2.10 Completion of Construction of the Project.

(a) Substantial Completion of the P25 Project shall be accomplished in a diligent manner, and in any event by the Outside P25 Completion Date, the failure of which shall constitute an Event of Default under this Agreement and the P25 Ground Lease and the P26 Ground Lease. Substantial Completion of the P26 Project shall be accomplished in a diligent manner, and in any event by the Outside P26 Completion Date, the failure of which shall constitute an Event of Default under this Agreement and the P25 Ground Lease and the P26 Ground Lease; provided, however, such Event of Default shall not constitute an Event of Default under the P25 Ground Lease to the extent such cross-default has been released by Owner in accordance with Section 2.10(c)(iii) below. Final completion of the Construction of the P25 Project and P26 Project, respectively, including but not limited to completion of all punch-list items, shall be accomplished in a diligent manner promptly following Substantial Completion thereof, in each case in a good and workerlike manner, substantially in accordance with the Plans and Specifications for such Phase of the Project (with no material deviations except as expressly permitted herein), in accordance with all applicable Laws and Ordinances and at Developer's sole cost and expense.

(b) Upon Substantial Completion of Construction of each of the P25 Project and the P26 Project, Developer shall furnish Owner with the following as and when Substantial Completion of such Phase of the Project occurs:

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

(ii) a copy or copies of the Certificates of Occupancy or Certificates of Completion for such Phase of the Project issued by the City of Miami Beach Building Department;

(iii) final lien waivers in form and substance reasonably satisfactory to Owner from each contractor, subcontractor, supplier or materialman at every tier retained by or on behalf of Developer in connection with the Construction of such Phase 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 such Phase;

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

(v) a final contractor payment affidavit in form and substance reasonably satisfactory to Owner executed by the General Contractor for such Phase of the Project (a) evidencing that all contractors, subcontractors, suppliers and materialmen retained by or on behalf of Developer in connection with the Construction of such Phase have been paid in full for all work performed or materials supplied in connection with the Construction of such Phase and (b) otherwise complying with all of the requirements under the Florida Construction Lien Law, Chapter 713, Florida Statutes, as amended; and

(vi) an affidavit duly executed by Developer certifying the amount of the Project Construction Costs incurred by Developer in connection with such Phase.

(c) Completion of Construction of the P25 Parking Component.

(i) Substantial Completion of the P25 Parking Component shall be accomplished in a diligent manner, and in any event by the Outside P25 Parking Completion Date, the failure of which shall constitute an Event of Default under this Agreement and the P25 Ground Lease and the P26 Ground Lease.

(ii) Upon Substantial Completion of Construction of each of the P25 Parking Component and the P26 Parking Component, Developer shall furnish Owner with the following:

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

(2) a copy or copies of the Temporary Certificate of Completion for such Component issued by the City of Miami Beach Building Department;

(iii) Following Substantial Completion of the P25 Project and the P26 Parking Component and provided that both the P25 Parking Component and the P26 Parking Component are at such time open to the public (the “**Public Parking Opening Date**”), Owner agrees to release the cross-default between the P25 Ground Lease and P26 Ground Lease and the cross-defaults between this Agreement and the P25 Ground Lease; provided further in the event that (but only for so long as) Developer has a single lender for the P25 Project and the P26 Project and the financings thereof are cross-defaulted, Owner shall have no obligation to release the foregoing cross-defaults.

Section 2.11 Economic Force Majeure.

If, prior to Commencement of Construction of either Phase of the Project, Developer is delayed, hindered or prevented from being able to obtain a commitment for, or is otherwise unable to secure adequate financing on commercially reasonable terms in connection with, a Construction Loan, or to the extent applicable, commitments for the Mezzanine Loan or C-PACE (as defined in the Ground Lease) financing, each in accordance with the applicable Ground Lease, as a result of an Economic Force Majeure, then the Outside Dates for Commencement of Construction and Substantial Completion of each Phase of the Project shall each be extended for the period of such delay not to exceed six (6) months in the aggregate in respect of each Phase; provided, that, Developer shall receive such extension, if any, only once and only prior to Commencement of Construction of each applicable Phase (and if such extension occurs only prior to Commencement of the P26 Project there shall be no corresponding extensions to any dates relating to the P25 Project); provided, further that in order to avail itself of such one-time extension of each Phase of the Project due to Economic Force Majeure, Developer must give written notice of such occurrence to Owner within twenty-one (21) days after Developer has knowledge of such occurrence, which notice shall describe in reasonable detail the events giving rise to the Economic Force Majeure and Developer must diligently attempt to remove, resolve, or otherwise seek to mitigate such delay, and keep Owner advised with respect thereto. Time is of the essence with respect to this provision, and any failure by Developer to timely deliver such notice of Economic Force Majeure or to diligently attempt to remove, resolve or otherwise mitigate such delay shall be deemed a waiver of Developer’s right to extend such Outside Dates as a result of such Economic Force Majeure.

Section 2.12 Developer’s Right of Termination.

Notwithstanding anything to the contrary contained herein, Developer shall have the right to be released from its liability and obligations (except the obligation to pay Rent and/or Impositions which are due prior to such termination and such other obligations that survive termination of the Ground Lease and this Agreement), and to terminate this Development Agreement and the Ground Lease prior to the Commencement of Construction of the P25 Project because (a) any changes to the Preliminary Plans and Specifications for either Phase of the Project required by the applicable City Land Development Boards, or any other Governmental Authority (including the City) render the Project economically unfeasible in the reasonable business judgment of Developer, (b) the Project cannot meet concurrency requirements under

Section 163.3180, Florida Statutes, or the costs of concurrency mitigation are, in the reasonable business judgment of Developer, economically unfeasible, (c) Developer, after diligent, good faith efforts, has been unable to obtain a full building permit for such Phase pursuant to the Plans and Specifications for the P25 Project approved by Owner, (d) there shall exist any change after the date this Agreement is signed by Developer in regional, national or global economic conditions that in Developer's reasonable and good faith judgment would materially and adversely affect the financial viability of the Project or (e) Owner does not provide Notice to Proceed to Developer within twenty-four (24) months after the Effective Date. In the event of termination of this Development Agreement and the Ground Lease pursuant to this Section 2.12 or pursuant to Section 1.3, each Party shall bear its own costs and expenses incurred in connection with this Development Agreement and the Ground Lease and neither Party shall have any further liability to the other Party, except for payment or performance obligations, as applicable, which arose prior to the date of such termination, including Developer's obligations pursuant to the Reimbursement Agreement. Further, in the event of termination of this Development Agreement and the Ground Lease pursuant to this Section 2.12 or pursuant to Section 1.3, Owner agrees to return to Developer any and all Rent paid by Developer to Owner under the Ground Lease prior to the date of termination, less a termination fee in the amount of (x) Five Hundred Thousand and No/100 Dollars (\$500,000.00) if the termination occurs within sixteen (16) months after the Commencement Date or (y) One Million and No/100 Dollars (\$1,000,000.00) if such termination occurs at any other time prior to Commencement of Construction of the P25 Project. In the event of any termination of this Agreement and the Ground Lease pursuant to this Section 2.12 or pursuant to Section 1.3 and without limiting the provisions of Section 2.6(a) hereof, Developer, at Developer's sole cost and expense, shall restore each of the P25 Land and the P26 Land to the Surface Parking Condition. Developer's restoration obligations pursuant to this Section shall survive expiration or earlier termination of this Agreement. For the avoidance of doubt, any termination by Developer pursuant to this Section shall be a termination of this Agreement with respect to the entire Project, the P25 Ground Lease and the P26 Ground Lease, and not limited to one or the other of the P25 Project and the P26 Project.

Section 2.13 Representations.

(a) Developer's Representation. Developer represents to Owner that its principals and Affiliates are experienced in the development, construction, leasing and operation of properties similar to the Project, and that Developer has independently determined the merits and risks of electing to proceed with the development of the Project, and that Developer is not and, will not be relying upon any information that may have been or hereafter be provided to Developer with respect to or relating to the financial results derived from, financial merits of investing in, or other economic or other benefits that may be realized from the development, construction, leasing and operation, as applicable, of the Project or sale or transfer of Developer's interests in this Agreement.

(b) No Representation or Warranties by Owner. Developer acknowledges and agrees that it will be given the opportunity to perform all inspections and investigations concerning the Project Site for each Phase of the Project in accordance with Section 1.3 hereof and (i) Owner is not making and has not made any representations or warranties, express or implied, of any kind whatsoever with respect to the P25 Project Site or the P26 Project Site,

including any representation or warranty of any kind with respect to title, survey, physical condition, suitability or fitness for any particular purpose, the financial performance or financial prospects of the P25 Project or the P26 Project, the value of either, or any other economic benefit that can be realized or expected therefrom, the presence or absence of Hazardous Materials (as defined in the Ground Lease), the tenants and occupants thereof, the zoning or other Requirements applicable thereto, taxes, the use that may be made of the P25 Project Site or the P26 Project Site, or any other matters with respect to this transaction or Agreement; (ii) Developer has relied on no such representations, statements or warranties, and (iii) Owner will in no event whatsoever be liable for any latent or patent defects in the P25 Project Site or the P26 Project Site (including any subsurface conditions).

(c) “AS IS” Condition of Project Site. Developer acknowledges it has relied solely on Developer’s own inspections, tests, evaluations and investigations of and related to this Agreement and the P25 Project Site and P26 Project Site in its determination of whether to proceed with this Agreement and the Project. As a material part of the consideration of this Agreement, Developer agrees to accept each of the P25 Project Site and the P26 Project Site in its respective “AS IS” and “WHERE IS” condition “WITH ALL FAULTS” and latent or patent defects, and without representations and warranties of any kind, express or implied, or arising by operation of law.

(d) Survival. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

Section 2.14 Developer’s Project Obligations.

Developer is obligated to and shall (i) design, permit, and construct each Phase of the Project to comply in all material respects with the City’s resiliency standards attached as **Exhibit G** hereto, including being designed with the objective of meeting LEED® Gold or Living Building Challenge certification requirements and compliance with the Sustainability Fee program in accordance with Section 133 of the City Code and provide reasonable evidence thereof to Owner within a reasonable period following the Substantial Completion of such Phase and (ii) maintain, and, if applicable, repair and reconstruct, as applicable, at its sole cost and expense during the Term, such Phase in accordance with and subject to all of the terms and provisions of this Agreement.

Section 2.15 Art in Public Places.

Developer shall comply with the City’s Art In Public Places (AIPP) program requirements under Section 82-536 through 82-612 of the City Code, as applicable, and shall contribute 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 each Phase of the Project, no later than the date of execution of the General Construction Contract for such Phase, as required by the City Code.

**ARTICLE 3
PLANS AND SPECIFICATIONS**

Section 3.1 Approval and Modification of Plans and Specifications.

(a) In accordance with Sections 2.2 and 2.3 above and prior to submitting its application for the Building Permit for each Phase of the Project, Developer shall prepare and submit to Owner (acting in its proprietary capacity as owner of the Land), the Plans and Specifications for such Phase, which Plans and Specifications shall be used to obtain the Building Permit. If such submitted Plans and Specifications for such Phase are materially inconsistent with, or contain material modifications to, the Approved Preliminary Plans for such Phase, then such Plans and Specifications for such Phase shall clearly indicate, by “ballooning”, highlighting, blacklining or describing in writing in sufficient detail in a memorandum accompanying such Plans and Specifications for such Phase, all such modifications to the Approved Preliminary Plans for such Phase. Within fifteen (15) Business Days of its receipt of such Plans and Specifications for such Phase, Owner shall notify Developer, in writing, describing, with specificity, the basis for such disapproval of any material inconsistencies or material modifications of which Owner disapproves between the proposed Plans and Specifications for such Phase and the Approved Preliminary Plans for such Phase, it being agreed however, that Owner’s failure to so notify Developer of its disapproval within such time period shall be deemed to constitute Owner’s conclusive approval of such Plans and Specifications for such Phase (subject to Developer’s compliance with Section 21.2(c) of this Agreement); provided, however, that if Owner shall notify Developer within fifteen (15) Business Days following its receipt that any of such inconsistencies or modifications to the Approved Preliminary Plans for such Phase are not indicated as required by this Section 3.1(a) or that the complexity of such changes from the Approved Preliminary Plans for such Phase necessitates an extension of such time period to complete Owner’s review, such period shall be extended for an additional fifteen (15) Business Days; provided, further, however, that Owner shall not be responsible for, and shall not be deemed to have approved, any such material inconsistency or modification that is not indicated as required by this Section 3.1(a), except that when Developer advises Owner in writing, and Owner agrees with Developer in writing, that the Plans and Specifications for such Phase, as approved as herein provided above, are complete and sufficient and suitable to construct, furnish and equip the entire Phase of the Project in accordance with the provisions of this Agreement, such written agreement shall be deemed to constitute Owner’s conclusive approval of all modifications and inconsistencies, whether or not the modifications are highlighted, in such Plans and Specifications for such Phase. The foregoing exception relating to Owner’s conclusive approval does not apply to those changes which, in the City Manager’s reasonable opinion, (i) diminish any of the levels of quality of the Phase of the Project, (ii) materially deviate, individually or in the aggregate, from any of the Mandatory Project Elements or the Project Concept Plan for such Phase, or (iii) could reasonably be expected to have a material adverse effect on the ability of Developer to complete Construction of such Phase or any portions thereof by the applicable Outside Dates. Notwithstanding anything to the contrary contained herein, Owner shall not object to any inconsistencies with or modifications to the Approved Preliminary Plans for such Phase which are necessitated by Requirements or as a result of a drafting, coordination, mechanical or technical error in the Approved Preliminary Plans for such Phase.

(b) If Developer desires to modify previously approved Plans and Specifications (as such may have been modified by approved Plans and Specifications) for either Phase of the Project, Developer shall submit any such modified Plans and Specifications for such Phase to Owner for Owner's approval. Such modified Plans and Specifications for such Phase shall clearly indicate, by "ballooning", highlighting, blacklining or describing in writing in sufficient detail in a memorandum accompanying such modified Plans and Specifications for such Phase, all such proposed modifications to the Plans and Specifications for such Phase. Within fifteen (15) Business Days of its receipt of the proposed modifications, Owner shall notify Developer in writing, with specificity of any material inconsistencies or material modifications of which Owner disapproves between the Plans and Specifications for such Phase as modified and the Plans and Specifications for such Phase previously approved by Owner, it being agreed however, that Owner's failure to so notify Developer of its disapproval during such time period shall be deemed to constitute Owner's conclusive approval of such Plans and Specifications for such Phase (subject to Developer's compliance with Section 21.2(c) of this Agreement); provided, however, that if Owner shall notify Developer within fifteen (15) Business Days following its receipt that any of the proposed modifications to the Plans and Specifications for such Phase are not indicated as required by this Section 3.1(b) or that the complexity of the proposed modifications necessitates an extension of such time period to complete Owner's review, such period shall be extended for an additional fifteen (15) Business Days; provided, further, however, that Owner shall not be responsible for, and shall not be deemed to have approved, any such proposed modification that is not indicated as required by this Section 3.1(b). Notwithstanding anything to the contrary contained herein, Owner shall not object to any modifications to the Plans and Specifications for such Phase which are necessitated by Requirements or as a result of a drafting, coordination, mechanical or technical error in the Plans and Specifications.

(c) If Owner disapproves any material inconsistencies or material modification in the Plans and Specifications for either Phase of the Project from the Preliminary Plans and Specifications for such Phase pursuant to Section 3.1(a) above, or Owner disapproves any of the material modifications to or material inconsistencies in the Plans and Specifications for such Phase pursuant to Section 3.1(b) above, then Developer shall, at its election either: (x) submit Owner's disapproval to expedited arbitration pursuant to Section 3.5 and Section 23.1 as to the (i) materiality of the inconsistency or modification and/or (ii) the reasonableness of the disapproval or (y) within thirty (30) days after receiving Owner's disapproval notice, submit revised Plans and Specifications for such Phase or a revised modification to the Plans and Specifications for such Phase to meet Owner's objections, which revised Plans and Specifications for such Phase or revised modification shall be reviewed and approved as provided in Section 3.1(a) or 3.1(b), as applicable.

Section 3.2 Compliance with Requirements; Construction Standards.

(a) Notwithstanding anything to the contrary contained herein, the Plans and Specifications for each Phase of the Project shall substantially comply with all applicable Laws and Ordinances. It is Developer's responsibility to assure such compliance at Developer's sole cost and expense. No approval by Owner shall be deemed to be or construed as being, or relied upon as, a determination that such Plans and Specifications for each Phase of the Project comply with any applicable Laws and Ordinances, including, without limitation,

any Laws and Ordinances providing for the review and approval of such Plans and Specifications by any Governmental Authority (in its governmental capacity as opposed to its proprietary capacity).

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

Section 3.3 Budget.

(a) Developer will submit contemporaneously with satisfaction of the Foundation Stage Possession Conditions for each Phase a reasonably detailed pre-construction budget and development budget showing the Project Construction Costs reasonably anticipated by Developer to be incurred for each of the P25 Project and the P26 Project, the form of which shall be reasonably acceptable to Owner (the “**P25 Development Budget**” and the “**P26 Development Budget**,” respectively, and collectively, the “**Development Budget**”), which shall be modified and updated as design contracts and Construction Agreements are bid out, finalized and entered into. Information copies of any material modifications to the Development Budget shall be promptly delivered to Owner as and when such modifications are made; provided, however, Owner shall not have any approval rights with respect to any modifications to the Development Budget.

(b) Developer hereby covenants and agrees that:

(i) With respect to the P25 Project:

(1) Developer shall initially invest or cause to be invested not less than Sixty Million and No/100 Dollars (\$60,000,000.00) in cash to the total initial cost of the P25 Project, subject to any adjustments due to value engineering which do not change the design quality or scope of the P25 Project and subject to Developer not expending all funds in the contingency line items of the P25 Development Budget, as the same may be modified and updated in accordance herewith; and

(2) Developer shall invest not less than Six Million and No/100 Dollars (\$6,000,000.00) in cash as its equity contribution to the total initial cost of the P25 Project (the “**P25 Funded Equity**”), provided, however, that any increase in Project Construction Costs for the P25 Project shall cause a corresponding increase in the P25 Funded Equity such that Developer’s P25 Funded Equity at all times represents not less than ten percent (10%) of the Project Construction Costs for the P25 Project through completion of Construction of the P25 Project; and

(ii) With respect to the P26 Project:

(1) Developer shall initially invest or cause to be invested not less than Eighty Million and No/100 Dollars (\$80,000,000.00) in cash to the total initial cost of the P26 Project, subject to any adjustments due to value engineering which do not change the design quality or scope of the P26 Project and subject to Developer not expending all funds in the

contingency line items of the P26 Development Budget, as the same may be modified and updated in accordance herewith; and

(2) Developer shall invest not less than Eight Million and No/100 Dollars (\$8,000,000.00) in cash as its equity contribution to the total initial cost of the P26 Project (the “**P26 Funded Equity**” and together with the P25 Funded Equity, individually or collectively as the context may require, the “**Funded Equity**”), provided, however, that any increase in Project Construction Costs for the P26 Project shall cause a corresponding increase in the P26 Funded Equity such that Developer’s P26 Funded Equity at all times represents not less than ten percent (10%) of the Project Construction Costs for the P26 Project through completion of Construction of the P26 Project.

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

Section 3.4 Design and Decor.

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

Section 3.5 Development Dispute.

Any dispute or disagreement between Owner and Developer for either Phase of the Project arising prior to issuance of the final Certificate of Occupancy for such Phase of the Project with respect to the following matters (a “**Development Dispute**”) shall be finally resolved in accordance with the provisions of Section 23.1:

(a) Any dispute as to whether the Preliminary Plans and Specifications for the applicable Phase of the Project substantially conform to the Project Concept Plan for such Phase;

(b) Any dispute as to whether the Preliminary Plans and Specifications include all of the Mandatory Project Elements for such Phase;

(c) Any dispute as to whether Developer’s proposed modifications to the Approved Preliminary Plans for such Phase or the Plans or Specifications for such Phase pursuant to Section 3.1(a) or (b), respectively, are materially inconsistent with or contain material modifications to the Approved Preliminary Plans or the previously approved Plans and Specifications, respectively, and in each case, are therefore subject to Owner’s approval;

(d) Any dispute as to whether Developer’s proposed modifications to the Approved Preliminary Plans for such Phase or the Plans and Specifications for such Phase pursuant to Section 3.1(a) or (b), respectively, materially deviate, individually or in the aggregate, from any of the Mandatory Project Elements or the Project Concept Plan and in each case, are therefore subject to Owner approval;

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

(f) Any dispute as to whether Developer or Owner is entitled to any extension of any Target Date or Outside Date as a result of any Economic Force Majeure, Unavoidable Delay or City Delay and any dispute as to the Permitted Transfer Date, Stabilization Date and any other dates identified in the Confirmation of Dates Certificate attached hereto as **Exhibit N**.

(g) Any delays associated with the resolution of a Development Dispute shall be deemed Force Majeure delays and shall entitle Developer to appropriate extensions of time hereunder if, but only if, Developer is the prevailing party in the Development Dispute.

ARTICLE 4 LAND USES AND DEVELOPMENT OBLIGATIONS

Section 4.1 Covenant Regarding Land Uses.

Developer agrees and covenants to devote each Phase of the Project only to the uses specified in this Agreement and the applicable Ground Lease and to be bound by and comply with all of the provisions and conditions of this Agreement. Developer shall not have the right to seek or obtain different uses or a change in such uses either by requesting a zoning change or by court or administrative action without first obtaining the City's approval, which approval may be granted or denied in the City's sole discretion.

Section 4.2 Concurrency.

(a) Developer shall be solely responsible for obtaining all land use permits for each Phase of the Project, including all permits and approvals required pursuant to Section 163.3180, Florida Statutes, and Chapter 122, City Code, with respect to mobility fees and concurrency requirements for roads, sanitary sewer, solid waste, drainage, potable water, recreation and open space, and public schools (the "**Concurrency Requirements**"). Prior to applying for the Building Permit for either Phase of the Project, Developer shall apply for preliminary concurrency determinations for such Phase with the applicable review departments, as defined in Section 122-4 of the City Code. Developer shall diligently and in good faith comply with all of the requirements of Section 122-6 of the City Code to obtain an estimate of concurrency mitigation and mobility fees, and if the applicable review department determines that the required public facilities are or will be available to serve the proposed development, the applicable review department shall issue a concurrency determination. In the event the issuance of a concurrency determination is based on an approved mitigation program, such determination shall be expressly conditioned upon compliance with such program. Provided that (i) a concurrency determination impact certificate is issued, (ii) the Design Review Board approves a Development Order or Development Orders for the applicable Phase of the Project and such order(s) becomes final (after all appeal periods have expired without an appeal being filed, or if filed, resolved favorably for Developer), and (iii)

Developer pays applicable mitigation fees (including impact fees, concurrency fees, and/or mobility fees that may be due) or provides for applicable mitigation prior to building permit, then in that event, a final reservation certificate shall be issued and the available capacity for public facilities will be reduced by the projected demand for such Phase until the reservation of the capacity expires or becomes permanent. Notwithstanding the foregoing and in accordance with Section 122-3(b) of the City Code, no Development Order shall be issued unless the Developer has proof of payment for all applicable concurrency mitigation and mobility fees as may be due to all agencies having jurisdiction over the Project.

Section 4.3 Compliance with Local Regulations Regarding Development Permits.

This Agreement is not and shall not be construed as a Development Permit, approval or authorization to commence any development, fill, or other land modification. 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 Effective Date shall not relieve Developer of the necessity of complying with the regulation governing said permitting requirements, conditions, fees, terms or restrictions, subject to the terms of this Agreement.

Section 4.4 Presently Permitted Development.

The development that is presently permitted on each of the P25 Project Site and the P26 Project Site, including population densities, and building intensities and height, which are subject to this Agreement, is more specifically set forth in **Composite Exhibit J** hereto.

Section 4.5 Public Facilities to Serve the Project Site.

A description of the public facilities that will service each Phase of the Project 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 **Composite Exhibit K** hereto.

Section 4.6 Public Reservations, 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 L** hereto.

Section 4.7 Required Development Permits.

Attached and made a part hereof as **Exhibit M** is a listing and description of certain local Development Permits approved or needed to be approved for the development of each of the P25 Project and the P26 Project, provided that City makes no representation or warranty that the information set forth on **Exhibit M** is correct or complete. Developer releases City from any liability with respect to such information and Developer acknowledges and Developer agrees that Developer is solely responsible for confirming the correctness and completeness of such information and obtaining all applicable Permits and Approvals whether or not set forth on **Exhibit M**.

Section 4.8 Duration of This Development Agreement.

The Term of this Agreement shall not exceed nine (9) years from the NTP Date, as reasonably extended for (i) Unavoidable Delays and/or (ii) City Delays, if applicable and each in accordance with this Agreement; provided, however, that the duration of this Agreement may be extended by mutual agreement of the Owner and Developer, subject to a public hearing(s) pursuant to Section 163.3225, Florida Statutes. 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. During the Term of this Agreement, the City's laws and policies governing the development of Land in effect as of the Effective Date shall govern development of each Phase of the Project and the Project Site for such Phase. Notwithstanding the foregoing, the City may apply subsequently adopted laws and policies to each Phase of the Project and the Project Site for such Phase (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 Development Agreement Act, including, without limitation, Section 163.3233(2), Florida Statutes, as the same may be amended from time to time; provided, however, that this provision shall not be deemed to apply to regulations governing height, Floor Area ratio (FAR), density, parking requirements or permitted uses.

Section 4.9 Confirmation of Land Development Regulations.

The City Commission held a duly noticed public hearing on _____, after which it determined, pursuant to Section 142-425(b) of the City Code, that the zoning district classification of the P25 Land under the Ground Lease for the P25 Project is CD-2/CD-3, each as defined in the Land Development Regulations and the zoning district classification of the P26 Land under the Ground Lease for the P26 Project is CD-3, as defined in the Land Development Regulations.

Section 4.10 Tax Exempt Status of the Public Parking Replacement Component.

To the fullest extent permitted by applicable law, the Public Parking Replacement Component will be exempt from ad valorem property taxes. In order to obtain such exemptions, the P25 Project and P26 Project each may be subdivided as a leasehold commercial condominium (subject to the P25 Ground Lease and P26 Ground Lease, respectively) pursuant to a Declaration of Leasehold Condominium in form and substance reasonably approved by Developer and the City Manager in consultation with the City Attorney (the "**Declaration**") consisting of two (2) commercial condominium units: one (1) unit comprised of the applicable Public Parking Replacement Component, which shall be owned by Owner; and one (1) unit comprised of the applicable Ground Lease Component, which shall be owned by Developer, and which shall grant reciprocal easements between the applicable Public Parking Replacement Component and applicable Ground Lease Component, provide for certain cost-sharing and maintenance obligations with respect to any common elements, and grant such other rights and obligations as may be reasonably required by the Parties in connection with the ownership and operation of their respective units. Owner, in its discretion, may elect to require Developer to obtain a title insurance policy in favor of Owner insuring Owner's leasehold ownership interest in the condominium unit constituting the Public Parking Replacement Component.

Section 4.11 Project Approvals Expiration.

Notwithstanding anything to the contrary herein, pursuant to and in accordance with Section 118-4(4) of the City Code, this Agreement shall extend the expiration date for a City Land Use Board Order (as defined below) beyond the time periods contemplated in Section 118-258 for design review approvals issued by the Design Review Board. The term “Land Use Board Order” means an order by the Planning Board, the Design Review Board and/or the Board of Adjustment. In addition, pursuant to Section 118-258(f) of the City Code, the time period to obtain a full building permit or phased building permit set forth in Section 118-258(c) of the City Code may be superseded and modified by a development agreement meeting the requirements Section 118-4 of the City Code. Accordingly, the Project Approvals shall not expire prior to the Outside Approvals Date and the time period to obtain the P25 Building Permit shall not expire prior to the Outside P25 Building Permit Date and the time period to obtain the P26 Building Permit shall not expire prior to the Outside P26 Commencement Date. Notwithstanding the foregoing, in no event shall any such tolling or extension of the Project Approvals or the time period to obtain the P25 Building Permit or P26 Building Permit be, or be deemed, an Unavoidable Delay or an City Delay.

**ARTICLE 5
OWNER PARTICIPATION**

Section 5.1 Owner’s Right to Use Field Personnel.

(a) Developer shall keep Owner and Owner’s Consultant apprised of Developer’s progress regarding each Phase of the Project, including Developer’s progress towards meeting the Target Dates and Outside Dates set forth in this Agreement. Developer shall deliver periodic written reports of same to Owner and Owner’s Consultant not less frequently than monthly.

(b) Developer acknowledges that Owner has appointed the Owner’s Consultant as the Owner’s consultant in connection with the Construction of each Phase of the Project in accordance with the terms of this Agreement. In connection therewith, Developer agrees to reasonably cooperate with the Owner’s Consultant. Further, Owner’s Consultant, at Owner’s sole cost and expense, during normal business hours, in a commercially reasonable manner, may visit, inspect and monitor each Phase of the Project, and Developer agrees to provide reasonable access to each Project Site, including, without limitation, access to inspect the Work for such Phase of the Project, including the preparation work and work in progress wherever located. No such inspection by the Owner’s Consultant shall impose upon Owner responsibility or liability for any failure by Developer to observe any Requirements or safety practices in connection with such Work, or constitute an acceptance of any Work which does not comply with the provisions of this Agreement, and no such inspection shall constitute an assumption by Owner of any responsibility or liability for the performance of Developer’s obligations hereunder, nor any liability arising from the improper performance thereof. The Owner’s Consultant shall not interfere with any Work being performed at either Project Site and shall comply with all safety standards and other job-site rules and regulations of Developer and shall acknowledge that such representatives will be entering and inspecting an active construction site. Owner’s on-site representative is an inspector only. Owner’s

Consultant shall make only such communications with Developer's construction manager(s), the General Contractor, its subcontractors, or any other Person involved in the Construction of the P25 Project and/or the P26 Project, as applicable, as are reasonably necessary to enable Owner's Consultant to conduct its investigations, and in no event shall Owner's Consultant give directions to such Persons. Developer shall make available a reasonable work area and services for Owner's Consultant during its site inspections as is customarily provided at similar construction sites. All expenses incurred by Owner's Consultant shall be paid by Owner.

Section 5.2 Owner's Right to Notice, Access and Review.

(a) Owner's Consultant shall be advised of, and entitled to attend, regularly scheduled Work meetings for each Phase of the Project (which shall be scheduled not less frequently than monthly) and at any special meetings as to the P25 Public Parking Replacement Component, P26 Public Parking Replacement Component, change orders, delays and other material issues concerning the Project;

(b) Owner's Consultant may, during normal business hours, in a commercially reasonable manner, inspect any of the following relating to each Phase of the Project, whether kept at Developer's offices in the City of Miami Beach, Florida, or at the applicable Project Site (copies of which, shall also be delivered to Owner and Owner's Consultant either in hard copy or electronically in such format(s) as Owner may reasonably require):

(i) the executed General Construction Contract for such Phase;

(ii) the Plans and Specifications for such Phase (and modifications made thereto from time to time, with such modifications being clearly indicated, by "ballooning", highlighting, or blacklining on the Plans and Specifications for such Phase or describing in writing in sufficient detail in a memorandum accompanying such modified Plans and Specifications for such Phase), working and other drawings, renderings, blueprints, specifications, layouts and change orders (collectively, as modified from time to time, the "**Detailed Plans**");

(iii) all insurance certificates required by Article 8 of this Agreement for such Phase (including those of Developer and all contractors and subcontractors);

(iv) a monthly construction cost-to-date report for such Phase reasonably acceptable to Owner; and

(v) all periodic (but not less than monthly) updates to the Development Budget for such Phase, which updates shall show all variances.

To the extent the exercise of the Owner's and Owner's Consultant's rights hereunder requires the opportunity for review of any documents or the opportunity for participation in any meetings, Developer agrees, without request therefor by Owner, to promptly provide copies of such documents or notice of such meetings to Owner and the Owner's Consultant, as applicable, that Developer is providing to any other Person attending such meeting, or if related to any documents received by Developer from any other Person, after receipt of the same by Developer

and reasonably in advance of any meetings to allow for appropriate travel arrangements to the extent practical under the circumstances. If Owner's Consultant is not in attendance, the meeting will proceed and Developer will promptly provide Owner's Consultant with minutes of the meeting.

(c) Prior to the Commencement of Construction of each Phase of the Project, Developer shall provide to Owner a construction schedule for such Phase, 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 for such Phase, shall be referred to as the "**CPM Schedule**", for use in scheduling and controlling the Construction of such Phase. The CPM Schedule for each Phase of the Project shall be in the format utilized by the General Contractor in the ordinary course of business or as otherwise required by the General Construction Contract. If a more detailed construction schedule is prepared by or on behalf of Developer, such schedule shall constitute the CPM Schedule hereunder.

Developer shall promptly provide to the Owner's Consultant three (3) hard copies (or an electronic soft copy in such file format(s) as Owner may reasonably require) of the CPM Schedule for each Phase of the Project. The CPM Schedule for each Phase of the Project shall (1) be revised by Developer whenever there is a material variance in the progress of the Construction for such Phase from the then current CPM Schedule for such Phase and otherwise at appropriate intervals, but in no event less frequently than within ten (10) Business Days after Developer prepares or receives any revised CPM Schedule and (2) provide for expeditious and practicable execution of the Construction for such Phase.

Developer shall provide the Owner's Consultant with reasonable access to the reports, logs and other systems in which Developer records or notes the progress of the Work for each Phase of the Project in the frequency maintained in the ordinary course of business. Developer shall inform the Owner's Consultant of any deviation from the CPM Schedule for each Phase of the Project which, in Developer's good faith determination, is likely to cause a material delay in the Substantial Completion of such Phase (as shown on the current CPM Schedule for such Phase), within ten (10) Business Days after such deviation becomes apparent to Developer, and promptly following any revisions to the CPM Schedule, copies (either hard copies or electronically in such format(s) as Owner may reasonably require) thereof shall be delivered to Owner and Owner's Consultant.

(d) To the fullest extent permitted by law, Owner shall protect from disclosure any records that are confidential and exempt from disclosure under Florida law and are expressly marked as "CONFIDENTIAL AND PROPRIETARY" by Developer when delivered to Owner, provided, however, that nothing herein shall preclude Owner or its employees from complying with the disclosure requirements of the Public Records Act, and any such compliance shall not be deemed a default by Owner under this Agreement. Owner shall use its good-faith, diligent efforts to provide timely written notice to Developer of any public records request seeking any records of Developer that may be within Owner's custody, possession or control, to permit Developer the opportunity to seek to protect such information from disclosure. Nothing contained herein shall or is deemed to limit Owner's inspection rights in its governmental and/or regulatory capacity.

**ARTICLE 6
MISCELLANEOUS CONSTRUCTION PROVISIONS**

Section 6.1 Prevailing Wage and Local Workforce Participation.

(a) All Persons employed by Developer with respect to Construction of each Phase of the Project shall be paid, without subsequent deduction or rebate unless expressly authorized by Requirements, not less than the relevant prevailing wage as prescribed by the City of Miami Beach Prevailing Wage Ordinance, Miami Beach City Code, Section 31-27, as amended, and as further described on **Exhibit I** of this Agreement.

(b) Developer shall cause the General Contractor for each Phase of the Project to comply with Section 31-40 of the City Code which provides, in pertinent part, that the contractor in any construction contract valued in excess of \$1,500,000 for the construction of buildings or improvements on City-owned land shall make of reasonable efforts to promote employment opportunities for local Miami-Dade County residents and seek to achieve a project goal of having thirty percent (30%) of all construction labor hours performed by Miami-Dade County and City of Miami Beach residents and as further described on **Exhibit I** of this Agreement.

Section 6.2 Construction Agreements.

All Construction Agreements for each Phase of the Project which provide for the performance of labor on the Project Site for such Phase shall include the provisions set forth on **Exhibit D** (or language substantially similar thereto which is approved in advance by Owner); provided, however, that any Construction Agreement for each Phase of the Project having aggregate payments of Five Hundred Thousand Dollars (\$500,000) or less shall not be required to include the provisions set forth on **Exhibit D**.

Section 6.3 Demolition of the Project Site.

Developer shall demolish the asphalt improvements on the applicable Project Site prior to Commencement of Construction of each Phase of the Project and in accordance with the Plans and Specifications for such Phase and all applicable Laws and Ordinances.

**ARTICLE 7
FINANCING OF PROJECT CONSTRUCTION
AND DISBURSEMENT PROCEDURES**

Section 7.1 Developer's Contributions.

Developer shall provide the Funded Equity as set forth in Section 3.3(b) for each Phase of the Project. Developer shall also provide all of the funds necessary to complete Construction of each Phase of the Project in accordance with this Agreement.

Section 7.2 Fees.

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

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

**ARTICLE 8
INSURANCE**

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

**ARTICLE 9
DAMAGE, DESTRUCTION AND RESTORATION**

Section 9.1 Casualty.

If the Project Site for each Phase of the Project is damaged or destroyed in whole or in part by fire or other casualty, the provisions of the applicable Ground Lease applicable to damage or destruction by fire or other casualty to the “Premises” described under such Ground Lease shall govern the rights and obligations of Developer, Owner and the applicable Recognized Mortgagee hereunder, and such provisions are incorporated herein by this reference.

Section 9.2 Effect of Casualty on this Agreement.

Except as provided in Section 9.1 or the Ground Lease for the applicable Phase of the Project, this Development Agreement shall not terminate, be forfeited or be affected in any manner, by reason of any damage to, or total or partial destruction of, or untenantability of the Project Site for such Phase or any part thereof resulting from such damage or destruction.

**ARTICLE 10
CONDEMNATION**

Section 10.1 Taking.

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

Section 10.2 Effect of Taking on this Agreement.

Except as provided in Section 10.1, this Agreement shall not terminate, be forfeited or be affected in any manner, by reason of any taking of the Project Site for a Phase of the Project or any part thereof.

**ARTICLE 11
RIGHTS OF RECOGNIZED MORTGAGEE AND RECOGNIZED MEZZANINE
LENDER**

The Recognized Mortgagee and the Recognized Mezzanine Lender shall have those rights set forth in the provisions of Article 11 of the Ground Lease, as such provisions relate to the financing for the initial construction of the Project as described herein and as such provisions relate to any Default or Event of Default under this Agreement that triggers a Default or Event of Default under the Ground Lease and/or a termination of this Agreement and the Ground Lease, and the same shall be applicable to this Agreement as if the references to the “Premises” in such Article 11 were references to the “Project Site,” and as if the reference to “this Lease” in such Article 11 were references to “this Agreement” and such provisions are incorporated herein by this reference.

**ARTICLE 12
NO SUBORDINATION**

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

**ARTICLE 13
WASTE DISPOSAL**

Developer, at its sole cost and expense, shall store, dispose of, and remove or cause to be removed from the Project Site for each Phase of the Project all trash and refuse which may accumulate in unreasonable quantities and arise from Developer's use of such Project Site in a prompt and sanitary manner. Upon Substantial Completion of portions of the Work for each Phase of the Project, Developer shall and shall cause the General Contractor for such Phase to remove all rubbish, tools, scaffolding and surplus materials related to such Substantially Complete portions of the Work from the Project Site for such Phase.

**ARTICLE 14
REQUIREMENTS**

Section 14.1 Requirements.

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

**ARTICLE 15
DISCHARGE OF LIENS**

Section 15.1 Creation of Liens.

(a) Developer shall not create, cause to be created, or suffer or permit to exist (i) any lien, encumbrance or charge upon this Agreement, either Project Site or any part thereof or appurtenance thereto, which is not removed within the time period required pursuant to Section 15.2, (ii) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Owner, or (iii) any other matter or thing whereby Owner's Interest in the Premises or any part thereof or appurtenance thereto might be materially impaired; provided, however, Developer shall have the right to execute a Recognized Mortgage for each Phase of the Project in favor of the applicable Recognized Mortgagee, subleases and other instruments for

each Phase of the Project (including, without limitation, equipment leases) as provided by, and in each case in accordance with, the provisions of the applicable Ground Lease.

(b) Owner shall not create, cause to be created, or suffer or permit to exist (i) any lien, encumbrance upon this Agreement, either Ground Lease or the income therefrom (except as expressly provided in such Ground Lease), either Project Site, or any part thereof or appurtenance thereto, which is not removed within the time period required pursuant to Section 15.2, (ii) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Developer, or (iii) any other matter or thing whereby Developer's Interest in the Premises any part thereof or appurtenant thereto might be materially impaired.

Section 15.2 Discharge of Liens.

(a) If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Developer by the Requirements or by a provision of this Development Agreement) is filed against either Project Site or any part thereof, or if any public improvement lien created, or caused or suffered to be created by Developer shall be filed against any assets of, or funds appropriated to, Developer or Owner, Developer shall, within thirty (30) days after Developer receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien or public improvement lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, Developer shall not be required to discharge any such lien if Developer shall have (i) furnished Owner with, at Developer's option, a cash deposit, bond, letter of credit from an Institutional Lender (in form reasonably satisfactory to Owner) or other security (such as a personal guaranty or title company indemnity) reasonably satisfactory to Owner, in an amount sufficient to pay the lien with interest and penalties; and (ii) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding with diligence and continuity; except that if, despite Developer's efforts to seek discharge of the lien, Owner reasonably believes that a court judgment or order foreclosing such lien is about to be entered or granted and so notifies Developer, Developer shall, within ten (10) Business Days of notice to such effect from Owner (but not later than three (3) Business Days prior to the entry or granting of such judgment or order of foreclosure), cause such lien to be discharged of record or Owner may thereafter discharge the lien in accordance with Section 19.2 and look to the security furnished by Developer for reimbursement of its cost in so doing. Notwithstanding anything to the contrary contained in this Section 15.2(a), in the case of a public improvement lien which provides for installment payments as a means of satisfying such lien, Developer shall be required only to pay, on a timely basis, all installments when due.

(b) Notwithstanding anything to the contrary contained in Section 15.2(a), if any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Developer pursuant to the Requirements or a provision of this Development Agreement) is filed against any Project Site or part thereof or Developer's Interest in the Premises or Owner's Interest in the Premises as a result of any action of Owner, its officers, employees, representatives or agents, Owner shall, within thirty (30) days after Owner receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien, cause it to be discharged of record by payment,

deposit, bond, order of a court of competent jurisdiction or otherwise. However, Owner shall not be required to discharge any such lien if Owner shall have (i) furnished Developer with, at Owner's option, a cash deposit, bond, letter of credit from an Institutional Lender (in form reasonably satisfactory to Developer) or other security (such as a personal guaranty or title company indemnity) reasonably satisfactory to Developer, in an amount sufficient to pay the lien with interest and penalties and (ii) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding with diligence and continuity; except that if, despite Owner's efforts to seek discharge of the lien, Developer reasonably believes that a court judgment or order foreclosing such lien is about to be entered or granted and so notifies Owner, Owner shall, within ten (10) Business Days of notice to such effect from Developer (but not later than three (3) Business Days prior to the entry or granting of such judgment or order of foreclosure), cause such lien to be discharged of record or Developer may thereafter discharge the lien in accordance with Section 19.2 and look to the security furnished by Owner for reimbursement of its cost in so doing.

Section 15.3 No Authority to Contract in Name of Owner.

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

**ARTICLE 16
NO LIABILITY FOR INJURY OR DAMAGE, ETC.**

The provisions of Article 19 of each Ground Lease shall be applicable to this Agreement as if the references to the "Premises" in such Article 19 were references to the applicable "Project Site," and such provisions are incorporated herein by this reference.

**ARTICLE 17
INDEMNIFICATION**

Section 17.1 Indemnification Generally.

The provisions of Article 20 of each Ground Lease shall be applicable to this Agreement as if the references to the “Premises” in such Article 20 were references to the applicable “Project Site,” and such provisions are incorporated herein by this reference.

Section 17.2 Governs Agreement.

The provisions of this Article 17 shall govern every other provision of this Agreement. The absence of explicit reference to this Article 17 in any particular provision of this Agreement shall not be construed to diminish the application of this Article 17 to such provision.

Section 17.3 Survival.

The provisions of this Article 17 shall survive the expiration of the Term of this Agreement.

**ARTICLE 18
CERTIFICATES BY OWNER AND DEVELOPER**

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

**ARTICLE 19
OWNER’S RIGHT TO PERFORM DEVELOPER’S OBLIGATIONS**

Section 19.1 Owner’s Right to Perform Developer’s Obligations.

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

Section 19.2 Discharge of Liens.

(a) If Developer fails to cause any mechanic’s, laborer’s, vendor’s, materialman’s or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Developer by the Requirements or by a provision of this Development Agreement) to be discharged of record in accordance with the provisions of Article 15, Owner may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings.

(b) If Owner fails to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including, tax liens, provided the underlying tax is an obligation of Developer by the Requirements or by a provision of this Agreement) to be discharged of record in accordance with the provisions of Article 15, Developer may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. If Developer's Interest in the Premises (or any portion thereof) is threatened or a material interest of Developer is impaired, Developer may also, if Owner has not done so (or bonded such lien), compel the prosecution of an action for the foreclosure of such lien by the lienor and the payment of the amount of the judgment in favor of the lienor with interest, costs and allowances.

Section 19.3 Reimbursement for Amounts Paid Pursuant to this Article.

(a) Any amount paid by Owner in performing Developer's obligations as provided in this Article 19, including all costs and expenses incurred by Owner in connection therewith, shall constitute additional Rent under the Ground Lease and shall be reimbursed to Owner within thirty (30) days of Owner's demand, together with a late charge on amounts actually paid by Owner, calculated at the Late Charge Rate from the date of notice of any such payment by Owner to the date on which payment of such amounts is received by Owner.

(b) Any amount paid by Developer in performing Owner's obligations as provided in this Article 19, including all costs and expenses incurred by Developer in connection therewith, shall be reimbursed to Developer within thirty (30) days of Developer's demand, together with a late charge on amounts actually paid by Developer, calculated at the Late Charge Rate from the date of notice of any such payment by Developer to the date on which payment of such amounts is received by Developer.

Section 19.4 Waiver, Release and Assumption of Obligations.

(a) Owner's payment or performance pursuant to the provisions of this Article 19 shall not be, nor be deemed to constitute, Owner's assumption of Developer's obligations to pay or perform any of Developer's past, present or future obligations hereunder.

(b) Developer's payment or performance pursuant to the provisions of this Article 19 shall not be, nor be deemed to constitute, Developer's assumption of Owner's obligations to pay or perform any of Owner's past, present or future obligations hereunder.

**ARTICLE 20
EVENTS OF DEFAULT, CONDITIONAL
LIMITATIONS, REMEDIES, ETC.**

Section 20.1 Events of Default.

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

(a) if Developer fails to obtain final, non-appealable Project Approvals on or before the Outside Approvals Date;

(b) if Developer fails to obtain the P25 Building Permit on or before the Outside P25 Building Permit Date;

(c) if Developer fails to satisfy the Conditions Precedent to Commencement of Construction and Commence Construction of the P25 Project on or before the Outside P25 Commencement Date;

(d) if Developer fails to Substantially Complete the P25 Parking Component on or before the Outside P25 Parking Completion Date;

(e) if Developer fails to Commence Construction of the P26 Project on or before the Outside P26 Commencement Date;

(f) if Developer fails to Substantially Complete the P25 Project on or before the Outside P25 Completion Date;

(g) if Developer fails to Substantially Complete the P26 Project on or before the Outside P26 Completion Date;

(h) if an Event of Default under either Ground Lease shall have occurred and be continuing beyond any applicable cure period, including any cure period applicable to the applicable Recognized Mortgagee or the applicable Recognized Mezzanine Lender, subject to Owner's agreement to release the cross-default between this Agreement and the P25 Ground Lease in accordance with Section 2.10(c)(iii); or

(i) if Developer shall default in the observance or performance of any term, covenant or condition of this Agreement on Developer's part to be observed or performed and not otherwise set forth in this Section 20.1 and, if no cure period is expressly provided for herein, Developer shall fail to remedy such Default within thirty (30) days after notice by Owner of such Default (the "**Default Notice**"), or if such a Default is of such a nature that it cannot reasonably be remedied within thirty (30) days (but is otherwise susceptible to cure), Developer fails to (i) within thirty (30) days after the giving of such Default Notice, commence such cure and notify Owner in writing of Developer's intention to institute all steps necessary (and from time to time, as reasonably requested by Owner, Developer shall advise Owner of the steps being taken) to remedy such default (which such steps shall be reasonably designed to effectuate the cure of such Default in a professional manner), and (ii) thereafter diligently and continuously prosecute to completion all such steps necessary to remedy the same within an additional ninety (90) days; or

(j) if Developer admits, in writing, that it is generally unable to pay its debts as such become due; or

(k) if Developer makes an assignment for the benefit of creditors; or

(l) if Developer files a voluntary petition under Title 11 of the United States Bankruptcy Code, or if Developer files a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any

other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Developer, of all or any substantial part of its properties, or of all or any part of Developer's Interest in the Premises, and the foregoing are not stayed or dismissed within one hundred fifty (150) days after such filing or other action; or

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

(n) if a levy under execution or attachment in an aggregate amount of One Hundred Seventy-Five Thousand Dollars (\$175,000) (as adjusted for inflation in accordance with the Ground Lease) at any one time is made against either Project Site or any part thereof or rights appertaining thereto (except for a levy made in connection with actions taken by Owner (other than holding Owner's Interest in the Premises)), or this Agreement and such execution or attachment is not vacated or removed by court order, bonding or otherwise within a period of sixty (60) days, subject to Unavoidable Delays after such levy or attachment;

In the event of a Default which with the giving of notice to Developer and the passage of time would constitute an Event of Default, Owner's notice to Developer shall state with specificity the provision of this Agreement under which the Default is claimed, the nature and character of such Default, the facts giving rise to such Default, the date by which such Default must be cured pursuant to this Agreement, if applicable, and, if applicable, that the failure of Developer to cure such Default by the date set forth in such notice will result in Owner having the right to terminate this Agreement. With respect only to Development Disputes, Owner's allegation of a Default shall be subject to expedited arbitration in accordance with the provisions of Article 23, provided Developer shall initiate any such arbitration within the applicable grace period provided in this Section 20.1 or within ten (10) Business Days after receipt of Owner's notice if no such grace period is provided therein.

Section 20.2 Enforcement of Performance and Termination.

If any Event of Default occurs and is continuing, Owner shall be entitled to all rights and remedies available at law or in equity and as set forth in this Agreement. Without limiting the foregoing, Owner may elect to (a) enforce performance or observance by Developer of the applicable provisions of this Agreement or (b) recover damages for breach of this Agreement or (c) in the circumstances described in Section 20.3(a), terminate this Agreement pursuant to

Section 20.3(a). Owner's election of a remedy hereunder with respect to an Event of Default shall not limit or otherwise affect Owner's right to elect any of the remedies available to Owner hereunder with respect to any other Event of Default.

Section 20.3 Expiration and Termination of Agreement.

(a) If an Event of Default occurs under either the P25 Ground Lease or the P26 Ground Lease, in either case, which results in a termination of such Ground Lease, this Agreement shall terminate, subject, however, to Owner's agreement to release the cross-default between this Agreement and the P25 Ground Lease and the cross-default between the P25 Ground Lease and the P26 Ground Lease, each in accordance with Section 2.10(c)(iii). If such termination is stayed by order of any court having jurisdiction over any proceeding described in Sections 20.1(l) or 20.1(m) or by federal or state statute, then, following the expiration of any such stay, or if the trustee appointed in any such case, Developer or Developer as debtor-in-possession fails to assume Developer's obligations under this Agreement within the period prescribed therefor by law or within thirty (30) days after entry of the order for relief or as may be allowed by the court, Owner, to the extent permitted by law or by leave of the court having jurisdiction over such case, shall have the right, at its election, to terminate this Agreement on five (5) days' notice to Developer, Developer as debtor-in-possession or the trustee. Upon the expiration of the five-day period this Agreement shall expire and terminate and Developer, Developer as debtor-in-possession and/or the trustee immediately shall quit and surrender Developer's Interest in the Premises and possession thereof.

(b) If this Agreement is terminated as provided in Section 20.3(a), Owner may, without notice, re-enter and repossess the P25 Project Site and the P26 Project Site, subject however, to Owner's agreement to release the cross-default between this Agreement and the P25 Ground Lease and the cross-default between the P25 Ground Lease and P26 Ground Lease, each in accordance with Section 2.10(c)(iii), and may dispossess Developer by summary proceedings, writ of possession, proceedings in bankruptcy court or otherwise, subject to applicable Requirements.

(c) As an additional inducement to and material consideration for Owner agreeing to this Agreement, Developer agrees that in the event any Bankruptcy or Judicial Action (as hereinafter defined) is commenced which subjects Owner to any stay in the exercise of Owner's rights and remedies under this Agreement, including the automatic stay imposed by section 362 of the United States Bankruptcy Code (individually and collectively, "**Stay**"), then, provided the Stay is lifted and released as to the applicable Recognized Mortgagee and the applicable Recognized Mezzanine Lender (to the extent the applicable mortgage and mezzanine loan documents include Stay relief provisions), Developer irrevocably consents and agrees to the Stay being lifted and released against Owner, and Owner shall thereafter be entitled to exercise all of its rights and remedies against Developer under this Agreement. Developer acknowledges that it is knowingly, voluntarily, and intentionally waiving its rights to any Stay and agrees that the benefits provided to Developer under the terms of this Agreement are valuable consideration for such waiver. As used in this Section, the term "**Bankruptcy or Judicial Action**" shall mean any voluntary or involuntary case filed by or against Developer under the Bankruptcy Code, or any voluntary or involuntary petition in

composition, readjustment, liquidation, or dissolution, or any state and federal bankruptcy law action filed by or against Developer, any action where Developer is adjudicated as bankrupt or insolvent, any action for dissolution of Developer or any action in furtherance of any of the foregoing, or any other action, case, or proceeding that has the effect of staying (or in which a Stay is being obtained against) the enforcement by Owner of its rights and remedies under this Agreement.

(d) Notwithstanding the foregoing, in the event that Developer seeks to assume and assign this Agreement pursuant to section 365 of the Bankruptcy Code it will be required to provide to Owner adequate assurance of future performance which shall consist of evidence that such assignee satisfies the “Acceptable Owner Criteria” set forth in Exhibit B of each Ground Lease.

Section 20.4 Strict Performance.

No failure by Owner or Developer to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy available to such party by reason of the other Party’s default or an Event of Default, shall constitute a waiver of any such default or Event of Default or of such covenant, agreement, term or condition or of any other covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by either Party, and no default by either Party, shall be waived, altered or modified except by a written instrument executed by the other Party. No waiver of any default or Event of Default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent default or Event of Default. Developer’s compliance with any request or demand made by Owner shall not be deemed a waiver of Developer’s right to contest the validity of such request or demand.

Section 20.5 Right to Enjoin Defaults.

With respect to Development Disputes, the Parties shall have the right to submit the same to arbitration in accordance with Article 23 of this Agreement. In the event of a continuing Event of Default by Developer, Owner shall be entitled to seek to enjoin the Event of Default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent Owner’s remedies are expressly limited by the terms hereof. In the event of a continuing event of default by Owner of any term, covenant or condition under this Agreement, Developer shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent Developer’s remedies are expressly limited by the terms hereof. Each right and remedy of Owner and Developer provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, except to the extent Owner’s remedies and Developer’s remedies are expressly limited by the terms hereof, and the exercise or beginning of the exercise by Owner or Developer of any one or more of the rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Owner or Developer of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by

statute or otherwise, except to the extent Owner's remedies and Developer's remedies are expressly limited by the terms hereof.

Section 20.6 Remedies under Bankruptcy and Insolvency Codes.

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

Section 20.7 Inspection.

Without in any way limiting Article 5, Owner and its representatives shall have the right, upon twenty-four (24) hours prior notice to Developer, to enter upon the Project Site to conduct inspections for the purpose of determining whether a Default or an Event of Default has occurred, provided that Owner shall be accompanied by a representative of Developer and provided further that such entry shall not unreasonably interfere with the Construction of the Project. Developer agrees to make a representative of Developer available to accompany Owner on any such inspection.

**ARTICLE 21
NOTICES, CONSENTS AND APPROVALS**

Section 21.1 Service of Notices and Other Communications.

(a) In Writing. Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the Parties by the other (or the applicable Recognized Mortgagee or the applicable Recognized Mezzanine Lender), or whenever either of the Parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to any Project Site, each such notice, demand, request, consent, approval or other communication (referred to in this Section 21.1 as a "**Notice**") shall be in writing (whether or not so indicated elsewhere in this Agreement) and shall be effective for any purpose only if given or served by (i) certified or registered U.S. Mail, postage prepaid, return receipt requested, (ii) personal delivery with a signed receipt or (iii) a recognized national courier service, addressed as follows:

if to Developer: Lincoln Road Property Owner, L.P.
Lincoln Road Property Owner II, L.P.
2340 Collins Avenue, Suite 100
Miami Beach, FL 33139
Attention: Andrew Coren

with a copy to: Rinaldi, Finkelstein & Franklin, LLC
591 West Putnam Avenue
Greenwich, CT 06830
Attention: Eric Franklin

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

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

with a copy to: Grady Hunt PLLC
2525 Ponce de Leon Boulevard
Suite 300
Coral Gables, Florida 33134
Attention: Lauren M. Hunt, Esq.

Any Notice may be given, in the manner provided in this Section 21.1, (x) on either party's behalf by its attorneys designated by such party by Notice hereunder, and (y) at Developer's request, on its behalf by the applicable Recognized Mortgagee or the applicable Recognized Mezzanine Lender designated in such request.

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

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

Section 21.2 Consents and Approvals

(a) Effect of Granting or Failure to Grant Approvals or Consents. All consents and approvals which may be given under this Development Agreement shall, as a condition of their effectiveness, be in writing. The granting by a Party of any consent to or approval of any act requiring consent or approval under the terms of this Development Agreement, or the failure on the part of a Party to object to any such action taken without the required consent or

approval, shall not be deemed a waiver by the Party whose consent was required of its right to require such consent or approval for any other act.

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

(c) Deemed Approval.

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

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

(i) If the matter to which consent or approval is requested pertains to Section 2.2 and/or Section 2.3, then such matter shall not be deemed consented to or approved unless (i) Owner fails to timely respond to Developer’s initial request, which request (and the envelope in which such request is transmitted to the extent permitted by the carrier) bears the legend set forth above and (ii) Developer shall thereafter send a second request to Owner which request (and the envelope in which such request is transmitted to the extent permitted by the carrier) bears the legend set forth above, and Owner shall fail to timely respond to such second request.

(ii) Notwithstanding anything to the contrary contained in Section 20.2(c)(i) above, if the “Owner” hereunder and the matter, other than a matter referred to in Section 20.2(c)(iii) below, to be consented to or approved requires the consideration of the City Commission, as applicable (whether pursuant to Requirements or the written opinion of the City Attorney, then, provided Owner gives Developer notice of such requirement within the time

period provided for such consent or approval, such matter shall not be deemed approved or consented to unless Owner shall fail to respond to Developer's request by the date which is five (5) Business Days after the first regular meeting of the City Commission which occurs no earlier than thirty (30) days following the receipt of such request (or second request, as applicable); but in any event not later than ninety (90) days following such request (or second request), as applicable.

(iii) Owner hereby agrees, for so long as the City shall be the "Owner" hereunder, that, subject to Requirements, the City Manager, as applicable, shall be authorized to grant consents or approvals on behalf of the City with respect to (A) matters for which consents or approvals are required pursuant to Section 2.2, Section 2.3, Section 4.10, and Article 3, (B) any consents or approvals specifically delegated to the City Manager by this Agreement, and (C) such other matters as the City Commission may from time to time delegate to the City Manager.

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

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

(e) No Fees, etc. Except as specifically provided herein, no fees or charges of any kind or amount shall be required by either Party hereto as a condition of the grant of any consent or approval which may be required under this Agreement (provided that the foregoing shall not be deemed in any way (i) to limit Owner acting in its governmental or regulatory capacity, as distinct from its proprietary capacity from charging governmental fees on a non-discriminatory basis) or (ii) to limit Owner acting in its proprietary capacity to require modifications of financial terms in consideration of amending the terms of this Agreement, including without limitation the granting of extensions of time.

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

Section 21.3 Notice of Detailed Plans.

Notwithstanding anything to the contrary contained in this Agreement (including without limitation Articles 3, 5 and 21):

(a) Copies of the Detailed Plans for each Phase of the Project shall be submitted to Owner's Consultant.

(b) Copies of all Notices to Owner pursuant to Sections 3, 5 and 6 (whether or not such Notice includes Detailed Plans for each Phase of the Project) shall be distributed to Owner's Consultant.

ARTICLE 22 FINANCIAL REPORTS AND RECORDS

Section 22.1 Books and Records; Audit Rights.

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

(b) The obligations of Developer under this Article to maintain, and to provide Owner and its representatives access to, Developer's Books and Records shall survive the expiration of this Agreement for a period of seven (7) years.

(c) The right of Owner to audit Developer's Books and Records, including the books of account regarding the Work for each Phase of the Project and parking operations during Construction of such Phase, shall be governed by the provisions of Article 28 of the applicable Ground Lease as if such books and records were specifically described in such Article 28 as being part of the "books and records" described in such Article 28; provided, however, copying of all such "books and records" shall specifically be allowed.

ARTICLE 23 ARBITRATION

Section 23.1 Expedited Arbitration of Development Disputes.

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

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

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

(d) Each Hearing shall be conducted by the Development Arbitrator. It is the intention of the Parties that the Hearings shall be conducted in an informal and expeditious manner. No transcript or recording shall be made. Each Party shall have the opportunity to make a brief statement and to present documentary and other support for its position, which may include the testimony of not more than four (4) individuals, two (2) of whom may be outside experts. There shall be no presumption in favor of either Party’s position. Any procedural matter not covered herein shall be governed by procedures mutually agreed upon by the Parties, or if they are unable to agree, in accordance with the Construction Industry Rules of the American Arbitration Association to the extent not inconsistent with this Section 23.1.

(e) The Hearings shall be held in a location selected by the Development Arbitrator in Miami-Dade County, Florida. Provided the Development Arbitrator is accompanied by representatives of both Developer and Owner, the Development Arbitrator may, at its option, visit the applicable Project 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 with respect to any Development Dispute that Developer’s proposed modifications are material with regard to, or materially inconsistent with, the Project Concept Plan, the Approved Preliminary Plans or the Plans or Specifications, as applicable, for the applicable Phase of the Project, Arbitrator shall take into account, in determining whether Owner has acted unreasonably in failing to grant an approval or consent as described in Section 3.5(b) such factors as the Development Arbitrator deems relevant which are not inconsistent with this Agreement (including items 1 through 7, below), [which in all events shall include the following factors:

(1) Owner does not have any approval rights with respect to the matter of interior design and décor of each Phase of the Project with respect to any Component other than the Public Parking Replacement Component (excluding, however, any areas that are reasonably anticipated to constitute “common elements” under the Declaration, such as the parking garage elevator lobby and stairwells) and the Community Benefit Suite;

(2) The P25 Project and the P26 Project each shall be a mixed-use building with Class A office space, retail space and a parking garage at a quality compatible with the quality set forth in the original approved Preliminary Plans and Specifications or the original approved Plans and Specifications for such Phase of the Project (without regard to changes thereto) and shall include all Mandatory Project Elements;

(3) The mutual goal of Developer and Owner that Project Construction Costs for the applicable Phase of the Project overruns shall be minimized;

(4) The mutual goal of Developer and Owner that (A) the P25 Parking Component be Substantially Completed on or before the Outside P25 Parking Completion Date, (B) the P25 Project be Substantially Completed on or before the Outside P25 Completion Date and (C) the P26 Project be Substantially Completed on or before the Outside P26 Completion Date;

(5) Applicability of any Requirement for the applicable Phase of the Project;

(6) The magnitude of the modification to the previously approved Preliminary Plans and Specifications or Plans and Specifications, as applicable, for the applicable Phase of the Project; and

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

(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, which decision shall include a brief written basis for its decision. As to each Development Dispute, the Development Arbitrator's decision shall be limited to whether or not (i) the Preliminary Plans and Specifications for the applicable Phase of the Project substantially conform with the Project Concept Plan for such Phase of the Project, (ii) the Preliminary Plans and Specifications for such Phase of the Project include all of the Mandatory Project Elements for such Phase, (iii) Developer's proposed modification(s) to the Preliminary Plans and Specifications or the Plans and Specifications for such Phase of the Project pursuant to Section 3.1 is material, (iv) Developer's proposed modification(s) diminish any of the levels of quality of the applicable Phase of the Project, (v) Developer's proposed modifications to the Preliminary Plans and Specifications or the Plans and Specifications for such Phase of the Project materially deviate, individually or in the aggregate, from any of the Mandatory Project Elements or the Project Concept Plan for such Phase, (vi) Developer's proposed modification(s) to the Preliminary Plans and Specifications or the Plans and Specifications for such Phase of the Project could reasonably be expected to have a material adverse effect on the ability of Developer to complete Construction of such Phase or any portions thereof by the applicable Outside Dates

(vii) Developer's proposed modification(s) to the Preliminary Plans and Specifications or the Plans or Specifications for such Phase of the Project pursuant to Section 3.1(a) or (b), respectively, is materially inconsistent, (viii) Owner has unreasonably failed to approve or give its consent to any modifications to the Preliminary Plans or Specifications or the Plans and Specifications for such Phase of the Project pursuant to Section 3.1(a) or (b); and/or (ix) Developer or Owner is entitled to any extension of any Outside Date. The Development Arbitrator may not award any other or different relief.

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

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

Section 23.2 Litigation.

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

ARTICLE 24 NO PERMIT OR WAIVER OF FEES

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

ARTICLE 25 INVESTIGATIONS, ETC.

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

**ARTICLE 26
HAZARDOUS MATERIALS**

Section 26.1 General Provision.

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

Section 26.2 Survival.

The provisions of this Article 26 shall survive the expiration or sooner termination of this Agreement.

**ARTICLE 27
MISCELLANEOUS**

Section 27.1 Governing Law and Exclusive Venue.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court. The exclusive venue for any expedited arbitration arising out of this Agreement shall be as specified in Article 23 herein.

Section 27.2 References.

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

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

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

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

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

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

(g) Pronouns and Drafting. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as appropriate. This Agreement will be interpreted without interpreting any provision in favor of or against either Party by reason of the drafting of such provision by such Party or such Party’s counsel.

(h) Reference to “include”, “including”, etc. The terms “include” and “including” and words of similar import shall each be construed as if followed by the phrase “without limitation”.

Section 27.3 Entire Agreement, etc.

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

(b) Waiver, Modification, etc. No covenant, agreement, term or condition of this Development Agreement shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by Owner and Developer. No waiver of any Default or default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Default or default thereof.

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

(d) Recitals. The recitals set forth above are true and correct and are incorporated herein by this reference.

Section 27.4 Invalidity of Certain Provisions.

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

Section 27.5 Remedies Cumulative.

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

Section 27.6 Performance at Each Party's Sole Cost and Expense.

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

Section 27.7 Recognized Mortgagee Charges and Fees.

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

Section 27.8 Time is of the Essence.

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

Section 27.9 Successors and Assigns.

The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, Owner and Developer, and, except as otherwise provided herein, their

respective successors and permitted assigns. If, while City is the Owner hereunder, the City shall cease to exist, the City, by its signature hereto, hereby agrees to be bound with respect to all of the terms, covenants and conditions of Owner hereunder and Developer agrees to recognize the City as Owner hereunder. There can be no assignment by Developer of its rights or obligations hereunder or its interest in this Agreement except as expressly permitted by each Ground Lease and Developer may assign all its rights hereunder to the applicable Recognized Mortgagee as security for the performance of Developer's obligations under the applicable Mortgage Loan Documents. This Agreement, however, shall automatically transfer in connection with a transfer of Developer's (as Tenant) interest in the applicable Ground Lease in accordance with the provisions of such Ground Lease.

Section 27.10 City Manager's Delegated Authority.

Notwithstanding any provision to the contrary in this Agreement, nothing herein shall preclude the City Manager, in his or her reasonable discretion, from seeking direction from or electing to have the City Commission determine any matter arising out of or related to this Agreement, including, without limitation, any approval contemplated under this Agreement (within the timeframe specified therefor and pursuant to the same standard of decision as if the approval was being determined by the City Manager), including, but not limited to, the approval of any proposed amendment or modification to this Agreement or any separate agreement relating to the Project or otherwise referenced in this Agreement.

Section 27.11 Corporate Obligations.

It is expressly understood that this Agreement and 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 Commissioners of the City) or employees, as such, of Owner or Developer, or of any successor corporation, or any of them, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom; and, except as otherwise provided in Article 15, that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer, director, elected or appointed officials (including, without limitation, the Mayor and City Commissioners of the City) or employee, as such, or under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

Section 27.12 Nonliability of Officials and Employees.

No member, official or employee of Owner shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by Owner or for any amount or obligation which may become due to Developer or successor under the terms of this Agreement; and any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such Person, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are

expressly waived and released as a condition of, and as a consideration for, the execution of this Development Agreement.

Section 27.13 Partnership Disclaimer.

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

The Parties hereby acknowledge that it is not their intention to create between themselves a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship for the purpose of developing either Phase of the Project, or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Agreement, either Ground Lease or other documents executed by the Parties or statements made by the Parties with respect to the applicable Phase of the Project shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship of any kind or nature whatsoever between the Parties hereto. The provisions of this Section 27.13 shall survive expiration or earlier termination of this Agreement.

Section 27.14 Time Periods.

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

Section 27.15 No Third Party Rights.

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

Section 27.16 No Conflict of Interest.

Developer represents and warrants that, to the best of its actual knowledge, no member, official or employee of the City has any direct or indirect financial interest in this Development Agreement nor has participated in any decision relating to this Development Agreement that is prohibited by law. Developer represents and warrants that, to the best of its knowledge, no officer, agent, employee or representative of the City has received any payment or other consideration for the making of this Agreement, directly or indirectly, from Developer. Developer represents and warrants that it has not been paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than

normal costs of conducting business and costs of professional services such as architects, engineers, and attorneys. Developer acknowledges that Owner is relying upon the foregoing representations and warranties in entering into this Agreement and would not enter into this Agreement absent the same.

Section 27.17 Recording of Development Agreement.

Within fourteen (14) calendar days after the Effective Date, the City shall record this Agreement with the Clerk of the Circuit Court of Miami-Dade County. Developer shall submit a copy of the recorded Development Agreement to the State of Florida's Land Planning Agency within fourteen (14) calendar days after this Agreement is recorded. This Development Agreement shall become effective only after (i) it has been recorded in the Public Records of Miami-Dade County, and (ii) thirty (30) days have elapsed after the State of Florida Land Planning Agency's receipt of a copy of the recorded Development Agreement. Developer agrees that it shall be responsible for all recording fees and other related fees and costs related to the recording and delivery of this Agreement as described in this Section 27.17. The provisions hereof shall remain in full force and affect during the term hereto, and subject to the conditions of this Agreement shall be binding upon the undersigned, and all successors in interest to the Parties to this Agreement. Whenever an extension of any deadline is permitted or provided for under the terms of this Agreement, at the request of either Party, the other Party shall join in a short-form recordable Memorandum of Agreement confirming such extension to be recorded in the Public Records of Miami-Dade County.

Section 27.18 Waiver of Trial by Jury.

EACH PARTY HEREBY IRREVOCABLY, UNCONDITIONALLY, KNOWINGLY AND VOLUNTARILY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY A PARTY AGAINST ANOTHER PARTY ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE GROUND LEASE.

[EXECUTION ON FOLLOWING PAGE]

EXECUTION

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

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

Print Name:

By: _____
Dan Gelber, Mayor

Print Name:

ATTEST:
By: _____
Rafael E. Granado, City Clerk

[SEAL]

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 _____, 202__, by Dan Gelber, as Mayor, and Rafael E. Granado, as City Clerk, of the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, on behalf of such municipal corporation. They are personally known to me or produced valid Florida driver's licenses as identification.

My commission expires: _____

Notary Public, State of Florida
Print Name: _____

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

WITNESSES:

LINCOLN ROAD PROPERTY OWNER,
L.P., a Delaware limited partnership

Print Name:

By: Lincoln Road Property Owner GP, L.L.C.,
a Delaware limited liability company,
its general partner

Print Name:

By: _____
Name:
Title:

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 _____, 202__, by _____, as _____ of Lincoln Road Property Owner GP, L.L.C., a Delaware limited liability company, the general partner of LINCOLN ROAD PROPERTY OWNER, L.P., a Delaware limited partnership, on behalf of such limited liability company and limited partnership. He or she is personally known to me or produced a valid _____ driver's license as identification.

My commission expires:

Notary Public, State of Florida
Print Name: _____

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

WITNESSES:

LINCOLN ROAD PROPERTY OWNER II, L.P., a Delaware limited partnership

Print Name:

By: Lincoln Road Property Owner II GP, L.L.C., a Delaware limited liability company, its general partner

Print Name:

By: _____
Name:
Title:

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 _____, 202__, by _____, as _____ of Lincoln Road Property Owner II GP, L.L.C., a Delaware limited liability company, the general partner of LINCOLN ROAD PROPERTY OWNER II, L.P., a Delaware limited partnership, on behalf of such limited liability company and limited partnership. He or she is personally known to me or produced a valid _____ driver's license as identification.

My commission expires:

Notary Public, State of Florida
Print Name: _____

EXHIBIT A-1

LEGAL DESCRIPTION OF THE P25 LAND

Lots 9, 10, 11, 12, and 13, Block 39, Palm View Subdivision, according to the plat thereof, as recorded in Plat Book 6, Page 29, of the Public Records of Miami-Dade County, Florida.

Folio Numbers:

02-3234-004-0870

02-3234-004-0880

02-3234-004-0890

02-3234-004-0900

02-3234-004-0910

EXHIBIT A-2

LEGAL DESCRIPTION OF THE P26 LAND

Lots 7, 8, 9, 18, 19, and 20, Block 38, Palm View Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page 29 of the Public Records of Miami-Dade County, Florida, together with the portion of a 20-foot alley, bounded on the East by the West right-of-way line of Michigan Avenue, and bounded on the West by the East right-of-way line of Lenox Avenue, as shown in Palm View Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page 29 of the Public Records of Miami-Dade County, Florida.

Folio Numbers:

02-3234-004-0710

02-3234-004-0720

02-3234-004-0730

02-3234-004-0820

02-3234-004-0830

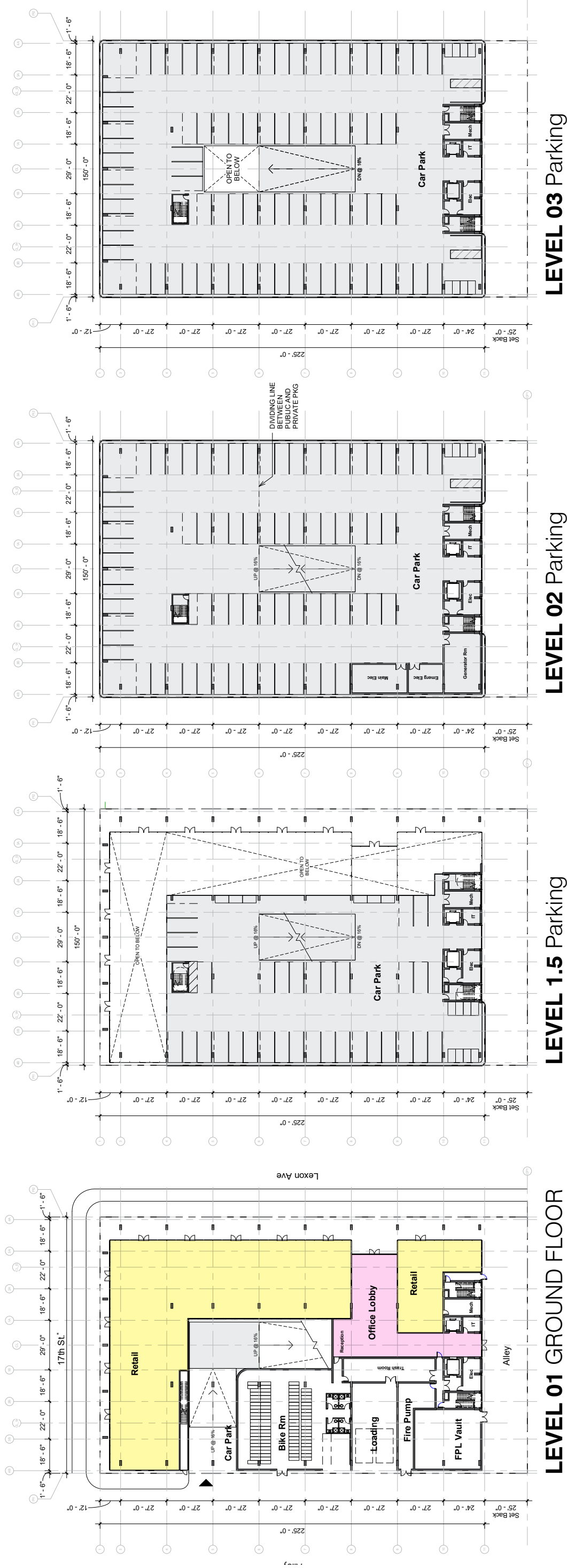
02-3234-004-0840

EXHIBIT B

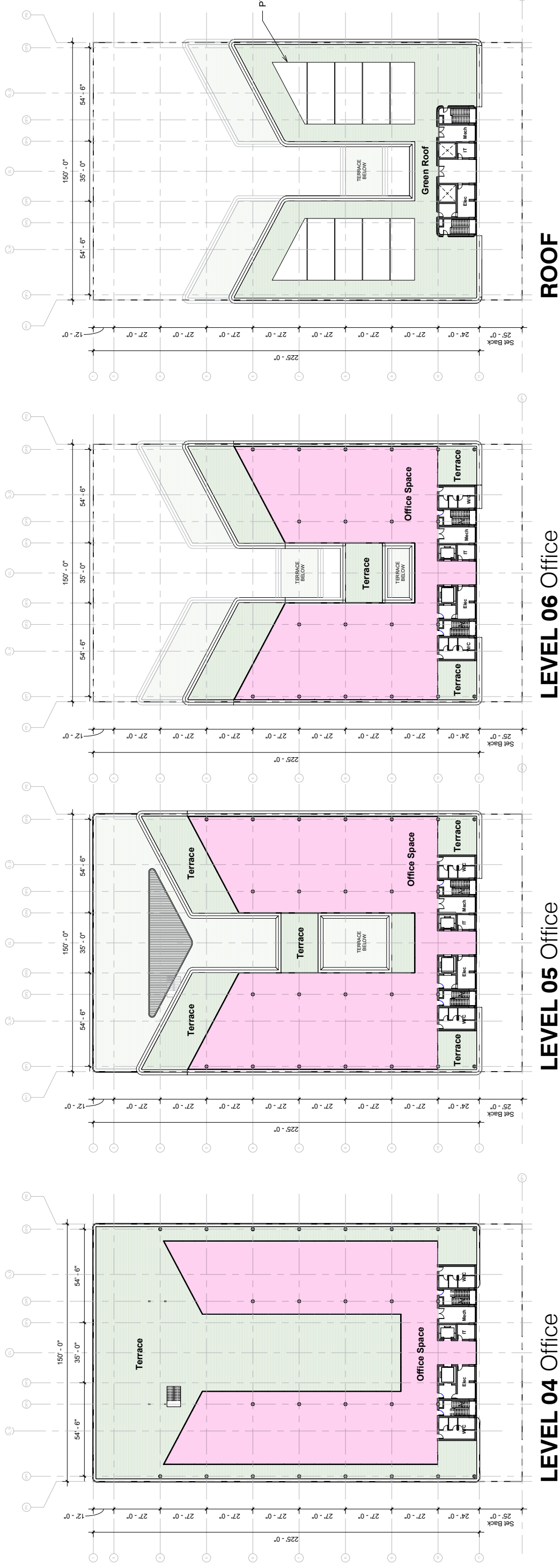
PROJECT CONCEPT PLAN

[see attached]

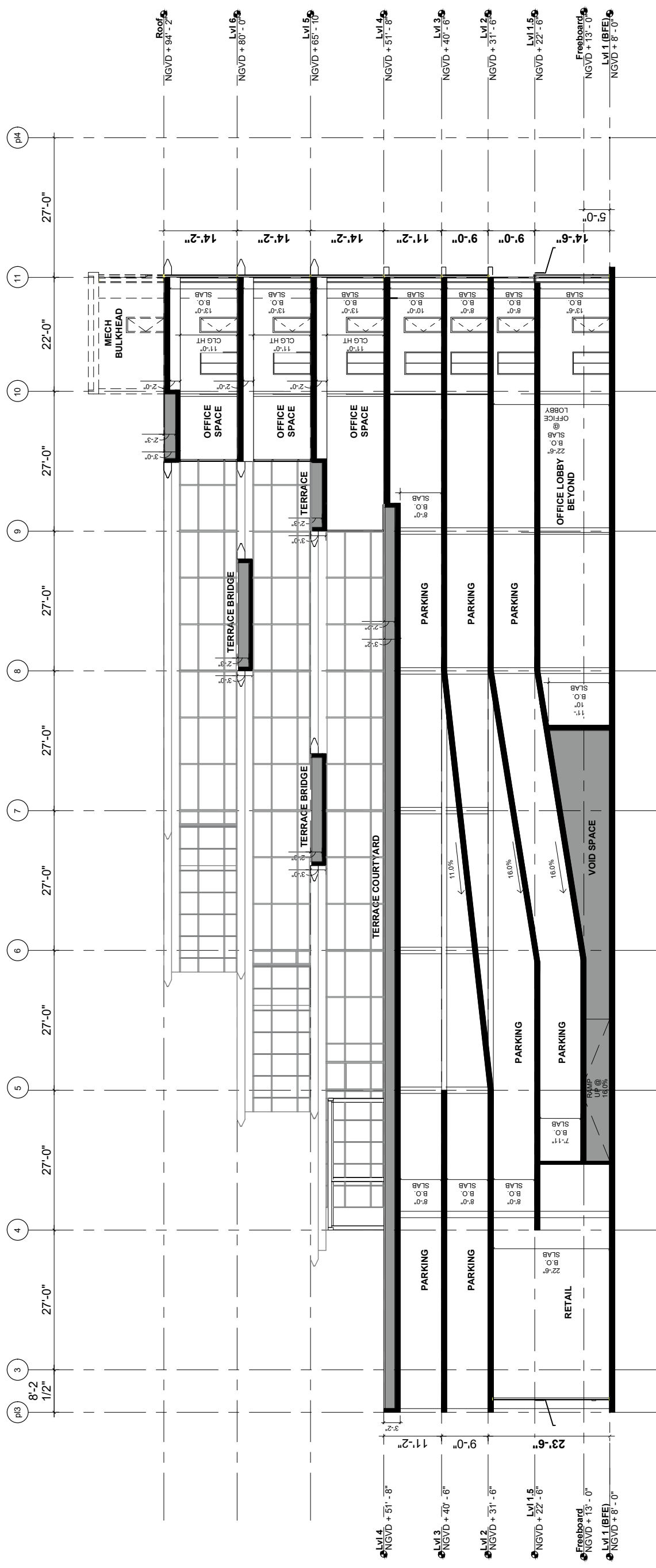
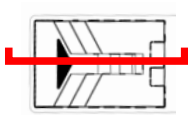
P25 Conceptual Floor Plans: Levels 01-03



P25 Conceptual Floor Plans: Levels 04-Roof



P25 Conceptual Architectural Section



Building Section: North/South

P25 Conceptual Project Areas and Parking

Building Areas	
Program/Use	Area
FAR	
MEP/BOH/Circulation	12,920 SF
Office	44,940 SF
Retail	12,265 SF
TOTAL	70,125 SF
Non-FAR	
Car Park	75,075 SF
City Replacement Pkg (Public)	13,356 SF
MEP Deductible	5,848 SF
Terrace	27,603 SF
	121,882 SF
Gross Construction Area	192,007 SF

Percentage of Office Area to Building Floor Area = **64%**

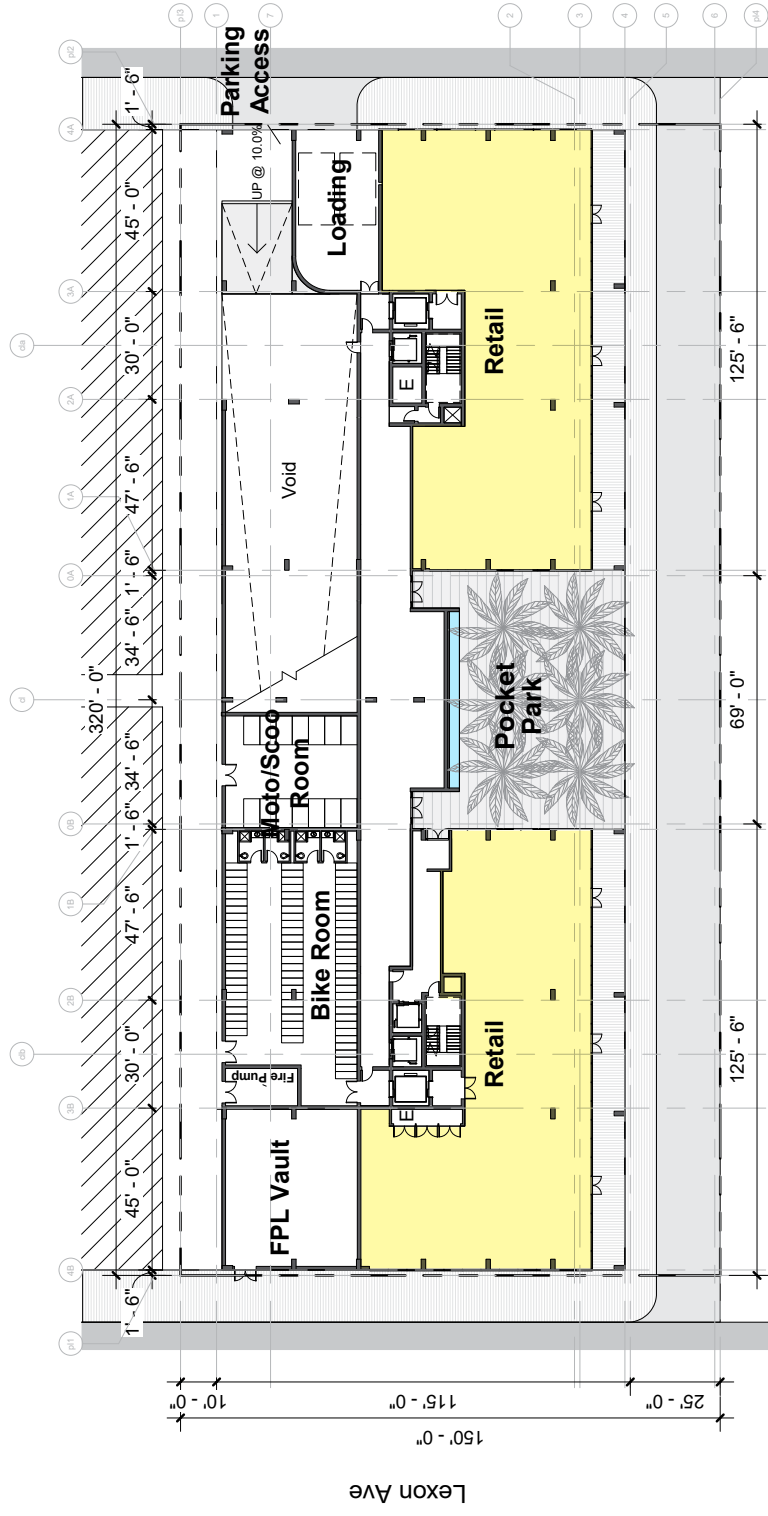
(44,940 SF Office Area / 70,125 SF Building Floor Area = 0.640)

OFFICE USE PARKING CALCULATION		
REQD PARKING BY CODE (OFFICE) ONE SPACE PER 400 SF		
TOTAL SF AREA "OFFICE USE" (FLRS 4-6)	42,336	
PKG FACTOR	400	
TOTAL REQD PKG		107
QTY. CAR PKG SPACES IN PROJECT		193
SUBTRACT CITY REPLACEMENT PKG SPACES	86	
PKG SPACES AVAIL. FOR OFFICE USE:		107
QTY. PKG "OVER/UNDERPARKED"		0

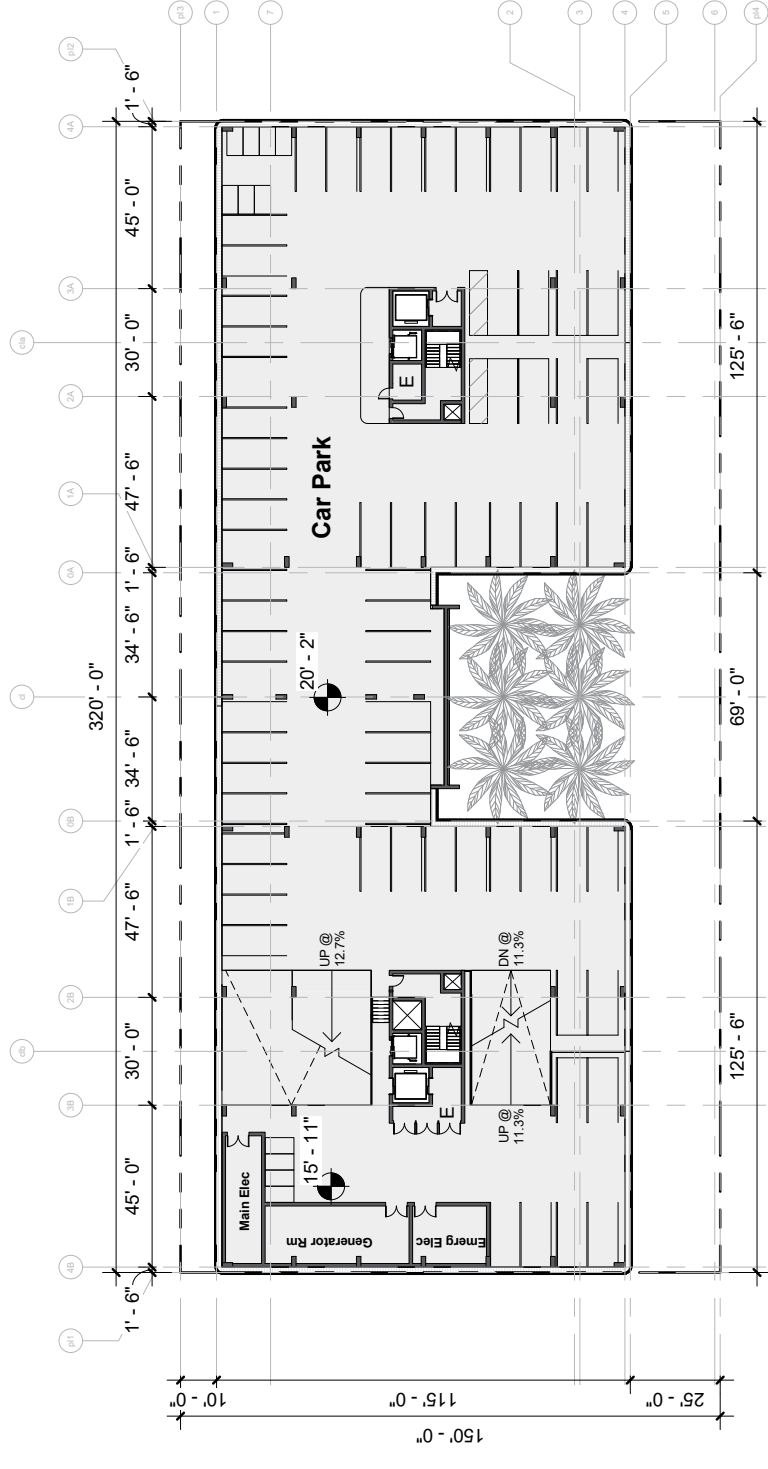
SUMMARY PARKING PROVIDED IN PROJECT	
QTY. STANDARD PKG SPACES (incl. 6 ADA)	107
QTY. CARPOOL PKG SPACES	0
QTY. CITY REPLACEMENT PKG	86
QTY. TOTAL CAR PARKING	193

ALTERNATIVE PARKING PROVIDED IN PROJECT	
QTY. SECURE BICYCLE PARKING	92
QTY. MOTORCYCLE / SCOOTER PARKING	26
QTY. BICYCLE ROOM SHOWERS	4

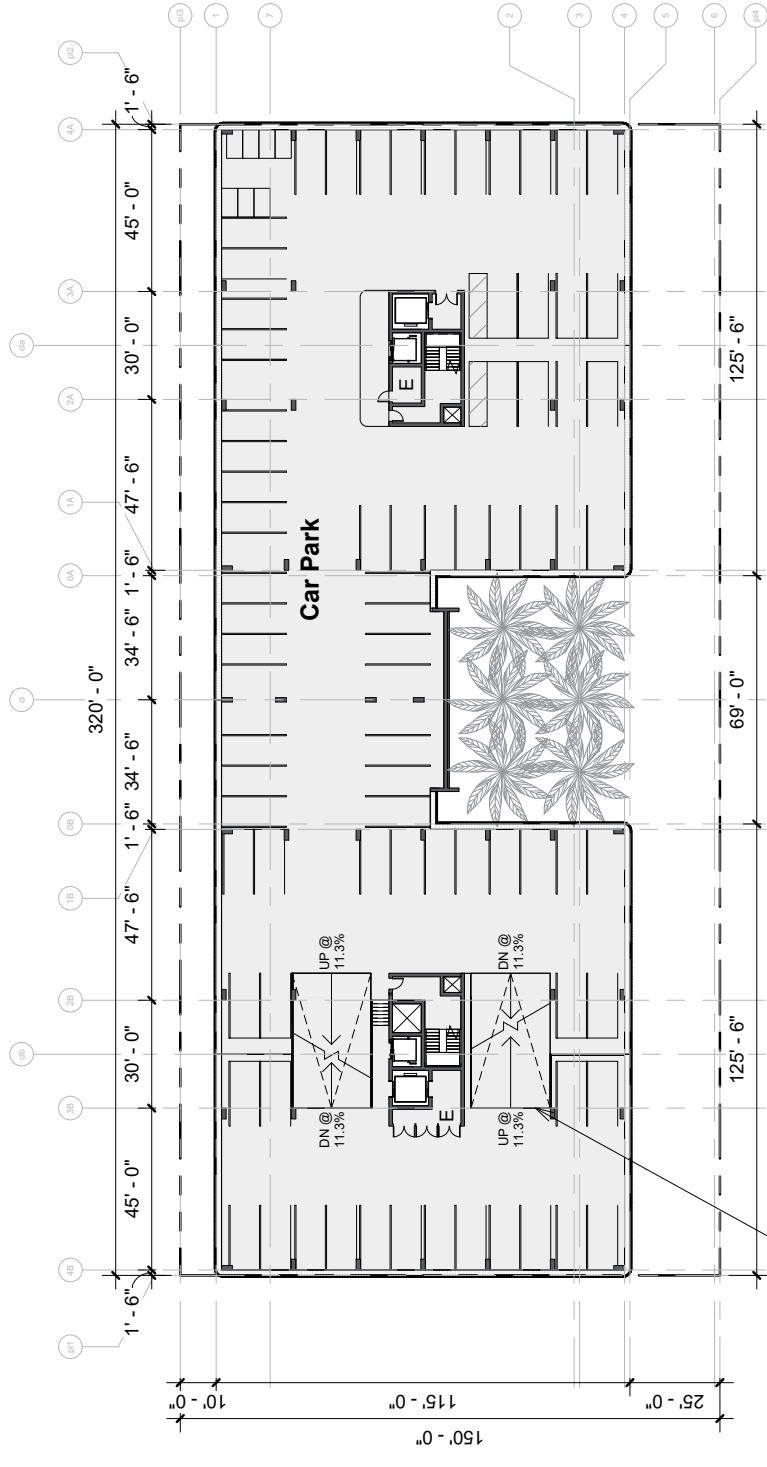
P26 Conceptual Floor Plans: Levels 01-04



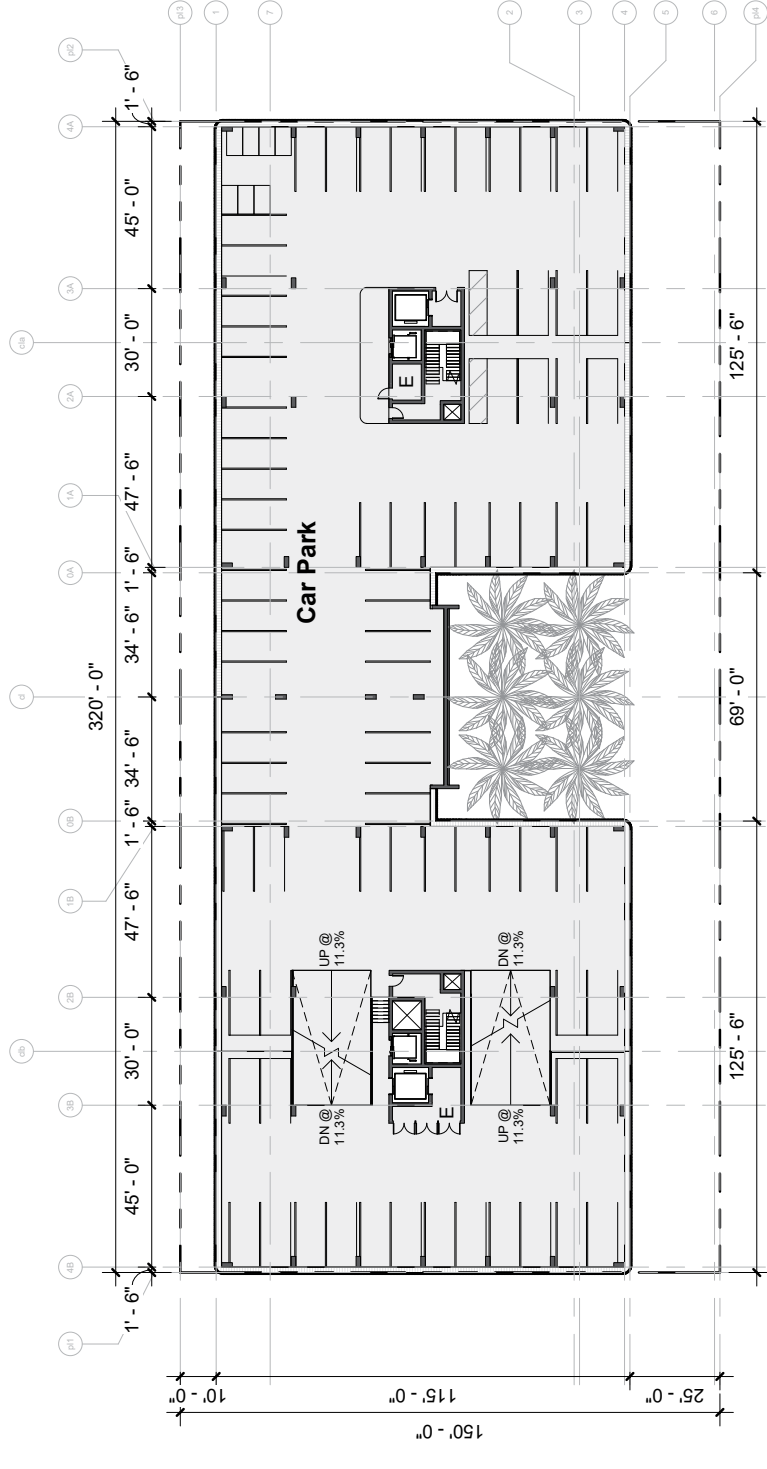
LEVEL 01 GROUND FLOOR Lincoln N



LEVEL 02 PARKING

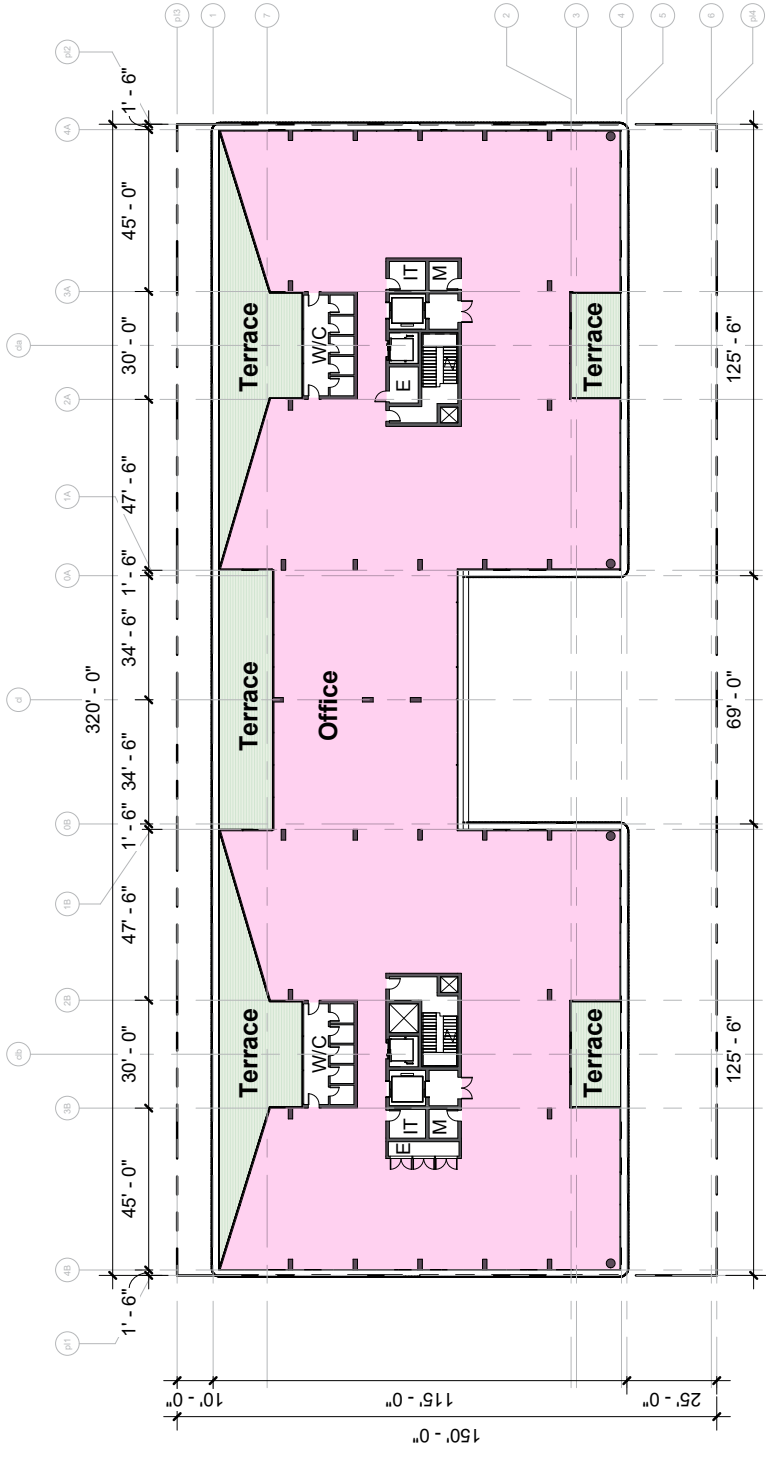


LEVEL 03 PARKING

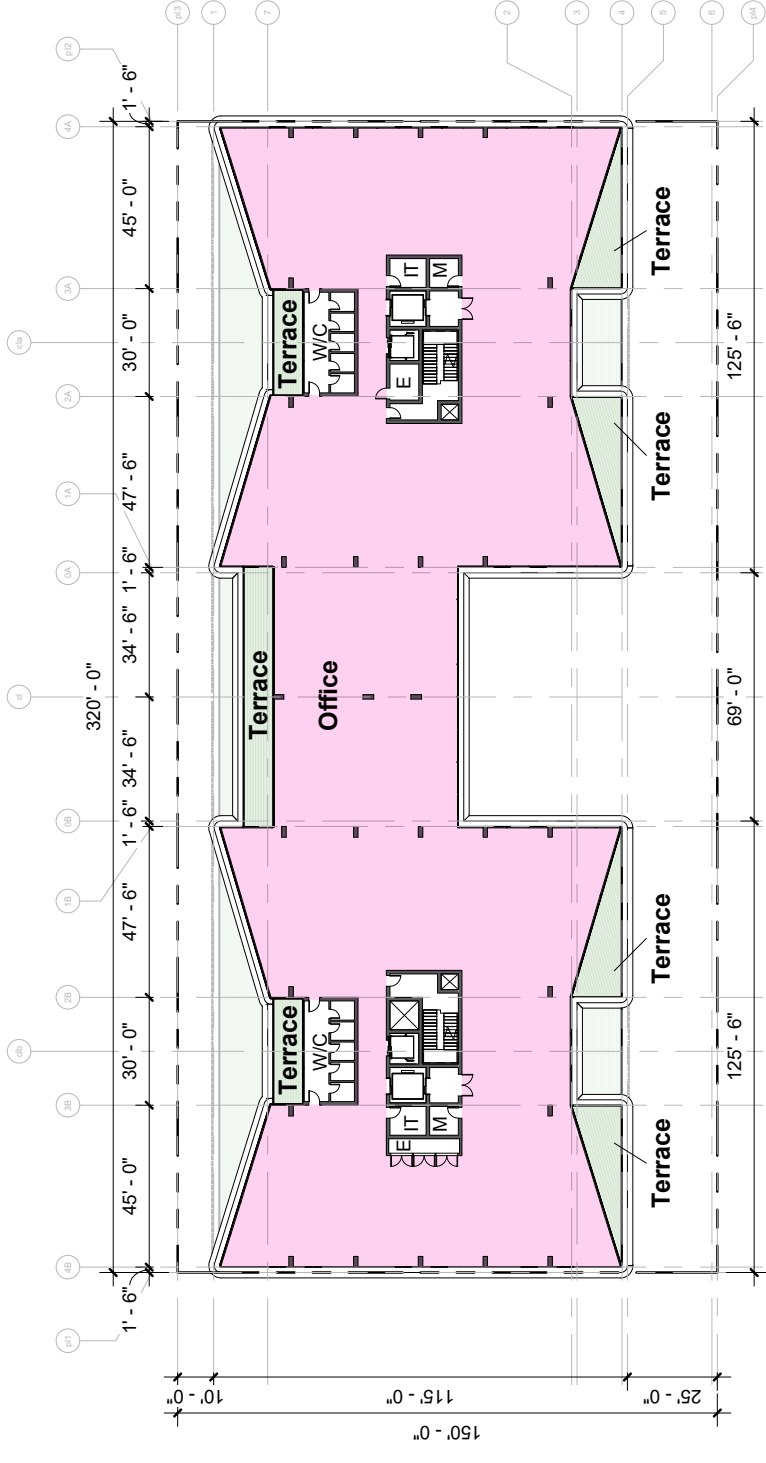


LEVEL 04 PARKING

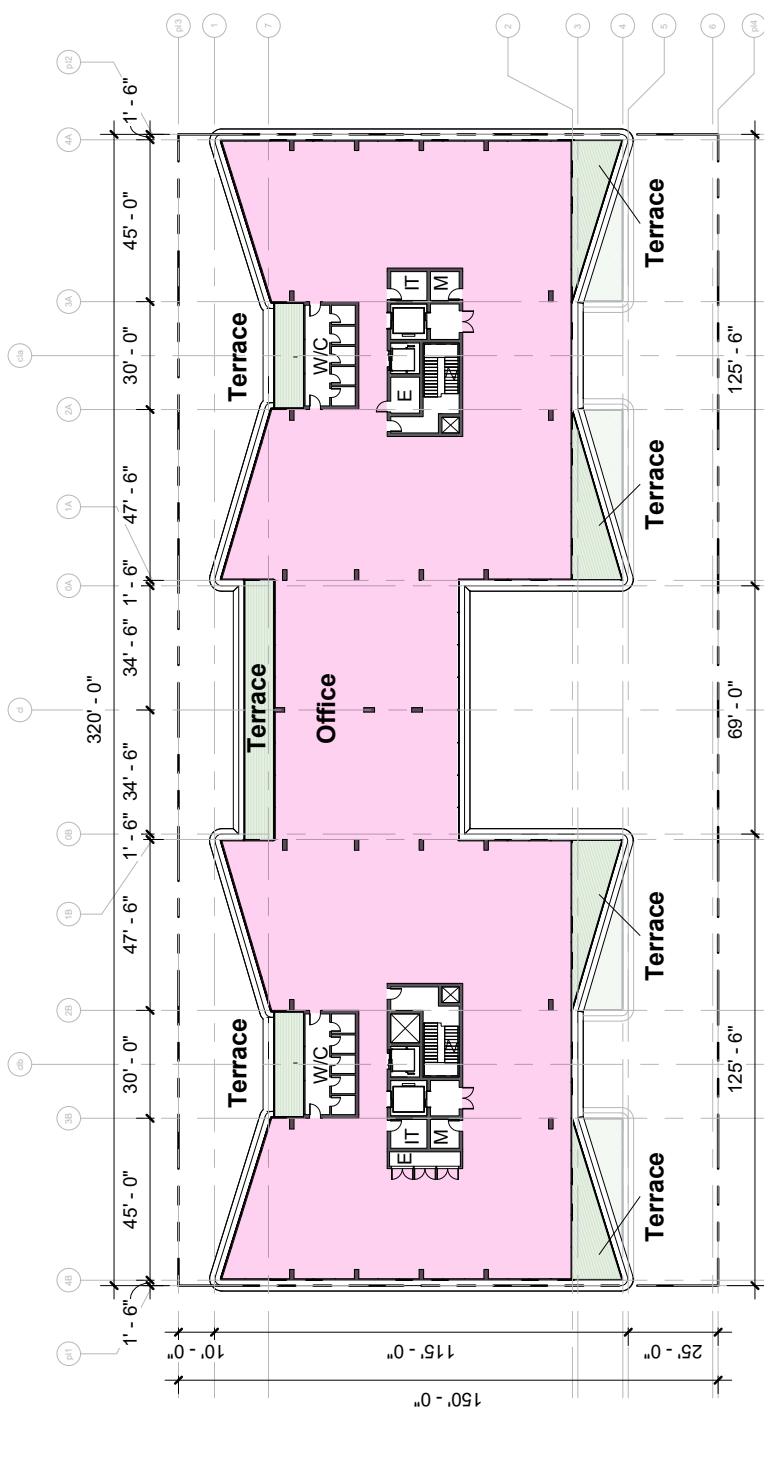
P26 Conceptual Floor Plans: Levels 05-08



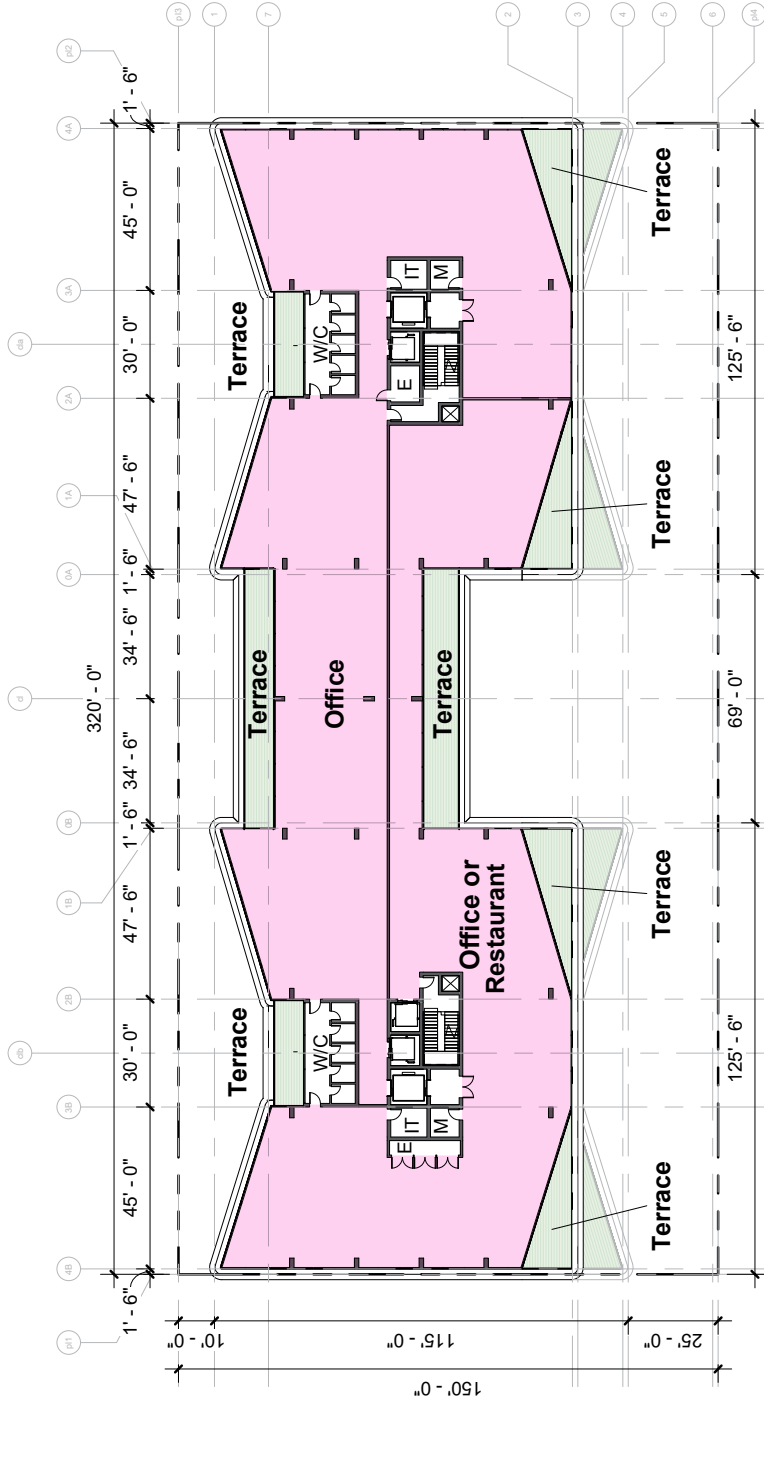
LEVEL 05 OFFICE



LEVEL 06 OFFICE

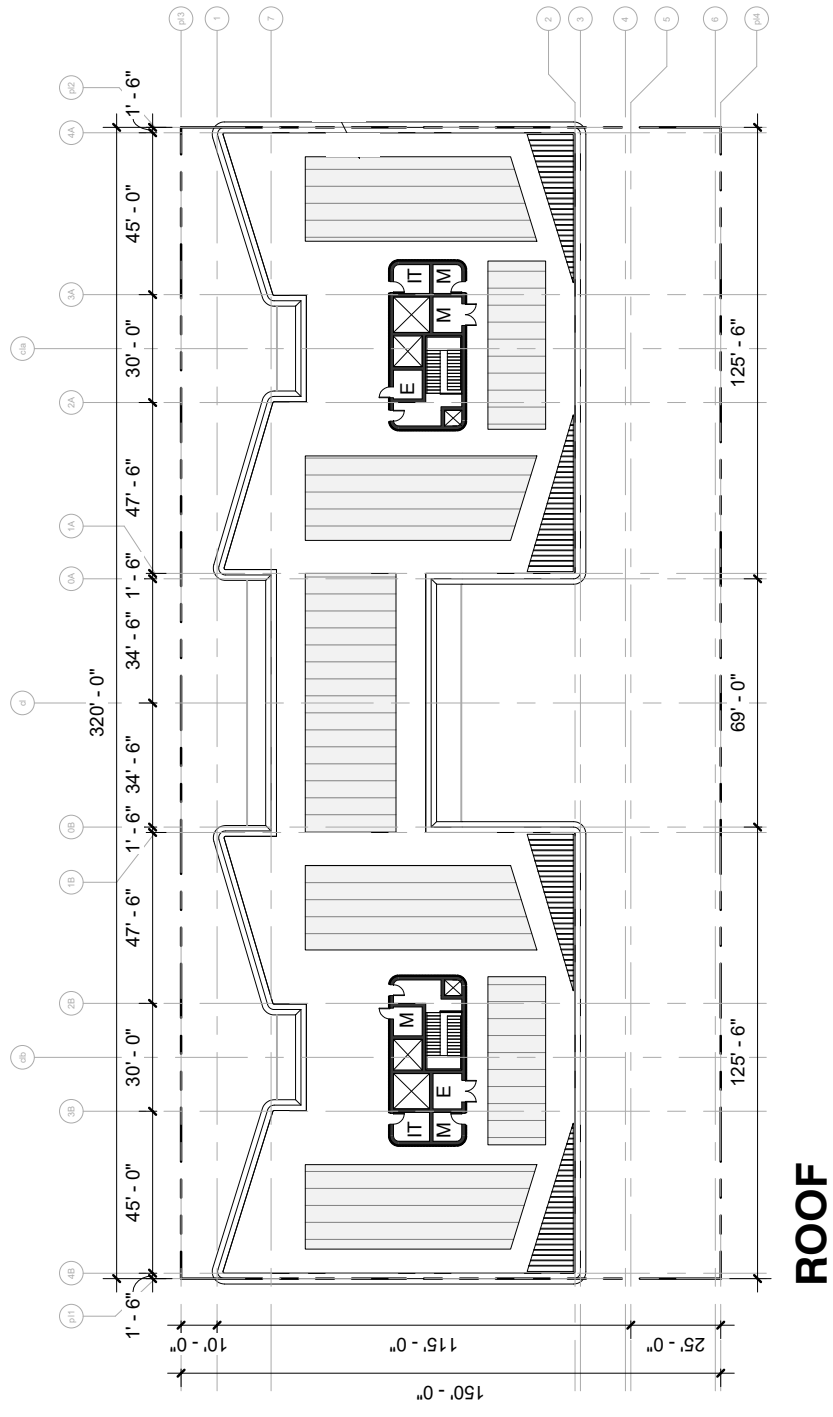


LEVEL 07 OFFICE



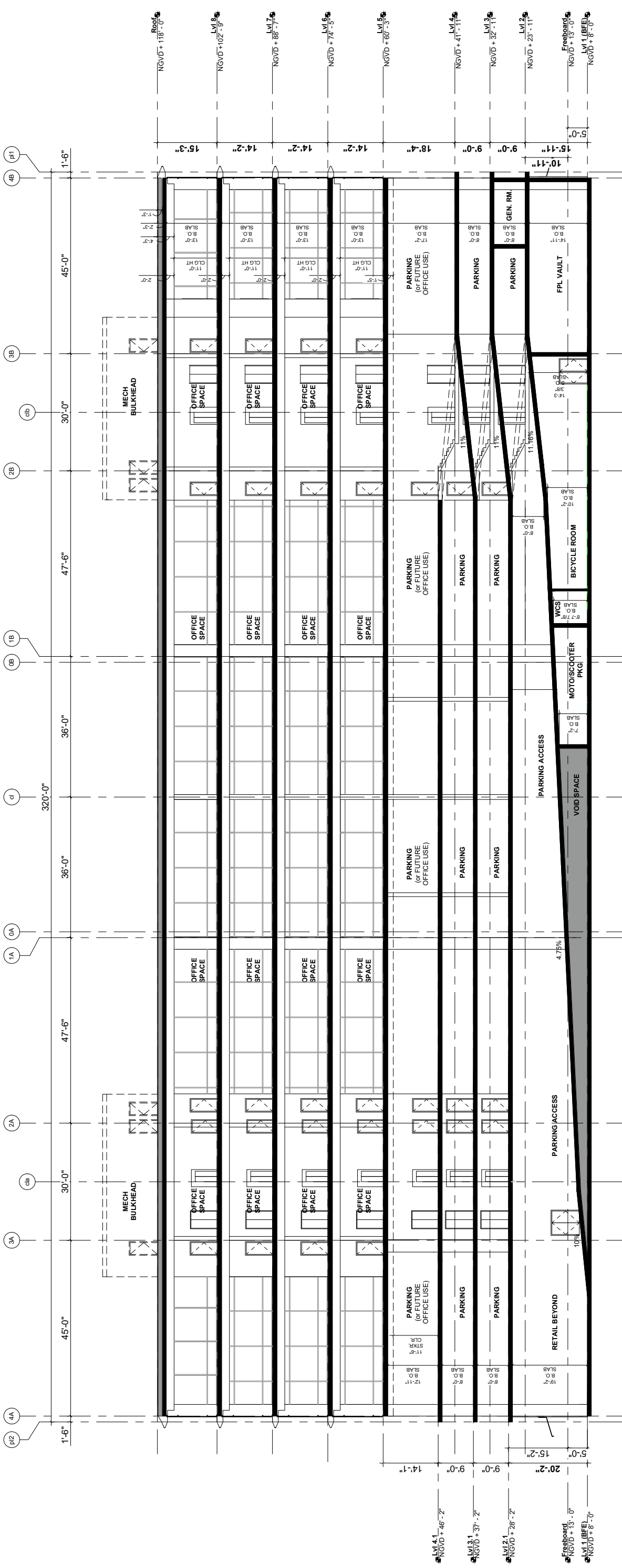
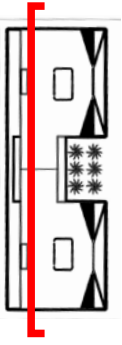
LEVEL 08 OFFICE

P26 Conceptual Floor Plans: Roof



ROOF

P26 Conceptual Architectural Section



P26 Conceptual Project Areas and Parking

Building Areas	
Program/Use	Area
FAR	
MEP/BOH/Circulation	21,226 SF
Office	91,393 SF
Retail	11,929 SF
	124,548 SF
Non-FAR	
Car Park	90,134 SF
City Replacement Pkg (Public)	16,303 SF
MEP Deductible	5,004 SF
Terrace	12,393 SF
	123,834 SF
Gross Construction Area	248,382 SF

Percentage of Office Area to Building Floor Area = **73%**

(91,393 SF Office Area / 124,548 SF Building Floor Area = 0.734)

OFFICE USE PARKING CALCULATION		
REQ'D PARKING BY CODE (OFFICE) ONE SPACE PER 400 SF		
TOTAL SF AREA "OFFICE USE" (FLRS 5-8)	87,630	
PKG FACTOR	400	
TOTAL REQ'D PKG		219
QTY. CAR PKG SPACES IN PROJECT	325	
SUBTRACT CITY REPLACEMENT PKG SPACES	106	
PKG SPACES AVAIL. FOR OFFICE USE:		219
QTY. PKG "OVER/UNDERPARKED"		0

SUMMARY PARKING PROVIDED IN PROJECT	
QTY. STANDARD PKG SPACES (incl. 8 ADA)	77
QTY. STACKER PKG SPACES (71 X 2)	142
QTY. CARPOOL PKG SPACES	0
QTY. CITY REPLACEMENT PKG	106
QTY. TOTAL CAR PARKING	325

ALTERNATIVE PARKING PROVIDED IN PROJECT	
QTY. SECURE BICYCLE PARKING	79
QTY. MOTORCYCLE / SCOOTER PARKING	39
QTY. BICYCLE ROOM SHOWERS	4

EXHIBIT C

[RESERVED]

EXHIBIT D

CONSTRUCTION AGREEMENTS REQUIRED CLAUSES

1. An agreement by the Contractor to provide, prior to the commencement of its portion of the work, and maintain during the performance thereof, the insurance set forth on in Section [7.10] of the Ground Lease attached to this Agreement and incorporated by reference herein. Such Contractor shall procure an appropriate clause in, or endorsement on, any policy of insurance carried by it pursuant to which the insurance company waives subrogation or consents to a waiver of right of recovery consistent with the release, discharge, exoneration and covenants not to sue contained herein. Original Certificates of Insurance, in quadruplicate (all of which shall be original signed counterparts) and including the City of Miami Beach, Florida (and any successor Owner), as additional insureds (the “**Certificate of Insurance**”), shall be furnished to Developer by Contractor prior to commencement of work, denoting all insurance required of Contractor pursuant to the terms of the Contract. The Contractor shall secure an original Certificate of Insurance from each of its sub-contractors and/or suppliers with limits of liability equal to those carried by the Contractor;
2. “Contractor hereby waives all rights of recovery, claims, actions or causes of action against the City of Miami Beach, Florida (and any successor Owner), and their respective elected and appointed officials (including, without limitation, the City’s Mayor and City Commissioners), directors, officials, officers, shareholders, members, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, lessees, mortgagees, trustees, partners, principals, invitees and affiliates, for any loss or damage to property of Contractor which may occur at any time in connection with the Project.”;
3. “To the fullest extent permitted by law, Contractor shall and does hereby indemnify and hold harmless the City of Miami Beach, Florida (and any successor Owner), and their respective elected and appointed officials (including the City’s Mayor and City Commissioners), directors, officials, officers, shareholders, members, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, lessees, mortgagees, trustees, partners, principals, invitees and affiliates, from and against any and all liability, claims, demands, damages, losses, fines, penalties, expenses and costs of every kind and nature, including, without limitation, costs of suit and attorneys’ fees and disbursements (collectively, “Expenses”), resulting from or in any manner arising out of, in connection with or on account of: (1) any act, omission, fault or neglect of Contractor, or anyone employed by it in connection with the work or each Phase thereof, or any of its agents, contractors, subcontractors, employees, invitees or licensees in connection with the work, or anyone for whose acts any of them may be liable, (2) claims of injury (including physical, emotional, economic or otherwise) to or disease, sickness or death of persons or damage to property (including, without limitation, loss of use resulting therefrom) occurring or resulting directly or indirectly from the work or any portion thereof or the activities of Contractor or anyone employed by it in connection with the work, or any portion thereof, or any of its respective agents, contractors, subcontractors,

employees, invitees or licensees in connection with the work, or anyone for whose acts any of them may be liable, or (3) mechanics' or materialmen's or other liens or claims (and all costs or expenses associated therewith) asserted, filed or arising out of the work or each Phase thereof. In no event shall Contractor be able to seek or be entitled to consequential damages (including, without limitation, loss of profits or loss of business opportunity) for claims arising under this contract. This indemnification obligation shall not be limited in any way by: (x) any limitation on the amount or type of damages, compensation or benefits payable to Contractor under worker's compensation acts, disability benefit acts or other employee benefit acts or other insurance provided for by this contract; or (y) the fact that the Expenses were caused in part by a party indemnified hereunder. The Contractor further agrees that this indemnification shall be made a part of all contracts and purchase orders with sub-contractors or material suppliers. The indemnification agreement included in this contract is to be assumed by all sub-contractors.";

4. (1) the right of Developer to assign to Owner, subject and subordinate to the rights of Lender, the contract and Developer's rights thereunder, at the Owner's request, without the consent of the Contractor, and (2) that without the necessity of such assignment and without thereby assuming any of the obligations of Developer under the contract occurring prior to such assignment and/or purchase order, except for Developer's payment obligations, Owner shall have the right to enforce the full and prompt performance by the Contractor of such Contractor's obligations under the contract;
5. "Contractor agrees to comply with all laws and requirements applicable to Contractor and the Project, including, without limitation, the City of Miami Beach Prevailing Wage Ordinance, Miami Beach City Code, Section 31-27, as amended.";
6. "Upon an Event of Default by Developer resulting in a termination of that certain Agreement of Lease between Developer and Owner, dated as of _____, 20___, pursuant to which Developer (as tenant) has agreed to lease the Land on which the Project is to be constructed, Contractor shall, at the option of the City of Miami Beach, Florida, subject and subordinate to the rights of Lender, be terminated or Contractor will honor this agreement as if this agreement had been originally entered into with the City of Miami Beach, Florida.";
7. "Nothing contained in this contract is in any way intended to be a waiver of the prohibition on Contractor's ability to file liens against property of the City of Miami Beach, Florida, or of any other constitutional, statutory, common law or other protections afforded to public bodies or governments.";
8. "Upon an Event of Default by Developer resulting in a termination of that certain Agreement of Lease between Developer and Owner, dated as of _____, 20___, pursuant to which Developer (as tenant) has agreed to lease the Land on which the Project is to be constructed, all covenants, representations, guarantees and warranties of Contractor hereunder shall be, subject and subordinate to the rights of Lender, deemed to be made for the benefit of the City of Miami Beach, Florida, (and the City of Miami Beach, Florida, shall be deemed to be a third-party beneficiary hereof) and shall be,

subject and subordinate to the rights of Lender, enforceable by the City of Miami Beach, Florida.”;

9. “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
10. “Contractor hereby agrees that notwithstanding that Contractor performed work at the Project Site or any part thereof, the City of Miami Beach, Florida shall not be liable in any manner for payment or otherwise to Contractor in connection with the work performed at the Project Site, except to the extent the City of Miami Beach, Florida, expressly assumes the obligations of Developer hereunder (and then only to the extent such obligations arise from and after such assumption).”
11. “Contractor warrants that all materials and equipment included in the Work will be new except where indicated otherwise in the 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 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.”

EXHIBIT E

MANDATORY PROJECT ELEMENTS

Unless modified in accordance with this Agreement:

P25 Project:

(1) a Class A office component consisting of approximately 45,000 square feet (the “**P25 Office Component**”) which shall in any event constitute approximately 60% (and notwithstanding anything to the contrary set forth herein or in the P25 Ground Lease, not less than 50%) of the available floor area ratio (FAR);

(2) a ground floor retail component consisting of approximately 12,000 square feet which shall in any event include a fully activated liner of retail, restaurant, personal service, cultural arts or similar active uses, with a minimum depth of 50 feet along the ground floor portions of the Project facing a street, sidewalk or Lenox Avenue and 17th Street except for access points for vehicles and pedestrians and required service functions, such as FPL vaults, fire or water installations (the “**P25 Retail Component**”);

(3) a public parking component to replace the existing public parking spaces on Lot P25 consisting of at least eighty-six (86) public parking spaces and ancillary office and storage space reasonably necessary for maintenance and operations purposes consisting of approximately 100 square feet (the “**P25 Public Parking Replacement Component**”), all of which spaces shall be located on the lowest levels of parking within the P25 Project at or above ground level (and shall not be located on any below-grade levels) (for the avoidance of doubt, the City shall operate the P25 Public Parking Replacement Component and it shall be excluded from the Ground Lease pursuant to the Declaration, provided, the City shall have the right, in its sole discretion, to cause the Developer to operate the P25 Public Parking Replacement Component by written notice to the Developer by or before the date that is sixty (60) days from the NTP Date). Developer shall provide reasonable access to bathroom facilities to employees of Owner or its agents operating the Public Parking Replacement Component. In the event the City requires Developer to operate the P25 Public Parking Replacement Component, the Developer and the City, each acting reasonably and in good faith, shall enter into a mutually agreed operating agreement with respect thereto; and

(4) additional parking component consisting of all required parking in accordance with the City Land Development Regulations (the “**P25 Additional Parking Component**”), which shall be designed in a manner that allows the P25 Additional Parking Component to be made available to the general public in accordance with the P25 Ground Lease. The P25 Office Component, the P25 Retail Component, and the P25 Additional Parking Component are hereinafter collectively referred to as the “**P25 Ground Lease Component**”.

(5) The P25 Project shall have a maximum of 7 stories and a maximum height of up to 100 feet, in accordance with the City Land Development Regulations.

P26 Project:

(1) a Class A office component consisting of approximately 91,000 square feet (the **“P26 Office Component,”** and together with the P25 Office Component, the **“Office Component”**) which shall in any event constitute approximately 65% (and notwithstanding anything to the contrary set forth herein or in the P26 Ground Lease, not less than 50%) of the available floor area ratio (FAR);

(2) a ground floor retail component consisting of approximately 12,000 square feet which shall in any event include a fully activated liner of retail, restaurant, personal service, cultural arts or similar active uses, with a minimum depth of 50 feet along the ground floor portions of the project facing a street, sidewalk or Lincoln Lane North except for access points for vehicles and pedestrians and required service functions, such as FPL vaults, fire or water installations (the **“P26 Retail Component,”** and together with the P25 Retail Component, the **“Retail Component”**);

(3) a public parking component to replace the existing public parking spaces on Lot P26 consisting of at least 106 public parking spaces and ancillary office and storage space reasonably necessary for maintenance and operations purposes consisting of approximately 350 square feet (the **“P26 Public Parking Replacement Component,”** and together with the P25 Public Parking Replacement Component, the **“Public Parking Replacement Component”**), all of which spaces shall be located on the lowest levels of parking within the P26 Project at or above ground level (and shall not be located on any below-grade levels) (for the avoidance of doubt, the City shall operate the P26 Public Parking Replacement Component and it shall be excluded from the Ground Lease pursuant to the Declaration, provided, the City shall have the right, in its sole discretion, to cause the Developer to operate the P26 Public Parking Replacement Component by written notice to the Developer by or before the date that is sixty (60) days from the NTP Date). Developer shall provide reasonable access to bathroom facilities to employees of Owner or its agents operating the Public Parking Replacement Component. In the event the City requires the Developer to operate the P26 Public Parking Replacement Component, the Developer and the City, each acting reasonably and in good faith, shall enter into a mutually agreed operating agreement with respect thereto;

(4) additional parking component consisting of all required parking in accordance with the City Land Development Regulations (the **“P26 Additional Parking Component”** and together with the P25 Additional Parking Component, the **“Additional Parking Component”**), which shall be designed in a manner that allows the P26 Additional Parking Component to be made available to the general public in accordance with the P26 Ground Lease; and

(5) an approximately 0.11-acre pocket park located on the ground floor of the P26 Project (the **“P26 Pocket Park”** and together with the P26 Office Component, the P26 Retail Component, and the P26 Additional Parking Component, collectively the **“P26 Ground Lease Component”**). The P25 Ground Lease Component and the P26 Ground Lease Component are hereinafter collectively referred to as the **“Ground Lease Component”**.

(6) The P26 Project shall have a maximum of 8 stories and a maximum height of up to 100 feet, in accordance with the City Land Development Regulations.

EXHIBIT F

FORM OF UNITY OF TITLE

[To be inserted]

EXHIBIT G

RESILIENCY STANDARDS

The City of Miami Beach requires all new construction over 7,000 square feet or ground floor additions to existing structures that encompass over 10,000 square feet of additional floor area to be LEED Gold Certified or have Living Building Challenge certification.

The City's goal is to design, build, and operate a new generation of efficient, environmentally responsible, healthy and resilient buildings, as well as to reduce the City's greenhouse gas emissions. The practice of green building can have a significant impact on reducing energy, water, natural resource consumption, GHG emissions and improve our citizens' and visitors' well-being through improved indoor air quality and comfort.

A resilient building and project site should incorporate the following elements:

- Increase energy efficiency in buildings and reduce greenhouse gas production and emissions;
- Encourage water and resource conservation; Reduce waste generated by construction projects;
- Reduce long-term building operating and maintenance costs; Improve indoor air quality and occupant health;
- Maximize the use of green and blue infrastructure to treat, retain, and manage stormwater; Utilize native vegetation and Florida-friendly canopy trees to maximize natural infrastructure and biodiversity throughout the site;
- Consider the stresses of climate change, including but not limited to extreme heat, rising ground water, and frequency and severity of storms when designing for function and form; Utilize the South Florida Climate Change Compacts Unified Sea Level Rise Projection when considering elevations of the site;
- Utilize public art and placemaking opportunities to enhance the resiliency of the site; Placemaking should incorporate business and marketing opportunities;
- community aesthetics, cultural identity, and cohesion; and serve to brand the City of Miami Beach as a resilient City;
- Encourage sound urban planning principles; Encourage social equity.

Resiliency design principles should be incorporated into the design and construction of City-Owned Lots and Garages. These include:

- Robust design is well-conceived, constructed and managed and includes making provision to ensure failure is predictable, safe, and not disproportionate to the cause. For example, protective infrastructure that is robust will not fail catastrophically when design thresholds are exceeded.
- Redundancy: refers to spare capacity purposively created to accommodate

disruption due to extreme pressures, surges in demand or an external event. It includes diversity where there are multiple ways to achieve a given need.

- Flexibility: refers to the willingness and ability to adopt alternative strategies in response to changing circumstances or sudden crises. Systems can be made more flexible through introducing new technologies or knowledge, including recognizing traditional practices.
- Integrated: processes bring together systems and institutions and can also catalyze additional benefits as resources are shared and actors are enabled to work together to achieve greater ends.

The successful Bidder will be familiar with the work of the Southeast Florida Regional Climate Compact <http://www.southeastfloridaclimatecompact.org/> and the Resilient305 Strategy <http://resilient305.com/>. Urban resilience is the capacity of individuals, communities, institutions, businesses, and systems within a city to survive, adapt, and grow no matter what kinds of chronic stresses and acute shocks they experience.

Building urban resilience requires looking at a city holistically: understanding the systems that make up the city and the interdependencies and risks they may face. By strengthening the underlying fabric of a city and better understanding the potential shocks and stresses it may face, a city can improve its development trajectory and the well-being of its citizens.

Chronic stresses are slow moving disasters that weaken the fabric of a city. They include, like overtaxed or inefficient public transportation system. On the other hand, acute shocks are sudden, sharp events that threaten a city, like floods or terrorist attacks for example.

Resilient design is therefore the intentional design of buildings, landscapes, communities, and regions in order to respond to natural and manmade disasters and disturbances—as well as long- term changes resulting from climate change—including sea level rise, increased frequency of heat waves, and drought.

EXHIBIT H

FORMS OF P25 GROUND LEASE AND P26 GROUND LEASE

[see attached]

EXHIBIT I

PREVAILING WAGE AND LOCAL WORKFORCE PARTICIPATION REQUIREMENTS

**The Requirements of the
Prevailing Wage and Local Workforce Participation Programs**

shall apply to the award of this project.

The purpose of this exhibit is to summarize, for clarity, the requirements of the City's Prevailing Wage and Local Workforce Program Requirements. In the event of any omissions or conflicts, the requirements of the City Code, with respect to these programs, shall prevail.

I. MINIMUM WAGES AND BENEFITS

1. Employee Compensation. The rate of wages and fringe benefits, or cash equivalent, for all laborers, mechanics and apprentices employed by the contractor or subcontractor on the work covered by the contract, shall be not less than the prevailing rate of wages and fringe benefit payments or cash equivalence for similar skills or classifications of work as established by the Federal Register last published by the United States Department of Labor prior to the date of issuance of this solicitation. (reference: Sec 31-27).
2. Notice Requirement. On the date on which any laborer or mechanic commences work on a construction contract to which this article applies, the contractor shall be required to post a notice in a prominent place at the work site stating the requirements of this article. (reference: Sec 31-29).
3. Certified Payrolls. With each payment application, Contractor shall submit a copy of all payrolls, including (at a minimum) the name and zip code for the covered employee, to the City accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper prevailing wage rate for the work performed. Beginning, January 30, 2018, all payroll submittals shall be completed electronically via the City's electronic compliance portal, LCP Tracker. No payment application shall be deemed accepted until such time as the Procurement Department has confirmed that a certified payroll for the applicable payment application has been accurately submitted in LCP Tracker.
 - a. LCP Tracker Training. The Procurement Department offers ongoing training in LCP Tracker to all contractors. To schedule a training session, contact Alian Gonzalez at AlianGonzalez@MiamiBeachFL.gov or at 305-673-7490.

II. LOCAL WORKFORCE PARTICIPATION GOALS

1. Responsible Contractor Affidavit (RCA). As a condition of being responsive to the requirements of the solicitation and eligible to be considered for award, the Contractor shall submit a Responsible Contractor Affidavit affirming that it will make its best reasonable efforts to promote employment opportunities for Miami-Dade County

residents by seeking to achieve a project goal of having thirty percent (30%) of all construction labor hours performed by Miami-Dade County residents. The Contractor shall also affirm that it will make its best reasonable efforts to promote employment opportunities for Miami Beach residents. Failure to submit the RCA shall result in the bid or proposal being disqualified and deemed non-responsive.

2. Workforce Performance Report. Before its final application for payment, the Contractor shall submit its final Certified Payroll in LCP Tracker, which shall be deemed its final Workforce Performance Report. If the project goal of thirty percent (30%) of all construction labor hours to be performed by Miami-Dade County residents is not met, the Contractor shall submit supporting documentation verifying reasonable efforts to promote employment opportunities for Miami Beach and Miami-Dade County residents. No final payment application may be approved without this information.

LOCAL WORKFORCE PARTICIPATION PROGRAM

Responsible Contractor Affidavit Form

In accordance with Article III, Section 31-40 of the Miami Beach Code, all contractors and subcontractors of any tier performing on a city contract valued in excess of \$1,500,000 for (i) the construction, demolition, alteration and/or repair of city buildings or city public works projects, or (ii) a contract valued in excess of \$1,500,000 which provides for privately-funded construction, demolition, alteration and/or repair of buildings or improvements located on city-owned land, and which are subject to Section 31-40 of the Miami Beach Code shall comply with the requirements of the Local Workforce Participation Program.

The undersigned Contractor affirms that, should it be awarded the contract pursuant to this solicitation, it shall comply with the following:

- i. The contractor will make its best reasonable efforts to promote employment opportunities for local Miami- Dade County residents and seek to achieve a project goal of having thirty percent (30%) of all construction labor hours performed by Miami-Dade County residents.

- ii. The contractor will also make its best reasonable efforts to promote employment opportunities for Miami Beach residents. To verify workers' residency, contractor(s) shall provide the residence address of each worker.

Print Name of Affiant

Print Title of Affiant

Signature of Affiant

Name of Firm

Date

Address of Firm

State

Zip Code

Additional Prevailing Wage and Local Workforce Participation Documentation

[see attached]

"General Decision Number: FL20210215 06/18/2021

Superseded General Decision Number: FL20200215

State: Florida

Construction Type: Building

County: Miami-Dade County in Florida.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/01/2021
1	01/22/2021
2	04/09/2021
3	04/23/2021
4	05/28/2021
5	06/18/2021

* ASBE0060-001 09/01/2019

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 34.28	14.37

 CARP1809-002 08/01/2016

	Rates	Fringes
CARPENTER: PILEDRIVERMAN.....	\$ 25.20	10.36

 ELEV0071-002 01/01/2021

Rates Fringes

ELEVATOR MECHANIC.....\$ 47.45 35.825

FOOTNOTE:

A: Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit; Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Veteran's Day; Thanksgiving Day; plus the Friday after Thanksgiving; and Christmas Day.

ENGI0487-019 07/01/2016

Rates Fringes

OPERATOR:

Backhoe/Excavator/Trackhoe.....\$ 23.75 9.20

ENGI0487-020 05/01/2016

Rates Fringes

OPERATOR: Concrete Pump.....\$ 26.04 9.23

ENGI0487-021 07/01/2016

Rates Fringes

OPERATOR: Crane

All Cranes 160 Ton
Capacity and Over.....\$ 33.05 9.20

All Cranes Over 15 Ton
Capacity.....\$ 32.05 9.20

OPERATOR: Forklift.....\$ 23.25 9.20

OPERATOR: Mechanic.....\$ 32.05 9.20

OPERATOR: Oiler.....\$ 23.50 9.20

IRON0272-001 10/01/2020

Rates Fringes

IRONWORKER, STRUCTURAL.....\$ 25.79 13.34

IRON0402-001 01/01/2019

Rates Fringes

IRONWORKER, ORNAMENTAL.....\$ 23.69 12.70

PLUM0519-001 04/01/2021

Rates Fringes

PLUMBER.....\$ 30.43 12.44

PLUM0725-001 07/16/2020

Rates Fringes

PIPEFITTER (Includes HVAC
Pipe, Unit and Temperature
Controls Installations).....\$ 38.03 14.50

SFFL0821-004 01/01/2021

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 29.88	20.27

 SHEE0032-001 12/01/2013

	Rates	Fringes
SHEET METAL WORKER, Includes HVAC Duct Installation.....	\$ 23.50	12.18

 SUFL2014-024 08/16/2016

	Rates	Fringes
CARPENTER, Includes Acoustical Ceiling Installation, Drywall Finishing/Taping, Drywall Hanging, Form Work, Metal Stud Installation.....	\$ 18.04	3.24
CEMENT MASON/CONCRETE FINISHER...	\$ 13.06	0.70
ELECTRICIAN, Includes Low Voltage Wiring.....	\$ 29.60	9.38
IRONWORKER, REINFORCING.....	\$ 17.72	0.00
LABORER: Common or General, Including Cement Mason Tending...	\$ 11.79	0.70
LABORER: Pipelayer.....	\$ 13.56	1.34
OPERATOR: Bulldozer.....	\$ 15.40	1.90
OPERATOR: Grader/Blade.....	\$ 18.97	0.00
OPERATOR: Loader.....	\$ 16.00	2.82
OPERATOR: Roller.....	\$ 14.43	4.78
PAINTER: Brush, Roller and Spray.....	\$ 16.00	3.48
ROOFER.....	\$ 19.98	4.77
TILE SETTER.....	\$ 18.01	0.00
TRUCK DRIVER: Dump Truck.....	\$ 13.22	2.12
TRUCK DRIVER: Lowboy Truck.....	\$ 14.24	0.00

 WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this

contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007

in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.

Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

COMPOSITE EXHIBIT J

PRESENTLY PERMITTED DEVELOPMENT

all as of July 20, 2022

P25 Project:

- (1) Permitted Development and Uses.

All uses permitted by Sections 142- 422, 423,424 , and Sections 142-332, 333, 334 and 336 of the Land Development Regulations and Policy RLU 1.1.17 of the 2040 Comprehensive Plan

- (2) Density, Building Heights, Setbacks and Intensities.

As permitted or required by Sections 142 - 425 and Sections 142-306, 307, 308 and Sections 142-337, 338, 339 of the City Land Development Regulations and Policy RLU 1.1.17 of the 2040 Comprehensive Plan

- (3) Calculation of Floor Area.

Lot size 37,500 SF X 1.87 = 70,125 SF Floor Area

P26 Project:

- (1) Permitted Development and Uses.

All uses permitted by Sections 142- 422, 423,424 and Sections 142-332, 333, 334 and 336 of the Land Development Regulations and Policy RLU 1.1.17 of the 2040 Comprehensive Plan

- (2) Density, Building Heights, Setbacks and Intensities.

As permitted or required by Sections 142 - 425 Sections 142-337, 338, 339 of the City Land Development Regulations and Policy RLU 1.1.17 of the 2040 Comprehensive Plan

- (3) Calculation of Floor Area.

Lot size 48,000 SF X 2.75 = 132,000SF Floor Area

THIS EXHIBIT DESCRIBES THE PRESENTLY PERMITTED DEVELOPMENT FOR PURPOSES OF THE DEVELOPMENT AGREEMENT ACT ONLY. THE PROJECT SHALL CONFORM TO THE DESCRIPTION, TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT.

COMPOSITE EXHIBIT K

PUBLIC FACILITIES

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 Development Agreement Act, that are described in the City of Miami Beach 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 L

PUBLIC RESERVATIONS AND DEDICATIONS

1. Unity of Title
2. Declaration

EXHIBIT M

REQUIRED DEVELOPMENT APPROVALS

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

EXHIBIT N

FORM OF CONFIRMATION OF DATES CERTIFICATE

THIS CONFIRMATION OF DATES CERTIFICATE (this “**Certificate**”) is made as of this ____ day of _____, 202__ by and between the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation duly organized and existing under the laws of the State of Florida (“**Owner**”) LINCOLN ROAD PROPERTY OWNER, L.P., a Delaware limited partnership (“**Developer**” and together with Owner, each a “**Party**” and collectively, the “**Parties**”).

RECITALS:

WHEREAS, the Parties entered into that certain Development Agreement by and between Owner, as owner, and Developer, as developer, dated as of _____, 2022 (the “**Development Agreement**”) and that certain Agreement of Ground Lease by and between Owner, as owner, and Developer, as tenant, dated as of _____, 2022 (the “**Ground Lease**”), pursuant to which this Certificate is delivered.

WHEREAS, Owner and Developer desire to confirm certain dates set forth in the Development Agreement and Ground Lease as set forth below.

NOW, THEREFORE in consideration of the foregoing, and of the mutual covenants contained herein, the Parties hereby agree as follows:

1. Recitals and Capitalized Terms. The recitals set forth above are true and correct and are incorporated herein by this reference. Capitalized terms used but not defined in this Certificate have the meanings set forth in the Development Agreement, or to the extent not defined in the Development Agreement, in the Ground Lease.

2. Confirmation of Dates.

- (a) The NTP Date is _____, 202__.
- (b) The Commencement Date is _____, 202__.
- (c) The Target Dates are as follows:
 - (i) The Target Approvals Date is _____, 202__.
 - (ii) The Target P25 Building Permit Date is _____, 202__.
 - (iii) The Target P25 Commencement Date is _____, 202__.
 - (iv) The Target P25 Parking Completion Date is _____, 202__.

- (v) The Target P26 Commencement Date is _____, 202__.
 - (vi) The Target P25 Completion Date is _____, 202__.
 - (vii) The Target P26 Completion Date is _____, 202__.
- (d) The Outside Dates are as follows:
- (i) The Outside Approvals Date is _____, 202__.
 - (ii) The Outside P25 Building Permit Date is _____, 202__.
 - (iii) The Outside P25 Commencement Date is _____, 202__.
 - (iv) The Outside P25 Parking Completion Date is _____, 202__.
 - (v) The Outside P26 Commencement Date is _____, 202__.
 - (vi) The Outside P25 Completion Date is _____, 202__.
 - (vii) The Outside P26 Completion Date is _____, 202__.
- (e) The Permitted Transfer Date is the earlier of _____, 202__ or the Stabilization Date (as defined in the Ground Lease).

5. Except for the certifications contained in this Certificate, all terms of the Development Agreement and Ground Lease shall remain unchanged and are hereby ratified and confirmed in all respects.

IN WITNESS WHEREOF, Owner and Developer have duly executed this Certificate as of the date and year first written above.

OWNER:

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

By: _____
Name:
Title:

DEVELOPER:

LINCOLN ROAD PROPERTY OWNER,
L.P., a Delaware limited partnership

By: Lincoln Road Property Owner GP, L.L.C.,
a Delaware limited liability company, its
general partner

By: _____

Name:
Title:

DEVELOPER:

LINCOLN ROAD PROPERTY OWNER,
II L.P., a Delaware limited partnership

By: Lincoln Road Property Owner II GP,
L.L.C., a Delaware limited liability company,
its general partner

By: _____
Name:
Title: