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# MIAMI BEACH

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## Development Agreement

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2021-173-KB  
FOR MIXED-USE DEVELOPMENTS INCORPORATING  
CLASS A OFFICE SPACE WITH RESPECT TO  
CITY-OWNED PARKING LOT P27

**DEVELOPMENT AGREEMENT**

**between**

**CITY OF MIAMI BEACH, FLORIDA**

**(“Owner”)**

**and**

**1664 MERIDIAN, LLC**

**(“Developer”)**

**Dated as of \_\_\_\_\_, 2022**

**LINCOLN LANE P27 PROJECT**

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## 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 **1664 MERIDIAN, LLC, a Florida limited liability company (“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: Lincoln Road Holdings, LLC (an Affiliate of Developer); Lincoln Road Property Owner, L.P., a Delaware limited partnership (“**Starwood 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 (consisting, as of the date of this Agreement, of a joint venture among The Pebbles Corporation, Scott Robins Companies, Inc. and the Baron Corporation) with regards to P27, and if the Administration is not successful in negotiating an agreement with Developer, authorizing the Administration to negotiate with Starwood Developer in regard to P27, and (b) negotiate with Starwood Developer (a joint venture among Integra Investments, LLC, Starwood Capital Group Holdings, L.P. and The Comras Company) with regards to P25 and P26 (the “**Option 5 Project**”), and if the Administration is not successful in negotiating an agreement with Starwood Developer, authorizing the Administration to negotiate with Developer in regard to P25 and P26; and

**WHEREAS**, on February 23, 2022, the City Commission adopted Resolution No. 2022-32054 authorizing the Administration to negotiate with Developer in regard to P27 and to negotiate with Starwood Developer in regard to P25 and P26; 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 an Agreement of Ground Lease for the Land (as hereinafter defined), and Development Agreement with Developer for the development of the Project.

**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 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 (i.e., greater than 50%) 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 such subsequent referendum, a “**2023 Referendum**” and along with the 2022 Referendum, each, a “**Referendum**”). The effectiveness of this Agreement shall be contingent upon voter approval of the Ground Lease in a 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 after the date on which it is determined that the 2022 Referendum was not successful, 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’ mutual 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’ mutual 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 5 Project will likely be phased, taking into account all appropriate factors, including the construction of the Miami Beach Convention Center Hotel. 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 and/or phasing of the Project and the Option 5 Project, including the viability and feasibility of the Project. Within sixty (60) days after the Effective Date, the City, acting in its sole, reasonable discretion, shall notify Developer and Starwood Developer in writing whether (a) the Project and the Option 5 Project may be developed in tandem or otherwise simultaneously without having an adverse impact on the City's residents, businesses and visitors, or if not, (b) whether the Project or the Option 5 Project will be the first to receive a notice to proceed with the preliminary work 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 on Developer with no right of appeal.

(c) Promptly following issuance of the Notice to Proceed by Owner to Developer, City Manager (or his or her designee) and Developer shall promptly execute and deliver a confirmation of dates certificate substantially in the form attached hereto as **Exhibit N** (the "**Confirmation of Dates Certificate**"). Upon notice from either Developer or Owner that any Unavoidable Delay, Owner 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, Owner Delay and/or Economic Force Majeure, or such Unavoidable Delay, Owner 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 and/or Outside Dates as a result of such Unavoidable Delay, City Delay and/or Economic Force Majeure, as applicable.

### **Section 1.3 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"** means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such Person. For purposes hereof, the term **"control"** (including the terms **"controlled by"** and **"under common control with"**) shall mean the possession of a Controlling Interest.

Unless the context otherwise requires, any reference to **“Affiliate”** in this Agreement shall be deemed to refer to an Affiliate of Developer.

**“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 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 buildings or structures to be erected, constructed, altered, moved, converted, extended, enlarged, or used, for any purpose, in conformity with applicable codes and ordinances.

**“Building Equipment”** has the meaning provided in the Ground Lease, as applicable.

**“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 for business.

**“Certificate of Completion”** means a certificate of completion issued by the applicable Governmental Authority for the applicable Improvements.

**“Certificate of Occupancy”** means a certificate of occupancy for the Project, and shall include any such certificate designated as **“temporary”** in nature, provided such temporary certificate of occupancy shall allow for the beneficial use and occupancy of the Project, or portion thereof, by tenants, occupants, users, and visitors. Nothing herein shall be deemed to modify the authority of the agency(ies) having jurisdiction to determine whether to issue a Certificate of Occupancy. Notwithstanding the foregoing, or anything to the contrary herein, if Developer performs tenant improvement work for interior tenant spaces, which will delay the issuance of a Certificate of Occupancy, for purposes of meeting the Outside Dates, the Certificate of Occupancy shall be deemed issued upon issuance of a Certificate of Completion for such interior tenant spaces in Cold Grey Shell condition.

**“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, ordinances, and plans (including through the exercise of the City’s building, fire, code enforcement, police department or otherwise), shall be deemed to have occurred pursuant to the City’s regulatory authority as a governmental body and shall not be attributable in any manner to the City as a party to

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

**"City Attorney"** means the City Attorney of the City of Miami Beach, Florida.

**"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 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.

**"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 the commencement of demolition which impacts the surface parking rights of the City and major work (such as pilings or foundations) for construction of the Improvements in accordance with the Plans and Specifications to be performed in connection with Construction of the Project. Promptly after Commencement of Construction, Owner and Developer shall enter into an agreement acknowledging the date of Commencement of Construction. Any and all Early Work shall not be deemed to be Commencement of Construction.

**"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.

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

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

**"Construction Agreement(s)"** means, collectively, any general contractor's agreement, architect's agreement, engineers' agreements, or any other agreements for the provision of labor, materials or supplies entered into with respect to the Construction of the Project, as the same may be amended or otherwise modified from time to time, including, for the avoidance of doubt such agreements entered into by subtenants of the Office Component and/or Retail Component for completion of such subtenants' interior spaces through issuance of a Certificate of Occupancy for such spaces.

**“Construction Lender”** means the Institutional Lender, which must be the Recognized Mortgagee, selected by Developer to provide the Construction Loan in accordance with the terms of this Agreement and, as applicable, the Ground Lease.

**“Construction Loan”** means the loan to be provided by the Construction Lender to Developer for development and construction of the Project in accordance with this Agreement and, as applicable, the Ground Lease, including as part of a syndication.

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

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

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

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

**“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 1664 MERIDIAN, LLC, a Florida limited liability company.

**“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, 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.

**“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) 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 that does not impact the surface parking rights of the City.

**“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.

**“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 Certificate(s) of Occupancy issued by the City’s Building Department for the entire Project, other than a Temporary Certificate of Occupancy.

**“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; civil commotion; 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; landslides; earthquakes; lightning; fires; hurricanes; storms; floods; washouts and other natural disasters; catastrophic weather event; verifiable and industry-wide inability to procure or a general shortage of labor, equipment, 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.

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

**“General Construction Contract”** means the construction contract between Developer and the General Contractor for the construction of the Project in accordance with the Approved Plans and Specifications for the Project, within the contract times specified therein for completion of the Work, for a guaranteed maximum price that as of the date of Commencement of Construction will not exceed the sum allocated for construction of the Work as reflected in updated Development Budget, and that includes provisions requiring (a) a Performance Bond from the General Contractor for any Work that the General Contractor self-performs and from each subcontractor performing Work pursuant to a subcontract having a scope of work of Two Hundred Fifty Thousand Dollars (\$250,000) or more and (b) a Payment Bond from the General Contractor.

**“General Contractor”** means the duly licensed general contractor engaged by Developer for the construction of the Project and completion of the Work and approved by the City in accordance with this Agreement.

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

**“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 Land from Owner, as landlord, the form of which is attached as **Exhibit H** to this Agreement.

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

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

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

**“Land”** means the real property described in **Exhibit A** attached hereto and incorporated by reference herein, which includes the seven (7) tax folios 02-3234-007-0560, 02-3234-007-0570, 02-3234-007-0630, 02-3234-007-0640, 02-3234-007-0650, 02-3234-007-0660 and 02-3234-007-0670, all located in Miami Beach, Florida, and commonly known as 1664 Meridian Avenue, Miami, FL 33139, and subject to the provisions of Section 2.1(a) in the Ground Lease.

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

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

**“Lawsuit”** means (a) any lawsuit, action, proceeding, appeal or petition for writ of certiorari challenging the validity, legal propriety, issuance, execution or effectiveness, as applicable, of the Project Approvals, the Project Amendments, this Development Agreement or the Ground Lease, any such challenge relating to any approval required under the City Code and/or the City Charter, or (b) an injunction or other legal or equitable remedy which otherwise prevents or restricts Developer from taking possession of the Premises and/or the Commencement of Construction or Owner from performing its obligations under this Agreement and/or the Ground Lease.

**“Mandatory Project Elements”** means the elements and components of the Project to be developed by the Developer as further described on **Exhibit E**.

**“Mezzanine Lender”** means, if applicable, the Institutional Lender selected by Developer to provide the Mezzanine Loan and which is receiving a pledge of all of the direct or indirect equity interests in Developer.

**“Mezzanine Loan”** means, if applicable, the loan to be made by the Mezzanine Lender to the borrower thereof to provide financing for the Project in accordance with the Ground Lease, subordinate to the Recognized Mortgage to the Construction Lender, which Mezzanine Loan is secured by a lien on all or any portion of the direct or indirect ownership interests in Developer.

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

**“Mortgage Loan Documents”** means, collectively, any loan agreement, promissory note, mortgage, guaranty or other document evidencing or securing a loan secured by, among other collateral, Developer’s interest in the Ground Lease or the Project and entered into between Developer and the 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 that it may commence and proceed with the preliminary work and corresponding construction of the Project in accordance with this Agreement. The actual date of issuance of NTP shall be determined by the City in its sole, reasonable discretion, and shall be subject to any phasing between the Project and the Option 5 Project.

**“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) an

Unavoidable Delay, (ii) Owner Delay and/or (iii) Economic Force Majeure, if applicable and 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 thirteen (13) months (inclusive of one month to allow all appeal periods to expire) after the NTP Date;

(b) **“Outside Building Permit Date”** means the date by which Developer shall obtain the Building Permit, which is anticipated to be twenty (20) months after the date of issuance of all final Project Approvals and must occur not later than thirty-three (33) months after the NTP Date;

(c) **“Outside Commencement Date”** means the date by which Developer shall Commence Construction of the Project, which is anticipated to be one (1) month after the issuance of the Building Permit and must occur not later than thirty-four (34) months after the NTP Date;

(d) **“Outside Completion Date”** means the date by which Developer shall Substantially Complete Construction of the Project and the Certificate of Occupancy shall have been issued, which is anticipated to be thirty (30) months after Commencement of Construction of the Project and must occur not later than sixty-one (64) months after the NTP Date;

(e) **“Outside Parking Opening Date”** means the date by which Developer shall open to the public and operate both the Public Parking Replacement Component and the Additional Parking Component, which is anticipated to be thirty (30) months after Commencement of Construction of the Project and must occur not later than sixty-four (64) months after the NTP Date; and

(f) **“Outside Stabilization Date”** means the date by which Developer shall have achieved Stabilization of the Project, which is anticipated to be twenty-four (24) months after Completion of Construction of the Project and not later than eighty-five (85) months after the NTP 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 as Owner may designate in writing to Developer from time to time.

**“Owner Delay”** means a delay in the performance by Owner, calculated to be the number of days in excess of the number of days specified in Sections 2.2(a) and/or 2.3, for the City’s review and approval or disapproval of the Preliminary Plans and Specifications and the Plans and Specifications, respectively, Section 2.4(b) in connection with the City Manager’s approval rights for the Contractor, Sections 3.1(a) and 3.1(b) in connection with Owner’s approval of modifications to



the Approved Preliminary Plans and Plans and Specifications, as applicable, and Section 21.(c)(ii) in connection with Owner's or the City Commission's approval in excess of the time periods set forth therein.

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

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

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

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

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

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

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

**“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 Ground Lease.

**“Project”** means the design, management, construction, development and ownership of the Improvements and their subsequent use and completion of the Work relating to the Improvements substantially in accordance with the Plans and Specifications therefor, 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 Land.

**“Project Amendments”** means, collectively, (a) an amendment to Policy RLU 1.1.17 of the 2040 Comprehensive Plan, to allow for all types of residential uses as well as mixed use developments as an allowable use in the Public Facility Government Uses (PF) future land use category, (b) 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 (c) 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 17<sup>th</sup> 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 ninety (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, as approved by Owner in accordance herewith, that would deviate from the Mandatory Project Elements or the Project Concept Plan.

**“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 all hard and soft construction costs, fees and expenses incurred or to be incurred in connection with the design, permitting, development and Construction of the Project. The projected Project Construction Costs are as set forth in the Development Budget.

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

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

**“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 the holder of the Recognized Mortgage; provided, however, that, the Recognized Mortgagee may not be an Affiliate of Developer (except if Developer

is an Affiliate of a Recognized Mortgagee that has caused the Ground Lease to be assigned to such Affiliate in lieu of foreclosure of the Recognized Mortgage of such Recognized Mortgagee).

**“Reimbursement Agreement”** means that certain Reimbursement Agreement by and between Owner and Developer dated as of March 18, 2022.

**“Requirements”** means:

(a) any and all laws, constitutions, rules, regulations, orders, ordinances, charters, statutes, codes, executive orders and requirements of all Governmental Authorities having jurisdiction over a Person and/or the Project Site or any street, road, avenue or sidewalk comprising a part of, or lying in front of, the Project Site or any vault in, or under the Project Site (including, without limitation, any of the foregoing relating to handicapped access or parking, the 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);

(b) the Certificates of Occupancy 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; 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.

**“Stabilization”** means the date that Developer has leased at least eighty-five (85%) of the net leasable square footage of the Project.

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

**“Substantial Completion”** or **“Substantially Complete”** or **“Substantially Completed”** means, with respect to the Project, that (1) it shall have been substantially completed in accordance with the Plans and Specifications and all conditions of permits and regulatory agencies to obtain a Certificate of Occupancy for the Project, or such portion thereof as provided in this Agreement, have been satisfied, (2) all of the Improvements therein (including all spaces within the Residential Component, the ground floor lobbies within each of the Office Component and Retail Component, the Parking Component and all stairwells and elevators within the Parking Component, which must be completed, as applicable, with all utilities, facilities (including finished restrooms located on the ground floor lobbies) and finishes allowing beneficial use and occupancy thereof for their intended purposes) shall have been issued Certificates of Occupancy, excluding, however, the Retail Component and the Office Component (other than the ground floor lobbies thereof), for which Certificate(s) of Completion shall have been issued, and, at a minimum, shall be in Cold Grey Shell

condition, and (3) 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) an Unavoidable Delay, (ii) Owner Delay and/or (iii) Economic Force Majeure, if applicable and each in accordance with this Agreement:

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

(b) **“Target Building Permit Date”** means the date targeted for issuance of the Building Permit, which is fourteen (14) months after the Target Approval Date (i.e., twenty-two (22) months after the NTP Date);

(c) **“Target Commencement Date”** means the date targeted for Commencement of Construction of the Project, which is one (1) month after the Target Building Permit Date (i.e., twenty-three (23) months after the NTP Date);

(d) **“Target Completion Date”** means the date targeted for Completion of Construction and issuance of a Certificate of Occupancy for the Project, which is twenty (20) months after the Target Commencement Date (i.e., forty-three (43) months after the NTP Date);

(e) **“Target Parking Opening Date”** means the date targeted for the opening to the public and operation of both the Public Parking Replacement Component and the Additional Parking Component, which is one (1) month after Target Completion Date (i.e., forty-four (44) months after the NTP Date); and

**“Term”** means the period commencing on the Effective Date and, unless sooner terminated as provided hereunder, expiring on the issuance of a Final Certificate of Occupancy for the entire Project, which shall be extended to include time required to perform and complete tenant improvement work performed by Developer pursuant to the Building Permit and the completion of all remaining punch list items with respect to completion of the Project in accordance with the terms of this Agreement, subject, however, to survival of any provisions of this Agreement that are expressly stated herein to survive such expiration or termination (as the case may be), but in no event shall the Term exceed the period set forth in Section 4.8 hereof.

**“Unavoidable Delays”** means a delay arising out of (i) any Force Majeure Event, (ii) a Project Approvals Delay, (iii) unforeseen site conditions to the extent not reasonably capable of being identified prior to execution of this Lease and are mutually agreed and identified prior to Commencement of Construction and/or (iv) a Lawsuit (not to exceed an aggregate of two (2) years for all Unavoidable Delays attributable to Lawsuits), in each case, which actually prevents or delays performance and that (a) is beyond the reasonable control of such Party incurring the delay, (b) is not due to the negligent or intentional act, error or omission of such Party and (c) if occurring after Commencement of Construction, directly 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 an Owner 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 twenty-one (21) calendar 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. With respect to any Unavoidable Delay that is an "Act of God" (e.g., a hurricane) that is of such an extent that reasonable methods of communication or access are not available, then notwithstanding the provisions of Section 21.1(a), 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 following the occurrence of such "Act of God" 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, Developer shall only be entitled to an extension of time for each day the critical path is delayed, and Developer shall not be entitled to double recovery thereon. For illustration purposes only, if two events of Unavoidable Delay are concurrent for two days, Developer 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.

**"Unity of Title"** means the unity of title, or covenant in lieu of unity of title joining the Land as a unified development site, substantially in the form attached hereto as **Exhibit F** to be signed by the City Manager and the Developer.

**"Work"** means the design, permitting, development and construction of the Project in accordance with the Plans and Specifications 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, 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 Project Site; utility relocations, installations, hook-ups or other infrastructure as may be required in connection with the Project and to obtain Certificates of Occupancy for the Project; total design, construction, installation, and functioning of the Project to the extent necessary to obtain Certificates of

Occupancy, and together with all additional, collateral and incidental items, work and services required for completion of construction of the Project.

## 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 the Project, and such design shall (1) conform in all material respects with the Project Concept Plan attached hereto as **Exhibit B**, except to the extent that changes thereto have been negotiated with, and approved by, Owner in accordance with this Agreement, and (2) include all Mandatory Project Elements, except to the extent that changes thereto have been negotiated with, and approved, by Owner in accordance with 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 (collectively, the “**Project Approvals**”), and the City shall have no duty or obligation to approve any particular design. Prior to submission of the Project’s design to the applicable City Land Development Boards, Developer shall submit to Owner (acting in its proprietary capacity as owner of the Land) the preliminary plans and specifications for the Project which shall include 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**”). The City, in its governmental or regulatory capacity, shall have no duty or obligation to approve any particular design. The City Manager shall have twenty (20) Business Days to (i) review the Preliminary Plans and Specifications and (ii) either approve or reasonably disapprove of the Preliminary Plans and Specifications. The City Manager shall review the Preliminary Plans and Specifications solely for conformity with the Project Concept Plan and to confirm that the Preliminary Plans and Specifications include all Mandatory Project Elements. The City Manager shall not unreasonably withhold his or her approval if the Preliminary Plans and Specifications include all Mandatory Project Elements and substantially conform to the Project Concept Plan. If the City Manager disapproves the Preliminary Plans and Specifications, it shall provide Developer with the specific details or elements of the Preliminary Plans and Specifications that are disapproved and which do not meet the requirements of the City as provided in this Agreement, and 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 forty-five (45) days after such disapproval, submit a revised modification to the Preliminary Plans and Specifications so that they conform in all material respects to the Project Concept Plan, and 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 have been approved by the City Manager.

(b) Promptly following the City Manager’s approval of the Preliminary Plans and Specifications in accordance with clause (a) above, Developer shall submit same to the applicable City Land Development Boards and any other applicable Governmental Authorities for approval. 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 on or before the Outside Approvals Date shall constitute an Event of Default under this Development Agreement.

(c) The City acknowledges and agrees that the City Land Development Boards and/or any other applicable Governmental Authority may require revisions to the Preliminary Plans and Specifications as a condition to the issuance of the Project Approvals; provided, however, any revisions to the Mandatory Project Elements shall be subject to approval by the City Manager in his or her sole discretion, and any material modifications to the Project Concept Plan shall be subject to approval by the City Commission in its reasonable discretion. Developer shall submit the Preliminary Plans and Specifications to the City Manager and/or City Commission for such approval pursuant to the foregoing process until such Preliminary Plans and Specifications have been approved by the City Manager and/or City Commission, as applicable. The Preliminary Plans and Specifications, 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 and/or City Commission, as applicable, as set forth herein, are referred to in this Agreement as the “**Approved Preliminary Plans.**”

(d) Specifically with respect to the DRB approval, the Developer intends to seek a waiver for up to an additional five feet (5') of height as measured from the base flood elevation plus maximum freeboard, to the top of the second floor slab of the building in accordance with Section 142-337 of the City Code and reserves the right to seek additional waivers or variances from the City Land Development Boards as may be needed to accommodate the proposed design of the Project, provided that all such waivers and variances are incorporated as part of Developer’s initial submission of its applications for Project Approvals (and if not so incorporated, Developer shall conclusively be deemed to have waived any right to seek such waivers or variances, unless Owner, in its proprietary capacity, otherwise agrees in its sole discretion), and which proposed design changes pursuant to such waivers and variances shall be subject to Owner’s approval, in its proprietary capacity, as part of its approval of the Preliminary Plans and Specifications.

### **Section 2.3 Plans and Specifications.**

Upon receipt of the Project Approvals, Developer shall prepare the Plans and Specifications for construction of the Project, consistent with the Approved Preliminary Plans, 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 and approve, or reasonably disapprove of the Plans and Specifications and shall review the Plans and Specifications solely for consistency with the Approved Preliminary Plans. If the City Manager disapproves the Plans and Specifications, it shall provide Developer with the specific basis for such disapproval and 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 forty-five (45) days after such disapproval,

submit a revised modification to the Plans and Specifications so that they conform in all material respects to the Approved Preliminary Plans and to satisfy the City Manager's objections, and then re-submit them to the City Manager pursuant to the foregoing process until such Plans and Specifications have been approved by the City Manager. Developer shall pursue approval by the City Manager of the Plans and Specifications diligently and in good faith.

**Section 2.4 Pre-Construction Obligations.**

(a) Prior to Commencement of any stage of Construction of the Project, Developer shall cause the General Contractor to furnish a payment bond ("**Payment Bond**") in form reasonably acceptable to Owner, and shall cause the General Contractor and/or subcontractors, as applicable, to furnish to Owner a performance bond (the "**Performance Bond**"), in a form reasonably acceptable to Owner, and each Payment Bond and Performance Bond shall be issued by a surety listed in the most recent United States Department of Treasury listing of approved sureties, guaranteeing the performance of the General Contractor under the General Construction Contract or such other security as is reasonably acceptable to the City Manager, after consultation with the City Attorney; provided, however, that the Performance Bond shall be required only for the General Contractor for any Work to be self-performed by the General Contractor and for each subcontractor performing Work pursuant to a subcontract having a scope of work of Two Hundred Fifty Thousand Dollars (\$250,000) or more. Owner may accept or reject, in its sole and absolute discretion, for any reasons and/or for no reason whatsoever, a completion guarantee from the General Contractor in substitution for such Payment and Performance Bond. Owner shall be named as a dual/co-obligee obligee under the Payment and Performance Bond; provided, however, Owner's rights under the Payment and Performance Bond shall be subordinate to the Recognized Mortgagee's rights under the Payment and Performance Bond and Owner shall agree in writing with such Recognized Mortgagee that Owner shall only seek to enforce its rights under the Payment and Performance Bond if the Ground Lease is terminated and such Recognized Mortgagee fails to exercise its rights under Section 11.6 of the Ground Lease for the execution of New Tenant's Documents (as defined in the Ground Lease).

(b) Developer's selection of the General Contractor shall be subject to the advance approval of the City Manager, 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 and any such approval or disapproval shall be given within ten (10) Business Days of submission by Developer. Provided that the General Contractor proposed by Developer does not have a significant history of material non-compliance with the law, City 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 achieved final completion of at least five projects of similar size and scope as the Project within the last ten (10) years; and
- (iii) Has total bonding capacity of at least One Hundred Million and No/100 Dollars (\$100,000,000.00).



(c) 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).

(d) 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, shall sign any application reasonably made by Developer which is required in order to obtain such Permits and Approvals and shall provide Developer with any information and/or documentation not otherwise reasonably available to Developer (if in Owner's possession) which is necessary to procure such Permits and Approvals. Any such accommodation by Owner shall be without prejudice to, and shall not constitute a waiver of, Owner's rights to exercise its discretion in connection with its governmental functions. Developer shall reimburse Owner, within ten (10) days after Owner's demand, for any reasonable out-of-pocket cost or expense payable to Owner's technical consultants (other than Owner's Consultant and Owner's employees), such as architects and engineers, so incurred by Owner in connection with Owner's assistance in obtaining the Permits and Approvals required by this Article 4.

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

(f) At all times prior to Commencement of Construction of the Project, City and the public shall have right to use the Land as a surface parking lot 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 in Owner's reasonable discretion 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 such use as a surface parking lot and (y) (a) all Early Work must be performed in accordance with the requirements of the City Code and all other applicable Requirements, (b) Developer shall have obtained, and shall have delivered to Owner copies of, all Permits and Approvals necessary for the commencement and performance of such Early Work, (c) Developer shall have entered into, and delivered to Owner a duly executed copy of, the construction contract between Developer and the duly licensed general contractor for such Early Work and (d) prior to commencing any Early Work on the Land, Developer shall have presented evidence reasonably acceptable to the City that all insurance coverages required under this Agreement and the Ground Lease are in place.

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

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

The term of Developer's possession of the Land shall commence immediately following Developer's satisfaction of each of the Possession Conditions set forth in the Ground Lease, and Commencement of Construction of the Project shall be subject to Developer's satisfaction of such Possession Conditions. Notwithstanding the foregoing or anything to the contrary herein, Developer's obligations for failure to satisfy Possession Conditions shall be governed by Sections 2.1(d) and 2.1(f) of the Ground Lease.

**Section 2.6 Parking Mitigation.**

(a) Developer shall stage construction of the Project in a manner that minimizes the extent and duration of displacement of the existing public parking spaces on the Land during construction; and

(b) In furtherance of and without limiting the foregoing, as a Possession Condition, Developer shall submit a parking mitigation plan in form and substance acceptable to Owner in its reasonable discretion that addresses both loss of parking within proximity (not greater than one-half mile) to the Premises and loss of revenue.

**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 and Commence Construction of the Project on or before the Target Commencement Date and (b) shall Commence Construction of the Project on or before the Outside Commencement Date. Failure to Commence Construction of the Project on or before the Outside Commencement Date shall constitute an Event of Default under this Agreement.

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

**Section 2.8 Construction Obligations.**

During Construction of the Project, Developer shall, or shall cause its General Contractor to:

(a) Select the means and methods of construction and use only adequate and safe procedures, methods, structures and equipment;

(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) Engage all architectural and engineering services, including for the provision of 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;

(d) Order and have delivered all materials required for the Work and shall be responsible for all materials so delivered to remain in good condition;

(e) Protect all Work prior to its completion and acceptance;

(f) Maintain the Project Site 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 and adjacent streets, properties and sidewalks in a clean and orderly manner at all times and be 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 damaged as a result of Construction of the Project, whether such streets, properties or sidewalks are publicly or privately owned;

(i) Promptly rectify any damage or interference caused by Developer to any improvements, equipment, structures or vegetation outside of the Project Site which is owned or controlled by Owner or the City; and

(j) Implement, and maintain in place at all times, a comprehensive hurricane and flood plan for the Project Site and the Work, 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 and in compliance with all Permits and Approvals and Requirements, shall install or cause to be installed all necessary connections between the Improvements, 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, grounding and installing within the Project Site, as applicable, new facilities for sewer, water, electrical, and other utilities as needed to service the Project, and, at its sole cost and expense, will install or cause to be installed inside the property line of the Project Site, any and all necessary utility lines, with adequate capacity for the Project and with the sizing of utility lines for the Project to conform with the Plans and Specifications approved by Owner.

**Section 2.10 Completion of Construction of the Project.**

(a) Substantial Completion of the Project shall be accomplished in a diligent manner, and in any event by the Outside Completion Date, the failure of which shall constitute an Event of Default under this Agreement and the Ground Lease. Final completion of the Construction of the Project, including but not limited to completion of all punch-list items, shall be accomplished in a diligent manner after Substantial Completion thereof, in each case in a good and workerlike manner, substantially in accordance with the Plans and Specifications (with no material deviations except as expressly permitted herein), in accordance with all applicable Requirements and at Developer's sole cost and expense.

(b) Upon Substantial Completion of Construction of the Project, Developer shall furnish Owner with the following as and when Substantial Completion of such portion 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 and that, in its professional judgment, after diligent inquiry, Construction of such portion of the Project has been Substantially Completed in accordance with the Plans and Specifications applicable thereto and, as constructed, the Improvements comply with all applicable Requirements;

(ii) a copy or copies of the Certificates of Occupancy for the Project (or portion thereof, as applicable) 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 the Project, evidencing that such Persons have been paid in full for all work performed or materials supplied in connection with the Construction of the Project, provided that if such payments are not yet due or are in dispute, partial lien waivers in form and substance reasonably satisfactory to Owner shall be obtained for any work partially performed, and the final lien waivers shall be delivered in conjunction with any final payments made to such party for which a waiver is required;

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

(v) a final contractor payment affidavit in form and substance reasonably satisfactory to Owner executed by the General Contractor (a) evidencing that all contractors, subcontractors, suppliers and materialmen retained by or on behalf of Developer in connection with

the Construction of the Project have been paid in full for all work performed or materials supplied in connection with the Construction of the Project and (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 (provided that any Project Construction Costs paid to Affiliates of Developer shall be included up to but not exceeding fair market value for the services provided by such Affiliates), which affidavit shall include as attachments: (A) proof of payment and other supporting documentation reasonably requested by Owner; and (B) a final accounting of all Project Construction Costs expended by Developer.

### **Section 2.11 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 the Possession Date (as defined in the Ground Lease and pursuant to Section 2.1(d)] of the Ground Lease), and to terminate this Development Agreement and the Ground Lease prior to the issuance of the Building Permit because (a) any changes to the Preliminary Plans and Specifications 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 the Project pursuant to the Plans and Specifications approved by Owner, (d) Developer, after diligent, good faith efforts, has been unable to secure adequate financing on financial terms that are commercially reasonable, or (e) there shall exist any material change in 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. In the event of termination of this Development Agreement and the Ground Lease pursuant to subsections (d) or (e) of this Section, Developer shall reimburse Owner for any reasonable, unreimbursed, out-of-pocket, third-party costs and expenses, that have not previously been paid pursuant to the Reimbursement Agreement without regard to the cap on such costs and expenses set forth in the Reimbursement Agreement. In the event of a termination of this Agreement and the Ground Lease pursuant to subsections (a), (b), or (c), each Party shall bear its own costs and expenses incurred in connection with this Agreement and the Ground Lease and neither Party shall have any further liability to the other Party, except for any payment or performance obligations, as applicable which arose prior to the date of such termination, including Developer's obligations pursuant to the Reimbursement Agreement. In the event of any termination of this Agreement and the Ground Lease pursuant to this Section 2.11, Developer, at Developer's sole cost and expense, shall restore the Land to a surface parking lot with curb cuts and driveways and otherwise to the same condition existing prior to commencement of any work thereon by Developer, which restoration must include installation and repair of any concrete or asphalt paving. The Developer's restoration obligations pursuant to this Section shall survive any termination of this Agreement.

### **Section 2.12 Representations.**

(a) Developer's Representation. Developer represents to Owner that its principals and Affiliates are experienced in the development, construction, 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, 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 has been or will be given the opportunity to perform all inspections and investigations concerning the Project Site, 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 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 Project, its value, or any other economic benefit that can be realized or expected therefrom, the presence or absence of Hazardous Substances, the tenants and occupants thereof, the zoning or other Requirements applicable thereto, taxes, the use that may be made of the 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 Project Site (including any subsurface conditions).

(c) "AS IS" Condition of Project Site. Developer acknowledges it has and will have relied solely on Developer's own inspections, tests, evaluations and investigations of and related to this Agreement and the 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 the Project Site in its "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 2.13 Developer's Project Obligations.**

Developer is obligated to and shall (i) design, permit, and construct the Project to comply 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 Outside Completion Date and (ii) maintain, and, if applicable, repair and reconstruct, as applicable, at its sole cost and expense during the Term, the Project in accordance with and subject to all of the terms and provisions of this Agreement.

### **Section 2.14 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 the Project, no later than the date of execution of the General Construction Contract, 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, Developer shall prepare and submit to Owner (acting in its proprietary capacity as owner of the Land), the Plans and Specifications, which Plans and Specifications shall be used to obtain the Building Permit. If such submitted Plans and Specifications are materially inconsistent with, or contain material modifications to, the Approved Preliminary Plans, then such Plans and Specifications shall clearly indicate, by "ballooning", highlighting, blacklining or describing in writing in sufficient detail in a memorandum accompanying such Plans and Specifications, all such modifications to the Approved Preliminary Plans. Within fifteen (15) Business Days of its receipt of such Plans and Specifications, Owner shall notify Developer, in writing, describing, with specificity, the basis for such disapproval of any material inconsistencies or material modifications of which Owner disapproves between the proposed Plans and Specifications and the Approved Preliminary Plans, 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 (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 are not indicated as required by this Section 3.1(a) or that the complexity of such changes from the Approved Preliminary Plans 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, as approved as herein provided above, are complete and sufficient and suitable to construct, furnish and equip the entire Project in accordance with the provisions of this Agreement, such written agreement shall be deemed to constitute Owner's conclusive approval of all modifications and inconsistencies, whether or not the modifications are highlighted, in such Plans and Specifications. 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 Project, (ii) materially deviate, individually or in the aggregate, from any of the Mandatory Project Elements or the Project Concept Plan, or (iii) could reasonably be expected to have a material adverse effect on the ability of Developer to complete Construction of the Project 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 which are necessitated

by Requirements or as a result of a drafting, coordination, mechanical or technical error in the Preliminary Plans and Specifications and/or Approved Preliminary Plans.

(b) If Developer desires to modify previously approved Plans and Specifications (as such may have been modified by approved Plans and Specifications), Developer shall submit any such modified Plans and Specifications to Owner for Owner's approval. Such modified Plans and Specifications shall clearly indicate, by "ballooning", highlighting, blacklining or describing in writing in sufficient detail in a memorandum accompanying such modified Plans and Specifications, all such proposed modifications to the Plans and Specifications. Within 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 as modified and the Plans and Specifications previously approved by Owner, it being agreed however, that Owner's failure to so notify Developer of its disapproval during such time period shall be deemed to constitute Owner's conclusive approval of such Plans and Specifications (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 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 which are necessitated by Requirements or as a result of a drafting, coordination, mechanical or technical error in the Plans and Specifications.

(c) If Owner disapproves any material inconsistencies or material modification in the Plans and Specifications from the Preliminary Plans and Specifications pursuant to Section 3.1(a) above, or Owner disapproves any of the material modifications to or material inconsistencies in the Plans and Specifications pursuant to Section 3.1(b) above, then Developer shall, at its election either: (x) submit Owner's disapproval to expedited arbitration pursuant to Section 3.5 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 forty-five (45) days after receiving Owner's disapproval notice, submit revised Plans and Specifications or a revised modification to the Plans and Specifications to meet Owner's objections, which revised Plans and Specifications or revised modification shall be reviewed 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 shall comply with all applicable Requirements. 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 comply with any applicable Requirements, including, without limitation, any



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

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

### **Section 3.3 Budget.**

(a) Developer will submit as a Possession Condition a reasonably detailed pre-construction budget and development budget for the Project, the form of which shall be reasonably acceptable to Owner (collectively, the “**Development Budget**”), which shall be modified and updated as design 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.

(b) Developer hereby represents or covenants and agrees that:

(i) Developer shall initially invest or cause to be invested (including amounts that are financed and all costs associated with, and directly related to, the planning, development, construction and ownership of the Improvements) not less than 100% of the Project Construction Costs, which as of the date of execution of this Agreement is estimated to be One Hundred Forty Million and No/100 Dollars (\$140,000,000.00) towards the total initial Project cost, subject to any adjustments due to value engineering, which do not change the design quality or scope of the Project and subject to Developer not expending all funds in the contingency line items of the Development Budget; and

(ii) Developer shall invest not less than ten percent (10%) of the Project Construction Costs, which as of the date of execution of this Agreement is estimated to be Fourteen Million and No/100 Dollars (\$14,000,000.00) in cash as its equity contribution towards the total initial Project cost (the “**Funded Equity**”), provided, however, that any increase in Project Construction Costs shall cause a corresponding increase in the Funded Equity such that Developer’s Funded Equity at all times represents not less than ten percent (10%) of the Project Construction Costs through completion of Construction.

(c) Upon Substantial Completion 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.

### **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 the Project except to the extent the same are reflected in the Plans and Specifications.

### **Section 3.5 Development Dispute.**

Any dispute or disagreement between Owner and Developer arising prior to the Project Opening Date with respect to the following matters (a “**Development Dispute**”) shall be finally resolved in accordance with the provisions of Section 23.1:

(a) Any dispute as to whether the Preliminary Plans and Specifications conform in all material respects with the Project Concept Plan;

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

(c) Any dispute as to whether Developer’s proposed modifications to the Approved Preliminary Plans or the Plans or Specifications pursuant to Section 2.3 or Section 2.5, or Sections 3.1(a) or 3.1(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 modification(s) to the Approved Preliminary Plans or the Plans and Specifications pursuant to Sections 3.1(a) or 3.1(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’s 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 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 and/or Outside Date as a result of any Unavoidable Delay, Owner Delay or Economic Force Majeure; and

(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 the Project only to the uses specified in this Agreement and the Ground Lease and to be bound by and comply with all of the provisions and conditions of this Agreement. Except with respect to the Project Amendments and any waivers or variances sought by Developer pursuant to and in accordance with Section 2.2(d), 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 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 the Project, Developer shall apply for preliminary concurrency determinations for the Project 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 impact. 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 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 the Project 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 the 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 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 the 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 eighty-five (85) months from the NTP Date, as reasonably extended or tolled for (i) Unavoidable Delays and/or (ii) Owner 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 rights or 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 the Project and the Project Site. Notwithstanding the foregoing, the City may apply subsequently adopted laws and policies to the Project Site and the Project (particularly as they may relate to quality of life issues such as, but not limited to noise, litter, and hours of operation) as permitted or required by the Development Agreement Act, only if the City has held a public hearing pursuant to Section 163.3233(2) and determined the requisite elements of Section 163.3233(2), Florida Statutes, as the same may be amended from time to time, have been met; provided, however, that this provision shall not be deemed to apply to regulations governing height, FAR, density, parking requirements or permitted uses, which are not subject to modification during the Term of this Agreement.

**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 Land under the Ground Lease is CD-3, as defined in the Land Development Regulations.

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

The Parties shall structure the transaction and the terms thereof so that, 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 Project may be subdivided as a leasehold commercial condominium (subject to the Ground Lease) 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 Public Parking Replacement Component, which shall be owned by Owner; and one (1) unit comprised of the Ground Lease Component, which shall be owned by Developer, and which shall grant reciprocal easements between the Public Parking Replacement Component and 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.

**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, to the extent applicable: Section 118-193 for conditional use permits issued by the Planning Board; Section 118-258 for design review and variance approvals issued by the Design Review Board; and Section 118-355 for variance approvals issued by the Board of Adjustment. 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 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 Building Permit shall not expire prior to the Outside Building Permit Date. Notwithstanding the foregoing, in no event shall any such tolling or extension of the Project Approvals or the time period to obtain the Building Permit be, or be deemed, an Unavoidable Delay or an Owner Delay.

**ARTICLE 5  
OWNER PARTICIPATION**

**Section 5.1 Owner’s Right to Use Field Personnel.**

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

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

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

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

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

(ii) the inspection by the Owner's Consultant of all Work (in accordance with the provisions of Section 5.1);

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

(iv) the delivery by Developer to the Owner's Consultant of two (2) copies of or electronic copies (in such file format(s) as Owner may reasonably require) of :

(1) the executed General Construction Contract;

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

(3) all insurance certificates required by Article 8 of this Agreement (including those of Developer and all contractors and subcontractors);

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

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

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

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

- (i) the early and late start and stop times for each major construction activity;
- (ii) all "critical path" activities and their duration;
- (iii) the sequencing of all procurement, approval, delivery and work activities;
- (iv) manpower levels;
- (v) late order dates for all long lead time materials and equipment;

(vi) Work will be commenced and completed in accordance with the applicable Target Dates and no later than the Outside Dates, in each case, as may be reasonably extended for an Unavoidable Delay and/or Owner Delay, if applicable and in accordance with this Agreement; and

- (vii) critical Developer and Owner decision dates.

Developer shall promptly provide to the Owner's Consultant three (3) hard copies of the CPM Schedule or an electronic, soft copy (in such file format(s) as Owner may reasonably require) of the CPM Schedule, as the same may be amended from time to time. The CPM Schedule shall (1) be revised by Developer whenever there is a material variance in the progress of the Construction from the then current CPM Schedule and otherwise at appropriate intervals, but in no event less

frequently than monthly and (2) provide for expeditious and practicable execution of the Construction.

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

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

## **ARTICLE 6 MISCELLANEOUS CONSTRUCTION PROVISIONS**

### **Section 6.1 Prevailing Wage and Local Workforce Participation.**

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

(b) Developer shall cause the General Contractor 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 which provide for the performance of labor on the Project Site 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 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 Project Site prior to Commencement of Construction and in accordance with the Plans and Specifications and all applicable Requirements.

**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). Developer shall also provide all of the funds necessary to complete Construction 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 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 adopted by the City, which fee schedule is hereby incorporated by reference and made a part of this Agreement (collectively, the “Fees”). Developer shall remain responsible for payment of the Fees notwithstanding any and all modifications or changes in price structure as imposed by the City or any other Governmental Authority authorized to impose such Fees.

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

**ARTICLE 8  
INSURANCE**

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

**ARTICLE 9  
DAMAGE, DESTRUCTION AND RESTORATION**

**Section 9.1 Casualty.**

If the Project Site is damaged or destroyed in whole or in part by fire or other casualty, the provisions of the Ground Lease applicable to damage or destruction by fire or other casualty to the “Premises” described under the Ground Lease shall govern the rights and obligations of Developer, Owner and the 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, 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 untenability of the Project Site 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 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 Recognized Mortgagee and those authorized to exercise such right, the provisions of the Ground Lease applicable to such taking of the “Premises” described under the Ground Lease shall govern the rights and obligations of Developer, Owner and the 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 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 the Ground Lease and this Agreement, as the same may be modified, amended or renewed, shall not be subject or subordinate to (a) any Mortgage now or hereafter existing, (b) any other liens or encumbrances hereafter affecting Developer's Interest in the Premises and Developer's interest in this Development Agreement or (c) any sublease or any mortgages, liens, or encumbrances now or hereafter placed on any subtenant's interest in the Project Site. Developer's Interest in the Premises and this Development Agreement and all rights of Developer hereunder are and shall be subject to all title matters of record.

**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 all trash and refuse which may accumulate in unreasonable quantities and arise from Developer's use of the Project Site in a prompt and sanitary manner. Upon Substantial Completion of portions of the Work, Developer shall and shall cause the General Contractor to promptly remove all rubbish, tools, scaffolding and surplus materials related to such Substantially Complete portions of the Work from the Project Site.

**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 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, the 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, notwithstanding the above, Developer shall have the right to execute the Recognized Mortgage in favor of the Recognized Mortgagee, the mezzanine loan documents in favor of the Recognized Mezzanine Lender, loan documents in favor of the Institutional Lender providing C-PACE financing for the Project, subleases and other instruments (including, without limitation, equipment leases) as provided by, and in each case in accordance with, the provisions of the Ground Lease.

(b) Owner shall not create, cause to be created, or suffer or permit to exist (i) any lien, encumbrance upon this Agreement, the Ground Lease or the income therefrom (except as expressly provided in the Ground Lease), the Project Site, or any part thereof or appurtenance thereto, which is not removed within the time period required pursuant to Section 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 the Project Site or any part thereof, or if any public improvement lien created, or caused or suffered to be created by Developer shall be filed against any assets of, or funds appropriated to, Developer or Owner, Developer shall, within thirty (30) days after Developer receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien or public improvement lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, Developer shall not be required to discharge any such lien if Developer shall have (i) furnished Owner with, at Developer's option, a cash deposit, bond, letter of credit from an Institutional Lender (in form reasonably satisfactory to Owner) or other security (such as a personal guaranty or title company indemnity) reasonably satisfactory to Owner, in an amount sufficient to pay the lien with interest and penalties; and (ii) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding with diligence and continuity; except that if, despite Developer's efforts to seek discharge of the lien, Owner reasonably believes that a court judgment or order foreclosing such lien is about to be entered or granted and so notifies Developer, Developer shall, within ten (10) days of notice to such effect from Owner (but not later than three (3) Business Days prior to the entry or granting of such judgment or order of foreclosure), cause such lien to be discharged of record or Owner may thereafter discharge the lien in accordance with Section 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 the Project Site or any part thereof or Developer's Interest in the Premises or Owner's Interest in the Premises as a result of any action of Owner, its officers, employees, representatives or agents, Owner shall, within thirty (30) days after Owner receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien, cause it to be discharged of record by payment, deposit, transfer to bond in accordance with Chapter 713, Florida Statutes, order of a court of competent jurisdiction or otherwise.

**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, the Project Site or any part thereof, nor as giving Developer any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against Owner's Interest in the Premises or any part thereof or against any assets of Owner. Notice is hereby given, and Developer shall cause all Construction Agreements to provide, that to the extent enforceable under Florida law, Owner shall not be liable for any work performed or to be performed at the Project Site or any part thereof for Developer or for any subtenant or for any materials furnished or to be furnished to the Project Site or any part thereof for any of the foregoing, and no mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials shall attach to or affect Owner's Interest in the Premises or any part thereof or any assets of Owner. The foregoing shall not require Developer to request advance waivers of lien from contractors or subcontractors.

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

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

**ARTICLE 17  
INDEMNIFICATION**

**Section 17.1 Indemnification Generally.**

The provisions of Article 20 of the Ground Lease shall be applicable to this Agreement as if the references to the “Premises” in such Article 20 were references to the “Project Site,” 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 the 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, Owner may, but shall be under no obligation to, perform the obligations 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 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 Building Permit on or before the Outside Building Permit Date;

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

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

(e) if Developer fails to open to the public and operate both the Public Parking Replacement Component and the Additional Parking Component on or before the Outside Parking Opening Date;

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

(g) 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 other than as set forth in Sections 20.1(a) – (f) or Sections 20.1(h) – (l) hereof and, if no cure period is expressly provided for herein, Developer shall fail to remedy such Default within thirty (30) days after notice by Owner of such Default (the “**Default Notice**”), or if such a Default is of such a nature that it cannot reasonably be remedied within thirty (30) days (but is otherwise susceptible to cure), Developer shall not (i) within thirty (30) days after the giving of such Default Notice, 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

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

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

(j) to the extent permitted by law, if Developer files a voluntary petition under Title 11 of the United States Bankruptcy Code, or if Developer files a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Developer, of all or any substantial part of its properties, or of all or any part of Developer's Interest in the Premises, and



the foregoing are not stayed or dismissed within one hundred fifty (150) days after such filing or other action; or

(k) 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

(l) 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 the Project Site or any part thereof or rights appertaining thereto (except for a levy made in connection with actions taken by Owner (other than holding Owner's Interest in the Premises)), or this Agreement and such execution or attachment is not vacated or removed by court order, bonding or otherwise within a period of sixty (60) days, subject to Unavoidable Delays (if applicable and in accordance with this Agreement), 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.<sup>1</sup>

## **Section 20.2 Enforcement of Performance and Termination.**

If any Event of Default occurs, 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, (b) exercise and enforce the Owner's rights pursuant to the assignment of Plans and Specifications, assignment of General Construction Contract and assignment of Construction Agreements delivered to Owner pursuant to the Ground Lease, 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

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<sup>1</sup> Confirmation of Dates Certificate, and subsequent updates, addressed in Section 1.2(b) above, and Section 3.5 addresses additional time to resolve Development Disputes.

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. Notwithstanding the foregoing or anything to the contrary herein, neither Owner nor the Developer shall be entitled to consequential, special, or punitive damages with respect to or in connection with Development Agreement and/or the Ground Lease.

### **Section 20.3 Expiration and Termination of Agreement.**

(a) If an Event of Default occurs under the Ground Lease which results in a termination of the Ground Lease, this Agreement shall terminate. If such termination is stayed by order of any court having jurisdiction over any proceeding described in Sections 20.1(j) or 20.1(k) 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 Developer's Interest in the Premises and may dispossess Developer by summary proceedings, writ of possession, proceedings in bankruptcy court or otherwise, subject to applicable Requirements.

(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 Recognized Mortgagee and 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 the 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 Developer’s Default or an Event of Default, Owner shall be entitled to seek to enjoin the Default or Event of Default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent Owner’s remedies are expressly limited by the terms hereof. 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 at least 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.

**Section 20.8 Economic Force Majeure.**

If, prior to Commencement of Construction, Developer is delayed, hindered or prevented from being able to obtain a commitment for or otherwise unable to secure adequate financing, on commercially reasonable terms in connection with the Construction Loan, or to the extent applicable, commitments for the Mezzanine Loan or C-PACE financing, each in accordance with the Ground Lease, due to Economic Force Majeure, then the applicable Target Dates and Outside Dates shall each be extended for the period of such delay, not to exceed nine (9) months in the aggregate; provided, that, in order to avail itself of any such extension due to Economic Force Majeure, Developer must give written notice of such occurrence to Owner within twenty-one (21) calendar 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 shall be delivered to Owner prior to Commencement of Construction. Developer must diligently attempt to remove, resolve, or otherwise seek to mitigate such delay (to the extent reasonably practicable), 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 (to the extent reasonably practicable) shall be deemed a waiver of Developer's right to extend such Target Dates and/or Outside Dates as a result of such Economic Force Majeure.

**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 Recognized Mortgagee or the 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 the 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: 1664 MERIDIAN, LLC  
c/o The Peebles Corporation  
13876 SW 56 St. #268  
Miami, FL 33175  
Attention: Donahue Peebles III, Executive Vice President]

with a copies to: Greenberg Traurig, LLP  
1840 Century Park East  
Suite 1900  
Los Angeles, CA 90067-2121  
Attention: Alison Weinberg-Fahey, Esq.

and: Holland & Knight  
701 Brickell Avenue  
Suite 3300  
Miami, FL 33131  
Attention: Tracy Slavens, Esq.

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 Recognized Mortgagee or the 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, conditioned, or delayed 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 shall be marked “**PRIORITY**”) bears the legend at the top of the first page thereof, set forth below in capital letters and in a type size not less than that provided below (14 point) 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.”

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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 is 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, as distinct from its proprietary, capacity from charging governmental fees on a nondiscriminatory 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 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) 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 the Project, parking operations during Construction 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 the Project and parking operations during Construction.

(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 and parking operations during Construction, shall be governed by the provisions of Article 28 of the Ground Lease as if such books and records were specifically described in such Article 28 as being part of the "books and records" described in such Article 28; provided, however, copying of all such "books and records" shall specifically be allowed.



**ARTICLE 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 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, 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 decor of the Project except to the extent the same is reflected in the Preliminary Plans and Specifications;

(2) The Project shall be a mixed-use building with Class A office space, retail space, residential apartment units (as applicable), 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 (without regard to changes thereto) and shall include all Mandatory Project Elements;

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

(4) The mutual goal of Developer and Owner that (A) the Project be Substantially Completed on or before the Outside Completion Date (B) the opening to the public and operation of both the Public Parking Replacement Component and the Additional Parking Component occur on or before the Outside Parking Opening Date and (C) the Stabilization of the Project be achieved on or before the Outside Stabilization Date;

(5) Applicability of any Requirement;

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

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

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

(h) The Development Arbitrator shall render a decision, in writing, as to any Development Dispute not later than two (2) Business Days following the conclusion of the Hearings regarding such Development Dispute, 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 conform in all material respects with the Project Concept Plan, (ii) the Preliminary Plans and Specifications include all of the Mandatory Project Elements, (iii) Developer's proposed modification(s) to the Approved Preliminary Plans or the Plans and Specifications 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, (iv) Developer's proposed modification(s) to the Approved Preliminary Plans or the previously approved Plans and Specifications pursuant to Sections 3.1(a) or 3.1(b), respectively, materially deviate, individually or in the aggregate, from any of the Mandatory Project Elements or the Project Concept Plan, (v) Owner has unreasonably failed to approve or give its consent to any modifications to the Preliminary Plans or Specifications pursuant to Section 2.3 or the Plans and Specifications pursuant to Sections 2.5, 3.1(a) or (b), (vi) Developer or Owner is entitled to any extension of any Target Date and/or Outside Date as a result of any Unavoidable Delay, Owner Delay and/or

Economic Force Majeure and/or (vii) the number of days of delay associated with the resolution of a Development Dispute to which Developer may be entitled if, but only if, Developer is the prevailing party in the Development Dispute. 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 the 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 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  
INSPECTOR GENERAL AND PUBLIC RECORDS ACT**

**Section 27.1 Inspector General.**

(a) Pursuant to Section 2-256 of the Code of the , the City has established the office of the inspector general which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.

(b) The office of the inspector general is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the inspector general has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The inspector general shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including, but not limited to, project design, bid specifications, (bid/proposal) submittals, activities of Developer, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption

(c) Upon ten (10) days' written notice to Developer, Developer shall make all requested records and documents available to the inspector general for inspection and copying. The inspector general is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including, but not limited to, Project design, bid specifications, (bid/proposal) submittals, activities of Developer, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with this Agreement and the Ground Lease and to detect fraud and corruption.

(d) The inspector general shall have the right to inspect and copy all documents and records in Developer's possession, custody or control which in the inspector general's sole judgment, pertain to performance of this Agreement and the Ground Lease, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all Project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.

(e) Developer shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this agreement and the Ground Lease, for examination, audit, or reproduction, until three years after final payment under the Ground Lease or for any longer period required by statute or by other clauses of this Agreement or the Ground Lease. In addition:

(i) If this Agreement is completely or partially terminated, Developer shall make available records relating to the work terminated until three years after any resulting final termination settlement; and

(ii) Developer shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Lease until such appeals, litigation, or claims are finally resolved.

(f) The provisions in this Section 27.1 shall apply to Developer, its officers, agents, employees, subcontractors and suppliers. Developer shall incorporate the provisions in this Section 27.1 in all subcontracts and all other agreements executed by Developer in connection with the performance of this Agreement and the Ground Lease.

(g) Nothing in this Section 27.1 shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this Section 27.1 are neither intended nor shall they be construed to impose any liability on the City by Developer or third parties.

## **Section 27.2 Public Records Act.**

Records copied by Owner, if any, shall be subject to the requirements of the Florida Public Records Act set forth in Chapter 119 of the Florida Statutes ("**Public Records Act**"). To the fullest extent permitted by law, Owner shall protect from disclosure any records that are confidential and exempt from disclosure under Florida law; provided, however, that nothing herein shall preclude Owner or its employees from complying with the Public Records Act, and any such compliance shall not be deemed a default by Owner under this Lease.

**ARTICLE 28  
MISCELLANEOUS**

**Section 28.1 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 28.2 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 28.3 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 the Project on the Project Site and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as expressly set forth herein and in such attachments thereto or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the parties hereto. Notwithstanding anything to the contrary set forth in this Agreement, the terms of this Agreement shall supersede the terms of the 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 as between City and Developer.

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

### **Section 28.4 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 28.5 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 28.6 Performance at Each Party's Sole Cost and Expense.**

Unless otherwise expressly provided in this Agreement and/or 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 28.7 Recognized Mortgagee Charges and Fees.**

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

**Section 28.8 Time is of the Essence.**

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

**Section 28.9 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 the Ground Lease and Developer may assign all its rights hereunder to the Recognized Mortgagee as security for the performance of Developer's obligations under the Mortgage Loan Documents. This Agreement, however, shall automatically transfer in connection with a transfer of Developer's (as Tenant) interest in the Ground Lease in accordance with the provisions of the Ground Lease.

**Section 28.10 City Manager's Delegated Authority.**

Notwithstanding any provision to the contrary in this Agreement, nothing herein shall preclude the City Manager 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 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 28.11 Corporate Obligations.**

It is expressly understood that this Agreement and obligations issued hereunder are solely corporate obligations, and that, except as otherwise provided in Section 19.2(b) of the Ground Lease incorporated herein pursuant to Article 16, 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 28.12 Nonliability of Officials and Employees.**

Except as otherwise provided in Section 19.2(b) of the Ground Lease incorporated herein pursuant to Article 16, 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 28.13 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 the Project, or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Agreement, the Ground Lease or other documents executed by the Parties or statements made by the Parties with respect to the Project shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship of any kind or nature whatsoever between the parties hereto. The provisions of this Section 28.13 shall survive expiration or earlier termination of this Agreement.

**Section 28.14 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 28.15 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 Recognized Mortgagee, the Recognized Mezzanine Lender or 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 28.16 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, contractors, consultants, 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 28.17 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 28.17. 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 28.18 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:

1664 MERIDIAN, LLC, a Florida limited liability company

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

By: \_\_\_\_\_  
Name:  
Title:

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

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

The foregoing instrument was acknowledged before me, by means of [ ] physical presence or [ ] online notarization, this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of 1664 MERIDIAN, LLC, a Florida limited liability company, on behalf of such limited liability company. They are personally known to me or produced valid Florida driver's licenses as identification.

My commission expires:

\_\_\_\_\_  
Notary Public, State of Florida  
Print Name: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE LAND**

The Land referred to herein below is situated in the County of Miami-Dade, State of Florida, and is described as follows:

PARCEL I:

LOT TWO (2) OF BLOCK THIRTY-SIX (36), GOLF COURSE SUBDIVISION AMENDED, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 6, AT PAGE 26 OF THE PUBLIC RECORDS OF MIAMI-DADE (F/K/A DADE) COUNTY, FLORIDA.

PARCEL II:

LOT THREE (3) AND SOUTH HALF (S/1/2) OF LOT FOUR (4) OF BLOCK THIRTY-SIX (36) OF GOLF COURSE SUBDIVISION, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 6, AT PAGE 26, OF THE PUBLIC RECORDS OF MIAMI-DADE (F/K/A DADE) COUNTY, FLORIDA.

THE SOUTH TWENTY (20) FEET OF THE NORTH ONE-HALF (N1/2) OF LOT FOUR (4) OF BLOCK THIRTY-SIX (36) OF GOLF COURSE SUBDIVISION, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 6, PAGE 26, OF THE PUBLIC RECORDS OF MIAMI-DADE (F/K/A DADE) COUNTY, FLORIDA.

PARCEL III:

LOTS ELEVEN (11) AND TWELVE (12) IN BLOCK THIRTY-SIX (36) OF GOLF COURSE SUBDIVISION, ACCORDING TO THE AMENDED PLAT THEREOF, RECORDED IN PLAT BOOK 6, AT PAGE 26, OF THE PUBLIC RECORDS OF MIAMI-DADE (F/K/A DADE) COUNTY, FLORIDA.

PARCEL IV:

LOT THIRTEEN (13) IN BLOCK THIRTY-SIX (36) OF GOLF COURSE SUBDIVISION, ACCORDING TO, THE PLAT THEREOF, RECORDED IN PLAT BOOK 6, AT PAGE 26, OF THE PUBLIC RECORDS OF MIAMI-DADE (F/K/A DADE) COUNTY, FLORIDA.

PARCEL V:

LOT FOURTEEN (14) IN BLOCK THIRTY-SIX (36) OF GOLF COURSE SUBDIVISION, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 6, AT PAGE 26, OF THE PUBLIC RECORDS OF MIAMI-DADE (F/K/A DADE) COUNTY, FLORIDA.

PARCEL VI:

LOT FIFTEEN (15) OF BLOCK THIRTY-SIX (36) OF GOLF COURSE SUBDIVISION, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 6, AT PAGE 26, OF THE PUBLIC RECORDS OF MIAMI-DADE (F/K/A DADE) COUNTY, FLORIDA.

Folio Numbers:

02-3234-007-0560

02-3234-007-0570

02-3234-007-0630

02-3234-007-0640

02-3234-007-0650

02-3234-007-0660

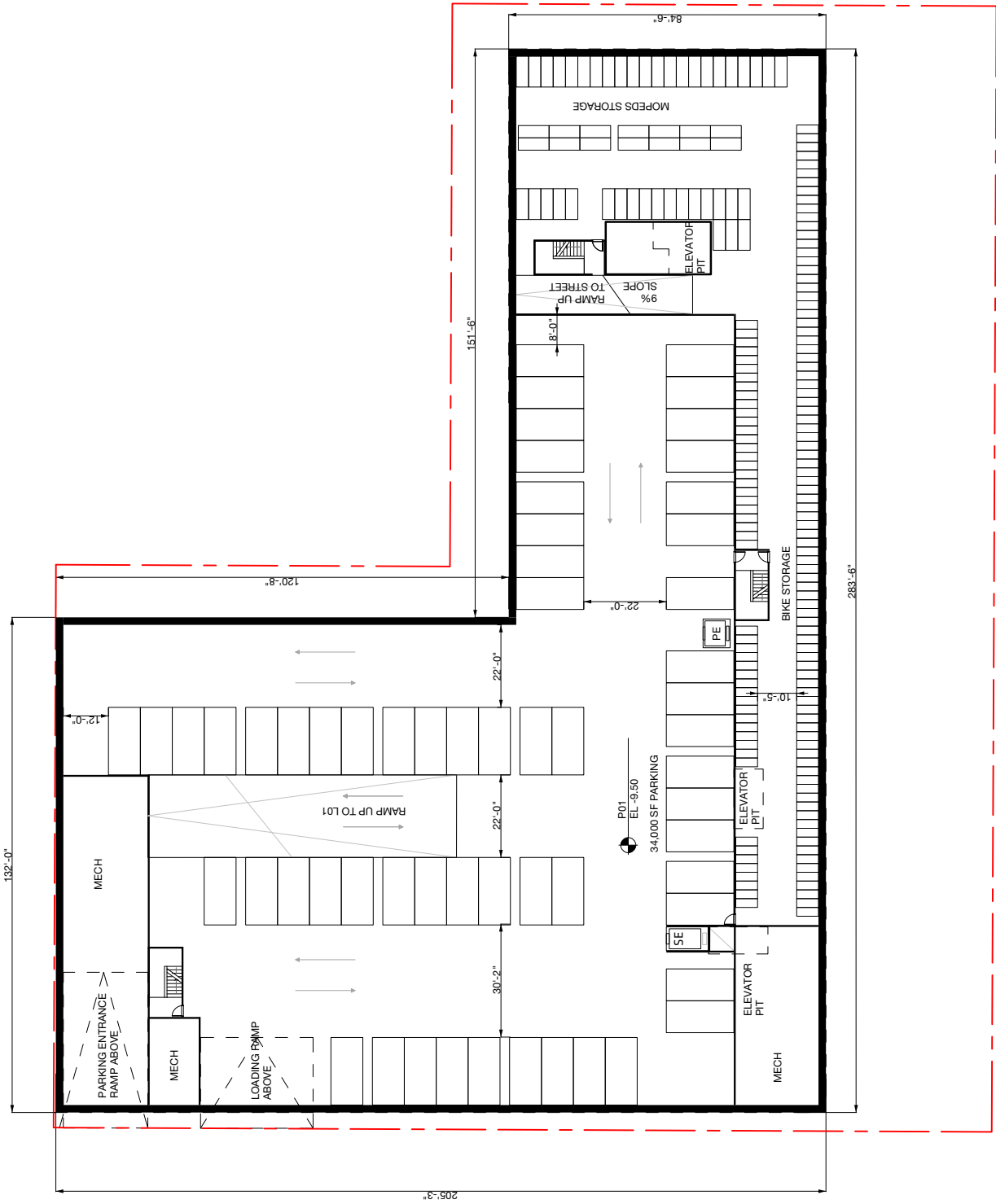
02-3234-007-0670

**EXHIBIT B**

**PROJECT CONCEPT PLAN**

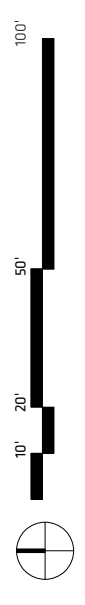
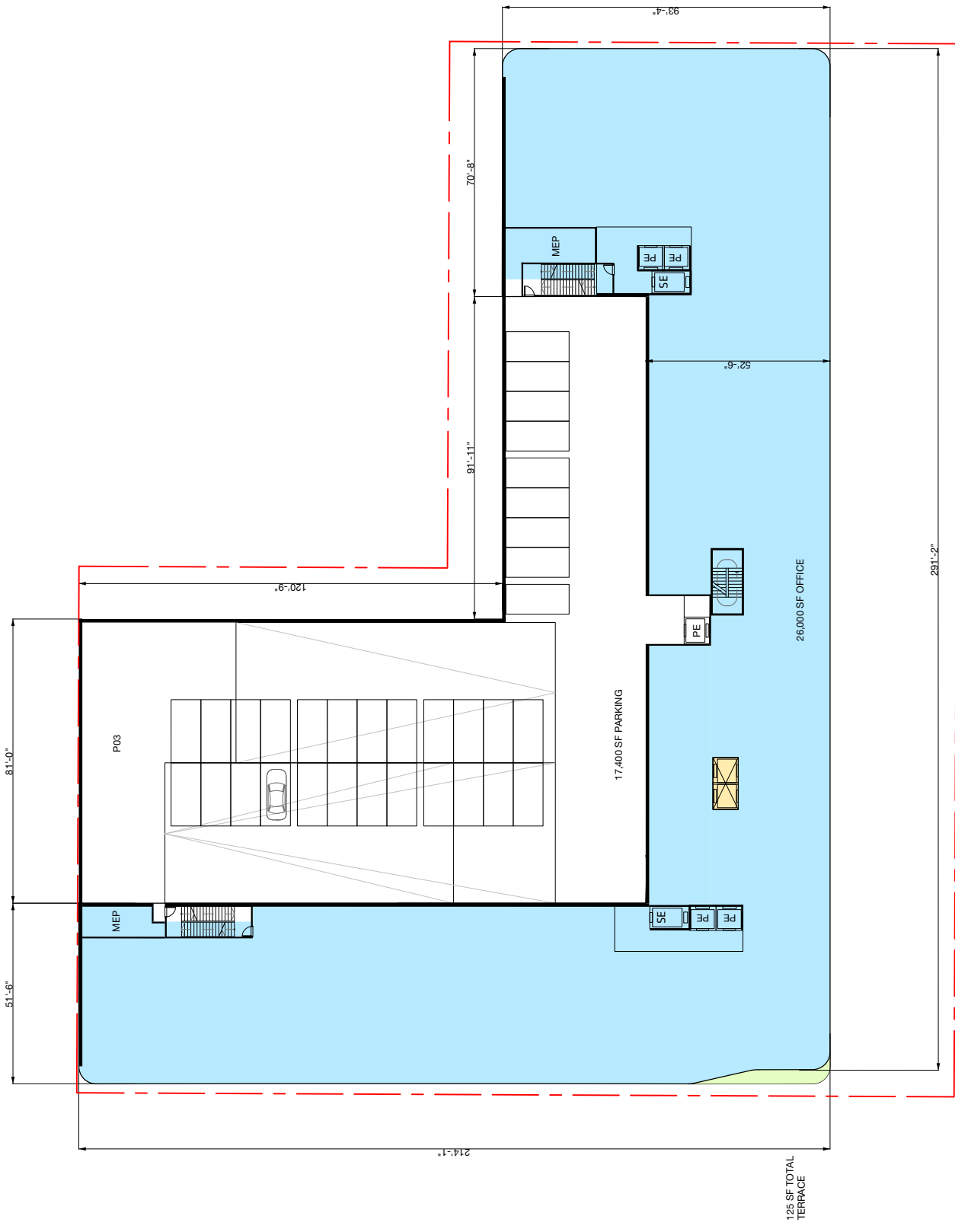
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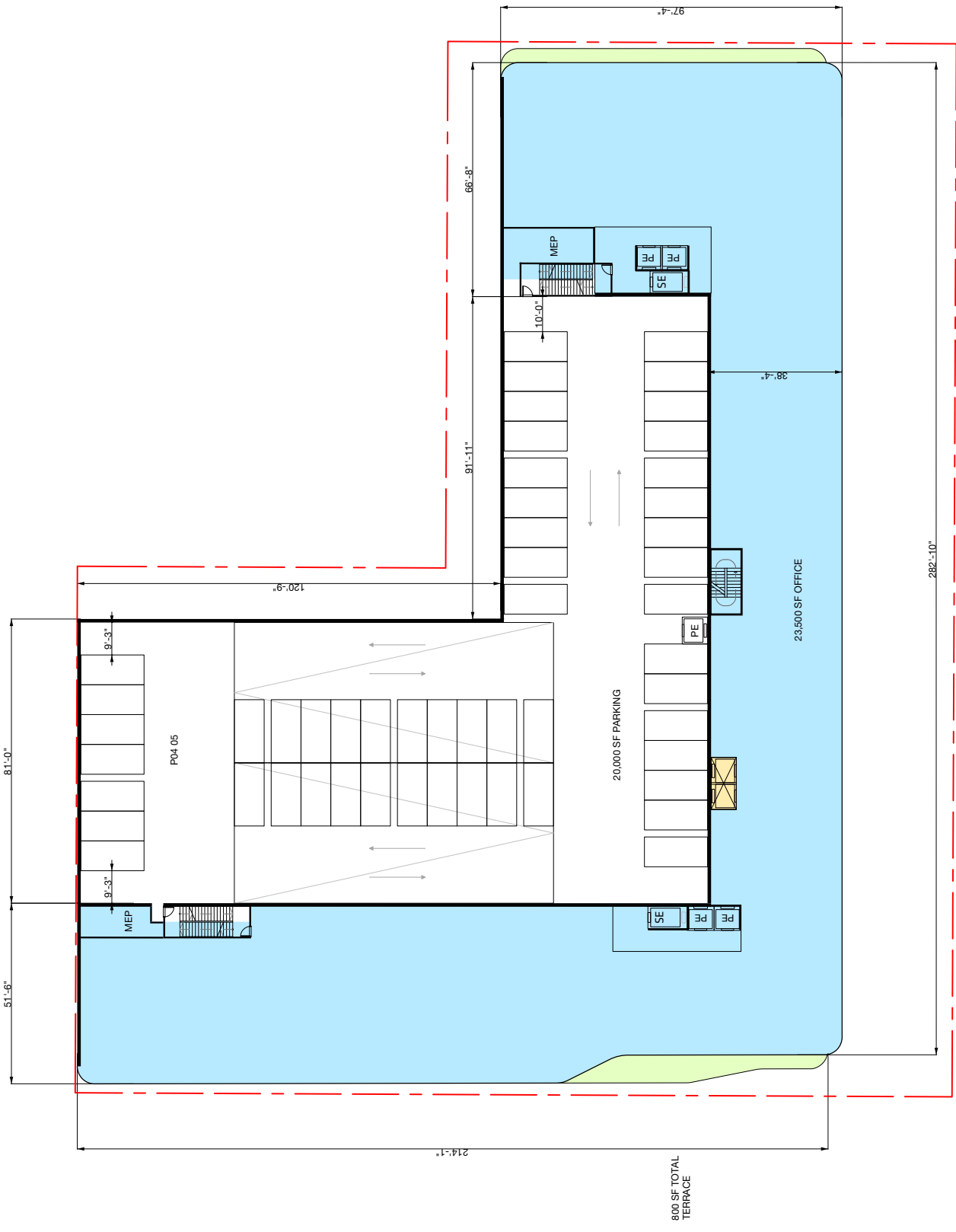


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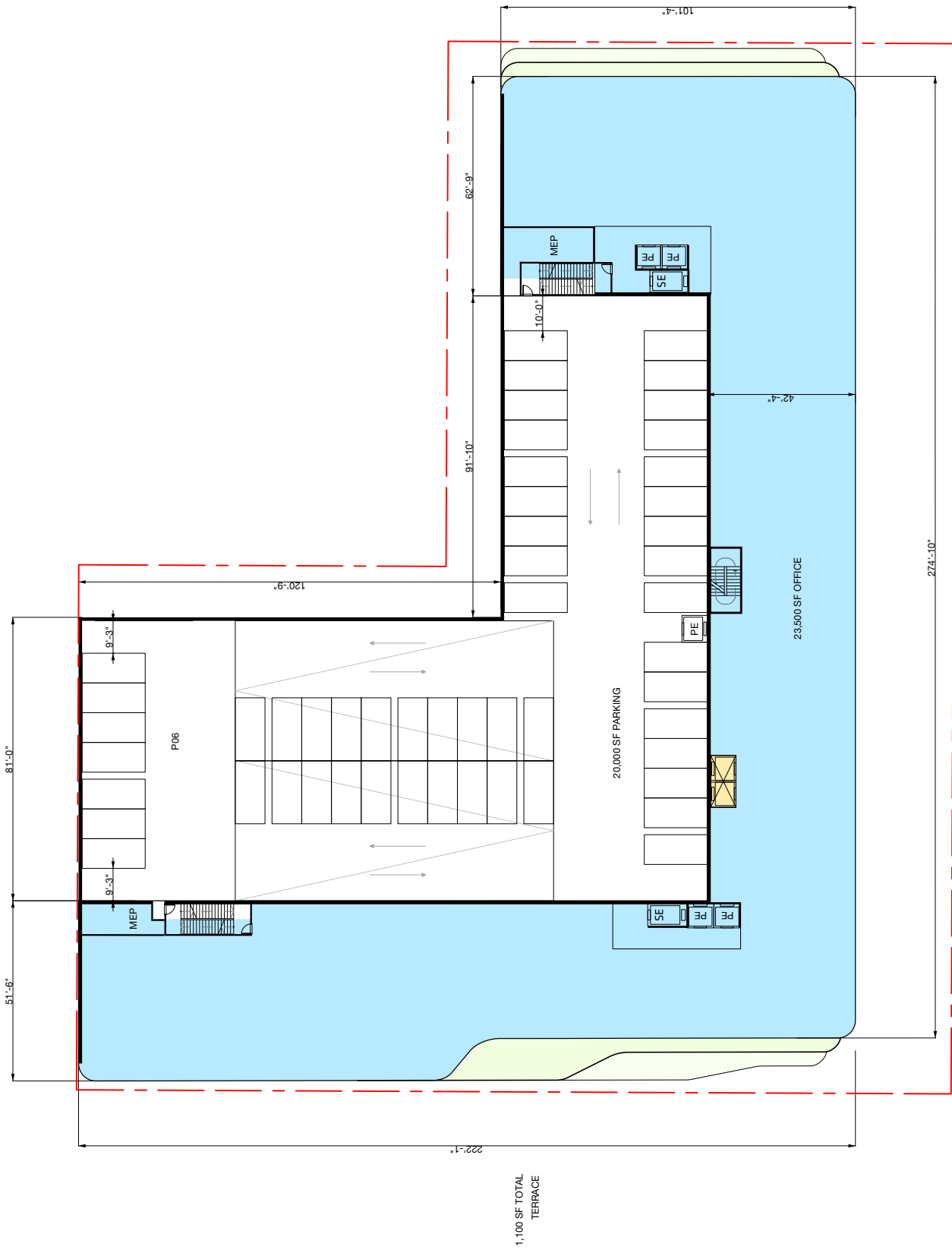




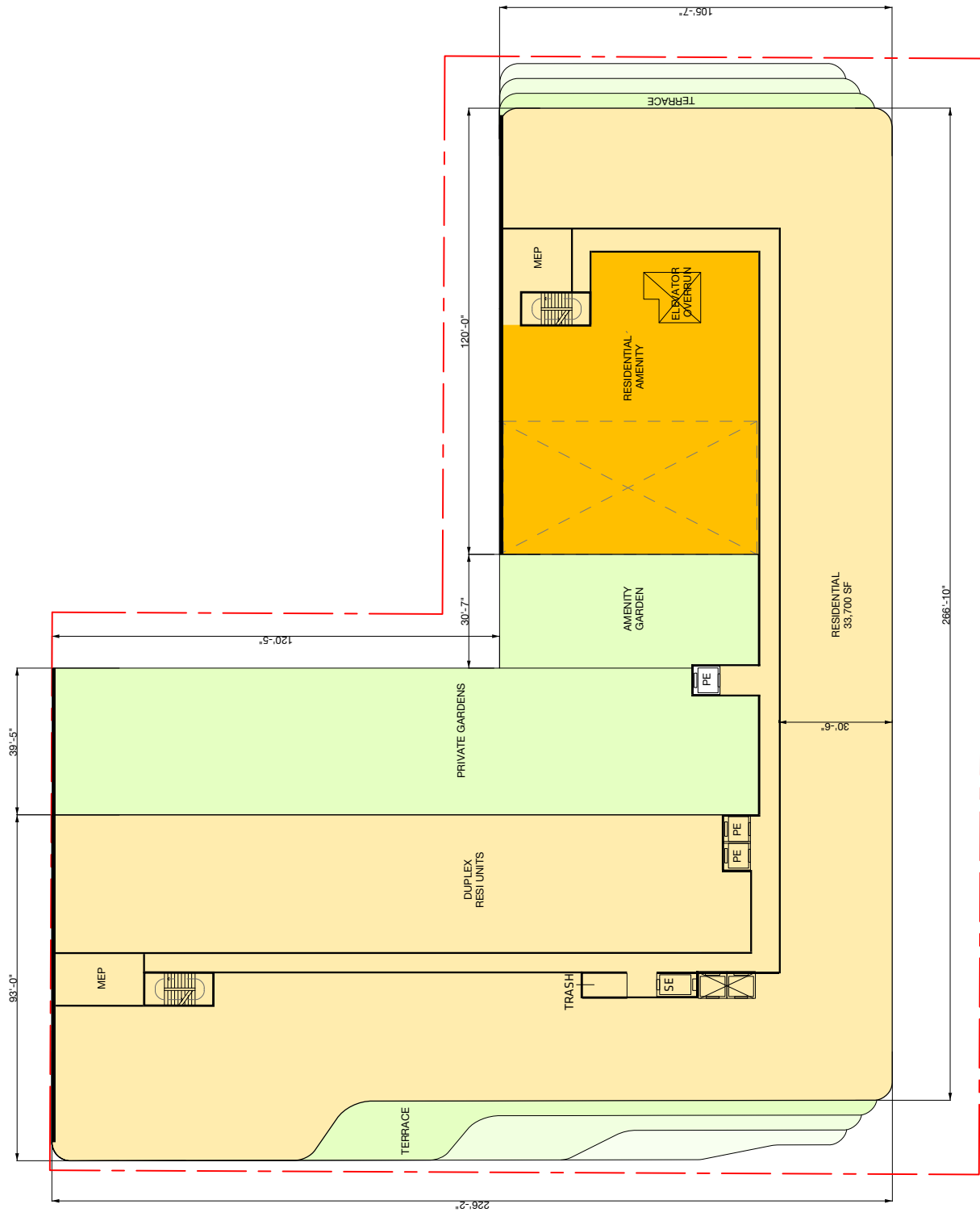
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L03

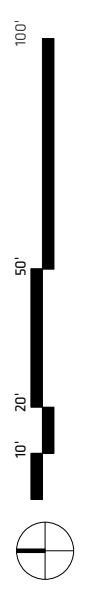


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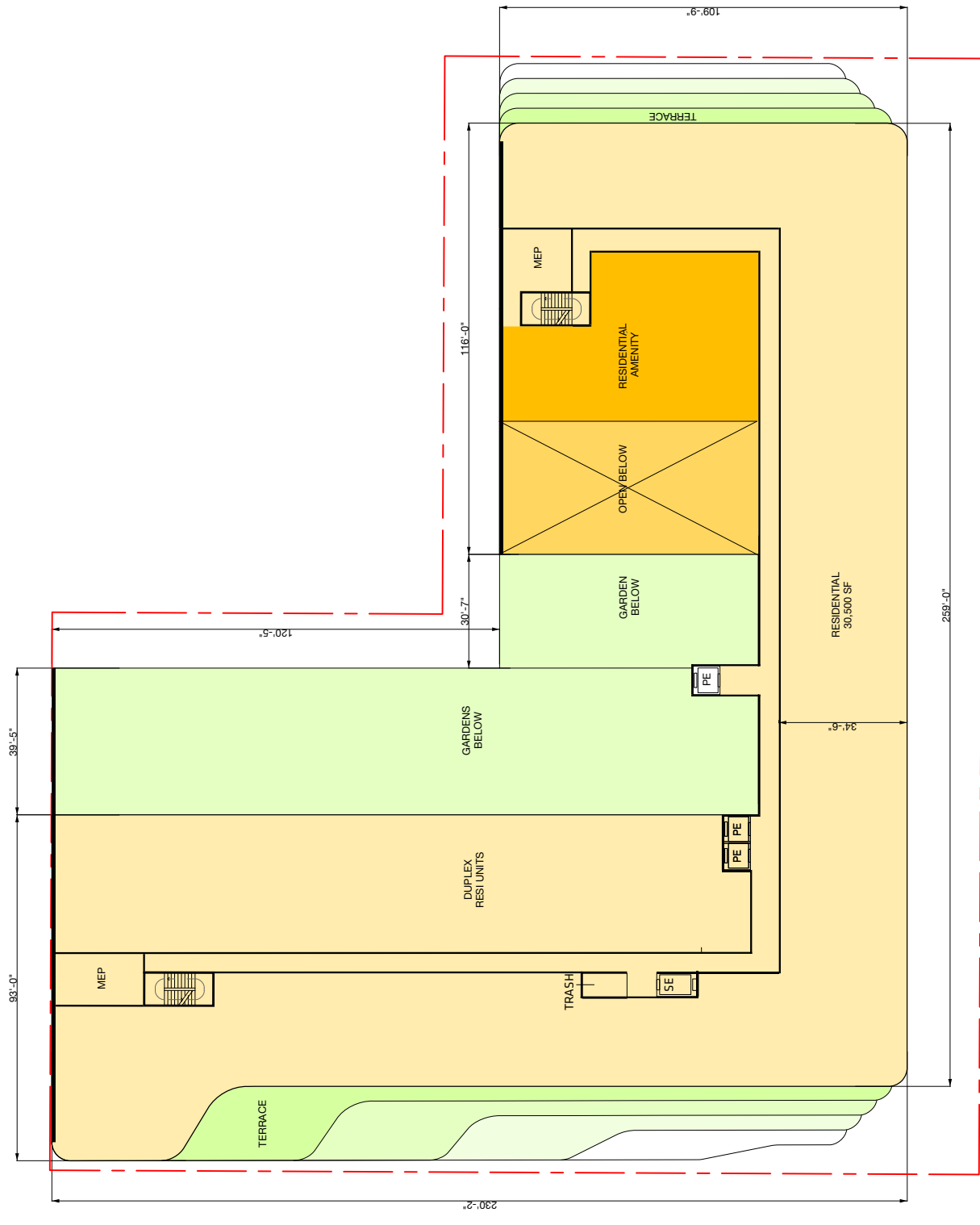


10,700 SF TOTAL TERRACE

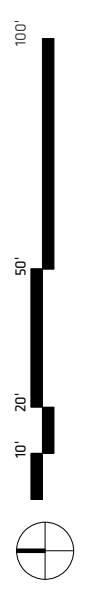
RESIDENTIAL  
33,700 SF



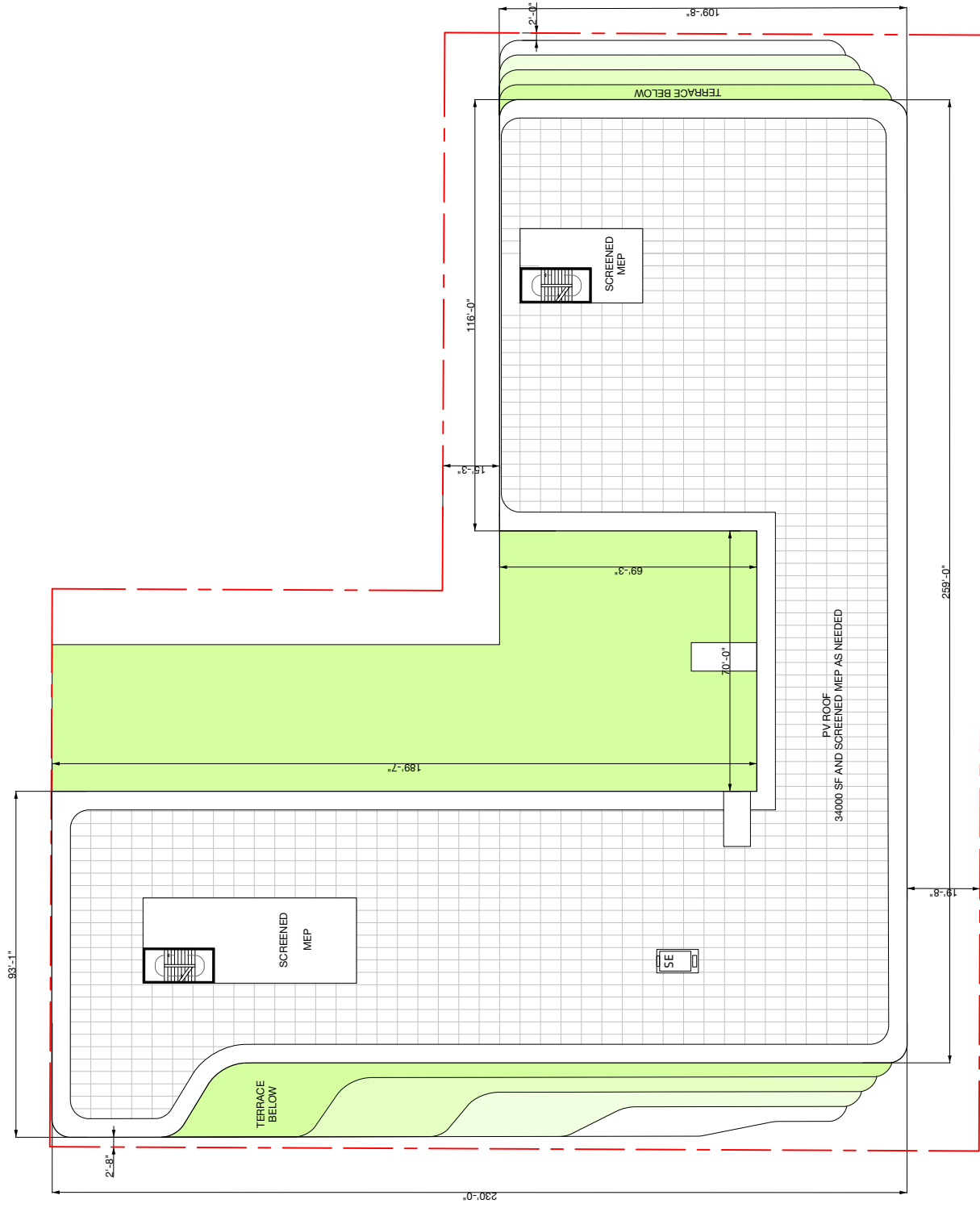
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1,700 SF TOTAL TERRACE

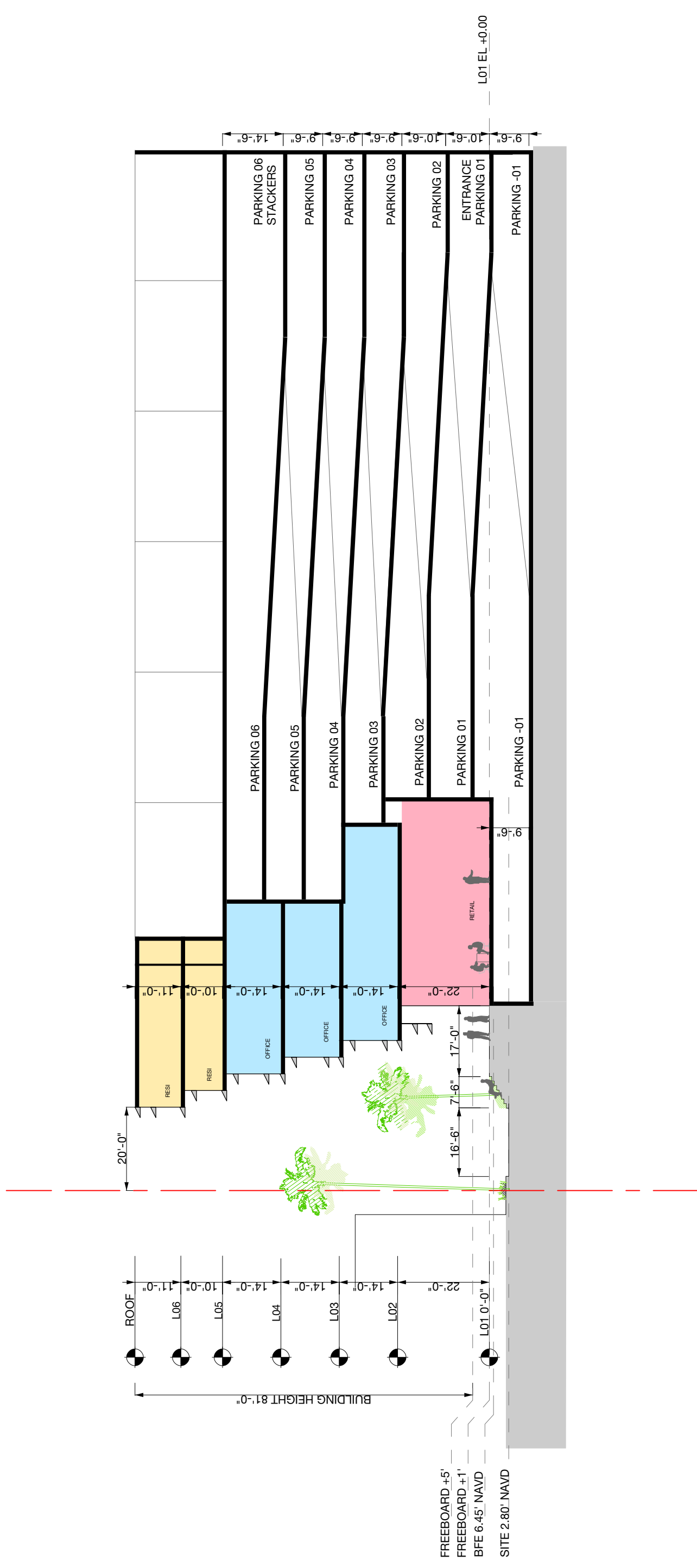


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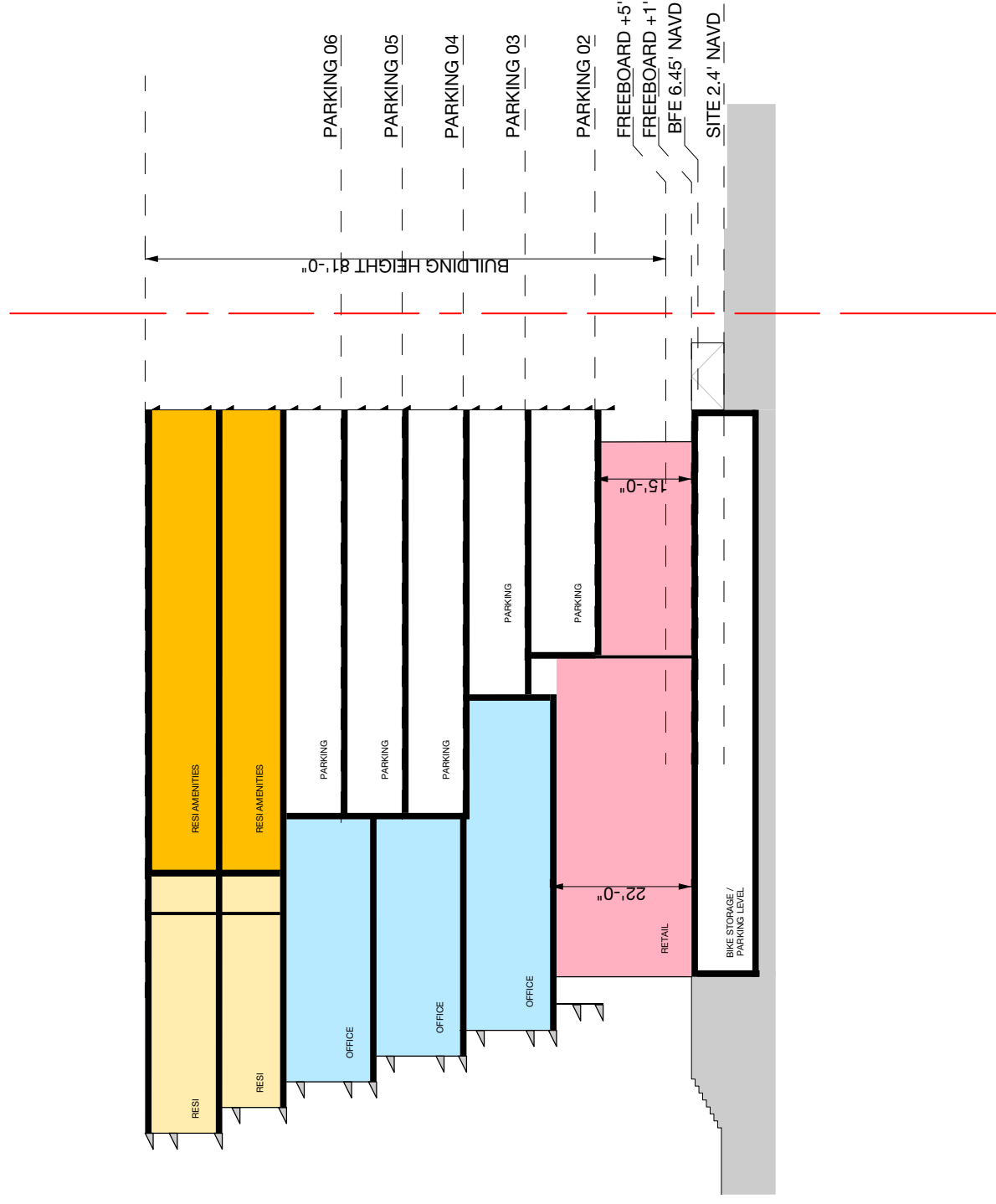


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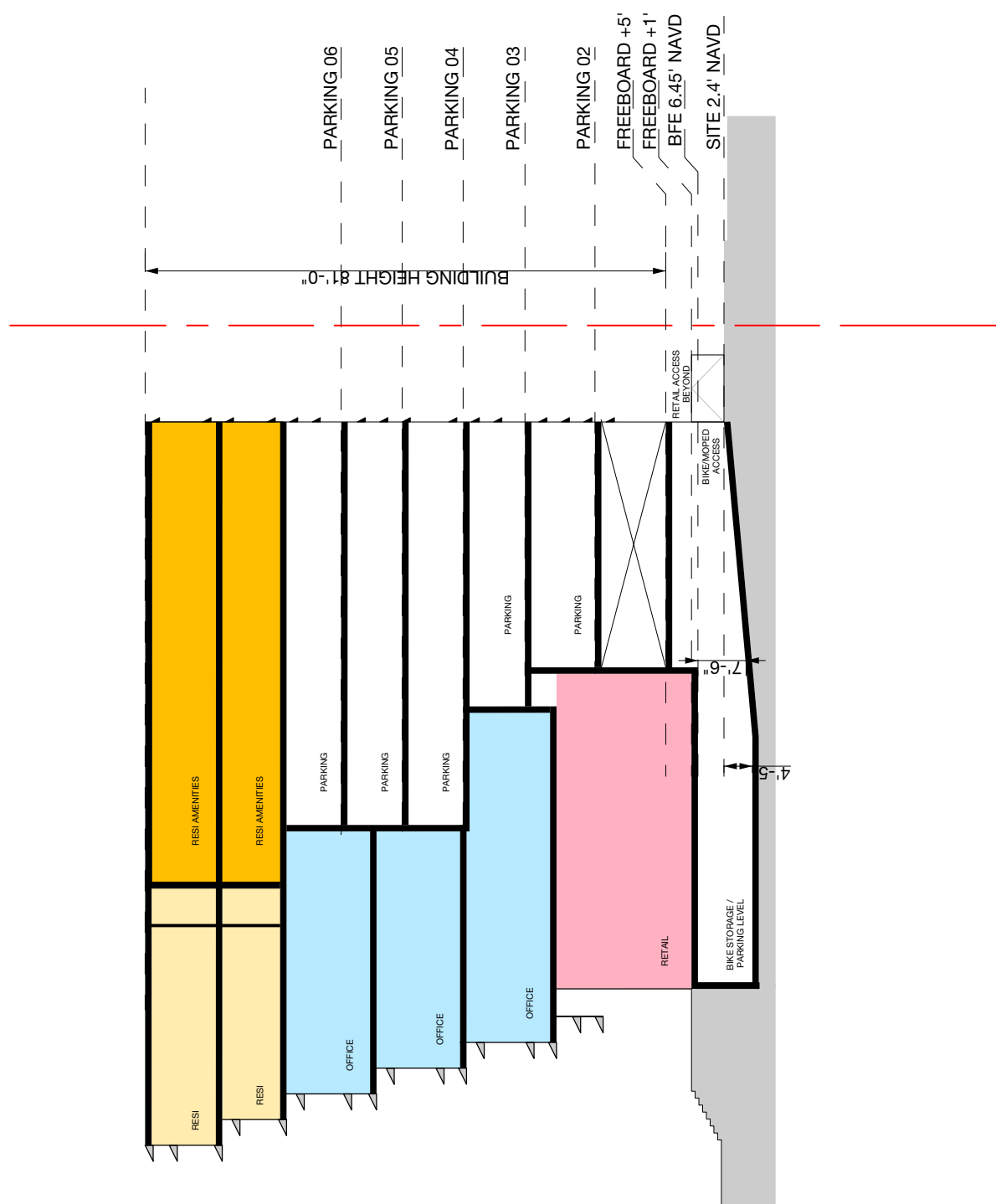




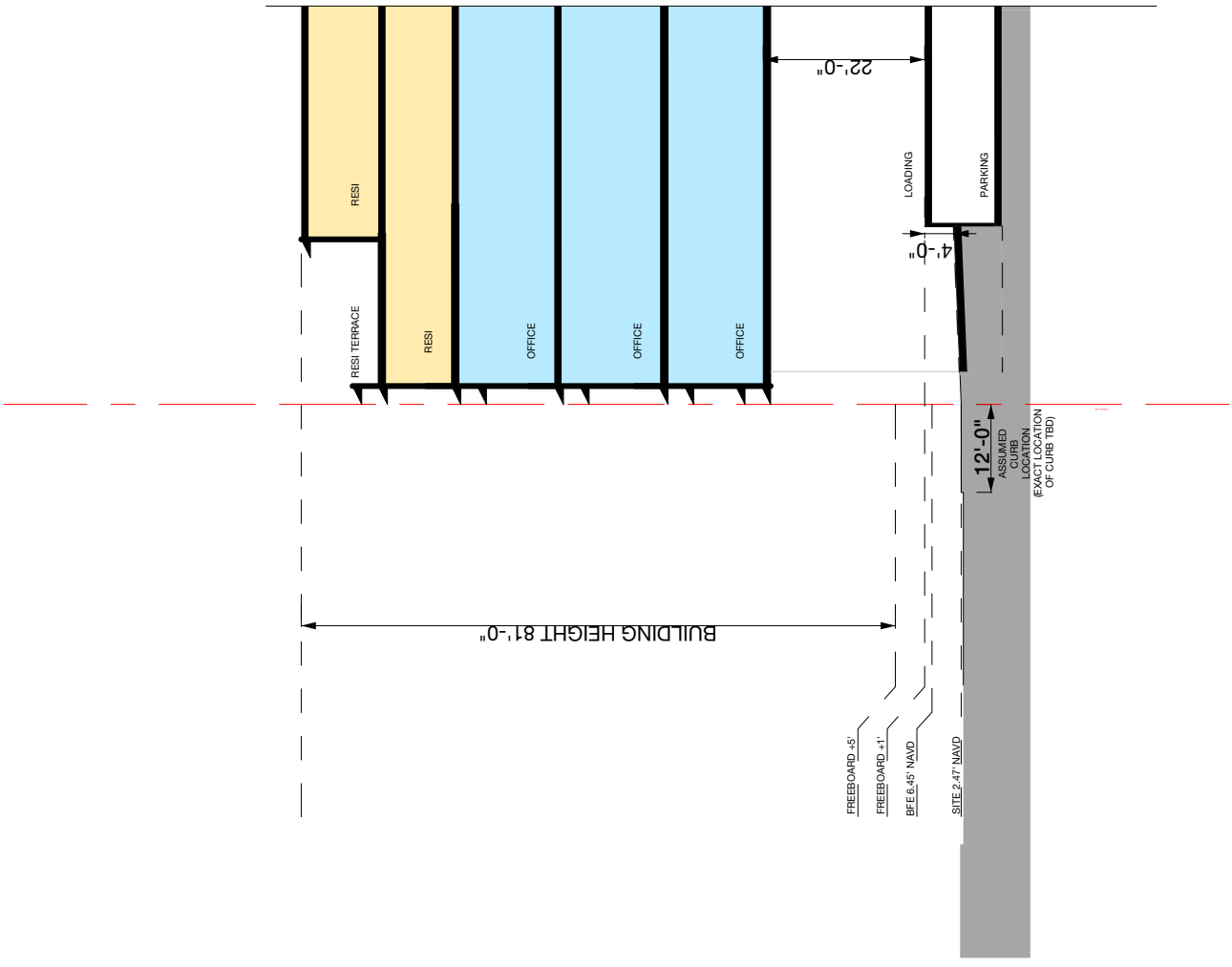
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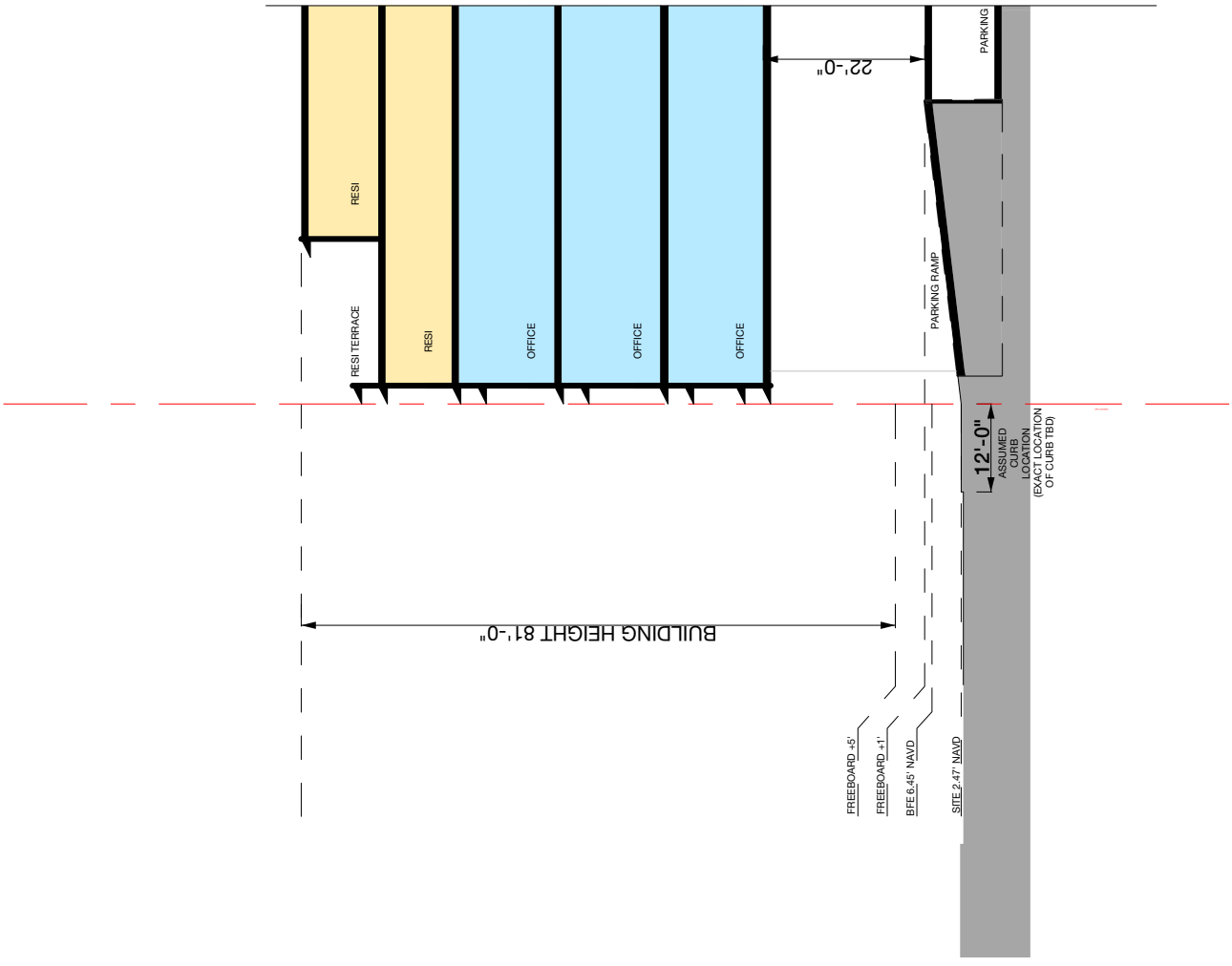
# SECTION D-D



# SECTION B-B



SECTION D-D



SECTION C-C

**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) shall name the City of Miami Beach, Florida (and any successor Owner), as additional insureds (the “**Certificate of Insurance**”), and shall be furnished to Developer by Contractor prior to commencement of work, denoting all insurance required of Contractor pursuant to the terms of the Construction Agreement. 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, and except to the extent caused by the gross negligence or willful misconduct by City, Contractor shall and does hereby indemnify and hold harmless the City of Miami Beach, Florida (and any successor Owner), and their respective elected and appointed officials (including the City’s Mayor and City Commissioners), directors, officials, officers, shareholders, members, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, lessees, mortgagees, trustees, partners, principals, invitees and affiliates, from and against any and all liability, claims, demands, damages, losses, fines, penalties, expenses and costs of every kind and nature, including, without limitation, costs of suit and attorneys’ fees and disbursements (collectively, “Expenses”), resulting from or in any manner arising out of, in connection with or on account of: (1) any act, omission, fault or neglect of Contractor, or anyone employed by it in connection with the work or any phase thereof, or any of its agents, contractors, subcontractors, employees, invitees or licensees in connection with the Work, or anyone for whose acts any of them may be liable, (2) claims of injury (including physical, emotional, economic or otherwise) to or disease, sickness or death of persons or damage to property (including, without limitation, loss of use resulting therefrom) occurring or resulting directly or indirectly from the Work or any portion thereof or the activities of Contractor or anyone employed by it in connection with the Work, or any portion thereof, or any of its respective agents, contractors, subcontractors, employees, invitees or licensees in

connection with the work, or anyone for whose acts any of them may be liable, or (3) mechanics' or materialmen's or other liens or claims (and all costs or expenses associated therewith) asserted, filed or arising out of the Work or any phase thereof. 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. The indemnification obligations set forth in this Section shall survive the termination and/or expiration of the Construction Agreement";

4. (1) the right of Developer to assign to Owner, subject and subordinate to the rights of Lender, the Construction Agreement and Developer's rights thereunder, at the Owner's request, without the consent of the Contractor, (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 Construction Agreement and (3) the City is a third party beneficiary of the Construction Agreement;
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 record liens against property of the City of Miami Beach, Florida, or of any other constitutional, statutory, common law or other protections afforded to public bodies or governments.";
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.”;
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).”; and
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

Construction of:

(1) a Class A office component consisting of approximately 81,500 square feet of space (the “**Office Component**”), which shall constitute not less than 50% of the available floor area ratio (FAR) utilized by Developer for the Project;

(2) a ground floor retail component consisting of approximately 10,500 square feet of space, which shall include a fully activated liner of retail, restaurant, personal service or similar active uses, with a minimum depth of 50 feet along the entire ground floor portions of the Project facing a street, sidewalk or Lincoln Lane North (provided, however, an exception to the liner requirement shall be made for utilities (to the extent such utilities cannot reasonably or functionally be located elsewhere), access points and emergency access for vehicles and pedestrians, including stairs and ramps, alleys, and loading docks), the design of which shall be subject to the review and approval by all applicable, required, City boards and departments in accordance with this Agreement (the “**Retail Component**”);

(3) to the extent the necessary Project Amendment permitting the development of the residential portion of the Project is obtained, a residential component consisting of approximately 70,000 square feet consisting of 38-48 residential rental units and related common spaces and amenities, provided that (A) no short term/transient rentals, as defined by Chapter 114 of the City Code, shall be permitted, (B) the units shall have minimum lease term of twelve (12) months and (C) no such units shall be co-living or micro units (less than 400 square feet) (the “**Residential Component**”);

(4) a public parking component to replace the existing public parking spaces on Lot P27 consisting of at least one hundred fifty-one (151) public parking spaces and ancillary office and storage space reasonably necessary for maintenance and operations purposes (the “**Public Parking Replacement Component**”), all of which spaces shall be located on the lowest levels of parking within the Project at or above ground level (and shall not be located on any below-grade levels) (for the avoidance of doubt, Owner shall own and shall operate the Public Parking Replacement Component and it shall be excluded from the Ground Lease Component (as defined below) pursuant to the Declaration, provided, Owner shall have the right, in its sole discretion, to cause Tenant to operate the Public Parking Replacement Component by providing written notice to Tenant 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 Owner requires Tenant to operate the Public Parking Replacement Component, Tenant and Owner, each acting reasonably and in good faith, shall enter into a mutually agreed operating agreement with respect thereto;



(5) an additional parking component consisting of the number of parking spaces required by the City Code (subject to any variance or amendment to the Land Use Regulations that may be approved by the City in its sole discretion) for the exclusive use of the occupants, customers, residents and guests of the Office Component, the Residential Component and the Retail Component (the “**Additional Parking Component**” and together with the Office Component, the Retail Component and, if applicable, the Residential Component, collectively, the “**Ground Lease Component**”); and

(6) subject to adoption of the Project Amendments, a maximum of 6 stories and a maximum height of up to 100 feet, or if the Project Amendments are not adopted, a maximum of 6 stories and a maximum height of up to 80 feet.

**EXHIBIT F**

FORM OF UNITY OF TITLE

**This instrument was prepared by:**

**Name:**            **Ricardo J. Dopico, Esq.**  
                          **Deputy City Attorney**  
**Address:**        **City of Miami Beach**  
                          **1700 Convention Center Drive, 4<sup>th</sup> Floor**  
                          **Miami Beach, Florida 33139**

**Folio Nos:**

**02-3234-007-0560**  
**02-3234-007-0570**  
**02-3234-007-0630**  
**02-3234-007-0640**  
**02-3234-007-0650**  
**02-3234-007-0660**  
**02-3234-007-0670**

**(Space Reserved for Clerk)**

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**UNITY OF TITLE**

**WITNESSETH:**

**WHEREAS**, the City of Miami Beach, Florida (“**Owner**”) holds fee-simple title to certain property in the City of Miami Beach, Florida, located at \_\_\_\_\_, Miami Beach, Florida, bearing the following folio number(s) 02-3234-007-0560, 02-3234-007-0570, 02-3234-007-0630, 02-3234-007-0640, 02-3234-007-0650, 02-3234-007-0660, 02-3234-007-0670, legally described in **Exhibit “A,”** attached hereto and made a part hereof (“**Property**”); and

**WHEREAS**, the Owner, as owner, and 1664 Meridian, LLC, as tenant (“**Developer**”), have entered into that certain Agreement of Ground Lease dated as of \_\_\_\_\_ (the “**Ground Lease**”), pursuant to which the Owner has leased to Developer, and Developer has the exclusive use and possession of, the Property during the term of the Ground Lease; and

**WHEREAS**, the Owner and Developer also entered into that certain Development Agreement dated as of \_\_\_\_\_ (the “**Development Agreement**”), pursuant to which the Developer intends to develop a mixed-use building with Class A office space, retail space, residential apartment units (as applicable), and a parking garage (the “**Project**”); and

**WHEREAS**, to facilitate permitting for the Project by Owner and Developer, and the future imposition of *ad valorem* taxes and on the Property and improvements constituting the Project by Miami-Dade County and such other taxing authorities as may have jurisdiction, the Owner has determined that unifying the parcels constituting the Property into a single plot and parcel is desirable.

**NOW THEREFORE**, in consideration of the premises, Owner hereby agrees as follows:

1. **Unity**. The Property shall be considered as one plot and parcel of land and that no portion of said plot and parcel of land shall be sold, transferred, devised or assigned separately, except in its entirety as one plot or parcel of land.

2. **City Inspection**. As further part of this Unity of Title, it is hereby understood and agreed that the City of Miami Beach, in its regulatory capacity, (the “**City**”) through its official inspectors of or duly authorized agents, may have the privilege at any time during normal working hours of entering and inspecting the use of the premises to determine whether or not the requirements of the building and zoning regulations and the conditions herein agreed to are being complied with.

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

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

4. **Term**. This Unity of Title is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years from the date this Unity of Title is recorded after which time it shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by the, then, owner(s) of the Property has been recorded agreeing to change the covenant in whole, or in part, provided that the Unity of Title has first been modified or released by the City.

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

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

6. **Enforcement.** Enforcement shall be by action against any parties or person violating, or attempting to violate, any covenants. The prevailing party in any action or suit pertaining to or arising out of this Unity of Title shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of such party's is attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

7. **Authorization for the City to Withhold Permits and Inspections.** In the event the terms of this Unity of Title are not being complied with, in addition to any other remedies available, the City is hereby authorized to withhold any further permits, and refuse to make any inspections or grant any approvals, until such time as this declaration is complied with.

8. **Election of Remedies.** All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

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

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

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

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

[\*Note: All others require attachment of original corporate resolution of authorization]

WITNESSES:

OWNER:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Individual Signature

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

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

\_\_\_\_\_  
Address:

\_\_\_\_\_

\_\_\_\_\_

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

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

The foregoing instrument was acknowledged before me, by means of [ ] physical presence or [ ] online notarization, by \_\_\_\_\_, who is personally known to me or has produced \_\_\_\_\_, as identification.

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

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

My Commission Expires:

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

Approved:

Approved as to form & language & for execution:

\_\_\_\_\_  
Director of Planning      Date

\_\_\_\_\_  
City Attorney                              Date

**EXHIBIT A TO COVENANT IN LIEU OF UNITY OF TITLE**

## 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**

**FORM OF 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](mailto: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

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CARP1809-002 08/01/2016

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

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ELEV0071-002 01/01/2021

	Rates	Fringes
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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.

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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

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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

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IRON0272-001 10/01/2020

Rates Fringes

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

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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

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SFFL0821-004 01/01/2021

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

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 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

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 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](http://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)).

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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.

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#### 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**

P27 Project:

- (1) Permitted Development and Uses.

All uses permitted by Sections 142- 422, -423, -424 and Sections 142-332 (1), (2), and (4), 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, Section 130-33 of the City Code, and Policy RLU 1.1.17 of the 2040 Comprehensive Plan

- (3) Calculation of Floor Area.

Lot size 59,273 SF X 2.75 = 163,000 SF Maximum Floor Area

Notwithstanding the “Main Permitted Uses” under the Code, the uses permitted for the Project Site are as expressly stated in this Agreement and the Ground Lease.

**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 PERMITS**

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**”) 1664 MERIDIAN, LLC, a Florida limited liability company (“**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 Building Permit Date is \_\_\_\_\_, 202\_\_.
  - (iii) The Target Commencement Date is \_\_\_\_\_, 202\_\_.
  - (iv) The Target Completion Date is \_\_\_\_\_, 202\_\_.

- (v) The Target Parking Opening Date is \_\_\_\_\_, 202\_\_.
- (d) The Outside Dates are as follows:
  - (i) The Outside Approvals Date is \_\_\_\_\_, 202\_\_.
  - (ii) The Outside Building Permit Date is \_\_\_\_\_, 202\_\_.
  - (iii) The Outside Commencement Date is \_\_\_\_\_, 202\_\_.
  - (iv) The Outside Completion Date is \_\_\_\_\_, 202\_\_.
  - (v) The Outside Parking Opening Date is \_\_\_\_\_, 202\_\_.
  - (vi) The Outside Stabilization Date is \_\_\_\_\_, 202\_\_.

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

**DEVELOPER:**

1664 MERIDIAN, LLC,  
 a Florida limited liability company

By: \_\_\_\_\_  
 Name:  
 Title:

By: \_\_\_\_\_  
 Name:  
 Title: