

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

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(Space reserved for Clerk)

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into as of the [] day of [] 2018, by and among the CITY OF MIAMI BEACH, a Florida municipal corporation (the "**City**"), and jointly and severally, 500 ALTON ROAD VENTURES, LLC, a Delaware limited liability company, 1220 SIXTH, LLC, a Delaware limited liability company, SOUTH BEACH HEIGHTS I, LLC, a Delaware limited liability company, and KGM EQUITIES, LLC, a Delaware limited liability company (collectively, the "**Developer**");

Introduction

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

B. The Developer owns or has a legal or equitable interest in the property located at the 500-700 blocks of Alton Road, Miami Beach, Florida, more specifically described in **Exhibit "A"** attached hereto and incorporated herein by this reference (the "**Developer Property**").

C. The City owns or has a legal or equitable interest in the property more specifically described in **Exhibit "B"** attached hereto and incorporated herein by this reference (the "**City Parcel**"), which is currently improved with 6th Street, lying between Alton Road and West Avenue, Miami Beach, Florida.

D. The Developer wishes to obtain ownership of the City Parcel to provide a unified development site with respect to the Developer Property. The Developer Property and the City Parcel combined constitute the **"Property"** which is more specifically described in **Exhibit "C"** attached hereto and incorporated herein by this reference.

E. The Developer intends to (1) convey that portion of the Property consisting of 3.0 acres and more specifically described in **Exhibit "D"** attached hereto and incorporated herein by this reference (the **"Park Site"**) to the City and thereafter improve the same, at the Developer's sole cost and expense, with the "Park Project" based upon the "Park Concept Plan" (as those terms are more specifically defined below), and (2) redevelop the remainder of the Property (inclusive of the City Parcel), more specifically described in **Exhibit "E"** attached hereto and incorporated herein by this reference (the **"Development Site"**), with the "Project" (as more specifically defined below).

F. The City is willing to vacate and convey the City Parcel to the Developer simultaneously with the Developer conveying the Park Site to the City, subject to (1) the Developer granting to the City a perpetual, non-revocable roadway easement over the City Parcel to provide a through street on 6th Street as a connector between West Avenue and Alton Road, for utilities, public vehicular and pedestrian use (the **"6th Street Easement"**), and (2) the Developer's compliance with the terms and provisions contained in this Agreement, the "Purchase and Sale Agreement", and the "Vacation Resolution" (as those terms are more specifically defined below).

G. The City wishes that the Developer, and the Developer is willing to, construct the "Baywalk Improvements" (as more specifically defined below) with respect to three (3) segments of the City's Baywalk adjoining the intracoastal waterway, in accordance with the terms and provisions contained in this Agreement.

H. Concurrently with this Agreement, the City has approved the vacation of the City Parcel pursuant to the Vacation Resolution, subject to and conditioned upon the terms and conditions contained in such Vacation Resolution, including, without limitation, (1) the grant by the Developer to the City of the 6th Street Easement, (2) the Developer conveying the Park Site to the City, (3) the Developer's commitment to construct the Park Project on the Park Site based upon the Park Concept Plan at the Developer's sole cost and expense, (4) the Developer's commitment to complete the Baywalk Improvements, and (5) the Developer's commitment to grant a perpetual, non-revocable roadway easement in favor of the City against the property more specifically described in **Exhibit "F"** attached hereto and incorporated herein by this reference (the **"5th Street Easement"**) to provide an additional ten (10) foot wide lane on 5th Street on to Interstate 395 for public vehicular and pedestrian use.

I. The City is a Florida municipal corporation with powers and authority conferred under the Florida Constitution, the Municipal Home Rule Powers Act, Florida Statutes and the Miami Beach City Charter and Code of Ordinances. The City has all governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal and governmental functions, and render municipal services, including the authority to adopt, implement and enforce (together with any other required governmental approvals) comprehensive plans, zoning ordinances, redevelopment plans, and other police power and legislative measures necessary to assure the health, safety and general welfare of the City and its inhabitants.

J. Having fully considered this Agreement at two (2) duly noticed public hearings in compliance with Section 163.3225 of the Act; having determined that the Project and this Agreement are in compliance with the City's Comprehensive Plan and Land Development Regulations (as may be amended by the "Land Development Regulation Amendments" (as more specifically defined below)) as of the Effective Date; and having further determined that it is in the City's best interest to address the issues covered by this Agreement in a comprehensive manner, in compliance with all applicable laws, rules, regulations, ordinances, and plans of the City, the City has agreed to enter into this Agreement with the Developer.

K. The City has determined that the Project, the Park Project, the Baywalk Improvements, the 6th Street Easement, and the 5th Street Easement will benefit the City and the public, including without limitation that the Project and Park Project will improve the southern entrance to the City, and the Park Project will provide a significant public amenity and increase recreational open space in the southern portion of the City, and the 5th Street Easement will improve traffic conditions in the southern portion of the City.

L. All capitalized terms used in this Introduction are defined in Paragraph 3 or elsewhere in this Agreement.

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

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

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

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

3.1 **"Act"** shall mean the Florida Local Government Development Agreement Act (Sections 163.3220 - 163.3243, Florida Statutes (2014))

3.2 **"Baywalk Improvements"** shall mean the specific improvements to portions of the City's Baywalk along the intracoastal waterway as described in the Comprehensive Plan, which improvements are more specifically referred to and described as either the Mirador 1 Baywalk (in **Exhibit "G"** attached hereto and incorporated herein by this reference), the Mirador 2 Baywalk (in **Exhibit "H"** attached hereto and incorporated herein by this reference), or the Mondrian Baywalk (in **Exhibit "I"** attached hereto and incorporated herein by this reference).

3.3 **"Building Permit"** shall mean any permit issued by the City of Miami Beach Building Department or Building Official, including any foundation, building or phase permits.

3.4 **"Business Day"** shall mean any day other than a Saturday, Sunday, any federal or state holiday and the following Jewish holidays: Passover (the first two (2) days and last two (2) days only), Shavuot (two (2) days), Rosh Hashanah (two (2) days), Yom Kippur (one (1) day), and Sukkot (the first two (2) days and last two (2) days only). If any period expires on a day which is not a Business Day or any event or condition is required by the terms of this Agreement to occur or be fulfilled on a day which is not a Business Day, such period shall expire or such event or condition shall occur or be fulfilled, as the case may be, on the next succeeding Business Day.

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

3.6 **"City Parcel"** shall mean the property more specifically described in **Exhibit "B"** attached hereto and incorporated herein by this reference.

3.7 **"Closing"** shall mean the formal exchange of documents between the parties, as further described in Paragraph 9 of this Agreement. The Closing shall occur on a date set by the Developer on not less than ten (10) Business Days prior written notice to the City, provided Developer has satisfied the "Hazardous Substance Environmental Contingency" (as more specifically defined below).

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

3.9 “**Covenant in Lieu of Unity of Title**” shall mean the covenant in lieu of unity of title covering the Property substantially in the form of **Exhibit “J”** attached hereto and incorporated herein by this reference.

3.10 “**Developer**” shall mean the persons or entities named in the preamble to this Agreement, and any permitted successors, assigns, or heirs thereof; provided, however, the term “Developer” shall not mean the City.

3.11 “**Development Order**” shall mean any order granting, denying, or granting with conditions an application for a Development Permit.

3.12 “**Development Site**” shall mean the property more specifically described in **Exhibit “E”** attached hereto and incorporated herein by this reference.

3.13 “**Development Permit**” shall have the meaning set forth in Section 163.3221(5), Florida Statutes (2017).

3.14 “**Effective Date**” shall mean the date when the City records the executed Agreement in the Public Records of Miami-Dade County, as provided in Section 163.3239, Florida Statutes (2017), and subparagraph 26(a) of this Agreement.

3.15 “**Environmental Contingency**” shall mean the remediation of the Park Site, as further described in subparagraph 6(c) of this Agreement.

3.16 “**Execution Date**” shall mean the date the last of the required parties executes this Agreement.

3.17 “**Hold Harmless Agreement**” shall mean the Hold Harmless Agreement substantially in the form of **Exhibit “K”** attached hereto and incorporated herein by this reference.

3.18 “**Land Development Regulations**” shall have the meaning set forth in Section 163.3221(8), Florida Statutes (2017) and shall also include, without limitation, the definition of “land development regulations” in Section 114-1 of the City’s Code.

3.19 “**Land Development Regulation Amendments**” shall mean an amendment to the Comprehensive Plan and to the Land Development Regulations to, among other things: (a) amend the Comprehensive Plan to change the designation of those portions of the Property designated CPS-2 and RM-2 to the designation CD-2; (b) rezone those portions of the Property zoned CPS-2 and RM-2 to the zoning district CD-2; and (c) amend the text of the Land

Development Regulations to authorize up to forty-four (44) stories and [REDACTED]¹ feet in height within the CD-2 zoning district.

3.20 "Laws" shall mean all laws, rules, regulations, ordinances, plans, resolutions, comprehensive plans, and land development regulations specifically including the City's Comprehensive Plan and the City's Land Development Regulations.

3.21 "Park Concept Plan" shall mean the plans, designs and drawings illustrating the proposed concept for the world-class public municipal park to be developed on the Park Site, approved by the City Commission, which approved plans are attached in Exhibit "L" hereto and incorporated herein by this reference.

3.22 "Park Project" shall mean the improvements to be made to the Park Site, as further described in subparagraph 7(d) of this Agreement.

3.23 "Park Site" shall mean the property more specifically described in Exhibit "D" attached hereto and incorporated herein by this reference.

3.24 "Park Site Owner" shall mean, collectively, South Beach Heights I, LLC, a Delaware limited liability company, and KGM Equities, LLC, a Delaware limited liability company, and any permitted successors, assigns, or heirs thereof.

3.25 "Project" shall mean the development of the Development Site consistent with the zoning regulations of the City's Land Development Regulations (as may be amended by the Land Development Regulation Amendments) and the following provisions:

(a) The maximum total floor area permitted upon the Property shall not exceed that provided by the City's Land Development Regulations for the purposes of determining population densities and building intensities as required by the Act; provided, however, if the entire Property is rezoned to CD-2, then the maximum floor area developed on the Development Site shall not exceed 571,000 square feet of floor area, as determined by the City's Land Development Regulations (as may be amended by the Land Development Regulation Amendments), and which floor area shall exclude non-floor area ratio areas as set forth in such Land Development Regulations, such as the floor area exclusion for projecting balconies free of structural columns and/or walls and open on at least two sides.

(b) The (i) height of any multi-family residential tower on the Development Site shall not exceed (A) [REDACTED] feet to the main roof line, and (B) forty-four (44) stories (excluding the parking pedestal), and any architectural projections will comply with the terms of the Land Development Regulations (as may be amended by the Land Development Regulation Amendments), and (ii) floor plate of any residential floor within any multi-family residential tower on the Development Site shall not exceed 13,800 square feet of floor area ratio.

¹ Land Use Committee recommended 484 feet; Planning Board recommended 519 feet.

(c) The uses permitted on the Development Site shall have a maximum of: (i) 410 units (including multi-family residential units, single-family detached units, townhomes, condominiums, and apartments), with up to a total of sixty (60) or twenty percent (20%) of such units, whichever is less, consisting of hotel, apartment hotel, or suite hotel units; and (ii) 15,000 square feet of retail uses.

(d) Any multi-family residential tower constructed within the 500 block of Alton Road shall be located within the northeast quadrant of the 500 block of Alton Road.

(e) No parking, whether surface or underground, will be constructed on any part of the Park Site.

(f) The Project shall include on-site parking in accordance with the provisions of the Land Development Regulations (as may be amended by the Land Development Regulation Amendments).

3.26 **"Property"** shall mean the property more specifically described in **Exhibit "C"** attached hereto and incorporated herein by this reference.

3.27 **"Purchase and Sale Agreement"** shall mean the Purchase and Sale Agreement substantially in the form of **Exhibit "M"** attached hereto and incorporated herein by this reference.

3.28 **"South Shore Hospital"** shall mean the structure currently located on the 600 Block of Alton Road.

3.29 **"Vacation Resolution"** shall mean the City's Resolution No. [REDACTED], approving, with conditions, the vacation of the City Parcel, which Vacation Resolution shall be substantially in the form of **Exhibit "N"** attached hereto and incorporated herein by this reference.

3.30 **"World-class"** shall mean, with respect to the Park Project, the same or substantially similar standard of physical and operational quality for the facilities, landscaping and associated infrastructure as the following parks as of the Effective Date: Millennium Park, Chicago, Illinois; South Point Park, Miami Beach, Florida; and Soundscape Park, Miami Beach, Florida. The world-class standard shall be conclusively deemed satisfied upon the issuance on the "Park Zoning Approval" (as more specifically defined below).

4 **Initial Obligations of the City and the Developer.** The following will constitute the initial obligations of the Developer and the City:

(a) **Purchase and Sale Agreement for Park Site and City Parcel.** Within ten (10) Business Days from the Effective Date, the City and the Developer shall execute the Purchase and Sale Agreement. If a party fails to execute the Purchase and Sale Agreement within such ten (10) day period, then the other party shall have the right to terminate this Agreement in accordance with Paragraph 34 of this Agreement.

(b) Vacation Resolution for City Parcel. Within thirty (30) days from the Effective Date, the Developer will submit an application for the vacation of the City Parcel. Thereafter, the City will diligently process that application through to hearing before the City Commission. The parties recognize that this Agreement does not obligate the City Commission to adopt the Vacation Resolution, and that it retains the sole and absolute discretion whether to adopt, adopt with changes, or deny the Vacation Resolution as governed by applicable law.

(c) Land Development Regulation Amendments. Within thirty (30) days from the Effective Date, the Developer will submit applications for the Land Development Regulation Amendments. Thereafter, the City will diligently process those applications through to hearing before the City Commission. The parties recognize that this Agreement does not obligate the City Commission to adopt the Land Development Regulation Amendments, and that it retains the sole and absolute discretion whether to adopt, adopt with changes, or deny the Land Development Regulation Amendments as governed by applicable law.

5 Termination. In the event that the City Commission denies the application for the Vacation Resolution, or the City Commission denies any of the applications for Land Development Regulation Amendments, then the Developer may either: (a) notify the City that it intends to submit revised applications for the vacation of the City Parcel and/or the Land Development Regulation Amendments (as applicable) within thirty (30) days from any such denial, in which event the revised applications must be submitted to the City within one hundred and eighty (180) days from the date of the original denial; or (ii) terminate this Agreement in accordance with Paragraph 34 of this Agreement. If the Developer does not timely provide notice of its intent to submit revised applications, or does not timely file the revised applications, then the City shall have the right to terminate this Agreement in accordance with Paragraph 34 of this Agreement.

DEVELOPMENT APPROVALS

6 Environmental Review.

(a) Prior to the Effective Date, the Developer delivered to the City the following environmental assessments with respect to the Park Site: (i) Limited Soil and Groundwater Assessment Report dated October 11, 2018 prepared by GFA International, Inc., bearing GFA Project No. 14-1421.02, and (ii) Additional Soil and Groundwater Assessment Report dated October 22, 2018 prepared by GFA International, Inc., bearing GFA Project No. 14-1421.03 (collectively, the "Developer Environmental Assessments").

(b) From the Effective Date through the date that is one hundred and twenty (120) days after the Effective Date (the "Environmental Due Diligence Period"), the City shall have the right, but not the obligation, to enter the Park Site to conduct, at the City's sole cost and expense, its own environmental due diligence of the Park Site, (including physical inspections, tests, studies, samplings and analyses (including soil borings and invasive environmental testing)). The City shall provide the Developer with not less than five (5) Business Days advance written notice of the date and time it seeks access to the Park Site to conduct its environmental due diligence thereof, and the Developer shall provide the City with access to the Park Site on

such date and time for the City to conduct such environmental due diligence. The Developer shall have the right to be present while the City conducts its environmental due diligence of the Park Site. The City shall provide the Developer with copies of all data, reports, assessments, analysis and other information prepared by or for the City in connection with or as a result of its environmental due diligence of the Park Site (collectively, the **"City Environmental Assessments"**). If the City fails to conduct its environmental due diligence or deliver to the Developer the City Environmental Assessments prior to the expiration of the Environmental Due Diligence Period, then the City shall have waived its right to object to the environmental condition of the Park Site, except for any environmental condition of the Park Site disclosed in the Developer Environmental Assessments.

(c) The Developer shall remediate all hazardous substances within the Park Site identified in the Developer Environmental Assessments and/or in any timely delivered City Environmental Assessments as follows:

(i) If the Developer Environmental Assessments and/or any timely delivered City Environmental Assessments identifies any arsenic within the Park Site that is in violation of any environmental laws, rules, regulations or standards applicable to the use of the Park Site as a public municipal park in the City of Miami Beach, then the Developer shall deliver to the City on or before Closing a bond, letter of credit, or similar security reasonably acceptable to the City in an amount equal to the cost of remediating the Park Site for such arsenic (the **"Arsenic Surety"**).

(ii) If the Developer Environmental Assessments and/or any timely delivered City Environmental Assessments identifies any hazardous substance (other than arsenic) within the Park Site that is in violation of any environmental laws, rules, regulations or standards applicable to the use of the Park Site as a public municipal park in the City of Miami Beach, then the Developer shall remediate the Park Site for such hazardous substances prior to Closing (the **"Hazardous Substance Environmental Contingency"**).

(iii) If the Developer Environmental Assessments and/or any timely delivered City Environmental Assessments identifies any arsenic within the Park Site that is in violation of any environmental laws, rules, regulations or standards applicable to the use of the Park Site as a public municipal park in the City of Miami Beach, then the Developer shall remediate the Park Site for such arsenic prior to conveying the completed Park Project to the City. If the Developer fails to remediate the Park Site for arsenic prior to conveying the completed Park Project to the City, and such failure is not cured by Developer within any applicable notice and cure periods, then the City may draw on the Arsenic Surety.

(iv) For purposes of this Agreement, the term **"remediate"** (and words derivative thereof or of similar import such as **"remediation"**) shall mean all actions necessary to obtain regulatory closure of any remediation with conditions from Miami-Dade County Department of Regulatory and Economic Resources – Division of Environmental Resources Management (**"DERM"**) and/or any other agency, department or governmental authority having jurisdiction over such remediation (any other agency, department or governmental authority

having jurisdiction over such remediation is referred to herein as an “**Applicable Environmental Agency**”). Such conditional closure shall allow for recordation of a covenant in favor of Miami-Dade County and/or any other Applicable Environmental Agency that provides for implementation of an approved engineering control (such as a clean soil cap) and, if necessary, prohibits use of groundwater for consumption or irrigation. In addition, the Developer may also, in its sole and absolute discretion, elect to remediate in full or in part by seeking approval from DERM and/or any other Applicable Environmental Agency of “**Alternative Cleanup Target Levels**” or by conducting source removal. In the event that the Developer elects to pursue conditional closure for soils on the Park Site based in part or in full on the use of an engineering control, the Developer shall be required to obtain approval from DERM and/or any other Applicable Environmental Agency of an “**Engineering Control Plan**”. The Developer’s obligations under this Paragraph shall be deemed complete upon issuance by DERM and/or any other Applicable Environmental Agency of correspondence indicating that no further remediation is required with respect to the Park Site. Prior to Closing, the Developer shall have the right to execute and record any and all agreements, documents and/or instruments in connection with its remediation of the Park Site. After Closing, the City shall promptly execute and deliver to the Developer (and the Developer shall have the right to thereafter record) any and all agreements, documents and/or instruments requested by the Developer in connection with its remediation of the Park Site, subject to the City’s right to approve any such agreements, documents and/or instruments, which approval shall not be unreasonably withheld, conditioned or delayed.

7 **Submittal of DRB and Planning Board Applications.**

(a) The Developer acknowledges that development of the Project will require design review approval by the City’s Design Review Board and conditional use approval by the City’s Planning Board (collectively, the “**Project Zoning Approvals**”), and that development of the Park Project will require design review approval by the City’s Design Review Board (the “**Park Zoning Approval**”). The Developer further acknowledges that until the effective date of the Vacation Resolution and the Closing, the City remains the owner of the City Parcel, and that no application for design review approval for the Project, or application for conditional use approval for the Project, or zoning application for any other development that includes the City Parcel, may lawfully be submitted to the City without the City’s joinder to such application while the City is the owner of the City Parcel.

(b) Prior to the Effective Date of this Agreement, the adoption of the Vacation Resolution, and the adoption of the Land Development Regulation Amendments, the Developer shall, at its sole cost and expense, prepare applications requesting the Project Zoning Approvals (collectively, the “**Project Zoning Applications**”). The City shall join in such Project Zoning Applications as the owner of the City Parcel, provided that the development requested in the Project Zoning Applications conforms with the Project as defined in this Agreement.

(c) Upon the Developer filing the Project Zoning Applications, the City shall diligently process the Project Zoning Applications pursuant to the requirements of the City Code through the issuance of the Project Zoning Approval. The Developer acknowledges that review

of the Project Zoning Applications by the City and its Boards is quasi-judicial, and that nothing in this Agreement obligates the City to approve the Project Zoning Applications or limits the quasi-judicial authority of the City and its Boards to impose conditions or take any action on the Project Zoning Applications as provided by the City Code. If either or both of the Project Zoning Applications is denied by the City, or if either or both of the Project Zoning Approvals contain any terms, conditions or obligations not consistent with the terms and conditions of this Agreement or otherwise unacceptable to Developer in its sole and absolute discretion, then the Developer may elect to: (i) diligently prepare revised Project Zoning Applications requesting the Project Zoning Approvals for a revised Project that still conforms with the Project as defined in this Agreement; (ii) exercise any rights of appeal the Developer may have; or (iii) terminate this Agreement in accordance with Paragraph 34 of this Agreement.

(d) Prior to the Effective Date of this Agreement, the adoption of the Vacation Resolution, and the adoption of the Land Development Regulation Amendments, the Developer shall, at its sole cost and expense, prepare an application requesting design review approval of the Park Project (the **"Park Zoning Application"**). Except as otherwise provided in subparagraph 7(e) of this Agreement, the Developer shall, prior to its submittal of the Park Zoning Application, submit the proposed final design for the Park Project to the City for the City Commission to review, in its proprietary capacity, to determine whether the proposed Park Project conforms to the Park Concept Plan. The proposed Park Project must be substantially similar to the Park Concept Plan in all material respects unless the City Commission, in its proprietary capacity, approves such material changes. Except as otherwise contemplated in subparagraph 7(e) of this Agreement, the Developer may not submit the Park Zoning Application until the City Commission, in its proprietary capacity, has approved the final design of the Park Project, which approval will not be unreasonably withheld, conditioned or delayed if the proposed Park Project is substantially similar to the Park Concept Plan in all material respects, or contains material changes that were previously approved by the City Commission in its proprietary capacity. The Developer shall file the Park Zoning Application within one (1) month after the City Commission, in its proprietary capacity, approves the final design of the Park Project, and thereafter the Developer shall diligently pursue the Park Zoning Applications, and the City shall diligently process the Park Zoning Applications pursuant to the requirements of the City Code, through the issuance of the Park Zoning Approval. The Developer acknowledges that review of the Park Zoning Application by the City and its Boards is quasi-judicial, and that nothing in this Agreement obligates the City to approve that application or limits the quasi-judicial authority of the City and its Boards to impose conditions or take any action on the Park Zoning Applications as provided by the City Code. If the Park Zoning Application is denied by the City, or if the Park Zoning Approvals contain any terms, conditions or obligations not consistent with the terms and conditions of this Agreement or otherwise unacceptable to the Developer in its sole and absolute discretion, then the Developer may elect to: (i) diligently prepare a revised Park Zoning Application requesting the Park Zoning Approval for a revised Park Project that still conforms with the Park Project, as defined in this Agreement; (ii) exercise any rights of appeal the Developer may have; or (iii) terminate this Agreement in accordance with Paragraph 34 of this Agreement.

(e) Although the Project Zoning Applications will be separate applications from the Park Zoning Application, it is the express intent of the parties that the Project Zoning Applications and the Park Zoning Application will all be scheduled before and heard by the City's Design Review Board on and at the same meeting date.

(f) The City may, in its sole and absolute discretion, adopt amendments to its Land Development Code that would permit the waiver or refund of application fees for the Project Zoning Applications and the Park Zoning Application. In the event that the City adopts such amendments to its Land Development Code prior to the Developer filing the Project Zoning Applications and the Park Zoning Application, then the City waives any application fees for the Project Zoning Applications and Park Zoning Application. In the event that the City adopts such amendments to its Land Development Code subsequent to the Developer filing the Project Zoning Applications and the Park Zoning Application, then the City shall refund all application fees paid by the Developer for the Project Zoning Applications and Park Zoning Application.

PERMITTING

8 Prerequisites to Building Permits. The Developer acknowledges that until the effective date of the Vacation Resolution, the City remains the owner of the City Parcel, and that no application for a Building Permit for the Project or the Park Project may lawfully be approved without the City's joinder to such application while the City is the owner of the City Parcel. The City shall not join any application for a Building Permit for the Project or the Park Project, and shall not join the Covenant in Lieu of Unity of Title (and therefore no Building Permit may be issued), until the Closing (including the execution and/or delivery of all items in subparagraphs 9(a)-(k) of this Agreement).

9 At the Closing, the Developer and the City shall perform the following:

(a) The Park Site Owner will convey to the City in fee simple, free and clear of all liens and encumbrances other than certain permitted exceptions accepted by the City, by special warranty deed, the Park Site, in accordance with the terms and provisions of the Purchase and Sale Agreement.

(b) Simultaneous with conveyance of the Park Site: (i) the City will convey the City Parcel, via quit claim deed, pursuant to and subject to the terms of the Vacation Resolution; and (ii) the Developer shall grant the 6th Street Easement to the City pursuant to an easement agreement substantially in the form of Exhibit "O" attached hereto and incorporated herein by this reference (the "6th Street Easement Agreement"), which 6th Street Easement Agreement shall reserve to the Developer the right to construct a pathway and related improvements not less than fifteen (15) feet above the surface of 6th Street the Easement.

(c) The Developer shall grant a perpetual, non-revocable public access easement in favor of the City against the property more specifically described in Exhibit "P" attached hereto and incorporated herein by this reference (the "Future Baywalk Parcel")

substantially in the form of **Exhibit "Q"** attached hereto and incorporated herein by this reference (the "**Future Baywalk Parcel Easement Agreement**").

(d) The Developer shall grant the 5th Street Easement to the City pursuant to an easement agreement substantially in the form of **Exhibit "R"** attached hereto and incorporated herein by this reference (the "**5th Street Easement Agreement**").

(e) The Developer will grant the City a perpetual, non-revocable easement over that certain property more specifically described in **Exhibit "S"** attached hereto and incorporated herein by this reference for pedestrian and bicycle use (the "**West Avenue Sidewalk Easement**") pursuant to an easement agreement substantially in the form of **Exhibit "T"** attached hereto and incorporated herein by this reference (the "**West Avenue Sidewalk Easement Agreement**").

(f) Developer will deliver, at its election, either:

(i) a written tri-party agreement among Developer, the City and the lender providing a construction loan for the construction of the Park (the "**Park Lender**"), in form and substance reasonably acceptable to the City (the "**Recognition Agreement**"), pursuant to which the Park Lender agrees, among other terms, to (A) fund the then remaining "Park Construction Amount" (as hereinafter defined) directly to the City in the event of any "Park Related Default" (as hereinafter defined) by Developer under this Agreement which is not cured by Developer within any applicable notice and cure periods, (B) fund the then remaining Park Construction Amount by way of monthly draws pursuant to the draw procedure set forth in the construction loan documents, and (C) fund such then remaining Park Construction Amount directly to the City pursuant to (a) and (b) above, notwithstanding that the Developer may be in default of its construction loan with the Park Lender; or

(ii) a letter of credit (the "**Letter of Credit**") in an amount equal to the Park Construction Amount, which Letter of Credit (A) is unconditional, irrevocable, and payable to City on sight at an office of the issuing financial institution in a single draw equal to the then remaining Park Construction Amount, (B) is in form and content reasonably acceptable to the Developer and the City, and (C) shall contain an "evergreen" provision which provides that the Letter of Credit is automatically renewed on an annual basis (unless the issuer delivers sixty (60) days' prior written notice of cancellation to City) until the Park Project has been completed and accepted by the City, and which the City shall have the right to present for payment in accordance with its terms in the event (Y) of any Park Related Default by Developer under this Agreement which is not cured by Developer within any applicable notice and cure periods, or (Z) the Developer fails to provide the City with any renewal or replacement letter of credit complying with the terms of this Agreement at least thirty (30) days prior to the expiration of the then-current Letter of Credit where the issuer of such Letter of Credit has advised the City of its intention not to renew the same.

(iii) For purposes of this Agreement, the term: (A) "**Park Construction Amount**" shall mean an amount equal to the then remaining cost to complete the construction

of the Park Project based on the budget of a guaranteed maximum price contract for or which includes the construction of the Park Project (i.e., the cost to construct the Park Project as initially set forth in the budget of a guaranteed maximum price contract for or which includes the construction of the Park Project, less any amounts paid towards the construction of the Park Project); and (B) "**Park Related Default**" shall mean the failure of the Developer to construct the Park Project in accordance with the terms and conditions of this Agreement. If the Developer elects to deliver the Letter of Credit, then the Developer shall have the right to reduce the amount of the same to the then remaining Park Construction Amount on a calendar quarter basis. The right to draw funds under the Recognition Agreement or Letter of Credit (as applicable) shall be the City's sole and exclusive remedy with respect to a Park Related Default, other than the failure of the Developer to remediate the Park Site in accordance with subparagraph 6(c) of this Agreement. If the City draws any funds under the Recognition Agreement or Letter of Credit (as applicable), then all conditions precedent to the issuance of a temporary certificate of occupancy, final certificate of occupancy, and/or certificate of completion for the Project (whether in whole or in part) shall be deemed satisfied, and the Developer shall have the right to apply for and the City shall issue a temporary certificate of occupancy, final certificate of occupancy, and/or certificate of completion for the Project (whether in whole or in part) whether or not construction of the Park Project has been completed or accepted by the City.

(iv) If the Park Lender refuses to enter into a Recognition Agreement for any reason whatsoever, or if the form or substance of the Recognition Agreement is not reasonably acceptable to the City, then the Developer shall be required to deliver the Letter of Credit.

(g) The Developer will execute and record the Hold Harmless Agreement substantially in the form of **Exhibit "K"** attached hereto and incorporated herein by this reference.

(h) The City and the Developer will execute and record the Covenant in Lieu of Unity of Title substantially in the form of **Exhibit "J"** attached hereto and incorporated herein by this reference

(i) The City and the Developer will execute and record a termination of that certain Grant of Easement and Agreement for Storm Water and Transportation Improvements recorded on August 22, 2014 in Official Records Book 29281, Page 1097 of the Public Records of Miami-Dade County, Florida substantially in the form of **Exhibit "U"** attached hereto and incorporated herein by this reference (the "**Termination of Grant of Easement and Agreement for Storm Water and Transportation Improvements**").

(j) The City will grant the Developer a perpetual, non-revocable roadway easement over that certain property more specifically described in **Exhibit "V"** attached hereto and incorporated herein by this reference for utilities, public vehicular and pedestrian use (the "**Floridian Parking Easement**") pursuant to an easement agreement substantially in the form of **Exhibit "W"** attached hereto and incorporated herein by this reference (the "**Floridian Parking Easement Agreement**").

(k) The City will grant the Developer a temporary easement over the Park Site which shall permit and authorize the Developer to access the Park Site for construction and installation of the Park Project and for staging and storage related to the development and construction of the Project (the **"Temporary Construction and Access Easement"**) pursuant to an easement agreement substantially in the form of **Exhibit "X"** attached hereto and incorporated herein by this reference (the **"Temporary Construction and Access Easement Agreement"**).

10 Within six (6) months after the issuance of the Project Zoning Approvals and the Park Zoning Approval and the expiration of all applicable appeal periods thereof or, in the event that an appeal is filed of any of the Project Zoning Approvals or the Park Zoning Approval, then within six (6) months after any such appeal is resolved (by judgement, settlement or otherwise) on terms and conditions acceptable to the Developer in its sole and absolute discretion, the Developer shall demolish, at its sole cost and expense, the South Shore Hospital.

11 The City may, in its sole and absolute discretion, adopt amendments to its Land Development Code that would permit the waiver of impact fees and TCMA contributions to be made, or the refund of prior payments of impact fees and TCMA contributions that have been made, for in connection with the Property. In the event that the City adopts such amendments to its Land Development Code, then the Developer shall receive such waiver or refund in accordance with the terms of such amendments.

PARK CONSTRUCTION

12 After the Closing and the issuance of the Park Zoning Approval, the Developer shall construct, at its sole cost and expense, the Park Project substantially in accordance with the Park Zoning Approval. The Developer shall execute a contract for the construction of the Park Project pursuant to the Park Zoning Approval with a Florida licensed contractor (the **"Park Contractor"**), which contract may be a stand-alone construction contract for the Park Project only or an addendum to or component of a construction contract related to both the Project and the Park Project (the **"Park Construction Contract"**). The Park Construction Contract shall, among other things: (a) be a guaranteed maximum price contract; (b) require that the City to be named as an additional or named insured on all insurance coverages required by Park Construction Contract and under which the Developer is an additional or named insured; (c) require that the City be named a co-obligee under any payment bond and performance bond (if any) required by Park Construction Contract; (d) be assignable to the City in the event of a default by the Developer under the Park Construction Contract or this Agreement; (e) name the City as an intended third-party beneficiary with respect to all warranties included in the Park Construction Agreement, **which warranties shall cover a period of one year following completion of the Park Project;** and (f) entitle City to the same indemnification protections as afforded Park Site Owner under the Park Construction Agreement. **[Note: Administration recommends the warranty language above, to clarify that standard warranties for construction will be provided for the Park Project; Developer has stricken City's proposed language]**

13 Upon the commencement of construction of the Park Site, the Developer shall use good faith efforts to keep the City reasonably apprised of the progress of the construction of the Park Project, including advising the City of meetings between the Developer and the Park Contractor concerning the construction of the Park Project. The City may, from time-to-time, designate on written notice to the Developer one or more employees or agents to be the City's representative (a "**City's Representative**") who may (a) review all contracts, plans, specifications and shop drawings relating to the construction of the Park Project (collectively, the "**Construction Documents**"), whether kept at Developer's offices or at the construction trailer for the Park Project, (b) attend all meetings between the Developer and the Park Contractor concerning the construction of the Park Project, and (c) enter the Park Site to monitor the construction of the Park Project; subject, however, to the following conditions and limitation (x) the City's and the City Representative's review of any such Construction Documents and/or entry on to the Park Site to monitor the construction of the Park Project shall be on not less than forty-eight (48) hours prior written notice to the Developer and conducted during normal business hours on Business Days, (y) the Developer shall have the right to have a representative present at all times while the City and/or the City Representative review any such Construction Documents or is on the Park Site to monitor the construction of the Park Project, and (z) the City and the City Representative, while on the Park Site to monitor the construction of the Park Project, shall comply with all safety and other requirements imposed by the Park Lender, the Park Contractor and any insurance company insuring the Developer, the Park Contractor, the Park Site and/or the construction of the Park Project. Notwithstanding the foregoing: (aa) the City hereby acknowledges, agrees and confirms that the foregoing rights of review, attendance, entry and monitoring granted to the City and the City Representative in this Paragraph shall not grant the City or the City Representative any approval rights whatsoever with respect to any aspect of the construction of the Park Project; and (bb) the Developer acknowledges, agrees and confirms that the foregoing rights of review, attendance, entry and monitoring granted to the City and the City Representative in this Paragraph shall be exercised (if at all) in the sole and absolute discretion of the City and shall not, in any way, be construed, interpreted and/or constitute an assumption by the City of any of the Developer's or the Park Contractors' obligations in connection with the construction of the Park Project.

14 Completion of the Park Project shall occur when: (y) the Developer has obtained a temporary certificate of occupancy, a final certificate of occupancy, and/or a certificate of completion that individually or collectively encompass the entire Park Project; and (z) all improvements that comprise the Park Project (the "**Park Improvements**") have been conveyed to and accepted by the City through a bill of sale. The Developer shall complete the Park Project within eight (8) years after the issuance of the initial Building Permit for the Project.

15 The City shall own the Park Site upon the Developer's conveyance of the same to the City and, upon such conveyance, the Developer shall have no further right or interest in the Park Site, except for those rights and interests: (a) under the Temporary Construction and Access Easement granted to the Developer; and (b) granted to the Developer in the Floridian Parking Easement Agreement. The City shall own and operate and be responsible for at its sole cost and expense the operation, maintenance, repair and replacement of the Park Project and the Park

Improvements upon (y) the Developer's completion and conveyance of the same to the City, and (z) the City's acceptance of the same from the Developer, and upon such completion, conveyance and acceptance, the Developer shall have no further right, interest, obligation or liability after the expiration of the warranty periods in or with respect to the Park Project or Park Improvements, except as otherwise provided in (a) and (b) above. The approval of this Agreement does not grant, and shall not be construed to grant, to the Developer any rights of ownership in the Park Site, the Park Project or the Park Improvements. [Note: Developer has requested deletion of language re: warranty periods; Administration does not recommend]

16 The Developer shall comply with the City's Art In Public Places (the "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 1.5% of the "construction cost" (as such term is defined in Section 82-537 of the City Code) of the Park Project (the "Public Art Funds") no later than the date of execution of a construction contract for or that includes the construction of the Park Project, as required by the City Code. The full amount of the Public Art Funds shall be dedicated to Developer's use for public art within the Park Site. In view of the Developer's overall design responsibility for the Park Project, the Developer shall either: (a) submit the proposed artworks to be funded with the Public Art Funds to the City's Art In Public Places Committee for its review and recommendation; or (b) seek the City Commission's approval of the proposed artworks and waiver of any applicable AIPP program requirements, with approval shall not to be unreasonably withheld, conditioned or delayed.

CONDITIONS PRECEDENT TO ISSUANCE OF CERTIFICATE OF OCCUPANCY OR
TEMPORARY CERTIFICATE OF OCCUPANCY

17 Conditions Precedent to Issuance of Certificate of Occupancy or Temporary Certificate of Occupancy for the Project. The Developer acknowledges that conveyance of the Park Site and the completion of the Park Project and the conveyance of the Park Improvements are additional and essential consideration for the City's vacation of the City Parcel. The Developer shall not apply for, and the City shall not issue, any temporary certificate of occupancy, final certificate of occupancy, and/or certificate of completion for the Project (in whole or in part) until the following has occurred:

(a) The Developer shall have completed construction of the Park Project substantially in accordance with the Park Zoning Approval (as evidenced by the issuance of a temporary certificate of occupancy, a final certificate of occupancy or a certificate of completion that individually or collectively encompass the entire Park Project);

(b) Developer shall have designed and constructed, at Developer's sole cost and expense, the "Future Baywalk Platform" (as more specifically defined below).

(c) The Developer shall have satisfied the Environmental Contingency; and

(d) The Developer shall have conveyed the Park Improvements to the City through a bill of sale. The City shall be obligated to accept such bill of sale for the Park

Improvements if the Park Project has been completed substantially in accordance with the Park Zoning Approval (as evidenced by the issuance of a temporary certificate of occupancy, a final certificate of occupancy or a certificate of completion for the Park Project that individually or collectively encompass the entire Park Project) and the Environmental Contingency has been satisfied.

Provided however, and notwithstanding anything to the contrary contained in this Agreement, subsections 17(a) through (d) above shall be deemed satisfied if the City draws any funds under the Recognition Agreement or Letter of Credit (as applicable) as provided in subparagraph 9(f) of this Agreement.

BAYWALK CONSTRUCTION

18 Baywalk Improvement Construction. As additional consideration for the City's Vacation of the City Parcel, the Developer will complete or cause to be completed the following Baywalk Improvements, subject to the following terms and conditions:

(a) The Developer will complete or cause to be completed the Baywalk Improvements according to the designs and at the locations set forth in Exhibits "G", "H" and "I" – "G" attached hereto and incorporated herein by this reference, which are generally located at:

Mirador 1000 Condo
1000 West Avenue
Miami Beach, FL

Mirador 1200 Condo
1200 West Avenue
Miami Beach, FL

Mondrian Hotel
1100 West Avenue
Miami Beach, FL

(b) The City shall be responsible, at its sole cost and expense, for obtaining all necessary permits for the Baywalk Improvements based on the existing completed designs for the Baywalk Improvements (the "Baywalk Permits"). The City shall be responsible for obtaining, at its sole cost and expense, all necessary joinders or consents from the owners of the upland parcels adjacent to the Baywalk Improvements; provided, however, to the extent any such owner of any such upland parcel is the Developer or any affiliate thereof or any association with respect to the Mondrian Hotel, then the Developer shall deliver such joinders or consent to the City promptly upon request for the same. The Developer shall reasonably cooperate (at no cost or expense to the Developer) with the City in the City's efforts to obtain the Baywalk Permits.

(c) After the City obtains the Baywalk Permits, the City shall deliver the same to the Developer. The Developer shall then be responsible, at Developer's sole cost and expense,

to complete or cause to be completed the construction of the Baywalk Improvements pursuant to the Baywalk Permits. The Developer shall complete or cause to be completed the construction of the Baywalk Improvements within one (1) year after the City delivers the Baywalk Permits to the Developer. After the Developer commences construction of the Baywalk Improvements, the City shall pay the Developer, through a draw schedule based upon a percentage of completion, the combined sum of \$762,682.58, less the amounts expended by the City to secure the Baywalk Permits.

19 Developer shall design and construct, at Developer's sole cost and expense, an elevated terminus/platform (approximately 14-15 feet above grade) to accommodate the City's design and construction of the Future Baywalk Pedestrian Bridge across West Avenue (the "Future Baywalk Platform"), in accordance with the following:

19.1 The Developer shall submit the proposed design for the Future Baywalk Platform to the City for its approval (which approval shall not be unreasonably withheld, conditioned or delayed) prior to applying for a Building Permit for the Future Baywalk Platform; and

19.2 Upon completion of the Future Baywalk Platform (as evidenced by the issuance of a temporary certificate of occupancy, a final certificate of occupancy or a certificate of completion for the Future Baywalk Platform), the Developer shall grant the City a perpetual, non-revocable easement over the Future Baywalk Platform, which easement area shall include the Future Baywalk Platform and a path leading to the Future Baywalk Platform, for pedestrian use, together with the right to connect and attach improvements thereto at the City's sole cost and expense, subject to the Developer's prior review and written approval (which approval shall not be unreasonably withheld, conditioned or delayed) of such improvements and methods of connection and/or attachment. [Note: Administration recommends clarification regarding scope of easement above; Developer has not agreed].

GENERAL PROVISIONS

20 Applications for Development Approvals and Development Permits. This Agreement contemplates that the Developer will file applications for Development Orders and Development Permits. The City shall process all Development Permit and Development Order applications in a timely fashion. Notwithstanding the foregoing, the Developer shall be solely responsible for obtaining all final, non-appealable Development Orders and Development Permits for the Project and the Park Project. No extension of any time period herein shall be deemed to be an extension of any time periods contained within the Development Permits or Development Orders.

21 Laws Governing this Agreement. For the entire term of this Agreement, the City hereby agrees that the City's Land Development Regulations governing the development of the Property as they exist as of the Execution Date of this Agreement (as amended by the Land Development Regulation Amendments, if adopted) shall govern the development of the Property (including the Project) during the Term. Notwithstanding the foregoing, the City may apply

subsequently adopted laws or policies of general applicability to the Property and the Project (particularly as they may relate to quality of life issues such as, but not limited to noise, litter, and hours of operation) as permitted or required by the Act, including, without limitation, Section 163.3233(2), Florida Statutes, as same may be amended from time to time; provided, however, that in no event shall the City apply any subsequently adopted law or policies in a manner that requires any alterations or modifications to the Project or the Park Project (prior to the City taking ownership of the Park Improvements) or any amendments or modifications to the Project Zoning Approvals or the Park Zoning Approval (prior to the City taking ownership of the Park Improvements).

22 Compliance with Local Regulations Regarding Development Permits. This Agreement is not and shall not be construed as a Development Permit, Development Order, approval or authorization to commence any development, fill, or other land modification. The Developer and the City agree that the failure of this Agreement to address a particular permit, approval, procedure, condition, fee, term or restriction in effect on the Effective Date of this Agreement shall not relieve the 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.

23 Reservation of Rights. This Agreement shall not affect any rights that may have accrued to any party to this Agreement under applicable laws and each party hereto reserves any and all of such rights.

24 Consistency with the City's Comprehensive Plan. The City has adopted and implemented the Comprehensive Plan. The City hereby finds and declares that the provisions of this Agreement dealing with the Property (including the Project and the Park Project) are consistent with the City's Comprehensive Plan and Land Development Regulations (as amended by the Land Development Regulation Amendments, if adopted), subject to all applicable requirements, permits and approvals.

25 Concurrency. The Developer shall be solely responsible for obtaining all land use permits, including, but not limited to, all permits and approvals required pursuant to Section 163.3180, Florida Statutes (2017), with respect to concurrency requirements for roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation, and schools (the "Concurrency Requirements"). Prior to applying for the initial Building Permit for the Project, Developer shall apply to the appropriate governmental authorities and obtain letters or other evidence that the Developer has satisfied all applicable Concurrency Requirements, and shall diligently and in good faith obtain such letters or other evidence that the Project meets all applicable Concurrency Requirements, and shall pay such impact fees as may then be due or applicable to meet Concurrency Requirements.

26 Effective Date; Duration; and Term.

(a) Within fourteen (14) days following approval at two (2) public hearings and execution by all parties, the City shall record this Agreement in the Public Records of Miami-Dade

County. This Agreement shall become effective only after it has been recorded in the Public Records of Miami-Dade County, Florida. The Developer agrees that it shall be responsible for all recording fees related to the recording of this Agreement.

(b) This Agreement shall run for an initial term of eight (8) years from the Effective Date (the "**Term**"), and may be extended by mutual consent of the City and the Developer subject to a public hearing pursuant to Section 163.3225, Florida Statutes. Consent to any extension of this Agreement is within the sole discretion of each party to this Agreement. No notice of termination shall be required by either party upon the expiration of this Agreement, and thereafter the parties shall have no further obligations under this Agreement, except as provided herein.

27 Presently Permitted Development.

(a) Permitted Development and Uses. The Property is to be designated as Medium Intensity Commercial Category (CD-2) according to the City's adopted Comprehensive Plan Future Land Use Map. The Property is to be zoned CD-2 Commercial, Medium Intensity by the City's Land Development Regulations. The CD-2 zoning district permits apartments; apartment hotels, hotels, hostels, and suite hotels; religious institutions with an occupancy of 199 persons or less; and alcoholic beverages establishments. The Property may be used for the purposes permitted and regulated in these land use designations and zoning districts, as further limited by the by the City's Land Development Regulations and Comprehensive Plan.

(b) Density, Building Heights, Setbacks and Intensities. The maximum density, heights, setbacks and intensities for any development on the Property shall be regulated by the City's Land Development Regulations, Comprehensive Plan and any applicable Federal, State or County laws and regulations. In the CD-2 land use designation, the maximum residential density is 100 dwelling units per acre. The intensity of hotel use is limited by such set back, height, floor area ratio, minimum room size and other provisions of the Land Development Regulations.

28 Public Facilities to Serve the Property. A description of the public facilities that will service the Property, 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 of the Property, is set forth in **Exhibit "Y"** attached hereto and incorporated herein by this reference.

29 Public Reservations and/or Dedications. A description of the reservations and/or dedications of land for public purposes that are proposed under the terms of this Agreement is set forth in **Exhibit "Z"** attached hereto and incorporated herein by this reference.

30 Required Development Permits. A listing and description of all local development permits approved or needed to be approved for the development of the Project and the Park Project is set forth in **Exhibit "AA"** attached hereto and incorporated herein by this reference.

31 Default. Each of the following shall be an “Event of Default” by the Developer hereunder:

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

(b) If, within eight (8) years after the issuance of the initial Building Permit for the Project, the requirements of subparagraphs 17(a) through (d) have not been or deemed to have been satisfied.

(c) If the Developer shall make an assignment for the benefit of creditors; or shall admit in writing its inability to pay its debts generally as they become due; or shall consent in writing to the appointment of a receiver or trustee or liquidator of all of its property or the major part thereof; or if all or a substantial part of the assets of the Developer are attached, seized, subjected to a writ or distress warrant, or are levied upon, and as a result come into the possession of any receiver, trustee, custodian or assignee for the benefit of creditors, and the same is not dismissed, discharged or satisfied within one hundred fifty (150) days after the occurrence of the event giving rise to such Event of Default.

(d) If the Developer shall commence a voluntary case under the Title 11 of the United States Code (the “Bankruptcy Code”); or an involuntary proceeding is commenced against the Developer under the Bankruptcy Code and the same is not dismissed or stayed within one hundred fifty (150) days after the commencement of the case; or a custodian (as defined in the Bankruptcy Code) is appointed for or takes charge of all or substantially all of the property of the Developer in any proceeding under the Bankruptcy Code and such custodian is not discharged or dismissed within one hundred fifty (150) days after such appointment; or the Developer consents in writing or joins in an application for the appointment of a custodian in any proceeding under the Bankruptcy Code; or the Developer commences any other proceedings under any reorganization, arrangement, readjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to the Developer; or there is commenced against the Developer any such other proceeding and the same is not dismissed or stayed within one hundred fifty (150) days; or a custodian, trustee or person of similar capacity is appointed for or takes charge of all or substantially all of the property of the Developer in any such other proceeding and such custodian, trustee or person of similar capacity is not discharged or dismissed within one hundred fifty (150) days after such

appointment; or the Developer consents in writing or joins in an application for the appointment of a custodian, trustee or person of similar capacity in any such other proceeding.

In the event the City shall claim any Event of Default shall have occurred under this Agreement, the City's Default Notice shall state with specificity the provisions of this Agreement under which the Event of Default is claimed, the nature and character of such Event of Default, the date by which such Event of Default must be cured pursuant to this Agreement (if applicable), and, if elected by the City, that the failure of the Developer to cure such Event of Default by the date set forth in such Default Notice will result in the City having the right to terminate this Agreement.

32 Enforcement of Performance; Damages; and Termination. If an Event of Default occurs under this Agreement, and such Event of Default has not been cured within any applicable notice and cure period, the City may elect (subject to the terms, conditions and limitations set forth in this Agreement) any one or more of the following remedies:

- (a) Enforce strict performance by the Developer;
- (b) Terminate this Agreement; or
- (c) Pursue any other remedy available to the City at law or in equity.

The City's election of a remedy under this Agreement with respect to any one or more Events of Default shall not limit or otherwise affect the City's right to elect any of the remedies available to it under this Agreement with respect to any other Event of Default.

In the event the City elects to terminate this Agreement after the occurrence of an Event of Default that was not cured within any applicable notice and cure period, and such termination is stayed by order of any court having jurisdiction of any matter relating to this Agreement, or by any federal or state statute, then following the expiration of any such stay, the City shall have the right, at its election, to terminate this Agreement with five (5) Business Days' written notice to the Developer, the Developer as debtor in possession, or if a trustee has been appointed, to such trustee.

Notwithstanding anything to the contrary contained in this Agreement, in no event whatsoever shall the Developer be liable to the City or any other person for any indirect, special, incidental, consequential, punitive, economic damages (including, without limitation, diminution of property value) lost profits or similar damages, whether or not foreseeable or advised of the possibility of the same, in connection with, arising from or as a result of any Event of Default by the Developer under this Agreement or the condition of the Park Site (including, without limitation, as disclosed in any of the Developer Environmental Assessments and/or City Environmental Assessments); provided, however, if an Event of Default occurs under this Agreement by reason of the Developer's failure to satisfy the Environmental Contingency as required by this Agreement, or if an Event of Default occurs under this Agreement by reason of the Developer's failure to construct the Baywalk Improvements as required by this Agreement, then the Developer shall be liable to the City for all actual fees, costs and expenses paid or

incurred by the City in satisfying the Environmental Contingency as required by this Agreement and/or in completing the construction of the Baywalk Improvements as required by this Agreement.

~~Notwithstanding anything to the contrary contained in this Agreement, in no event shall the City have the right to terminate this Agreement under any circumstance after the Developer has conveyed the Park Site to the City; it being acknowledged and agreed by the City that its sole and exclusive remedy for any Event of Default by the Developer under this Agreement after it has conveyed the Park Site to the City shall be limited to an action for damages and/or specific performance to the extent such remedies are available and permitted to the City under this Agreement and applicable law. [Note: Developer has requested language eliminating City's right to terminate the agreement for cause; Administration does not recommend].~~

33 City's Right of Self-Help for Demolition. In addition to any other rights and remedies available to the City at law or in equity, if the Developer fails to timely demolish the South Shore Hospital in accordance with the requirements of Paragraph 10 of this Agreement, and if the Developer fails to timely cure such failure after receipt of a Default Notice, then the City shall have the right, but not the obligation, to enter the Development Site and demolish the South Shore Hospital. All sums reasonably disbursed, deposited or incurred by the City in connection with such demolition, including but not limited to any costs of permitting such demolition, shall be paid by the Developer to the City within thirty (30) days of demand. If payment is not made by the Developer, then upon the recording in the public records of Miami-Dade County, a certificate executed by the Building Official, certifying the amount so expended, the same shall become a special assessment lien against the Development Site, and until fully paid and discharged, shall remain a lien equal in rank and dignity with the lien of ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the Development Site. The Developer hereby irrevocably grants to the City a license to enter the Development Site for the purposes of curing any Event of Default under Paragraph 10 of this Agreement and to effectuate the provisions of this Paragraph.

34 Termination Outside of Default. In the event either party chooses to exercise its right to terminate this Agreement under any of Paragraphs 4(a), 5, 7(c) or 7(d) of this Agreement (apart from the City's right to terminate under Paragraph 32 of this Agreement as a result of an Event of Default by Developer), each party shall bear its own fees, costs and expenses incurred in connection with this Agreement, the Project and the Park Project, and neither party shall have or owe any further obligation or liability to the other party. Moreover, in the event that the Purchase and Sale Agreement is terminated prior to the Closing Date, then this Agreement shall automatically terminate, and each party shall bear its own fees, costs and expenses incurred in connection with this Agreement, the Project and the Park Project, and neither party shall have or owe any further duty, obligation or liability to the other party.

35 Strict Performance; Waiver. No failure by the City or the Developer to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy available to such party by reason of the other party's default or an

Event of Default hereunder shall constitute a waiver of any such default, Event of Default or of such other covenant, agreement, term or condition hereunder.

36 Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

| | |
|---------------------|---|
| If to the City at: | City of Miami Beach, City Hall 1700 Convention Center Drive Miami Beach, Florida 33139 Attn: City Manager |
| With a copy to: | City of Miami Beach, City Hall 1700 Convention Center Drive Miami Beach, Florida 33139 Attn: City Attorney |
| With copies to: | Holland & Knight LLP 701 Brickell Avenue Miami, Florida 33131 Attn: Joseph G. Goldstein |
| If to Developer at: | KGM Equities, LLC 2200 Biscayne Boulevard Miami, Florida 33137 Attn: David Smith |
| With a copy to: | KGM Equities, LLC 2200 Biscayne Boulevard Miami, Florida 33137 Attn: Michael Sheitelman |
| With a copy to: | Bercow Radell Fernandez & Larkin 200 S. Biscayne Boulevard Miami, Florida 33131 Attn: Michael W. Larkin |

Notices personally delivered or sent by overnight courier shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given three (3) days after deposit in the U.S. mails. The terms of this Paragraph shall survive the expiration or earlier termination of this Agreement.

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

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

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

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

41 Other Agreements. This Agreement has no effect on any other agreement, the City's development orders, or declaration of restrictions otherwise encumbering the Property. Any and all agreements currently in the public records remain valid. The parties incorporate by reference each and every requirement set forth in the Act.

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

43 Transfer and Assignment. The Developer shall not be entitled to assign or transfer this Agreement or any of the rights and obligations hereunder prior to the issuance of a temporary certificate of occupancy, a final certificate of occupancy or a certificate of completion for the Park Project without the prior written consent of the City (which consent may be withheld, conditioned or delayed in the sole and absolute discretion of the City), except as hereinafter provided. The Developer shall have the right at any time and from time to time to sell, transfer and convey all or any portion of the Property to any person or entity (a “**Subsequent Owner**”) and assign and transfer this Agreement and the rights and obligations hereunder in whole or in part to any Subsequent Owner in connection with such sale, transfer or conveyance of the Property without the prior consent or approval of the City, provided that a “Galbut Entity” (as hereinafter defined) shall at all times (a) hold, directly or indirectly, not less than a 10% ownership interest in the Development Site, (b) serve, directly or indirectly, as a manager of the entity that is developing the Project and the Park Project, and (c) exercise, directly or indirectly, day-to-day operational control of the entity as the manager of the entity that is developing the Project; provided, further, that this Agreement and the rights and obligations hereunder can be assigned and transferred to any lender, lender designee or non-lender affiliated purchaser (any of the foregoing being referred to herein as a “**Foreclosure Purchaser**”) who acquires the Property or any portion thereof through a foreclosure sale or deed-in-lieu of foreclosure without the prior consent or approval of the City. This Paragraph and the restrictions, limitations and prohibitions contained herein shall automatically terminate, extinguish and be of no further force or effect immediately upon the earlier of the following events to occur (y) the issuance of a temporary certificate of occupancy, a final certificate of occupancy or a certificate of completion for the Park Project, or (z) the acquisition of the Property or any portion thereof by any Foreclosure Purchaser through a foreclosure sale or deed-in-lieu of foreclosure; whereupon, the Developer, any Subsequent Owner and/or any Foreclosure Purchaser shall have the absolute and unconditional right to sell, transfer and convey all or any portion of the Property to any person or entity and to assign and transfer this Agreement and the rights and obligations hereunder in whole or in part to any person or entity in connection with such sale, transfer or conveyance of the Property or any portion thereof without the prior consent or approval of the City whether or not a Galbut Entity holds, directly or indirectly, any ownership interest in the Development Site. Any assignee or transferee (including, any Subsequent Owner or Foreclosure Purchaser) shall assume all remaining obligations of the Developer under this Agreement at the time of such assignment or transfer of this Agreement. For purposes of this Paragraph, the term “**Galbut Entity**” shall mean: (a) Russell Galbut; (b) any spouse, child, grandchild or sibling of Russell Galbut; (c) any trust established for the benefit of Russell Galbut or any spouse, child, grandchild or sibling of Russell Galbut (or of any combination of the foregoing); and/or (d) any entity owned, directly or indirectly, one hundred percent (100%) by Russell Galbut, or any spouse, child, grandchild or sibling of Russell Galbut, any trust established for the benefit of Russell Galbut or any spouse, child, grandchild or sibling of Russell Galbut (or of any combination of the foregoing).

42 Force Majeure and Third Party Challenges. All time periods set forth in this Agreement and in any approval or permit issued in connection with the Project and/or the Park Project will be tolled due to force majeure events (including, without limitation, strikes, lockouts, acts of God, hurricanes and severe weather, and other causes beyond the control of either party),

and due to delays in obtaining permits and approvals from governmental agencies, and during the pendency of any "Lawsuit" (as hereinafter defined) and any unexpired appeal period thereof. In the event that a third party unrelated to or unaffiliated with the City or the Developer institutes any action, suit or proceeding relating to the Project and/or the Park Project, including, without limitation, any action, suit or proceeding challenging the validity or issuance of the Vacation Resolution, this Agreement, the Land Development Regulation Amendments, the Project Zoning Applications, the Project Zoning Approvals, the Park Zoning Application, the Park Zoning Approval or any Building Permit (in each instance, including any related appeals, a "Lawsuit"), then the Developer shall defend any such Lawsuit at its sole cost and using legal counsel reasonably acceptable to the City. The Developer shall further indemnify and hold the City harmless from and against all actual damages, losses, liabilities, fees, cost and expense (including attorneys' fees, costs and expenses) of any and every kind arising out of or relating to any such Lawsuit. This Paragraph shall survive the expiration or any earlier termination of this Agreement.

If a Lawsuit is commenced prior to the vacation and conveyance of the City Parcel as contemplated by this Agreement, then the City shall not be required to effectuate such vacation and conveyance of the City Parcel until thirty (30) days after the Lawsuit has been completed and finally disposed of (by judgement, settlement or otherwise) on terms and conditions acceptable to Developer in its sole and absolute discretion; provided, however, if the Lawsuit is still pending more than sixty (60) months after it has been commenced, then either party, at its option, may from and after the expiration of such sixty (60) month period and while the Lawsuit remains unresolved, elect to terminate the transaction contemplated by this Agreement by delivering a written notice of termination to the other party, whereupon the Vacation Resolution shall be rescinded and this Agreement shall be terminated, and the City and the Developer shall have no further obligation and/or liability to each other hereunder.

44 Indemnification of City. The Developer shall indemnify, defend and hold harmless the City and its employees, from and against any actual claims, demands, causes of action, damages, losses, liabilities, fees, cost and expense of whatever kind or nature arising out of or related to the conduct, act or omission of the Developer and/or its officers, directors, managers, members, employees, contractors and agents, related to (a) this Agreement, and/or (b) the Project. The Developer shall directly pay all actual costs and expenses related to any expense or cost charged, or legal defense required by the City, using legal counsel reasonably acceptable to the City, pursuant to the foregoing. The City shall reasonably cooperate and collaborate (but at no expense to the City) with the Developer in connection with any legal proceeding in which the Developer is defending the City. This Paragraph shall survive the expiration or any earlier termination of this Agreement.

45 Corporate Obligations. It is expressly understood that this Agreement and the obligations issued hereunder are solely corporate obligations, and that no personal liability will attach to, or is or shall be incurred by, the incorporators, stockholders, officers, directors, managers, members, partners, trustees, beneficiaries, elected or appointed officials (including, without limitation, the Mayor and City Commissioner of the City) or employees, as such, of the Developer, the City, or any successor or assign of any of them, under or by reason of the

obligations, covenants or agreements contained in this Agreement or implied therefrom; and that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any of all such rights and claims against, every such incorporators, stockholders, officers, directors, managers, members, partners, trustees, beneficiaries, elected or appointed officials (including, without limitation, the Mayor and City Commissioner of the City) or employees, as such, or under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are expressly waived and released as a condition of, and as consideration for, the execution of this Agreement.

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

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

48 Limitations of Liability and Waiver of Consequential Damages.

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

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

(f) The City will not be liable to the Developer or to any other person for any injury or damage to any property of the Developer or to any person or to the City Parcel or the Park Site caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the City Parcel or the Park

Site, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by any person (unless caused by the gross negligence or willful misconduct of the City, its agents, contractors or employees).

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

(h) No member, official, elected representative or employee of the City shall be personally liable to the Developer or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligations under the terms of this Agreement.

(i) Notwithstanding anything contained in this Lease to the contrary, in no event shall either Party be liable to the other for any consequential, exemplary or punitive damages.

49 Police Power.

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

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

50 Conflict. In the event of an inconsistency or conflict between the terms of this Agreement and the Vacation Resolution, the terms of this Agreement shall control.

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

Signed, sealed and delivered
in the presence of:

CITY OF MIAMI BEACH,
a Florida municipal corporation

Print Name: _____

By: _____

Print Name: _____

Name: _____

Attest: _____
City Clerk

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

The foregoing instrument was acknowledged before me this _____day of _____, 201__, by _____, as Mayor of the City of Miami Beach, a municipal corporation, on behalf of the Corporation. He is personally known to me or has produced _____ as identification and who did (did not) take an oath.

NOTARY PUBLIC

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

500 ALTON ROAD VENTURES, LLC, a
Delaware limited liability company

By: _____
David Smith, Vice President

Print Name: _____

Print Name: _____

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

The foregoing instrument was acknowledged before me this ____ day of _____, 201__
by DAVID SMITH, as a Vice President of 500 ALTON ROAD VENTURES, LLC, a Delaware limited
liability company, on behalf of the company. He is personally known to me or has produced
_____ as identification and who did/did not take an oath.

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

1220 SIXTH, LLC, a Delaware limited liability
company

By: _____
David Smith, Vice President

Print Name: _____

Print Name: _____

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

The foregoing instrument was acknowledged before me this ____ day of _____, 201__
by DAVID SMITH, as a Vice President of 1220 SIXTH, LLC, a Delaware limited liability company,
on behalf of the company. He is personally known to me or has produced
_____ as identification and who did/did not take an oath.

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

SOUTH BEACH HEIGHTS I, LLC, a Delaware
limited liability company

By: _____
Marisa Galbut, President

Print Name: _____

Print Name: _____

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

The foregoing instrument was acknowledged before me this ____ day of _____, 201__
by MARISA GALBUT, as President of SOUTH BEACH HEIGHTS I, LLC, a Delaware limited liability
company, on behalf of the company. He is personally known to me or has produced
_____ as identification and who did/did not take an oath.

NOTARY PUBLIC

Typed or printed Name of Notary

My Commission expires:

Serial No., if any _____

KGM EQUITIES, LLC, a Delaware limited liability company

By: _____
David Smith, President

Print Name: _____

Print Name: _____

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

The foregoing instrument was acknowledged before me this ____ day of _____, 201__ by DAVID SMITH, as President of KGM EQUITIES, LLC, a Delaware limited liability company, on behalf of the company. He is personally known to me or has produced _____ as identification and who did/did not take an oath.

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

TABLE OF EXHIBITS

EXHIBIT "A" – LEGAL DESCRIPTION OF DEVELOPER PROPERTY

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EXHIBIT "R" – FIFTH STREET EASEMENT AGREEMENT

EXHIBIT "S" – WEST AVENUE SIDEWALK EASEMENT

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EXHIBIT "U" – TERMINATION OF GRANT OF EASEMENT AND AGREEMENT FOR STORM
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EXHIBIT "Y" – DESCRIPTION OF PUBLIC FACILITIES

EXHIBIT "Z" – DESCRIPTION OF PUBLIC RESERVATIONS

EXHIBIT "AA" – DESCRIPTION OF REQUIRED DEVELOPMENT PERMITS

EXHIBIT "A" – LEGAL DESCRIPTION OF DEVELOPER PROPERTY

EXHIBIT “B” – LEGAL DESCRIPTION OF CITY PARCEL

LEGAL DESCRIPTION

A PORTION OF THE NE 6TH STREET LYING NORTH OF AND ADJACENT OT LOTS 10 AND 11 OF "AMENDED PLAT OF AQUARIUM SITE RESUBDIVISON", ACCORDING TO THE PLAT THEREOF , AS RECORDED IN PLAT BOOK 21, PAGE 83, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA AND LYING SOUTH OF AND ADJACENT TO LOT 1 AND LOT 32, BLOCK 2 OF "AMENDED PLAT FLEETWOOD SUBDIVISION", ACCORDING TO THE PLAT THEREOF ,AS RECORDED IN PLAT BOOK 28 AT PAGE 34, OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF SAID LOT 11, SAID POINT BEING ON A CIRCULAR CURVE CONCAVE TO THE SOUTHEAST;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAD CURVE, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 90° 00'21" AND AN ARC DISTANCE OF 31.42 FEET;

THENCE NORTH 00°22'32" WEST, A DISTANCE OF 70.00 FEET TO A POINT ON THE SOUTH LINE OF SAID LOTS 1 AND 32;

THENCE NORTH 89°37'30 EAST ALONG THE SOUTH LINE OF SAID LOT 1 AND 32, A DISTANCE OF 234.99 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE NORTHWEST;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 15.00 FEET, A CENTRAL ANGEL OF 90°00'21" AND AN ARC DISTANCE OF 23.56 FEET;

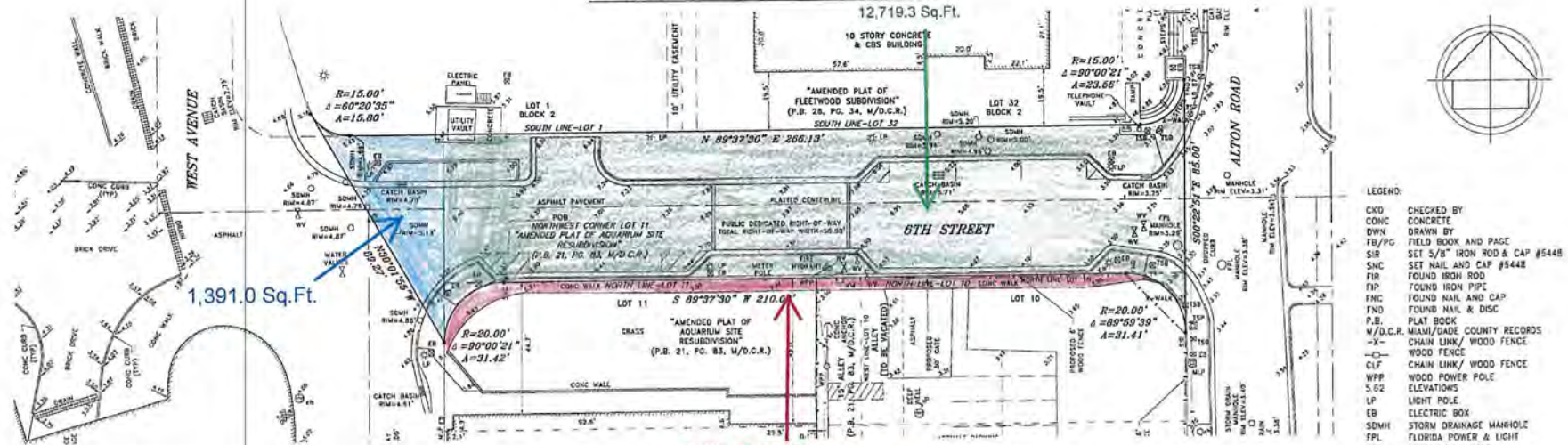
THENCE SOUTH 00°22'51" EAST, A DISTANCE OF 85.00 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE SOUTHWEST;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 89°59'39" AND AN ARC DISTANCE OF 31.41 FEET;

THENCE SOUTH 90°37'30" WEST ALONG THE NORTH LINE OF SAID LOTS 10 AND 11 A DISTANCE OF 210.00 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE, LYING AND BEING IN MIAMI-DADE COUNTY, FLORIDA; CONTAINING 12,719 SQUARE FEET MORE OR LESS.

SKETCH OF SURVEY



1,027.5 Sq. Ft.
(Sidewalk Encroachment)

LEGEND:

| | |
|----------|-------------------------------|
| CXB | CHECKED BY |
| CONC | CONCRETE |
| DWN | DRAWN BY |
| FB/PG | FIELD BOOK AND PAGE |
| SIR | SET 5/8" IRON ROD & CAP #5448 |
| SHC | SET NAIL AND CAP #5448 |
| FIR | FOUND IRON ROD |
| FIP | FOUND IRON PIPE |
| FNC | FOUND NAIL AND CAP |
| FND | FOUND NAIL & DISC |
| P.B. | PLAT BOOK |
| M/D.C.R. | MIAMI/DADE COUNTY RECORDS |
| -X- | CHAIN LINK/ WOOD FENCE |
| -C- | WOOD FENCE |
| CLF | CHAIN LINK/ WOOD FENCE |
| WPP | WOOD POWER POLE |
| 5.02 | ELEVATIONS |
| LP | LIGHT POLE |
| EB | ELECTRIC BOX |
| SDMH | STORM DRAINAGE MANHOLE |
| FPL | FLORIDA POWER & LIGHT |
| M/LP | METAL LIGHT POLE |
| TSB | TRAFFIC SIGNAL BOX |
| TSP | TRAFFIC SIGNAL POLE |
| WV | WATER VALVE |
| WM | WATER METER |
| R | RADIUS |
| A | ARC DISTANCE |
| Δ | CENTRAL ANGLE |
| P.O.B. | POINT OF BEGINNING |

FLOOD ZONE INFORMATION

| | |
|----------------------|----------|
| COMMUNITY NUMBER | 120651 |
| PANEL NUMBER | 0319 L |
| ZONE | AE |
| BASE FLOOD ELEVATION | 8 |
| EFFECTIVE DATE | 09/11/09 |

NOTES:

- NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
- LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD.
- THIS SURVEY WAS DONE SOLELY FOR BOUNDARY PURPOSES AND DOES NOT DEPICT THE JURISDICTION OF ANY MUNICIPAL, STATE, FEDERAL OR OTHER ENTITIES.
- THE LAND DESCRIPTION SHOWN HEREON WAS PREPARED BY THE SURVEYOR.
- UNDERGROUND IMPROVEMENTS NOT SHOWN.
- ELEVATIONS SHOWN HEREON ARE BASED ON THE NATIONAL GEODETIC VERTICAL DATUM OF 1929.
- BENCHMARK REFERENCE: MIAMI/DADE COUNTY BENCHMARK # D-151 ELEVATION=3.72'
- BEARINGS SHOWN HEREON ARE ASSUMED.

LAND DESCRIPTION:

A PORTION OF NE 6TH STREET LYING NORTH OF AND ADJACENT TO LOTS 10 AND 11 OF "AMENDED PLAT OF AQUARIUM SITE RESUBDIVISION", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 21, PAGE 85, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA AND LYING SOUTH OF AND ADJACENT TO LOT 1 AND LOT 32, BLOCK 2 OF "AMENDED PLAT FLEETWOOD SUBDIVISION", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 28 AT PAGE 34, OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF SAID LOT 11, SAID POINT BEING ON A CIRCULAR CURVE CONCAVE TO THE SOUTHEAST;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 90°00'21" AND AN ARC DISTANCE OF 31.42 FEET; 00 22'32" 70.00

THENCE NORTH 89°37'30" WEST, A DISTANCE OF 89.37 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE NORTHWEST;

THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 15.00 FEET, A CENTRAL ANGLE OF 60°20'35" AND AN ARC DISTANCE OF 15.00 FEET;

THENCE NORTH 89°37'30" EAST ALONG THE SOUTH LINE OF SAID LOTS 1 AND 32, A DISTANCE OF 210.00 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE NORTHWEST; 234.99

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 15.00 FEET, A CENTRAL ANGLE OF 90°00'21" AND AN ARC DISTANCE OF 23.56 FEET;

THENCE SOUTH 00°22'51" EAST, A DISTANCE OF 85.00 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE SOUTHWEST;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 89°59'39" AND AN ARC DISTANCE OF 31.41 FEET;

THENCE SOUTH 89°37'30" WEST ALONG THE NORTH LINE OF SAID LOTS 10 AND 11, A DISTANCE OF 210.00 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE, LYING AND BEING IN MIAMI/DADE COUNTY, FLORIDA; CONTAINING 1,027.5 SQUARE FEET MORE OR LESS.

I HEREBY CERTIFY THAT THE "SKETCH OF SURVEY" OF THE HEREON DESCRIBED PROPERTY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS SURVEYED IN THE FIELD UNDER MY DIRECTION IN AUGUST, 2018. I FURTHER CERTIFY THAT THIS SURVEY MEETS THE STANDARDS OF PRACTICE FOR SURVEYING IN THE STATE OF FLORIDA ACCORDING TO CHAPTER 5J-17 OF THE FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES. THERE ARE NO ABOVE GROUND ENCROACHMENTS OTHER THAN THOSE SHOWN HEREON, SUBJECT TO THE QUALIFICATIONS NOTED HEREON.

FOR THE FIRM, BY: *Richard E. Cousins*

RICHARD E. COUSINS
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA REGISTRATION NO. 4188

SURVEY DATE: 08/30/18

COUSINS SURVEYORS & ASSOCIATES, INC.

3921 SW 47TH AVENUE, SUITE 1011
DADE, FLORIDA 33114
CERTIFICATE OF AUTHORIZATION: B # 5448
PHONE (954) 689-7766 FAX (954) 689-7799

CLIENT:
CRESCENT HEIGHTS

6TH STREET
MIAMI BEACH, FLORIDA

SKETCH OF SURVEY

REVISIONS

| DATE | BY | FOR |
|------|----|-----|
| | | |
| | | |
| | | |

PROJECT NUMBER: 0544-112

SCALE: 1" = 10'

SHEET
1 OF 1
SHEET

EXHIBIT “C” – LEGAL DESCRIPTION OF PROPERTY

EXHIBIT “D” – LEGAL DESCRIPTION OF PARK SITE

EXHIBIT “E” – DESCRIPTION OF DEVELOPMENT SITE

EXHIBIT "F" - 5TH STREET EASEMENT

This instrument was prepared by.

Name: Raul J. Aguila, City Attorney.
Address: City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

**EASEMENT AGREEMENT
(5th Street Easement)**

THIS EASEMENT AGREEMENT (the "**Agreement**"), is made this ____ day of _____, 201__, by _____, having an address of 2200 Biscayne Boulevard, Miami, Florida 33137 (the "**Owner**") in favor of the City of Miami Beach, a Florida municipal corporation (the "**City**").

WITNESSETH:

WHEREAS, the Owner holds fee simple title to that certain real property more specifically described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "**Property**");

WHEREAS, the real property more specifically described on **Exhibit "B"** attached hereto and incorporated herein by this reference (the "**Easement Area**") is contained within the Property; and

WHEREAS, the Owner seeks to grant a perpetual non-exclusive easement in, upon, under and through the Easement Area in favor of the City for the "Easement Purposes" (as hereinafter defined).

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound hereby agree as follows:

1. Recitals. The above recitals are true and correct and by this reference are hereby incorporated into the body of this Agreement as if fully set forth herein.

2. Grant of Easement. Subject to the rights reserved herein, the Owner hereby grants to the City a perpetual, non-exclusive and irrevocable easement in, upon, under and through the Easement Area for the purposes of (a) constructing, installing, operating, using, maintaining, repairing and replacing landscaping, sidewalks, street lighting, traffic or directional signage, underground utilities, drainage, roadways and related infrastructure with respect to each of the foregoing (the "**Improvements**") within the Easement Area, (b) granting to any parties providing utilities service the right to use and occupy the Easement Area for and in connection with the providing of any such utilities, and (c) unrestricted ingress and egress by the general public for pedestrian and vehicular travel over and across the Easement Area (collectively, the "**Easement Purposes**"). The term "**utilities**" shall mean water, sewer, stormwater, electrical, gas, telecommunications, telephone and cable.

3. Construction in Easement Area. If the City elects to construct and/or install any Improvements within the Easement Area, the City hereby acknowledges and agrees that: (a) all fees, costs and expenses associated with the Improvements (including, without limitation, the design, permitting

construction, installation, operation, use, maintenance, repair and replacement thereof) shall be paid in full by the City; (b) all Improvements shall be performed and completed by the City (i) in a good and workmanlike manner, (ii) free from liens and defects, and (iii) in full compliance with all laws, rules, regulations, ordinances, codes and other requirements of governmental and quasi-governmental authorities having jurisdiction; and (c) upon final completion of the Improvements, the City shall (i) remove all debris, equipment and materials from the Easement Area, (ii) fill, compact, grade and otherwise restore Easement Area to substantially the same condition as existed prior to commencement of the Improvements, including harmonizing the soil levels within the Easement Area and the lands adjacent thereto, and (iii) keep and maintain the Improvements (and all parts and components thereof) in good condition, repair and working order at all times.

4. Miscellaneous.

4.1 This Agreement shall be governed by, enforced and construed under the laws of the State of Florida. Venue for all actions, litigation and/or other proceedings arising out of this Agreement shall be exclusively in Miami-Dade County, Florida. The parties hereby knowingly and voluntarily waive the right to a trial by jury of any claim, controversy or disputed matter between them arising under, out of or in connection with this Agreement. The prevailing party in any action, litigation or other proceeding that is based on any claim, controversy or other disputed matter arising under, out of or in connection with this Agreement shall recover from the non-prevailing party all fees, costs and expenses (including, without limitation, reasonable attorneys' fees and costs through all trial, appellate and post-judgment levels and proceedings) incurred by the prevailing party in such action, litigation or other proceeding.

4.2 The parties hereby acknowledge and agree that each has had an opportunity to be represented by or consult with independent legal counsel and that any rule of construction which provides that ambiguities are to be construed against the drafter shall not apply in the interpretation or construction of this Agreement. If any term, provision or portion of this Agreement is for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction, then such term, provision or portion of this Agreement shall be given it nearest valid, legal and enforceable meaning, or construed as deleted, whichever such court may determine, and the same shall not invalidate the remaining terms, provisions and/or portions of this Agreement, which remaining terms, provisions and portions of this Agreement will remain in full force and effect.

4.3 This Agreement includes all exhibits attached hereto. This Agreement, together with all such exhibits, contains the entire agreement and understanding between the parties relating to the subject matter of this Agreement, and all prior or contemporaneous terms, covenants, conditions, representations, warranties, statements, agreements and understandings made by or on behalf of the parties, whether oral or written, are merged herein.

4.4 This Agreement may not be amended, modified or terminated except by a written instrument executed by the Owner and the City through its Public Works Director, or his designee, or the successor administrative officer with jurisdiction over the matter, and which is recorded in the Public Records of Miami-Dade County, Florida. This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

4.5 The failure of any party to insist in any one or more instances upon strict performance of any term, covenant, condition or other provision of this Agreement will not be construed as a waiver or relinquishment of the future enforcement of such term, covenant, condition or other provision of this Agreement.

4.6 Wherever appropriate in this Agreement, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of each gender shall be deemed to comprehend either or both of the other genders. The section and paragraph headings in this Agreement are for convenience only and shall not affect the meaning, interpretation or scope of the terms or provisions set forth therein.

4.7 This Agreement may be executed in multiple counterparts, each of which individually shall be deemed an original, but when taken together shall be deemed to be one and the same Agreement.

4.8 This Agreement shall never be construed as a conveyance in any manner whatsoever of fee simple title to any portion of the Property or the Easement Area; it being intended by the parties that this Agreement conveys only an easement interest with respect to the Easement Area for the specific uses and purposes set forth herein.

4.9 All of the rights, easements and interests herein created and granted are and shall be limited to and utilized solely for the uses and purposes expressly set forth herein. Notwithstanding anything to the contrary contained in this Agreement, the Owner hereby expressly reserves the right to use and grant others the right to use any and all portions of the Property owned by it (including, without limitation, any and all portions of the Easement Area) so long as such use by the Owner and/or others does not damage any of the Improvements installed by the City under this Agreement or interfere in any material respects with the exercise by the City of the rights granted to the City herein.

4.10 This Agreement and the rights, easements and interests herein created and granted shall only become effective upon the recordation of this Agreement in the Public Records of Miami-Dade County. This Agreement and the rights, easements and interests herein created and granted shall run with the land, and shall be binding on all persons holding title to said lands.

5. Notice. All notices, demands, requests or other communications which may be or are required to be given, served, or sent by either the Owner or the City pursuant to this Agreement shall be in writing and addressed as follows:

If to Developer at.

2200 Biscayne Boulevard
Miami, Florida 33137
Attn: David Smith

With a copy to:

2200 Biscayne Boulevard
Miami, Florida 33137
Attn: Michael Sheitelman

If to the City:

City of Miami Beach
Attn: City Manager
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

With copies to:

City of Miami Beach
Attn: Public Works Director
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent.

6. The City shall indemnify, defend and hold the Developers harmless from and against all claims, demands, causes of action, suits, losses, damages, liabilities, liens, judgments, fees, costs, expenses and other charges (including, without limitation, attorneys' fees and costs through all trial, appellate and post judgment levels and proceedings) commenced, incurred and/or paid by or against any of the Developers arising from, relating to or in connection with: (a) the use of the Easement Area by the City or any successor, assign and/or grantee thereof; (b) the construction, installation, operation, use, maintenance, repair and/or replacement, or the failure to properly construct, install, operate, use, maintain, repair and/or replace of any Improvements by the City or any successor, assign and/or grantee thereof; and (c) any default, breach or violation of any term, covenant, condition or provision of this Agreement by the City or any successor, assign and/or grantee thereof.

**DEVELOPER'S NOVEMBER 2, 2018 DRAFT
DEVELOPER'S PROPOSED REVISIONS UNDER REVIEW**

APPROVED

Public Works Director

Date

APPROVED AS TO
FORM & LANGUAGE

City Attorney

Date

[EXECUTION PAGES TO FOLLOW]

**DEVELOPER'S NOVEMBER 2, 2018 DRAFT
DEVELOPER'S PROPOSED REVISIONS UNDER REVIEW**

IN WITNESS WHEREOF, the Owner has caused these presents to be signed, sealed executed and acknowledged on ____ day of _____, 20____, in its name by its proper officials.

Print Name: _____

By. _____

Name: _____

Title: _____

Print Name: _____

STATE OF FLORIDA)

) SS:

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__ by _____, as _____ of _____, on behalf of the company. He is personally known to me or has produced _____ as identification and who did/did not take an oath.

NOTARY PUBLIC

Typed or printed Name of Notary

My Commission expires:

Serial No., if any _____

Exhibit A

Legal Description of Property

Exhibit B

Legal Description of Easement Area

EXHIBIT “G” – DESCRIPTION OF MIRADOR 1 BAYWALK

EXHIBIT “H” – DESCRIPTION OF MIRADOR 2 BAYWALK

EXHIBIT “I” – DESCRIPTION OF MONDRIAN BAYWALK

EXHIBIT "J" – COVENANT IN LIEU OF UNITY OF TITLE

**City's Form Covenant in Lieu of Unity of Title
Draft Subject to Developer Review**

This instrument was prepared by:

Name:

Address:

(Space Reserved for Clerk)

**DECLARATION OF RESTRICTIVE COVENANTS
IN LIEU OF UNITY OF TITLE**

KNOW ALL BY THESE PRESENTS that the undersigned Owners hereby make, declare and impose on the land herein described, the easement and covenants running with the title to the land, which shall be binding on the Owners, their heirs, successors and assigns, personal representatives, mortgagees, lessees, and against all persons claiming by, through or under them;

WITNESSETH:

WHEREAS, the Owners hold fee-simple title to certain property in the City of Miami Beach, Florida, located at _____, Miami Beach, Florida, bearing the following folio number(s) _____, legally described in **Exhibit "A,"** attached hereto and made a part hereof ("Property"); and

WHEREAS, on _____ [date] Owner obtained approval of the [Design Review Board (DRB) / Historic Preservation Board (HPB) / Board of Adjustment (BOA) / Planning Board (PB)] under File No. _____ as recorded in Official Records Book _____, at Page _____ of the Public Records of Miami-Dade; and

WHEREAS, the Owners may develop the buildings on the Property in a condominium format of ownership and/or in two or more phases; and

WHEREAS, the Owners may develop the buildings on the Property for sale to multiple owners or in a condominium or association format of ownership and/or in two or more phases, and

WHEREAS, the Owners may wish to convey portions of the Property from time to time, and may wish to offer units as condominiums, this instrument is executed in order to assure that the phased development, or development of the property with future multiple ownership, will not violate the Land Development Regulations of the City of Miami Beach.

Declaration of Restrictive Covenants in Lieu of Unity of Title

Address _____

Folio No.: _____

Page 2 of 7

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

1. The subject site will be developed as a unified development site in substantial accordance with the approved site plan, after one has been submitted and approved under the City's land development regulations. No modification shall be effectuated in such site plan without the written consent of the then owner(s) of the phase or portion of the property for which modification is sought, all owners within the original unified development site, or their successors, whose consent shall not be unreasonably withheld, and the Director of the City's Planning Department; provided the Director finds that the modification is in compliance with the land development regulations. Should the Director withhold such approval, the then owner(s) of the phase or portion of the property for which modification is sought shall be permitted to seek such modification by application to modify the plan at public hearing before the appropriate City board or the City Commission of Miami Beach, Florida, (whichever by law has jurisdiction over such matters). Such application shall be in addition to all other required approvals necessary for the modification sought. Proposed modifications to the property's use, operation, physical condition or site plan shall also be required to return to the appropriate development review board or boards for consideration of the effect on prior approvals and the affirmation, modification or release of previously issued approvals or imposed conditions.

2. If the subject property will be developed in phases, each phase will be developed in substantial accordance with the approved site plan.

3. In the event of multiple ownerships subsequent to site plan approval, each of the subsequent owners shall be bound by the terms, provisions and conditions of the declaration of restrictive covenants. Owners further agree that they will not convey portions of the subject property to such other parties unless and until the Owners and such other party or parties shall have executed and mutually delivered, in recordable form, an instrument to be known as an easement and operating agreement which shall contain, among other things:

- (i) Easements in the common area of each parcel for ingress to and egress from the other parcels;
- (ii) Easements in the common area of each parcel for the passage and parking of vehicles;
- (iii) Easements in the common area of each parcel for the passage and accommodation of pedestrians;
- (iv) Easements for access roads across the common area of each parcel to public and private roadways;

Declaration of Restrictive Covenants in Lieu of Unity of Title

Address _____

Folio No.: _____

Page 3 of 7

- (v) Easements for the installation, use, operation, maintenance, repair, replacement, relocation and removal of utility facilities in appropriate areas in each such parcel;
- (vi) Easements on each such parcel for construction of buildings and improvements in favor of each such other parcel;
- (vii) Easements upon each such parcel in favor of each adjoining parcel for the installation, use, maintenance, repair, replacement and removal of common construction improvements such as footings, supports and foundations;
- (viii) Easements on each parcel for attachment of buildings;
- (ix) Easements on each parcel for building overhangs and other overhangs and projections encroaching upon such parcel from the adjoining parcels such as, by way of example, marquees, canopies, lights, lighting devices, awnings, wing walls and the like;
- (x) Appropriate reservation of rights to grant easements to utility companies;
- (xi) Appropriate reservation of rights to road right-of-ways and curb cuts;
- (xii) Easements in favor of each such parcel for pedestrian and vehicular traffic over dedicated private ring roads and access roads; and
- (xiii) Appropriate agreements between the owners of the several parcels as to the obligation to maintain and repair all private roadways, parking facilities, common areas and common facilities and the like.

The easement provisions or portions thereof may be waived by the Director if they are not applicable to the subject property (such as for conveyances to purchasers of individual condominium units). These provisions of the easement and operating agreement shall not be amended without prior written approval of the City Attorney. In addition, such easement and operating agreement shall contain such other provisions with respect to the operation, maintenance and development of the property as to which the parties thereto may agree, or the Director may require, all to the end that although the property may have several owners, it will be constructed, conveyed, maintained and operated in accordance with the approved site plan.

4. The provisions of this instrument shall become effective upon their recordation in the public records of Miami-Dade County, Florida, and shall continue in effect for a period of thirty (30) years after the date of such recordation, after which time they shall be extended automatically for successive periods of ten (10) years each, unless released in writing by the then owners of the Property and the Director of the Department of Planning, acting for and on behalf of the City of Miami Beach, Florida upon the demonstration and affirmative finding that the same is no longer necessary to preserve and protect the Property for the purposes herein intended.

Declaration of Restrictive Covenants in Lieu of Unity of Title

Address _____
Folio No.: _____
Page 4 of 7

5. The provisions of this instrument may be amended, modified or released by a written instrument executed by the then Owner or Owners of the Property, with joinders by all mortgagees, if any. Should this Declaration of Restrictive Covenants be so modified, amended or released, and the Director of the Department of Planning or his successor, approves, then such Director or successor shall forthwith execute a written instrument effectuating and acknowledging such amendment, modification or release. No modification, amendment or release shall be effective without the Director's, or his successor's, approval.

6. Enforcement shall be by action against any parties or persons violating or attempting to violate any covenants. The prevailing party to any action or suit pertaining to or arising out of this Declaration 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 his attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both

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

8. This Declaration shall be recorded in the public records of Miami-Dade County at the Owners' expense.

9. 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.

10. In the event of a violation of this Declaration, in addition to any other remedies available, the City of Miami Beach is hereby authorized to withhold any future permits, and refuse to make any inspections or grant any approval, until such time as this Declaration is complied with

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

Declaration of Restrictive Covenants in Lieu of Unity of Title

Address _____
Folio No.: _____
Page **5** of **7**

Signed, witnessed, executed and acknowledged on this ____ day of _____,
_____.
[*Note: All others require attachment of original corporate resolution of authorization]

WITNESSES

Signature

Print Name

Signature

Print Name

OWNER.

Individual Signature

Print Name

Name of Corporate Entity

Position with Corporate Entity (Prez. VP, CEO)

Address _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me 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

My Commission Expires

Notary Public-State of _____

Print Name

Declaration of Restrictive Covenants in Lieu of Unity of Title

Address _____
Folio No.: _____
Page 6 of 7

Signed, witnessed, executed and acknowledged on this ____ day of _____,

WITNESSES

Signature

Print Name

Signature

Print Name

OWNER

Individual Signature

Print Name

Address: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me 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

My Commission Expires:

Notary Public-State of _____

Print Name

Approved:

Approved as to form & language & for
execution:

Director of Planning Date

City Attorney Date

Declaration of Restrictive Covenants in Lieu of Unity of Title

Address _____
Folio No.: _____
Page **7** of **7**

EXHIBIT A

EXHIBIT “K” – HOLD HARMLESS AGREEMENT

November 2, 2018

This instrument was prepared by:

Name: _____
Address: _____

AGREEMENT

WHEREAS, the undersigned owners, South Beach Heights I, LLC, a Delaware limited liability company, 1220 Sixth, LLC, a Delaware limited liability company, 500 Alton Road Ventures, LLC, a Delaware limited liability company, and KGM Equities, LLC, a Delaware limited liability company, each having an address of 2200 Biscayne Boulevard, Miami, Florida 33137 (collectively, the “**Owners**”), hold the fee simple title to that certain parcel of land, which is legally described in **Exhibit “A”** attached hereto and incorporated herein by reference (the “**Property**”);

WHEREAS, the Owners and the City of Miami Beach (the “**City**”) have entered into that certain Development Agreement, dated as of _____, 201__ (the “**Development Agreement**”), pursuant to Sections 163 3220-163 3243, Florida Statutes (the “**Florida Local Government Development Agreement Act**”) and Section 118-4 of the City’s Code,

WHEREAS, the Development Agreement contemplates that the Owners will convey a portion of the Property to the City for use as a park (the “**Park Site**”), which parcel is legally described in **Exhibit “B”** attached hereto and incorporated herein by reference, and that the Park Site will be improved by the Owners as contemplated under the Development Agreement (the “**Park Project**”),

WHEREAS, the Development Agreement contemplates that the Owners will construct (among other things) a multifamily residential building and up to 15,000 square feet of retail uses (the “**Project**”) on a portion of the Property (the “**Development Site**”), which parcel is legally described in **Exhibit “C”** attached hereto and incorporated herein by reference,

WHEREAS, the Owners wish to obtain building permits, including phased permits, for the construction of the Project (the “**Building Permits**”) prior to the completion of, and acceptance by, the City of the Park Project,

WHEREAS, until the conditions precedent set forth in **Exhibit “D”** attached hereto and incorporated herein by reference are satisfied (the “**Park Contingency**”), the Owners are not to receive any

November 2, 2018

temporary certificate of occupancy, final certificate of occupancy or certificate of completion for the Project (in whole or in part);

NOW, THEREFORE, IN ORDER TO ASSURE the City that the representations made by the Owners in the Development Agreement will be abided by, the Owners freely, voluntarily and without duress, make the following declaration of restrictions covering and running with the Property.

1. The Owners agree to indemnify and hold harmless and release and discharge the City, including its employees, from any and all liability for issuing the Building Permits prior to the satisfaction of the Park Contingency
 2. The Owners acknowledge that no temporary certificate of occupancy, final certificate of occupancy or certificate of completion for the Project (in whole or in part) will be granted until the Park Contingency has been satisfied
 3. The Owners agree that they will not file or cause to be filed any request for a temporary certificate of occupancy, final certificate of occupancy or certificate of completion for the Project (in whole or in part) until the Park Contingency has been satisfied
 4. The Owners acknowledge that, if they obtain the Building Permits prior to the satisfaction of the Park Contingency, they will be proceeding at their own risk and agree that they will not make or commence any claim or action against the City (including, without limitation, a vested/property rights claim) as a result of the City's issuance of the Building Permits prior to the satisfaction of the Park Contingency. Further, the Owners agree that the issuance of the Building Permits prior to the satisfaction of the Park Contingency would not be a grant of any vested right whatsoever to the Owners to occupy the Project prior to the satisfaction of the Park Contingency
 5. The Owners acknowledge that the acknowledgement in Section 2 above shall appear on the face of any and all Building Permits issued by the City pursuant to this Agreement prior to the satisfaction of the Park Contingency.
-
6. The Owners acknowledge that the City, in its regulatory capacity, reserves the right to evaluate all applications for Building Permits for compliance with all existing laws, ordinances and regulations controlling the issuance of building permits for construction within the City

7. The Owners agree to indemnify, defend, save and hold harmless the City from any claims, demands, causes of action, liabilities, losses, costs, fees, expenses, orders, judgments and/or decrees of any nature whatsoever as a result of granting the Building Permits, including, without limitation, reasonable, out-of-pocket attorneys' fees and expenses incurred in the defense of any such claim, demand or cause of action

8. Additional Provisions

a Covenant Running with the Land This Agreement shall constitute a covenant running with the land and shall remain in full force and effect and be binding upon the Owners and their heirs, successors and assigns until such time as the same is modified, released, terminated or extinguished (including, without limitation, pursuant to Paragraph 8(b) below) These restrictions during their lifetime shall be for the benefit of and limitation upon all present and future owners of the Property and for the benefit of the City and the public welfare. However, notwithstanding any other provision of this Agreement, nothing herein shall be binding upon the City in the event that the City takes ownership to any portion of the Property, and the Owners together with their heirs, successors and assigns acknowledge that acceptance of this Agreement does not in any way obligate or provide a limitation on the City.

b Term This Agreement is to run with the land and shall be binding on all present and future owners of the Property and their heirs, successors and assigns until the earlier to occur of (i) the satisfaction of the Park Contingency, or (ii) the expiration or earlier termination of the Development Agreement, whereupon, this Agreement shall automatically terminate and extinguish and be void and of no further force or effect without the need of any further consent, agreement, document or instrument from the City Notwithstanding the foregoing, the City covenants and agrees, promptly upon the request of the then-owner(s) of the Property, to execute and deliver to such then-owner(s) of the Property, an instrument in recordable form to terminate, release and discharge this Agreement from the Property and public record.

c Modification, Amendment, Release Except as provided in Paragraph 8(b) above with respect to the automatic termination and extinguishment of this Agreement, this Agreement may be modified, amended or released as to the Property, or any portion thereof, by a written instrument executed by the then-owner(s) of the Property, including joinders of all mortgagees, if any, provided that the same is also approved by the City

e-d Enforcement Enforcement shall be by action against any parties or persons violating, or attempting to violate, any term, covenant, condition or provision of this Agreement The prevailing party in any action or suit pertaining to or arising out of this Agreement shall be entitled to

November 2, 2018

recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of its attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

~~d-e~~ 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.

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

~~f-g~~ Recording. This Agreement shall be filed of record in the public records of Miami-Dade County, Florida at the cost of the Owners. This Agreement shall become effective immediately upon recordation.

~~g-h~~ Acceptance of Agreement. Acceptance of this Agreement does not obligate the City in any manner to make, nor does it entitle the Owners to, a favorable recommendation or approval of any application, zoning or otherwise, and the City and its boards, departments and/or agencies retain their full power and authority to deny each such application in whole or in part and to decline to accept any conveyance or dedication.

~~h-1~~ Owner. The term "Owners" shall include the Owners, and their heirs, successors and assigns, except that Owners shall not refer to the City.

[Execution Pages Follow]

November 2, 2018

IN WITNESS WHEREOF, _____, has caused these present to be signed in its name on this
____ day of _____, 201__

500 ALTON ROAD VENTURES, LLC, a
Delaware limited liability company

By _____

David Smith, Vice President

Print Name. _____

Print Name _____

STATE OF FLORIDA)

) SS:

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__ by
DAVID SMITH, as a Vice President of 500 ALTON ROAD VENTURES, LLC, a Delaware limited
liability company, on behalf of the company He is personally known to me or has produced
_____ as identification and who did/did not take an oath

NOTARY PUBLIC

Typed or printed Name of Notary

My Commission expires

Serial No , if any _____

November 2, 2018

1220 SIXTH, LLC, a Delaware limited liability company

By _____

David Smith, Vice President

Print Name: _____

Print Name _____

STATE OF FLORIDA)

) SS

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__ by DAVID SMITH, as a Vice President of 1220 SIXTH, LLC, a Delaware limited liability company, on behalf of the company. He is personally known to me or has produced as identification and who did/did not take an oath

NOTARY PUBLIC

Typed or printed Name of Notary

My Commission expires _____

Serial No , if any _____

November 2, 2018

SOUTH BEACH HEIGHTS I, LLC, a Delaware
limited liability company

By: _____

Marisa Galbut, President

Print Name: _____

Print Name: _____

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

The foregoing instrument was acknowledged before me this ____ day of _____, 201__ by
MARISA GALBUT, as President of SOUTH BEACH HEIGHTS I, LLC, a Delaware limited liability
company, on behalf of the company. He is personally known to me or has produced
_____ as identification and who did/did not take an oath

NOTARY PUBLIC

Typed or printed Name of Notary

My Commission expires

Serial No , if any _____

November 2, 2018

KGM EQUITIES, LLC, a Delaware limited liability company

By: _____

David Smith, President

Print Name _____

Print Name: _____

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

The foregoing instrument was acknowledged before me this ____ day of _____, 201__ by DAVID SMITH, as President of KGM EQUITIES, LLC, a Delaware limited liability company, on behalf of the company He is personally known to me or has produced _____ as identification and who did/did not take an oath

NOTARY PUBLIC

Typed or printed Name of Notary

My Commission expires.

Serial No , if any _____

November 2, 2018

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY:

November 2, 2018

EXHIBIT "B"

LEGAL DESCRIPTION OF PARK SITE:

November 2, 2018

EXHIBIT “C”

LEGAL DESCRIPTION OF DEVELOPMENT SITE:

EXHIBIT "D"

After the Closing and the issuance of the Park Zoning Approval, the Developer shall construct, at its sole cost and expense, the Park Project substantially in accordance with the Park Zoning Approval. The Developer shall execute a contract for the construction of the Park Project pursuant to the Park Zoning Approval with a Florida licensed contractor, which contract may be a stand-alone construction contract for the Park Project only or an addendum to or component of a construction contract related to both the Project and the Park Project (the "**Park Construction Contract**"). The Park Construction Contract shall, among other things: (a) be a guaranteed maximum price contract; (b) require that the City to be named as an additional or named insured on all insurance coverages required by Park Construction Contract and under which the Developer is an additional or named insured; (c) require that the City be named a co-obligee under any payment bond and performance bond (if any) required by Park Construction Contract; (d) be assignable to the City in the event of a default by the Developer under the Park Construction Contract or this Agreement; (e) name the City as an intended third-party beneficiary with respect to all warranties included in the Park Construction Agreement; and (f) entitle City to the same indemnification protections as afforded Park Site Owner under the Park Construction Agreement. Completion of the Park Project shall occur when: (y) the Developer has obtained a temporary certificate of occupancy, a final certificate of occupancy, and/or a certificate of completion that individually or collectively encompass the entire Park Project; and (z) all improvements that comprise the Park Project (the "**Park Improvements**") have been conveyed to and accepted by the City through a bill of sale. The Developer shall complete the Park Project within eight (8) years after the issuance of the initial Building Permit for the Project.

The City shall own the Park Site upon the Developer's conveyance of the same to the City and, upon such conveyance, the Developer shall have no further right or interest in the Park Site, except for those rights and interests: (a) under the Temporary Construction and Access Easement granted to the Developer under the Purchase and Sale Agreement; and (b) granted to the Developer in the Floridian Parking Easement Agreement. The City shall own and operate and be responsible for at its sole cost and expense the operation, maintenance, repair and replacement of the Park Project and the Park Improvements upon (y) the Developer's completion and conveyance of the same to the City, and (z) the City's acceptance of the same from the Developer, and upon such completion, conveyance and acceptance, the Developer shall have no further right, interest, obligation or liability in or with respect to the Park Project or Park Improvements, except as otherwise provided in (a) and (b) above. The approval of this Agreement does not grant, and shall not be construed to grant, to the Developer any rights of ownership in the Park Site, the Park Project or the Park Improvements.

EXHIBIT “L” – PARK CONCEPT PLAN

[See Exhibit 1 to November 14, 2018 City Commission

Memorandum Regarding Development Agreement – Agenda Item R7A]

EXHIBIT “M” –PURCHASE AND SALE AGREEMENT

PURCHASE AND SALE AGREEMENT¹

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is executed this ____ day of ____, 20__, by and among **SOUTH BEACH HEIGHTS I, LLC**, a Delaware limited liability company, and **KGM EQUITIES, LLC**, a Delaware limited liability company (collectively, "Park Site Owner") and the **CITY OF MIAMI BEACH**, a Florida municipal corporation ("City").

RECITALS

- A. Park Site Owner owns the land constituting the Park Site (as hereinafter defined);
- B. 500 Alton Ventures, LLC, a Delaware limited liability company, 1220 Sixth, LLC, a Delaware limited liability company and South Beach Heights I, LLC, a Delaware limited liability company (collectively, "Development Site Owner") own the land constituting the Development Site (as hereinafter defined);
- C. City owns the land constituting the City Parcel (as hereinafter defined), which is a publicly dedicated roadway known as 6th Street;
- D. Park Site Owner, Development Site Owner and City have entered into that certain Development Agreement, dated as of ____, 2018, pursuant to Sections 163.3220-163.3243, Florida Statutes (the "Florida Local Government Development Agreement Act") and Section 118-4 of the City's Code (the "Development Agreement"), which Development Agreement will be recorded in the Public Records of Miami-Dade County, Florida;
- E. The Development Agreement provides that (i) City will vacate and abandon and convey the City Parcel to Development Site Owner, subject to the 6th Street Easement Agreement (as defined in the Development Agreement); and (ii) Park Site Owner will: (a) convey the Park Site to City, subject to the Permitted Exceptions (as hereinafter defined); and (b) improve the Park Site with the Park Project (as hereinafter defined);
- F. The Development Agreement further provides for restrictions on the development of the Development Site to provide assurances that the Park Site will be conveyed and improved; and
- G. The parties desire to enter into this Agreement to more particularly describe their mutual obligations with respect to the subject matter set forth herein.

NOW, THEREFORE, in consideration of the premises and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, (i) Park Site Owner agrees to

¹ *As a general note, to the extent applicable, definitions, certain conditions/milestones/deadlines and other provisions must be revised to be consistent with the final version of the Development Agreement.*

convey the Park Site to City, and City agrees to accept the Park Site from Park Site Owner; and (ii) City agrees to convey the City Parcel to Development Site Owner, and Development Site Owner agrees to accept the City Parcel from City, in each instance on the terms and conditions contained herein:

Section 1. Definitions and References. The following terms, as used in this Agreement, have the following meanings:

"Agreement Date" means the date upon which this Agreement has been executed by Park Site Owner and City.

"Business Day" shall mean any day other than a Saturday, Sunday, any federal or state holiday and the following Jewish holidays: Passover (the first two (2) days and last two (2) days only), Shavuot (two (2) days), Rosh Hashanah (two (2) days), Yom Kippur (one (1) day), and Sukkot (the first two (2) days and last two (2) days only). If any period expires on a day which is not a Business Day or any event or condition is required by the terms of this Agreement to occur or be fulfilled on a day which is not a Business Day, such period shall expire or such event or condition shall occur or be fulfilled, as the case may be, on the next succeeding Business Day.

"City Parcel" means the real property more specifically described on Exhibit A, attached hereto and incorporated herein by this reference, together with all tenements, hereditaments, development rights, easements, privileges, reversions, remainders and other rights and appurtenances belonging or in any manner appertaining thereto, including, without limitation, all reversionary interests in and to any adjoining or abutting rights-of-way.

"Closing" means the consummation of the conveyance of the City Parcel by City to Park Site Owner, and the conveyance of the Park Site by Park Site Owner to City, pursuant to Section 7.1 of this Agreement.

"Closing Date" means the date upon which the Closing occurs, which shall be a date set by Park Site Owner (~~subject to City's approval, not to be unreasonably withheld~~) upon not less than ten (10) days' Business Days' prior written notice to City, provided Park Site Owner has satisfied the Hazardous Substance Environmental Contingency (as defined in Development Agreement), ~~provided that the conditions set forth in Section 6 of this Agreement have been satisfied,~~ and shall be subject to the applicable provisions of this Agreement regarding extension or termination.

"Contracts" means all contracts, and other agreements, written or oral (exclusive of the Leases), governing or relating to the Park Site.

"County" means Miami-Dade County, a political subdivision of the State of Florida.

"Development Site" means the real property more specifically described in Exhibit B-2, attached hereto and incorporated herein by this reference.

"Hazardous Substances" means (i) those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances" or "solid waste" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42

U.S.C. § 960, et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq., or the Clean Water Act, 33 U.S.C. § 1321, et seq., and in the regulations promulgated pursuant thereto; (ii) those substances listed in the United States Department of Transportation Table (49 CFR § 172.101) or by the Environmental Protection Agency as "hazardous substances"; (iii) such other substances, materials and wastes which are regulated, or classified as hazardous or toxic, under applicable local, state or federal law or regulations; and (iv) any material, waste or substance which is petroleum, asbestos, polychlorinated biphenyls, flammable explosives or radioactive materials.

"Leases" means all leases, licenses and other agreements, whether oral or written, for the use or occupancy of any portion of the Park Site or improvements located thereon as of the Agreement Date.

"Park Improvements" means all improvements that comprise the Park Project that are to be constructed in accordance with the Park Zoning Approval (as defined in the Development Agreement).

"Park Project" shall mean the improvements to be made to the Park Site, including, without limitation, the Park Improvements, as further described in Paragraph 7(d) of the Development Agreement.

"Park Site" means the real property more specifically described in **Exhibit B-1**, attached hereto and incorporated herein by this reference, together with all tenements, hereditaments, development rights, easements, privileges, reversions, remainders and other rights and appurtenances belonging or in any manner appertaining thereto, including without limitation all reversionary interests in and to any adjoining or abutting rights-of-way.

"Permitted Exceptions" means (i) the title exceptions set forth in **Exhibit C** hereto; (ii) documents, agreements and/or instruments, including, without limitation, easements, covenants and restrictions entered into in connection with, or required as a condition to, Park Site Owner's obtaining the Park Zoning Approval and/or constructing the Park Project; (iii) the Temporary Construction and Access Easement (as defined in the Development Agreement); (iv) the Covenant in Lieu of Unity of Title (as defined in the Development Agreement); (v) the Floridian Parking Easement Agreement (as defined in the Development Agreement); (vi) all matters disclosed on the Survey; and (vii) any New Title Matter(s) which is (are) approved or deemed approved by City in accordance with Section 2.3. **[SUBJECT TO CONFIRMATION WITH FINAL DEVELOPMENT AGREEMENT]**

"Survey" means that certain **[INSERT DESCRIPTION OF SURVEY]**, performed by Surveyor.

"Surveyor" means Richard E. Cousins, Professional Land Surveyor and Mapper, Florida Registration No. 4188, of Cousins Surveyors & Associates, Inc.

"Title Agent" means Greenberg Traurig, P.A., as agent for Chicago Title Insurance Company.

“Title Commitment” means that certain American Land Title Association Commitment issued by Title Agent on behalf of Title Company, Order No.: [____], having an effective date of [____] at [____] p.m. ET.

“Title Company” means Chicago Title Insurance Company.

“Title Policy” means the standard form of American Land Title Association Title Insurance Policy to be issued to City by the Title Company pursuant to the Title Commitment, subject to the Permitted Exceptions.

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Development Agreement.

Section 2. Title Evidence.

2.1 Title Insurance Commitment. As of the Agreement Date, City has received and approved the Title Commitment, including the Permitted Exceptions shown therein.

2.2 Survey. As of the Agreement Date, City has received and approved the Survey, including all matters shown thereon.

2.3 Subsequent Matters. If, subsequent to the effective date of the Title Commitment, new title exceptions are discovered or the Title Company raises a title exception not disclosed in the Title Commitment, or if, subsequent to the certification date of the Survey, new matters of survey are discovered (in each of the foregoing instances, other than Permitted Exceptions and/or as otherwise contemplated in connection with the Park Project, the Park Concept Plan (as defined in the Development Agreement) and the Park Zoning Approval) (any such new matter being hereinafter referred to as “New Title Matter”), then City may raise objections to such New Title Matter(s) by delivering written notice thereof to Park Site Owner on or before the date that is the earlier of: (a) five (5) days after City’s receipt of the updated Title Commitment or Survey, as applicable; or (b) the Closing Date. If City fails to timely deliver to Park Site Owner an objection notice regarding any New Title Matter(s), then City shall have waived its right to object to such New Title Matter(s), and such New Title Matter(s) shall be a Permitted Exception(s). However, if City timely delivers to Park Site Owner an objection notice regarding any New Title Matter(s), then Park Site Owner shall have the right (but not the obligation) to deliver to City, within five (5) days after receipt of such objection notice (the “Title Response Period”), written notice as to whether or not Park Site Owner will cure or remove such New Title Matter(s) at or prior to Closing (the “Cure Notice”). If Park Site Owner fails to timely deliver a Cure Notice to City, or timely deliver a Cure Notice to City but refuse to cure or remove all New Title Matters set forth in an objection notice, then City shall have the right, at City’s sole option, to either (i) accept title to the Park Site in its then existing condition and proceed with Closing, in which event all such New Title Matters that Park Site Owner has not agreed to cure or remove shall be deemed Permitted Exceptions; or (ii) terminate this Agreement by written notice to Park Site Owner, in which case the parties hereto will have no further rights or obligations hereunder except those which expressly survive the termination of this Agreement. If Park Site Owner timely delivers a Cure Notice, then it may, at its sole option and upon written notice to City delivered at least five (5) days prior to the then-scheduled Closing Date, extend the Closing for a period of up to one hundred twenty (120) days to permit Park Site Owner to cure or remove any such New Title Matter(s) that Park Site Owner elected to cure or remove in such Cure Notice.

Section 3. Park Site Owner's Representations and Warranties. Park Site Owner hereby represents and warrants to City as follows:

3.1 Due Execution and Performance. This Agreement has been duly executed and delivered by Park Site Owner and constitutes the legal, valid and binding obligation of Park Site Owner enforceable in accordance with its terms. The Park Deed (as hereinafter defined) and all other documents, instruments and agreements required to be delivered by Park Site Owner pursuant to this Agreement will be, when executed and delivered, duly executed and delivered by Park Site Owner and constitute the legal, valid and binding obligations of Park Site Owner enforceable in accordance with their respective terms. Subject to Section 6 below, neither the execution, delivery or performance of this Agreement or any document, instrument or agreement required to be delivered by Park Site Owner pursuant hereto, nor the consummation of the transactions contemplated hereby, is prohibited by, or requires Park Site Owner to obtain the consent, approval or authorization of, or notice to or filing or registration with, any person, public authority, court or any other entity having jurisdiction over Park Site Owner or the Park Site.

3.2 Binding Agreements. The execution and delivery by Park Site Owner of this Agreement and the performance by Park Site Owner of Park Site Owner's obligations hereunder do not and will not conflict with, or result in a breach of or a default or violation under, any contract, agreement or arrangement to which Park Site Owner is a party or any statute, decree, judgment, regulation, order or rule of any governmental authority or court having jurisdiction over Park Site Owner or the Park Site.

3.3 Mechanic's Liens. At Closing there will not be any unpaid bills for labor, services or work performed or rendered upon the Park Site or for materials or supplies furnished or delivered to the Park Site that could result in the filing of mechanics', materialmen's or laborers' liens upon the Park Site.

3.4 Litigation. There are no suits or proceedings pending or, to Park Site Owner's knowledge, threatened in writing against or concerning Park Site Owner which would prohibit Park Site Owner from conveying the Park Site to City, ~~and there are no suits or proceedings pending or, to Park Site Owner's knowledge, threatened which could result in writing a lien against or concerning or any portion of the Park Site after Closing.~~

3.5 Sales Taxes. Park Site Owner has paid all sales taxes due with respect to the Park Site and the rents or other revenue therefrom, if any.

3.6 Hazardous Substances. Other than as disclosed by the Developer Site Assessments and/or the City Environmental Assessments (each as defined in the Development Agreement), Park Site Owner has no knowledge of (i) any Hazardous Substance present on or within the Park Site; (ii) any present or past generation, recycling, reuse, sale, storage, handling, transport and/or disposal of any Hazardous Substance on or within the Park Site; or (iii) any failure to comply with any applicable governmental, environmental laws, regulations, ordinances or orders relating to the generation, recycling, reuse, sale, storage, handling, transport and/or disposal of any Hazardous Substance. ~~City does not assume any responsibility or liability for Hazardous Substances on or within the Park Site.~~

3.7 Contracts. There are no Contracts in effect with respect to the Park Site that will be binding upon City ~~or the Park Site~~ as of Closing.

3.8 Leases. There are no Leases in effect with respect to the Park Site that will be binding upon City as of Closing.

3.9 Statements and Information and Park Site Owner. All representations and warranties of Park Site Owner set forth in this Section 3 are, and on and as of the Closing Date will be, correct in every material respect ~~and but~~ shall not survive Closing ~~for a period of three (3) months~~.

Section 4. City's Representations and Warranties. City hereby represents and warrants to Park Site Owner as follows:

4.1 Standing of City. City has full power and authority to execute, deliver and perform this Agreement and consummate the transactions contemplated hereby.

4.2 Due Execution and Performance. Upon satisfaction of the condition specified in Section 6.2 below, this Agreement will have been duly authorized, executed and delivered by City and constitute the legal, valid and binding obligations of City enforceable in accordance with its terms.

Section 5. Covenants.

5.1 Covenants of Park Site Owner. Park Site Owner hereby covenants with City as follows:

(a) Compliance. Prior to the Closing, Park Site Owner will continue to comply with all Contracts, authorizations, approvals and legal requirements applicable to the Park Site. Park Site Owner will not enter into any Contracts or Leases that will be binding upon City after Closing without the prior written consent of City.

(b) Property. Other than as contemplated under the Development Agreement and the Temporary Construction and Access Easement, Park Site Owner will not perform or allow the performance of any construction on the Park Site.

(c) Cooperation. Park Site Owner will cooperate with City in good faith in connection with all investigations, examinations and inspections being made by City with respect to this transaction and the Park Project, and will provide to City the Developer Environmental Assessments and any geotechnical and soil reports, prior owner's title policies and commitments, copies of plans and design concepts and any other materials in Seller's possession that City may reasonably request.

5.2 Covenants of City. City will continue to comply with all contracts, authorizations, approvals and legal requirements applicable to the City Parcel. City Owner will not enter into any contracts or leases that will be binding upon Development Site Owner after Closing without the prior written consent of Development Site Owner. City shall not encumber title the City Parcel, it being understood and agreed that the only exceptions to title with respect to the City Parcel shall be the 6th Street Easement Agreement and the Covenant in Lieu of Unity of Title.

Section 6. Conditions Precedent to Closing. The obligations of City to close on the acquisition of the Park Site pursuant to this Agreement are conditioned upon the fulfillment of each of the conditions contemplated by this Section 6 on or before the Closing Date:

6.1 Correctness of Representations and Warranties. Each of the representations and warranties of Park Site Owner set forth herein shall have been true and complete in all material respects when made and on the Closing Date as if made at and as of that time.

6.2 Vacation Resolution. City shall have adopted the Vacation Resolution (as defined in the Development Agreement).

6.3 Absence of Adverse Change. Between the Agreement Date and the Closing Date, no fact shall have arisen that has or could reasonably be expected to prevent commencement and construction of the Park Project through completion, as contemplated in the Development Agreement.

6.4 Commission Approval: Execution and Delivery. The City Commission shall have approved this Agreement and the transaction contemplated hereby and City shall have caused this Agreement to be executed and delivered to Park Site Owner.

Section 7. Closing: Post Closing Obligations.

7.1 Closing. Closing shall be held at the offices of the attorneys for City, Holland & Knight LLP, 701 Brickell Avenue, Miami, Florida 33131.

7.2 Closing Expenses.

(a) At Closing, Park Site Owner shall pay or cause to be paid the cost of recording the Park Deed and any corrective instruments related to the Park Site, all documentary stamp taxes and surtax on the deed, any other applicable transfer or conveyance taxes, and the cost of the Survey. **[OPEN – PAYMENT OF PARK SITE TITLE INSURANCE PREMIUM]**

(b) Each party will pay its own attorneys' fees and fees owed to its consultants or agents.

7.3 Delivery of Documents by Park Site Owner. At Closing, in addition to any other documents specifically required to be delivered or acts required to be done pursuant to this Agreement and under Paragraph 9 of the Development Agreement, Park Site Owner will deliver to the Title Agent the following:

(a) a special warranty deed conveying to City title to the Park Site (the "Park Deed"), subject to the Permitted Exceptions.

(b) a mechanic's lien affidavit, to the Title Company and Title Agent, in form acceptable to the Title Company to delete the standard exception relating to such liens in City's Title Policy;

(c) an affidavit, to the Title Company and Title Agent, that there are no unrecorded easements and that Park Site Owner has exclusive possession of the Park Site, in form

acceptable to the Title Company and Title Agent to delete the standard exceptions relating to such matters in City's Title Policy;

(d) a gap affidavit and indemnification agreement acceptable to the Title Company and Title Agent for purposes of deleting the "gap" from City's Title Policy;

(e) a certificate of Park Site Owner, dated as of the Closing Date, certifying that the representations and warranties of Park Site Owner contained in this Agreement are true as of the Closing Date;

(f) reasonable and customary collateral assignments of the Park Construction Contract and Park Concept Plans;

(g) appropriate evidence of Park Site Owner's corporate or partnership existence and authority to sell and convey the Park Site, as required by the Title Company and Title Agent in order to issue the Title Policy;

(h) a non-foreign certificate and other documentation to meet the non-withholding requirements under FIRPTA and any other federal statute or regulations;

(i) evidence that all real estate taxes and assessments attributable to the Park Site which are due and owing have been paid in full; and

(j) such other items as may be reasonably necessary or required to complete the Closing contemplated by this Agreement.

7.4 Delivery of Documents by City. At Closing, in addition to any other documents specifically required to be delivered or acts required to be done pursuant to this Agreement and under Paragraph 9 of the Development Agreement, City will deliver to the Title Agent the following:

(a) a quitclaim deed conveying to Development Site Owner title to the City Parcel, subject only to the 6th Street Easement Agreement and the Covenant in Lieu of Unity of Title;

(b) an affidavit, to the Title Company and Title Agent, in a form satisfactory to delete all standard exceptions to any title insurance policy to be obtained by Development Site Owner with respect to the City Parcel;

(c) appropriate evidence of City's existence and authority to sell and convey the City Parcel, as required by the Title Company and Title Agent in order to issue a title insurance policy to Development Site Owner; and

(d) such other items as may be reasonably necessary or required to complete the Closing contemplated by this Agreement.

7.5 Property Revenues and Obligations. All revenue from the Park Site attributable to periods prior to the Closing shall belong solely to Park Site Owner. ~~Park Site Owner agrees to pay and hold City harmless from all obligations arising by, through and under Park Site Owner with respect to~~ All expenses of the Park Site ~~which arose or are~~ attributable to periods prior

to the Closing. ~~Park Site Owner shall pay at Closing~~ be paid solely by Park Site Owner. Park Site Owner shall pay or cause to be paid all ad valorem real estate taxes and assessments due and owing that are attributable to the Park Site for all periods prior to the Closing. ~~Park Site Owner shall hold City harmless from all obligations, liabilities, losses, damages, delays and costs (including attorney's fees and court costs) incurred by City that arise from or under the Park Site as a result of the breach by Park Site Owner of any representations and warranties contained in this Agreement. The provisions of this Section 7.5 shall survive Closing.~~

7.6 Execution and Delivery of Closing Statement. At Closing, in addition to any other documents required to be executed and delivered in counterparts by both parties, Park Site Owner and City will execute and deliver to each other closing statements accounting for sums adjusted or disbursed at Closing.

Section 8. — Post Closing Completion of Park Project.

8.1 — ~~Park Site Owner acknowledges and agrees that Park Site Owner shall be responsible to construct the improvements to the Park Site in accordance with and consistent with the specifications and requirements contained in the Park Plans. As of the Closing Date, the City shall provide Park Site Owner with access to the Park Site by means of a temporary construction and access easement in the form attached to this Agreement as Exhibit _____ (the "Temporary Construction and Access Easement") which shall permit and authorize Park Site Owner to access the Park Site for construction and installation of the Park Project. Prior to commencing construction and/or installation of the Park Project, Park Site Owner shall cause for its construction contractor to obtain and record a payment bond and performance bond pursuant to and consistent with the requirements of Section 255.05, Florida Statutes, naming City as a co-obligee on each bond. No modifications or amendments to the Park Project or the Park Plan may be made without the prior written consent of City, and no application to the City's Design Review Board to modify the Park Project or the Park Plan may be filed without the consent of the City, which consent may be withheld at its sole and absolute discretion. Any modifications or amendments to the Park Project shall not require any obligations on the part of the City with respect to the installation and/or construction of the Park Improvements. Park Site Owner shall be responsible for all maintenance, repair, and replacement of the Park Improvements in conformance with all City standards, guidelines, and legal requirements; provided, however, Owners' obligation to maintain, repair and replace the Park Improvements shall terminate upon Project Completion of the Park Project pursuant to the Park Plans, subject to the warranty provisions in Section _____ hereto.~~

8.2 — ~~Project Completion of the Park Project shall occur on or before the issuance of the first certificate of occupancy or temporary certificate of occupancy for the improvements to the Development Site (the "Certificates of Occupancy") and until such times as the Park Project has been completed to City's satisfaction, City shall be under no obligation to issue the Certificates of Occupancy. Final Completion shall occur no later than eight (8) years following the effective date of the Development Agreement.~~

8.3 — ~~During construction and/or installation of the Park Improvements and through Project Completion, Park Site Owner shall obtain and maintain, and/or cause any and all contractors and subcontractors to obtain and maintain, the Insurance Requirements so as to provide protection from claims which may arise out of or result from Park Site Owner's construction and/or installation of the Park Project, whether such construction and/or installation of the Park Project is performed by Park Site Owner, by any person or entity who has a direct contract with Park Site~~

~~Owner to perform all or a portion of the construction and/or installation of the Park Improvements, by anyone directly or indirectly employed by Park Site Owner or a subcontractor to perform or furnish any of the Park Project, or by anyone for whose acts any of them may be liable.~~

~~Section 9.~~Section 8. Brokers. Each party represents and warrants to the other that it has not consulted, dealt or negotiated with any real estate broker, finder, salesman or agent to whom a commission or other compensation is or could be due in connection with the exchange of the City Parcel and Park Site by Park Site Owner and City or the development of the Park Project, or any other matter associated with this Agreement. Each party hereby agrees to hold harmless the other from any costs, liabilities or expenses, including reasonable costs and attorneys' fees incurred in trial, appellate or post-judgment proceedings, related to or arising out of any breach of the representations, warranties and agreements set forth in this Section 8. Anything to the contrary notwithstanding, the representations, warranties and agreements of this Section 8 will survive closing of the transactions which are the subject of this Agreement and the delivery of the deeds of conveyance, or any earlier termination of this Agreement.

~~Section 10.~~Section 9. Default.

~~10.19.1~~City's Default. ~~If it shall be a default by City under this Agreement, if~~ City shall fail to observe or perform any term, covenant or condition of this Agreement on City's part to be observed or performed and City shall fail to cure or remedy the same within thirty (30) days of City's receipt of written notice from Park Site Owner with respect to monetary defaults; or within sixty (60) days of City's receipt of written notice from Park Site Owner with respect to non-monetary defaults. ~~If (provided, however, if~~ such non-monetary default is susceptible to cure but cannot reasonably be cured within said sixty (60) day period, then City shall ~~have such additional time as is necessary to cure such failure and no event of default shall be deemed to exist hereunder~~ not be in default of this Agreement so long as City commences such cure within such initial sixty (60) day period and diligently and in good faith pursues such cure to completion. Notwithstanding the foregoing, there shall be no notice and cure period with respect to City's failure to comply with its obligations under Sections 7.4 and 7.6 above. In the event City defaults hereunder ~~(after the expiration of and such default is not cured within~~ any applicable notice and cure period), then the Park Site Owner may pursue its remedies at Owner's sole and exclusive remedy shall be to: (a) terminate this Agreement; or (b) commence an action for specific performance to compel City to comply with the terms of this Agreement to the extent permitted by applicable law and/or in equity.

~~10.29.2~~Park Site Owner's Default. ~~If it shall be a default by Park Site Owner under this Agreement, if~~ Park Site Owner shall fail to observe or perform any term, covenant or condition of this Agreement on Park Site Owner's part to be observed or performed and Park Site Owner shall fail to cure or remedy the same within thirty (30) days of Park Site Owner's receipt of written notice from City with respect to monetary defaults; or within sixty (60) days of Park Site Owner's receipt of written notice from City with respect to non-monetary defaults. ~~If (provided, however, if~~ such non-monetary default is susceptible to cure but cannot reasonably be cured within said sixty (60) day period, then Park Site Owner shall ~~have such additional time as is necessary to cure such failure and no event of default shall be deemed to exist hereunder~~ not be in default of this Agreement so long as Park Site Owner commences such cure within such initial sixty (60) day period and diligently and in good faith pursues such cure to completion. Notwithstanding the foregoing, there shall be no notice and cure period with respect to Park Site Owner's failure to comply with its obligations under Sections 7.3 and 7.6 above. In the event Park Site Owner

defaults hereunder (~~after the expiration of any applicable notice and cure period~~), City may pursue its remedies at law and/or in equity, including, without limitation, ~~the right to specific performance and the right to withhold or fail to issue any of the Certificates of Occupancy. These rights shall specifically include (but not be limited to) the right to draw upon the Letter of Credit and complete the construction of the Park Project per the assignment of Park Plans and construction contract and~~ such default is not cured within any applicable notice and cure period, then the City's sole and exclusive remedy shall be to: (a) terminate this Agreement; or (b) commence an action for specific performance to compel Park Site Owner to comply with the terms of this Agreement to the extent permitted by applicable law.

~~10.3 — Survival. The provisions of this Section 10 shall survive Closing.~~

~~Section 11.~~ Section 10. Miscellaneous.

~~11.1~~ 10.1 Governing Laws, Construction and Litigation. This Agreement shall be governed and construed in accordance with the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. Park Site Owner and City agree that Miami-Dade County, Florida is the appropriate and exclusive state court venue, and that the U.S. District Court, Southern Division of Florida is the appropriate and exclusive federal court venue, in connection with any litigation between the parties with respect to this Agreement. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof; and accordingly, this Agreement shall not be more strictly construed against any of the parties hereto. In construing this Agreement, captions and section and paragraph headings shall be disregarded and the use of any gender shall include every other and all genders. All of the exhibits referenced in this Agreement are incorporated in, and made a part of, this Agreement. In the event of any litigation between the parties under this Agreement for a breach thereof, the prevailing party shall be entitled to reasonable attorney's fees and court costs at all trial and appellate levels. BY ENTERING INTO THIS AGREEMENT CITY AND PARK SITE OWNER EXPRESSLY WAIVE ANY RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT. The terms of this Section 10.1 shall survive the Closing or earlier termination of this Agreement.

~~11.2~~ 10.2 Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

To City:

City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
Attn: City Manager

Copy to:

City of Miami Beach
1700 Convention Center Drive

Miami Beach, Florida 33139
Attn: City Attorney

Holland & Knight LLP
701 Brickell Avenue
Miami, Florida 33131
Attn: Joseph G. Goldstein

To Park Site Owner:

2200 Biscayne Boulevard
Miami, Florida 33137
Attn: David Smith

Copy to:

c/o Crescent Heights
2200 Biscayne Boulevard
Miami, Florida 33137
Attn: Michael Sheitelman

Bercow Radell Fernandez & Larkin
200 S. Biscayne Boulevard
Miami, Florida 33131
Attn: Michael W. Larkin

Notices personally delivered or sent by overnight courier shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given three (3) days after deposit in the U.S. mail. The terms of this Section 10.2 shall survive the Closing or earlier termination of this Agreement.

~~11.3~~10.3 Severability. In the event any term or provision of this Agreement be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect. To the extent of any conflict between the terms and conditions of this Agreement and the terms and conditions of the Development Agreement, the terms and conditions of the Development Agreement shall govern.

~~11.4~~10.4 Successors and Assigns. This Agreement shall be binding upon and enforceable by and against the parties hereto, their personal representatives, heirs, successors, grantees and assigns. The terms and conditions of Paragraph 41 of the Development Agreement shall apply with respect to Park Site Owner's right to assign or transfer this Agreement.

~~11.5~~10.5 Entire Agreement. This Agreement, together with the documents referenced herein, including, without limitation, the Development Agreement, constitutes the entire agreement and understanding among the parties with respect to the subject matter hereof, and there are no other agreements, representations or warranties other than as set forth herein.

Neither party shall be bound by any agreement, condition, warranty nor representation other than as expressly stated in this Agreement. This Agreement may not be changed, altered or modified except by an instrument in writing signed by both parties hereto, subject to the requirements for the amendment of development agreements in the Florida Local Government Development Agreement Act.

~~11.6~~10.6 Survival. Except as otherwise expressly provided in this Agreement, the terms, conditions and provisions contained herein shall not survive the Closing and shall be merged into the respective deeds.

~~11.7~~10.7 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which will constitute the same instrument.

~~11.8~~10.8 Further Assurances. In addition to the obligations required to be performed under this Agreement by the parties hereto at the Closing, each such party agrees to perform such other acts, and to execute, acknowledge and deliver subsequent to the Closing such other instruments, documents and other materials, as the other party may reasonably request in order to effectuate the consummation of the transactions contemplated herein ~~and to complete construction of, and to operate the Park Project.~~ The provisions of this Section ~~11.8~~10.8 shall survive Closing.

~~11.9~~10.9 No Partnership. This Agreement does not and shall not be construed to create a partnership, joint venture or any other relationship between the parties except the relationship of seller and purchaser.

~~11.10~~10.10 Strict Performance; Waiver. No failure by City or Park Site Owner to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy available to such party by reason of the other party's default or an event of default hereunder shall constitute a waiver of any such default, event of default or of such other covenant, agreement, term or condition hereunder.

~~11.11~~10.11 Termination. Notwithstanding anything to the contrary contained herein, if any party hereto terminates the Development Agreement in accordance with its terms, then this Agreement shall automatically terminate as of the same date, in which case the parties hereto will have no further rights or obligations hereunder except those which expressly survive the termination of this Agreement.

*[The remainder of page intentionally left blank]
[Signatures appear on next pages]*

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date(s) hereinafter set forth.

PARK SITE OWNER:

SOUTH BEACH HEIGHTS I, LLC, a
Delaware limited liability company

By: _____

Name: _____

Its: _____

KGM EQUITIES, LLC, a Delaware
limited liability company

By: _____

Name: _____

Its: _____

*[The remainder of page intentionally left blank]
[Signatures continue on next page]*

CITY:

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

By: _____
_____, Mayor

ATTEST:

By: _____ [SEAL]
_____, City Clerk

Date: _____

EXHIBITS

- A – LEGAL DESCRIPTION OF CITY PARCEL
 - B-1 – LEGAL DESCRIPTION OF PARK SITE
 - B-2 – LEGAL DESCRIPTION OF DEVELOPMENT SITE
 - C – PERMITTED EXCEPTIONS
-

EXHIBIT “N” – VACATION RESOLUTION

EXHIBIT “O” – 6TH STREET EASEMENT AGREEMENT

This instrument was prepared by:

Name: Raul J. Aguila, City Attorney.
Address: City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

EASEMENT AGREEMENT
(6th Street Easement)

THIS EASEMENT AGREEMENT (the "**Agreement**"), is made this ____ day of _____, 201__, by _____, having an address of 2200 Biscayne Boulevard, Miami, Florida 33137 (the "**Owner**") in favor of the City of Miami Beach, a Florida municipal corporation (the "**City**").

WITNESSETH:

WHEREAS, the Owner holds fee simple title to that certain real property more specifically described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "**Property**");

WHEREAS, the real property more specifically described on **Exhibit "B"** attached hereto and incorporated herein by this reference (the "**Easement Area**") is contained within the Property; and

WHEREAS, the Owner seeks to grant a perpetual non-exclusive easement in, upon, under and through the Easement Area in favor of the City for the "Easement Purposes" (as hereinafter defined).

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound hereby agree as follows:

1. Recitals. The above recitals are true and correct and by this reference are hereby incorporated into the body of this Agreement as if fully set forth herein.

2. Grant of Easement. Subject to the rights reserved herein, the Owner hereby grants to the City a perpetual, non-exclusive, and irrevocable easement in, upon, under and through the Easement Area for the purposes of (a) constructing, installing, operating, using, maintaining, repairing and replacing landscaping, sidewalks, street lighting, traffic or directional signage, underground utilities, drainage, roadways and related infrastructure with respect to each of the foregoing (the "**Improvements**") within the Easement Area, (b) granting to any parties providing utilities service, ~~or similar parties,~~ the right to use and occupy the Easement Area for ~~any and in connection with the providing of any such~~ utilities ~~or drainage,~~ and (c) unrestricted ingress and egress by the general public for pedestrian and vehicular travel ~~or access to, over, and across and in~~ the Easement Area (collectively, the "**Easement Purposes**"). The term "**utilities**" shall mean water, sewer, stormwater, electrical, gas, telecommunications, telephone and cable. Notwithstanding anything to the contrary contained in this Agreement, and in addition to the rights reserved elsewhere herein, the Owner hereby specifically reserves the right to construct, install, operate, use, maintain, repair and replace a bridge and other improvements ~~above the Easement Area, provided such bridge and other improvements are not less than fifteen (15) feet above the Easement Area, provided Grantor's use of the Easement Area, and the improvements~~

~~thereon, do not materially interfere with the exercise by the City of the rights granted to the City herein-related thereto in and above the Easement Area.~~

3. Construction in Easement Area. If the City elects to construct and/or install any Improvements within the Easement Area, the City hereby acknowledges and agrees that: (a) all fees, costs and expenses associated with the Improvements (including, without limitation, the design, permitting construction, installation, operation, use, maintenance, repair and replacement thereof) shall be paid in full by the City; (b) all Improvements shall be performed and completed by the City (i) in a good and workmanlike manner, (ii) free from liens and defects, and (iii) in full compliance with all laws, rules, regulations, ordinances, codes and other requirements of governmental and quasi-governmental authorities having jurisdiction; and (c) upon final completion of the Improvements, the City shall (i) remove all debris, equipment and materials from the Easement Area, (ii) fill, compact, grade and otherwise restore Easement Area to substantially the same condition as existed prior to commencement of the Improvements, including harmonizing the soil levels within the Easement Area and the lands adjacent thereto, and (iii) keep and maintain the Improvements (and all parts and components thereof) in good condition, repair and working order at all times.

4. Miscellaneous.

4.1 This Agreement shall be governed by, enforced and construed under the laws of the State of Florida. Venue for all actions, litigation and/or other proceedings arising out of this Agreement shall be exclusively in Miami-Dade County, Florida. The parties hereby knowingly and voluntarily waive the right to a trial by jury of any claim, controversy or disputed matter between them arising under, out of or in connection with this Agreement. The prevailing party in any action, litigation or other proceeding that is based on any claim, controversy or other disputed matter arising under, out of or in connection with this Agreement shall recover from the non-prevailing party all fees, costs and expenses (including, without limitation, reasonable attorneys' fees and costs through all trial, appellate and post-judgment levels and proceedings) incurred by the prevailing party in such action, litigation or other proceeding.

4.2 The parties hereby acknowledge and agree that each has had an opportunity to be represented by or consult with independent legal counsel and that any rule of construction which provides that ambiguities are to be construed against the drafter shall not apply in the interpretation or construction of this Agreement. If any term, provision or portion of this Agreement is for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction, then such term, provision or portion of this Agreement shall be given it nearest valid, legal and enforceable meaning, or construed as deleted, whichever such court may determine, and the same shall not invalidate the remaining terms, provisions and/or portions of this Agreement, which remaining terms, provisions and portions of this Agreement will remain in full force and effect.

4.3 This Agreement includes all exhibits attached hereto. This Agreement, together with all such exhibits, contains the entire agreement and understanding between the parties relating to the subject matter of this Agreement, and all prior or contemporaneous terms, covenants, conditions, representations, warranties, statements, agreements and understandings made by or on behalf of the parties, whether oral or written, are merged herein.

4.4 This Agreement may not be amended, modified or terminated except by a written instrument executed by the Owner and the City through its Public Works Director, or his designee, or the successor administrative officer with jurisdiction over the matter, and which is recorded in the Public Records of Miami-Dade County, Florida. This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

4.5 The failure of any party to insist in any one or more instances upon strict performance of any term, covenant, condition or other provision of this Agreement will not be construed as a waiver or relinquishment of the future enforcement of such term, covenant, condition or other provision of this Agreement.

4.6 Wherever appropriate in this Agreement, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of each gender shall be deemed to comprehend either or both of the other genders. The section and paragraph headings in this Agreement are for convenience only and shall not affect the meaning, interpretation or scope of the terms or provisions set forth therein.

4.7 This Agreement may be executed in multiple counterparts, each of which individually shall be deemed an original, but when taken together shall be deemed to be one and the same Agreement.

4.8 This Agreement shall never be construed as a conveyance in any manner whatsoever of fee simple title to any portion of the Property or the Easement Area; it being intended by the parties that this Agreement conveys only an easement interest with respect to the Easement Area for the specific uses and purposes set forth herein.

4.9 All of the rights, easements and interests herein created and granted are and shall be limited to and utilized solely for the uses and purposes expressly set forth herein. Notwithstanding anything to the contrary contained in this Agreement, the Owner hereby expressly reserves the right to use and grant others the right to use any and all portions of the Property owned by it (including, without limitation, any and all portions of the Easement Area) so long as such use by the Owner and/or others does not damage any of the Improvements installed by the City under this Agreement or ~~materially~~ interfere in any material respects with the exercise by the City of the rights granted to the City herein.

4.10 This Agreement and the rights, easements and interests herein created and granted shall only become effective upon the recordation of this Agreement in the Public Records of Miami-Dade County. This Agreement and the rights, easements and interests herein created and granted shall run with the land, and shall be binding on all persons holding title to said lands.

5. Notice. All notices, demands, requests or other communications which may be or are required to be given, served, or sent by either the Owner or the City pursuant to this Agreement shall be in writing and addressed as follows:

If to Developer at:

2200 Biscayne Boulevard
Miami, Florida 33137
Attn: David Smith

With a copy to:

2200 Biscayne Boulevard
Miami, Florida 33137
Attn: Michael Sheitelman

If to the City:

City of Miami Beach
Attn: City Manager
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

PAGE 4

With copies to:

City of Miami Beach
Attn: Public Works Director
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

Each ~~Party~~party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent.

6. The City shall indemnify, defend and hold the Developers harmless from and against all claims, demands, causes of action, suits, losses, damages, liabilities, liens, judgments, fees, costs, expenses and other charges (including, without limitation, attorneys' fees and costs through all trial, appellate and post judgment levels and proceedings) commenced, incurred and/or paid by or against any of the Developers arising from, relating to or in connection with: (a) the use of the Easement Area by the City or any successor, assign and/or grantee thereof; (b) the construction, installation, operation, use, maintenance, repair and/or replacement, or the failure to properly construct, install, operate, use, maintain, repair and/or replace of any Improvements by the City or any successor, assign and/or grantee thereof; and (c) any default, breach or violation of any term, covenant, condition or provision of this Agreement by the City or any successor, assign and/or grantee thereof.

APPROVED

Public Works Director

Date

APPROVED AS TO
FORM & LANGUAGE

City Attorney

Date

[EXECUTION PAGES TO FOLLOW]

Serial No., if any _____

Exhibit A

Legal Description of Property

Exhibit B

Legal Description of Easement Area

EXHIBIT “P” – FUTURE BAYWALK PARCEL

Draft, November 2, 2018

EXHIBIT “Q” – FUTURE BAYWALK PARCEL EASEMENT AGREEMENT

DEVELOPER'S NOVEMBER 2, 2018 DRAFT
DEVELOPER'S PROPOSED REVISIONS UNDER REVIEW

This instrument was prepared by:

Name: Raul J. Aguila, City Attorney.
Address: City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

EASEMENT AGREEMENT
(Pedestrian Pathway – 500 Block)

THIS EASEMENT AGREEMENT (the “**Agreement**”), is made this ____ day of _____, 201__, by _____, having an address of 2200 Biscayne Boulevard, Miami, Florida 33137 (the “**Owner**”) in favor of the City of Miami Beach, a Florida municipal corporation (the “**City**”).

WITNESSETH:

WHEREAS, the Owner holds fee simple title to that certain real property more specifically described on **Exhibit “A”** attached hereto and incorporated herein by this reference (the “**Property**”);

WHEREAS, the real property more specifically described on **Exhibit “B”** attached hereto and incorporated herein by this reference (the “**Easement Area**”) is contained within the Property; and

WHEREAS, the Owner seeks to grant a perpetual non-exclusive easement upon, over and across the Easement Area in favor of the City for the “Easement Purpose” (as hereinafter defined).

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound hereby agree as follows:

1. Recitals. The above recitals are true and correct and by this reference are hereby incorporated into the body of this Agreement as if fully set forth herein.

2. Grant of Easement. Subject to the rights reserved herein, the Owner hereby grants to the City a perpetual, non-exclusive and irrevocable easement (a) upon, over and across the Easement Area for the purpose of ~~(a) pedestrian travel; and (b) constructing and attaching improvements thereto, for the purpose of facilitating the design and construction of the Future Baywalk Pedestrian Bridge across West Avenue at the City's sole cost and expense~~ (the “**Easement Purpose**”). Notwithstanding anything to the contrary contained in this Agreement, the Owner reserves the right to install gates, barricades and other security measures within the Easement Area to prohibit the Easements Purpose with respect to that portion of the Easement Area more specifically described on Exhibit “C” attached hereto and incorporated herein by this reference during the hours of _____ AM through _____ PM on every day of the week.

3. Intentionally Deleted.

4. Miscellaneous.

4.1 This Agreement shall be governed by, enforced and construed under the laws of the State of Florida. Venue for all actions, litigation and/or other proceedings arising out of this Agreement shall be exclusively in Miami-Dade County, Florida. The parties hereby knowingly and voluntarily waive the right to a trial by jury of any claim, controversy or disputed matter between them arising under, out of or in connection with this Agreement. The prevailing party in any action, litigation or other proceeding that is based on any claim, controversy or other disputed matter arising under, out of or in connection with this Agreement shall recover from the non-prevailing party all fees, costs and expenses (including, without limitation, reasonable attorneys' fees and costs through all trial, appellate and post-judgment levels and proceedings) incurred by the prevailing party in such action, litigation or other proceeding.

4.2 The parties hereby acknowledge and agree that each has had an opportunity to be represented by or consult with independent legal counsel and that any rule of construction which provides that ambiguities are to be construed against the drafter shall not apply in the interpretation or construction of this Agreement. If any term, provision or portion of this Agreement is for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction, then such term, provision or portion of this Agreement shall be given its nearest valid, legal and enforceable meaning, or construed as deleted, whichever such court may determine, and the same shall not invalidate the remaining terms, provisions and/or portions of this Agreement, which remaining terms, provisions and portions of this Agreement will remain in full force and effect.

4.3 This Agreement includes all exhibits attached hereto. This Agreement, together with all such exhibits, contains the entire agreement and understanding between the parties relating to the subject matter of this Agreement, and all prior or contemporaneous terms, covenants, conditions, representations, warranties, statements, agreements and understandings made by or on behalf of the parties, whether oral or written, are merged herein.

4.4 This Agreement may not be amended, modified or terminated except by a written instrument executed by the Owner and the City through its Public Works Director, or his designee, or the successor administrative officer with jurisdiction over the matter, and which is recorded in the Public Records of Miami-Dade County, Florida. This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

4.5 The failure of any party to insist in any one or more instances upon strict performance of any term, covenant, condition or other provision of this Agreement will not be construed as a waiver or relinquishment of the future enforcement of such term, covenant, condition or other provision of this Agreement.

4.6 Wherever appropriate in this Agreement, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of each gender shall be deemed to comprehend either or both of the other genders. The section and paragraph headings in this Agreement are for convenience only and shall not affect the meaning, interpretation or scope of the terms or provisions set forth therein.

4.7 This Agreement may be executed in multiple counterparts, each of which individually shall be deemed an original, but when taken together shall be deemed to be one and the same Agreement.

4.8 This Agreement shall never be construed as a conveyance in any manner whatsoever of fee simple title to any portion of the Property or the Easement Area; it being intended by the parties that this Agreement conveys only an easement interest with respect to the Easement Area for the specific uses and purposes set forth herein.

4.9 All of the rights, easements and interests herein created and granted are and shall be limited to and utilized solely for the uses and purposes expressly set forth herein. Notwithstanding anything to the contrary contained in this Agreement, the Owner hereby expressly reserves the right to use and grant others the right to use any and all portions of the Property owned by it (including, without limitation, any and all portions of the Easement Area) so long as such use by the Owner and/or others does not prohibit the City from engaging in the Easement Purpose granted to it under this Agreement.

4.10 This Agreement and the rights, easements and interests herein created and granted shall only become effective upon the recordation of this Agreement in the Public Records of Miami-Dade County. This Agreement and the rights, easements and interests herein created and granted shall run with the land, and shall be binding on all persons holding title to said lands.

5. Notice. All notices, demands, requests or other communications which may be or are required to be given, served, or sent by either the Owner or the City pursuant to this Agreement shall be in writing and addressed as follows:

If to Developer at:

2200 Biscayne Boulevard
Miami, Florida 33137
Attn: David Smith

With a copy to:

2200 Biscayne Boulevard
Miami, Florida 33137
Attn: Michael Sheitelman

If to the City:

City of Miami Beach
Attn: City Manager
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

With copies to:

City of Miami Beach
Attn: Public Works Director
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

| Each ~~Party~~party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent.

DEVELOPER'S NOVEMBER 2, 2018 DRAFT
DEVELOPER'S PROPOSED REVISIONS UNDER REVIEW
APPROVED

Public Works Director

Date

APPROVED AS TO
FORM & LANGUAGE

City Attorney

Date

[EXECUTION PAGES TO FOLLOW]

DEVELOPER'S NOVEMBER 2, 2018 DRAFT

DEVELOPER'S PROPOSED REVISIONS UNDER REVIEW

IN WITNESS WHEREOF, the Owner has caused these presents to be signed, sealed executed and acknowledged on ____ day of _____, 20____, in its name by its proper officials.

Print Name: _____

By: _____

Name: _____

Title: _____

Print Name: _____

STATE OF FLORIDA)

) SS:

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__ by _____, as _____ of _____, on behalf of the company. He is personally known to me or has produced _____ as identification and who did/did not take an oath.

NOTARY PUBLIC

Typed or printed Name of Notary

My Commission expires:

Serial No., if any _____

**DEVELOPER'S NOVEMBER 2, 2018 DRAFT
DEVELOPER'S PROPOSED REVISIONS UNDER REVIEW**

Exhibit A

Legal Description of Property

Exhibit B

Legal Description of Easement Area

EXHIBIT “R” – FIFTH STREET EASEMENT AGREEMENT

**DEVELOPER'S NOVEMBER 2, 2018 DRAFT
DEVELOPER'S PROPOSED REVISIONS UNDER REVIEW**

This instrument was prepared by:

Name: Raul J. Aguila, City Attorney.
Address: City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

**EASEMENT AGREEMENT
(5th Street Easement)**

THIS EASEMENT AGREEMENT (the "**Agreement**"), is made this ____ day of _____, 201__, by _____, having an address of 2200 Biscayne Boulevard, Miami, Florida 33137 (the "**Owner**") in favor of the City of Miami Beach, a Florida municipal corporation (the "**City**").

WITNESSETH:

WHEREAS, the Owner holds fee simple title to that certain real property more specifically described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "**Property**");

WHEREAS, the real property more specifically described on **Exhibit "B"** attached hereto and incorporated herein by this reference (the "**Easement Area**") is contained within the Property; and

WHEREAS, the Owner seeks to grant a perpetual non-exclusive easement in, upon, under and through the Easement Area in favor of the City for the "Easement Purposes" (as hereinafter defined).

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound hereby agree as follows:

1. Recitals. The above recitals are true and correct and by this reference are hereby incorporated into the body of this Agreement as if fully set forth herein.

2. Grant of Easement. Subject to the rights reserved herein, the Owner hereby grants to the City a perpetual, non-exclusive and irrevocable easement in, upon, under and through the Easement Area for the purposes of (a) constructing, installing, operating, using, maintaining, repairing and replacing landscaping, sidewalks, street lighting, traffic or directional signage, underground utilities, drainage, roadways and related infrastructure with respect to each of the foregoing (the "**Improvements**") within the Easement Area, (b) granting to any parties providing utilities service the right to use and occupy the Easement Area for and in connection with the providing of any such utilities, and (c) unrestricted ingress and egress by the general public for pedestrian and vehicular travel over and across the Easement Area (collectively, the "**Easement Purposes**"). The term "**utilities**" shall mean water, sewer, stormwater, electrical, gas, telecommunications, telephone and cable

3. Construction in Easement Area. If the City elects to construct and/or install any Improvements within the Easement Area, the City hereby acknowledges and agrees that: (a) all fees, costs and expenses associated with the Improvements (including, without limitation, the design, permitting

construction, installation, operation, use, maintenance, repair and replacement thereof) shall be paid in full by the City; (b) all Improvements shall be performed and completed by the City (i) in a good and workmanlike manner, (ii) free from liens and defects, and (iii) in full compliance with all laws, rules, regulations, ordinances, codes and other requirements of governmental and quasi-governmental authorities having jurisdiction; and (c) upon final completion of the Improvements, the City shall (i) remove all debris, equipment and materials from the Easement Area, (ii) fill, compact, grade and otherwise restore Easement Area to substantially the same condition as existed prior to commencement of the Improvements, including harmonizing the soil levels within the Easement Area and the lands adjacent thereto, and (iii) keep and maintain the Improvements (and all parts and components thereof) in good condition, repair and working order at all times.

4. Miscellaneous.

4.1 This Agreement shall be governed by, enforced and construed under the laws of the State of Florida. Venue for all actions, litigation and/or other proceedings arising out of this Agreement shall be exclusively in Miami-Dade County, Florida. The parties hereby knowingly and voluntarily waive the right to a trial by jury of any claim, controversy or disputed matter between them arising under, out of or in connection with this Agreement. The prevailing party in any action, litigation or other proceeding that is based on any claim, controversy or other disputed matter arising under, out of or in connection with this Agreement shall recover from the non-prevailing party all fees, costs and expenses (including, without limitation, reasonable attorneys' fees and costs through all trial, appellate and post-judgment levels and proceedings) incurred by the prevailing party in such action, litigation or other proceeding.

4.2 The parties hereby acknowledge and agree that each has had an opportunity to be represented by or consult with independent legal counsel and that any rule of construction which provides that ambiguities are to be construed against the drafter shall not apply in the interpretation or construction of this Agreement. If any term, provision or portion of this Agreement is for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction, then such term, provision or portion of this Agreement shall be given it nearest valid, legal and enforceable meaning, or construed as deleted, whichever such court may determine, and the same shall not invalidate the remaining terms, provisions and/or portions of this Agreement, which remaining terms, provisions and portions of this Agreement will remain in full force and effect.

4.3 This Agreement includes all exhibits attached hereto. This Agreement, together with all such exhibits, contains the entire agreement and understanding between the parties relating to the subject matter of this Agreement, and all prior or contemporaneous terms, covenants, conditions, representations, warranties, statements, agreements and understandings made by or on behalf of the parties, whether oral or written, are merged herein.

4.4 This Agreement may not be amended, modified or terminated except by a written instrument executed by the Owner and the City through its Public Works Director, or his designee, or the successor administrative officer with jurisdiction over the matter, and which is recorded in the Public Records of Miami-Dade County, Florida. This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

4.5 The failure of any party to insist in any one or more instances upon strict performance of any term, covenant, condition or other provision of this Agreement will not be construed as a waiver or relinquishment of the future enforcement of such term, covenant, condition or other provision of this Agreement.

4.6 Wherever appropriate in this Agreement, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of each gender shall be deemed to comprehend either or both of the other genders. The section and paragraph headings in this Agreement are for convenience only and shall not affect the meaning, interpretation or scope of the terms or provisions set forth therein.

4.7 This Agreement may be executed in multiple counterparts, each of which individually shall be deemed an original, but when taken together shall be deemed to be one and the same Agreement.

4.8 This Agreement shall never be construed as a conveyance in any manner whatsoever of fee simple title to any portion of the Property or the Easement Area; it being intended by the parties that this Agreement conveys only an easement interest with respect to the Easement Area for the specific uses and purposes set forth herein.

4.9 All of the rights, easements and interests herein created and granted are and shall be limited to and utilized solely for the uses and purposes expressly set forth herein. Notwithstanding anything to the contrary contained in this Agreement, the Owner hereby expressly reserves the right to use and grant others the right to use any and all portions of the Property owned by it (including, without limitation, any and all portions of the Easement Area) so long as such use by the Owner and/or others does not damage any of the Improvements installed by the City under this Agreement or interfere in any material respects with the exercise by the City of the rights granted to the City herein.

4.10 This Agreement and the rights, easements and interests herein created and granted shall only become effective upon the recordation of this Agreement in the Public Records of Miami-Dade County. This Agreement and the rights, easements and interests herein created and granted shall run with the land, and shall be binding on all persons holding title to said lands.

5. Notice. All notices, demands, requests or other communications which may be or are required to be given, served, or sent by either the Owner or the City pursuant to this Agreement shall be in writing and addressed as follows:

If to Developer at:

2200 Biscayne Boulevard
Miami, Florida 33137
Attn: David Smith

With a copy to:

2200 Biscayne Boulevard
Miami, Florida 33137
Attn: Michael Sheitelman

If to the City:

City of Miami Beach
Attn: City Manager
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

With copies to:

City of Miami Beach
Attn: Public Works Director
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent.

6. The City shall indemnify, defend and hold the Developers harmless from and against all claims, demands, causes of action, suits, losses, damages, liabilities, liens, judgments, fees, costs, expenses and other charges (including, without limitation, attorneys' fees and costs through all trial, appellate and post judgment levels and proceedings) commenced, incurred and/or paid by or against any of the Developers arising from, relating to or in connection with: (a) the use of the Easement Area by the City or any successor, assign and/or grantee thereof; (b) the construction, installation, operation, use, maintenance, repair and/or replacement, or the failure to properly construct, install, operate, use, maintain, repair and/or replace of any Improvements by the City or any successor, assign and/or grantee thereof; and (c) any default, breach or violation of any term, covenant, condition or provision of this Agreement by the City or any successor, assign and/or grantee thereof.

**DEVELOPER'S NOVEMBER 2, 2018 DRAFT
DEVELOPER'S PROPOSED REVISIONS UNDER REVIEW**

APPROVED

Public Works Director

Date

APPROVED AS TO
FORM & LANGUAGE

City Attorney

Date

[EXECUTION PAGES TO FOLLOW]

**DEVELOPER'S NOVEMBER 2, 2018 DRAFT
DEVELOPER'S PROPOSED REVISIONS UNDER REVIEW**

IN WITNESS WHEREOF, the Owner has caused these presents to be signed, sealed executed and acknowledged on ____ day of _____, 20 ____, in its name by its proper officials.

Print Name: _____

By: _____

Name: _____

Title: _____

Print Name: _____

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

The foregoing instrument was acknowledged before me this ____ day of _____, 201__ by _____, as _____ of _____, on behalf of the company. He is personally known to me or has produced _____ as identification and who did/did not take an oath.

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

**DEVELOPER'S NOVEMBER 2, 2018 DRAFT
DEVELOPER'S PROPOSED REVISIONS UNDER REVIEW**

Exhibit A

Legal Description of Property

Exhibit B

Legal Description of Easement Area

EXHIBIT “S” – WEST AVENUE SIDEWALK EASEMENT

EXHIBIT “T” – WEST AVENUE SIDEWALK EASEMENT AGREEMENT

This instrument was prepared by:

Name: Raul J. Aguila, City Attorney.
Address: City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

**EASEMENT AGREEMENT
(West Avenue Sidewalk Easement)**

THIS EASEMENT AGREEMENT (the “**Agreement**”), is made this ____ day of _____, 201__, by _____, having an address of 2200 Biscayne Boulevard, Miami, Florida 33137 (the “**Owner**”) in favor of the City of Miami Beach, a Florida municipal corporation (the “**City**”).

WITNESSETH:

WHEREAS, the Owner holds fee simple title to that certain real property more specifically described on **Exhibit “A”** attached hereto and incorporated herein by this reference (the “**Property**”);

WHEREAS, the real property more specifically described on **Exhibit “B”** attached hereto and incorporated herein by this reference (the “**Easement Area**”) is contained within the Property; and

WHEREAS, the Owner seeks to grant a perpetual non-exclusive easement upon, over and across the Easement Area in favor of the City for the “Easement Purpose” (as hereinafter defined).

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound hereby agree as follows:

1. Recitals. The above recitals are true and correct and by this reference are hereby incorporated into the body of this Agreement as if fully set forth herein.
 2. Grant of Easement. Subject to the rights reserved herein, the Owner hereby grants to the City a perpetual, non-exclusive and irrevocable easement upon, over and across the Easement Area for the purpose of pedestrian and bicycle travel (the “**Easement Purpose**”).
 3. Intentionally Deleted.
 4. Miscellaneous.
-

4.1 This Agreement shall be governed by, enforced and construed under the laws of the State of Florida. Venue for all actions, litigation and/or other proceedings arising out of this Agreement shall be exclusively in Miami-Dade County, Florida. The parties hereby knowingly and voluntarily waive the right to a trial by jury of any claim, controversy or disputed matter between them arising under, out of or in connection with this Agreement. The prevailing party in any action, litigation or other proceeding that is based on any claim, controversy or other disputed matter arising under, out of or in connection with

this Agreement shall recover from the non-prevailing party all fees, costs and expenses (including, without limitation, reasonable attorneys' fees and costs through all trial, appellate and post-judgment levels and proceedings) incurred by the prevailing party in such action, litigation or other proceeding.

4.2 The parties hereby acknowledge and agree that each has had an opportunity to be represented by or consult with independent legal counsel and that any rule of construction which provides that ambiguities are to be construed against the drafter shall not apply in the interpretation or construction of this Agreement. If any term, provision or portion of this Agreement is for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction, then such term, provision or portion of this Agreement shall be given its nearest valid, legal and enforceable meaning, or construed as deleted, whichever such court may determine, and the same shall not invalidate the remaining terms, provisions and/or portions of this Agreement, which remaining terms, provisions and portions of this Agreement will remain in full force and effect.

4.3 This Agreement includes all exhibits attached hereto. This Agreement, together with all such exhibits, contains the entire agreement and understanding between the parties relating to the subject matter of this Agreement, and all prior or contemporaneous terms, covenants, conditions, representations, warranties, statements, agreements and understandings made by or on behalf of the parties, whether oral or written, are merged herein.

4.4 This Agreement may not be amended, modified or terminated except by a written instrument executed by the Owner and the City through its Public Works Director, or his designee, or the successor administrative officer with jurisdiction over the matter, and which is recorded in the Public Records of Miami-Dade County, Florida. This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

4.5 The failure of any party to insist in any one or more instances upon strict performance of any term, covenant, condition or other provision of this Agreement will not be construed as a waiver or relinquishment of the future enforcement of such term, covenant, condition or other provision of this Agreement.

4.6 Wherever appropriate in this Agreement, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of each gender shall be deemed to comprehend either or both of the other genders. The section and paragraph headings in this Agreement are for convenience only and shall not affect the meaning, interpretation or scope of the terms or provisions set forth therein.

4.7 This Agreement may be executed in multiple counterparts, each of which individually shall be deemed an original, but when taken together shall be deemed to be one and the same Agreement.

4.8 This Agreement shall never be construed as a conveyance in any manner whatsoever of fee simple title to any portion of the Property or the Easement Area; it being intended by the parties that this Agreement conveys only an easement interest with respect to the Easement Area for the specific uses and purposes set forth herein.

4.9 All of the rights, easements and interests herein created and granted are and shall be limited to and utilized solely for the uses and purposes expressly set forth herein. Notwithstanding anything to the contrary contained in this Agreement, the Owner hereby expressly reserves the right to use and grant others the right to use any and all portions of the Property owned by it (including, without limitation, any and all portions of the Easement Area) so long as such use by the Owner and/or others does not prohibit the City from engaging in the Easement Purpose granted to it under this Agreement.

4.10 This Agreement and the rights, easements and interests herein created and granted shall only become effective upon the recordation of this Agreement in the Public Records of Miami-Dade County. This Agreement and the rights, easements and interests herein created and granted shall run with the land, and shall be binding on all persons holding title to said lands

5. Notice. All notices, demands, requests or other communications which may be or are required to be given, served, or sent by either the Owner or the City pursuant to this Agreement shall be in writing and addressed as follows:

If to Developer at:

2200 Biscayne Boulevard
Miami, Florida 33137
Attn: David Smith

With a copy to:

2200 Biscayne Boulevard
Miami, Florida 33137
Attn: Michael Sheitelman

If to the City:

City of Miami Beach
Attn: City Manager
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

With copies to:

City of Miami Beach
Attn: Public Works Director
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent.

APPROVED

Public Works Director

Date

APPROVED AS TO
FORM & LANGUAGE

City Attorney

Date

[EXECUTION PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Owner has caused these presents to be signed, sealed executed and acknowledged on ____ day of _____, 20____, in its name by its proper officials

Print Name: _____

By: _____

Name: _____

Title: _____

Print Name: _____

STATE OF FLORIDA)

) SS:

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__ by _____, as _____ of _____, on behalf of the company. He is personally known to me or has produced _____ as identification and who did/did not take an oath.

NOTARY PUBLIC

Typed or printed Name of Notary

My Commission expires:

Serial No., if any _____

Exhibit A

Legal Description of Property

Exhibit B

Legal Description of Easement Area

**EXHIBIT "U" –
TERMINATION OF GRANT OF EASEMENT AND AGREEMENT FOR STORM WATER AND
TRANSPORTATION IMPROVEMENTS**

**DEVELOPER'S NOVEMBER 2, 2018 DRAFT
DEVELOPER'S DRAFT UNDER REVIEW**

This instrument was prepared by:

Name: Raul J. Aguila, City Attorney.
Address: City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

**TERMINATION OF GRANT OF EASEMENT AND AGREEMENT FOR STORM WATER AND
TRANSPORTATION IMPROVEMENTS**

THIS TERMINATION OF GRANT OF EASEMENT AND AGREEMENT FOR STORM WATER AND TRANSPORTATION IMPROVEMENTS (the "**Termination**") is made and entered into as of the _____ day of _____, 201__, by and between 500 ALTON ROAD VENTURES, LLC, a Delaware limited liability company, having an address of 2200 Biscayne Boulevard, Miami, Florida 33137 ("**500 Alton**"), and the CITY OF MIAMI BEACH, a municipal corporation duly organized and existing under the laws of the State of Florida, having an address at 1700 Convention Center Drive, Miami Beach, Florida 33139 (the "**City**").

RECITALS

A. 500 Alton and the City are parties to that certain Grant of Easement and Agreement for Storm Water and Transportation Improvements dated October 29, 2013 and recorded August 22, 2014 in Official Records Book 29281, Page 1097 of the Public Records of Miami-Dade County, Florida (the "**Easement Agreement**").

B. 500 Alton and the City seek to terminate and extinguish the Easement Agreement in its entirety by the recordation of this Termination.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound hereby agree as follows:

1. Recitals. The above recitals are true and correct and by this reference are hereby incorporated into the body of this Termination as if fully set forth herein.

2. Termination and Discharge of Easement Agreement. 500 Alton and the City hereby terminate and extinguish the Easement Agreement in its entirety and discharge the same from Public Record, and from and after the date on which this Termination is recorded in the Public Records of Miami-Dade County, Florida: (a) all of the rights, easements, licenses and interests created and granted in and by the Easement Agreement shall be terminated, extinguished, released, vacated, discharged and of no further force or effect; (b) the parties to the Easement Agreement shall be fully released and discharged from the Easement Agreement and all rights, obligations and liabilities thereunder as though the same had never existed; and (c) the property encumbered by the Easement Agreement shall be fully released and discharged from the Easement Agreement and all easements, licenses and interests created and granted therein and

thereby as though the same had never existed.

3. Miscellaneous.

3.1 This Termination shall be governed by, enforced and construed under the laws of the State of Florida. Venue for all actions, litigation and/or other proceedings arising out of this Termination shall be exclusively in Miami-Dade County, Florida. The parties hereby knowingly and voluntarily waive the right to a trial by jury of any claim, controversy or disputed matter between them. The prevailing party in any action, litigation or other proceeding that is based on any claim, controversy or other disputed matter arising under, out of or in connection with this Termination shall recover from the non-prevailing party all fees, costs and expenses (including, without limitation, reasonable attorneys' fees and costs through all trial, appellate and post-judgment levels and proceedings) incurred by the prevailing party in such action, litigation or other proceeding. No party to this Termination shall be entitled to any pre-judgment interest.

3.2 The parties hereby acknowledge and agree that each has had an opportunity to be represented by or consult with independent legal counsel and that any rule of construction which provides that ambiguities are to be construed against the drafter shall not apply in the interpretation or construction of this Termination. If any term, provision or portion of this Termination is for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction, then such term, provision or portion of this Termination shall be given it nearest valid, legal and enforceable meaning, or construed as deleted, whichever such court may determine, and the same shall not invalidate the remaining terms, provisions and/or portions of this Termination, which remaining terms, provisions and portions of this Termination will remain in full force and effect.

3.3 This Termination, together with all such exhibits, contains the entire agreement and understanding between the parties relating to the subject matter of this Termination, and all prior or contemporaneous terms, covenants, conditions, representations, warranties, statements, agreements and understandings made by or on behalf of the parties, whether oral or written, are merged herein.

3.4 This Termination may not be amended, modified, or terminated except by a written instrument executed by the party or parties against whom enforcement is sought and which is recorded in the Public Records of Miami-Dade County, Florida. This Termination shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

3.5 Wherever appropriate in this Termination, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of each gender shall be deemed to comprehend either or both of the other genders. The section and paragraph headings in this Termination are for convenience only and shall not affect the meaning, interpretation or scope of the terms or provisions set forth therein.

3.6 This Termination may be executed in multiple counterparts, each of which individually shall be deemed an original, but when taken together shall be deemed to be one and the same Termination.

[signatures follow on next page]

IN WITNESS WHEREOF, the parties hereto have duly executed this Termination as of the date and year first set forth above.

WITNESSES:

500 ALTON:

500 ALTON ROAD VENTURES, LLC, a
Delaware 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 this _____ day of _____, 201__, by _____, as _____ of 500 ALTON ROAD VENTURES, LLC, a Delaware limited liability company, a Delaware limited liability company, on behalf of such limited liability company, who is personally known to me or has produced a _____ driver's license as identification.

Print or Stamp Name: _____

Notary Public, State of Florida at Large

Commission No.: _____

My Commission Expires: _____

[signatures and notary acknowledgments continue on next page]

IN WITNESS WHEREOF, the parties hereto have duly executed this Termination as of the date and year first set forth above.

WITNESSES:

THE CITY

CITY OF MIAMI BEACH, a Florida municipal corporation

Attest:

City Clerk

By: _____
Name: _____
Title: _____

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

The foregoing instrument was acknowledged before me this _____ day of _____, 201__, by _____, as _____ of the City of Miami Beach, a Florida municipal corporation on behalf of such municipal corporation, who is personally known to me or has produced a _____ driver's license as identification.

Print or Stamp Name: _____
Notary Public, State of Florida at Large
Commission No.: _____
My Commission Expires: _____

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

Date

EXHIBIT “V” – FLORIDIAN PARKING EASEMENT

EXHIBIT “W” – FLORIDIAN PARKING EASEMENT AGREEMENT

This instrument was prepared by:

Name: Raul J. Aguila, City Attorney.
Address: City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

EASEMENT AGREEMENT
(Floridian Parking Lot Access Easement)

THIS EASEMENT AGREEMENT (the “**Agreement**”), is made this ____ day of _____, 201__, by and between _____, having an address of 2200 Biscayne Boulevard, Miami, Florida 33137 (the “**Owner**”), and the City of Miami Beach, a Florida municipal corporation (the “**City**”).

WITNESSETH:

WHEREAS, the Owner holds fee simple title to that certain real property more specifically described on **Exhibit “A”** attached hereto and incorporated herein by this reference (the “**Property**”);

WHEREAS, the real property more specifically described on **Exhibit “B”** attached hereto and incorporated herein by this reference (the “**Parking Lot Easement Area**”) is contained within the Property;

WHEREAS, the City holds fee simple title to that certain real property more specifically described on **Exhibit “C”** attached hereto and incorporated herein by this reference (the “**Access Easement Area**”);

WHEREAS, the Owner seeks to grant a perpetual non-exclusive easement upon, over and across the Parking Lot Easement Area in favor of the City for the “City Easement Purpose” (as hereinafter defined), and the City seeks to grant a perpetual non-exclusive easement upon, over and across the Access Easement Area in favor of the Owner for the “Owner Easement Purpose” (as hereinafter defined), .

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound hereby agree as follows:

1. Recitals. The above recitals are true and correct and by this reference are hereby incorporated into the body of this Agreement as if fully set forth herein.

2. Grant of Easement.

(a) Subject to the rights reserved herein, the Owner hereby grants to the City a perpetual, non-exclusive and irrevocable easement upon, over and across the Parking Lot Easement Area for the purpose of accessing the real property more specifically described on **Exhibit “D”** attached hereto and incorporated herein by this reference (the “**Park Property**”) to install, maintain, repair and replace grass, plantings and other landscaping within the Park Property (the “**City Easement Purpose**”).

(b) Subject to the rights reserved herein, the City hereby grants to the Owner a perpetual, non-exclusive and irrevocable easement upon, over and across the Access Easement Area for the purposes of pedestrian and vehicular ingress and egress to and from the Parking Lot Easement Area and West Avenue (the “**Owner Easement Purpose**”).

3. Intentionally Deleted.

4. Miscellaneous.

4.1 This Agreement shall be governed by, enforced and construed under the laws of the State of Florida. Venue for all actions, litigation and/or other proceedings arising out of this Agreement shall be exclusively in Miami-Dade County, Florida. The parties hereby knowingly and voluntarily waive the right to a trial by jury of any claim, controversy or disputed matter between them arising under, out of or in connection with this Agreement. The prevailing party in any action, litigation or other proceeding that is based on any claim, controversy or other disputed matter arising under, out of or in connection with this Agreement shall recover from the non-prevailing party all fees, costs and expenses (including, without limitation, reasonable attorneys' fees and costs through all trial, appellate and post-judgment levels and proceedings) incurred by the prevailing party in such action, litigation or other proceeding.

4.2 The parties hereby acknowledge and agree that each has had an opportunity to be represented by or consult with independent legal counsel and that any rule of construction which provides that ambiguities are to be construed against the drafter shall not apply in the interpretation or construction of this Agreement. If any term, provision or portion of this Agreement is for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction, then such term, provision or portion of this Agreement shall be given it nearest valid, legal and enforceable meaning, or construed as deleted, whichever such court may determine, and the same shall not invalidate the remaining terms, provisions and/or portions of this Agreement, which remaining terms, provisions and portions of this Agreement will remain in full force and effect.

4.3 This Agreement includes all exhibits attached hereto. This Agreement, together with all such exhibits, contains the entire agreement and understanding between the parties relating to the subject matter of this Agreement, and all prior or contemporaneous terms, covenants, conditions, representations, warranties, statements, agreements and understandings made by or on behalf of the parties, whether oral or written, are merged herein.

4.4 This Agreement may not be amended, modified or terminated except by a written instrument executed by the Owner and the City through its Public Works Director, or his designee, or the successor administrative officer with jurisdiction over the matter, and which is recorded in the Public Records of Miami-Dade County, Florida. This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

4.5 The failure of any party to insist in any one or more instances upon strict performance of any term, covenant, condition or other provision of this Agreement will not be construed as a waiver or relinquishment of the future enforcement of such term, covenant, condition or other provision of this Agreement.

4.6 Wherever appropriate in this Agreement, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of each gender shall be deemed to comprehend either or both of the other genders. The section and paragraph headings in this Agreement are for convenience only and shall not affect the meaning, interpretation or scope of the terms or provisions set forth therein.

4.7 This Agreement may be executed in multiple counterparts, each of which individually shall be deemed an original, but when taken together shall be deemed to be one and the same Agreement.

4.8 This Agreement shall never be construed as a conveyance in any manner whatsoever of fee simple title to any portion of the Property or the Easement Area; it being intended by the parties that this Agreement conveys only an easement interest with respect to the Easement Area for the specific uses and purposes set forth herein.

4.9 All of the rights, easements and interests herein created and granted are and shall be limited to and utilized solely for the uses and purposes expressly set forth herein. Notwithstanding anything to the contrary contained in this Agreement, each party hereby expressly reserves the right to use and grant others the right to use any and all portions of the property owned by it so long as such use by such party and/or others does not prohibit the other party from engaging in the easement purpose granted to it under this Agreement.

4.10 This Agreement and the rights, easements and interests herein created and granted shall only become effective upon the recordation of this Agreement in the Public Records of Miami-Dade County. This Agreement and the rights, easements and interests herein created and granted shall run with the land, and shall be binding on all persons holding title to said lands.

5. Notice. All notices, demands, requests or other communications which may be or are required to be given, served, or sent by either the Owner or the City pursuant to this Agreement shall be in writing and addressed as follows:

If to Developer at:

2200 Biscayne Boulevard
Miami, Florida 33137
Attn: David Smith

With a copy to:

2200 Biscayne Boulevard
Miami, Florida 33137
Attn: Michael Sheitelman

If to the City:

City of Miami Beach
Attn: City Manager
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

With copies to:

City of Miami Beach
Attn: Public Works Director
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent.

APPROVED

Public Works Director

Date

APPROVED AS TO
FORM & LANGUAGE

City Attorney

Date

[EXECUTION PAGES TO FOLLOW]

Serial No., if any _____

Exhibit A

Legal Description of Property

Exhibit B

Legal Description of Easement Area

EXHIBIT "X" – TEMPORARY CONSTRUCTION AND ACCESS EASEMENT AGREEMENT

**DEVELOPER'S NOVEMBER 2, 2018 DRAFT
DEVELOPER'S PROPOSED REVISIONS UNDER REVIEW**

This instrument was prepared by:

Name: Raul J. Aguila, City Attorney.
Address: City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

GRANT OF EASEMENT AND AGREEMENT

THIS GRANT OF EASEMENT AND AGREEMENT (this "~~Easement~~") is made this __ day of _____, 20__, by the CITY OF MIAMI BEACH, a Florida municipal corporation ~~(the "City")~~, having its principal place of business at 1700 Convention Center Drive, Miami Beach, Florida 33139 ~~in favor of~~ (the "Developer"), ~~having its principal place of business at~~ (the "City"), to and in favor of 500 ALTON ROAD VENTURES, LLC, a Delaware limited liability company, 1220 SIXTH, LLC, a Delaware limited liability company, SOUTH BEACH HEIGHTS I, LLC, a Delaware limited liability company, and KGM EQUITIES, LLC, a Delaware limited liability company, each having its respective principal place of business at 2200 Biscayne Boulevard, Miami, Florida 33137 (collectively, the "~~Developers~~").

WITNESSETH:

WHEREAS, the City owns that certain property situated, lying and being in Miami-Dade County, Florida, as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "~~Park Parcel~~");

WHEREAS, 500 ALTON ROAD VENTURES, LLC, a Delaware limited liability company, owns that certain property situated, lying and being in Miami-Dade County, Florida, as more particularly described in Exhibit "B" attached hereto and made a part hereof (the "Residential Development Parcel"), and

WHEREAS, SOUTH BEACH HEIGHTS I, LLC, a Delaware limited liability company, owns that certain property situated, lying and being in Miami-Dade County, Florida, as more particularly described in Exhibit "C" attached hereto and made a part hereof (the "Commercial Development Parcel");

WHEREAS, the City and the ~~Developer~~ Developers entered into that certain Development Agreement dated as of _____, 20__, a memorandum of which is recorded in Official Records Book _____, at Page _____ of the Public Records of Miami-Dade County (the "~~Development Agreement~~" Agreement"), which constitutes a development agreement pursuant to the Florida Local Government Development Act, Section 163.3220, et. seq., Florida Statutes (the "~~Act~~" and), pursuant to which contemplates the development of Developers will construct the Property depicted in Exhibit "B" (the "Property") for purposes of constructing a 44-story residential tower (the "Project"). Capitalized terms not (as defined herein shall have the meanings assigned such terms in the

**DEVELOPER'S NOVEMBER 2, 2018 DRAFT
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Development Agreement) on the "Development Site" (as defined in the Development Agreement) and the "Park Project" (as defined in the Development Agreement) on the Park Parcel;

WHEREAS, ~~pursuant to the Development Agreement,~~ the City has agreed to grant to the ~~Developer~~Developers a non-exclusive, irrevocable, temporary easement over the Park Parcel; for access and construction staging purposes during ~~Developer's~~Developers' construction of the Project, ~~as such term is more particularly described in the Development Agreement;~~ and

~~WHEREAS, pursuant to the Development Agreement, the City has also agreed to grant to the Developer a non-exclusive, irrevocable temporary construction and access easement over the Park Parcel, for the purpose of permitting Developer to construct the Park Project, as such term is more particularly described in the Development Agreement; and;~~

~~WHEREAS, pursuant to the Development Agreement, the City has agreed to grant to the Developer a non-exclusive, irrevocable access easement for the purpose of ingress and egress through, over, on, upon and across the right-of-way which is more particularly described in Exhibit "C" attached hereto ("Access Easement") for the purpose of permitting the owner of that certain property which is more particularly described in Exhibit "D" attached hereto access ("Floridian Parking Parcel"), and reserving unto City and its contractors, agents, employees, invitees and licensees (collectively, the "City Parties") the right to ingress and egress through, over, on, upon and across the Access Easement for all purposes;~~

~~WHEREAS, collectively, Park Parcel and Access Easement shall be referred to herein as the "Easement Parcels";~~

~~WHEREAS, granting the foregoing easements~~WHEREAS, the granting of this Easement is a condition of the effectiveness of the Development Agreement and the issuance of development permits and approvals in order for to develop the Project and the Park Project;

NOW, THEREFORE, in consideration of the sum of Ten ~~and No/100~~ Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which isare hereby acknowledged, the ~~City and Developer parties hereto intending to be legally bound hereby~~ agree as follows:

1. Recitals. The above recitals are true and correct and by this reference are hereby incorporated into the body of this Agreement as if fully set forth herein

2. Grant of Easement.

4. (a) The City hereby grants ~~Developer to the Developers~~ and ~~Developer's~~their respective employees, agents, representatives, contractors, subcontractors, laborers, suppliers, Leasehold Mortgagees and Mezzanine Lenders~~lenders, and each of their respective successors and assigns~~ (collectively, the "Developer Construction Permittees," and collectively with the Developer Permittees, the "Developer Parties")), a non-exclusive, temporary ~~temporary~~ irrevocable, on, over, on, under, upon, and across ~~the~~ Park Parcel to perform all acts necessary or desirable to ensure fulfillment and satisfaction of all duties, obligations and requirements with respect to

**DEVELOPER'S NOVEMBER 2, 2018 DRAFT
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the construction of the Project and the Park Project referenced in the Development Agreement. The City hereby expressly reserves for itself, the other City Parties and their respective successors and/or assigns, the unrestricted right to use the Park Parcel for any and all other purposes that do not unreasonably interfere with the Developer's and Developer Construction Permittees' use of Park Parcel for the rights pursuant to and in accordance with the Development Agreement. The easement granted herein, including but not limited to granting other easements or licenses at the same location.

~~The City hereby grants Developer and Developer Construction Permittees a non-exclusive, temporary irrevocable easement over, on, under, upon, and across Park Parcel for purposes of construction staging with respect to the construction of the Project referenced in the Development Agreement (the "Temporary Construction Easement"), including but not limited to includes, without limitation, the following: (i) temporarily the right to staging construction equipment and materials on Park Parcel; (ii) erecting a fence the right to erect fencing around and within an the Park Parcel; (iii) the right to use the Park Parcel for site logistics, including but not limited to, the Developer's and the Developer Construction Permittees' ingress and egress to and from the Property through Development Site over, and across the Park Parcel; and (v) performing any and all other activities reasonably related to the construction of the Project and the Park Project and all improvements relating thereto pursuant to and in accordance with the Development Agreement. The Temporary Construction~~

(b) This Easement and the rights granted herein will ~~expire~~terminate upon the earlier of: (i) the ~~issuance of~~date that is the later of (A) the date on which a final certificate of occupancy for the Project; ~~or is issued and (B) the date on which a final certificate of occupancy for the Park Project is issued; or~~ (ii) the date that is eight (8) years from after the "Effective Date of" (as defined in the Development Agreement. ~~—) of the Development Agreement.~~ Although ~~said~~such termination is intended to be automatic and require no further action on the part of any party hereto, upon the request of ~~either a~~party, the City and Developer after the occurrence of a termination event, the other party will, no later than thirty (30) days after such request, execute a termination ~~and release or partial release, as applicable, of the Temporary Construction of this~~ Easement, in form and substance reasonably acceptable to the City and the Developer.

~~3. The City hereby grants Developer and Developer's heirs, successors and assigns a non-exclusive, irrevocable easement over, on, under, upon, and across Access Easement for the purpose of ingress and egress to and from the Floridian Parking Parcel for so long as Developer uses the Property in accordance with the terms of the Development Agreement. The City hereby expressly reserves for itself, the other City Parties and their respective successors and/or assigns, the unrestricted right to use Access Easement for any and all other purposes that do not unreasonably interfere with the Developer's and Developer Permittees' use of the Access Easement for the rights granted herein, including but not limited to granting other easements or licenses at the same location.~~

~~The Easement Parcels~~ 3. Encumbrances. This Easement and the rights granted herein are subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the Property, whether or not Park Parcel that are of

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record ~~(the as of the date of this Easement (collectively, the~~ “Encumbrances”). The use of the word “grant” ~~in this Easement~~ shall not imply any warranty on the part of the City with respect to the ~~Easement Parcels~~ status of title to the Park Parcel.

4. Insurance. The ~~Developer~~ Developers shall maintain the following insurance ~~on the Easement Parcels~~ at all times, ~~including while this Easement remains in effect:~~ (a) commercial general liability coverage with minimum limits of One Million ~~Dollars~~ and No/100 (\$1,000,000) Dollars per occurrence, combined single limit for bodily injury liability and property damage liability; (b) business automobile liability coverage with minimum limits of One Million ~~Dollars~~ and No/100 (\$1,000,000) Dollars per occurrence, combined single limit for bodily injury liability and property damage liability; ~~pollution liability coverage which covers mitigation expenses and third party liability in the minimum amount of Two Million Dollars (\$2,000,000) per claim, subject to a maximum deductible acceptable to the City; and~~ (c) workers compensation insurance ~~apply~~ for all employees in compliance with the “Workers Compensation Law” of the State of Florida and all applicable ~~Federal~~ federal laws. Such insurance policies ~~(except for shall workers compensation insurance):~~ (x) name the City as an additional insured ~~and loss payee (with respect to property coverage) thereunder; shall (except for workers compensation insurance):~~ (y) be written by insurance companies licensed to do business in Florida ~~and with an AM Best rating of A- or better; and must specify it is not; and~~ (z) ~~not be~~ subject to cancellation or non-renewal without a minimum of thirty (30) days notification by the insurer to the City with a copy to the attention of Risk Manager, 1700 Convention Center Drive, Miami Beach, Florida 33139 (“Risk Manager”), ~~with a minimum of 10 days notification by the insurer to the City and the City’s Risk Manager prior to cancellation or non-renewal for non-payment of premium.~~ The ~~Developer~~ Developers shall provide the City with ~~a certificate~~ one or more certificates of insurance evidencing ~~said all such insurance~~ coverages set forth above.

5. Representations of the City ~~covenants~~. The City hereby ~~represents~~, warrants and ~~represents~~ covenants to and with the Developers that ~~the City~~ is the fee simple owner of the ~~Property and Easement Parcels~~ Park Parcel and has the right, title, ~~and~~ capacity and authority to grant the easements granted herein, subject only to the Encumbrances.

7. ~~Developer shall not materially interfere with the use by and operation and activities of City Parties on the Easement Parcels, as applicable, and Developer shall use such routes and follow such procedures on the Easement Parcels as result in the least damage and inconvenience to City and its invitees, agents, employees, guests, Developers and/or licensees.~~

8. ~~Developer shall be responsible for any damage to the Property or any property of third parties resulting from the exercise or use of the Easement Parcels by the Developer or the Developer Parties, including but not limited to soil erosion, subsidence or damage resulting therefrom. Developer shall promptly repair and restore to its original condition any of the Property that may be altered, damaged or destroyed in connection with the exercise or use of the Easement Parcels by the Developer Parties. This Easement is made on the express condition that City is to be free from all liability by reason of injury or death to persons or injury to property from whatever cause arising out of any of the Developer Parties’ exercise or use of the Easement Parcels, including any liability for injury or death to the person or property of any of the Developer Parties or to any property under the control or custody of any of the Developer Parties.~~

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~~Developer hereby covenants and agrees to defend and indemnify the City Parties and save them harmless from any and all liability, loss, costs, or obligations on account of, or arising out of, any such injury or losses caused or claimed to be caused by the exercise or use of the Easement Parcels by the Developer Parties, however occurring, except to the extent caused solely by the willful or grossly negligent acts or omissions of City or the City Parties.~~

~~9. This Easement shall inure to the benefit of and be binding upon the heirs, legal representatives, successors and assigns of the City and Developer, as applicable.~~

~~10. — Developer alone shall pay any and all taxes, charges or use fee(s) levied by any governmental agency against Developer's interest in the Easement Parcels. Developer shall not cause liens of any kind to be placed against the Easement Parcels or any of the Property.~~

~~11. — Any notices required or permitted to be given under this Easement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:~~

If to the City at: _____ City of Miami Beach, City Hall
1700 Convention Center Drive
Miami Beach, Florida 3313
Attn: City Manager, City Attorney

With a copy to: _____

6. Miscellaneous.

6.1 This Easement shall be governed by, enforced and construed under the laws of the State of Florida. Venue for all actions, litigation and/or other proceedings arising out of this Easement shall be exclusively in Miami-Dade County, Florida. The parties hereby knowingly and voluntarily waive the right to a trial by jury of any claim, controversy or disputed matter between them arising under, out of or in connection with this Easement. The prevailing party in any action, litigation or other proceeding that is based on any claim, controversy or other disputed matter arising under, out of or in connection with this Easement shall recover from the non-prevailing party all fees, costs and expenses (including, without limitation, reasonable attorneys' fees and costs through all trial, appellate and post-judgment levels and proceedings) incurred by the prevailing party in such action, litigation or other proceeding.

6.2 The parties hereby acknowledge and agree that each has had an opportunity to be represented by or consult with independent legal counsel and that any rule of construction which provides that ambiguities are to be construed against the drafter shall not apply in the interpretation or construction of this Easement. If any term, provision or portion of this Easement is for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction, then such term, provision or portion of this Easement shall be given it nearest valid, legal and enforceable meaning, or construed as deleted, whichever such court may determine, and the same shall not invalidate the remaining terms, provisions and/or portions of this Easement, which remaining terms, provisions and portions of this Agreement will remain in full force and effect.

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6.3 This Easement includes all exhibits attached hereto.

~~If to Developer at:~~ _____

_____ c/o _____

_____ Attn: _____

With a copy to: _____

~~Notices personally delivered or sent by overnight courier shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given five (5) days after deposit in the U.S. mails. The terms of this Section shall survive the termination of this Easement.~~

~~12. _____ Construction.~~

~~a. This Easement shall be construed and governed in accordance with the laws of the State of Florida. All of the parties to this Easement have participated fully in the negotiation and preparation hereof; and, accordingly, this Easement shall not be more strictly construed against any one of the parties hereto.~~

~~b. In construing this Easement, the use of any gender shall include every other and all genders, and captions and section and paragraph headings shall be disregarded.~~

~~c. All of the exhibits attached to this Easement are incorporated in, and made a part of, this Easement.~~

~~d. The recitals to this Easement set forth above are true and correct and are incorporated herein by this reference.~~

~~e. The dominant estate is intended to be appurtenant to the Development Agreement and is co-terminus with the Developer's rights thereunder.~~

~~13. Severability. In the event any term or provision of this Easement be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or construed as deleted as such authority determines, and the remainder of this Easement shall be construed to be in full force and effect.~~

~~14. Time of Essence. Time shall be of the essence for each and every provision hereof.~~

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Entire Agreement. This Easement, together with ~~the documents referenced herein,~~
~~constitute all such exhibits, contains~~ the entire agreement and understanding ~~among between~~ the parties
~~with respect relating~~ to the subject matter ~~hereof, and there are no other agreements of~~ this Easement,
~~and all prior or contemporaneous terms, covenants, conditions, representations or, warranties other than~~
~~as set forth, statements, agreements and understandings made by or on behalf of the parties, whether oral~~
~~or written, are merged~~ herein.

6.4 This Easement may not be ~~changed, altered or amended,~~ modified or terminated
except by ~~an~~ a written instrument ~~in writing signed by the party against whom~~ executed by the Owner
and the City through its Public Works Director, or his designee, or the successor administrative officer
with jurisdiction over the matter, and which is recorded in the Public Records of Miami-Dade County,
Florida. This Easement shall inure to the benefit of and shall be binding upon the parties and their respective
successors and assigns.

6.5 The failure of any party to insist in any one or more instances upon strict
performance of any term, covenant, condition or other provision of this Agreement will not be construed as
a waiver or relinquishment of the future enforcement of such ~~change would be sought~~ term, covenant,
condition or other provision of this Easement.

6.6 Wherever appropriate in this Easement, the singular shall be deemed to refer to the
plural and the plural to the singular, and pronouns of each gender shall be deemed to comprehend either or
both of the other genders. The section and paragraph headings in this Easement are for convenience only
and shall not affect the meaning, interpretation or scope of the terms or provisions set forth therein.

6.7 This Easement may be executed in multiple counterparts, each of which
individually shall be deemed an original, but when taken together shall be deemed to be one and the same
Easement.

6.8 This Easement shall never be construed as a conveyance in any manner
whatsoever of fee simple title to any portion of the Park Parcel; it being intended by the parties that this
Easement conveys only an easement interest with respect to the Park Parcel for the specific uses and
purposes set forth herein.

6.9 All of the rights, easements and interests herein created and granted are and shall be
limited to and utilized solely for the uses and purposes expressly set forth herein. Notwithstanding anything
to the contrary contained in this Easement, the City shall not be permitted to use or grant others the right to
use all or any portions of the Park Parcel so long as this Easement remains in effect without the prior written
consent of the Developers.

6.10 This Easement and the rights, easements and interests herein created and granted
shall only become effective upon the recordation of this Easement in the Public Records of Miami-Dade
County. This Easement and the rights, easements and interests herein created and granted shall run with the
land, and shall be binding on all persons holding title to said lands.

7. Notice. All notices, demands, requests or other communications which may be or are
required to be given, served, or sent by either the Developers or the City pursuant to this Easement shall be
in writing and addressed as follows:

If to Developers at: KGM Equities, LLC
2200 Biscayne Boulevard

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Miami, Florida 33137

Attn: David Smith

With a copy to:

KGM Equities, LLC

2200 Biscayne Boulevard

Miami, Florida 33137

Attn: Michael Sheitelman

If to the City:

City of Miami Beach

Attn: City Manager

1700 Convention Center Drive, 4th Floor

Miami Beach, Florida 33139

With copies to:

City of Miami Beach

Attn: Public Works Director

1700 Convention Center Drive, 4th Floor

Miami Beach, Florida 33139

Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent.

(Signature pages to follow)

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IN WITNESS WHEREOF, the undersigned have caused this Easement to be executed by execution of this instrument as of this _____ day of _____, 201__.

Witnesses

CITY OF MIAMI BEACH, FLORIDA,
a municipal corporation

Sign Name: _____

By: _____

Mayor

Print Name: _____

Sign Name: _____

Print Name _____

ATTEST:

City Clerk

STATE OF FLORIDA)
) SS.
COUNTY OF DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by _____, as _____ of _____. He is personally known to me or has produced _____ as identification and who did (did not) take an oath.

NOTARY PUBLIC

Typed or Printed Name of Notary

My Commission Expires: _____

Serial No , if any. _____

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ACKNOWLEDGED AND ACCEPTED this _____ day of _____, 20__ by _____:

Witnesses:

DEVELOPER: _____

Sign Name: _____

Print Name: _____

By: _____

Sign Name: _____

Print name: _____

Print Name _____

STATE OF FLORIDA)

) SS:

COUNTY OF DADE)

The foregoing instrument was acknowledged before me this ____ day of _____,
20__ by _____, as _____ of _____. He is
personally known to me or has produced _____ as identification and who did
(did not) take an oath.

NOTARY PUBLIC

Typed or Printed Name of Notary

My Commission Expires: _____

Serial No , if any: _____

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Exhibit "A"

PARK PARCEL

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Exhibit "B"

Legal Description for the Developer Property

[see attached]

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Exhibit "C"

Access Easement for Floridian Parking Lot

EXHIBIT “Y” – DESCRIPTION OF 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(12) of the Act, that are described in the Comprehensive Plan, specifically including those facilities described in the Infrastructure Element and the Capital Improvements Element therein, a copy of which is available for public inspection in the offices of the City Clerk of the City of Miami Beach. Notwithstanding the foregoing, the Project may be required to provide for some of its own services, including solid waste removal and stormwater drainage.

EXHIBIT “Z” – DESCRIPTION OF PUBLIC RESERVATIONS

[All easements referenced in the Agreement]

EXHIBIT "AA" - DESCRIPTION OF REQUIRED DEVELOPMENT PERMITS

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

1. Design Review Board, Planning Board, and/or Board of Adjustment approvals, pursuant to Chapter 118 of the City of Miami Beach Code.
2. Utility Permits
3. Demolition Permits
4. Building Permits
5. Environmental Permits
6. Hazardous Materials Removal Permit, if removal of hazardous materials is found necessary.
7. Public Works Permit, Paving and Drainage
8. Public Works Permit, Water and Sewer
9. Public Works Revocable Permits
10. Certificates of Use and/or Occupancy
11. Any variances or waivers that may be required pursuant to Chapters 114 through 142 of the City of Miami Beach Code
12. All other local governmental approvals as may be applicable to the subject property from time to time pursuant to the terms of this Development and Ground Lease Agreement, including but not limited to restrictive covenants in lieu of unity of title