



CFN 20190502574
 OR BK 31563 Pgs 1201-1335 (135Pgs)
 RECORDED 08/09/2019 10:10:38
 HARVEY RUVIN, CLERK OF COURT
 MIAMI-DADE COUNTY, FLORIDA

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

Akerman LLP
 98 SE 7th Street, Suite 1100
 Miami, Florida 33131
 Attn: Kristofer D. Machado, Esq.

(Space reserved for Clerk)

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of the 31st day of July 2019, by and among the CITY OF MIAMI BEACH, a Florida municipal corporation (the "City"), and jointly and severally 7450 OCEAN TERRACE LLC, 7436 OCEAN TERRACE LLC, 7420 OCEAN TERRACE INVESTMENT, LLC, 7410 OCEAN TERRACE LLC, 7400 OCEAN TERRACE, LLC, 7409 COLLINS AVE INVESTMENT, LLC, 7421 COLLINS AVE INVESTMENT, LLC, 7433 COLLINS AVE INVESTMENT, LLC, 7439 COLLINS AVE INVESTMENT LLC, and 7441 COLLINS AVE INVESTMENT, LLC (collectively, the "Developer"). City and Developer are each a "Party" and collectively are the "Parties" to this Agreement.

Introduction

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

B. The Developer owns or has a legal or equitable interest in the property located east of Collins Avenue between 74th and 75th Streets, Miami Beach, Florida, more specifically described in Exhibit "A" (the "Developer Property") and intends to redevelop the Developer Property with a mixed-use residential, hotel, and retail development (as defined in Section 3.43, the "Project").

C. The Developer holds a reversionary interest in the public reservation area immediately east of Ocean Terrace between 74th and 75th Streets, more specifically described in Exhibit "B" (the "Reversionary Interest").

D. The City has a beneficial and legal interest in the property specifically described in Exhibit "C" (the "75th Street Parcel"), which is currently improved with a portion of 75th Street between Collins Avenue and Ocean Terrace.

E. The City has a beneficial and legal interest in the property specifically described in Exhibit "D" (the "74th Street Parcel"), which is currently improved with a portion of 74th Street between Collins Avenue and Ocean Terrace.

F. The City has a beneficial and legal interest in the property specifically described in Exhibit "E" (the "Ocean Terrace Parcel"), which is currently improved with a portion of Ocean

Terrace between 74th and 75th Streets (collectively, with the 74th Street Parcel and the 75th Street Parcel, the "City Parcel").

G. The City wishes to release the City's beneficial and legal interest in the City Parcel to provide a unified development site with the Developer Property.

H. The Developer Property and the City Parcel combined constitute the "Development Site," and is legally described in Exhibit "F."

I. The Developer desires to develop, design, permit and install, at Developer's sole cost and expense, a public park and streetscape project in the vicinity of Ocean Terrace, which area is described more fully in Exhibit "G" hereto, and will include improvements to (i) Ocean Terrace, between 73rd Street and 75th Street; (ii) the public reservation area immediately east of Ocean Terrace between 73rd Street and 75th Street; and (iii) 73rd Street, 74th Street, and 75th Street, from Collins Avenue to Ocean Terrace (as defined in Section 3.37, the "Park/Streetscape Site"), to be designed by Raymond Jungles (or by a comparable landscape architecture firm approved in accordance with Section 65 of this Agreement), substantially as shown on the Park/Streetscape Concept Plan, and to be constructed in phases in accordance with this Agreement (the "Park/Streetscape Improvements").

J. The City and Developer anticipate that, once completed, the Park/Streetscape Improvements will have an estimated value of approximately Fourteen Million Eight Hundred Thousand Dollars (\$14,800,000.00).

K. Pursuant to City Resolution No. 2019-30927 (the "Vacation Resolution"), concurrently with the execution of this Agreement, the City has approved the vacation of the City Parcel, 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 a perpetual, non-revocable easement against the City Parcel for subsurface utilities and public recreational, vehicular, and pedestrian use and access (the "City Parcel Easement"); (2) the Developer conveying the Reversionary Interest to the City; and (3) the Developer's commitment to improve the City Parcel with the Park/Streetscape Improvements as provided in this Agreement.

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

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

N. In accordance with Section 163.3227(1)(h) of the Florida Statutes, the City has determined that the Project, the Park/Streetscape Improvements, and the City Parcel Easement will benefit the City and the public, and that the conditions, terms, restrictions and requirements herein are necessary for the public health, safety and welfare of its citizens. The Project and Park/Streetscape Improvements will help revitalize and improve the character and appearance of the surrounding neighborhood and will have a significant positive fiscal impact for the City. The Park/Streetscape Improvements will also provide a significant public amenity and increase recreational open space in the northern portion of the City.

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

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

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

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

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

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

3.3 "Affiliate Mortgagee" shall mean a lender who is an affiliate of the Developer or of the Developer's principals, including, without limitation, Access Industries, Inc. and its subsidiaries, and who holds a mortgage, lien, or other security interest on the Development Site or a portion thereof.

3.4 "Assignment of Construction Agreements" means an assignment by Developer to the City of all of Developer's right, title and interest in and to the Construction Agreements, which assignment shall include a duly executed consent by the Contractor and architect/engineer of record and all other Persons having any interests therein, and shall otherwise be in form and substance reasonably satisfactory to the Parties, which assignment shall be executed by Developer solely for the purpose of providing additional security to the City for the performance and discharge of Developer's obligations in this Agreement with respect to the Park/Streetscape Improvements, and shall only be exercisable by the City upon the occurrence of an uncured Event of Default by Developer under this Agreement pertaining to the Park/Streetscape Improvements.

3.5 "Assignment of Plans, Permits and Approvals" means an assignment by Developer to the City of all of Developer's right, title and interest in and to the approved Permit

Plans and Specifications and all Permits and Approvals for the Park/Streetscape Improvements, which assignment shall include a duly executed consent by the architect/engineer of record and all other Persons having any interests therein, and shall otherwise be in form and substance reasonably satisfactory to the Parties, which assignment shall be executed by Developer solely for the purpose of providing additional security to the City for the performance and discharge of Developer's obligations in this Agreement with respect to the Park/Streetscape Improvements, and shall only be exercisable by the City upon the occurrence of an uncured Event of Default by Developer under this Agreement pertaining to the Park/Streetscape Improvements.

3.6 "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.

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

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

3.9 "City Code" shall mean the Code of Ordinances of the City.

3.10 "City Parcel" shall mean the area described in Exhibits "C," "D," and "E."

3.11 "City's Consultant" has the meaning provided in Section 18.

3.12 "Closing" shall refer to the formal exchange of documents between the parties, as further described in Section 5 of this Agreement.

3.13 "Commence Construction," "Commencement of Construction" and terms of similar import mean, with respect to the Park/Streetscape Improvements, the commencement of bona-fide site work for the Park/Streetscape Improvements, including, without limitation, clearing, grubbing, erection of construction fencing, and drainage improvements.

3.14 "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.

3.15 "Construction Agreements" shall mean those contracts between the Developer and the Contractor, architects, and engineers with whom Developer is in direct privity of contract for the construction of the Park/Streetscape Improvements.

3.16 "Contractor" shall mean the Developer's general contractor for the construction of the Park/Streetscape Improvements, to be selected by Developer in compliance with the requirements of Section 65 of this Agreement.

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

3.18 "Covenant in Lieu of Unity of Title" shall mean the covenant in lieu of unity of title covering the Development Site, substantially in the form attached as Exhibit "H."

3.19 "Developer" means the persons or entities undertaking the development of the Development Site and the Park/Streetscape Improvements, as defined in the preamble to this Agreement, or any permitted successors, assigns, transferees, delegates, or heirs thereof.

3.20 "Development Default Deadlines" shall mean those default deadlines set forth in Sections 42(b), (c), (d), and (e) of this Agreement.

3.21 "Development Dispute" shall mean any contention by Developer that City has unreasonably failed to approve or give its consent to any modifications to any Plans and Specifications pursuant to Sections 8, 9, and/or 11 of this Agreement, or any contention by City that Developer has not complied with its obligations or responsibilities set forth in those sections.

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

3.23 "Development Site" shall mean the area described in Exhibit "F," including, after the Closing, the Developer's right, title, and interest in and to the City Parcel.

3.24 "Development Permit" shall have the meaning set forth in Section 163.3221(5), Florida Statutes (2018).

3.25 "Economic Force Majeure" means economic or political conditions or events that materially impair access to debt or equity markets by developers for development of projects similar to the Project or allow a committed debt or equity participant to terminate its debt or equity commitment, such as a temporary or long-term liquidity crisis or major recession, as well as disruptions in the normal functioning of the economy and/or related debt and equity capital markets, including extreme and/or prolonged recessionary conditions, sustained elevated levels of unemployment, sustained increased interest rates, sustained losses in valuations of equity, debt, real estate, hospitality and other markets, and severe limitations in the ability to raise liquidity and/or capital through those markets.

3.26 "Effective Date" is 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 (2018), and Section 36 of this Agreement.

3.27 "Execution Date" is the date the last of the required Parties executes this Agreement.

3.28 "Final Approval" shall mean, with respect to the Project Zoning Approvals, the Park/Streetscape Zoning Approval, or any other Permits and Approvals for the Project or the Park/Streetscape Improvements, that such permit or approval has been finally approved by the

issuing governmental or regulatory body. With respect to the Project Zoning Approvals and the Park/Streetscape Zoning Approval, and any other discretionary Permit or Approval requiring a public hearing, it shall further mean that all appeal and limitations periods have expired, with no challenges or appeals having been made or with all challenges and appeals having been finally disposed of (by judgement, settlement or otherwise) to Developer's satisfaction. Notwithstanding anything to the contrary, Developer will be deemed to have accepted all conditions attaching to a particular Permit or Approval unless the Developer notifies the City in writing, no later than thirty (30) days after such Permit or Approval is finally approved, of its objections to any such conditions and intent to appeal or avail itself of other remedies. Upon delivery of such written notice, the Permit or Approval at issue shall not be deemed a "Final Approval" unless and until the offending condition is removed or the Developer waives its objections by written notice to the City.

3.29 "Force Majeure Events" include, without limitation, floods, storms, hurricanes, and other acts of God (including reasonable preparation therefor); war, terrorism, riots, civil commotion, fire, and other casualty; epidemics; quarantines; strikes, lockouts, labor disputes, and any inability to procure, or a general shortage of, labor, equipment, facilities, materials, or supplies in the open market; breakdown of transmission or other systems or facilities; the declaration of a state of emergency by the President of the United States or by the Governor of Florida that, in each case, includes Miami-Dade County, Broward County, and/or Palm Beach County; moratoria; the pendency of any Lawsuit (as defined below) and any unexpired appeal periods thereof at all levels of appeal; acts of the other Party; and all other causes and circumstances similar to the foregoing, but excluding Economic Force Majeure.

3.30 "Hold Harmless" shall mean the Hold Harmless Agreement, substantially in the form attached in Exhibit "I."

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

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

3.33 "Material Modification" and words of similar import shall mean (i) any modification that reduces the total area of the Park/Streetscape Site from that shown on the Park/Streetscape Concept Plan or on any subsequently approved Plans and Specifications, as applicable; (ii) any modification that introduces uses at the Park/Streetscape Site that have not been previously approved by the City and are substantially incompatible with the Park/Streetscape Concept Plan or with any subsequently approved Plans and Specifications, as applicable; or (iii) any modification that substantially diminishes the physical quality of the landscaping and improvements shown on the Park/Streetscape Concept Plan or on any subsequently approved Plans and Specifications, as applicable. Any disagreement between the Parties as to whether a proposed modification is a Material Modification shall be resolved by expedited arbitration pursuant to Section 34 of this Agreement.

3.34 "Park/Streetscape Concept Plan" shall mean the plans, designs, and drawings, illustrating the proposed concept for the Park/Streetscape improvements, which approved plans are attached in Exhibit "J."

3.35 "Park/Streetscape Construction Commencement Date" shall mean the date on which Developer Commences Construction of the Park/Streetscape Improvements.

3.36 "Park/Streetscape Improvements" shall mean the improvements to be made to the Park/Streetscape Site as further described in accordance with this Agreement.

3.37 "Park/Streetscape Site" shall mean the property described in the Introduction and depicted in the Park/Streetscape Concept Plan, as the same may be modified by any subsequently approved Plans and Specifications.

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

3.39 "Permitted Transferee" means any Affiliate of the Developer.

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

3.41 "Phase" shall mean Phases 1 and 2 of the Park/Streetscape Improvements, as depicted on the Park/Streetscape Concept Plan or on any subsequently approved Plans and Specifications, as applicable.

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

3.43 "Project" shall mean the development, design and construction of the Development Site (including, after the Closing, the Developer's right, title, and interest in and to the City Parcel) consistent with the City's Land Development Regulations for the Ocean Terrace Overlay District and the underlying CD-2 and MXE zoning districts, as the same may be amended from time to time, but subject to Section 28 of this Agreement, and provided that the Project must include at least 75 hotel units and may only include one tower in excess of 125 feet.

3.44 "Recognized Mortgagee" shall mean any Affiliate Mortgagee, bank, savings and loan association, insurance company, an agency of the United States Government, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or

any other lender generally recognized as an institutional lender, holding a mortgage, lien, or other security interest on the Development Site or a portion thereof, and who has notified the City that it is a Recognized Mortgagee under this Agreement and has provided an address for notices.

3.45 "Requirements" shall mean any and all laws, constitutions, rules, regulations, orders, ordinances, charters, statutes, codes, executive orders and requirements of all governmental authorities having jurisdiction over a person, the Project, and/or the Park/Streetscape Site or any street, road, avenue or sidewalk comprising a part of, or lying in front of, the Park/Streetscape Site.

3.46 "Substantial Completion" and words of similar import shall mean, with respect to the Project or the Park/Streetscape Improvements, that such component has been completed in accordance with the Permit Plans and Specifications and the requirements of Section 14.2(a) through (d) have been satisfied, and such component is ready for occupancy, except for so-called "punch list" items (including, without limitation, adjustments to equipment, fixtures, landscaping, and similar items of work) that can be completed after occupancy has been taken without causing substantial interference with the use of such component.

3.47 "Vacation Resolution" means the City's Resolution No. 2019-30927, approving, with conditions, the vacation of the City Parcel.

VACATION RESOLUTION

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

(a) Vacation Resolution for City Parcel. City acknowledges that Developer has submitted a complete application for the vacation of the City's beneficial and legal interest in the City Parcel, also known as portions of Ocean Terrace, 74th Street, and 75th Street. The City agrees to diligently process that application and to promptly schedule same for consideration by the City Commission and adoption of the Vacation Resolution, which shall be substantially in the form attached as Exhibit "K." The Parties recognize that this Agreement does not obligate the City Commission to adopt the Vacation Resolution, and that the City Commission retains the sole and absolute discretion, subject to applicable Laws and Requirements, whether to adopt, adopt with changes, or deny the Vacation Resolution.

(b) Failure to Adopt Vacation Resolution. In the event that the City Commission denies the application for the Vacation Resolution or approves it in a form or with any terms, conditions, or obligations inconsistent with this Agreement or that are otherwise unacceptable to Developer in its sole and absolute discretion, then within sixty (60) days of such denial or approval Developer shall, at its option, either: (i) notify the City of its intent to submit a revised application for the vacation of the City Parcel; or (ii) terminate this Agreement in accordance with Section 45 hereof.

CLOSING

5. Closing. The Closing shall occur on a date set by Developer, at its election, with prior written notice to the City, but in no event later than ten (10) Business Days after the date on which Developer has obtained Final Approval of all Permits and Approvals to Commence Construction of the Park/Streetscape Improvements and Final Approval of the Project Zoning

Approvals, subject to the termination provisions in Section 45 below. At the Closing, the Developer and City shall perform the following:

(a) The City, pursuant to and subject to the terms of the Vacation Resolution, will deliver a quit claim deed to Developer through which the City quit claims, remises, releases and transfers unto Developer and Developer's successors and assigns forever, all right, title, interest, claim and demand that City has in and to the City Parcel, subject to Developer's delivery of the Surety Bond and the City Parcel Easement (the "City Deed").

(b) Developer will, subject to City's delivery of the City Deed, deliver to City a quit claim deed through which the Developer quit claims, remises, releases and transfers unto City and City's successors and assigns forever, all right, title, interest, claim and demand that Developer has in and to the Reversionary Interest, but reserving the Reversionary Interest in the eastern thirty (30) feet of the Ocean Terrace right-of-way.

(c) Developer will grant to City the City Parcel Easement, in the form attached as Exhibit "L," and subject to Section 60.5 of this Agreement.

(d) Developer will deliver to City, at Developer's 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/Streetscape Improvements (the "Park Lender"), in form and substance reasonably acceptable to the City (the "Recognition Agreement"), pursuant to which the Park Lender agrees to (a) fund the then remaining cost to Substantially Complete the construction of the Park/Streetscape Improvements (the "Park Construction Amount") directly to the City in the event the Developer fails to Substantially Complete the Park/Streetscape Improvements in accordance with this Agreement and such failure continues uncured past 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. The right to draw funds under the Recognition Agreement (or Surety Bond, as applicable) shall be the City's sole and exclusive remedy for the Developer's failure to Substantially Complete the Park/Streetscape Improvements in accordance with this Agreement. If the City receives any funds under the Recognition Agreement, then all conditions precedent to the issuance of all certificates of occupancy and/or certificates 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 have an obligation to issue (when and as required by the City Code), all such approvals, whether or not construction of the Park/Streetscape Improvements has been completed by the City; or

ii. A surety bond with a penal sum equivalent to the guaranteed maximum price set forth in the Construction Agreements for the then-remaining design and construction of the Park/Streetscape Improvements, plus City's estimated oversight/inspection costs, or, if the Developer has not executed the Construction Agreements as of the Closing, then with a penal sum equivalent to the City's estimate to complete the then-remaining work for the design and construction of the Park/Streetscape Improvements, but provided that in no event shall the penal sum for the surety bond exceed Fourteen Million Eight Hundred Thousand Dollars (\$14,800,000.00), and naming the City as obligee, in a form reasonably acceptable to City, issued by a surety listed in the most recent United States Department of Treasury listing of approved sureties (the "Surety Bond"). The Surety Bond shall provide that, if Developer fails to Substantially

Complete the Park/Streetscape Improvements in accordance with this Agreement and such failure continues uncured past applicable notice and cure periods, then, as the City's sole and exclusive remedy for such default (subject to City's exercise of its rights pursuant to Section 44(b)), the surety shall be liable to City for the City's actual, out-of-pocket expenses incurred in Substantially Completing the Park/Streetscape Improvements, up to a maximum aggregate liability of the penal sum. Developer shall have the right to reduce the penal sum of the Surety Bond on a monthly basis to reflect then-remaining cost of Substantially Completing the Park/Streetscape Improvements. The Surety Bond shall terminate immediately upon the Substantial Completion of the Park/Streetscape Improvements in accordance with this Agreement. If the City receives any funds from the surety pursuant to the Surety Bond, then all conditions precedent to the issuance of all certificates of occupancy and/or certificates of completion for the Project shall be deemed satisfied, and the Developer shall have the right to apply for, and the City shall have an obligation to issue (when and as required by the City Code), all such approvals, whether or not construction of the Park/Streetscape Improvements has been completed by the City.

(e) Developer will execute and record the Hold Harmless Agreement.

(f) The City and Developer shall execute the Covenant in Lieu of Unity of Title.

(g) Developer shall submit confirmatory evidence of an agreement between the Developer and the owner of the property located at 7401 Collins Avenue, with respect to any acquisition by Developer of any property rights pertaining to 7401 Collins Avenue in connection with the development of the Project, and any joinder to the Covenant in Lieu of Unity of Title or other Closing documents, as may be required to include the 4,380 sq. ft. right-of-way area abutting 7401 Collins Avenue as part of the unified development site for the Project. Developer shall, in accordance with the provisions of Section 56 of this Agreement, indemnify, defend and hold harmless the City from and against any and all Losses sustained by the City in connection with Developer's election to include property rights related to 7401 Collins Avenue as part of the Project.

(h) The City and Developer will execute and record a temporary construction and access easement agreement, substantially in the form of Exhibit "S" to this Agreement, through which the City grants Developer the right to access the Park/Streetscape Site for construction and installation of the Park/Streetscape Improvements and for staging and storage of construction vehicles, equipment, and materials related to the development and construction of the Project and the Park/Streetscape Improvements, including, without limitation, the rights specified in Sections 13.2(a) and 13.2(b) of this Agreement.

(i) Developer will deposit in escrow with Akerman LLP or with such other escrow agent selected by Developer in its reasonable discretion ("Escrow Agent") the sum of Fifty Thousand Dollars (\$50,000.00) (the "Unwinding Funds"), to be paid to the City in accordance with Section 45 of this Agreement to cover any City Unwinding Expenses (defined in Section 45 below) in the event that the Developer terminates this Agreement for convenience following the Closing but prior to the Commencement of Construction of the Park/Streetscape Improvements (the "Unwinding Escrow").

DESIGN AND DISCRETIONARY APPROVALS

6. City Cooperation.

(a) Developer acknowledges that until the Closing, the City will remain the owner of the City Parcel, and, therefore, applications for design review approval for the Park/Streetscape Improvements, or any other zoning application for any other development that includes the City Parcel while the City is the owner, may lawfully be approved only with the City's joinder. The City, in its proprietary capacity, hereby covenants to cooperate with Developer and agrees to join and execute all applications and supporting documents as Developer may reasonably request of the City in connection with Developer's pursuit of any Permits and Approvals for the Project or the Park/Streetscape Improvements, so long as the same are not materially inconsistent with this Agreement. Notwithstanding the foregoing, the City may revoke such proprietary consent if the Developer terminates or is in material default of this Agreement, and, upon such revocation, the City may, in its governmental capacity, withhold issuance of any Permits and Approvals for the Project or the Park/Streetscape Improvements that require the City's proprietary consent for issuance. Furthermore, the Developer shall not commence vertical construction of the Project prior to the Closing.

7. Project Approvals.

(a) Developer shall be responsible for the development, design, permitting, and construction of the Project at Developer's sole cost and expense, except as provided in Section 23 below. Developer acknowledges that development of the Project will require design review approval by the City's Historic Preservation Board ("HPB") and, if applicable, conditional use approval by the Planning Board (collectively, the "Project Zoning Approvals").

(b) After the adoption of the Vacation Resolution, the Developer shall, at its sole cost and expense, diligently prepare applications requesting the Project Zoning Approvals (the "Project Zoning Applications"). The City shall join in such Project Zoning Applications as the owner of the City Parcel unless the development requested in such Project Zoning Applications is materially inconsistent with this Agreement.

(c) Upon the Developer filing the Project Zoning Applications, the City shall process those applications as expeditiously as possible and in accordance with the requirements of the City Code. 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 those 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 the Project Zoning Application is denied by the City, or if it is approved by the City with any terms, conditions, or obligations not consistent with this Agreement or that are otherwise unacceptable to Developer in its sole and absolute discretion, then the Developer may elect to: (i) diligently prepare revised applications requesting the Project Zoning Approvals for a revised Project; (ii) exercise any rights of appeal or redress the Developer may have; or (iii) terminate this Agreement in accordance with Section 45 hereof.

8. Park/Streetscape Approvals.

(a) Developer shall be responsible for the development, design, permitting, and construction of the Park/Streetscape Improvements at Developer's sole cost and expense, except as provided in Section 23 below. The design of the Park/Streetscape Improvements shall

be substantially in accordance with the design shown in the Park/Streetscape Concept Plan, except to the extent that changes thereto have been negotiated with, and approved by, City. Developer acknowledges that development of the Park/Streetscape Improvements, based on the Park/Streetscape Concept Plan, will require design review approval by the City's HPB (the "Park/Streetscape Zoning Approval"). Developer shall be solely responsible for obtaining the approval of the City's HPB, and, subject to applicable Laws and Requirements, the HPB shall have no duty or obligation to approve any particular design.

(b) After the adoption of the Vacation Resolution, the Developer shall diligently prepare an application seeking design review approval of the Park/Streetscape Improvements (the "Park/Streetscape Zoning Application"). Prior to submission of the Park/Streetscape Improvements design to the HPB, Developer shall submit to City (acting in its proprietary capacity as owner of the City Parcel) all of the preliminary Plans and Specifications for the Park/Streetscape Improvements, which shall include, but not be limited to, a detailed site plan, elevations, and landscape plan for the Park/Streetscape Improvements (the "Preliminary Plans and Specifications"), which shall be submitted to the City Manager for approval. At a minimum, the Preliminary Plans and Specifications shall be developed to ensure pedestrian and vehicle circulation and access, including, without limitation, the following:

- i. The Preliminary Plans and Specifications shall address accessibility needs for elderly and/or disabled persons, and shall be designed to ensure that public access to the City's beaches is maintained.
- ii. The Preliminary Plans and Specifications shall provide for a "reasonable flow" for ingress/egress of vehicles on 75th Street, with a proposed solution that may include either a drop-off loop or other turn-around at the east end of 75th Street, or any other similar proposed solution as may be approved by the City Manager at the City Manager's sole discretion, to ensure vehicular access to the 75th Street parking lot and/or access for drop-offs to the beach.
- iii. The Preliminary Plans and Specifications shall provide for emergency vehicle access to the Park/Streetscape Site, as well as for buildings located in the vicinity of the Park/Streetscape Site, including vehicular drop-offs for elderly visitors to the UNIDAD building at 7251 Collins Avenue, and load-in/load-out needs for the North Beach Bandshell located at 7275 Collins Avenue.
- iv. The Preliminary Plans and Specifications shall provide for ingress/egress for pedestrians and vehicles accessing the St. Tropez property located at 7330 Ocean Terrace ("St. Tropez"), and shall incorporate any comments as may be provided by the City Manager with respect to ingress/egress for the St. Tropez.

Notwithstanding any other provisions in this Agreement to the contrary, the portions of the Plans and Specifications for the Park/Streetscape Project relating to Subsections 8(b)(i) through 8(b)(iv) shall be subject to approval by the City Manager at the City Manager's sole discretion (or by the City Commission pursuant to Section 63).

(c) The City Manager shall review the Preliminary Plans and Specifications solely for general consistency with the Park/Streetscape Concept Plan and the requirements of

this Agreement. The City Manager (or the City Commission pursuant to Section 63) will not withhold, delay, or condition the City's proprietary approval so long as the proposed Park/Streetscape Improvements substantially accord with the Park/Streetscape Concept Plan in all material respects, or contain only those material changes that were previously negotiated with, and approved by, City in its proprietary capacity. If the City Manager (or the City Commission pursuant to Section 63) disapproves the Preliminary Plans and Specifications, then Developer shall, at its election, either (x) submit the City's disapproval to expedited arbitration pursuant to Section 34 as to the reasonableness of the disapproval, or (y) submit a revised modification to the Preliminary Plans and Specifications to meet the City's objections, which revised modification shall be submitted and reviewed as provided in Section 9. The Developer may not file, and the City may not join, the Park/Streetscape Zoning Application until the City Manager (or the City Commission pursuant to Section 63) has approved the design of the Park/Streetscape Improvements in its proprietary capacity.

(d) After the City Manager has approved the design of the Park/Streetscape Improvements in its proprietary capacity, the Developer shall diligently pursue the approval of the Park/Streetscape Zoning Application through the issuance of an HPB Order (the "Park/Streetscape Zoning Approval"). Although the Project Zoning Applications will be separate applications from the Park/Streetscape Zoning Application, it is the express intent of the Parties that the Project Zoning Applications and the Park/Streetscape Zoning Application will all be scheduled before and heard by the HPB on and at the same meeting date. Developer will endeavor to have the Park/Streetscape Zoning Application and the Project Zoning Applications heard by HPB within twelve (12) months following the Effective Date of this Agreement, but the failure to do so will not be deemed an Event of Default.

(e) Developer acknowledges that review of the Park/Streetscape 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/Streetscape Zoning Application as provided by the City Code. If the Park/Streetscape Zoning Application is denied by the City, or if it is approved by the City with any terms, conditions, or obligations not consistent with this Agreement or that are otherwise unacceptable to Developer in its sole and absolute discretion, then the Developer may elect to: (i) diligently prepare revised applications requesting the Park/Streetscape Improvements Zoning Approval for revised Park/Streetscape Improvements after proprietary approval by the City Manager as set forth above; (ii) exercise any rights of appeal or redress the Developer may have; or (iii) terminate this Agreement in accordance with Section 45.

(f) Upon receipt of the HPB's approval of the Park/Streetscape Improvements, Developer shall prepare plans and specifications for construction of the Park/Streetscape Improvements, consistent with the Preliminary Plans and Specifications, as approved by the HPB, if applicable, for confirmatory review by the City Manager (the "Final Plans and Specifications"). Developer shall pursue approval by the City Manager of the Final Plans and Specifications diligently and in good faith. The Final Plans and Specifications shall be reviewed by the City Manager for substantial consistency with the Preliminary Plans and Specifications as the same have been modified by the HPB, if applicable. If the City Manager (or the City Commission pursuant to Section 63) disapproves the Final Plans and Specifications, then Developer shall, at its election, either (x) submit the City Manager's disapproval to expedited arbitration pursuant to Section 34 as to the reasonableness of the disapproval, or (y) submit a revised modification to the Final Plans and Specifications to meet the City Manager's objections, which revised modification shall be submitted and reviewed as provided in Section 9. Nothing in this paragraph shall obligate the City to accept Final Plans and Specifications that are inconsistent with the

Preliminary Plans and Specifications except for those inconsistencies that are necessitated by the Park/Streetscape Improvements Zoning Approval or by the Requirements.

9. Park/Streetscape Plan Material Modifications.

(a) If Developer desires to implement Material Modifications to previously approved Plans and Specifications, Developer shall submit any such modified Plans and Specifications to the City Manager for approval in the City's proprietary capacity. Such modified Plans and Specifications shall clearly indicate, by "ballooning", highlighting, blacklining or describing in writing in sufficient detail in a memorandum accompanying such modified Plans and Specifications, all such proposed Material Modifications to the Plans and Specifications. Promptly after its receipt of the proposed Material Modifications, the City Manager shall notify Developer in writing, with specificity, of any Material Modifications of which City disapproves, it being agreed, however, that the City Manager's failure to notify Developer of its disapproval within fifteen (15) Business Days of its receipt of the proposed Material Modifications shall be deemed to constitute City's conclusive approval of such modified Plans and Specifications. Notwithstanding anything to the contrary, City shall not unreasonably withhold, condition, or delay the City's approval of any modifications to the Plans and Specifications that, regardless of materiality, are necessitated by Requirements or as a result of a drafting, coordination, mechanical or technical error in the Plans and Specifications, and all such modifications shall be deemed approved by the City in its proprietary capacity.

(b) If the City Manager (or the City Commission pursuant to Section 63) disapproves any proposed Material Modifications to the Plans and Specifications, then Developer shall submit revised Plans and Specifications or a revised modification to the Plans and Specifications to meet the City Manager's objections, which revised Plans and Specifications or revised modification shall be reviewed as provided in Section 9(a), as applicable.

BUILDING PERMITS

10. City Joinder. The Developer acknowledges that until the Closing, no application for a Building Permit for the Project or the Park/Streetscape Improvements may lawfully be approved (and no Building Permit may be issued) without the City's joinder to such application while the City is the owner of the City Parcel. The City agrees, upon Developer's request, to join any application for a Building Permit for the Project and/or Park/Streetscape Improvements, and any application for a Covenant in Lieu of Unity of Title, so long as the same are not materially inconsistent with this Agreement, but a Building Permit for the Park/Streetscape Improvements shall not issue until the Closing, and a Building Permit for the Project shall not issue until the City has issued a Building Permit for the Park/Streetscape Improvements. Notwithstanding the foregoing, the City may revoke such proprietary consent if the Developer terminates or is in material default of this Agreement, and, upon such revocation, the City may, in its governmental capacity, withhold issuance of any Building Permits for the Project or the Park/Streetscape Improvements that require the City's proprietary consent for issuance.

11. Prerequisites to Park/Streetscape Building Permit. Prior to submitting an application for a Building Permit for the Park/Streetscape Improvements, Developer shall prepare and submit to City (acting in its proprietary capacity as owner of the City Parcel), for confirmatory review and approval by the City Manager, the Plans and Specifications intended to be used to obtain the required Building Permit (the "Permit Plans and Specifications"). If such submitted Permit Plans and Specifications contain Material Modifications to the Final Plans and Specifications approved by the City Manager following HPB approval in accordance with Section

8(f) above (or any more recently modified Plans and Specifications approved in accordance with Section 9(a) above), then such Permit Plans and Specifications shall clearly indicate, by "ballooning", highlighting, blacklining or describing in writing in sufficient detail in a memorandum accompanying such Permit Plans and Specifications, all such Material Modifications. Promptly after its receipt of such Permit Plans and Specifications, the City Manager shall notify Developer, in writing, describing, with specificity, the basis for disapproval of any Material Modifications of which the City Manager disapproves. Further, whenever Developer advises the City Manager in writing, and the City Manager agrees with Developer in writing, that the Permit Plans and Specifications, as approved as herein provided above, are complete and sufficient and suitable to construct, furnish and equip the entire Park/Streetscape Improvements in accordance with the provisions of this Agreement, such written agreement shall be deemed to constitute City's conclusive approval of all modifications and inconsistencies, whether or not the modifications are highlighted, in such Permit Plans and Specifications. Notwithstanding anything to the contrary, City shall not object to any modifications to any Plans and Specifications (i) that are not Material Modifications, or (ii) that, regardless of materiality, are necessitated by Requirements or as a result of a drafting, coordination, mechanical or technical error in the Plans and Specifications, and all such modifications shall be deemed approved by the City in its proprietary capacity.

CONSTRUCTION OF PARK/STREETSCAPE IMPROVEMENTS

12. Conditions Precedent to Developer's Commencement of Construction of the Park/Streetscape Improvements.

12.1 Developer shall not Commence Construction of the Park/Streetscape Improvements or any Phase thereof unless and until:

- i. the Closing shall have occurred;
- ii. Developer shall have obtained and delivered to City's Consultant copies of all Permits and Approvals required to Commence Construction of the Park/Streetscape Improvements;
- iii. Developer shall have delivered to City original certificates of the policies of insurance required to be carried pursuant to the provisions of Exhibit "N" to this Agreement;
- iv. Contractor shall have furnished to City the Payment Bond and Performance Bond required by Section 12.3;
- v. City Manager shall have approved the Permit Plans and Specifications, as provided in Section 11;
- vi. Developer shall have delivered to the City a duly executed original Assignment of Construction Agreements for the Park/Streetscape Improvements, and a duly executed original Assignment of Plans, Permits and Approvals for the Park/Streetscape Improvements; and
- vii. Contractor shall have submitted to Developer and City a construction schedule as provided in Section 19.2;

provided, however, if Developer chooses to perform any construction of the Park/Streetscape Improvements on a "fast track" basis (other than pursuant to the Phases approved herein), Developer may request the necessary approval of the City Manager in stages and perform that portion of the construction work which has been approved by the City Manager at the City Manager's reasonable discretion (provided Developer shall comply with all of the requirements of Section 12.1 above, and all other applicable requirements with respect to such portion of the construction work), even if progress plans and specifications for other portions of the construction work have not yet been prepared.

12.2 In addition to the City's cooperation obligations set forth elsewhere in this Agreement, the City (solely in its capacity as the owner of the City Parcel and not in its governmental capacity) hereby covenants to fully cooperate with Developer (at no cost to the City) in obtaining any and all Permits and Approvals required for the Project and the Park/Streetscape Improvements, and any necessary utility access agreements, including, without limitation, by signing all applications reasonably made by Developer that are required to obtain such Permits and Approvals and utility access agreements. In addition, the City shall provide Developer with any information and/or documentation not otherwise reasonably available to Developer (if available to City) which is necessary to procure such Permits and Approvals and utility access agreements. Any such accommodation by City shall be without prejudice to, and shall not constitute a waiver of, City's rights to exercise its discretion in connection with its governmental functions. Developer shall reimburse City, within thirty (30) Business Days after City's written demand, for all actual, documented out-of-pocket cost and expenses paid by the City to the City's outside technical consultants (other than City's Consultant and City's employees), such as architects and engineers, in connection with City's assistance in obtaining any such Permits and Approvals and utility access agreements; provided, however, that any reimbursable cost or expense exceeding One Thousand Dollars (\$1,000.00) individually, and all reimbursable costs or expenses exceeding Five Thousand Dollars (\$5,000.00) in the aggregate for any discrete task or component, shall require the Developer's prior written approval. The City's failure to obtain Developer's prior written approval shall relieve Developer of any obligation to reimburse the City for such unapproved costs or expenses. In addition, the City hereby agrees to furnish Developer, on or by the fifth (5th) Business Day of each month, with a monthly financial report detailing, with specificity, expenditures by the City Consultant for the immediately preceding month. Developer shall have the right to audit all City Consultant expenditures from time to time.

12.3 Prior to Commencement of Construction of the Park/Streetscape Improvements, Developer shall cause the Contractor to furnish to City a payment bond ("Payment Bond") and performance bond ("Performance Bond") naming the City and Developer as co-obligees, substantially in the form attached as Exhibit "M" hereto (with any modifications approved in advance by the City), issued by a surety satisfying the bonding requirements set forth in Exhibit "N" attached hereto, guaranteeing the performance of the Contractor under that certain guaranteed maximum price contract for the construction of the Park/Streetscape Improvements. If the Contractor fails to complete the construction of the Park/Streetscape Improvements as required by this Agreement, (i) the City may make demand upon the surety to perform its obligations under the Payment Bond and Performance Bond, including completion of the work; or (ii) in the alternative and provided that same does not render the Payment Bond and Performance Bonds void or otherwise voidable by the surety, the City may take over and complete the work, or any portion thereof, by its own devices, by entering into a new contract or contracts for the completion of the work, or using such other methods as in the City's reasonable opinion shall be required for the proper completion of the work, including succeeding to the rights of the Developer and/or Contractor. Subject to the terms and conditions of the Payment Bond and the Performance Bond, as applicable, the City may also charge against the Performance Bond and Payment Bond

all fees and expenses for services incidental to ascertaining and collecting losses under the Performance Bond and Payment Bond including, without limitation, accounting, engineering, and legal fees, together with any and all costs incurred in connection with renegotiation of the Agreement. The Contractor shall have the right to reduce the face value of the Payment Bond and Performance Bond on a calendar quarter basis as construction of the Park/Streetscape Improvements progresses to reflect then-remaining costs of Substantially Completing the Park/Streetscape Improvements.

13. Commencement of Construction of the Park/Streetscape Improvements.

13.1 Developer shall at its expense (a) Commence Construction of Phase 1 of the Park/Streetscape Improvements no later than ninety (90) Business Days after Developer obtains (i) Final Approval of the Project Zoning Approvals, or (ii) Final Approval of all Permits and Approvals for the Park/Streetscape Improvements, whichever occurs last, and (b) thereafter continue to prosecute construction of the Park/Streetscape Improvements with reasonable good faith diligence and continuity to completion. In the event the 74th Street design feature depicted in the Park/Streetscape Concept Plan is approved by the HPB and is approved as part of the Final Plans and Specifications, such design feature shall be completed as part of Phase 1 of the Park/Streetscape Improvements.

13.2 During the construction of the Project and the Park/Streetscape Improvements, the City shall provide the following construction staging, storage, use and construction parking accommodations to the Developer and the Contractor at no cost or expense to the Developer or the Contractor:

(a) During construction of the Park/Streetscape Improvements, the Developer and its contractors will have the right to use the areas within Phases 1 and 2 of the Park/Streetscape Improvements as staging areas and lay-down yards in connection with the construction of the Park/Streetscape Improvements.

(b) During construction of the Project, the Developer and its contractors will have the right to use the area within Phase 2 of the Park/Streetscape Improvements as staging areas and lay-down yards in connection with the construction of the Project.

(c) The City will budget and appropriate, from the General Fund, the amounts necessary to pay the Parking Department for up to 100 monthly parking passes at the then-prevailing standard rates, for use by the Developer and its contractors, during construction of the Park/Streetscape Improvements and the Project or any phase or portion thereof, up to the aggregate not-to-exceed amount of Three Hundred Thousand Dollars (\$300,000.00) (the "Not-to-Exceed Amount"). Once the Not-to-Exceed Amount has been expended, Developer shall be solely responsible for making appropriate parking arrangements for its employees, contractors and their respective employees. Developer and its contractors may use such monthly parking passes at the following City-owned parking lots, provided such parking lots are then being operated as municipal parking lots:

- i. Collins Avenue and 75th Street (Lot 106). A maximum of 25 Developer/contractor parking spaces may be utilized at this location at any time, with the remainder of the lot to be made available for parking for the general public. No Developer/contractor parking may occur on this lot on weekends or legal holidays.

- ii. 299 72nd Street (Lot 92). Parking will be made available until such time as the City commences construction of a City parking garage at this location. No limitation on the number of Developer/contract parking spaces that may be used at this lot and no restrictions on weekend or holiday use; however, the City's parking director retains discretion to limit Developer/contractor parking on this lot to not less than 25 parking spaces at any given time if he/she determines, based on documented parking counts and other objective data, that such limitation is necessary to satisfy public parking demand on the lot.
- iii. 8040 Collins Avenue (Lot 108). No limitation on the number of Developer/contract parking spaces that may be used at this lot and no restrictions on weekend or holiday use, except as necessary to accommodate valet use as provided in Section 13.3 of this Agreement.
- iv. 8300 Collins Avenue (Lot 109). No limitation on the number of Developer/contract parking spaces that may be used at this lot and no restrictions on weekend or holiday use.
- v. Others. Such additional City lots in the general vicinity of the Development Site as the City may designate from time to time, with such limitations and restrictions, if any, as agreed to by the City and Developer.

13.3 City, through its valet concessionaire, will operate the Collins Avenue and 75th Street parking lot (Lot 106) and the 8040 Collins Avenue parking lot (Lot 108) for valet purposes on Saturdays, Sundays, and legal holidays or as otherwise agreed to by the Developer and the City, commencing upon the Commencement of Construction of Phase 1 of the Park/Streetscape Improvements, and will establish and maintain discounted pricing for City residents comparable to the differential pricing in favor of City residents at other City-owned parking lots. Developer agrees to reimburse the City for 75% of the actual, documented, out-of-pocket losses, if any, sustained by the City for such valet operations at Lots 106 and 108, up to a maximum of One Hundred Thousand Dollars (\$100,000.00) in the aggregate, until the later of (i) Substantial Completion of Phase 1 of the Park/Streetscape Improvements, or (ii) four (4) years following the Effective Date of this Agreement.

13.4 In addition, if the City adopts a suitable amendment to the City Code that permits the construction of a temporary gravel or stone parking lot on one or more of the vacant North Beach "West Lots," and exempts such temporary parking lot from compliance with the temporary parking lot standards of Section 130-70 of the City Code, then the Developer will, at its sole cost and expense, construct such gravel or stone parking lot with chain-link perimeter construction fencing for use as overflow valet parking and as temporary construction parking for the Project and the Park/Streetscape Improvements in support of the parking arrangements contemplated by Sections 13.2(c) and 13.3 of this Agreement.

13.5 During the construction of the Park/Streetscape improvements, Developer shall sequence its work to ensure that at least one continuous beachwalk path is maintained running north and south through the Park/Streetscape Site, for the benefit of the general public. Notwithstanding the foregoing, the Developer may (with prior approval from the City Manager) close the beachwalk access for periods not to exceed ten (10) consecutive calendar days at any

given time, at the City Manager's reasonable discretion, for the purpose of accommodating unusual construction activities that may require such closure.

14. Substantial Completion of Construction of the Park/Streetscape Improvements.

14.1 Developer shall Substantially Complete the construction of the Park/Streetscape Improvements in Phases in accordance with the construction schedule set forth in Section 42 of this Agreement. Substantial Completion of the Park/Streetscape Improvements shall be accomplished in a diligent manner, and final completion of the Construction of the Park/Streetscape Improvements, including but not limited to completion of all punch-list items, shall be accomplished in a diligent manner thereafter, in each case in a good and worker like manner, in substantial accordance with the Plans and Specifications (with no Material Modifications except as expressly permitted herein), in accordance with all applicable Requirements and, except as provided in Section 23, at Developer's sole cost and expense.

14.2 Upon Substantial Completion of the Park/Streetscape Improvements or any Phase thereof, Developer shall furnish City with the following:

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

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

(c) lien waivers in form and substance reasonably satisfactory to City from the Contractor and any other contractor, subcontractor, supplier or materialman retained by Developer in connection with the construction of the Park/Streetscape Improvements, evidencing that such persons have been paid in full for all work performed or materials supplied in connection with the construction of the Park/Streetscape Improvements; and

(d) a complete set of "as built" plans and a survey showing the Park/Streetscape Improvements (or the relevant Phase thereof, as applicable) as Substantially Completed. City shall have an unrestricted license to use such "as built" plans and survey for any purpose related to the Park/Streetscape Site without paying any additional cost or compensation therefor, subject to copyright and similar rights of the architect to prohibit use of designs for purposes unrelated to the Park/Streetscape Site, as such rights exist in law or may appear in the architect's contract, and subject to applicable public records laws. The foregoing requirement with respect to "as built" plans shall be satisfied by Developer furnishing to City, at Developer's expense, a complete set of Plans and Specifications, with all addenda thereto and change orders in respect thereof, marked to show all changes, additions, deletions and selections made during the course of the construction of the Park/Streetscape Improvements up to Substantial Completion.

14.3 Upon Developer's delivery to City of items 14.2(a) through (d) above, the Park/Streetscape Improvements shall be deemed to be Substantially Complete and City shall be deemed to have accepted the Park/Streetscape Improvements in their then condition.

15. Not Used.

16. Compliance with Requirements; Construction Standards

16.1 Notwithstanding anything to the contrary contained herein, the Plans and Specifications shall comply with all applicable Requirements. It is Developer's responsibility to assure such compliance. City's approval in accordance with this Section 16 of any Plans and Specifications shall be deemed to be a determination by City that the Plans and Specifications so approved are in substantial conformity with this Agreement, but shall not be, and shall not be construed as being, or relied upon as, a determination that such Plans and Specifications comply with other applicable Requirements, including, without limitation, any Requirements providing for the review and approval of the Plans and Specifications by any governmental authority (in its governmental capacity as opposed to its proprietary capacity).

16.2 In connection with any work related to the construction of the Park/Streetscape Improvements, Developer shall comply promptly with all Requirements. No consent to, approval of or acquiescence in any plans or actions of Developer by City, in its proprietary capacity, or City's designee shall be relied upon or construed as being a determination that such are in compliance with the Requirements, or, in the case of construction plans, are structurally sufficient, prudent or in compliance with the Requirements. Failure of this Agreement to address a particular governmental or regulatory permit, condition, term or restriction shall not relieve the Developer of the necessity of complying with the Laws governing said permitting requirements, conditions, term or restriction.

17. Not Used.

CITY PARTICIPATION

18. City's Right to Use Field Personnel. City reserves the right, at its sole cost and expense, to maintain on site-representative(s) at the Park/Streetscape Site to observe the progress of the construction of the Park/Streetscape Improvements (provided, however, that City shall be entitled to maintain additional on-site representatives from time to time to the extent reasonably necessary to perform such progress reviews), and Developer agrees to provide access to the Park/Streetscape Site for such limited purpose, including, without limitation, access to the preparation work and work in progress wherever located. No such progress review by the City's on-site representative(s) shall impose upon City responsibility or liability for any failure by Developer to observe any Requirements or safety practices in connection with such construction work, or constitute an acceptance of any work which does not comply with the provisions of this Agreement, and no such progress review shall constitute an assumption by City of any responsibility or liability for the performance of Developer's obligations hereunder, nor any liability arising from the improper performance thereof. The City's on-site representative(s) shall not interfere with any construction work being performed at the Park/Streetscape Site, shall comply with all safety standards and other job-site rules and regulations of Developer, and shall make entry upon the Park/Streetscape Site in its "as-is" condition, with all faults, whether latent or apparent. The City's on-site representative(s) will observe the progress of the construction of the Park/Streetscape Improvements only. Further, the City shall designate, by written notice to Developer, one on-site representative as the City's principal representative (such individual, the

"City's Consultant"). The City's Consultant shall serve as Developer's direct point of contact with the City for construction matters regarding the Park/Streetscape Improvements and shall be responsible for coordinating all progress reviews by the City's other representative(s) with Developer under this Section 18 and gathering and submitting to Developer all comments provided by such other representative(s). The City's on-site representative(s) shall communicate only with the City's Consultant and shall make only such communications as are reasonably necessary to enable the City's on-site representative to conduct its investigations under this Section 18. In no event shall the City's Consultant or the other on-site representative(s) give directions to Developer, to the Developer's representative, or to any member of the Developer's construction team. Developer shall endeavor to provide a reasonable work area for use by the City's Consultant and on-site representative(s) during such progress reviews as is customarily provided at similar construction sites for such purposes. All expenses incurred by City's Consultant and on-site representative(s) shall be paid by City.

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

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

(a) the opportunity for attendance by the City's Consultant at regularly scheduled construction work status meetings between the Developer and the Contractor (which Developer will endeavor to have scheduled not less frequently than once each month following Commencement of Construction until Substantial Completion of the Park/Streetscape Improvements) and at any special meetings which Developer deems necessary in its reasonable discretion as to change orders, delays and other material issues concerning the Park/Streetscape Improvements;

(b) the inspection by the City's Consultant of all construction work (in accordance with the provisions of Section 18);

(c) the opportunity for attendance by the City's Consultant at the design presentations given to Developer for the Park/Streetscape Improvements;

(d) upon the City's prior written request, the delivery by Developer to the City's Consultant of a copy of:

(i) the executed contract between Developer and the Contractor for the Park/Streetscape Improvements;

(ii) the Plans and Specifications (and modifications thereto, with such modifications being clearly indicated, by "ballooning", highlighting, or blacklining on the Plans and Specifications or describing in writing in sufficient detail in a memorandum accompanying such modified Plans and Specifications to be provided following Substantial

Completion of the Park/Streetscape Improvements), working and other drawings, renderings, blueprints, specifications, layouts and change orders; and

(iii) all insurance certificates required by Exhibit "N" of this Agreement.

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

19.2 Prior to the Commencement of Construction of the Park/Streetscape Improvements, Developer shall provide to City a construction schedule for each Phase of the Park/Streetscape Improvements, which schedule shall be prepared using the critical path method ("CPM"); such schedule, as it shall be amended from time to time in accordance with the Construction Agreements, shall be referred to as the "CPM Schedule", including a CPM network diagram, for use in scheduling and controlling the construction of the Park/Streetscape Improvements. Developer shall, upon the City's prior written request, promptly provide to the City's Consultant information copies of the CPM Schedule. The CPM Schedule shall (1) be revised by Developer whenever there is a material variance in the progress of the construction of the Park/Streetscape Improvements from the then-current CPM Schedule and otherwise at appropriate intervals, but no more frequently than monthly unless Developer elects, in its sole discretion, to undertake more frequent updates; and (2) provide for expeditious and practicable execution of the construction of the Park/Streetscape Improvements. Developer shall promptly inform the City's Consultant of any deviation from the CPM Schedule which, in Developer's good-faith determination, is likely to cause a material delay in the Substantial Completion of the Park/Streetscape Improvements (as shown on the current CPM Schedule).

20. Not Used.

21. Construction Agreements; Required Clauses.

21.1 All Construction Agreements which provide for the performance of labor for the construction of the Park/Streetscape Improvements shall, to the extent applicable to the scope of work governed by such Construction Agreement, include the following provisions (or language substantially similar thereto which is approved in advance by City); provided, however, that any Construction Agreement having aggregate payments of Five Hundred Thousand Dollars (\$500,000.00) or less shall not be required to include the provisions set forth in paragraph (i) below:

(a) "Contractor shall provide, prior to the commencement of its portion of the work, and maintain during the performance thereof, the insurance set forth on Exhibit "N"

attached hereto and incorporated by reference herein. Such Contractor shall procure an appropriate clause in, or endorsement on, any policy of insurance carried by it pursuant to which the insurance company waives subrogation or consents to a waiver of right of recovery consistent with the release, discharge, exoneration and covenants not to sue contained herein. Original certificates of insurance shall name the City of Miami Beach, Florida (and any successor City), as additional insureds (the "Certificate of Insurance"), and shall be furnished to Developer by the Contractor prior to Commencement of Construction of the Park/Streetscape Improvements, denoting all insurance required of the Contractor pursuant to the terms of the contract. The Contractor shall secure an original Certificate of Insurance from each of its sub-contractors with limits of liability appropriate to such sub-contractor's scope of work";

(b) "Contractor hereby waives all rights of recovery, claims, actions or causes of action against the City of Miami Beach, Florida (and any successor City), and their respective elected and appointed officials (including, without limitation, the City's Mayor and City Commissioners), directors, officials, officers, shareholders, members, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, lessees, mortgagees, trustees, partners, principals, invitees and affiliates, for any loss or damage to property of Contractor which may occur at any time in connection with the Park/Streetscape Improvements, except to the extent arising out of or related to the gross negligence or willful misconduct of the City, the City's Consultant, the City's officers, directors, officials, employees, contractors, or agents, and/or any of the City Indemnified Parties.";

(c) "To the fullest extent permitted by law, Contractor shall and does hereby indemnify and hold harmless the City of Miami Beach, Florida, and its respective officers and employees, from liabilities, damages, losses and costs including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of Contractor and persons employed or utilized by Contractor in the performance of this Agreement. Notwithstanding anything to the contrary, Contractor shall not be required to indemnify, defend or hold the City of Miami Beach, Florida or any of its respective officers and employees from liabilities, damages, losses or costs to the extent caused by the acts, omissions, negligence of the City of Miami Beach, Florida or any of its officers or employees. The indemnification obligations set forth in this Section 14 shall survive the termination and/or expiration of this Agreement."

(d) "Developer shall have the right to assign to City, subject and subordinate to the rights of Lender, the Construction Agreement and Developer's rights thereunder, at the City's request, without the consent of the Contractor, and (2) that without the necessity of such assignment and without thereby assuming any of the obligations of Developer under the Construction Agreement occurring prior to such assignment and/or purchase order, except for Developer's payment obligations, City shall have the right to enforce the full and prompt performance by the Contractor of such Contractor's obligations under the Construction Agreement; and (3) the City is a third party beneficiary of the Construction Agreement";

(e) "Contractor agrees to comply with all laws and requirements applicable to Contractor and the Park/Streetscape Improvements";

(f) "Upon an Event of Default by Developer resulting in a termination of that certain Development Agreement between Developer and City, dated as of July 31, 2019, at the option of the City of Miami Beach, Florida, subject and subordinate to the rights of Lender,

this agreement shall be terminated or Contractor will honor this agreement as if this agreement had been originally entered into with the City of Miami Beach, Florida.”;

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

(h) “Upon an Event of Default by Developer resulting in a termination of that certain Development Agreement between Developer and City, dated as July 31, 2019, all covenants, representations, guarantees and warranties of Contractor hereunder shall be, subject and subordinate to the rights of Lender, deemed to be made for the benefit of the City of Miami Beach, Florida, (and the City of Miami Beach, Florida, shall be deemed to be a third party beneficiary hereof) and shall be, subject and subordinate to the rights of Lender, enforceable by the City of Miami Beach, Florida.”;

(i) “Unless and until the City of Miami Beach, Florida, expressly assumes the obligations of Developer under this contract (and then only to the extent the same arise from and after such assumption), the City of Miami Beach, Florida, shall not be a party to this contract and will in no way be responsible to any party for any claims of any nature whatsoever arising or which may arise in connection with such contract.”; and

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

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

22. Not Used.

23. Fees.

23.1 City Fees. The Parties acknowledge that the Project and the Park/Streetscape Improvements may require payment of certain fees, which include, without limitation, application fees, notice fees, development review fees, building permit fees, inspection, certification, impact, concurrency, transportation/mobility and connection fees, and other fees that the City may levy under applicable Laws (including, without limitation, water and sewer fees and all fees relating to HPB, Design Review Board, and/or Planning Board reviews), as well as those fees, to the extent applicable, listed in the most current edition of the City of Miami Beach Building Department Fee Schedule adopted by the City, which fee schedule is hereby incorporated by reference and made a part of this Agreement (collectively, the "City Fees"). The Parties further acknowledge that, under the current City Code, the application fees for the Project Zoning Applications and the Park/Streetscape Zoning Application total a maximum of \$80,000. Developer shall remain responsible for the City Fees notwithstanding any and all modifications or changes in price structure as imposed by the City. The Parties assume payment responsibility as follows:

(a) Zoning Application Fees. In consideration for the Developer's commitment to complete the Park/Streetscapes Improvements and in recognition of Developer's prior payment of \$206,835.00 (as per invoice number 00091435) for application fees in connection with the Project Zoning Applications (the "Fee Overage Balance"), the City assumes payment responsibility for the up to \$80,000.00 in application fees required for the Project Zoning Applications and the Park/Streetscape Zoning Application. The City shall accept the Developer's filing of the Project Zoning Applications and the Park/Streetscape Zoning Application without requiring payment of any application fees from Developer and shall diligently process the same pursuant to the requirements of the City Code through Final Approval of the Project Zoning Approvals and the Park/Streetscape Zoning Approval.

(b) Other Project City Fees. Developer assumes payment responsibility for any and all other City Fees required for the construction of the Project.

(c) Other Park/Streetscape City Fees. Developer is solely responsible for payment of all City Fees for the Park/Streetscape Improvements other than the application fees for the Park/Streetscape Zoning Application; provided, however, that the City hereby agrees to waive all City fees relating to the Park/Streetscape Improvements, to the extent that any such waiver is currently permitted under the City Code (that is, without requiring any legislation to provide for any such waiver). The Developer shall not be obligated to pay any City Fees for the Park/Streetscape Improvements that can currently be waived under the City Code, and the City shall accept Developer's filing of applications for Permits and Approvals for the Park/Streetscape Improvements, and process the same to Final Approval, without payment of any such City Fees by Developer.

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

23.2 Non-City Fees. Developer shall assume responsibility for payment of all fees charged by governmental authorities relating to the Project, and the City hereby assumes responsibility for payment of all fees charged by governmental authorities relating to the Park/Streetscape Improvements.

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

24.1 City shall give to the Recognized Mortgagee a copy of each Developer Default Notice at the same time as it gives such notice to Developer, and no such notice shall be deemed effective with respect to any Recognized Mortgagee unless and until a copy thereof shall have been so received by or refused by such Recognized Mortgagee, as applicable. All such notices to a Recognized Mortgagee shall be sent as set forth in Section 47 of this Agreement. City shall also give the Recognized Mortgagee notice (each, a "Notice of Failure to Cure") in the event Developer fails to cure an Event of Default within the cure period, if any, provided in this Agreement for such cure, promptly following the expiration of such cure period.

24.2 The Recognized Mortgagee shall have a period of thirty (30) Business Days after receipt of the Notice of Failure to Cure, in the case of any Event of Default, to (1) cure the Event of Default referred to in the Notice of Failure to Cure, or (2) cause it to be cured, subject to the same additional time periods provided to Developer pursuant to the provisions of Section 42 or elsewhere in this Agreement, unless such default is not susceptible of being cured by a Recognized Mortgagee. Nothing contained herein shall be construed as imposing any obligation upon any Mortgagee to so perform or comply on behalf of Developer.

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

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

24.5 Notwithstanding the foregoing provisions of this Section 24, if a Recognized Mortgagee fails (for any reason) to cure any Event of Default by Developer within sixty (60) days following receipt of the Notice of Failure to Cure regarding such Event of Default, then City may, but shall be under no obligation to, perform the obligation of Developer the breach of which gave rise to such Event of Default (including, without limitation, the performance of any of the obligations of Developer under any Construction Agreement), without waiving or releasing Developer from its obligations with respect to such Event of Default. Developer hereby grants City access to the Park/Streetscape Site in order to perform any such obligation. Any amount paid by City in performing Developer's obligations as provided in this Section 24, including, without limitation, all costs and expenses incurred by City in connection therewith, shall be reimbursed to City within thirty (30) days following City's demand therefor, together with a late charge on amounts actually paid by City, from the date of notice of any such payment by City to the date on which payment of such amounts is received by City.

24.6 If there is more than one Recognized Mortgagee, only that Recognized Mortgagee, to the exclusion of all other Recognized Mortgagees, whose Recognized Mortgage is most senior in lien shall be recognized as having rights under this Section 24, unless such first

priority Recognized Mortgagee has designated in writing to City a Recognized Mortgagee whose Mortgage is junior in lien to exercise such right.

CONDITIONS PRECEDENT TO ISSUANCE OF CERTIFICATE OF OCCUPANCY

25. Conditions Precedent to Issuance of Certificate of Occupancy. The Developer acknowledges that conveyance of the Park/Streetscape Improvements Parcel and completion and conveyance of the Park/Streetscape Improvements is additional and essential consideration for the City's vacation of the City Parcel. Accordingly, (i) the City shall not issue a temporary certificate of occupancy and/or a temporary certificate of completion for the Project (in whole or in part), until the Developer has Substantially Completed construction of Phase 1 of the Park/Streetscape Improvements, or the City receives any funds under the Surety Bond (or the Recognition Agreement, as applicable) or under the Payment Bond and/or Performance Bond, whether or not construction of Phase 1 of the Park/Streetscape Improvements has been completed by the City; and (ii) the City shall not issue a final certificate of occupancy and/or a final certificate of completion for the Project (in whole or in part) until the City has issued a final certificate of occupancy and/or a final certificate of completion for both Phases of the Park/Streetscape Improvements, or the City receives any funds under the Surety Bond (or the Recognition Agreement, as applicable) or under the Payment Bond and/or Performance Bond, whether or not construction of the Park/Streetscape Improvements has been completed by the City.

26. Developer's Reserved Rights.

26.1 Beachfront Concession. As part of the consideration for the completion of the Park/Streetscape Improvements, and in an effort to incentivize Developer to attract a quality hotel and stimulate economic development in the Ocean Terrace area, if a hotel is ultimately operated as part of the Project that is substantially similar in quality of operations and level of service provided, as of the Effective Date, at the Delano Hotel (1685 Collins Avenue), the Nautilus Hotel (1825 Collins Avenue), or the Shelborne Hotel (1801 Collins Avenue) (the "Hotel"), then in such event, Developer shall have the right to utilize, along with City's beachfront concessionaire for the concession area located between 72nd Street and 77th Street (the "Ocean Terrace Concession Area"), up to 175 linear feet of the concession area located between 74th Street and 75th Street (the "Enhanced Service Area"), for a beachfront concession for the Hotel's guests, visitors, and patrons.

26.2 The intent of the Enhanced Service Area is to permit the Developer and/or the Hotel to enter into an agreement with City's then-existing concessionaire for the Ocean Terrace Concession Area ("City's Concessionaire"), which concessionaire, as of the Effective Date of this Agreement, is Boucher Brothers Miami Beach, LLC, to provide upgraded beach equipment offerings and food & beverage services not otherwise part of the standard concession services offered by City's Concessionaire within the Ocean Terrace Concession Area. Any such beachfront concession within the Enhanced Service Area shall be operated by City's Concessionaire for the Ocean Terrace Concession Area.

26.3 The terms for the Enhanced Service Area shall be memorialized in City's agreement with City's Concessionaire (or, in the case of the current concessionaire, Boucher Brothers Miami Beach, LLC, via an amendment to the Concession Agreement dated May 21, 2019), prior to the issuance of a temporary certificate of occupancy for the Hotel. Such terms shall provide (i) the right for the Hotel to brand uniforms of Hotel staff providing food & beverage services, and to brand beach equipment and/or signage located within the Enhanced Service

Area; and (ii) for the City to continue to receive, with respect to standard beach equipment rentals and pre-packaged food services offered by the City's Concessionaire within the Enhanced Service Area, the same percentage of gross receipts the City would otherwise receive for such standard services pursuant to the City's concession agreement with the City's Concessionaire for the Ocean Terrace Concession Area.

26.4 Raised Pavilion/Café. Developer shall have the right to construct and operate a raised pavilion/café within the Park/Streetscape Site, generally consistent with the sidewalk café permit requirements as set forth in Chapter 82 of the City Code, and in accordance with the minimum standards, criteria, and conditions set forth in Sections 82-385 to 82-388 of the City Code, provided such pavilion/café is approved by the HPB. This Section shall survive the termination or expiration of this Agreement.

26.5 Parking Space Removal. Developer reserves the right, if approved by the HPB, to eliminate those certain parking spaces located along Ocean Terrace between 73rd Street and 75th Street, and along 73rd Street, 74th Street, and 75th Street between Ocean Terrace and Collins Avenue. City agrees that such removal shall not require the payment of any fee by Developer under Section 106-55(h) of the City Code, as the same may be amended from time to time. This Section shall survive the termination or expiration of this Agreement.

GENERAL PROVISIONS

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

28. Laws Governing this Agreement. For the entire term of this Agreement, the City hereby agrees that the City's Law's and Requirements governing the development of the Development Site as they exist as of the Execution Date of this Agreement shall govern the development of the Development Site and the Project during the Term. Notwithstanding the foregoing, the City may apply subsequently adopted laws or policies to the Development Site and the Project (particularly as they may relate to quality of life issues such as, but not limited to noise, litter, and hours of operation) as permitted or required by the Act, including, without limitation, Section 163.3233(2), Florida Statutes, as same may be amended from time to time; provided, however, that in no event shall the City apply any subsequently adopted laws or policies in a manner that requires any alterations or modifications to the Project or the Park/Streetscape Improvements or any amendments or modifications to the Project Zoning Approvals or the Park/Streetscape Zoning Approval, or in a manner that renders the Project or the Park/Streetscape Improvements "nonconforming" as to any Laws or Requirements. Without limiting the generality of the foregoing, Developer expressly reserves the right to challenge any subsequently adopted changes to the Laws or Requirements based on, among others, (i) equitable estoppel, vested rights, or other common law principles; or (ii) rights that may accrue under Chapter 70, Florida Statutes (2018) or any successor or similar laws. In addition, the expiration or termination of this Agreement (other than termination for an uncured Developer Event of Default) shall not act to waive, limit, or invalidate any vested right (or equitable estoppel defense) that may have accrued to Developer pursuant to or in furtherance of this Agreement prior to such expiration or termination.

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

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

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

32. Concurrency. Developer shall be solely responsible for obtaining all land use permits, including, but not limited to, all permits and approvals required pursuant to Section 163.3180, Florida Statutes (2018), with respect to concurrency requirements for roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation, and schools for the Project (the "Concurrency Requirements"). Prior to applying for its full Building Permit for the Project, Developer shall apply to the appropriate governmental authorities and obtain letters or other evidence that Developer has satisfied all applicable Concurrency Requirements, and shall diligently and in good faith obtain such letters or other evidence that the Project meets all applicable Concurrency Requirements and shall pay such impact fees as may then be due or applicable to meet Concurrency Requirements for the Project.

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

33.1 Developer shall at all times during the Term keep and maintain (separate from any of Developer's other books, records and accounts), accurate and complete records pertaining to the construction of the Park/Streetscape Improvements in accordance with suitable accounting principles with such exceptions as may be provided for in this Agreement. City and its representatives shall have, during normal business hours and upon reasonable advance notice, access to the books and records of Developer pertaining to the Park/Streetscape Improvements for the purpose of examination and audit (including copying), including books of account properly reflecting the construction of the Park/Streetscape Improvements.

33.2 The obligations of Developer under this Section to maintain, and to provide City and its representatives access to, the books and records related to the Park/Streetscape Improvements shall survive the expiration of this Agreement for a period of one (1) year.

33.3 The City will be solely responsible for responding to all requests for public records in accordance with Florida law. In the event that a third party submits a request to the City for records of the Developer regarding this Agreement, the City shall notify the Developer of the public records request, to provide Developer the opportunity to determine whether any documents responsive to the request contain confidential trade secret information entitled to protection from disclosure under Florida law. If the Developer certifies to the City that any specific

documents responsive to the request contain confidential trade secrets information (with such certification specifying the basis for the trade secret assertions, and the steps taken by the Developer to otherwise protect the confidentiality of such information), City shall withhold the subject documents, and shall provide the requestor with a copy of the Developer's trade secret certification. If the requestor objects and continues to make demand for the release of such records, City shall notify the Developer of the requestor's objection, to permit the Developer to file an action in a court of competent jurisdiction within fourteen (14) calendar days, seeking a protective order barring disclosure of any confidential trade secret information. If Developer fails to file an action for injunctive relief within the time period specified, or fails to submit the trade secret certification referenced herein, the City shall treat such failure as a waiver of any claim of trade secret protection, and the City shall thereafter release the document as requested, in accordance with Florida law.

34. Expedited Arbitration of Development Disputes.

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

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

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

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

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

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

(a) City does not have any approval rights with respect to the matter of design and decor of the Park/Streetscape Improvements except to the extent the same is reflected in the Plans and Specifications.

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

(c) The mutual goal of Developer and City that cost overruns for the construction of the Park/Streetscape Improvements shall be minimized.

(d) Applicability of any Requirement.

(e) The magnitude of the modification to the previously approved Plans and Specifications.

(f) The magnitude of the consistency or inconsistency from the previously approved Plans and Specifications.

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

34.8 The Development Arbitrator shall render a decision, in writing, as to any Development Dispute not later than two (2) Business Days following the conclusion of the Hearings regarding such Development Dispute and shall provide a brief written basis for its decision not later than five (5) Business Days thereafter. As to each Development Dispute, the Development Arbitrator's decision shall be limited to (i) whether or not Developer's proposed modification(s) to the Plans and Specifications is a Material Modification; (ii) whether or not City has unreasonably failed to approve or give its consent to any modifications to the Plans and Specifications pursuant to Sections 8, 9, and/or 11; (iii) whether or not Developer has complied with its obligations or responsibilities set forth in Sections 8, 9, and/or 11; and (iv) whether or not Developer or City is entitled to any extension of time for performance. The Development Arbitrator may not award any other or different relief.

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

34.10 The Parties shall reasonably cooperate to select an independent, neutral, professional firm having hotel development or construction experience to serve as the arbitrator (the "Development Arbitrator"). If the Parties cannot agree on the selection of a Development Arbitrator, then any Party may ask the CPR Institute for Dispute Resolution to select a substitute who will act as Development Arbitrator of that Development Dispute. The cost of the Development Arbitrator shall be equally shared by the Parties, but each Party shall bear its own costs, including those of its experts and legal fees, associated with the arbitration.

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

36. Effective Date and Duration (Term).

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

(b) This Agreement shall run for an initial term of ten (10) years from the Effective Date (the "Term"); provided, however, if the Developer completes construction of Phases 1 and 2 of the Park/Streetscape Improvements within the time periods set forth in Section 42(c) and (d) of this Agreement, then the Term shall automatically be extended (without the need of any notice to or consent of the City, or being subject to any public hearing) for an additional eight (8) years, so that the Term of this Agreement shall be a total of eighteen (18) years from the Effective Date. Except for the automatic eight (8) year extension of the Term set forth above (which does not require any consent of the City or public hearing): (i) the Term of this Agreement may be extended only by the mutual consent of the City and the Developer subject to a public hearing pursuant to Section 163.3225, Florida Statutes; and (ii) consent to any extension of this Agreement is within the sole discretion of each Party to this Agreement. No notice of termination shall be required by either Party upon the expiration of this Agreement, and after the expiration of this Agreement the Parties shall have no further obligations under this Agreement, except for those obligations that expressly survive the expiration of this Agreement.

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

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

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

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

41. Not Used.

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

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

(b) If Developer shall fail to Commence Construction of Phase 1 of the Park/Streetscape Improvements within ninety (90) Business Days after Developer obtains (i) Final Approval of the Project Zoning Approvals, or (ii) Final Approval of all Permits and Approvals for the Park/Streetscape Improvements, whichever occurs last.

(c) If Developer shall fail to Substantially Complete the construction of Phase 1 of the Park/Streetscape Improvements within forty-eight (48) months after the Effective Date.

(d) If Developer shall fail to Substantially Complete the construction of Phase 2 of the Park/Streetscape Improvements within ninety-six (96) months after the Effective Date.

(e) If Developer shall fail to Substantially Complete the construction of the Project within ninety-six (96) months after the Effective Date, subject to one automatic twenty-four (24) month extension if Developer has completed Phases 1 and 2 of the Park/Streetscape Improvements within the timeframes set forth in this Agreement and has Commenced Construction of the Project.

(f) If, prior to Substantial Completion of Phase 2 of the Park/Streetscape Improvements, Developer shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all of its property or the major part thereof or if all or a substantial part of the assets of Developer are attached, seized, subjected to a writ or distress warrant, or are levied upon, or come into the possession of any receiver, trustee, custodian or assignee for the benefit of creditors.

(g) If, prior to Substantial Completion of Phase 2 of the Park/Streetscape Improvements, Developer shall commence a voluntary case under the Title 11 of the United States Code (the "Bankruptcy Code"); or an involuntary proceeding is commenced against Developer under the Bankruptcy Code and relief is ordered against Developer, or the petition is controverted but not dismissed or stayed within one hundred fifty (150) days after the commencement of the case, or a custodian (as defined in the Bankruptcy Code) is appointed for or takes charge of all or substantially all of the property of Developer and is not discharged or dismissed within one hundred fifty (150) days; or Developer commences any other proceedings under any reorganization, arrangement, readjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar Law of any jurisdiction whether now or hereafter in effect relating to Developer; or there is commenced against Developer any such proceeding which

remains undismissed or unstayed for a period of one hundred fifty (150) days; or Developer fails to controvert in a timely manner any such case under the Bankruptcy Code or any such proceeding, or any order of relief or other order approving any such case or proceeding is entered; or Developer consents to or approves of, in any such case or proceeding or the appointment of any custodian or the like of or for it for any substantial part of its property or suffers any such appointment to continue undischarged or unstayed for a period of one hundred fifty (150) days.

(h) If, prior to Substantial Completion of Phase 2 of the Park/Streetscape Improvements, Developer shall assign or transfer its rights and/or delegate the performance of its obligations under this Agreement to anyone, at any time, other than a Permitted Transferee without the City's prior written consent and approval, as governed by Section 54.

43. Effect of Cure. Notwithstanding Section 42 or anything else to the contrary, Developer will not be deemed to be in default of this Agreement for any Event of Default that is cured by the Developer, by the Recognized Mortgagee, or by the City's receipt of funds for such Event of Default under the Surety Bond, the Recognition Agreement, or the Payment Bond and/or Performance Bond, as applicable.

44. Enforcement of Performance; Damages and Termination. In the event the City shall claim any Event of Default shall have occurred hereunder, the Developer Default Notice shall state with specificity the provisions of this Agreement under which the Default is claimed, the nature and character of such Event of Default, the date by which such Event of Default must be cured pursuant to this Agreement, if applicable, and, if elected by the City, that the failure of Developer to cure such Default by the date set forth in such notice will result in the City having the right to terminate this Agreement. Subject to the exclusive remedies set forth in Sections 5(d) and 12.3 of this Agreement, if an Event of Default occurs hereunder, the City may elect any one or more of the following remedies as the City's sole and exclusive remedy with respect to such Event of Default:

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

In the event City elects to exercise its remedies pursuant to Sections 5(d) and/or 44(b), Developer shall:

i. Promptly deliver to the City all submittals and Park/Streetscape Improvements records in their original/native electronic format (i.e. CAD, Word, BIM, Excel, etc.), any and all other unfinished documents, and any and all warranties for work, equipment or materials already installed or purchased, to the extent the same are in Developer's possession;

ii. As directed by the City, transfer or cause the Contractor to transfer title and deliver or demand that the Contractor deliver to the City (1) the fabricated and non-fabricated parts, work in progress, completed work, supplies and other material produced or required for the work; and (2) the completed or partially completed project records that, had the work been completed, would be

required to be furnished to the City, to the extent the same are in Developer's possession; and

iii. Take any action that may be reasonably necessary, or that the City may reasonably direct, for the protection and preservation of the property related to this Development Agreement that is in Developer's possession and in which the City has or may acquire an interest.

The rights and remedies of the City in this Section 44 shall apply to all Events of Default that fail to be cured within the applicable cure period or are cured but in an untimely manner, and the City shall not be obligated to accept such late cure.

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

45. Termination Outside of Default.

(a) Developer Termination. Notwithstanding anything to the contrary in this Agreement, Developer shall have the right to terminate this Agreement and be released from its liability and obligations hereunder by written notice to City delivered not later than on the Park/Streetscape Construction Commencement Date if any of the following occurs: (a) changes to the Park/Streetscape Improvements, the Park/Streetscape Concept Plan, the Plans and Specifications or any other aspect required by the HPB, Planning Board, or any other governmental or regulatory authority (including the City) render the Project or the Park/Streetscape Improvements economically unfeasible in the sole judgment of Developer; (b) the Project cannot meet Concurrency Requirements under Section 163.3180, Florida Statutes (1997), or the costs of concurrency mitigation, in the sole judgment of Developer, render the Project or the Park/Streetscape Improvements economically unfeasible; (c) Developer, after good-faith efforts, has been unable to obtain Final Approval of all Permits and Approvals for the Project or the Park/Streetscape Improvements; or (d) after good-faith efforts, Developer has not been able to arrange appropriate financing for the Project or the Park/Streetscape Improvements. In the event of termination of this Agreement pursuant to this Section, each Party shall bear its own costs and expenses incurred in connection with this Agreement and neither Party shall have any further liability to the other except for any matters that expressly survive termination of this Agreement. The right of termination pursuant to this Section shall expire and become void if not exercised by Developer on or prior to the Park/Streetscape Construction Commencement Date. If Developer exercises its right of termination under this Section 45(a), then the Parties shall promptly schedule a closing for the unwinding of the Closing consummated in Section 5 of this Agreement (the "Unwinding Closing"), at which time the Parties shall execute, exchange, and, if applicable, record such documents and instruments as are necessary or convenient to vest the Parties with the respective rights and interests each Party possessed, and leave each Party in the position it enjoyed, prior to the Closing, as if the Closing had not occurred and as if this Agreement had not been signed, but excluding the refund of any monies expended or costs incurred by either Party in performing such Party's obligations under this Agreement prior to

Developer's exercise of such right of termination. Developer further agrees to reimburse the City for the reasonable out-of-pocket costs and expenses actually incurred by the City for the mechanics of unwinding the Closing (the "City Unwinding Expenses"), regardless of when the Unwinding Closing occurs. If the Developer terminates this Agreement pursuant to this Section 45 after the Closing but prior to Commencement of Construction of the Park/Streetscape Improvements, the City will, no later than three (3) Business Days after the Unwinding Closing, submit a written invoice to the Developer and Escrow Agent detailing the City Unwinding Expenses. Escrow Agent will, no later than three (3) Business Days after receiving such invoice, pay to the City from the Unwinding Funds an amount sufficient to cover the City Unwinding Expenses and will return the remaining balance of the Unwinding Funds, if any, to the Developer. If the Unwinding Funds are not sufficient to cover the City Unwinding Expenses, the Developer will pay the deficiency to the City no later than three (3) Business Days after the Developer receives written notice from the City and/or Escrow Agent of the deficiency. If the Developer does not terminate this Agreement for convenience prior to Commencement of Construction of the Park/Streetscape Improvements, then Escrow Agent will return the Unwinding Funds to Developer in full no later than three (3) Business Days after such Commencement of Construction. The Parties agree to accept and abide by such terms and conditions of escrow as Escrow Agent reasonably requests to implement the intent of, and avoid or resolve disputes regarding, the Unwinding Escrow.

(b) Effect. In the event that either Party chooses to exercise its express right to terminate this Agreement for convenience (including, without limitation, under Section 45(a) above), but apart from such Party's right to terminate in an Event of Default by the other Party, then each Party shall bear its own costs and expenses incurred in connection with this Agreement and the Project, and neither Party shall have or owe any further liability to the other Party.

46. Strict Performance; Waiver. No failure by the City or Developer to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy available to such Party by reason of the other Party's default or an Event of Default hereunder shall constitute a waiver of any such default, Event of Default or of such other covenant, agreement, term or condition hereunder.

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

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

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

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

If to Developer at: 1035 N. Miami Avenue, Suite 201
Miami, Florida 33136
Attn: Sandor Scher
sscher@clarocorp.com

With a copy to: Akerman LLP
98 SE 7 Street, Suite 1100
Miami, FL 33131
Attn: Neisen O. Kasdin, Esq.
neisen.kasdin@akerman.com

Notices personally delivered or sent by electronic mail or by overnight courier shall be deemed given on the date of delivery (or upon refusal of such delivery), and notices mailed in accordance with the foregoing shall be deemed given three (3) Business Days after deposit in the U.S. mails. The terms of this Section 47 shall survive the termination of this Agreement.

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

49. 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.

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

51. Entire Agreement. This Agreement, together with its exhibits and all other documents referenced herein, constitutes the entire agreement and understanding among the parties with respect to the subject matter hereof, and there are no other agreements,

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

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

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

54. Transfer, Assignment, and Delegation.

(a) By Developer. Developer may, in its sole discretion, assign or transfer its rights and/or delegate the performance of its obligations under this Agreement pertaining to those portions of the Project other than the Park/Streetscape Improvements, in whole or in part, to anyone at any time, without the City's prior written consent or other approval. With respect to transfers, assignments, and delegations of Developer's rights and obligations pertaining to the Park/Streetscape Improvements, the following shall apply:

i. Prior to Substantial Completion of the Park/Streetscape Improvements, Developer may not assign or transfer its rights, or delegate the performance of its obligations, pertaining to the Park/Streetscape Improvements under this Agreement, in whole or in part, to any third party other than a Permitted Transferee, unless Developer first obtains the City's prior written consent, which consent the City may withhold in its sole discretion.

ii. Following Substantial Completion of the Park/Streetscape Improvements, Developer may, in its sole discretion, assign or transfer its rights or delegate the performance of its obligations pertaining to the Park/Streetscape Improvements under this Agreement, in whole or in part, to anyone at any time, without the City's prior written consent or other approval.

Notwithstanding the foregoing or anything else to the contrary, the City's prior written consent shall not be required to allow (i) any financing or refinancing of all or any portion of the Project, including, without limitation, the granting of any mortgage, the foreclosure by any mortgagee thereunder (or designee of such mortgagee), or the transfer or conveyance to such mortgagee or designee by deed or assignment in lieu of foreclosure; or (ii) the submission of all or any portion of the Project to a condominium form of ownership under Chapter 718, Florida Statutes, the creation of an organization of unit owners and/or parcel owners, or the sale of condominium units or other types of individually conveyable units or parcels within the Project. Upon the recordation of a declaration in the public records submitting all or any portion of the Project to a condominium form of ownership or other form of ownership governed by an organization of unit/parcel owners, the obligations of Developer hereunder pertaining to such portion(s) of the Project, as applicable, shall be binding only upon the organization of unit/parcel owners, and not upon the declarant or

any particular unit/parcel owner except to the extent otherwise specifically provided in such declaration.

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

(c) Notice; Effect; Invalidity. A Party making any transfer, assignment, or delegation under this Agreement shall, no later than twenty (20) Business Days after completing such transaction, deliver to the other Party a written notice specifying the nature and effective date of such transfer, assignment, or delegation. Any transferee, assignee, or delegatee (including through foreclosure or deed-in-lieu thereof) shall assume all of the obligations expressly transferred, assigned, or delegated. Upon any transfer, assignment, or delegation carried out in accordance with this Section, the obligations transferred, assigned, or delegated shall be binding only on such Party's transferee, assignee, or delegatee, as the case may be, and the other Party shall look only to such transferee, assignee, or delegatee for performance of the obligations being transferred, assigned, or delegated. Any purported assignment or transfer of rights, or delegation of performance, in violation of this Section is void.

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

In addition, if, due to Economic Force Majeure, Developer is delayed, hindered, or prevented from being able to obtain or maintain adequate financing for the Park/Streetscape Improvements or for the Project or is otherwise unable to satisfy any Development Default Deadline, then all Development Default Deadlines shall be extended for the period of such delay (but not to exceed the total aggregate maximum period of thirty (30) months for all events of Economic Force Majeure that may arise throughout the term of this Agreement); provided, that, with respect to any such delay by Economic Force Majeure, Developer shall give written notice of such occurrence to City describing in reasonable detail the events giving rise to the Economic Force Majeure, and the date of commencement thereof. Developer shall use good-faith, diligent, efforts to attempt to remove, resolve, or otherwise seek to mitigate such delay, shall advise the City periodically of such efforts, and shall notify the City of the date of cessation of the event of Economic Force Majeure (or the date Developer elects to no longer claim an extension of time therefor), to permit the City and Developer to track development deadlines and ensure the maximum aggregate extension of thirty (30) months for Economic Force Majeure is not exceeded. Time is of the essence with respect to this provision.

In the event that a third party (unrelated or unaffiliated with the City or the Developer) institutes any action, suit, or proceeding relating to the Project (including, without limitation, any action, suit, or proceeding challenging the validity of this Agreement or any element of the

proposed transaction, or the validity or issuance of the Vacation Resolution, the Project Zoning Approvals, the Park/Streetscape Zoning Approval, any amendments to the Comprehensive Plan or Land Development Regulations relating to the Project or to the Park/Streetscape Improvements, or any other Permits and Approvals relating to the Project or to the Park/Streetscape Improvements (in each instance, including any related appeals and appeal periods, a "Lawsuit"), then the Developer shall, at its option, either: (i) attempt to defend such Lawsuit at its sole cost and using legal counsel reasonably acceptable to the City, in which case all time periods in this Agreement and in any Permits and Approvals issued in connection with the Project and/or the Park/Streetscape Improvements, whether express or implied, shall be tolled automatically through all levels of appeal until such Lawsuit has been finally disposed of (by judgement, settlement or otherwise) to Developer's satisfaction; or (ii) terminate this Agreement in accordance with Section 45. Developer shall indemnify and hold the City harmless from and against all actual claims, injury, damage, loss and liability, cost and expense (including attorneys' fees, costs and expenses) of any and every kind arising out of or relating to any such Lawsuit, except to the extent arising out of or related to the City's negligence or misconduct. Developer shall be entitled to control the defense and conduct of any such Lawsuit and to compromise, settle, or abandon the Lawsuit, in its sole discretion, and the City agrees to reasonably cooperate with Developer (at no expense to the City) in connection with the conduct of any such Lawsuit. This Section shall survive the termination or expiration of this Agreement.

In addition, if a Lawsuit is commenced prior to the City's approval of the Vacation Resolution, then the City shall not be required to effectuate the vacation of the City Parcel until thirty (30) days after the Lawsuit has been finally disposed of (whether by judgment, settlement, or otherwise) on terms and conditions acceptable to Developer in its sole discretion; provided, however, that if such 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 such Lawsuit remains unresolved, elect to terminate this Agreement by delivering a written notice of termination to the other Party, whereupon the Vacation Resolution application shall be withdrawn and the Agreement shall be terminated, and the City and Developer shall have no further obligation and/or liability to each other.

56. Indemnification. In addition to the indemnification obligations provided elsewhere in this Agreement, and subject to the City's liability limitations as set forth herein and in Section 60 below, each Party hereby agrees to defend, indemnify and hold harmless the other Party, its agents and employees, from and against all actual, documented loss, cost, expense, claim, demand or cause of action of whatever kind or nature arising out of or related to the gross negligence or willful misconduct of such Party and/or its officers, directors, officials, employees, contractors, and agents, related to (i) this Agreement, (ii) the Project; and/or (iii) the Park/Streetscape Improvements, except to the extent arising out of or related to the gross negligence or willful misconduct of the other Party and/or its officers, directors, officials, employees, contractors, or agents (collectively, "Losses"). The indemnifying Party shall directly pay all actual, documented costs and expenses related to any cost charged or legal defense required by the other Party, using legal counsel reasonably acceptable to the other Party (but subject to the requirements of the indemnifying Party's insurers), pursuant to the foregoing indemnification obligation. The non-indemnifying Party shall notify the indemnifying Party of any Losses promptly after receiving notice of same and shall reasonably cooperate and collaborate (but at no expense to the non-indemnifying Party) with the indemnifying Party in connection with any legal proceeding in which the indemnifying Party is defending the other Party hereunder. This Section shall survive termination or expiration of this Agreement. City's indemnity obligations herein shall be solely to the extent and limits permitted by Section 768.28 of the Florida Statutes,

and without waiver of any rights or defenses thereunder or any privileges or immunities afforded to the City under the laws of the State of Florida.

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

58. No Conflict of Interest. Developer represents and warrants that, to Developer's knowledge, no member, official or employee of the City has any direct or indirect financial interest in this Agreement nor has participated in any decision relating to this Agreement that is prohibited by law. Developer represents and warrants that, to Developer's knowledge, no officer, agent, employee, or representative of the City has received any payment or other consideration for the making of this Agreement, directly or indirectly, from Developer.

59. 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.

60. Limitations of Liability.

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

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

60.3 Other than as provided in the City Parcel Easement, City will not be liable to Developer or to any other person for any injury or damage to any property of Developer or to any person or to the City Parcel caused by or resulting from gasoline, oil, steam, gas, electricity,

or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the City Parcel or the Park/Streetscape 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 City, its agents, contractors or employees).

60.4 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/Streetscape Improvements by the City under this Agreement, shall render the City liable for its failure to discover any defects or nonconformance with any governmental requirement.

60.5 Developer shall, pursuant to and in accordance with the terms and conditions of the City Parcel Easement, make the City Parcel available to the public free of charge for outdoor recreational purposes. Accordingly, to the maximum extent permitted by law, Developer may avail itself of the limitations of liability afforded pursuant to Section 375.251, Florida Statutes, to the fullest extent applicable to the City Parcel Easement.

61. Police Power.

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

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

62. Art in Public Places. Developer shall comply with the City's Art In Public Places program requirements under Section 82-536 through 82-612 of the City Code, as applicable (the "AIPP Ordinance"), and shall pay to the City's Art in Public Places fund the total of 2.0% of the "construction cost" (as such term is defined in Section 82-537 of the City Code) of the Park/Streetscape Improvements (the "Public Art Funds") no later than the date of execution of Construction Agreement with the Contractor for the Park/Streetscape Improvements. The full amount of the Public Art Funds shall be dedicated to Developer's use for public art within the Park/Streetscape Site. In view of the Developer's overall design responsibility for the Park/Streetscape Improvements, 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, recommendation and approval; or (b) seek the City Commission's approval of the proposed artworks and waiver of any applicable AIPP Ordinance program requirements, which approval by the City Commission shall not to be unreasonably withheld, conditioned or delayed.

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

64. 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.


65. Freedom from Interference. Except as is otherwise expressly provided in this Agreement, Developer shall have discretion, control, and authority, free from interference, interruption, or disturbance by the City, in all matters relating to the development, design, permitting, and construction of the Project and the Park/Streetscape Improvements, including, among others, with respect to the following specific matters: (i) the selection, approval, hiring, and discharge of architects, engineers, contractors, subcontractors, professionals, and other third parties on such terms and conditions as Developer deems appropriate in its sole discretion, provided that the Contractor for the Park/Streetscape Improvements must be duly licensed by the State of Florida, must satisfy the insurance and bonding requirements set forth in Exhibit "N" to this Agreement, and must have completed at least two (2) projects with an estimated value of at least Ten Million Dollars (\$10,000,000.00) each during the five (5) years immediately preceding the Contractor's engagement for the Park/Streetscape Improvements, and provided further that the landscape architect for the Park/Streetscape Improvements, if other than Raymond Jungles, must be approved in advance by City, but the City will not unreasonably withhold, condition, or delay such approval; (ii) the negotiation and execution of contracts, agreements, instruments, covenants, and other documents with third parties, in form and substance satisfactory to Developer in its sole discretion; and (iii) the preparation of such budgets, cost estimates, financial projections, statements, information, and reports as Developer deems appropriate in its sole discretion.

66. Estoppel. The City will, no later than fifteen (15) Business Days after a written request therefor by Developer, by any Recognized Mortgagee, or by anyone claiming by or through Developer (including, without limitation, Developer's successors, assigns, transferees, and mortgagees and other lenders providing financing for the Project or the Park/Streetscape Improvements), and upon payment of the reasonable fees to cover the City's expenses for any third-party resources required to comply, issue a written estoppel certificate, in recordable form, to the requesting party, certifying as to any matter related to this Agreement that the requesting party may reasonably request of the City, including, without limitation, (i) that this Agreement, or any particular paragraph or section of this Agreement specified by the requesting party, is in full force and effect and unmodified (or in what respects this Agreement is no longer in force or effect or has been modified); (ii) that all monies due and payable under this Agreement, if any, have been paid (or in what respects monies are owed); and (iii) that to the City's knowledge, Developer is in compliance with this Agreement or with any particular paragraph or section hereof specified by the requesting party (or in what respects there is noncompliance). Such estoppel certificates will be binding on the City and its successors and assigns, and may be relied upon by Developer, its mortgagees and lenders, and by all others claiming by or through Developer. Notwithstanding the foregoing section or any representations in any estoppel certificates issued thereunder, City shall not be estopped as to matters to which it did not have knowledge.

[Signatures Follow]


Signed, sealed and delivered
in the presence of:

7410 OCEAN TERRACE LLC,
a Delaware limited liability company


Print Name: Denise Wirschet

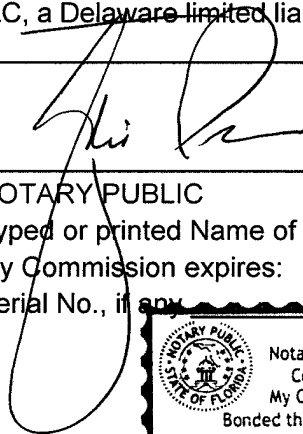
By: OCEAN TERRACE HOLDINGS, LLC,
a Delaware limited liability company,
its sole member


Print Name: Kevin DiCalvo

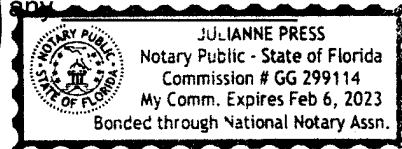
By: 
Sandor Scher
Manager

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

The foregoing instrument was acknowledged before me this 31st day of July 2019
by Sandor Scher, as ~~Manager~~ of Ocean Terrace Holdings, LLC, a Delaware limited liability
company, the sole member of 7410 Ocean Terrace LLC, a ~~Delaware limited liability~~ company. He
is personally known to me or has produced _____ as identification
and who did/did not take an oath.

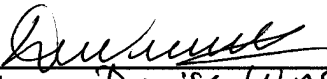


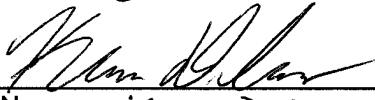
NOTARY PUBLIC
Typed or printed Name of Notary
My Commission expires:
Serial No., if any _____




Signed, sealed and delivered
in the presence of:

7421 COLLINS AVE INVESTMENT, LLC,
a Florida limited liability company


Print Name: Denise Winsoliel

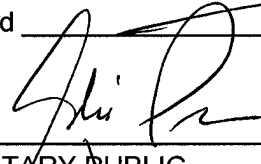

Print Name: Kevin DiCalvo

By: OCEAN TERRACE HOLDINGS, LLC,
a Delaware limited liability company,
its sole member

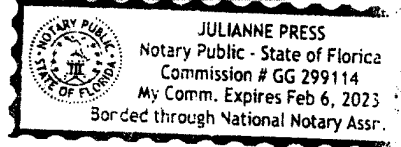
By: 
Sandor Scher
Manager

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

The foregoing instrument was acknowledged before me this 31st day of July 2019
by Sandor Scher, as Manager of Ocean Terrace Holdings, LLC, a Delaware limited liability
company, the sole member of 7421 Collins Ave Investment, LLC, a Florida limited liability
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



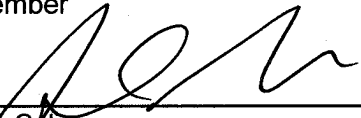
Signed, sealed and delivered
in the presence of:

7433 COLLINS AVE INVESTMENT, LLC,
a Florida limited liability company


Print Name: Denise Winschel

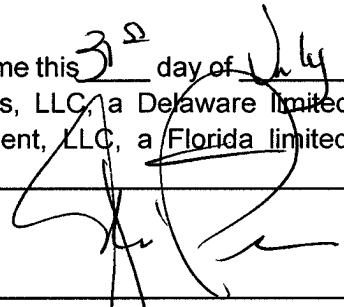

Print Name: Kevin DiCalvo

By: OCEAN TERRACE HOLDINGS, LLC,
a Delaware limited liability company,
its sole member

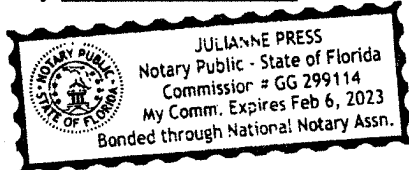
By: 
Sandor Scher
Manager

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

The foregoing instrument was acknowledged before me this 3rd day of July 2019
by Sandor Scher, as Manager of Ocean Terrace Holdings, LLC, a Delaware limited liability
company, the sole member of 7433 Collins Ave Investment, LLC, a Florida limited liability
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 _____



Signed, sealed and delivered
in the presence of:

7439 COLLINS AVE INVESTMENT LLC,
a Florida limited liability company

Denise Winschel
Print Name: Denise Winschel

Kevin DiCello
Print Name: Kevin DiCello

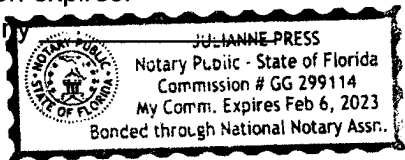
By: OCEAN TERRACE HOLDINGS, LLC,
a Delaware limited liability company,
its sole member

By: *Sandor Scher*
Sandor Scher
Manager

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

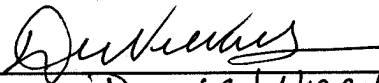
The foregoing instrument was acknowledged before me this 31st day of July 2019
by Sandor Scher, as Manager of Ocean Terrace Holdings, LLC, a Delaware limited liability
company, the sole member of 7439 Collins Ave Investment LLC, a Florida limited liability
company. He is personally known to me or has produced _____ as
identification and ~~who~~ did/did not take an oath.


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




Signed, sealed and delivered
in the presence of:

7441 COLLINS AVE INVESTMENT, LLC,
a Delaware limited liability company


Print Name: Denise Wunsche

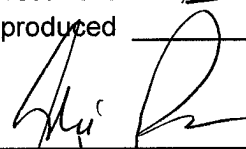

Print Name: Kevin DiCato

By: OCEAN TERRACE HOLDINGS, LLC,
a Delaware limited liability company,
its sole member

By: 
Sandor Scher
Manager

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

The foregoing instrument was acknowledged before me this 31st day of July 2019
by Sandor Scher, as Manager of Ocean Terrace Holdings, LLC, a Delaware limited liability
company, the sole member of 7441 Collins Ave Investment LLC, a Delaware limited liability
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

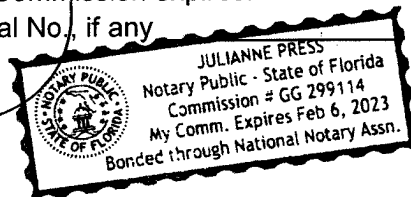


Exhibit "A"

The Developer Property

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 in Block 1 of Harding Townsite, according to the Plat thereof, as recorded in Plat Book 34, Page 4, of the Public Records of Miami-Dade County, Florida.

Exhibit "B"

Reversionary Interest

see following page(s)

49033720;1

LEGAL DESCRIPTION:

A portion of the Public Reservation shown on Plat of TOWNSITE OF HARDING, according to the Plat thereof, as recorded in Plat Book 34 at Page 4, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Commence at the Southeast corner of Lot 7 in Block 1, of said Plat of TOWNSITE OF HARDING; thence South 02°58'50" East, along the Southerly prolongation of the West Right-of-Way line of Ocean Terrace, (First Avenue per Plat Book 34 at Page 4), for 30.00 feet to a point on the center line of 74th Street (Second Street per Plat Book 34 at Page 4); thence North 86°59'28" East, along said center line, for 60.00 feet to a point on the East Right-of-Way line of said Ocean Terrace and the Point of Beginning; thence continue North 86°59'28" East, along said center line, for 31.53 feet to a point on the East line of said Public Reservation; thence North 04°12'42" West, along said East line, for 420.09 feet to a point on the North line of Government Lot 7, lying in Section 2, Township 53 South, Range 42 East, also being the North line of Plat Book 34 at Page 4; thence South 86°59'28" West along said North line of Government Lot 7 for 22.50 feet to a point on said East Right-of-Way line of Ocean Terrace, also being the West line of said Public Reservation; thence South 02°58'50" East, along said East Right-of-Way line and West line, for 420.00 feet to the Point of Beginning.

SURVEYOR'S NOTES:

- This site lies in Section 2, Township 53 South, Range 42 East, City of Miami Beach, Miami-Dade County, Florida.
- Bearings hereon are referred to an assumed value of N 02°58'50" W for the centerline of Collins Avenue.
- Lands shown hereon were not abstracted for easements and/or rights-of-way of records.
- Lands shown hereon containing 11,346 square feet, or 0.260 acres, more or less.
- This is not a "Boundary Survey" but only a graphic depiction of the description shown hereon.
- Dimensions shown hereon are based on Fortin, Leavy, Skiles, sketch #2016-170-NGVD.

SURVEYOR'S CERTIFICATION:

I hereby certify that this "Sketch of Description" was made under my responsible charge on May 8, 2019, and meets the applicable codes as set forth in the Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

"Not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper"

FORTIN, LEAVY, SKILES, INC., LB3653

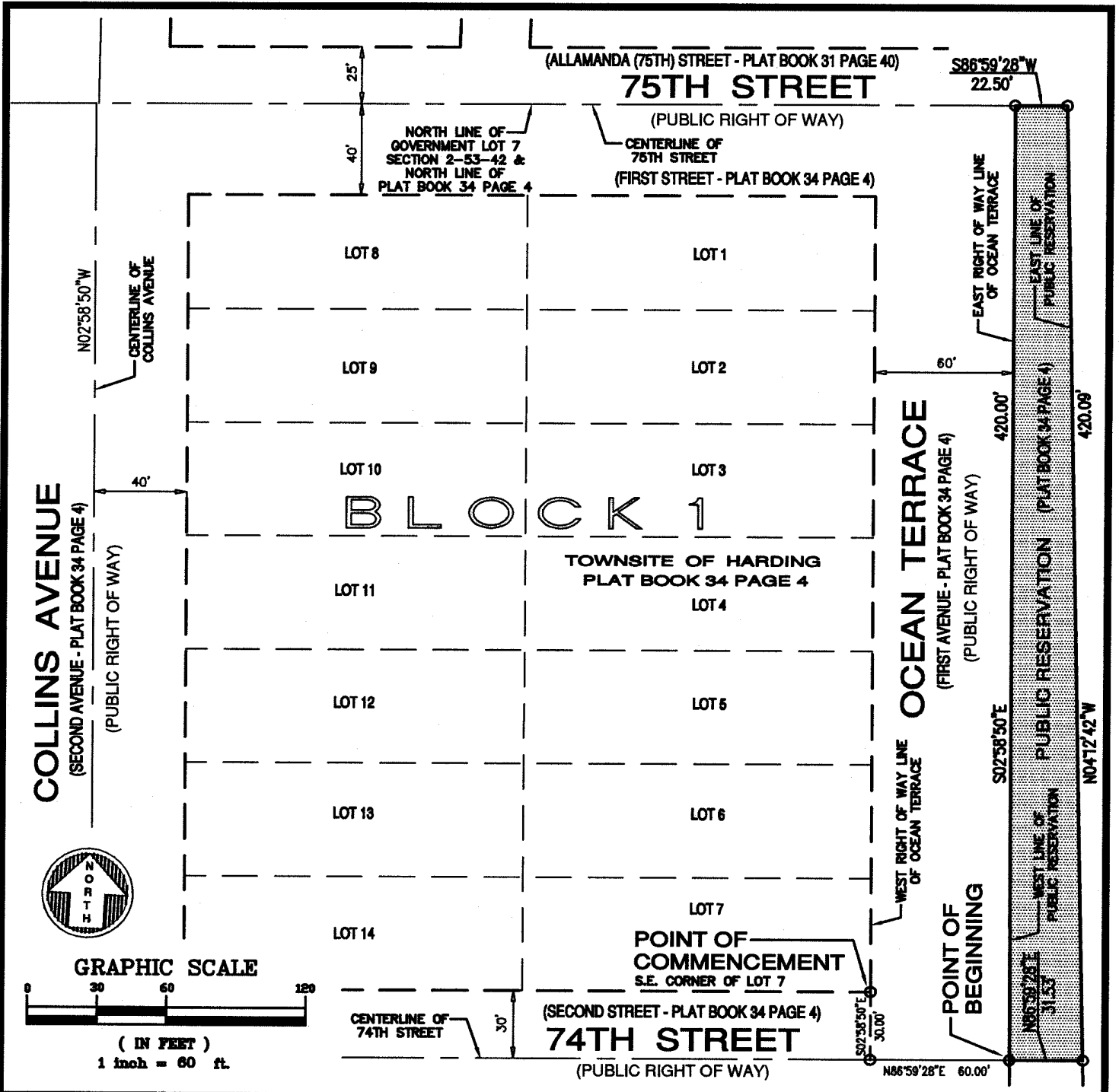
By: _____
 Daniel C. Fortin, Jr., For The Firm
 Surveyor and Mapper, LS6435
 State of Florida.

Drawn By	MAP
Cad. No.	190176
Ref. Dwg.	2016-170
Plotted:	5/9/19 7:29a

LEGAL DESCRIPTION, NOTES & CERTIFICATION

FORTIN, LEAVY, SKILES, INC.
 CONSULTING ENGINEERS, SURVEYORS & MAPPERS
 FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653
 180 Northeast 168th. Street / North Miami Beach, Florida. 33162
 Phone: 305-653-4493 / Fax 305-651-7152 / Email fls@flsurvey.com

Date	5/8/19
Scale	NOT TO SCALE
Job. No.	190441
Dwg. No.	1019-007-K
Sheet	1 of 3

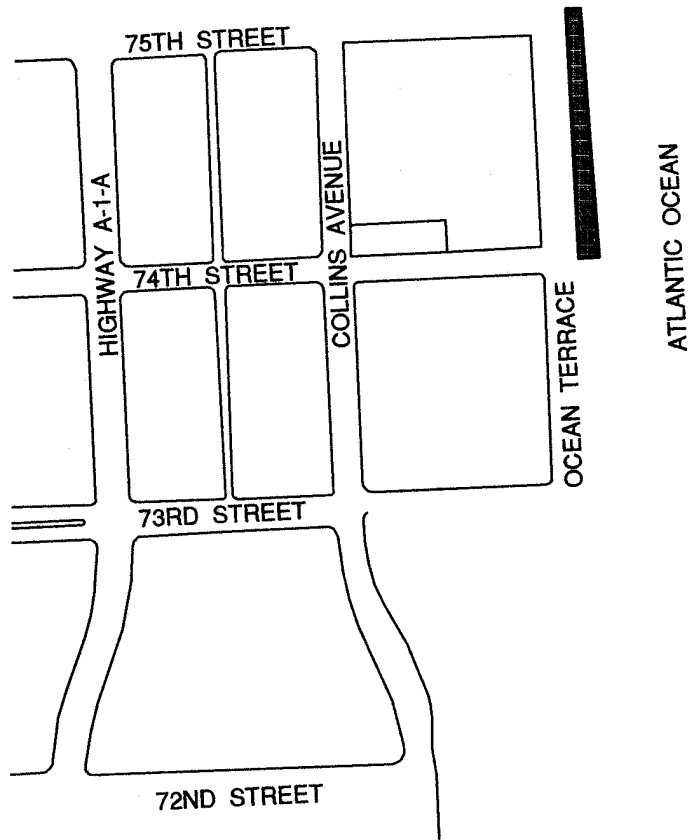


Drawn By	MAP
Cad. No.	190176
Ref. Dwg.	2016-170
Plotted:	5/9/19 7:29a

SKETCH OF DESCRIPTION

FORTIN, LEAVY, SKILES, INC.
CONSULTING ENGINEERS, SURVEYORS & MAPPERS
FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653
180 Northeast 168th Street / North Miami Beach, Florida. 33162
Phone: 305-653-4493 / Fax 305-651-7152 / Email fls@flsurvey.com

Date	5/8/19
Scale	1"=60'
Job. No.	190441
Dwg. No.	1019-007-K
Sheet	2 of 3



Drawn By	MAP
Cad. No.	190176
Ref. Dwg.	2016-170
Plotted:	5/9/19 7:29a

LOCATION SKETCH

FORTIN, LEAVY, SKILES, INC.
 CONSULTING ENGINEERS, SURVEYORS & MAPPERS
 FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653
 180 Northeast 168th. Street / North Miami Beach, Florida. 33162
 Phone: 305-653-4493 / Fax 305-651-7152 / Email fls@flssurvey.com

Date	5/8/19
Scale	NOT TO SCALE
Job. No.	190441
Dwg. No.	1019-007-K
Sheet	3 of 3

Exhibit "C"

75th Street Parcel

see following page(s)

49183387,1

LEGAL DESCRIPTION:

A portion of the Right-of-Way of 75th Street that adjoins Lots 1 and 8 in Block 1, of TOWNSITE OF HARDING, according to the Plat thereof, as recorded in Plat Book 34 at Page 4, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Northeast corner of said Lot 1; thence South 86°59'28" West along the North line of said Lots 1 and 8, also being the South Right-of-Way line of said 75th Street, (First Street per Plat Book 34 at Page 4) for 296.00 feet to the Northwest corner of said Lot 8, also being a point on the East Right-of-Way line of Collins Avenue (Second Avenue per Plat Book 34 at Page 4); thence North 02°58'50" West, along the Northerly prolongation of the West line of said Lot 8, also being said East Right-of-Way line of Collins Avenue for 40.00 feet to a point on the North line of Government Lot 7, lying in Section 2, Township 53 South, Range 42 East, also being the North line of Plat Book 34 at Page 4; thence North 86°59'28" East along said North line of Government Lot 7 for 296.00 feet; thence South 02°58'50" East, along the Northerly prolongation of the East line of said Lot 1, for 40.00 feet to the Point of Beginning.

SURVEYOR'S NOTES:

- This site lies in Section 2, Township 53 South, Range 42 East, City of Miami Beach, Miami-Dade County, Florida.
- Bearings hereon are referred to an assumed value of N 02°58'50" W for the centerline of Collins Avenue.
- Lands shown hereon were not abstracted for easements and/or rights-of-way of records.
- Lands shown hereon containing 11,840 square feet, or 0.272 acres, more or less.
- This is not a "Boundary Survey" but only a graphic depiction of the description shown hereon.
- Dimensions shown hereon are based on Fortin, Leavy, Skiles, sketch #2016-170-NGVD.

SURVEYOR'S CERTIFICATION:

I hereby certify that this "Sketch of Description" was made under my responsible charge on June 13, 2019, and meets the applicable codes as set forth in the Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

"Not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper"

FORTIN, LEAVY, SKILES, INC., LB3653

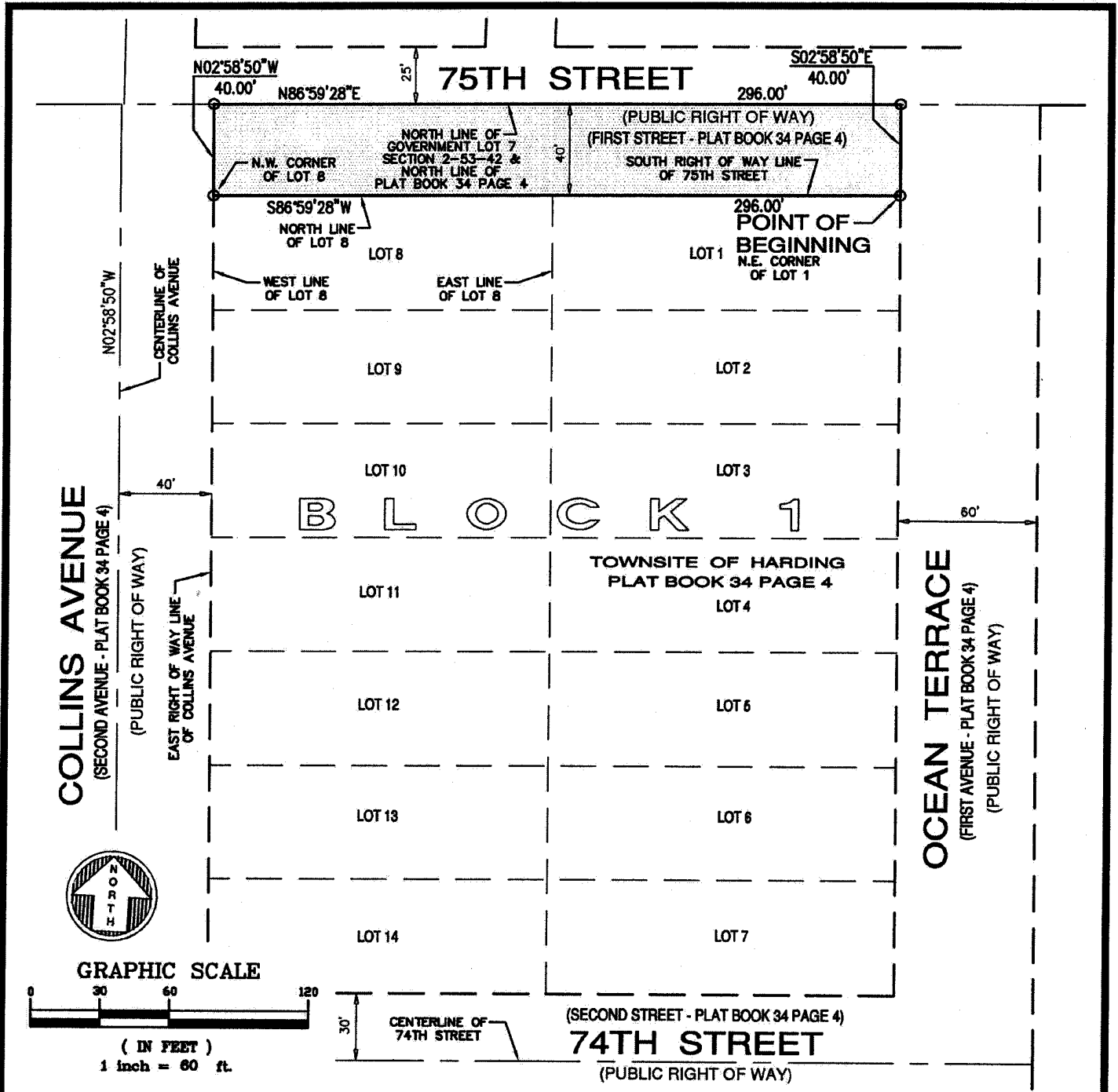
By: _____
Daniel C. Fortin, Jr., For The Firm
Surveyor and Mapper, LS6435
State of Florida.

Drawn By	DANJR
Cad. No.	190176
Ref. Dwg.	2016-170
Plotted:	5/9/19 7:29a

LEGAL DESCRIPTION, NOTES & CERTIFICATION

FORTIN, LEAVY, SKILES, INC.
CONSULTING ENGINEERS, SURVEYORS & MAPPERS
FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653
180 Northeast 168th. Street / North Miami Beach, Florida. 33162
Phone: 305-653-4493 / Fax 305-651-7152 / Email fls@flsurvey.com

Date	6/13/2019
Scale	NOT TO SCALE
Job. No.	190594
Dwg. No.	1019-007-P
Sheet	1 of 3

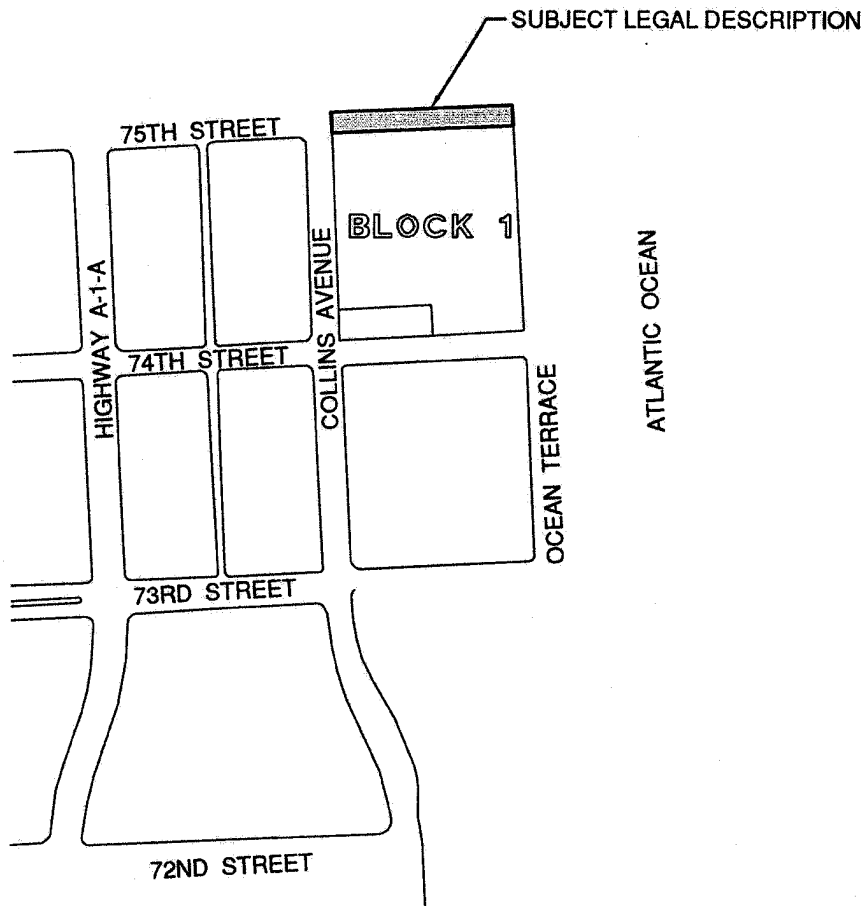


Drawn By	DANJR
Cad. No.	190176
Ref. Dwg.	2016-170
Plotted:	5/9/19 7:29a

SKETCH OF DESCRIPTION

FORTIN, LEAVY, SKILES, INC.
 CONSULTING ENGINEERS, SURVEYORS & MAPPERS
 FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653
 180 Northeast 168th. Street / North Miami Beach, Florida. 33162
 Phone: 305-653-4493 / Fax 305-651-7152 / Email fls@flsurvey.com

Date	6/13/2019
Scale	1"=60'
Job. No.	190594
Dwg. No.	1019-007-P
Sheet	2 of 3



Drawn By DANJR

Cad. No. 190176

Ref. Dwg. 2016-170

Plotted: 5/9/19 7:29a

LOCATION SKETCH

FORTIN, LEAVY, SKILES, INC.
 CONSULTING ENGINEERS, SURVEYORS & MAPPERS
 FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653
 180 Northeast 168th. Street / North Miami Beach, Florida. 33162
 Phone: 305-653-4493 / Fax 305-651-7152 / Email fls@flssurvey.com

Date 6/13/2019

Scale NOT TO SCALE

Job. No. 190176

Dwg. No. 1019-007-P

Sheet 3 of 3

Exhibit "D"

74th Street Parcel

see following page(s)

49183387;1

LEGAL DESCRIPTION:

A portion of the Right-of-Way of 74th Street that adjoins Lots 7 and 14 in Block 1, of TOWNSITE OF HARDING, according to the Plat thereof, as recorded in Plat Book 34 at Page 4, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Southeast corner of said Lot 7; thence South 86°59'28" West, along the South line of said Lots 7 and 14, also being the North Right-of-Way line of 74th Street (Third Street per Plat Book 34 at Page 4), for 296.00 feet to the Southwest corner of said Lot 14; thence South 02°58'50" East, along the Southerly prolongation of the West line of said Lot 14, also being the East Right-of-Way line of Collins Avenue (Second Avenue per Plat Book 34 at Page 4), for 30.00 feet to a point on the center line of said 74th Street; thence North 86°59'28" East, along said center line, for 296.00 feet to a point on the Southerly prolongation of the East line of said Lot 7; thence North 02°58'50" West, along said Southerly prolongation, for 30.00 feet to the Point of Beginning.

SURVEYOR'S NOTES:

- This site lies in Section 2, Township 53 South, Range 42 East, City of Miami Beach, Miami-Dade County, Florida.
- Bearings hereon are referred to an assumed value of N 02°58'50" W for the centerline of Collins Avenue.
- Lands shown hereon were not abstracted for easements and/or rights-of-way of records.
- Lands shown hereon containing 8,880 square feet, or 0.204 acres, more or less.
- This is not a "Boundary Survey" but only a graphic depiction of the description shown hereon.
- Dimensions shown hereon are based on Fortin, Leavy, Skiles, sketch #2016-170-NGVD.

SURVEYOR'S CERTIFICATION:

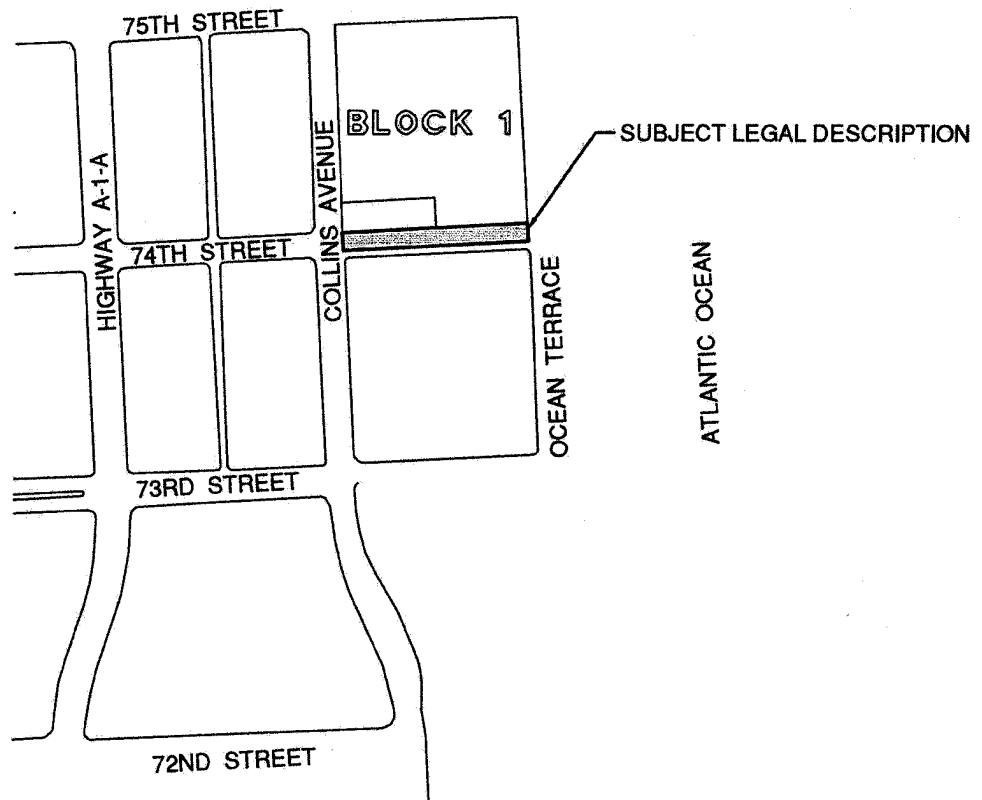
I hereby certify that this "Sketch of Description" was made under my responsible charge on June 13, 2019, and meets the applicable codes as set forth in the Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

"Not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper"

FORTIN, LEAVY, SKILES, INC., LB3653

By: _____
 Daniel C. Fortin, Jr., For The Firm
 Surveyor and Mapper, LS6435
 State of Florida.

Drawn By DANJR	LEGAL DESCRIPTION, NOTES & CERTIFICATION	Date 6/13/2019
Cad. No. 190176		Scale NOT TO SCALE
Ref. Dwg. 2016-170		Job. No. 190594
Plotted: 5/9/19 7:29a		Dwg. No. 1019-007-S
FORTIN, LEAVY, SKILES, INC. CONSULTING ENGINEERS, SURVEYORS & MAPPERS FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653 180 Northeast 168th. Street / North Miami Beach, Florida. 33162 Phone: 305-653-4493 / Fax 305-651-7152 / Email fls@flssurvey.com		Sheet 1 of 3



Drawn By	DANJR
Cad. No.	190176
Ref. Dwg.	2016-170
Plotted:	5/9/19 7:29a

LOCATION SKETCH

FORTIN, LEAVY, SKILES, INC.
 CONSULTING ENGINEERS, SURVEYORS & MAPPERS
 FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653
 180 Northeast 168th. Street / North Miami Beach, Florida. 33162
 Phone: 305-653-4493 / Fax 305-651-7152 / Email fls@flssurvey.com

Date	6/13/2019
Scale	NOT TO SCALE
Job. No.	190594
Dwg. No.	1019-007-S
Sheet	3 of 3

Exhibit "E"

Ocean Terrace Parcel

see following page(s)

49183443;1

LEGAL DESCRIPTION:

A portion of the Right-of-Way of Ocean Terrace that adjoins Lots 1 through 7 in Block 1, of TOWNSITE OF HARDING, according to the Plat thereof, as recorded in Plat Book 34 at Page 4, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Southeast corner of said Lot 7; thence North 02°58'50" West along the East line of said Block 1, also being the West Right-of-Way line of said Ocean Terrace, (First Avenue per Plat Book 34 at Page 4) for 390.00 feet to a point on the North line of Government Lot 7, lying in Section 2, Township 53 South, Range 42 East, also being the North line of Plat Book 34 at Page 4; thence North 86°59'28" East along said North line of Government Lot 7 for 60.00 feet to a point on the East Right-of-Way line of said Ocean Terrace; thence South 02°58'50" East along said East Right-of-Way line for 420.00 feet to the centerline of 74th Street (Second Street per Plat Book 34, Page 4); thence South 86°59'28" West, along said center line, for 60.00 feet; thence North 02°58'50" West along the Southerly extension of said East line of Block 1 for 30.00 feet to the Point of Beginning.

SURVEYOR'S NOTES:

- This site lies in Section 2, Township 53 South, Range 42 East, City of Miami Beach, Miami-Dade County, Florida.
- Bearings hereon are referred to an assumed value of N 02°58'50" W for the centerline of Collins Avenue.
- Lands shown hereon were not abstracted for easements and/or rights-of-way of records.
- Lands shown hereon containing 25,200 square feet, or 0.537 acres, more or less.
- This is not a "Boundary Survey" but only a graphic depiction of the description shown hereon.
- Dimensions shown hereon are based on Fortin, Leavy, Skiles, sketch #2016-170-NGVD.

SURVEYOR'S CERTIFICATION:

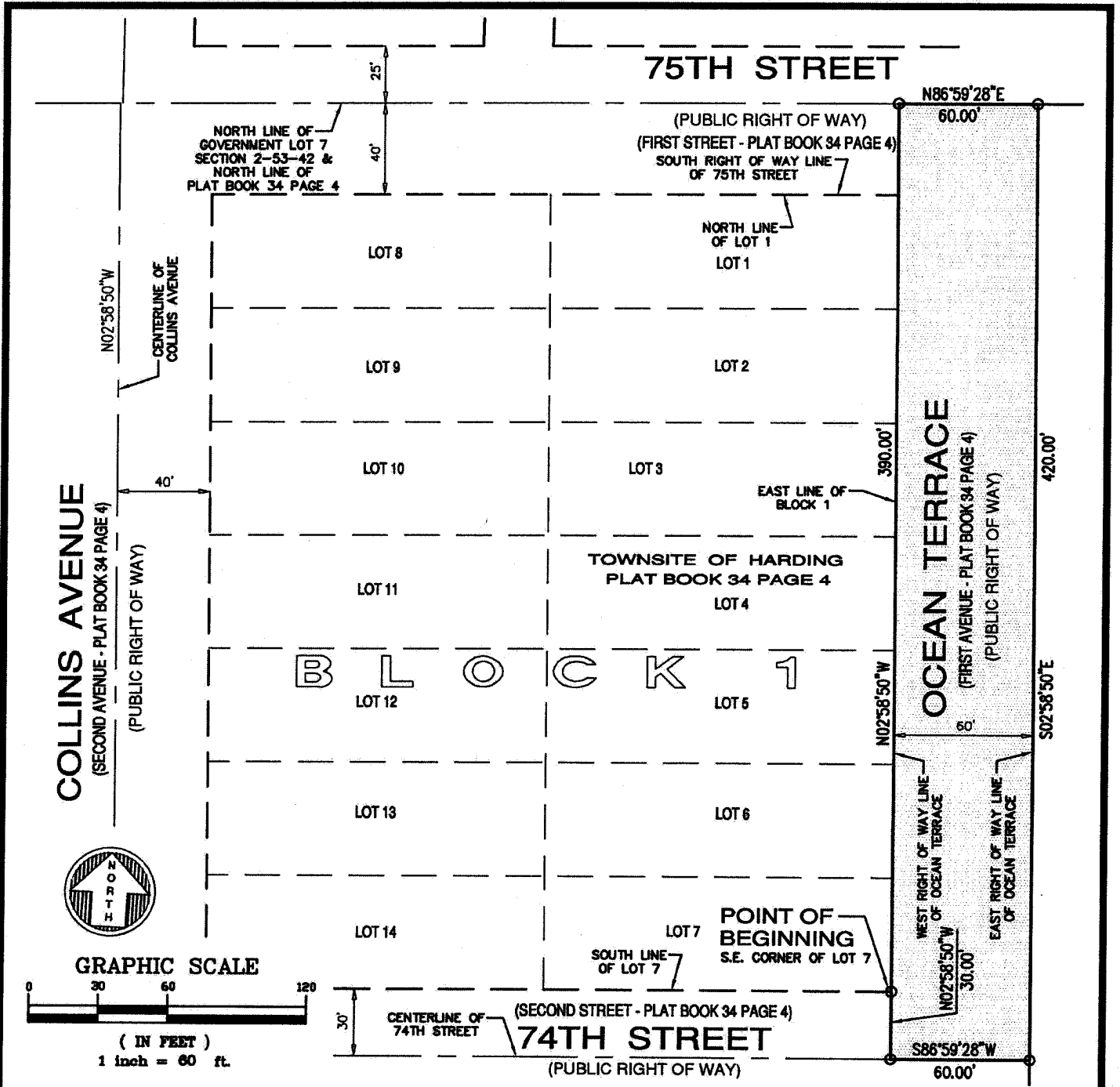
I hereby certify that this "Sketch of Description" was made under my responsible charge on June 13, 2019, and meets the applicable codes as set forth in the Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

"Not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper"

FORTIN, LEAVY, SKILES, INC., LB3653

By: _____
 Daniel C. Fortin, Jr., For The Firm
 Surveyor and Mapper, LS6435
 State of Florida.

Drawn By DANJR	LEGAL DESCRIPTION, NOTES & CERTIFICATION FORTIN, LEAVY, SKILES, INC. CONSULTING ENGINEERS, SURVEYORS & MAPPERS FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653 180 Northeast 168th. Street / North Miami Beach, Florida. 33162 Phone: 305-633-4493 / Fax 305-651-7152 / Email fls@flsurvey.com	Date 6/13/2019
Cad. No. 190176		Scale NOT TO SCALE
Ref. Dwg. 2016-170		Job. No. 190594
Plotted: 5/9/19 7:29a		Dwg. No. 1019-007-Q
		Sheet 1 of 3

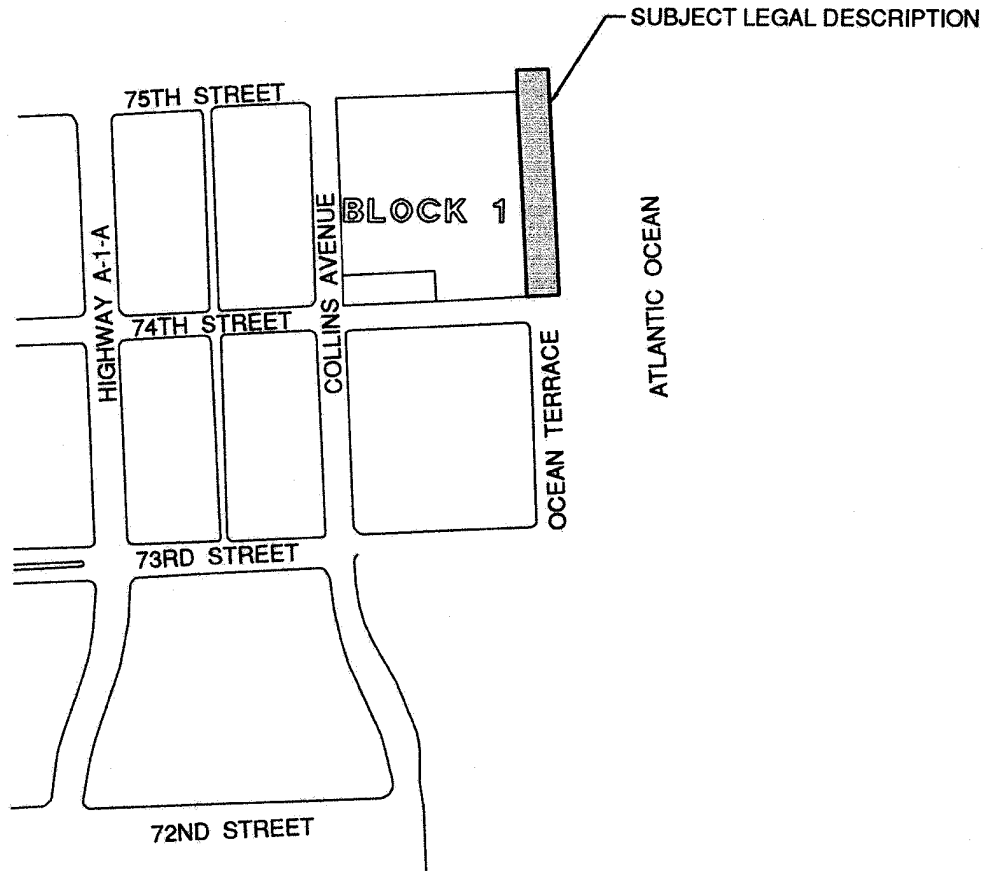


Drawn By	DANJR
Cad. No.	190176
Ref. Dwg.	2016-170
Plotted:	5/9/19 7:29a

SKETCH OF DESCRIPTION

FORTIN, LEAVY, SKILES, INC.
 CONSULTING ENGINEERS, SURVEYORS & MAPPERS
 FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653
 180 Northeast 168th. Street / North Miami Beach, Florida. 33162
 Phone: 305-653-4493 / Fax 305-651-7152 / Email fls@flssurvey.com

Date	6/13/2019
Scale	1"=60'
Job. No.	190594
Dwg. No.	1019-007-Q
Sheet	2 of 3



Drawn By	DANJR
Cad. No.	190176
Ref. Dwg.	2016-170
Plotted:	5/9/19 7:29a

LOCATION SKETCH

FORTIN, LEAVY, SKILES, INC.
 CONSULTING ENGINEERS, SURVEYORS & MAPPERS
 FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653
 180 Northeast 168th. Street / North Miami Beach, Florida. 33162
 Phone: 305-653-4493 / Fax 305-651-7152 / Email fls@flssurvey.com

Date	6/13/2019
Scale	NOT TO SCALE
Job. No.	190594
Dwg. No.	1019-007-Q
Sheet	3 of 3

Exhibit "F"

Development Site

Developer Property

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 in Block 1 of Harding Townsite, according to the Plat thereof, as recorded in Plat Book 34, Page 4, of the Public Records of Miami-Dade County, Florida.

Ocean Terrace Parcel

A portion of the Right-of-Way of Ocean Terrace that adjoins Lots 1 through 7 in Block 1, of TOWNSITE OF HARDING, according to the Plat thereof, as recorded in Plat Book 34 at Page 4, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Southeast corner of said Lot 7; thence North 02°58'50" West along the East line of said Block 1, also being the West Right-of-Way line of said Ocean Terrace, (First Avenue per Plat Book 34 at Page 4) for 390.00 feet to a point on the North line of Government Lot 7, lying in Section 2, Township 53 South, Range 42 East, also being the North line of Plat Book 34 at Page 4; thence North 86°59'28" East along said North line of Government Lot 7 for 60.00 feet to a point on the East Right-of-Way line of said Ocean Terrace; thence South 02°58'50" East along said East Right-of-Way line for 420.00 feet to the centerline of 74th Street (Second Street per Plat Book 34, Page 4); thence South 86°59'28" West, along said center line, for 60.00 feet; thence North 02°58'50" West along the Southerly extension of said East line of Block 1 for 30.00 feet to the Point of Beginning.

74th Street Parcel

A portion of the Right-of-Way of 74th Street that adjoins Lots 7 and 14 in Block 1, of TOWNSITE OF HARDING, according to the Plat thereof, as recorded in Plat Book 34 at Page 4, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Southeast corner of said Lot 7; thence South 86°59'28" West, along the South line of said Lots 7 and 14, also being the North Right-of-Way line of 74th Street (Third Street per Plat Book 34 at Page 4), for 296.00 feet to the Southwest corner of said Lot 14; thence South 02°58'50" East, along the Southerly prolongation of the West line of said Lot 14, also being the East Right-of-Way line of Collins Avenue (Second Avenue per Plat Book 34 at Page 4), for 30.00 feet to a point on the center line of said 74th Street; thence North 86°59'28" East, along said center line, for 296.00 feet to a point on the Southerly prolongation of the East line of said Lot 7; thence North

02°58'50" West, along said Southerly prolongation, for 30.00 feet to the Point of Beginning.

75th Street Parcel

A portion of the Right-of-Way of 75th Street that adjoins Lots 1 and 8 in Block 1, of TOWNSITE OF HARDING, according to the Plat thereof, as recorded in Plat Book 34 at Page 4, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Northeast corner of said Lot 1; thence South 86°59'28" West along the North line of said Lots 1 and 8, also being the South Right-of-Way line of said 75th Street, (First Street per Plat Book 34 at Page 4) for 296.00 feet to the Northwest corner of said Lot 8, also being a point on the East Right-of-Way line of Collins Avenue (Second Avenue per Plat Book 34 at Page 4); thence North 02°58'50" West, along the Northerly prolongation of the West line of said Lot 8, also being said East Right-of-Way line of Collins Avenue for 40.00 feet to a point on the North line of Government Lot 7, lying in Section 2, Township 53 South, Range 42 East, also being the North line of Plat Book 34 at Page 4; thence North 86°59'28" East along said North line of Government Lot 7 for 296.00 feet; thence South 02°58'50" East, along the Northerly prolongation of the East line of said Lot 1, for 40.00 feet to the Point of Beginning.

Exhibit "G"

the Park/Streetscape Site

- Ocean Terrace between the City Library property and the Bandshell Park
- 73, 74 and 75 Streets between Collins Avenue and Ocean Terrace

EXHIBIT H

Prepared by and Return to:

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

(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 following covenants that will run with the title to the land, which shall be binding on the Owners, their heirs, successors, assigns, personal representatives, mortgagees and lessees, and against all persons claiming by, through or under any of them;

WITNESSETH:

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

WHEREAS, the Owners and the City of Miami Beach, a Florida municipal corporation (the "**City**"), 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**"); and

WHEREAS, on _____ [date] the Owners obtained approval of the Historic Preservation Board (HPB) under File No. _____ as recorded in Official Records Book _____, at Page _____ of the Public Records of Miami-Dade; and

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

WHEREAS, this instrument is executed in order to assure that the development of the property with future multiple ownership or phased development will not violate the Land Development Regulations of the City of Miami Beach.

NOW THEREFORE, in consideration of the premises, the Owners hereby agree as follows:

Declaration of Restrictive Covenants in Lieu of Unity of Title

Address _____

Folio No.: _____

Page 2 of 9

1. After a site plan for the Property has been submitted and approved under the City's Land Development Regulations, the Property will be developed as a unified development site in substantial accordance with such approved site plan for the Property. No modification of such approved site plan shall be effectuated without the written consent of the then owner(s) of the portion or phase of the Property for which such proposed modification is sought and the Director of the City's Planning Department (such person, or any successor thereof, is referred to herein as the "**Director**"). No such then owner(s) nor the Director shall unreasonably withhold, condition or delay its consent, provided the proposed modification is in compliance with the Land Development Regulations. Should any such then owner(s) or the Director withhold, condition or delay its consent to any such proposed modification, then the owner(s) seeking the proposed modification shall be permitted to seek the same by application to modify the approved site 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). Approval of such application shall be in addition to all other required approvals necessary for the proposed modification sought. Notwithstanding anything to the contrary contained in this Declaration: (a) if any building on the Property (or portion of a building) is developed and sold to multiple owners in a condominium format or non-condominium format of ownership with an owners' association, then only the owners' association (as opposed to each individual unit owner governed by the owners' association) shall be required to give, grant or execute any consent, approval or document required by this Declaration, and such consent, approval or document as given, granted or executed by the owners' association shall bind each and every individual unit owner in such building (or portion of the building) governed by the owners' association; (b) if the Property is developed in phases, then only the owner(s) of the phase(s) affected by the proposed modification shall be required to give, grant or execute any consent, approval or document required by this Declaration, and no consent, approval or document shall be required from the owner(s) of any phase(s) unaffected by such proposed modification shall be required; (c) the City shall not be required to obtain any consent, approval or document from any owner with respect to any proposed modification (including any subsequent zoning application) relating to the "**Park/Streetscape Site**" (as such term is defined in the Development Agreement); and (d) this Declaration of Restrictive Covenants in Lieu of Unity of Title (the "**Declaration**") shall not create any additional obligations for the Owners (or their respective successors and/or assigns) to obtain any consent, approval or document from the City with respect to any proposed modification (including any subsequent zoning application) relating to the "**Development Site**" (as such term is defined in the Development Agreement), other than the written consent of the Director for modifications to the approved site plan, as provided above. Nothing contained in the preceding sentence shall relieve the Owners (and their successors and assigns) from the obligation to obtain any approvals or authorizations from the City required by law or any other instrument or agreement apart from this Declaration.

Declaration of Restrictive Covenants in Lieu of Unity of Title

Address _____

Folio No.: _____

Page 3 of 9

2. If the Property is developed in phases, then each phase will be developed in substantial accordance with the approved site plan for the Property.

3. In the event the Owners shall convey any portion of the Property to any person or entity subsequent to site plan approval for the Property, each of the subsequent owners shall be bound by the terms, covenants, restrictions and limitations of this Declaration. Owners further agree that they will not convey portions of the Property to any other person or entity unless and until the Owners and such other person or entity shall have mutually executed and delivered, in recordable form, an instrument to be known as an **"easement and operating agreement"** which shall contain, among other things, the following easements to the extent required for the Property to be developed, constructed, conveyed, maintained and operated in accordance with the approved site plan for the Property despite the Property having multiple owners:

- (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;
- (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 grant road rights-of-way 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

Declaration of Restrictive Covenants in Lieu of Unity of Title

Address _____

Folio No.: _____

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- (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.

These easement, reservation and agreement provisions (or portions thereof) will be waived by the Director if they are not applicable to the portion of the Property then being conveyed (such as, but not limited to, conveyances to purchasers of individual condominium units, or conveyance that are separated by a street or road). These easement, reservation and agreement provisions shall not otherwise be waived or amended without prior written approval of the City Attorney. In addition, the easement and operating agreement shall contain such other provisions with respect to the development, construction, conveyance, maintenance and operation of the Property as to which the parties thereto may agree, all to the end that although the Property may have several owners, it will be developed, constructed, conveyed, maintained and operated in accordance with the site plan approved for the Property.

4. The provisions of this Declaration 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 owner(s) of the Development Site and the Director (acting for and on behalf of the City) upon the demonstration and affirmative finding that the same is no longer necessary to preserve and protect the Development Site for the purposes herein intended.

5. The terms, covenants, restrictions and limitations of this Declaration may be amended, modified or released by a written instrument executed by the then owner(s) of the Development Site (with joinders by all mortgagees) and the Director (acting for and on behalf of the City). Should this Declaration be so modified, amended or released, then the Director shall forthwith execute a written instrument effectuating and acknowledging such amendment, modification or release; it being acknowledged and agreed that no amendment, modification or release of this Declaration shall be effective without the Director's written approval of, or execution of a written instrument effectuating and acknowledging, such amendment, modification or release.

6. Enforcement of the terms, covenants, restrictions and limitations of this Declaration shall be by action against any parties or persons violating or attempting to violate any such terms, covenants, restriction or limitation of this Declaration. The prevailing party to in 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

Declaration of Restrictive Covenants in Lieu of Unity of Title

Address _____
Folio No.: _____
Page 5 of 9

of his attorney. As used herein, the term "prevailing party" means the party who receives substantially the relief sought upon final, non-appealable judgment, order, or other disposition of a court of competent jurisdiction. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

7. Invalidation of any term, covenant, restriction or limitation of this Declaration by a final, non-appealable order of a court of competent jurisdiction shall not affect any of the other term, covenant, restriction or limitation of this Declaration, all of 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 any violation of this Declaration, in addition to any other remedies available, the City 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.

11. This Declaration is recorded for the limited purpose of ensuring that the Property is developed as a unified development site under the City's land development regulations and is not intended to and does not modify, limit, or derogate any rights or privileges that may benefit the Property or any portion thereof, including, without limitation, any available exemption from or reduction in ad valorem taxation and assessments, nor does this Declaration prohibit the division of the Property into independent tax parcels and folios as the Owner may deem necessary or appropriate in its sole discretion, and all such rights and privileges are hereby expressly reserved.

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

Declaration of Restrictive Covenants in Lieu of Unity of Title

Address _____
Folio No.: _____
Page 6 of 9

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

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

WITNESSES:

OWNER:

Signature

Individual Signature

Print Name

Print Name

Signature

Name of Corporate Entity

Print Name

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

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

Declaration of Restrictive Covenants in Lieu of Unity of Title

Address _____
Folio No.: _____
Page 7 of 9

WITNESSES:

OWNER:

Signature

Individual Signature

Print Name

Print Name

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.

Notary Public-State of _____

My Commission Expires:

Print Name

Declaration of Restrictive Covenants in Lieu of Unity of Title

Address _____
Folio No.: _____
Page 8 of 9

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 **9** of **9**

EXHIBIT A

Exhibit "I"

This instrument was prepared by:

Name: _____
Address: _____

HOLD HARMLESS AGREEMENT

WHEREAS, the undersigned owners, _____ (collectively, the "Owners"), hold the fee simple title to that certain parcel of land, which is legally described in Exhibit "A", hereinafter the "Property";

WHEREAS, the Owners and the City of Miami Beach (the "City") have entered into a 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 (the "Development Agreement");

WHEREAS, the Development Agreement contemplates that the Owners will develop, design and construct certain park/streetscape improvements on a portion of the Property for use by the general public (the "Park/Streetscape Site"), which parcel is legally described in Exhibit "B" (the "Park/Streetscape Project");

WHEREAS, the Development Agreement contemplates that the Owners will construct a proposed mixed use development consistent with the City's Land Development Regulations for the Ocean Terrace Overlay District and in accordance with the requirements of the Development Agreement (the "Project") on a portion of the Property (the "Development Parcel"), which parcel is legally described in Exhibit "C";

WHEREAS, as contemplated under the Development Agreement, the Owners wish to obtain building permits, including phased permits, for the construction of the Project prior to the completion and acceptance by the City of the Park/Streetscape Project (the "Building Permits");

WHEREAS, the Development Agreement provides that until the Owners have improved, and the City has accepted, both "Phase 1" and "Phase 2" of the Park/Streetscape Project as defined in the Development Agreement, or until such condition is deemed satisfied in accordance with the terms of the Development Agreement, the Owners are not to receive any certificate of occupancy or a temporary certificate of occupancy for any part of the Project (the "Park Contingency");

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. Owners agree that no certificate of occupancy or temporary certificate of occupancy for the Project will be granted until the Park Contingency has been satisfied.
2. Owners agree that they will not file or cause to be filed any request for a certificate of occupancy or temporary certificate of occupancy for any part of the Project until the Park Contingency has been satisfied.

Exhibit "I"

3. 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, 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.
4. Owners acknowledge that condition (1) 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.
5. 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.
6. Owners agree to indemnify, defend, save, and hold harmless the City from any claims, demands, liabilities, losses, and causes of action of any nature whatsoever actually sustained by or brought against the City due to the City's issuance of Building Permits for the Project prior to the satisfaction of the Park Contingency in accordance with this Agreement, including, without limitation, reasonable, out-of-pocket attorneys' fees and expenses incurred by the City in the defense of any such claim, demand, or cause of action.

7. Additional Provisions:

a. **Covenant Running with the Land.** This Agreement shall constitute a covenant running with the land and may be recorded, at Owners' expense, in the public records of Miami-Dade County, Florida, 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 7(b) below). These restrictions during their lifetime shall be for the benefit of, and a 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 Owners, and 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 parties and all persons claiming under it for a period of thirty (30) years from the date this Agreement is recorded after which time it shall be extended automatically for successive periods of ten (10) years each, unless earlier terminated, modified, or released as provided in this Agreement. Notwithstanding the foregoing, this Agreement shall terminate automatically upon the earlier of (i) the satisfaction of the Park Contingency in accordance with the terms of the Development Agreement, or (ii) the expiration or termination of the Development Agreement (other than termination by the City for an uncured Developer "Event of Default," as defined in the Development Agreement). The City covenants and agrees, promptly upon the request of the then-owner(s) of the Property following such termination, to execute and deliver to such then-owner(s) an instrument in recordable form that terminates, releases, and discharges this Agreement from the Property and the public record.

Exhibit "I"

c. **Modification, Amendment, Release.** Except as provided in Paragraph 7(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.

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 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. As used herein, the term "prevailing party" means the party who receives substantially the relief sought upon final, non-appealable judgment, order, or other disposition of a court of competent jurisdiction. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

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.

f. **No Restriction of Regulatory Remedies.** The City shall retain all regulatory remedies and enforcement powers associated with the review, issuance, and enforcement of building permits and their requirements, and the remedies and privileges granted herein shall be deemed to be cumulative to any such regulatory remedies and enforcement powers.

g. **Severability.** Invalidation of any one of the terms, covenants, conditions, or provisions of this Agreement, by judgment of court of competent jurisdiction, shall not affect any of the other terms, covenants, conditions, or provisions of this Agreement, which shall remain in full force and effect.

h. **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.

i. **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.

j. **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]

Exhibit "I"

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

WITNESSES:

_____, a Florida limited liability company

Signature

By: _____

Print Name: _____

Print Name

Title: _____

Signature

Address: _____

Print Name

STATE OF FLORIDA)

) SS:

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 201_, by _____, as _____ of _____, a Florida limited liability company, on behalf of said corporation, who is personally known to me or has produced _____ as identification.

My Commission Expires:

Notary Public – State of Florida

Printed Name

Exhibit "I"

EXHIBIT "A"

LEGAL DESCRIPTION:

Exhibit "I"

EXHIBIT "B"

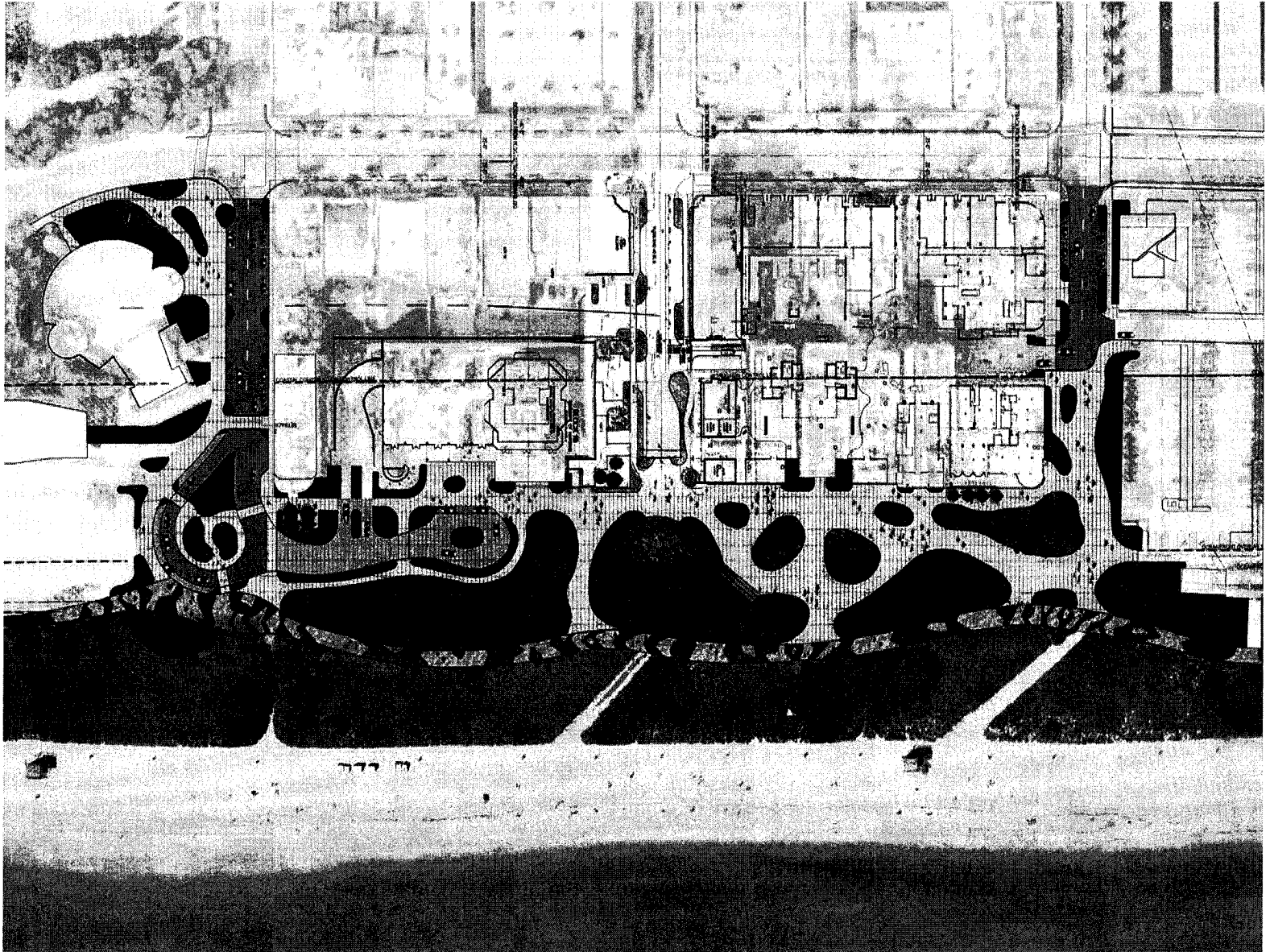
LEGAL DESCRIPTION:

Exhibit "I"

EXHIBIT "C"

LEGAL DESCRIPTION:

EXHIBIT "J"
CONCEPT AND PHASING PLANS



PHASING PLAN

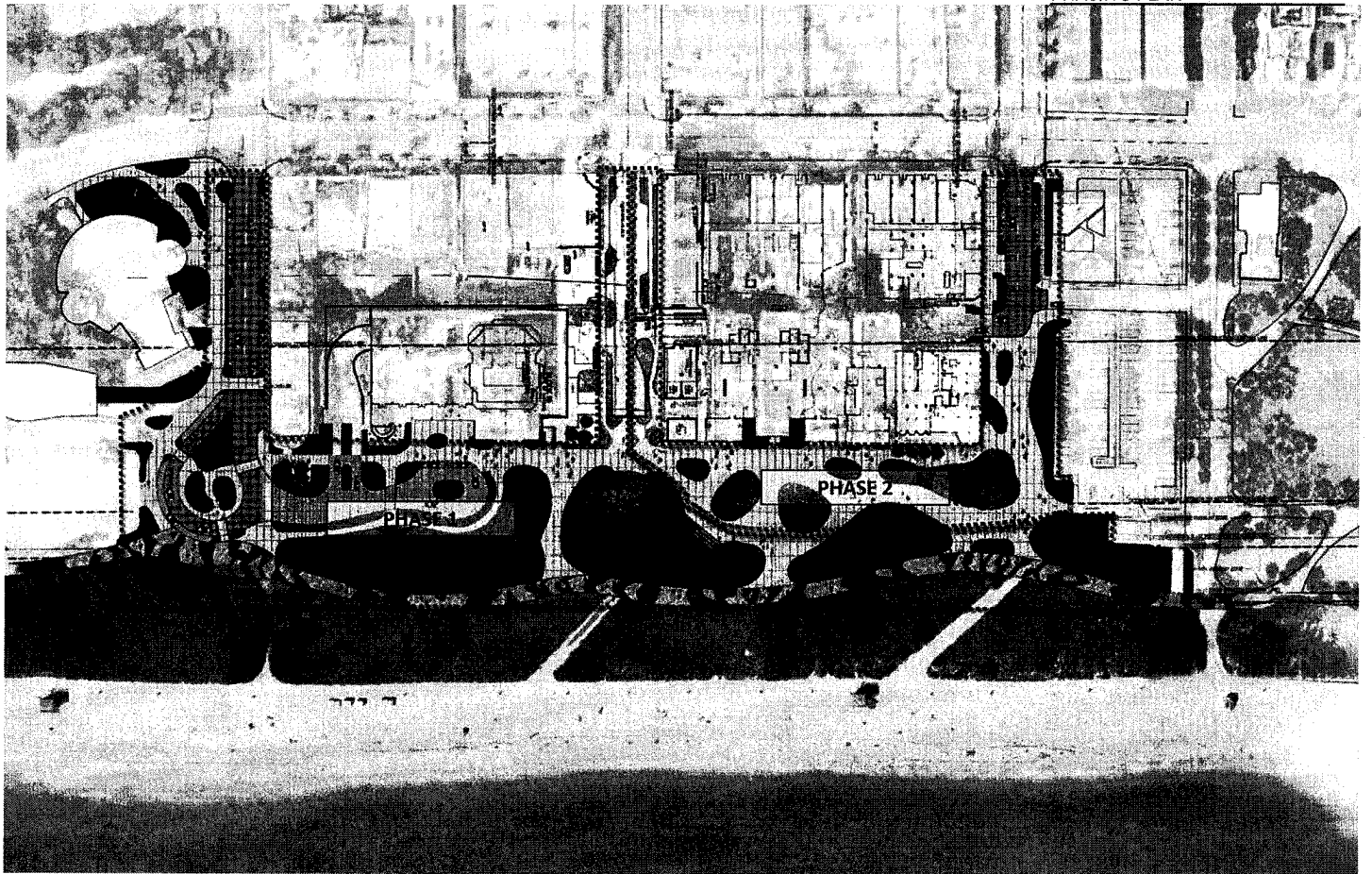


Exhibit "K"

Vacation Resolution

see following page(s)

RESOLUTION NO. 2019-30927

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, ON SECOND READING/PUBLIC HEARING OF THIS RESOLUTION, THE VACATION OF THAT PORTION OF (1) OCEAN TERRACE, BETWEEN THE CENTERLINE OF 74th STREET AND THE NORTHERN RIGHT-OF-WAY LINE OF 75th STREET, WHICH CONSISTS OF A 60-FOOT WIDE RIGHT-OF-WAY CONTAINING APPROXIMATELY 25,200 SQUARE FEET IN TOTAL LOT AREA; (2) THE NORTH HALF OF 74th STREET, BETWEEN OCEAN TERRACE AND COLLINS AVENUE, WHICH CONSISTS OF A 30-FOOT WIDE RIGHT-OF-WAY CONTAINING APPROXIMATELY 8,880 SQUARE FEET IN TOTAL LOT AREA; AND (3) A PORTION OF 75th STREET, BETWEEN OCEAN TERRACE AND COLLINS AVENUE, WHICH CONSISTS OF A 40-FOOT WIDE RIGHT-OF-WAY CONTAINING APPROXIMATELY 11,840 SQUARE FEET IN TOTAL LOT AREA (COLLECTIVELY, THE "CITY RIGHT-OF-WAY AREAS"), IN FAVOR OF THE ABUTTING PROPERTY OWNERS, 7400 OCEAN TERRACE, LLC, 7410 OCEAN TERRACE, LLC, 7420 OCEAN TERRACE INVESTMENT, LLC, 7436 OCEAN TERRACE, LLC, 7450 OCEAN TERRACE, LLC, AND 7441 COLLINS AVENUE INVESTMENT, LLC (COLLECTIVELY, THE "DEVELOPER") AND G & V REALTY, LLC, THE OWNER OF 7401 COLLINS AVENUE; CONDITIONING THE VACATION UPON THE CITY COMMISSION'S APPROVAL OF, AND DEVELOPER'S SATISFACTION OF, CERTAIN TERMS AND CONDITIONS, TO BE SET FORTH IN A DEVELOPMENT AGREEMENT BETWEEN THE CITY AND DEVELOPER, WHICH CONDITIONS SHALL, AMONG OTHER TERMS, REQUIRE THE DEVELOPER TO (1) GRANT TO THE CITY A PERPETUAL EASEMENT OVER, ACROSS AND UNDER THE CITY RIGHT-OF-WAY AREAS FOR UTILITIES AND PUBLIC VEHICULAR, PEDRESTRIAN AND RECREATIONAL USE AND ACCESS; AND (2) DEVELOP, DESIGN, AND CONSTRUCT, AT THE DEVELOPER'S SOLE COST AND EXPENSE (EXCEPT FOR PAYMENT OF CERTAIN CITY FEES), CERTAIN PUBLIC PARK AND STREETScape IMPROVEMENTS IN THE VICINITY OF OCEAN TERRACE, BETWEEN 73RD STREET AND 75TH STREET, WITH SUCH PUBLIC IMPROVEMENTS HAVING A VALUE OF APPROXIMATELY FOURTEEN MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$14,800,000); AND FURTHER, WAIVING, BY 5/7THS VOTE, THE COMPETITIVE BIDDING REQUIREMENT, PURSUANT TO SECTION 82-38 OF THE CITY CODE, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY.

WHEREAS, the City holds a right-of-way dedication to the following right-of-way areas:

(1) a portion of Ocean Terrace, running from the centerline of 74th Street and the northern right-of-way line of 75th Street, consisting of a sixty (60) foot wide right-of-way, and containing approximately 25,200 square feet in total lot area; as shown on as shown on the Plat of the Townsite of Harding, recorded in Plat Book 34, Page 4 of the Public Records of Miami-Dade County (the "Harding Townsite Plat");

(2) the north half of 74th Street, between Ocean Terrace and Collins Avenue, which consists of a 30-foot wide right-of-way containing approximately 8,880 square feet in total lot area; and

(3) a portion of 75th Street, between Ocean Terrace and Collins Avenue, which consists of a 40-foot wide right-of-way containing approximately 11,840 square feet in total lot area (collectively, (1) through (3) above, the "City Right-of-Way Areas"), each as shown on the Harding Townsite Plat, and depicted in the sketch attached as Exhibit "A" to the Commission Memorandum accompanying this Resolution; and

WHEREAS, various entities controlled by and affiliated with the principals of Ocean Terrace Holdings, LLC, namely, 7400 Ocean Terrace, LLC, 7410 Ocean Terrace, LLC, 7420 Ocean Terrace Investment, LLC, 7436 Ocean Terrace, LLC, 7450 Ocean Terrace, LLC, and 7441 Collins Avenue Investment, LLC (collectively, the "Developer"), and G&V Realty, LLC (the owner of 7401 Collins Avenue), own the properties abutting or in the vicinity of the City Right-of-Way Areas; which parcels are known as 7401, 7409, 7421, 7433, 7435, 7437, 7439, 7441, and 7449 Collins Avenue, and 7400, 7410, 7420, 7430, 7436, and 7450 Ocean Terrace (collectively, the "Property"); and

WHEREAS, the Developer intends to develop the Property as a mixed-use residential and commercial development (collectively, the "Proposed Development") pursuant to a Florida Statute Chapter 163 development agreement entered into between the City and the Developer (the "Development Agreement"), and to develop, design and construct, at the Developer's sole cost and expense, certain public park and streetscape improvements in the vicinity of Ocean Terrace, between 73rd Street and 75th Street; and

WHEREAS, the Proposed Development shall be developed as a unified development site; and

WHEREAS, in conjunction with Proposed Development, the Developer is requesting that the City vacate the City Right-of-Way Areas abutting 7401, 7441, and 7449 Collins Avenue and 7400, 7410, 7420, 7430, 7436, and 7450 Ocean Terrace, and has submitted its application to the City's Public Works Department with respect thereto, to permit Developer to utilize the F.A.R. associated with the City Right-of-Way Areas within the Developer's Project (but with the City Right-of-Way Areas to continue to be used for pedestrian and vehicular access and travel); and

WHEREAS, with respect to the proposed vacation of the 4,380 square feet of City right-of-way abutting 7401 Collins Avenue, the proposed vacation shall be subject to and contingent on Developer's agreement with the property owner to include the vacated right-of-way area as part of the unified development site for the Project; and

WHEREAS, the vacation of City streets, alleys, and/or rights of way, require compliance with Article II, Sections 82-36 through 82-40, of the City Code (which establish the procedures governing the sale or lease of public property);

WHEREAS, prior to approving a request for vacation, the following requirements must be satisfied: (1) the title of the Resolution approving the proposed vacation shall be heard by the City Commission on two separate meeting dates, with the second reading to be accompanied by a duly noticed public hearing; (2) the proposed vacation shall be transmitted to the Finance and Citywide Projects Committee (the "Finance Committee") for its review; (3) the City's Planning Department shall prepare a written planning analysis, to be submitted to the City Commission concurrent with its consideration of the proposed vacation; and (4) the City shall obtain an independent appraisal of the fair market value of the property proposed to be vacated; and

WHEREAS, the Finance Committee reviewed the proposed vacation at its March 22, 2019 meeting, which recommendations were accepted by the City Commission in Resolution No. 2019-30771; and

WHEREAS, the Planning Department analysis of the vacation, pursuant to Section 82-38 of the City Code, is attached as Exhibit "B" to the Commission Memorandum accompanying this Resolution; and

WHEREAS, the July 3, 2019 appraisal of the City Right-of-Way Areas, which appraisal is attached as Exhibit "C" to the Commission Memorandum accompanying this Resolution, valued the City Right-of-Way Areas at \$12,400,000; and

WHEREAS, on December 12, 2018, the City Commission unanimously adopted the Ocean Terrace Neighborhood Urban Design Plan, a concept plan for proposed public streetscape and park improvements to the Ocean Terrace area ("Concept Plan"), prepared by The Corradino Group and Garcia-Pons + Associates; and

WHEREAS, on March 22, 2019, the Finance Committee recommended proceeding with the vacation process, subject to the following public benefits being memorialized in the Development Agreement:

1. Developer would develop, design, permit and construct, at its sole cost and expense, certain public park and streetscape improvements in the vicinity of Ocean Terrace, between 73rd Street and 75th Street, based on the Concept Plan approved by the City Commission; and

2. Developer would grant a perpetual, non-revocable utility, roadway and pedestrian access easement in favor of the City against the City Right-of-Way Areas, for public vehicular and pedestrian use and access, as modified by the public improvements, which will pedestrianize portions of Ocean Terrace; and

WHEREAS, Section 82-39(a) of the City Code provides that the lease or sale of public property also requires an advertised public bidding process, which requirement may be waived by 5/7th vote of the City Commission; and

WHEREAS, Florida law, requires, upon vacation, a right-of-way reverts to the abutting property owners and/or the holders of any interest in any reversionary rights to the vacated area; and

WHEREAS, as the abutting property owners and holders of the appropriate reversionary interests are the only persons entitled to the vacation, the City Administration recommends that the Mayor and City Commission waive the competitive bidding requirement, finding that the public interest is served by waiving such condition; and

WHEREAS, pursuant to the requirements of Section 1.03(b)(4) of the City Charter, the Planning Board at its May 21, 2019 meeting, unanimously approved the proposed vacation; and

WHEREAS, Section 1.03 (b)(4) of the City Charter also requires that the vacation be approved by 6/7^{ths} vote of the City Commission; and


WHEREAS, on June 26, 2019, the Mayor and City Commission held the first reading of this Resolution and the companion agenda items (for the proposed Development Agreement and amendments to the City's Land Development Regulations), and read the title of the vacation Resolution into the record as required by Section 82-37 of the City Code; and

WHEREAS, the Administration, recommends approval of the vacation at second reading, subject to the Developer's satisfaction of the terms and conditions set forth in the Development Agreement.


NOW THEREFORE BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve, on second reading of this Resolution, the vacation of that portion of (1) Ocean Terrace, between the centerline of 74th Street and the northern right-of-way line of 75th Street, which consists of a 60-foot wide right of way containing approximately 25,200 square feet in total lot area; (2) the north half of 74th Street, between Ocean Terrace and Collins Avenue, which consists of a 30-foot wide right of way containing approximately 8,880 square feet in total lot area; and (3) a portion of 75th Street, between Ocean Terrace and Collins Avenue, which consists of a 40-foot wide right-of-way containing approximately 11,840 square feet in total lot area (collectively, the "City Right-of-Way Areas"), in favor of the abutting property owners, 7400 Ocean Terrace, LLC, 7410 Ocean Terrace, LLC, 7420 Ocean Terrace Investment, LLC, 7436 Ocean Terrace, LLC, 7450 Ocean Terrace, LLC, and 7441 Collins Avenue Investment, LLC (collectively, the "Developer") and G & V Realty, LLC, the owner of 7401 Collins Avenue; conditioning the vacation upon the City Commission's approval of, and Developer's satisfaction of, certain terms and conditions, to be set forth in a development agreement between the City and Developer, which conditions shall, among other terms, require the Developer to (1) grant to the City a perpetual easement over, across and under the City Right-of-Way Areas for utilities and public vehicular, pedestrian, and recreational use and access; and (2) develop, design, and construct, at the Developer's sole cost and expense (except for the payment of certain City fees), certain public park and streetscape improvements in the vicinity of Ocean Terrace, between 73rd Street and 75th Street, with such public improvements having a value of approximately Fourteen Million Eight Hundred Thousand Dollars (\$14,800,000); and further, waive, by 5/7ths vote, the competitive bidding requirement, pursuant to Section 82-38 of the City Code, finding such waiver to be in the best interest of the City.

PASSED and ADOPTED this 31 day of July, 2019.

ATTEST:

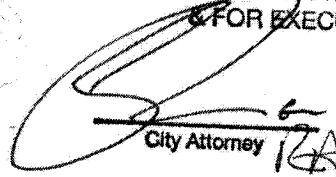


Dan Gelber, Mayor


Aug 8, 2019

Rafael G. Stanado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney 7/24/19
Date

MIAMI BEACH

CITY OF MIAMI BEACH NOTICE OF PUBLIC HEARING

July 31, 2019

NOTICE IS HEREBY given that a Second Reading/Public Hearing will be heard by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd Floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, July 31, 2019 at 11:40 a.m.**, or as soon thereafter as the matter can be heard, to consider:

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, FOLLOWING SECOND READING/PUBLIC HEARING OF THIS RESOLUTION, THE VACATION OF THAT PORTION OF (1) OCEAN TERRACE, BETWEEN THE CENTERLINE OF 74TH STREET AND THE NORTHERN RIGHT-OF-WAY LINE OF 75TH STREET, WHICH CONSISTS OF A 60-FOOT WIDE RIGHT-OF-WAY CONTAINING APPROXIMATELY 25,200 SQUARE FEET IN TOTAL LOT AREA; (2) THE NORTH HALF OF 74TH STREET, BETWEEN OCEAN TERRACE AND COLLINS AVENUE, WHICH CONSISTS OF A 30-FOOT WIDE RIGHT-OF-WAY CONTAINING APPROXIMATELY 8,980 SQUARE FEET IN TOTAL LOT AREA; AND (3) A PORTION OF 75TH STREET, BETWEEN OCEAN TERRACE AND COLLINS AVENUE, WHICH CONSISTS OF A 40-FOOT WIDE RIGHT-OF-WAY CONTAINING APPROXIMATELY 11,840 SQUARE FEET IN TOTAL LOT AREA (COLLECTIVELY, THE "CITY RIGHT-OF-WAY AREAS"), IN FAVOR OF THE ADJUTING PROPERTY OWNERS, 7400 OCEAN TERRACE, LLC, 7410 OCEAN TERRACE, LLC, 7420 OCEAN TERRACE INVESTMENT, LLC, 7436 OCEAN TERRACE, LLC, 7450 OCEAN TERRACE, LLC, AND 7441 COLLINS AVENUE INVESTMENT, LLC (COLLECTIVELY, THE "DEVELOPER") AND G & V REALTY, LLC, THE OWNER OF 7401 COLLINS AVENUE; CONDITIONING THE VACATION UPON THE CITY COMMISSION'S APPROVAL OF, AND DEVELOPER'S SATISFACTION OF, CERTAIN TERMS AND CONDITIONS, TO BE SET FORTH IN A DEVELOPMENT AGREEMENT BETWEEN THE CITY AND DEVELOPER, WHICH CONDITIONS SHALL, AMONG OTHER TERMS, REQUIRE THE DEVELOPER TO (1) GRANT TO THE CITY A PERPETUAL UTILITY, ROADWAY AND PEDESTRIAN ACCESS EASEMENT OVER, ACROSS AND UNDER THE CITY RIGHT-OF-WAY AREAS; AND (2) OBLIGATE THE DEVELOPER TO DEVELOP, DESIGN, AND CONSTRUCT, AT THE DEVELOPER'S SOLE COST AND EXPENSE (EXCEPT FOR PAYMENT OF CERTAIN CITY FEES), CERTAIN PUBLIC PARK AND STREETSCAPE IMPROVEMENTS IN THE VICINITY OF OCEAN TERRACE, BETWEEN 73RD STREET AND 75TH STREET, WITH SUCH PUBLIC IMPROVEMENTS HAVING A VALUE OF APPROXIMATELY FIFTEEN MILLION DOLLARS (\$15,000,000); FURTHER, WAIVING, BY 5/7TH VOTE, THE COMPETITIVE BIDDING REQUIREMENT, PURSUANT TO SECTION 82-38 OF THE CITY CODE, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY.

This Resolution is being heard pursuant to Section 82-37 of the City of Miami Beach Code of Ordinances, and Section 1.03(b)(4) of the City Charter.

A copy of the proposed Development Agreement that is related to this item is available for public inspection during normal business hours in the Office of the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139.

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. This item is available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. This meeting, or any item herein, may be continued, and under such circumstances, additional legal notice need not be provided. Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in alternate format, sign language interpreter (five-day notice required), information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceedings, call 305.604.2489 and select option 6; TTY users may call via 711 (Florida Relay Service).

Ad 073119-02

Rafael E. Granado, City Clerk
City of Miami Beach

EXHIBIT "L"

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 (Ocean Terrace, 74th Street and 75th Street Easement)

THIS EASEMENT AGREEMENT (the "Agreement"), is made this ____ day of _____, 201__, by _____, having an address of _____ (together with its successors and permitted assigns, the "Owner") in favor of the City of Miami Beach, a Florida municipal corporation (together with its successors and permitted assigns, 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. 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) providing to the general public, and to the City and its invitees, agents, employees, contractors, and licensees (including, without limitation, Owner and Owner's officers, employees, agents, contractors, subcontractors, invitees, and licensees), an unrestricted way of passage, right of ingress and egress, access to, and reasonable use of, the Easement Area, including, without limitation, for public recreational purposes, and pedestrian and vehicular access over and across the Easement Area;

(b) constructing, installing, operating, using, maintaining, repairing and replacing landscaping, sidewalks, pedestrian or bicycle paths, walkways, decks, street lighting, traffic or directional signage, underground utilities, drainage, roadways, parks, and streetscape-related infrastructure, or any other

improvements which City, in its reasonable discretion, deems necessary for the protection of the health, safety or welfare of the general public (collectively, the “**Improvements**”) within the Easement Area;

(c) authorizing the City to grant third parties providing utility services (the “**City Grantees**”) the right to use and occupy the Easement Area for the sole purpose of providing any such utilities, without any need for Owner approval of any City Grantee; and

(d) taking all other actions as may be reasonably necessary, without any need for Owner approval thereof, to develop and install Improvements within the Easement Area, or to operate the Easement Area, solely for public purposes, in the same manner as otherwise applicable to any public right of way areas of the City pursuant to the Code of Ordinances of the City of Miami Beach, Florida, as the same may be amended from time to time (the “**City Code**”), including, without limitation, the issuance by the City of temporary special event permits for cultural, recreational or other programming, sidewalk café permits, or any other actions as may be lawfully undertaken by the City on public right of way areas of the City (collectively, the “**Easement Purposes**”). The term “**utilities**” shall include, but not be limited to, water, sewer, stormwater, electrical, gas, telecommunications, telephone and cable.

3. Maintenance, Casualty, and Condemnation. From and after Owner’s “**Substantial Completion**” of the “**Park/Streetscape Improvements,**” as such terms are defined under that certain Development Agreement between the City and _____, dated _____, 2019 (the “**Ocean Terrace Development Agreement**”), City shall be responsible, at City’s sole cost and expense, for maintaining the Easement Area and the Park/Streetscape Improvements, including all landscaping and vegetation therein, in accordance with those standards and criteria contained in the final approved plans and specifications for the Park/Streetscape Improvements. In the event that any portion of the Easement Area and/or the Park/Streetscape Improvements is damaged or destroyed by fire, flood, storm, or other casualty or by the act or omission of the City, any of the City’s agents, employees, contractors, vendors, operators, representatives, licensees, or any other party retained by the City or for whom the City is legally responsible, or by the general public, City shall be solely responsible for any repair or restoration of the Easement Area, subject to an appropriation of funds by the City Commission, if any is required, in the same manner as applicable to other public right of way areas of the City. In addition, if any portion of the Easement Area is taken or condemned in any manner as a result of the exercise of the power of eminent domain by any governmental authority for any public or quasi-public use, including, without limitation, a conveyance or assignment in lieu of condemnation or taking, then this Agreement shall immediately terminate as to any portion of the Easement Area so taken, and the parties hereto shall be released automatically from all further obligations under this Agreement with respect to area taken, except for those obligations that expressly survive the termination of this Agreement. The Owner, its successors and assigns, will be entitled to receive the entire amount of any award made for any partial or complete taking of the Easement Area.

4. Construction in Easement Area.

A. 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) the design and construction of 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 the 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.

B. Following the Owner's Substantial Completion and delivery to the City of the Park/Streetscape Improvements, if the Owner elects to construct and/or install any infrastructure or other improvements within or above the Easement Area for Owner's use (the "**Owner Improvements**"), the Owner hereby acknowledges and agrees that any such Owner Improvements shall be subject to and contingent upon the prior approval of the City Commission, and further agrees that: (a) all fees, costs and expenses associated with the Owner Improvements (including, without limitation, the design, permitting, construction, installation, operation, use, maintenance, repair and replacement thereof) shall be paid in full by the Owner; (b) the design and construction of all Owner Improvements shall be performed and completed by the Owner (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 Owner Improvements, the Owner shall (i) remove all debris, equipment and materials from the Easement Area, (ii) fill, compact, grade and otherwise restore the Easement Area to substantially the same condition as existed prior to commencement of the Owner Improvements, including harmonizing the soil levels within the Easement Area and the lands adjacent thereto, and (iii) keep and maintain the Owner Improvements (and all parts and components thereof) in good condition, repair and working order at all times.

5. Miscellaneous.

5.1 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. BY ENTERING INTO THIS AGREEMENT, OWNER AND CITY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, 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. As used herein, the term "Prevailing Party" means the party who receives substantially the relief sought upon final, non-appealable judgment, order, or other disposition of a court of competent jurisdiction. The provisions of this Section shall survive the termination or expiration of this Agreement.

5.2 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.

5.3 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.

5.4 This Agreement may not be amended, modified or terminated except by a written instrument executed by the Owner and the City through its City Manager, 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. All provisions of this Agreement, including the benefits and burdens of the same, are covenants that run with the land, are not intended to be executory in nature, and shall be binding upon, and shall inure to the benefit of, the parties and their respective heirs, legal representatives, successors and assigns.

5.5 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.

5.6 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.

5.7 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.

5.8 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.

5.9 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. Except for Owner's use of the Easement Area in the same manner as made available to the general public pursuant to the purposes authorized pursuant to Section 2(a) herein or to effectuate the terms and conditions of the Development Agreement, Owner shall not otherwise use the Easement Area for any other purpose, or make any Owner Improvements to the Easement Area, without the City's consent, which consent may be withheld by the City Manager, if the City Manager determines, at his or her reasonable discretion, that such proposed uses or Owner Improvements would interfere in any material respect with the exercise by the public or by the City of the rights granted to the public and the City herein.

5.10 Owner shall not withhold or obstruct City's access to the Easement Area for any of the purposes authorized in Section 2 of this Agreement.

5.11 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.

5.12 Nothing in this Agreement shall be construed to create a joint venture, partnership, tenancy in common, or joint tenancy relationship between the Owner and the City, nor shall this Agreement render either party liable for the debts or obligations of the other party.

6. 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 Owner: _____

With a copy to: _____

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. Any notice or other communication (i) sent by certified United States mail, postage prepaid, return receipt requested will be deemed effectively given or received on the third (3rd) business day following the postmark date of such notice or other communication; (ii) sent by overnight courier or by hand will be deemed effectively given or received upon receipt or refusal, as the case may be; and (iii) sent by electronic mail will be deemed effectively given or received on the day of transmission of such notice if sent on a business day before 6:00 P.M. Eastern Standard Time, or on the following business day if sent after 6:00 P.M. Eastern Standard Time or on a non-business day. Any notice or other communication given in the manner provided above by counsel for either party will be deemed to be notice or such other communication from the party represented by such counsel.

7. City Indemnity. Solely to the extent and limits permitted by Section 768.28 of the Florida Statutes, and without waiving any rights or defenses therein, the City shall indemnify, defend and hold the Owner 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, reasonable attorneys' fees and costs through all trial, appellate and post judgment levels and proceedings) (collectively, the "**Claims**") commenced, incurred and/or paid by or against the Owner to the extent the Claims arise from: (a) the willful misconduct or negligent use of the Easement Area by the City or any successor, assign and/or City Grantee thereof expressly approved by the City Commission; (b) the design, construction, installation, operation, use, maintenance, repair and/or replacement of, or the failure to properly design, construct, install, operate, use, maintain, repair and/or replace, any Improvements by the City or any successor, assign and/or City Grantee thereof expressly approved by the City Commission; 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 City Grantee thereof expressly approved by the City Commission, including, without limitation, any failure by the City to maintain, repair, and restore the Easement Area and the Park/Streetscape Improvements in accordance with Section 3 of this Agreement. Notwithstanding anything to the contrary

contained in this Agreement: (y) nothing in this Agreement shall impair, limit or prohibit any rights or remedies the Owner has against any person or entity using or occupying the Easement Area under, through or as an assignee of the City or a City Grantee; and (z) the obligation of the City to indemnify, defend and hold the Owner harmless as set forth herein shall not apply to the extent any such Claims arise from the gross negligence or willful misconduct of the Owner or any successor, assign and/or grantee thereof. Nothing herein shall be construed to increase or otherwise waive any limits of liability or immunity afforded to the City under the laws of the State of Florida, including, without limitation, the limitations of liability and immunities set forth in Section 768.28 of the Florida Statutes.

8. Insurance. The City agrees to maintain a self-insurance fund, in compliance with Sections 768.28(16)(a) and 440.09, Florida Statutes, in the same manner as provided by the City with respect to other public right of ways of the City, to cover liability, workmen's compensation, and other claims that may arise against the City with respect to this Agreement or the use of the Easement Area. Owner shall maintain insurance sufficient to cover Owner's liability exposure with respect to the Easement Area, which insurance shall include Commercial General Liability Insurance, including Products-Completed Operations and Contractual Liability, in an amount not less than \$1,000,000 combined single limit per occurrence, and \$2,000,000 in the aggregate, for bodily injury and property damage, and Workmen's Compensation as required by law. Owner shall name the City as an additional named insured on the Certificates of Insurance for Commercial General Liability Insurance, and upon request of the City, shall provide City with a certificate of insurance evidencing the foregoing coverages.

9. Owner Indemnity. The Owner shall indemnify, defend and hold the City harmless from and against all Claims commenced, incurred and/or paid by or against the City to the extent the Claims arise from the design, construction, installation, operation, use, maintenance, repair and/or replacement of, or the failure to properly design, construct, install, operate, use, maintain, repair and/or replace, any Owner Improvements by the Owner. Notwithstanding anything to the contrary contained in this Agreement, the obligation of the Owner to indemnify, defend and hold the City harmless as set forth herein shall not apply to the extent any such Claims arise from the gross negligence or willful misconduct of the City, any successor or assign of the City, any City Grantee, and/or the general public.

10. Liability Limitation. The Owner, pursuant to and in accordance with the terms and conditions of this Agreement, makes the Easement Area available to the public free of charge for outdoor recreational purposes. Accordingly, to the maximum extent permitted by law, Owner may avail itself of the limitations of liability afforded pursuant to Section 375.251, Florida Statutes, to the fullest extent applicable to the Easement Area.

11. Ad Valorem Taxes and Assessments. The parties acknowledge that the Easement Area historically has been used and controlled by the City as a public right-of-way and, therefore, has been exempt from ad valorem taxation and assessments. As this Agreement is intended to ensure the continued use of the Easement Area solely for public purposes, the City covenants to cooperate with any efforts by the Owner to exempt the Easement Area from ad valorem taxation, by providing documentation to Owner, as may be reasonably necessary, to evidence the public uses of the Easement Area. Notwithstanding the foregoing, Owner shall be solely responsible for the payment of any ad valorem taxes or assessments, if any, with respect to the Easement Area.

12. Mortgages and Encumbrances. This Agreement is made subject to, and with the benefit of, all matters of record. To the extent the Easement Area is presently encumbered by a mortgage, Owner agrees to request that its mortgagee join in and consent to this Agreement and subordinate its mortgage lien to the easements granted herein. In addition, the Owner hereby reserves the right, for itself and its successors and assigns, to encumber all or any portion of the Easement Area, at any time

and from time to time, with one or more mortgages, deeds of trust, or other financing instruments. Any mortgage hereafter encumbering or otherwise affecting any portion of the Easement Area shall at all times be subject and subordinate to the terms of this Agreement (and any modifications thereto, from time to time), and any party foreclosing any such mortgage, or acquiring title by deed in lieu of foreclosure, shall acquire title subject to all of the terms and provisions of this Agreement (and any modifications thereto, from time to time). No breach of the provisions of this Agreement shall defeat or render invalid the lien of any mortgage made in good faith for value covering any part of the Easement Area and any improvements thereon.

13. Assignment. Prior to Substantial Completion of the Park/Streetscape Improvements in accordance with the Ocean Terrace Development Agreement, the Owner shall only be permitted to assign or transfer its rights and/or delegate the performance of its obligations under this Agreement to a "Permitted Transferee," as defined in the Ocean Terrace Development Agreement. Following Substantial Completion of the Park/Streetscape Improvements, the Owner may assign or transfer its rights and/or delegate the performance of its obligations under this Agreement to any person or entity in accordance with the Ocean Terrace Development Agreement, so long as such person or entity is a subsequent owner or mortgage lender of the adjacent development parcels subject to the Covenant in Lieu of Unity of Title as contemplated in the Ocean Terrace Development Agreement, or is an organization or association of unit owners and/or parcel owners designated with the responsibility of maintenance of common areas in connection with the development or operation of such adjacent development parcels. Owner's successors and/or assigns shall not include individual unit owners, unless such individual unit owners are an organization or association of unit owners and/or parcel owners or a successor-in-interest to the Ocean Terrace Development Agreement as described above. The City may, in its sole discretion, transfer or assign this Agreement at any time only to a successor municipal corporation, provided, however, that nothing herein shall be deemed a limitation on City's or any successor municipal corporation's right to permit its invitees, agents, employees, licensees and the public to use the Easement Area in accordance with this Agreement. All other transfers, assignments, and delegations are prohibited (and, if attempted, void) absent the other party's prior written consent, which consent such other party may condition or withhold in its sole discretion. A party completing any permitted transfer, assignment, or delegation will promptly provide the other party with a written instrument evidencing the completion of such transaction. Upon any transfer, assignment, or delegation completed in accordance with this Section, the rights and obligations of the party completing such transfer, assignment, or delegation will be binding only on such party's transferee, assignee, or delegatee, as the case may be, and the other party will look only to such transferee, assignee, or delegatee for performance under this Agreement. In the case of a transfer, assignment, or delegation to an organization of unit owners and/or parcel owners, the obligations of the Owner pertaining to such portion transferred, assigned, or delegated shall be binding only upon the organization of unit/parcel owners, and not upon the declarant or any particular unit/parcel owner, except to the extent otherwise specifically provided in the declaration governing such organization.

14. Enforcement. The rights, privileges, and remedies granted by this Agreement are enforceable exclusively by the City and the Owner. Nothing in this Agreement, whether express or implied, confers upon the general public any enforcement rights against the Owner. Notwithstanding anything to the contrary, neither party will be in breach of this Agreement, and no enforcement may be sought against a party through any means, unless such party (i) receives a written notice from the other party, detailing with specificity the ways in which such party is in breach of this Agreement, and (ii) fails to remedy such breach within fifteen (15) days from the date of such written notice, or, if the breach is susceptible to cure but cannot reasonably be cured within fifteen (15) days, then within forty-five (45) days from the date of such written notice, provided the breaching party promptly commences and diligently pursues the curing of such breach within the initial fifteen (15) day period.

15. Remedies. The parties may enforce the terms of this Agreement by injunctive relief, mandamus, and by any other remedies available at law or in equity, except for rescission, revocation or termination of this Agreement, or any other remedy which would deprive the public with the right to use the Easement Area in accordance with this Agreement. All rights, remedies, and privileges granted to any party under this Agreement are cumulative, and the exercise of any one or more such rights, remedies, or privileges will not preclude the exercising party from exercising any other rights, remedies, or privileges available to such party under this Agreement or at law or in equity.

16. Estoppel. The City will, no later than fifteen (15) business days after a written request therefor by the Owner, by any of the Owner's mortgagees or lenders, or by anyone claiming by or through the Owner (including, without limitation, the Owner's successors, assigns, and transferees), and upon payment of the reasonable fees to cover the City's expenses for any third-party resources required to comply, issue a written estoppel certificate, in recordable form, to the requesting party, certifying as to any matter related to this Agreement that the requesting party may reasonably request of the City, including, without limitation, (i) that this Agreement, or any particular paragraph or section of this Agreement specified by the requesting party, is in full force and effect and unmodified (or in what respects this Agreement is no longer in force or effect or has been modified); (ii) that all monies due and payable under this Agreement, if any, have been paid (or in what respects monies are owed); and (iii) that to the City's knowledge, the Owner is in compliance with this Agreement or with any particular paragraph or section hereof specified by the requesting party (or in what respects there is noncompliance). Such estoppel certificates will be binding on the City and its successors and assigns, and may be relied upon by the Owner, its mortgagees and lenders, and by all others claiming by or through the Owner. Notwithstanding the foregoing section or any representations in any estoppel certificates issued thereunder, City shall not be estopped as to matters to which it did not have knowledge.

[EXECUTION PAGES TO FOLLOW]

EXHIBIT "L"

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.

City of Miami Beach, Florida

Print Name: _____

By: _____
Jimmy L. Morales, City Manager

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 "L"

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 "L"

Exhibit A

Legal Description of Property

Exhibit B

Legal Description of Easement Area

EXHIBIT "M"

FORM OF PERFORMANCE BOND

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

THE CONDITION OF THIS BOND is that if Principal:

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

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

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

If no specific periods of warranty are stated in the Contract for any particular item or work, material or equipment, the warranty shall be deemed to be a period of one (1) year from the date of final acceptance by the City; provided, however, that this limitation does not apply to suits seeking damages for latent defects in materials or workmanship, such actions being subject to the limitations found in Section 95.11(2)(b), Florida Statutes.

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

(1) Complete the Contract in accordance with its terms and conditions; or

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

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

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

Signed and sealed this _____ day of _____, 20_____.

WITNESSES:

(Name of Corporation)

Secretary

By: _____
(Signature)

(CORPORATE SEAL)

(Print Name and Title)

Countersigned by Resident
Florida Agent of Surety

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

[Atty in fact power of atty must be attached]

INSURANCE COMPANY:

By: _____

Attorney-in-Fact

Address:

(Street)

(City/State/Zip Code)

Telephone No.: _____

FORM OF PAYMENT BOND

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

THE CONDITION OF THIS BOND is that if the Principal:

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

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

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

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

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

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

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

Signature page to follow

Signed and sealed this _____ day of _____, 20____.

Principal

ATTEST:

(Name of Corporation)

(Secretary)

By: _____

(Signature)

(Corporate Seal)

(Print Name and Title)

____ day of _____, 20____.

Countersigned by Resident

Florida Agent of Surety

INSURANCE COMPANY:

By: _____

Attorney-in-Fact

Address:

[attach copy of Agent's ID card

(Street)

Issued by Fla. Ins. Commissioner]

(City/State/Zip Code)

[Atty in fact power of atty must be attached]

Telephone No.: _____

Exhibit "N"

**INSURANCE AND BONDING REQUIREMENTS
FOR PARK/STREETSCAPE IMPROVEMENTS**

I. BONDING REQUIREMENTS

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

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

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

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

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

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

Policy- Financial Holder's Size

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

II. INSURANCE REQUIREMENTS

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

- A. **worker's Compensation Insurance** for all employees as required by Florida Statute 440, and Employer Liability Insurance with a limit in an amount not less than \$1,000,000 per accident for bodily injury or disease.
- B. **Commercial General Liability Insurance** on an occurrence basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits in an amount not less than \$2,000,000 per occurrence.
- C. **As to Developer and Contractor only: Umbrella Liability Insurance** with limits in an amount not less than \$5,000,000 per occurrence. The umbrella coverage must be as broad as the primary General Liability coverage.

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

- D. **Automobile Liability Insurance** covering any automobile, if vendor has no owned automobiles, then coverage for hired and non-owned automobiles, with limits in an amount not less than \$1,000,000 combined per accident for bodily injury and property damage.
- E. **As to Developer and Architect only: Project-Specific Design Professional Liability (Errors & Omissions) Insurance** with limits in an amount not less than \$2,000,000 per occurrence or claim, and \$5,000,000 policy aggregate, subject to a maximum deductible acceptable to the City, and not-to-exceed \$100,000.

Developer and Architect shall maintain the claims made form coverage with a minimum of 10 years extended reporting following Final Completion and shall annually provide City with evidence of renewal coverage. Developer and Architect are responsible for all deductibles in the event of a claim. Developer and Architect shall indicate the deductible for this coverage on its Certificate of Insurance. Developer and Architect shall notify City in writing within thirty (30) days of any claims filed or made against the Design Project-Specific Professional Liability Insurance Policy(ies). Consultant and Design Subconsultants shall each maintain commercially reasonable Errors & Omissions Liability coverages, as reasonably determined by Developer.

- F. **As to Contractor: Contractors' Pollution Legal Liability** with limits in an amount not less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate, subject to a maximum deductible acceptable to the City.
- G. **As to Contractor only: Installation Floater Insurance** including coverage for material & equipment to be installed during the course of this Project. City shall be included as a Named Insured on this policy, as its insurable interest may appear. This policy shall remain in force until acceptance of the Project by the City.

III. **ADDITIONAL TERMS AND CONDITIONS:**

1. **Notice to City.** If the initial insurance expires prior to the completion of the work, certificates of insurance evidencing the renewal of the coverage required shall be furnished to the City ten (10) days prior to the date of their expiration. The insurance policy(ies) must be endorsed to require the relevant insured to provide the City with at least thirty (30) days' notice of cancellation and/or restriction, except for non-payment of premium, which shall be subject to ten (10) days' notice.
2. **Certificates of Insurance.** Developer shall furnish to the City Certificates of Insurance or endorsements evidencing the insurance coverage required of Developer hereunder prior to entering upon the Park/Streetscape Improvements Site, and shall also furnish to the City a copy of each insurance policy required of Developer by this Agreement. Developer shall provide the City with Certificates of Insurance from its Contractor and Architect prior to the commencement of any work or services by any such entity. The Certificates of Insurance shall be in form acceptable to, and subject to, reasonable approval by City. Developer's failure to timely provide the Certificates of Insurance as required by this paragraph, and failure to cure within fifteen (15) days following receipt of written notice of such failure from the City, shall be the basis for the rescission of this Agreement by the City, without any liability to Developer. The official title of the certificate holder is City of Miami Beach, Florida. This official title shall be used in all insurance documentation.
3. **Right to revise or reject.** City's Risk Management Division reserves the right, but not the obligation, to review and revise any insurance requirements at the time of insurance contract renewal and/or any amendments, not limited to deductibles, limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work/specifications affecting the scope and applicability of coverage.
4. **Additional Insured.** City shall be expressly included as an Additional Insured on all policies (except Professional Liability and workers' Compensation), and with an endorsement that is acceptable to the City. Additional insured certificates for the City shall read "City of Miami

Beach, Florida”, 1700 Convention Center Drive, Miami Beach, FL, 33139, Attn: Risk Management, 3rd Floor.

5. **Notice of Cancellation and/or Restriction.** The policy(ies) must be endorsed to require the relevant insured to provide City with at least thirty (30) days' notice of cancellation or non-renewal and/or restriction, except for non-payment of premium, which shall be subject to ten (10) days' notice. A copy of the endorsement(s) shall be provided with the Certificates of Insurance.

6. **Duty of Care.** Developer's furnishing insurance coverage shall in no way relieve or limit, or be construed to relieve or limit, Developer or any of its contractors of any responsibility, liability, or obligation imposed under this Agreement or the applicable contract documents relating to the Park/Streetscape Improvements, or by Applicable Laws, including, without limitation, any indemnification obligations which Developer or any of its contractors have to City thereunder.

7. **Developer's Failure to Procure.** Developer's failure to procure or maintain the insurance required by this Exhibit "N" during the entire term of the work shall constitute a material breach and Default of this Agreement, as long as it is available based on prevalent market conditions. In the event of such a breach (and following all notice and right to cure periods have expired), the City may exercise all available rights and remedies hereunder, including the right to immediately suspend or terminate this Agreement without any further notice to or liability to Developer or, at its discretion, procure or renew such insurance to protect the City's interests and pay any and all premiums in connection therewith, and withhold or recover all monies so paid by the City from the Developer.

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

EXHIBIT "O"
PRESENTLY PERMITTED DEVELOPMENT

(a) Permitted Development and Uses. The Property, generally bounded by Ocean Terrace, 75th Street, Collins Avenue, and 74th Street, is designated Mixed Use Entertainment Category (MXE) on the eastern portions and Medium Intensity Commercial Category (CD-2) on the western portion according to the City's adopted Comprehensive Plan. The Property is zoned MXE Mixed Use Entertainment District on the eastern portions and CD-2 Medium Intensity, Commercial District on the western portion by the City's Land Development Regulations. The property is also located within the Ocean Terrace Overlay. The Ocean Terrace Overlay regulations supersede the underlying regulations and permits apartments, apartment/hotels, hotels, commercial, and uses that serve alcoholic beverages as regulated by the City Code. 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 floor area ratio (FAR) is 2.0 for mixed-use buildings. In the MXE land use designation, the maximum FAR is 2.0. In the MXE and 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.

EXHIBIT "P"
PUBLIC FACILITIES TO SERVE THE PROPERTY

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

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

EXHIBIT "Q"
PUBLIC RESERVATIONS AND DEDICATIONS

1. All easements referenced in the Development Agreement
2. The Public Reservation Area depicted in Exhibit "B"

EXHIBIT "R"
REQUIRED DEVELOPMENT PERMITS AND VARIANCES

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

1. Historic Preservation 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, including, without limitation, DERM or DEP 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 Agreement, including but not limited to restrictive covenants in lieu of unity of title

EXHIBIT "S"

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

CONSTRUCTION AND ACCESS EASEMENT AGREEMENT

THIS CONSTRUCTION AND ACCESS EASEMENT AGREEMENT (this "**Easement**") is made this ___ day of _____, 20__, by the CITY OF MIAMI BEACH, a Florida municipal corporation, having its principal place of business at 1700 Convention Center Drive, Miami Beach, Florida 33139 (the "**City**"), to and in favor of _____, a _____, each having its respective principal place of business at _____ (collectively, the "**Developer**").

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/Streetscape Site**");

WHEREAS, Developer 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 "**Development Site**"), and

WHEREAS, the City and the Developer entered into that certain Development Agreement dated as of _____, 20__, a copy of which is recorded in Official Records Book _____, at Page _____ of the Public Records of Miami-Dade County (the "**Development Agreement**"), which constitutes a development agreement pursuant to the Florida Local Government Development Act, Section 163.3220, et. seq., Florida Statutes (the "**Act**");

WHEREAS, pursuant to the Development Agreement, Developer will construct the "Project" (as defined in the Development Agreement) on the "Development Site" (as defined in the Development Agreement) and will construct the "Park/Streetscape Improvements" (as defined in the Development Agreement) on the Park/Streetscape Site;

WHEREAS, the City has agreed to grant to the Developer a non-exclusive, irrevocable, temporary easement over the Park/Streetscape Site for access and construction staging purposes during Developer's construction of the Project and the Park/Streetscape Improvements;

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 the Developer to develop the Project and the Park/Streetscape Improvements;

49495785;2

EXHIBIT "S"

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 Easement as if fully set forth herein.

2. Grant of Easement.

(a) The City hereby grants to the Developer and its employees, agents, representatives, architects, engineers, consultants, contractors, subcontractors (of every and any tier), laborers, suppliers, and lenders, and each of their respective successors and assigns (collectively, the "**Developer Construction Permittees**"), a non-exclusive, irrevocable, temporary easement on, over, under, through, upon, and across the Park/Streetscape Site to perform all acts necessary or desirable to ensure fulfillment and satisfaction of all duties, obligations, and requirements with respect to the construction of the Project and the Park/Streetscape Improvements pursuant to and in accordance with the Development Agreement. The easement granted herein includes, without limitation, the following: (i) during construction of the Park/Streetscape Improvements, the right to stage, store, and operate construction trailers, vehicles, tools, machinery, equipment, and materials related to the Park/Streetscape Improvements on all or any portion of the Park/Streetscape Site; (ii) during construction of the Project, the right to stage, store, and operate construction trailers, vehicles, tools, machinery, equipment, and materials related to the Project on the "Phase 2" portion of the Park/Streetscape Site (as such phase is defined in the Development Agreement); (iii) the right to erect fencing around and within the Park/Streetscape Site; (iv) the right to use the Park/Streetscape Site for site logistics, including but not limited to, the Developer's and the Developer Construction Permittees' ingress and egress to and from the Development Site over and across the Park/Streetscape Site; and (v) the right to do all other things and perform all other activities that are reasonably related to the construction of the Project and the Park/Streetscape Improvements pursuant to and in accordance with the Development Agreement, or that may be necessary or appropriate to give effect to any of the foregoing rights.

(b) This Easement and the rights granted herein will terminate upon the earlier of (such earlier date is referred to herein as the "**Termination Date**"): (i) the date on which the City issues a final certificate of occupancy for the entire Project (as opposed to any individual phase thereof); (ii) the date that is ninety-six (96) months after the "Effective Date" of the Development Agreement, subject to automatic extension and automatic tolling as provided in Sections 42(e) and 55 of the Development Agreement; (iii) the date on which the City terminates the Development Agreement for an uncured Developer "Event of Default" under the Development Agreement; or (iv) the date on which the Developer terminates the Development Agreement for convenience in accordance with Section 45 of the Development Agreement. Although such termination is intended to be automatic and require no further action on the part of any party hereto, upon the request of a party after the occurrence of a termination event, the other party will, no later than thirty (30) days after such request, execute a termination of this Easement in recordable form and in substance reasonably acceptable to the City and the Developer.

3. Restoration. The Developer shall remove all vehicles, equipment and materials from the Park/Streetscape Site on or prior to the Termination Date and, if the entire Park/Streetscape Improvements has not been completed on or prior to the Termination Date, then the Developer shall, at the Developer's cost and expense, sod such un-completed portion of the Park/Streetscape Site promptly after the Termination Date, whereupon the City shall, at the City's cost and expense, be required to keep and maintain such sod.

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4. 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 Park/Streetscape Site that are of record 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 status of title to the Park/Streetscape Site.

5. Insurance. The Developer shall maintain the following insurance at all times while this Easement remains in effect: (a) commercial general liability coverage with minimum limits of Two Million and No/100 (\$2,000,000) 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 and No/100 (\$1,000,000) Dollars per occurrence, combined single limit for bodily injury liability and property damage liability; and (c) workers compensation insurance for all employees in compliance with the "Workers Compensation Law" of the State of Florida and all applicable federal laws. Such insurance policies (except for workers compensation insurance) shall: (x) name the City as an additional insured thereunder; (y) be written by insurance companies licensed to do business in Florida; and (z) not be subject to cancellation or non-renewal without a minimum of thirty (30) days' notification by the insurer to the City (except for non-payment of premium, which shall be subject to ten (10) days' notice) with a copy to the attention of Risk Manager, 1700 Convention Center Drive, Miami Beach, Florida 33139. The Developer shall provide the City with one or more certificates of insurance evidencing all such insurance coverages set forth above.

6. Representations of the City. The City hereby represents, warrants and covenants to and with the Developer that the City is the fee simple owner of the Park/Streetscape Site and has the right, title, capacity and authority to grant the easements granted herein, subject only to the Encumbrances.

7. Indemnification. The Developer shall indemnify, defend and hold harmless the City from and against any actual, out-of-pocket damages, losses, liabilities, fees, costs and expenses (collectively, "**Losses**") incurred by the City in any action, suit or proceeding brought against the City by any third-party as a result of any negligent act or omission of the Developer in exercising its rights under this Easement which first occurred prior to the Termination Date of this Easement, except for any Losses that arise out of or are related to the gross negligence or willful misconduct of the City, the City's elected and appointed officials (including, without limitation, the City's Mayor and City Commissioners), directors, officials, officers, shareholders, members, employees, successors, assigns, agents, consultants, contractors, subcontractors, experts, licensees, lessees, mortgagees, trustees, partners, principals, invitees, affiliates, or the general public. The Developer shall directly pay all actual, out-of-pocket costs and expenses related to any covered Losses, or legal defense required by the City for any covered Losses, using legal counsel that is selected by the Developer and which is 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.

8. Miscellaneous.

8.1 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-

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judgment levels and proceedings) incurred by the Prevailing Party in such action, litigation or other proceeding. As used herein, the term "**Prevailing Party**" means the party who receives substantially the relief sought upon final, non-appealable judgment, order, or other disposition of a court of competent jurisdiction. The provisions of this Section shall survive the termination or expiration of this Easement.

8.2 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 Easement will remain in full force and effect.

8.3 This Easement includes all exhibits attached hereto. This Easement, together with all such exhibits, contains the entire agreement and understanding between the parties relating to the subject matter of this Easement, 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.

8.4 This Easement 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 Easement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

8.5 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 Easement will not be construed as a waiver or relinquishment of the future enforcement of such term, covenant, condition or other provision of this Easement.

8.6 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.

8.7 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.

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

8.9 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 in this Easement. Notwithstanding anything to the contrary contained in this Easement, the City shall not be permitted to

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use or grant others the right to use, all or any portions of the Park/Streetscape Site so long as this Easement remains in effect without the prior written consent of the Developer.

8.10 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, shall run with the land, and shall be binding on all persons holding title to said lands.

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

If to Developer at:	1035 N. Miami Avenue, Suite 201 Miami, Florida 33136 Attn: Sandor Scher sscher@clarocorp.com
With a copy to:	Akerman LLP 98 SE 7 Street, Suite 1100 Miami, FL 33131 Attn: Neisen O. Kasdin, Esq. neisen.kasdin@akerman.com
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. Any notice or other communication (i) sent by certified United States mail, postage prepaid, return receipt requested will be deemed effectively given or received on the third (3rd) business day following the postmark date of such notice or other communication; (ii) sent by overnight courier or by hand will be deemed effectively given or received upon receipt or refusal, as the case may be; and (iii) sent by electronic mail will be deemed effectively given or received on the day of transmission of such notice if sent on a business day before 6:00 P.M. Eastern Standard Time, or on the following business day if sent after 6:00 P.M. Eastern Standard Time or on a non-business day. Any notice or other communication given in the manner provided above by counsel for either party will be deemed to be notice or such other communication from the party represented by such counsel.

10. Enforcement. The rights, privileges, and remedies granted by this Easement are enforceable exclusively by the City in its municipal capacity. Nothing in this Easement, whether express or implied, confers upon the general public any enforcement rights against the Owner. Notwithstanding anything to the contrary, neither party will be in breach of this Easement, and no enforcement may be sought against a party through any means, unless such party (i) receives a written notice from the other party, detailing with specificity the ways in which such party is in breach of this Easement, and (ii) fails to remedy such breach within thirty (30) days from the date of such written notice, or, if the breach is susceptible to cure

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but cannot reasonably be cured within thirty days, then within sixty (60) days from the date of such written notice, provided the breaching party promptly commences and diligently pursues the curing of such breach within the initial thirty (30) day period.

11. Remedies. The parties may enforce the terms of this Easement by injunctive relief, mandamus, and by any other remedies available at law or in equity. All rights, remedies, and privileges granted to any party under this Easement are cumulative, and the exercise of any one or more such rights, remedies, or privileges will not preclude the exercising party from exercising any other rights, remedies, or privileges available to such party under this Easement or at law or in equity.

(Signature pages to follow)

EXHIBIT "S"

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: _____

EXHIBIT "S"

Exhibit "A"

Park/Streetscape Site

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EXHIBIT "S"

Exhibit "B"

Legal Description for the Developer Property

[see attached]

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