

**Lincoln Land Class A Office Space, with Retail and Residential Components and Parking  
Development Agreement and Ground Lease  
Proposed Term Sheet  
City Revised Draft - April 26, 2022**

Capitalized terms used in this Term Sheet and not defined, or with fuller definitions to be provided in the definitive documents, shall be defined in the Development Agreement and/or Ground Lease, as applicable.

**1. Overview of Transaction Structure and Project:**

- a. The City of Miami Beach, Florida (the “City”) owns that certain surface parking lot referred to as Parking Lot P27 and consisting of the following seven (7) tax folios 02-3234-007-0560, 02-3234-007-0570, 02-3234-007-0630, 02-3234-007-0640, 02-3234-007-0650, 02-3234-007-0660 and 02-3234-007-0670, all located in Miami Beach, Florida (collectively, the “Property”), and commonly known as 1664 Meridian Avenue, Miami, FL 33139. The Developer (as defined below) shall cause the recordation of a unity of title (or covenant in lieu of unity of title), in form and content reasonably acceptable to Developer and the City, prior to breaking ground for the Project (the form of which shall be attached as an exhibit to the Development Agreement).
- b. Lincoln Road Holdings, LLC, a Florida limited liability company, which is a subsidiary of The Peebles Corporation, a Washington D.C. corporation (“TPC” and together with its wholly-owned or Controlled subsidiary as permitted hereunder, the “Developer”), has responded to the City’s Request for Proposals Bid Package 2021-173-KB (as amended, “RFP”) for the redevelopment of the Property, and the City of Miami Beach Commission, consisting of six elected Commissioners and an elected Mayor (the “City Commission”) authorized the City to commence negotiations with Developer for the redevelopment of the Property, based on Developer’s proposal Option 3-Parcel 27 Noli Crossing Miami Beach Response dated January 12, 2022, including the Design Package and Financial Offer (the “RFP Response”).
- c. Subject to the Developer obtaining all required entitlements, Developer, at its sole cost and expense, intends to develop, hold a ground leasehold interest in (which includes ownership of the building(s)), design, permit, construct, operate and, as applicable, maintain on, the Property the following (collectively, the “Project”):
  - (1) a Class A office component consisting of approximately [80,000] square feet, which shall in any event constitute not less than 50% of the available floor area ratio (“FAR”) utilized by Developer for the Project (the “Office Component”), to be more fully and particularly described in the Development Agreement;

- (2) a ground floor retail component consisting of approximately [9,500] square feet, to be more fully and particularly described in the Development Agreement, which shall include a fully activated liner of retail, restaurant, personal service or similar active uses, with a minimum depth of 50 feet along the entire ground floor portions of the Project facing a street, sidewalk or Lincoln Lane North (provided, however, an exception to the liner requirement shall be made for utilities (to the extent such utilities cannot reasonably, or functionally be located elsewhere), access points and emergency access for vehicles and pedestrians, including stairs and ramps, alleys, and loading docks) (the “Retail Component”), and the design of which shall be subject to the review and approval by all applicable, required, City boards and departments;
- (3) to the extent the necessary amendment to the City’s Comprehensive Plan (as shall be defined in the Development Agreement) is obtained, a residential component consisting of approximately [69,500] square feet and 43 rental units, to be more fully and particularly described in the Development Agreement, provided, however, the City has determined in its proprietary capacity that (A) no short term/transient rentals, as defined by Chapter 114 of the City Code, shall be permitted (the “Residential Component”), (B) the units shall have minimum lease term of twelve (12) months and (C) no such units shall be co-living or micro units (less than 400 square feet);
- (4) a public parking component (the “Public Parking Replacement Component”) to replace the existing surface parking spaces on the Property consisting of at least 151 spaces (the “City Spaces”) (for the avoidance of doubt, the City shall operate the Public Parking Replacement Component pursuant to an operating agreement to be negotiated with Developer, and the City shall be responsible for the management, repair, maintenance and insurance thereof and shall be responsible for its Pro Rata Share (as shall be defined in the Ground Lease) of the actual, reasonable out-of-pocket costs associated therewith, provided, however, the City shall have the right, in its sole discretion, to cause the Developer to operate the Public Parking Replacement Component by delivering written notice to the Developer on or before the date that is sixty (60) days from the date the Referendum (as defined below) results are certified. In the event the City requires the Developer to operate the Public Parking Replacement Component, the Developer and the City shall agree to additional terms regarding the Public Parking Replacement Component. At the City’s option and simultaneously with or prior to its written notice regarding operation of the Public Parking Replacement Component, the Public Parking Replacement Component may be part of the Ground Lease Component (as defined below) or may be separate from the Ground Lease Component, and if separate, the City and Developer will mutually agree on the form of declaration of condominium and related documents to create a leasehold commercial condominium on the Property, which shall contain two condominium units, one unit

consisting of the Public Parking Replacement Component and one unit consisting of the Ground Lease Component, and to provide for the respective maintenance obligations and cost-sharing between the City and Developer, each as to its respective condominium unit;

(5) additional parking component consisting of such number of parking spaces as are required by the City Code (subject to any variance or amendment to the land use regulations approved by the City) for the exclusive use of the Project's office occupants, retail customers, and residents (the "Additional Parking Component" and together with the Office Component, the Retail Component, the Residential Component and, if applicable, the Public Parking Replacement Component, collectively, the "Ground Lease Component"); and

(6) public benefits (collectively, the "Public Benefits Components") consisting of a Project which shall:

- (A) Provide the City and area with a Project that will activate, revitalize, enhance and bring new life and energy to this part of the City;
- (B) Serve as a benefit to the City by improving and replacing the City Spaces with covered, secure, and structured parking.
- (C) Create new rental housing for City residents;
- (D) Create new Class-A office space;
- (E) Further the City's sustainability and resiliency efforts for new development;
- (F) Improve lighting, providing increased safety for area;
- (G) Create temporary and construction jobs and long-term permanent jobs;
- (H) Increase the tax base and increase the tax revenue to the City;
- (I) Provide landscaping and overall beautification of the area surrounding the Project;
- (J) Create a live, work, and play environment within the Project;
- (K) Provide economic stimulus to the City;
- (L) Encourage future development of areas surrounding the Project; and
- (M) Create a pedestrian walkway connecting the Lincoln Lane neighborhood with landscaping, lighting, benches and storefronts.

d. The transaction will be contractually structured as a development agreement for construction of the Project (the "Development Agreement") and a long-term ground lease for the completed Ground Lease Component (the "Ground Lease").

e. The Ground Lease shall be subject to, and comply with, Chapter 82, Article II, Sections 82-36 through 82-40 of the Miami Beach, Florida – Code of Ordinances (the "City Code") and requires approval by a majority of the voters voting in a Citywide referendum pursuant to Section 1.03(b)(2) of the City of Miami Beach Charter (the "Referendum"). In the City Commission's sole discretion, if requested by Developer, the Referendum could be scheduled for a special election on a date

different than the scheduled general election, provided that the Developer pays its pro rata share (based on total number of questions on the ballot) of the costs of a special election (approximately \$400,000). Notwithstanding whether the Ground Lease ballot question is included in a scheduled general election or a special election, the Ground Lease and Development Agreement shall be finalized as to the form and approved by the City Commission prior to the deadline for submission of ballot questions to the Miami-Dade County Elections Department. The effectiveness of the Ground Lease and Development Agreement shall be subject to and contingent upon voter approval of the Ground Lease at the November 8, 2022 general election in accordance with the City of Miami Beach Charter. In the event the Referendum is not successful, or if the ballot question is removed, or the election results are invalidated by a court of competent jurisdiction, the Ground Lease and Development Agreement shall terminate simultaneously with such failure, shall be null and void and of no further force and effect, except to the extent any provisions of the Ground Lease and/or the Development Agreement expressly survive termination.

- f. The rights granted under the Ground Lease and Development Agreement shall be exclusive with respect to the Property; provided, however, the City reserves the right to grant similar privileges and similar development agreements and/or ground leases to other lessees or developers on other City-owned or leased property, and to take any and all actions that City is permitted to take under federal, state, and local law. Without limiting the generality of the foregoing, the Developer acknowledges that the City is negotiating the terms of a similar project for the development of Class-A Office Space, retail space and parking at City-owned lots P25 and P26 (the "Option 5 Project") with Lincoln Road Property Owner, L.P. In the event both the Project and the Option 5 Project are approved by the City Commission and by a majority of the City's voters in the Referendum, Developer acknowledges and agrees that the two (2) projects will likely be phased, taking into account all appropriate factors, including without limitation, the construction of the Miami Beach Convention Center Hotel, provided that the City may make a determination, in its sole, reasonable discretion, that the Option 5 Project and the Project can reasonably be constructed in tandem or otherwise simultaneously, and without having an adverse impact on the City's residents, businesses and visitors. The Developer may submit to the City such information as the Developer deems may be useful to the City in making its determination regarding the commencement order and/or phasing of the Option 5 Project and the Project, including the viability and feasibility of the Project. The City's determination as to phasing and order of commencement (i) shall be made in the City's sole, reasonable discretion on or prior to the date that is sixty (60) days from the date the Referendum results are certified and (ii) shall be final and binding on Developer with no right of appeal.
- g. If and to the extent any components of the Project are modified pursuant to entitlements, or the City's requests or demands, or as mutually agreed by the City and the Developer, such changes shall be addressed and accommodated in the Development Agreement and, as applicable, the Ground Lease and/or any amendments thereto.

## 2. Development Agreement:

- a. The term of the Development Agreement will be limited to the construction period for the Project.
- b. If the Referendum is successful, the effective date of the Development Agreement shall occur upon the latest to occur of: (i) the parties' mutual execution and delivery of the Development Agreement by the parties; (ii) approval thereof by the City Commission in accordance with the City Code; (iii) adoption by the City Commission of a resolution accepting the certification of the official results of the successful Referendum; and (iv) the parties' mutual execution and delivery of the Ground Lease. The "Effective Date" for purposes of phasing and commencement of the Project (including milestones) under the Development Agreement shall be determined in the notice to proceed issued by the City but shall not be earlier than the latest to occur of (i) through (iv) above.
- c. During the term of the Development Agreement, and subject to the Permitted DA Transfers (as defined below), Developer shall not assign or otherwise transfer or permit to be assigned or transferred, directly or indirectly, its right, title or interest in and to the Development Agreement or the Property without the prior written consent of the City, which may be granted or withheld in the City's sole and absolute discretion. Notwithstanding the foregoing, the following transfers shall be permitted (i) a single mortgage secured by a single mortgage lien on the Developer's leasehold interest in the Property as security for financing of the construction of the Project in favor of a single lender (except as otherwise expressly permitted in Section 6.c. below) that is an "Institutional Lender" (as shall be further defined and criteria set in the Development Agreement), (ii) a single pledge of direct or indirect membership interests of the Developer as security for mezzanine financing for the construction of the Project in favor of a single lender (except as otherwise expressly permitted in Section 6.c. below) that is an Institutional Lender, (iii) involuntary transfers pursuant to a foreclosure or deed or assignment in lieu of foreclosure by an Institutional Lender pursuant to the mortgage financing or mezzanine financing permitted by clauses (i) and (ii) above, respectively, (iv) transfers of direct or indirect ownership (including non-voting limited partners that are Institutional Buyers (as shall be further defined and criteria set in the Development Agreement, and shall include creditworthy partners)) of Developer provided that: (A) the general partner or manager of the Developer as of the date hereof continues to be the general partner or manager of the Developer; and (B) Donahue Peebles II, Donahue Peebles III, Scott Robins and Philip Levine (collectively, the "Principals") continue to (I) own, directly or indirectly, at least ten percent (10%) of the ownership interests of the Developer and (II) have the ultimate power to direct and Control (as shall be further defined in the Development Agreement) the day-to-day business and affairs of Developer after such transfer, subject to certain "major decisions" or similar approval rights to another person or entity (provided that at all times during construction and through stabilization of the Project, the Principals retain control over decisions relating to construction and operations, including without limitation, leasing), or (v) transfers by members of

Developer for estate planning purposes or as the result of death provided the transferor (or the applicable heir) retains control of the transferred interest) (the “Permitted DA Transfers”), which transfers are expressly permitted hereunder with notice, and without the requirement for consent. The City may agree to permit C-PACE financing for the Project in addition to the mortgage financing and mezzanine financing described above subject to the City’s receipt from the Developer of a security deposit or other security as may be acceptable to the City and such other terms as may be mutually agreed in the Ground Lease, and subject at all times to the loan-to-cost ratio and loan-to-value ratio, as applicable, set forth below. The City shall receive prior written notice of any such Permitted DA Transfer in accordance with (i), (ii), (iv) and (v) above, and any such transferee shall assume all remaining obligations of Developer under the Development Agreement in a written instrument reasonably acceptable to the City. Notwithstanding anything to the contrary set forth herein, in the event any proposed transferee will own, in the aggregate (whether in one transaction or a series of transactions), twenty percent (20%) or more of the direct or indirect ownership interests of Developer or will have the power to direct and Control the day-to-day business and affairs of the Developer, then such proposed transferee must satisfy the Acceptable Owner Criteria and comply with the procedures set forth in Exhibit “A” attached hereto. [In no event shall any sale or transfer of any interests, rights or obligations of Developer under the Development Agreement or in the Project be permitted to a “Foreign Instrumentality” (as shall be defined in the Development Agreement) other than any of the member countries of the European Union or the Gulf Cooperation Council (each as existing as of the effective date of the Development Agreement), United Kingdom, Norway, Switzerland, Canada, Mexico, countries located in South America (excluding Venezuela), Japan, South Korea, Singapore and Australia or any person or entity controlled by any of the foregoing countries (each, a “Specified Foreign Instrumentality”).<sup>1</sup>] [*Parties continuing to discuss*]

- d. In furtherance of the goals of the City and Developer in connection with this Project, the parties acknowledge and agree that the exact and additional terms, provisions, and agreements of the Development Agreement are to be further negotiated by the parties, and this Term Sheet includes certain terms and conditions as a framework for the parties’ good faith negotiation of the definitive documents.

### **3. Ground Lease:**

- a. Term: Not to exceed 99 years, including an initial term of fifty-one (51) years and two (2) consecutive, dependent twenty-four (24)-year extension options. The extension options shall be exercisable by Developer, its permitted successors or assigns, in their sole and absolute discretion, subject only to the condition that Developer is not then in material default under the Ground Lease, beyond applicable notice and cure periods, nor has an event or circumstance occurred, which with the giving of notice and passage of time would constitute a material

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<sup>1</sup> Indirect ownership by Foreign Instrumentalities will be subject to the threshold set forth in Exhibit A.



- (c) the greater of 1.5% or CPI (capped at 2.5%) commencing immediately following the expiration of the period set forth in (b) above and continuing for a period of five (5) years;
    - (d) the greater of 1.5% or CPI (capped at 3.0%) commencing immediately following the expiration of the period set forth in (c) above and continuing for the remainder of the Term, subject to the Base Rent Resets set forth below.
  - (ii) Annual Percentage Rent: 4% of effective gross income from the Project for such lease year.
  - (iii) Base Rent Reset at year 51 (for years 52-75) and at year 75 (for years 76-99): At the time of rent reset, hypothetical rent would be calculated based on year when full rent (i.e. \$680,000) commences escalated through the rent reset date by the higher of 2% or CPI (uncapped).
  - (iv) Appraisal to be obtained in accordance with Section 82-37(b) of the City Code and Resolution No. 2019-30853.
- c. Net Revenues from the Public Parking Replacement Component: The City shall manage and operate the Public Parking Replacement Component (unless the City elects to cause the Developer to operate the Public Parking Replacement Component as provided in this Term Sheet) and shall be entitled to retain 100% of all Net Revenues (as shall be further defined in the Ground Lease) arising out of any use of the Public Parking Replacement Component. The City shall have the right, in its sole discretion, to cause the Developer to operate the Public Parking Replacement Component as set forth above, and in such case, the Developer shall pay to the City, in addition to the Rent, all Net Revenues from the Public Parking Replacement Component, which shall be net of, any reasonable, out-of-pocket costs and expenses permitted under the Development Agreement and/or Ground Lease, including a reasonable and customary management fee to be retained by the Developer (or paid to a third party operator) in connection with the operation and maintenance of the Public Parking Replacement Component. For the avoidance of doubt, rates to be charged for spaces in the Public Parking Replacement Component shall not be higher than the City's then applicable rates for similar parking facilities.
- d. Use: Office, retail, restaurant, personal service or similar active uses, residential, public, and non-public parking, and ancillary uses. No other uses or purposes shall be permitted, except as may be approved by the City in its sole discretion and set forth in the Development Agreement and/or Ground Lease.
- e. The Ground Lease shall be a "triple net" (net-net-net) lease, and Developer shall be solely responsible for all real estate taxes, utilities, assessments and other public charges, insurance, common area maintenance and other costs and expenses associated with operation of the Project; provided, however, the City shall be



responsible for all such reasonable, out of pocket costs and expenses attributable to the Public Parking Replacement Component.

- f. Following Substantial Completion (as shall be defined in the Development Agreement and Ground Lease), Developer may assign its interests, rights and obligations under the Ground Lease in connection with certain “Permitted Transfers” (as shall be defined in the Ground Lease and shall include certain permitted transferees having the requisite assets, net worth and experience to operate the Project, as shall be further described in the Ground Lease), which shall include the Permitted DA Transfers. No other transfer shall be permitted without the prior written consent of the City, which may be granted or withheld in the City’s sole and absolute discretion. [In no event shall any sale or transfer of any interests, rights, or obligations of Developer under the Ground Lease or in the Project be permitted to a “Foreign Instrumentality” (as shall be defined in the Ground Lease, which definition shall be the same as defined in the Development Agreement) other than a Specified Foreign Instrumentality.<sup>2</sup> Any proposed transferee of any ownership interest in Developer or any portion of the Project must satisfy the “Acceptable Owner Criteria” and be confirmed as such by the City in accordance with **Exhibit “A”** attached hereto.] [*Parties continuing to discuss*]

#### **4. The Project:**

- a. The City Commission shall approve a concept plan design of the Project as part of its approval of the Development Agreement (the “Concept Plan”). The Concept Plan will be included as an exhibit to the Development Agreement and as of the date hereof, is anticipated to be consistent with the RFP Response, provided that the design will also be subject to review by the DRB (as defined below) and any other relevant body or department.
- b. The term of Developer’s possession of the Property pursuant to the Ground Lease shall commence immediately following, and commencement of construction and the Developer’s right to such possession shall be expressly subject to, the Developer’s satisfaction of certain conditions reasonably determined by the City and to be further described in the Development Agreement, including without limitation, the following (such date of possession, as further defined and described in the Development Agreement, the “Possession Date”):
  - (i) Issuance of all Required Approvals, as further described below and in the Development Agreement;
  - (ii) Developer’s delivery to the City of payment and performance bonds in form and substance reasonably acceptable to the City and naming City as co-obligee, or such other security as is reasonably acceptable to the City Manager, after consultation with the City Attorney. City recognizes and approves of a lender being a co-obligee together with the City on the bonds

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<sup>2</sup> Indirect ownership by Foreign Instrumentalities will be subject to the threshold set forth in Exhibit A.

and any other approved security, as shall be further described in the Development Agreement.

- (iii) Developer's delivery to the City of a budget reflecting the good faith estimated costs to complete construction of the Project in accordance with the Development Agreement;
- (iv) Developer's delivery to the City of a schedule of performance of the Project using the critical path method, setting forth the dates and times of delivery of the Project, including without limitation the Project milestones set forth below, subject to reasonable extension for unavoidable delays and force majeure events (which may include specified delays attributable to (a) the City acting in its proprietary capacity and as owner of the Property, (b) certain specified global or national economic conditions that delay the Developer's financing or construction of the Project and (c) unforeseen site conditions to the extent not reasonably capable of being identified prior to execution of the Development Agreement, provided in each case (i) Developer provides prompt written notice of such delay, and (ii) with respect to (b) and (c) above, any resulting permitted delays are mutually agreed and identified prior to commencement of construction), as more particularly described in the Development Agreement.
- (v) City's approval of the general contractor/design builder for the Project, with such approval not to be unreasonably withheld so long as the contractor has bonding capacity equal to or to exceed \$100 million and has achieved final completion of at least five (5) projects of similar size and scope in the U.S. within the last ten (10) years;
- (vi) Developer's delivery to the City of the fully executed general construction contract for the Project with the approved general contractor/design builder reflecting a guaranteed maximum price that does not exceed the costs set forth in the budget; and
- (vii) Developer's delivery to the City of contingent assignments of the architect's agreement and general contract, subject to a default, beyond any applicable notice and cure periods of Developer, and further subject only to the rights of Developer's mortgage lender and/or mezzanine lender as shall be further defined in the Development Agreement, pursuant to which the City shall have the right, without assuming Developer's obligations, to enforce the architect's and general contractor's, as applicable, full and prompt performance under their respective agreements, subject only to payment by the City;
- (viii) Developer's delivery to the City of evidence reasonably satisfactory to the City that Developer has secured financing for the Project and will contribute equity to complete construction of the Project in accordance with the Project budget and the Development Agreement.

- c. Promptly following Developer's satisfaction of the conditions to the Possession Date, Developer shall commence (or cause the general contractor to commence) construction of the Project and thereafter, diligently and continuously pursue completion of the Project in accordance with the Development Agreement and all applicable laws, permits and approvals, subject to the terms of the Development Agreement and reasonable extension for unavoidable delays and force majeure events, as further described above and as more particularly described in the Development Agreement.
- d. Developer shall stage construction of the Project in a manner that minimizes the extent and duration of displacement of the existing public parking spaces on the Property during construction and until the Public Parking Replacement Component is completed and available for beneficial use by the public, which shall be to the satisfaction of the City Manager or his/her designee in their sole discretion.
- e. Prior to the Possession Date, and subject to the Developer's rights to enter upon and conduct its investigations of the Property, which shall be exercised by Developer in a manner not to unreasonably interfere with the use of the Property as a surface parking lot, as shall be further set forth in the Development Agreement, the City shall have the right to use the Property consistent with the current uses, so long as such uses do not interfere with or delay the Possession Date.
- f. During construction of the Project, the City and its on-site representative shall have reasonable rights of inspection of the Project and progress of construction, which inspections shall be solely for the benefit of the City, provided that the City shall not unreasonably interfere with or disrupt construction of the Project by the Developer or its general contractor. The City and its on-site representative shall also have the right to participate in periodic meetings with Developer and to receive periodic updates with respect to the progress of construction and any changes to the Project budget and other Project documents. Nothing contained herein or in the Development Agreement or Ground Lease shall or is deemed to limit the City's inspection rights in its governmental and/or regulatory capacity.

#### **5. Project Approvals and Milestones:**

- a. Zoning: Developer shall adhere to all applicable zoning requirements, including without limitation, the minimum parking requirements, and applicable height restrictions and FAR (unless amendments to the Land Development Regulations are proposed, in which case such amendments shall be subject to review and approval by the City and its applicable development boards, in their regulatory capacity and sole discretion).
- b. The definition of "Required Approvals" shall mean:
  - (i) The City Commission shall have approved the Concept Plan as part of the Development Agreement described above.

- (ii) The City Manager shall have approved the proposed plans and specifications, which approval will not be unreasonably withheld, conditioned, or delayed provided such proposed plans and specifications substantially conform to the approved Concept Plan. Any material modifications made by or on behalf of the Developer to the approved Concept Plan, must be approved by the City Commission, in its sole discretion. The Development Agreement shall set forth certain minimum elements to be incorporated within the Project, and any deviation from such minimum elements shall be deemed material.
  
- (iii) Developer, at its sole cost, is responsible for obtaining all governmental approvals for the design, development, and construction of the Project, including without limitation, City of Miami Beach Design Review Board (“DRB”) and, if applicable, City of Miami Beach Planning Board (“Planning Board”) approval. Specifically with respect to the DRB approval, the Developer intends to seek a waiver for up to an additional five feet (5') of height as measured from the base flood elevation plus maximum freeboard, to the top of the second floor slab of the building in accordance with Section 142-337 of the City Code and reserves the right to seek additional waivers or variances as may be needed to accommodate the proposed design of the Project, subject to the City’s approval in its proprietary capacity as part of its approval of the proposed plans and specifications. Promptly following the City Manager’s approval of the proposed plans and specifications (the “Approved Plans”), Developer shall submit the Approved Plans to DRB and, if applicable, Planning Board for approval and thereafter, diligently pursue such approvals. To the extent DRB or, if applicable, Planning Board requires any revisions to the Approved Plans that do not materially conform to the approved Concept Plan, such revisions shall be subject to the City Commission’s approval, in its sole discretion. [In accordance with Section 118-4(4) of the City Code, the Development Agreement shall extend the expiration date for a City Land Use Board Order as defined below beyond the time periods contemplated in Section 118-193 for conditional use permits issued by the Planning Board; Section 118-258 for design review and variance approvals issued by the design review board; and Section 118-355 for variance approvals issued by the board of adjustment. The term “Land Use Board Order” means an order by the Planning Board, but [with the approval of] Design Review Board and/or by the Board of Adjustment. In such cases, the expiration date set forth in the approved and executed Development Agreement shall control over any contained in a City Land Use Order.

c. Project Milestones:

	<u>Target Date</u>	<u>Outside Date</u>

DRB, and if applicable, Planning Board approval	8 months after Effective Date	12 months after Effective Date (plus one month to exhaust all appeals)
Issuance of building permit necessary for commencement of vertical construction of the Project (“Building Permit”)	14 months after DRB, and if applicable, Planning Board approval	20 months after DRB, and if applicable, Planning Board approval
Commencement of Construction and Construction Loan Closing	1 month after issuance of Building Permit and not later than 23 months after Effective Date	1 month after issuance of Building Permit and not later than 34 months after Effective Date
Completion of Construction and issuance of TCO for the Project	20 months after Commencement of Construction and not later than 43 months after the Effective Date	27 months after Commencement of Construction and not later than 61 months after Effective Date
Opening of the Public Parking Replacement Component and Additional Parking Component to the public and Project Public Spaces [ <i>to be defined</i> ]	1 month after Completion of Construction and issuance of TCO for the Project and not later than 44 months after the Effective Date	3 months after Completion of Construction and issuance of TCO for the Project and not later than 64 months after the Effective Date
Stabilization of the Project (as shall be further defined in the Ground Lease)	24 months after Completion of Construction and not later than 67 months after Effective Date	24 months after Completion of Construction and not later than 85 months after Effective Date

- (i) Such other development milestones as the parties may mutually agree to be set forth in the Development Agreement. The Project milestones will be subject to reasonable extension for unavoidable delays and force majeure events, as further described above and as more particularly described in the Development Agreement.
- (ii) “Commencement of Construction” and “Completion of Construction” shall be defined and described in the Development Agreement. All references above to “TCO” shall mean a temporary certificate of occupancy allowing for the beneficial use and occupancy of such portions of the Project by tenants, occupants, users and visitors thereof and shall be further defined in the Development Agreement.

## **6. Project Costs and Financing:**

- a. Developer at its sole cost, shall be responsible for all costs and expenses in connection with the development, design, permitting, construction, operation and maintenance of the Project, including demolition of any existing improvements on the Property, including asphalt paving.
- b. Developer, in coordination with the City, shall be responsible for development and implementation of community outreach and public information campaigns for the Project.
- c. Developer shall be permitted to finance the Project with (i) a single mortgage loan from one or more lenders as part of a syndication, provided that an Institutional Lender shall be the administrative agent/mortgagee with respect to such mortgage loan and, at Developer's option, (ii) one mezzanine loan secured by one pledge of the direct or indirect ownership interests in Developer, provided that an Institutional Lender shall be the administrative agent/pledgee with respect to such mezzanine loan; provided further that the loan-to-cost ratio (with respect to construction financing) or loan-to-value ratio (with respect to permanent financing), taking into account the mortgage loan and the mezzanine loan financing of the Project, as applicable, shall not exceed ninety percent (90%) and Developer shall at all times maintain not less than ten percent (10%) equity in the Project, including Developer's initial equity contribution to the Project.
- d. In no event shall the City's interest in the Property be subject or subordinate to any mortgage or other liens or encumbrances hereafter affecting Developer's interest in the Property. City shall at all times have first priority right of payment of rent due under the Ground Lease.
- e. The City is not and shall not be required to provide any funding or financing for the Project, including without limitation, any tax credits and/or subsidies.
- f. Developer acknowledges and agrees that the City has a compelling interest in the development of the Project and the Option 5 Project in order to advance and promote the City's objective of developing additional Class-A office space to diversify its economy to include a greater mix of businesses, including technology and financial firms. [As an inducement to the City to negotiate this Term Sheet, the Development Agreement and the Ground Lease, at all times until the conclusion of the Referendum, neither the Developer nor any Principal nor any director, officer or member of senior management of Developer, TPC, Scott Robins Companies or the Baron Corporation shall engage in a deliberate campaign intended to cause voters in the Referendum to vote against, or otherwise publicly disparage, impugn or make derogatory statements regarding the Option 5 Project or the developer of the Option 5 Project with such intent (the "Option 5 Negative Campaign Covenant"). However, the foregoing waivers are not intended to and do not limit Developer's ability to truthfully communicate with any governmental agency or to advocate in favor of the Project, including to prospective tenants who may be

considering both the Project and the Option 5 Project. Developer acknowledges that it is voluntarily and knowingly waiving its rights under the First Amendment to the United States Constitution and under any applicable provision of the Florida Constitution in connection with the Option 5 Negative Campaign Covenant. Developer has had the opportunity to consult an attorney in connection with the foregoing waivers and has made the informed decision to waive these rights. The Developer shall execute an inducement letter containing the foregoing waivers promptly upon the City's request. The City agrees that it shall require the developer of the Option 5 Project to enter into a substantially similar agreement containing similar waivers with respect to the Project; provided, however, the developer of the Option 5 Project shall not be a third party beneficiary of the Option 5 Negative Campaign Covenant and the Developer shall not be a third party beneficiary of the negative campaign covenant made by the developer of the Option 3 Project. The City will fairly and equitably enforce both the Option 5 Negative Campaign Covenant and the negative campaign covenant made by the developer of the Option 5 Project as determined by the City Manager in his/her sole discretion.] [*Parties continuing to discuss*]

## **7. Condition of Property/Environmental**

- a. Developer accepts the Property in its AS IS, WHERE IS, and WITH ALL FAULTS condition, including without limitation, environmental condition, and all latent or patent defects, without any representation or warranty of any kind, express or implied, or arising by operation of law.
- b. The City will provide any environmental reports in the City's possession for the Property.
- c. The Project must be developed to comply with the City's resiliency standards attached as Appendix D to the RFP and to be set forth in the Development Agreement. The Developer shall cause its architectural and engineering consultants to design the Project with the objective of meeting LEED® Gold or Living Building Challenge certification requirements and compliance with the Sustainability Fee Program, in accordance with Section 133 of the City Code. The Public Parking Replacement Component and the Additional Parking Component will be designed with the objective of being eligible for Park Smart® certification.

## **8. Termination Rights:**

- a. Developer may terminate the Development Agreement and the Ground Lease at any time prior to issuance of the building permits for the Project in the event of any of the following: (1) any of the Required Approvals render the Project economically unfeasible in the reasonable business judgment of Developer, (2) the Project cannot meet concurrency requirements under Section 163.3180, Florida Statutes, or the costs of concurrency mitigation are, in the reasonable business judgment of Developer, economically unfeasible, (3) Developer, after diligent, good faith

efforts, has been unable to obtain necessary building permits for the Project pursuant to the Approved Plans, (4) Developer, after diligent, good faith efforts, has been unable to secure adequate financing on financial terms that are commercially reasonable, or (5) there shall exist any material adverse change in national or global economic conditions that in the Developer's reasonable and good faith judgment would materially, adversely affect the financial viability of the Project. In connection with any such termination by Developer, Developer shall reimburse the City for any reasonable unreimbursed, out-of-pocket, third-party costs and expenses, beyond the cap on such costs and expenses set forth in the Reimbursement Agreement; for the avoidance of doubt, Developer would be "credited" with all amounts already reimbursed to City pursuant to the Reimbursement Agreement.

- b. The City will not have the right to terminate the Development Agreement for convenience. City will have the right to terminate the Development Agreement as a result of any default by Developer, as further described in the Development Agreement, beyond any applicable notice and cure periods, to be more fully set forth in the Development Agreement and the Ground Lease.
- c. In the event of a termination by Developer pursuant to Section 8.a or by the City as a result of an uncured default by Developer pursuant to Section 8.b., (i) the Developer shall assign (without any representation or warranty, express or implied) to the City all right, title and interest the Developer has in and to the Approved Plans and any other non-privileged, non-confidential or proprietary materials, information, and documents pertaining to the Project, developed by or on behalf of the Developer, and (ii) the City shall have no further obligation to the Developer following such termination, financial or otherwise.

## **9. Default:**

Developer shall be in default of the Development Agreement and Ground Lease if the Developer fails to comply with the terms thereof, beyond any applicable notice and cure periods to be negotiated by the parties and included in the Development Agreement and the Ground Lease, including, without limitation, failure to satisfy conditions precedent to possession of the Property, failure to commence construction prior to the outside date for commencement of construction, failure to satisfy the other Project milestones, and the occurrence of any unpermitted transfers, subject to any applicable extensions for unavoidable delays and force majeure events, as further described above and as more particularly described in the Development Agreement and the Ground Lease. The parties acknowledge and agree that the Development Agreement and Ground Lease will include reasonable and appropriate notice and cure periods and provisions in accordance with City's customary practices. City's remedies for Developer's default under the Development Agreement and Ground Lease will include, without limitation, termination of the Development Agreement and the Ground Lease, as applicable. In connection with any such termination following the commencement of construction and prior to completion of construction, Developer shall restore the



Property to the condition existing prior to the execution of the Development Agreement so that the Property may be fully utilized by the City for its existing purposes as a surface parking lot as of the date hereof and Developer shall reimburse the City for any reasonable out of pocket losses or damages to the extent suffered as a result of the Developer's failure to complete construction in accordance with the Development Agreement, to be further described in the Development Agreement. In connection with certain defaults for failure to meet Project milestones prior to Developer paying full rent under the Ground Lease, in lieu of termination, the City may elect to receive payment of liquidated damages by Developer for a specified period before exercising its right to terminate the Development Agreement as a result of such defaults. Such liquidated damages shall be reasonably determined by the City, and further described and agreed to in the Development Agreement.

#### **10. Indemnification:**

Each of the Development Agreement and Ground Lease shall contain such indemnity provisions as the City customarily requires for projects of this nature. In addition, except to the extent caused by the City's gross negligence and/or willful misconduct, Developer will indemnify, hold harmless and defend the City for any claims, losses, damages, liabilities, fees, costs and expenses (including reasonable attorneys' fees, costs and expenses) in connection with any lawsuit challenging the validity of the Development Agreement or Ground Lease, any governmental approvals of the Project and/or arising in connection with Developer's failure to complete construction in accordance with the Development Agreement, each at Developer's sole cost and expense and using legal counsel reasonably acceptable to the City. The foregoing indemnity will survive the expiration or earlier termination of the Development Agreement and Ground Lease, as applicable. In the event the City elects to operate the Public Replacement Component, the operating agreement may provide that the City agrees to indemnify the Developer subject to sovereign immunity and other customary City indemnity limitations. Neither the City nor the Developer shall be entitled to consequential, special or punitive damages with respect to this Term Sheet, the Development Agreement and/or the Ground Lease; provided the foregoing is not intended to and shall not modify the Developer's obligation to pay any liquidated damages pursuant to the Development Agreement.

#### **11. Other:**

- a. Legal Description and Parking Bond Covenant Analysis: The Developer shall procure a survey of the Property by a licensed surveyor reasonably approved by the City. Developer shall pay the costs of such survey, provided, if the City's Public Works Department prepares the survey, the Developer will reimburse the City for its costs in accordance with the terms of the Reimbursement Agreement (defined in Section 11.e). Developer acknowledges that the transactions are subject to the City's receipt of a parking bond covenant analysis acceptable to the City in its sole discretion and performed by a parking bond consultant approved by the City (or at

the City's sole discretion, the City may produce the parking bond covenant analysis using its internal resources). Whether the City retains the services of a consultant or produces the parking bond analysis itself, Developer will reimburse the City for its costs in accordance with the terms of the Reimbursement Agreement.

- b. [Naming Rights: Naming rights for all or any portion of the Project shall require the approval of the City Commission, which approval shall be in the City Commission's sole discretion; provided, however, the City will not unreasonably withhold its approval of a request by Developer for naming rights in favor of the lead commercial tenant for the Project.] [*Parties continuing to discuss*]
- c. Land Development Regulations: The Project shall be subject to the City's Land Development Regulations (the "LDRs"). The City makes no representation or warranty that the proposed amendment to the LDR will be approved by the City Commission. The Developer acknowledges and agrees that any amendment to the LDRs that would result in a FAR increase would be subject to separate voter referendum approval (i.e., separate from the Referendum required to approve the Ground Lease).
- d. By or before 5:00 p.m. on April 13, 2022, Developer has procured for the City's review, a preliminary parking impact study, a preliminary traffic impact study and a preliminary infrastructure (i.e. water and sewer capacity) study.
- e. Reimbursement: Subject to the agreed upon terms, Developer agreed to reimburse the City for, or at City's option, pay directly, on a monthly basis the City's reasonable out of pocket transactional and professional costs and expenses associated with the due diligence, negotiation and drafting of the Development Agreement and Ground Lease and development of the Project, including without limitation reasonable fees for the City's parking bond covenant analysis, real estate appraisals and other required reports; the City's outside counsel and paralegal fees; and any surveys, environmental assessments (if any), title searches, and other reviews engaged by the City, up to \$150,000, all as further described in the reimbursement agreement between the parties. The Developer has executed a Reimbursement Agreement (the "Reimbursement Agreement") and furnished same to the City on March 7, 2022.
- f. Art in Public Places: Developer shall comply with the City's Art In Public Places (AIPP) program requirements under Section 82-536 through 82-612 of the City Code, as applicable, and shall contribute to the City's Art in Public Places fund the total amount of 1.5% of the "construction cost" of the Project development costs, as such term is defined in Section 82-537 of the City Code, no later than the date of execution of the Project general contract by Developer and the Project general contractor, as required by the City Code.
- g. Prevailing Wage. Developer shall comply with Section 31-27 of the City Code which provides, in pertinent part, that in construction projects pursuant to a development agreement and/or ground lease with the City on City-owned land, the

rate of wages and fringe benefits, or cash equivalent, for all laborers, mechanics and apprentices employed by any contractor or subcontractor on the work covered by the contract, shall not be less than the prevailing rate of wages and fringe benefit payments or cash equivalence for similar skills or classifications of work, as established by the Federal Register, in the City of Miami Beach, Florida. The details included in Appendix C of the RFP pertaining to this requirement shall be attached as an exhibit to the Development Agreement and Ground Lease.

- h. Local Workforce Participation Program: Developer shall cause its contractor to comply with Section 31-40 of the City Code which provides, in pertinent part, that the contractor in any construction contract valued in excess of \$1,500,000 for the construction of buildings or improvements on City-owned land shall make of reasonable efforts to promote employment opportunities for local Miami-Dade County residents and seek to achieve a project goal of having thirty percent (30%) of all construction labor hours performed by Miami-Dade County and City of Miami Beach residents. The details included in Appendix C of the RFP pertaining to this requirement shall be attached as an exhibit to the Development Agreement and Ground Lease.
- i. Developer shall comply with, all Federal, State, County, and City laws, ordinances, codes, rules and regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which, in any manner, may affect the Project (including, without limitation, the Americans with Disabilities Act, Title VII of the Civil Rights Act, the EEOC Uniform Guidelines, and all EEO regulations and guidelines).
- j. Whether or not included or referenced in this term sheet, all other applicable terms and conditions included in the RFP shall be incorporated into the Development Agreement and/or Ground Lease, as appropriate.
- k. Notwithstanding anything to the contrary herein, the specific details, terms, agreements, and conditions for the Project will be negotiated by the parties and set forth in the definitive Development Agreement and Ground Lease, and shall be subject to further approvals, as provided herein.

**EXHIBIT “A”**  
**ACCEPTABLE OWNER DEFINITION**

A. “Acceptable Owner” means any individual, corporation or other entity which has, at a minimum, the following qualifications:

1. [The proposed transferee is not a Foreign Instrumentality; provided however, that up to forty-nine percent (49%) of the indirect equity interests of Developer may be owned by Foreign Instrumentalities provided that at least seventy percent (70%) of such indirect equity interests permitted to be owned by Foreign Instrumentalities must be owned by Specified Foreign Instrumentalities.] [*Parties continuing to discuss*].

2. The proposed transferee must not be owned or Controlled by entities or individuals who have been convicted, or are presently under indictment, for felonies under the laws of any foreign or United States of America jurisdiction; provided, however, the foregoing shall not apply to any individuals or entities owning less than twenty percent (20%) equity interest in the proposed transferee, other than officers, directors, managers or others who have the power to direct and control the business and affairs of such proposed transferee.

3. The proposed transferee must not in its charter or organizational documents (defined as the articles of incorporation and bylaws for any corporation, the partnership agreement and partnership certificate for any partnership, the articles of organization and limited liability company operating agreement for any limited liability company, the trust agreement for any trust and the constitution of the relevant government for any governmental entity, but expressly excluding any statements, positions, actions or allegations not contained in such charter organizational documents) expressly advocate or have as its stated purpose: (a) the violent overthrow of or armed resistance against, the U.S. government; or (b) genocide or violence against any persons; or (c) discrimination, hatred or animosity toward persons based solely on their race, gender, color, national origin, religion, age, disability, marital status, familial status, or sexual orientation.

4. Neither the proposed transferee nor any other person that controls the proposed transferee (or that will, following the proposed transfer, control the proposed transferee) will have violated any laws resulting in a forfeiture of such proposed transferee’s or other person’s entire interest in real property owned or managed by such transferee or other person.

5. The proposed transferee must not (nor any of the individuals or entities who own at least a twenty percent (20%) equity interest in such proposed transferee or are officers, directors, managers or otherwise have the power to direct and control the business and affairs of such proposed transferee) have voluntarily filed or been discharged from bankruptcy, or have been the subject of an involuntary bankruptcy, reorganization or insolvency proceedings (which was not dismissed within 90 days after the filing thereof) within the past five (5) years (bankruptcy filings by Affiliates shall not disqualify a proposed transferee, unless such Affiliates are any of the individuals or entities described in the parenthetical immediately above).

B. “Acceptable Owner Criteria”: The foregoing categories of requirements set forth in Paragraph A above are collectively defined as the “Acceptable Owner Criteria.”

C. Evaluation of the Acceptable Owner Criteria:

Solely for the purpose of evaluating whether the proposed transferee has met the Acceptable Owner Criteria, the proposed transferee shall provide the following information to the Developer and certify that the information provided by the proposed transferee is true and correct and that the proposed transferee meets or exceeds the Acceptable Owner Criteria:

1. information sufficient for the City or any outside vendor engaged by the City to perform a due diligence investigation pursuant to Paragraph D below, including copies of any applicable operating licenses;
2. identification and summary description of its principals and its major real estate or other investments;
3. a list of all bankruptcies filed by such proposed transferee or to which such proposed transferee was a party-bankrupt, if any; and
4. such other evidence as is commercially reasonably necessary, as determined by Developer, to establish that the new entity proposed to be the Acceptable Owner meets the Acceptable Owner Criteria.

D. With respect to any proposed transfer to a proposed transferee, City may, at its sole discretion, engage an outside vendor to perform a due diligence investigation at the Developer's or such proposed transferee's sole expense, which may include a search of civil, criminal, or bankruptcy proceedings in federal and state jurisdictions; regulatory filings; tax filings; lien, judgment and Uniform Commercial Code searches; business registrations, and the like; provided, however, that City's right to conduct its own due diligence shall not expand or deemed to expand the Acceptable Owner Criteria or impose additional criteria with respect to whether a proposed transferee constitutes an Acceptable Owner. City shall be entitled to engage an independent accounting firm, the reasonable costs of which shall be borne by Developer or such proposed transferee, to review the information upon which the proposed transferee's certifications were based, for the purpose of determining whether the certifications and/or information provided to the City is accurate and complete. Developer shall, or shall cause such proposed transferee to, reimburse City, upon demand, for any reasonable out-of-pocket costs incurred by City in connection with such transfer or proposed transfer to a proposed transferee, including the reasonable out-of-pocket costs of making inquiries and investigations into the conformance with the Acceptable Owner Criteria of such proposed transferee and the reasonable legal costs incurred, if any, in connection therewith.

E. Confirmation/Approval Process for Proposed Transferees:

Regarding the City's confirmation that a proposed transferee is an Acceptable Owner, or the City's approval of a transfer that is not a Permitted Transfer, the parties hereby agree that:

1. When reviewing a potential Permitted Transfer for compliance with the Acceptable Owner criteria, the City Manager shall make a recommendation to the City Commission in reliance on the proposed transferee's certification that the proposed transferee meets the Acceptable Owner Criteria (if a Permitted Transfer), along with the information provided by the proposed transferee and the results of any due diligence investigation performed by the City. If the City Manager does not recommend that the proposed transferee meets the Acceptable Owner Criteria, the City Manager shall provide to Developer, upon Developer's written request, specific written, commercially reasonable reasons for such action.

2. The City Commission shall not unreasonably withhold the City's confirmation of a Permitted Transfer if the proposed transferee complies with the Acceptable Owner Criteria.

3. The City Manager may, but shall not be obligated to, make any recommendation for the City's Approval of a transfer that is not a Permitted Transfer, and provided that any such transfer shall be subject to the prior written Approval of the City Commission, which may be granted, conditioned, or withheld by the City Commission in its sole discretion; and

4. If a proposed transfer requires the City's confirmation or Approval, Developer shall deliver written notice to the City, which shall include (i) the name and address of the proposed transferee; (ii) the name and address of the proposed transferor; (iii) information describing the nature of the transaction; (iv) the percentage interest being conveyed; and (v) the materials described in Paragraph C above.

5. The City shall have up to sixty (60) days after the delivery of such written notice and the information required under Paragraph C above, to determine whether, on a commercially reasonable basis, the proposed transferee meets the Acceptable Owner Criteria, and is a Permitted Transfer. The City shall have up to ninety (90) days after the delivery of such written notice and the information required under Paragraph C above whether to Approve in accordance herewith a transfer that is not a Permitted Transfer.

6. Provided that no Event of Default is then continuing, Developer's request for confirmation that the proposed transferee meets the Acceptable Owner Criteria shall be deemed confirmed if the first correspondence from Developer to the City requesting such confirmation is in an envelope marked "**PRIORITY**" and contains a bold-faced, conspicuous (in a font size that is not less than fourteen (14)) legend at the top of the first page thereof stating that "**THIS IS A REQUEST FOR CONFIRMATION OF A PERMITTED TRANSFER UNDER SECTION [\_\_\_] OF THE [DEVELOPMENT AGREEMENT] [GROUND LEASE], DATED AS OF [\_\_\_\_\_], 2022, AND FAILURE TO RESPOND TO THIS REQUEST WITHIN SIXTY (60) DAYS WILL RESULT IN THE REQUEST BEING DEEMED CONFIRMED**" and is accompanied by the information and documents required above and City fails to respond or to deny such request for confirmation in writing within such sixty (60) day period. Provided that no Event of Default is then continuing, Developer's request for approval of a transfer that is not a Permitted Transfer shall be deemed Approved (except if the request includes a Foreign

Instrumentality as a transferee) if the first correspondence from Developer to the City requesting such approval is in an envelope marked “**PRIORITY**” and contains a bold-faced, conspicuous (in a font size that is not less than fourteen (14)) legend at the top of the first page thereof stating that **“THIS IS A REQUEST FOR APPROVAL OF A TRANSFER UNDER SECTION [ ] OF THE [DEVELOPMENT AGREEMENT] [GROUND LEASE], DATED AS OF [ ], 2022, AND FAILURE TO RESPOND TO THIS REQUEST WITHIN NINETY (90) DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED, PROVIDED IF THE REQUEST INCLUDES A FOREIGN INSTRUMENTALITY AS A TRANSFEREE, THE CITY’S FAILURE TO RESPOND IN THE AFFIRMATIVE WITHIN NINETY (90) DAYS SHALL BE DEEMED A REJECTION OF THE REQUEST”** and is accompanied by the information and documents required above and City fails to respond or to deny such request for Approval in writing within such ninety (90) day period. For the avoidance of doubt, if the City has not notified Developer, in writing, of the City Commission’s approval of a transfer that includes a Foreign Instrumentality as a transferee within the ninety (90) day period specified above, then such request shall be deemed rejected.

7. If the City notifies Developer, in writing, within the first thirty (30) days of such sixty (60) or ninety (90) day period, as applicable, that the information submitted is, on a commercially reasonable basis, incomplete, or insufficient (and specifies in what ways it is incomplete or insufficient), then Developer shall supplement such information , on a commercially reasonable basis, and the City shall then have thirty (30) days or sixty (60) days, respectively, after such supplemental information is provided to make its determination whether the proposed transferee meets the Acceptable Owner Criteria or to approve a transfer that is not a Permitted Transfer.

8. No confirmation by the City of a proposed transferee as an Acceptable Owner or its meeting of the Acceptable Owner Criteria shall have the effect of waiving or estopping the City from later claiming that said Acceptable Owner is no longer developing, operating or maintaining the Project according to the terms of the [Development Agreement] [Ground Lease].

F. Interpretation:

1. All acts and omissions as well as rights and duties shall be done in a commercially reasonable manner, unless the standard of “sole discretion” is used.

2. The implied covenant of good faith and fair dealing under Florida law is expressly adopted.

