

**Lincoln Land Class A Office Space
and Parking Development Agreement
Proposed Term Sheet
City Revised Draft - April 26, 2022**

Capitalized terms used in this Term Sheet and not defined 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 those certain surface parking lots referred to as Lots P25 and P26 and consisting of the following eleven (11) tax folios: (1) with respect to Lot P25: 02-3234-004-0870, 02-3234-004-0880, 02-3234-004-0890, 02-3234-004-0900, and 02-3234-004-0910; and (2) with respect to Lot P26: 02-3234-004-0710, 02-3234-004-0720, 02-3234-004-0730, 02-3234-004-0820, 02-3234-004-0830, and 02-3234-004-0840, all located in Miami Beach, Florida (collectively, the “Property”).
- b. Lincoln Road Property Owner, L.P., a Delaware limited partnership (“Developer”), has responded to the City’s Request for Proposals 2021-173-KB (“RFP”) for the redevelopment of the Property and the City Commission authorized the City to commence negotiations with Developer for the redevelopment of the Property based on Developer’s proposal.
- c. Developer, at its sole cost and expense, intends to develop, design, permit, construct, operate and, as applicable, maintain on Lots P25 and P26, respectively, the following (collectively, the “Project”), subject to any changes to the Project that may be approved by the City in its sole discretion in accordance with the Development Agreement and/or Ground Lease (as defined below):
 - (1) With respect to Lot P25 (the “P25 Project”):
 - (A) a Class A office component consisting of approximately [44,951] square feet (the “P25 Office Component”) which shall in any event constitute approximately 66% (and not less than 50%) of the approved floor area ratio (FAR);
 - (B) a ground floor retail component consisting of approximately [12,214] square feet which shall in any event 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 Lenox Avenue and 17th Street except for access points for vehicles and pedestrians (the “P25 Retail Component”);

(C) a public parking component to replace the existing public parking spaces on Lot P25 consisting of at least eighty-six (86) public parking spaces (the “P25 Public Parking Replacement Component”) (for the avoidance of doubt, the City shall operate the P25 Public Parking Replacement Component and it shall be excluded from the Ground Lease pursuant to a condominium regime, as shall be further described in the Development Agreement, provided, the City shall have the right, in its sole discretion, to cause the Developer to operate the P25 Public Parking Replacement Component by written notice to the Developer by or before the date that is sixty (60) days from the date the Referendum (as defined below) results are certified). In the event the City requires Developer to operate the P25 Public Parking Replacement Component, the Developer and the City shall agree to additional terms regarding the Public Parking Replacement Component below; and

(D) additional parking component consisting of ninety-five (95) private parking spaces for use by the occupants of the P25 Office Component and the P25 Retail Component (the “P25 Additional Parking Component”). The P25 Office Component, the P25 Retail Component, and the P25 Additional Parking Component are hereinafter collectively referred to as the “P25 Ground Lease Component”; and

(2) With respect to Lot P26 (the “P26 Project”):

(A) a Class A office component consisting of approximately [63,339] square feet (the “P26 Office Component,” and together with the P25 Office Component, the “Office Component”) which shall in any event constitute approximately 68% (and not less than 50%) of the approved floor area ratio (FAR);¹

(B) a ground floor retail component consisting of approximately [12,670] square feet which shall in any event 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 except for access points for vehicles and pedestrians (the “P26 Retail Component,” and together with the P25 Retail Component, the “Retail Component”);

¹ In the event the proposed amendments to the LDRs are approved, the square footage of the P26 Office Component will be increased to approximately [84,329] square feet. Notwithstanding the foregoing, such increased square footage will not be included for purposes of allocating the aggregate Base Rent between the P25 Project and the P26 Project, as described in Section 3.b. below.

- (C) a public parking component to replace the existing public parking spaces on Lot P26 consisting of at least 106 public parking spaces (the “P26 Public Parking Replacement Component,” and together with the P25 Public Parking Replacement Component, the “Public Parking Replacement Component”) (for the avoidance of doubt, the City shall operate the P26 Public Parking Replacement Component and it shall be excluded from the Ground Lease pursuant to a condominium regime, as shall be further described in the Development Agreement, provided, the City shall have the right, in its sole discretion, to cause the Developer to operate the P26 Public Parking Replacement Component by written notice to the Developer by or before the date that is sixty (60) days from the date the Referendum results are certified). In the event the City requires the Developer to operate the P26 Public Parking Replacement Component, the Developer and the City shall agree to additional terms regarding the Public Parking Replacement Component below; and
 - (D) additional parking component consisting of 126 private parking spaces for use by the occupants of the P26 Office Component and the P26 Retail Component (the “P26 Additional Parking Component” and together with the P25 Additional Parking Component, the “Additional Parking Component”). The P26 Office Component, the P26 Retail Component, and the P26 Additional Parking Component are hereinafter collectively referred to as the “P26 Ground Lease Component”. The P25 Ground Lease Component and the P26 Ground Lease Component are hereinafter collectively referred to as the “Ground Lease Component”.
- (3) The public benefits of the Project (collectively, the “Public Benefits Components”) including, but not limited to, the following:
- (A) the creation of new employment opportunities for residents of the City and neighboring communities;
 - (B) diversification of the City’s economy by attracting new employers from various industries to the City;
 - (C) enhancing public parking available in the Lincoln Road areas of the City;
 - (D) an approximately 0.11-acre pocket park on the ground floor of Lot P26 (the “Public Park Component”);
 - (E) providing the public with additional meeting space as well as new health, recreational, entertainment, and cultural opportunities;

(F) achieving LEED Gold designation; and

(G) addressing the issue of sea level rise by providing onsite stormwater retention.

- d. The transaction will be structured as a development agreement for construction of the Project (the “Development Agreement”) and a long-term ground lease for the completed P25 Ground Lease Component (the “P25 Ground Lease”) and the completed P26 Ground Lease Component (the “P26 Ground Lease;” and together with the P25 Ground Lease, collectively, the “Ground Lease”), which shall be cross-defaulted. Based on Developer’s intended phasing plan for construction of the Project in accordance with the milestones set forth below and which shall be further described in the Development Agreement, following Substantial Completion of the P25 Ground Lease Component and the P26 Public Parking Replacement Component and the opening of the Public Parking Replacement Component to the public (the “Public Parking Opening Date”), the City agrees to release the cross-default between the P25 Ground Lease and the P26 Ground Lease and the cross-defaults between the Development Agreement and the P25 Ground Lease; provided, however, in the event that (but only for so long as) Developer has a single lender for the P25 Project and the P26 Project and the financings thereof are cross-defaulted, the City shall have no obligation to release the cross-default between the P25 Ground Lease and P26 Ground Lease or between the Development Agreement and the P25 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 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 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 (November 8, 2022), 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). Whether or not 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 the Development Agreement shall be 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 be null and void. [*Developer to propose ballot question(s) addressing two Ground Leases instead of one on or before May 15, 2022 (City to determine whether there can be more than one ballot question for this Option)*]

- f. The rights granted under the Ground Lease 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 project for the development of Class-A Office Space, residential and retail space and parking at City-owned lot P27 (the “Option 3 Project”) with The Peebles Corporation (“TPC”). In the event both the Project and the Option 3 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 Project and the Option 3 Project 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 3 Project and the Project can reasonably be constructed in tandem or otherwise simultaneously 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 of the Option 3 Project and the Project and, if applicable, any necessary phasing within 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’ 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’ 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. 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, the P25 Ground Lease and the P26 Ground Lease, 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 under the Development Agreement, the P25 Ground Lease and the P26 Ground Lease at any time: (i) one mortgage secured by a lien on Developer's leasehold interest in the Property as security for financing of the Project in favor of one "Institutional Lender" (as shall be defined in the Development Agreement)², as mortgagee, (ii) one pledge of direct membership interests of the Developer as security for mezzanine financing of the Project in favor of one Institutional Lender, as pledgee, (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 contemplated by clauses (i) and (ii) above, respectively, (iv) transfers of direct or indirect ownership interests in Developer, provided Developer continues to be a Starwood Entity (as defined below) after such transfer, (v) transfers of direct or indirect ownership interests in Developer for estate planning purposes or as the result of death provided the transferor (or the applicable heir) retains control of the transferred interest, and (vi) Exempt Transfers (as defined below) (the transfers described in the foregoing clauses (i) through (vi), collectively, the "Permitted DA Transfers"). 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 the foregoing clauses (i), (ii), (iv) (other than Exempt Transfers that are not Substantial Interest Transfers (as defined in the proviso to Exempt Transfers below)), (v) (with respect to transfers of direct ownership interests in Developer) and (vi) (but only for Exempt Transfers that are Substantial Interest Transfers). Any transferee of Developer's direct interest in the Development Agreement pursuant to a Permitted DA Transfer shall assume all remaining obligations of Developer under the Development Agreement in a written instrument reasonably acceptable to the City. [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

² Note to Draft: Definition of "Institutional Lender" to include an entity that qualifies as an Institutional Lender acting in its capacity as administrative agent, collateral agent, trustee or similar function in connection with a syndication or securitization of the applicable loan.

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”).³] [*Parties continuing to discuss*]

- d. For purposes of the Development Agreement and the Ground Lease, the term “Starwood Entity” shall mean any entity that is directly or indirectly controlled by, or under common control with, Starwood Capital Group Holdings, L.P., a Delaware limited partnership (together with any successor thereto by merger or successor owner of all or substantially all of the assets thereof, “SCG”), [or any publicly traded entity (i) of which Barry S. Sternlicht is (upon such entity becoming, or immediately following such entity becoming, a publicly traded entity) the chief executive officer and/or chairperson and (ii) that (A) directly or indirectly manages or controls SCG or any investment vehicle or fund that is directly or indirectly controlled by, or under common control with, SCG or (B) succeeds, by merger or other transaction, to direct or indirect ownership of all or a substantial portion of the assets directly or indirectly owned by SCG prior to such merger or other transaction (a “Public Successor”; SCG or such Public Successor, the “Starwood Parent”).] [*Parties continuing to discuss*] For purposes hereof and to be further defined in the Development Agreement, Developer will be deemed to be a Starwood Entity so long as the Starwood Parent shall retain the power to direct and control the business and affairs of the persons and/or entities holding the majority of the ownership interests of Developer, other than with respect to certain “major decision” or similar approval rights granted to any other person or entity owning any indirect equity interests in Developer.
- e. For the avoidance of doubt, except as set forth in the proviso below, nothing in the Development Agreement or the Ground Lease shall restrict or prohibit, or require any notification to or consent of the City in respect of (A) any direct or indirect transfer by any non-controlling investor or limited partner in any investment partnership or fund holding a direct or indirect ownership interest in Developer, (B) any transfer of less than 50% of the indirect interests in Developer so long as Developer remains a Starwood Entity, (C) [any transfer by any non-controlling person or entity of its stock or other ownership interests in a public company that holds an indirect ownership interest in Developer,] [*Parties continuing to discuss*] (D) one pledge (other than in connection with a mezzanine financing that is a Permitted DA Transfer) of indirect ownership interests in Developer in favor of one Institutional Lender providing a financing secured by substantial collateral in addition to such indirect ownership interests in Developer and (E) Developer or any of its direct or indirect constituent partners, shareholders or investors (including SCG) from becoming, merging into, consolidating with or being acquired by any Public Successor (the transfers described in the foregoing clauses (A) through (E), collectively, “Exempt Transfers”); provided, however, the City shall receive prior

³ Indirect ownership by Foreign Instrumentalities will be subject to the threshold set forth in Exhibit A.

written notice of any transfer (including any Exempt Transfer) to any proposed transferee that 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 in Developer (and did not own twenty percent (20%) or more of the direct or indirect ownership interests in Developer immediately prior to such transfer or series of transfers) or will have the power to direct and control the business and affairs of the Developer (a “Substantial Interest Transfer”), and for the avoidance of doubt and without limiting the Acceptable Owner Criteria, such proposed transferee of a Substantial Interest Transfer shall satisfy the Acceptable Owner Criteria and comply with the procedures set forth in Exhibit “A”.

3. Ground Lease:

a. Term: Not to exceed 99 years consisting of an initial term of 51 years and two (2) consecutive, dependent extension terms of 24 years each. The effective date of the Ground Lease shall occur upon execution of the Ground Lease by the parties, approval thereof by the City Commission in accordance with City Code and adoption by the City Commission of a resolution accepting the certification of the official results of the successful Referendum and shall be subject to the parties’ execution of the Development Agreement. The term of the Ground Lease will commence upon the Possession Date (as defined below).

b. Rent:

(i) Base Rent*:

Year 1 (months 1-12)	\$2,500,000	(Referendum certification/Notice to Proceed)
Year 2 (months 13-24)	\$ 650,000	(Year 2 commences on the first anniversary of Referendum certification/Notice to Proceed)
Year 3 (months 25-36)	\$ 725,000	
Year 4 (months 37-48)	\$ 725,000	
Year 5 (months 49-60)	\$ 750,000	
Year 6 (months 61-72)	\$ 1,250,000	\$750,000 Base Rent + \$500,000 one-time payment at TCO for P25 Project (estimated to be between months 51-66)
Year 7 (months 73-84)	\$ 1,272,500	\$772,500 Base Rent + \$500,000 one-time payment at TCO for P26 Project (estimated to be between months 66-82)

Years 8 (months 85-96) and Beyond: Increases over the prior year Base Rent by the greater of 2% or CPI (capped at 3.0%)

*Base Rent will be allocated to the P25 Project and the P26 Project based on the aggregate square footage of the P25 Ground Lease Component and P26 Ground Lease Component, respectively, prior to any increase in square footage that may result from the approval of the proposed amendments to the LDRs (as defined below).

- (ii) Annual Percentage Rent for the P25 Project: 5% of effective gross income from the P25 Project for such lease year.
 - (iii) Annual Percentage Rent for the P26 Project: 5% of effective gross income from the P26 Project for such lease year.
 - (iv) Base Rent Reset for each of the P25 Project and the P26 Project: At time of rent reset, hypothetical rent would be calculated based on year 6 (\$750,000) (based on the allocated Base Rent as set forth above) escalated through the rent reset date by the higher of 2% or CPI (uncapped). This would occur at years 51 (for years 52-75) and year 75 (for years 76-99). This formula is in lieu of an appraisal so there is certainty.
 - (v) 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 Public Parking Replacement 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. 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, parking, ancillary uses related thereto and any other uses approved by the City in its sole discretion in accordance with the Development Agreement and/or the Ground Lease. No other uses or purposes shall be permitted.
- 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 of the P25 Project and the Public Parking Opening Date, Developer may assign its interests, rights and obligations under the P25 Ground Lease in connection with certain “Permitted Transfers” (as shall be defined in the Ground Lease) which shall include as-of-right transfers to permitted transferees having the requisite assets, net worth and experience to operate the Project (as shall be further described in the Ground Lease) as well as the Permitted DA Transfers. Following Substantial Completion of the P26 Project and the Public Parking Opening Date, Developer may assign its interests, rights and obligations under the P26 Ground Lease in connection with the foregoing Permitted 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 as defined in the Development Agreement) other than a Specified Foreign Instrumentality.⁴ Any proposed transferee of any ownership interest in Developer or any portion of the Project must satisfy the Acceptable Owner Criteria as and to the extent set forth therein 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.
- b. The term of Developer’s possession of the Property shall commence immediately following, and commencement of construction shall be subject to, 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;

⁴ Indirect ownership by Foreign Instrumentalities will be subject to the threshold set forth in Exhibit A.

- (iii) Developer's delivery to the City of a budget reflecting the 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.
 - (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 in excess of \$100 million and has successfully completed at least five (5) projects of similar size and scope 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 assignments of the architect's agreement and general contract, subject only to the rights of Developer's lender, 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 satisfactory to the City that Developer has sufficient equity and private debt financing to complete construction of the Project in accordance with the budget and the Development Agreement.
- c. Promptly following Developer's satisfaction of the conditions to the Possession Date, Developer shall 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 unavoidable delays and force majeure events (which may include delays attributable to (a) the City acting in its proprietary capacity and as owner of the Property in failing to timely respond or join in applications for Required Approvals, (b) certain specified global or national economic conditions that delay the Developer's financing or construction of the Project and (c) specified unforeseen conditions to the extent not reasonably capable of being identified prior to the execution of the Development Agreement, provided (i) Developer provides prompt written notice to the City of any such unforeseen conditions and (ii) any resulting permitted delays are mutually agreed and identified prior to commencement of construction), and as further 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.
- e. Prior to the Possession Date, the City shall have the right to use the Property consistent with the current uses.
- 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. 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.

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. Required Approvals:
 - (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 or delayed provided such proposed plans and specifications conform to the approved Concept Plan. Any material modifications to the approved Concept Plan must be approved by the City Commission, in its reasonable discretion.
 - (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, Design Review Board (“DRB”) and, if applicable, Planning Board approval. 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 conform to the approved Concept Plan, such revisions shall be subject to the City Commission’s approval in its sole discretion.
- c. Project Milestones:

	<u>Target Date</u>	<u>Outside Date</u>
DRB, and if applicable, Planning Board approval	8 months after Effective Date	11 months after Effective Date (plus one month to allow all appeal periods to expire)
Issuance of full building permit for the Project (“Building Permit”)	17 months after DRB, and if applicable, Planning Board final approval	20 months after DRB, and if applicable, Planning Board final approval
Commencement of Construction of P25 Project	2 months after issuance of Building Permit	3 months after issuance of Building Permit and not later than 35 months after Effective Date
Issuance of TCO for the P25 Public Parking Replacement Component and the P25 Additional Parking Component and Commencement of Construction of P26 Project	15 months after Commencement of Construction of P25 Project	19 months after Commencement of Construction of P25 Project and not later than 54 months after Effective Date
Completion of Construction and issuance of TCO for P25 Project	24 months after Commencement of Construction of P25 Project and 51 months after the Effective Date	28 months after Commencement of Construction of P25 Project and not later than 63 months after the Effective Date
Completion of Construction and issuance of TCO for P26 Project	24 months after Commencement of Construction of P26 Project and 66 months after the Effective Date	28 months after Commencement of Construction of P26 Project and not later than 82 months after the 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 (which may include specified conditions as described above), subject to prompt notice to the City, and as further described in the Development Agreement. To the extent the City approvals are delayed through no fault of Developer, the City Manager, in his/her reasonable discretion, may extend the Project milestones as may be reasonably necessary as a result of such delays.

- (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 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) one loan secured by a single mortgage in favor of one Institutional Lender and, at Developer’s option, (ii) one mezzanine loan secured by one pledge of direct ownership interests in Developer in favor of an Institutional Lender; provided 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 (if any) financing the Project, shall not exceed 90%. 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. [For the avoidance of doubt, each of Lot P25 and Lot P26 may be separately financed, and in such case, the above financings will be permitted with respect to each such portion of the Project separately.] [*Parties continuing to discuss*]
- d. In no event shall the City’s fee 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 3 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. In furtherance of the foregoing, Developer intends to market the P25 Office Component and the P26 Office Component for leasing to tenants in the financial and professional services and technology industries and such other industries targeted for promotion by the City and/or Miami-Dade County, Florida;

provided that the foregoing shall not require Developer to enter into any lease with any prospective tenant, or prohibit Developer from entering into any lease with any prospective tenant.

- g. [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, none of the Developer, any person authorized to speak on behalf of Developer or any director, officer or member of senior management of Developer, Integra Investments, LLC, The Comras Company or SCG shall engage in a deliberate campaign intended to cause voters in the Referendum to vote against the Option 3 Project, including by publicly disparaging, impugning or making derogatory statements regarding the Option 3 Project or the developer of the Option 3 Project with such intent (the "Option 3 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, to advocate in favor of the Project, and to compare and contrast the Project and Option 3 Project, including to prospective tenants who may be considering both the Project and the Option 3 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 3 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 in connection with the Option 3 Negative Campaign Covenant. 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 3 Project to enter into a substantially similar agreement containing similar waivers with respect to the Project; provided, however, the developer of the Option 3 Project shall not be a third party beneficiary of the Option 3 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 3 Negative Campaign Covenant and the negative campaign covenant made by the developer of the Option 3 Project as determined by the City Manager in his/her sole discretion.] *[Provision to be effective once a decision has been made for both the Project and the Option 3 Project to be included on the same ballot] [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, including, without limitation, being designed with the objective of meeting LEED® Gold or Living Building Challenge certification requirements and compliance with the Sustainability Fee Program, in accordance with Section 133 of the City Code. The Public Parking Replacement Component and the Additional Parking Component will be designed to be eligible for Park Smart® certification.

8. Termination Rights:

- a. Developer may terminate the Development Agreement at any time prior to issuance of the building permit 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, or (3) Developer, after diligent, good faith efforts, has been unable to obtain a full building permit for the Project pursuant to the Approved Plans.
- 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, which continues beyond the expiration of any applicable notice and cure period, as further described herein, 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 a default by Developer, (i) the Developer shall assign to the City all right, title and interest the Developer has in and to the Plans and any other materials 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 other than those obligations, if any, which expressly survive such termination.

9. Default:

Developer shall be in default of the Development Agreement and Ground Lease if the Developer fails to comply with the terms thereof, including, without limitation, failure to satisfy conditions precedent to possession of the Property and commencement of construction prior to the outside date for commencement of construction, failure to satisfy the other Project milestones, the occurrence of any unpermitted transfers, which failures continue beyond the expiration of any applicable notice and cure period. City's remedies for Developer's default under the Development Agreement and Ground Lease will include, without limitation, termination of the Development Agreement and/or Ground Lease, as applicable, subject to the release of cross-defaults set forth in Section 1(d) above. In connection with any such termination following the commencement of construction and prior

to completion of construction, Developer shall restore the Property substantially 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 of the date hereof and Developer shall reimburse the City for any losses or damages suffered as a result of the Developer 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, 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 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 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 the failure of Developer 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. 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 approved by the City (or at the City's sole discretion, it may have the survey prepared by its Public Works Department). 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 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 City Commission approval, which approval shall be in the Commission's sole discretion; provided, however, the City shall not unreasonably withhold its approval of a request by Developer for naming rights in favor of the lead commercial tenant for each Project Phase.
- c. Land Development Regulations: The Project shall be subject to the City's Land Development Regulations (the "LDRs"). If Proposer desires to request an amendment to the LDRs, Developer must advise the City of the proposed amendment in writing not later than 5:00pm March 11, 2022. 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 an 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 5:00pm April 13, 2022, Developer shall procure 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: Developer agrees to reimburse the City for, or at City's option, pay directly, on a monthly basis the City's 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 fees for the City's parking bond covenant analysis, real estate and transaction 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 shall execute the Reimbursement Agreement (the "Reimbursement Agreement") furnished to the Developer by the City by or before 5:00pm 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.

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 such 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 directly or indirectly Controls the proposed transferee (or that will, following the proposed transfer, directly or indirectly Control the proposed transferee) has violated any laws, which have resulted 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, condition, or delay the City's confirmation of a Permitted Transfer if the proposed transferee complies with the Acceptable Owner Criteria based on the review described in the preceding paragraph.

3. The City Manager may, but shall not be obligated to, make any a 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 pursuant to the terms hereof, 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 (iv) 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 if 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 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 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 and 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.