

OFF. REC. 19395M1106

This instrument was prepared by
and should be returned to:
Brian P. Tague, P.A.
Tew Cardenas Robak Kellogg Lehman
DeMaria & Tague, L.L.P.
Suite 2600, Miami Center
201 South Biscayne Boulevard
Miami, Florida 33131

00R585375 2000 DEC 06 10:16

This space reserved for recording information

**FIRST AMENDMENT TO
AGREEMENT OF LEASE AND DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO AGREEMENT OF LEASE AND DEVELOPMENT AGREEMENT (this "Amendment") made as of this 8th day of November, 2000, between **THE CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation (the "City"), and **16TH STREET PARTNERS, LLC**, a Florida limited liability company ("Tenant").

WITNESSETH:

WHEREAS, the City and Tenant have heretofore entered into a certain Agreement of Lease dated as of September 1, 1999 and recorded in Official Records Book 18770 at Page 46 in the Public Records of Miami-Dade County, Florida (the "Lease") and a Development Agreement dated as of September 1, 1999 and recorded in Official Records Book 18770 at Page 272 in the Public Records of Miami-Dade County, Florida ("Development Agreement"); and

WHEREAS, the parties hereto desire to modify the Lease and Development Agreement upon the terms, provisions and conditions as are more particularly hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained, the parties hereto agree as follows:

1. **Recitals: Defined Terms.** The recitals set forth above are true and by this reference are incorporated herein in their entirety. All capitalized terms contained in this Amendment which are not otherwise defined herein shall, for the purposes hereof, have the same meanings as are ascribed to them in the Lease.
2. **Legal Descriptions.** Exhibit A to the Lease and Exhibit A to the Development Agreement are hereby deleted and Exhibit A to this First Amendment is hereby substituted in

24

lieu of both such exhibits. Exhibit 2.1 to the Lease is hereby deleted and in lieu thereof Exhibit 2.1 attached to this First Amendment is substituted in lieu thereof.

3. **Termination of Prior Easements.** Parcel 1 (as identified on Exhibit A hereto) is burdened by certain easements set forth in the deeds recorded in Official Records Book 223, at Page 283, and Official Records Book 187, at Page 315, Public Records of Miami-Dade County, which easements are described therein as Easement "A," Easement "B," and Easement "C," respectively, which easements benefit Parcel 2 (as identified on Exhibit A hereto) (collectively, the "Prior Easements"). The City is the owner of all the real property benefited and burdened by the Prior Easements. By execution hereof, the City does hereby terminate such Prior Easements. Upon recording of this Amendment, the Prior Easements shall be extinguished and shall be of no further force and effect.

4. **Modifications of Lease.** The Lease is hereby modified as follows:

(a) Section 7.2(d) of the Lease is hereby modified to read as follows:

"(d) Adjustments for Claims. All property insurance policies required by this Article shall provide that all adjustments for claims with the insurers involving a loss in excess of One Million Dollars (\$1,000,000) adjusted for inflation be made jointly with Tenant, Owner and the Recognized Mortgagee. Owner and Tenant agree, and the Recognized Mortgagee shall agree, however, to approve any insurance adjustment so long as the insurance proceeds, together with any additional amounts which Tenant and/or the Recognized Mortgagee agree to provide, will be sufficient to pay the costs of the Casualty Restoration."

(b) Section 7.3(g) of the Lease is hereby modified to read as follows:

"(g) Duration of Policies. Tenant shall procure policies for all insurance required by any provision of this Lease ~~for periods of not less than one (1) year~~ and shall procure renewals thereof from time to time at least fifteen (15) days before the expiration thereof, except that Builders' Risk Insurance shall only be renewed for the term of any construction period. Tenant shall at all times maintain insurance of the types and in the amounts and subject to the terms, conditions and provisions, required by the terms of the Lease."

(c) Section 9.1(b) of the Lease is hereby modified to read as follows:

"(b) Disbursement of Award. If all or Substantially All of the Premises are taken or condemned as provided in Section, the Net Condemnation Award paid or payable to Owner, Tenant or any lender or mortgagee claiming through either of them in connection with such taking or condemnation shall be paid as follows: (1) there shall first be paid to

Owner an amount equal to the Net Condemnation Award multiplied by a fraction, the numerator of which is the appraised value of the Land as encumbered by this Lease immediately prior to such condemnation, and the denominator of which is the appraised value of the Premises immediately prior to such condemnation; (2) there shall next be paid to the Recognized Mortgagee so much of the Net Condemnation Award as shall equal the unpaid principal indebtedness secured by such Recognized Mortgagee with interest thereon at the rate specified therein to the date of payment (including any prepayment fees thereon and any so-called "yield maintenance" or "make-whole" amounts or other sums intended to assure to the Recognized Mortgagee a certain rate of return under the loan secured by the Recognized Mortgage, if any, as well as any costs payable by Tenant in connection with such Recognized Mortgage pursuant to any "swap" or other interest rate protection or hedging mechanism); and (3) the remaining Net Condemnation Award shall be disbursed to Tenant. The appraised values referred to in Section 9.1(b)(1) shall be determined using the appraisal process outlined in Section 3.2(e), except that the appraised values shall be based upon "fair market value" and not Fair Market Rent.

- (d) Section 25.8(f) of the Lease is hereby modified to read as follows:

"(f) in the case of a proceeding concerning Tenant, that Owner shall be granted a security interest acceptable to it in property of Tenant (other than the Improvements) to secure the performance of Tenant's obligations under this Lease, subject to the rights of any Recognized Mortgagee under the Recognized Mortgage."

- (e) Section 32 of the Lease is hereby modified by adding the following provision as subsection 36.2(h):

"(h) Notwithstanding anything to the contrary contained in this Section 36.2, (i) Owner's right of first offer and other rights set forth in Section 36.2 shall not apply with respect to any transfer occurring as a result of the foreclosure of a Recognized Mortgage or as a result of an assignment or other conveyance in lieu of foreclosure of a Recognized Mortgage, and (ii) during the pendency of a foreclosure action of a Recognized Mortgage, a Recognized Mortgagee, notwithstanding that it has not yet acquired the interest of Tenant under this Lease, may deliver to Owner an Offer Notice under which the proposed sale to Owner would be contingent upon the Recognized Mortgagee (or its designee) obtaining Tenant's estate in and to the Premises. In such event, Owner's period for electing to consummate the Right of First Offer Transaction shall be thirty (30) days after Owner's receipt of the Offer Notice, but in no event earlier than five (5) business

OFF. REC. 1939561109

days after the first regularly scheduled meeting of the Mayor and City Commission that occurs after Owner's receipt of the Offer Notice. It is understood and agreed that this Section 36.2(h) shall only apply to the first sale, assignment or transfer which occurs after the foreclosure of any Recognized Mortgage."

5. **Ratification.** As modified by this Amendment, the Lease and the Development Agreement shall remain in full force and effect and are hereby in all respects ratified and confirmed.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

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

Witnesses:

EB Kleier
Print Name: EB Kleier

By: [Signature]
Neisen O. Kasdin, Mayor

ATTEST:

[Signature]
Print Name: Lillian R. Hatfield

By: [Signature] Asst. City Clerk
for Robert Parcher, City Clerk [Seal]

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

[Signature]
City Attorney

11-15-07
Date

[Handwritten initials]

16th STREET PARTNERS LLC,
a Florida limited liability company

By: LNR 16th STREET, INC., a Florida
corporation, as Managing Member

By: [Signature] MARK A GRIFFIN
Vice, President

[Signature]
Print Name ELIZABETH ROMANIK

[Signature]
Print Name Sheba Jernison

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

The foregoing instrument was acknowledged before me this 17th day of November 2000, by Neisen O. Kasdin, as Mayor, and Robert Parone, as City Clerk, of the City of Miami Beach, Florida, a municipal corporation of the State of Florida, on behalf of such municipal corporation. They are personally known to me or have produced Florida drivers' licenses as identification.

[Signature]
Notary Public
Lillian Beauchamp
Type, Print or Stamp Name

My Commission Expires:

STATE OF Georgia)
) SS:
COUNTY OF Fulton)



The foregoing instrument was acknowledged before me this 16th day of November 2000, by Mark A. Griffin as Vice President of LNR 16th Street, Inc., a Florida corporation, as Managing Member and on behalf of 16th Street Partners LLC, a Florida limited liability company. He is personally known to me or has produced a Florida driver's license as identification.

[Signature]
Notary Public
Termy L Roberts
Type, Print or Stamp Name

My Commission Expires:



RECORDED IN OFFICIAL RECORDS BOOK
OF DADE COUNTY, FLORIDA
RECORD VERIFIED
HARVEY RUVIN
CLERK CIRCUIT COURT

WC HASYRAN@LEVEL.PARKINGPUB-PRIV\16th-Lincoln Place\FinalAmendment-Final Revisions1.doc