

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

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(Space reserved for Clerk)

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**DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** (the “Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2017, by and among the CITY OF NORTH MIAMI BEACH, a Florida municipal corporation (the “City”), and \_\_\_\_\_<sup>1</sup> (the “Developer”):

Introduction

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

B. The Developer has a legal or equitable interest in the parcels of real properties located at 17071, 17035, 17017, and 17005 West Dixie Highway, North Miami Beach, Florida, as more particularly described on Exhibit A-1 attached hereto (the “Developer Property”) (to wit: the Developer or its affiliates own or have a contract to purchase).

<sup>1</sup> Note – We need to identify who will be the owner s of the lots.

C. The City has determined that the alley lying adjacent to the westerly right-of-way line of the F.E.C Railroad and through the intersection of the center lines of West Dixie Highway and N.E. 170th Street, as more particularly described on Exhibit A-2 (the “Alley”) no longer serves a public purpose and is desirous of vacating said right-of-way. ~~Once vacated, ownership of the Alley will revert to the Developer.~~

D. The City owns the real property located at 16955 West Dixie Highway, North Miami Beach, Florida as more particularly described on Exhibit A-3 attached hereto (the “Parking Area”), which currently contains twenty-six (26) off-street parking spaces, and intends to convey the Parking Area to the Developer for redevelopment of the Property in exchange for i) One Hundred Seventy-Five Thousand Dollars (\$175,000.00) (the “Cash Payment”); and ii) the Public Parking Spaces, as defined hereinafter. The Parking Area, Alley and Developer Property are sometimes collectively hereinafter referred to as the “Property” as more particularly described on Exhibit A-4 attached hereto.

E. Developer intends to redevelop the Property with a multi-use project that may include retail, office, and residential uses substantially in accordance with the provisions contained in this Agreement (the “Project”).

F. The City is desirous of improving that certain portion of NW 170 Street lying between the westerly right-of-way line of the F.E.C. Railroad and the intersection of West Dixie Highway (the “Easement”) to enhance the access to Greynolds Park Gardens Park (the “Park”) and improve the aesthetics of said roadway.

G. The City is a Florida municipal corporation with powers and authority conferred under the Florida Constitution, the Municipal Home Rule Powers Act, Florida Statutes and the North Miami Beach City Charter and Code of Ordinances. The City has all governmental,

corporate and proprietary powers to enable it to conduct municipal government, perform municipal and governmental functions, and render municipal services, including the authority to adopt, implement and enforce (together with any other required governmental approvals) comprehensive plans, zoning ordinances, redevelopment plans, and other police power and legislative measures necessary to assure the health, safety and general welfare of the City and its inhabitants.

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

I. The City has determined that the Project, the Easement Improvements, and the monetary contributions associated with the Project will benefit the City and the public. The Project, Easement Improvements, and monetary contributions will improve a northern entrance to the Park. The Project is compatible with the area and will serve as a catalyst in the City's continuing efforts to revitalize the West Dixie Corridor.

J. All capitalized terms used in this Introduction are defined in Section 3 or elsewhere in this Agreement.

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

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

2. Authority. This Agreement is entered into pursuant to the authority and procedures provided by the Act.

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

3.1 “Act” shall mean the Florida Local Government Development Agreement Act (Sections 163.3220 - 163.3243, Florida Statutes (2016)).

3.2 “Alley” shall have the meaning ascribed to such term in Recital D above as more particularly described in Exhibit “A-2”.

3.3 “Cash Payment” shall mean the amount of One Hundred Seventy-Five Thousand Dollars (\$175,000.00), which, at Developer’s election, may be paid in ten (10) equal installments of Seventeen Thousand Five Hundred Dollars (\$17,500.00) payable to the City in connection with the conveyance of the Parking Area.

3.4 “City” shall mean the City of North Miami Beach, Florida.

3.5 “City Code” shall mean the Code of Ordinances adopted by the City as of the Effective Date.

3.6 “City Commission” shall mean the Mayor and City Commission of the City of North Miami Beach, Florida, the governing body of the City, or any successor commission, board or body in which the general legislative power of the City shall be vested

3.7 “Closing” shall refer to the formal exchange of documents between the parties, as further described in Section 4 of this Agreement.

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

3.9 “Default” means any condition or event, or failure of any condition or event to occur, which constitutes, or would after the giving of notice and lapse of time (in accordance with the terms of this Agreement) constitute, an Event of Default.

3.10 “Developer” means the person or entity undertaking the development of the Property, as defined in the preamble to this Agreement, or any permitted successors, assigns, or heirs thereof.

3.11 “Development Order” means any order granting, denying, or granting with conditions an application for a Development Permit, including the Site Plan, as defined hererinafter, and shall include Resolution No. \_\_\_\_\_, as may be amended by the City from time to time.

3.12 “Development Permit” shall have the meaning set forth in Section 163.3221(5), Florida Statutes (2016).

3.13 “Development Program” shall mean the permitted development consisting of up to (i) 415 multi-family residential dwelling units, including condominiums and apartments, and associated amenities; (ii) 32,000 square feet of gross leasable area of general business, retail, and service uses; (iii) 72,000 square feet of gross leasable area of office use; and (iv) parking facilities and other accessory uses. An insubstantial or minor modification of this program may be varied administratively by the City pursuant to section 24-176(B) of the City Code. A change that would result in an equivalent combination of uses (“Equivalent Program”) as set forth in the attached land use equivalency matrix attached as Exhibit B (“Equivalency Matrix”) may be

allowed without the need to amend this Agreement, provided that the modification to the Site Plan referenced in Paragraph 3.26 of this Agreement reflecting the Equivalent Program is approved after public hearing, so long as said combination of uses complies with the Comprehensive Plan and that Residential program shall not exceed 500 dwelling units. Modifications of this Development Program that are not in accordance with and are in excess of the attached Equivalency Matrix, or provide for more than 500 dwelling units shall require amendment of this Agreement and two public hearings pursuant to section 163.3225, F.S. Hotel/motel use may be permitted upon approval of a conditional use by the City pursuant to Section 24-75 of the City Code.

3.14 “Effective Date” is the date when the City records the executed Agreement in the Public Records of Miami-Dade County, as provided in Section 163.3239, Florida Statutes (2016), and Section 21 of this Agreement.

3.15 “Execution Date” is the date the last of the required parties executes this Agreement.

3.16 “Final Closing Date” shall mean the date upon which the conveyance of the Parking Area occurs, which date, subject to Developer’s right to extend as set forth in this Agreement, shall occur no later than ninety (90) days following the Effective Date.

3.17 “Institutional Lender” means a bank, savings and loan association, insurance company, an agency of the United States Government, the Federal National Mortgage Association (“FNMA”), the Federal Home Loan Mortgage Corporation (“FHLMC”), or any other lender generally recognized as an institutional lender, holding a mortgage, lien or other security interest on the Property or a portion thereof.

3.18 “Land Development Regulations” shall have the meaning set forth in Section 163.3221(8), Florida Statutes (2016) and shall also include, without limitation, the definition of “development” in Section 24-22 of the City Code.

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

3.20 “Mortgagee” means the holder of a mortgage encumbering the Property.

3.21 “Parking Area” shall mean the area described in Exhibit A-3.

3.22 “Project” shall mean the construction and development of the Property (as set forth in Section 3.13 and consistent with the Mixed-Use Neighborhood Corridor (MU/NC) zoning district regulations of the City’s Land Development Regulations and the following provisions (with the stricter of the two prevailing):

(a) The maximum total floor area permitted upon the Property shall not exceed that provided by the City’s Land Development Regulations for the purposes of determining population densities and building intensities as required by the Act.

(b) The height of any habitable building on the Property shall not exceed one hundred ninety-five feet (195’-0”), not including rooftop parapets, architectural projections, or mechanical equipment pursuant to Section 24-58.3(E) of the Land Development Regulations.

(c) The uses permitted on the Property shall be (i) multi-family residential use; (ii) general business, retail, and service uses; (iii) office use; (iv)

parking facilities; and (v) any use permitted pursuant to Section 24-58.3(G) of the Land Development Regulations.

(d) The Project shall include on-site parking in accordance with the provisions of the City's Land Development Regulations.

(e) The Developer shall cause the completion of the Project and shall obtain a certificate of occupancy or certificate of completion, as applicable, within five (5) years of the Final Closing Date (the "Outside Certificate Date"). Notwithstanding the foregoing subsection (e), if, despite its good faith efforts, Developer has not obtained a final certificate of occupancy prior the Outside Certificate Date, Developer, ~~acting alone~~with the consent of the Community Development Director or his/her successor and which consent shall not be unreasonably withheld, may extend the Outside Certificate Date by an additional two (2) years.

3.23 "Project Approvals" shall mean the Development Order issued by the City for the development of the Project.

3.24 "Property" shall mean the parcel of real property described in Exhibit A-4 hereto. From and after the conveyance of the Parking Area and the vacation of the Alley, the Property shall include all of the Developer's right, title and interest in and to the Parking Area and the Alley.

3.25 "Recognized Mortgagee" means an Institutional Lender who is the holder of a mortgage and who has notified City that it is a Recognized Mortgagee and provided an address for notices.



3.26 “Site Plan” shall mean that certain site plan for the Project entitled “5 Park,” as prepared by Kobi Karp Architecture and Interior Design, Inc., dated January 18, 2017, approved pursuant to Resolution No. \_\_\_\_\_, passed and adopted by the City Commission on April 18, 2017, and as may be amended from time to time.

3.27 “Title Company” shall mean the title insurance company selected by Developer to provide title insurance regarding Developer’s acquisition of the Parking Area.

4. Parking Area Conveyance.

4.1 Transaction Consideration. In consideration for the conveyance of the Parking Area to Developer, City shall receive from Developer (i) the Cash Payment, and (ii) the Public Parking Spaces, as defined in Section 9 below.

4.2 Conveyance Dates; Cash Payment Date. The conveyance (closing) of the Parking Area to Developer shall occur on or before the Final Closing Date pursuant to a special warranty deed, the form of which is attached to this Agreement as Exhibit C, free of any tenancies or other rights of possession (the “Parking Area Deed”).

4.3 Closing Documents. On or before the Final Closing Date, the City shall deliver to Developer, together with the Parking Area Deed, (i) a no lien, possession and gap affidavit reasonably acceptable to the Title Company and sufficient to remove the standard title exceptions from Developer’s title commitment, (ii) a certificate of non-foreign status or statement complying with Section 1445(b)(2) or (iii) of the Internal Revenue Code, as amended, (iv) the termination of deed restriction in the form attached hereto as Exhibit D or such other form as may be approved by the Title Company (the “Deed Restriction Termination”), (v) a closing statement, and (vi) such other documents as the Title Company shall reasonably require and instruments and/or documents as otherwise necessary to consummate the transactions

contemplated by this Agreement. All costs associated with the removal of title exceptions shall be ~~split between the City and~~borne by the Developer. Furthermore, and notwithstanding anything to the contrary herein, the execution of this Agreement by the City shall serve as prima facie evidence of City's ~~requisite authority~~intention to convey the Parking Area to the Developer, and no other authorization and/or consent shall be necessary by the City to effectuate such conveyance.

#### 4.4 Inspections.

(a) Developer shall have ~~forty-five~~thirty (~~45~~30) days from the Execution Date (the "Inspection Period") to perform an inspection of the Parking Area. During the Inspection Period, the Developer shall determine (i) whether the Parking Area is satisfactory for the Developer's purposes, and (ii) whether the Parking Area has adequate services available and that all federal, state, county and local laws, rules and regulations have been and are currently being complied with relative to the Parking Area.

(b) During the Inspection Period, it shall be the responsibility of the Developer to determine that utility services including, water, waste water, electric, telephone and all other utilities are available in the proper size and capacity to serve the Parking Area. At all times during the Inspection Period, Developer shall be provided with reasonable access during normal business hours to the Parking Area for purposes of on-site inspections. Developer shall determine the scope of the inspections that Developer deems appropriate. In the event that any inspections and/or any review of documents conducted by the Developer proves unsatisfactory to the Developer, in its sole discretion, then, upon written notice to City delivered at any time prior to 5:00 p.m. Florida time on that date which is the second Business Day following the expiration of the Inspection Period (the "Expiration Inspection Date"), Developer may elect not to purchase

the Parking Area and this Agreement shall terminate. In the event that Developer fails to provide a timely written notice of its election not to acquire the Parking Area, then Developer shall be obligated to close on the acquisition of the Parking Area as set forth in this Agreement.

(c) During the Inspection Period, the City shall provide Developer copies and/or access to any appraisals, environmental reports (Phase I and Phase II, if any), surveys, abstracts and title policies and all other studies that City may have in its possession or is subject to its control relating to the Parking Area.

4.5 As-Is Condition. Developer agrees to accept the Parking Area in “as-is”-~~physical~~ condition without representation or warranty by the City regarding physical condition. The City agrees to accept the Parking Area Easement, as described in Section 9, with the underlying land and improvements in “as-is” condition, subject to Developers subsequent compliance with the terms of this Agreement

4.6 No Deposit. Neither City nor Developer shall be required to make any escrow deposit with respect to such party’s obligations under the Agreement.

4.7 Closing Costs. Developer shall be responsible for all documentary stamp taxes, surtax, intangible taxes (if any), transfer fees, recording fees, and any similar costs associated with the recording of the deed with respect to the conveyance of the Parking Area. City shall ~~each~~ be responsible for the payment of all real estate taxes, liens or other outstanding charges or fines applicable to the Parking Area for any period prior to the conveyance. Taxes for the year shall be prorated between Developer and City as of the applicable closing date.

4.8 Release of Deed Restriction. It is acknowledged that the Parking Area is currently encumbered with a deed restriction that requires termination or removal. The process for effectuating said termination or removal may delay the Final Closing Date. The Developer shall be entitled to extend the Final Closing Date of the Parking Area to allow time for the

termination or removal of the deed restriction for a period not to exceed twenty-four (24) months (for clarification purposes, the date upon which the conveyance of the Parking Area finally occurs shall be deemed the “Final Closing Date” for calculation of all time periods set forth in this Agreement). The payment of the Cash Payment shall occur on the Final Closing Date.

5. Representations and Warranties. To induce Developer to enter into this Agreement, the City makes the following representations all of which are now true, and shall be true on the Final Closing Date:

(a) At all times prior to the Final Closing Date, the City shall keep the Parking Area free and clear of any construction, mechanic's or materialmen' s liens for work or materials furnished to or contracted for, by or on behalf of the City prior to the Final Closing Day.

(b) The City has no actual knowledge of pending or contemplated condemnation proceedings affecting the Parking Area or any part thereof.

(c) The City has no actual knowledge nor has the City received any notice of any litigation, claim, action or proceeding, actual or threatened, against the City or the Parking Area.

(d) No individual, general or limited partnership, limited liability partnership or company, corporation, trust, estate, real estate investment trust, association or any other entity has or is entitled to possession of any part of the Parking Area.

(e) No tenant or other occupant, no licensor or franchisor and no other person, firm, corporation, or other entity has any right or option to acquire the Parking Area or any portion thereof. Developer has the exclusive right to acquire the Parking Area and, for so long as this Agreement remains in full force and effect, the City shall not engage in any negotiations with or solicit offers from any other party relating to the sale of the Parking Area.

(f) The City is not a party to any unrecorded contracts, restrictions, easements, leases, option contracts, rights of first refusal or contracts with respect to the Parking Area, nor shall the City enter into any of the foregoing with respect to the Parking Area from and after the Effective Date without the prior written consent of Developer.

(g) To the best of the City's knowledge, the City has not received any written notice claiming that the Parking Area is in violation of any applicable law, ordinance, code, rule, order, regulation or requirement of any governmental authority, the requirements of any local board of fire underwriters (or other body exercising similar functions) and the City further represents that the Parking Area shall be delivered free of any such violation on the Final Closing Date.

6. ~~Evidence of Title.(a) City shall convey the Parking Area, including all easements and restrictions of record (other than the Deed Restriction), to Developer on the Final Closing Date by delivery of the Parking Area Deed. Prior to the expiration of the Inspection Period, Developer shall obtain a title insurance commitment (the "Title Commitment") issued by the Title Company in an amount equal to the Cash Payment. The costs and expenses relative to the issuance of the Title Commitment shall be borne by Developer.~~Status of Title. City shall convey the Parking Area to Developer on the Final Closing Date by delivery of the Parking Area Deed subject only to the items set forth on Exhibit E. From and after the date of this Agreement, City shall not sell, transfer, encumber, or change the status of title or allow any portion of the Parking Area nor execute any leases or other agreements that may bind the Parking Area beyond the Final Closing Date.

~~(b) Developer shall have the Inspection Period in which to examine the Title Commitment. If Developer objects to any exception to title as shown in the Title~~

~~Commitment, the City shall, within fifteen (15) days of receipt of written notice of such objection (the "Title Objection Notice") take such action as is necessary to resolve the items set forth in the Title Objection Notice. All items set forth in the Title Commitment and Survey (as defined below) that are not included in a timely delivered Title Objection Notice shall be deemed "Permitted Exceptions". If the City is unable to cure all objections set forth in the Title Objection Notice prior to the Final Closing Date, then the Developer may (i) not to purchase the Parking Area; or (ii) seek specific performance of the City's obligations hereunder.~~

~~(c) — Prior to the expiration of the Inspection Period, Developer may obtain a current survey (the "Survey"), prepared by a registered land surveyor or engineer licensed in the State of Florida showing the boundaries of the Parking Area, and the location of any easements and other matters as reflected on Schedule B-II of the Title Commitment and certifying the number of acres (to the nearest one thousandth acre) of land contained in the New Park Land, all buildings, improvements and encroachments.~~

~~(d) — In the event the Survey shows any encroachments, strips, gores, or any portion of the land noncontiguous to any other portion of the Parking Area or any other matter materially affecting the intended use of the Parking Area or marketability of title to the Parking Area (any such matter is herein called a "Survey Objection" and treated as a title defect), then, prior to the expiration of the Inspection Period, Developer may notify City of any Survey Objections and, prior to the Final Closing Date, City shall resolve such Survey Objections.~~

7. Vacation of Alley Right-of-Way. The City has determined that, in connection with the Project Approvals, the Alley no longer holds a public benefit and is not required for public access to the Property. The City intends to vacate the Alley by resolution of the City

Commission in accordance with Chapter 336, Florida Statutes (2016). The Alley, once vacated, shall revert to and become a part of the Property and shall be developed in accordance with the Project Approvals. ~~Concurrently~~In connection with the re-platting of the Property to accommodate the Development Program, the City shall vacate the Alley.

8. Roadway Improvements. The Developer shall construct or cause the construction the following improvements to West Dixie Highway and the Easement (collectively, the “Roadway Improvements”):

- (a) West Dixie Highway Improvements. The Developer shall construct or cause the construction of improvements to that certain east half of West Dixie Highway lying between the Easement and NE 172 Street. Said improvements may include landscaping, on-street parking, sidewalks, and curb and gutter. These improvements be installed in accordance with the design approved pursuant to the Project Approvals. However, it is specifically acknowledged that Miami-Dade County has funded a roadway improvement project for the portion of West Dixie Highway adjacent to the Property. The design and timing of the Miami-Dade County improvements to the right-of-way may impact the Developer’s compliance with this Paragraph. Therefore, final design of the Developer’s design and construction of the improvements contemplated herein shall be modified administratively and in compliance with Miami-Dade County approval.
- (b) Easement Improvements. The Developer shall construct or cause the construction of improvements to the Easement. Said improvements shall include landscaping, sidewalks, and curb and gutter. These improvements are to be installed in accordance with the design approved pursuant to the Project Approvals. The

design and timing of the improvements to the Easement may impact the Developer's compliance with this Paragraph. Therefore, final design of the Developer's design and construction of the improvements to the Easement shall be modified administratively.

The Roadway Improvements shall comply with the streetscape plan set forth in Section 24-58.3 of the Land Development Regulations and the Project Approvals. Final design of the Roadway Improvements may be modified administratively and West Dixie Highway improvements shall be subject to Miami-Dade County approval. The Roadway Improvements shall be completed prior to the issuance of the final certificate of occupancy for the Project unless Miami-Dade County imposes any modifications to the Roadway Improvements.

9. Relocation of Public Parking Spaces. The Developer, at its sole expense, shall design, construct and install twenty-six (26) excess parking spaces within the Project (the "Public Parking Spaces") to accommodate the relocation of the existing public parking spaces located within the Parking Area. The Developer shall record a perpetual easement (the "Parking Area Easement"), in the form attached hereto as Exhibit EE, which shall run with the land and require that (i) at least twenty-six (26) parking spaces within the Project shall be designated as public parking at all times; and (ii) Developer shall be responsible for any and all maintenance to the ~~surface~~ area within the Public Parking Spaces. The Public Parking Spaces shall be of a similar size and conformity with other parking spaces in the parking structure and shall be located within the Project's parking structure and shall be accessible for the use of the general public free of charge. The Public Parking Spaces shall be located on the lowest unrestricted floor (i.e., the floor above ground level) within the parking structure. The City shall determine the location and configuration of the Public Parking Spaces as part of the Project Approvals. There shall be no



overnight parking permitted in the Public Parking Spaces. The Developer shall be responsible for the maintenance of and security relating to the Public Parking Spaces. The Developer shall take necessary steps to ensure the Public Parking Spaces are managed and maintained for the purposes defined herein. The Public Parking Spaces shall be substantially completed in accordance with industry standard garage parking spaces by the time of issuance of the Developer's application for the certificate of occupancy for the Project. The City may condition and withhold the issuance of the final certificate of occupancy for the Project pending recordation of the Public Parking Easement and substantial completion of the Public Parking Spaces.

10. Public Infrastructure Assessment. The development of the Project shall require the contribution of a public infrastructure assessment to mitigate the impacts of the Project on the City's public infrastructure in compliance with Subsection 24-58.3(O)(1) of the Land Development Regulations (the "Public Infrastructure Assessment") in order to receive any allowable tax incentive, which may be available from the North Miami Beach Community Redevelopment Agency, if any. If no tax incentives are sought from the North Miami Beach Community Redevelopment Agency by the Project, then the Public Infrastructure Assessment shall not be required. The amount of the Public Infrastructure Assessment shall not exceed one hundred thousand dollars (\$100,000.00) (the "Public Infrastructure Assessment Payment"). The City shall use the Public Infrastructure Assessment Payment received in connection with the Project for stormwater drainage repair for and improvements to Judge Arthur I. Snyder Tennis Center and Dieffenbach Preserve Park. The Developer shall make the Public Infrastructure Assessment Payment prior to the issuance of the final certificate of occupancy for the Project.

11. Public Open Space Assessment and Park Impact Fee. Developer hereby covenants and agrees that, prior to the issuance of a certificate of occupancy for the Project, shall

pay the park impact fee associated with the Project to the City in accordance with Article XVII of the Land Development Regulations; and this shall satisfy Subsection 24-8.3(O)(2) of the Land Development Regulations (the “Public Open Space Assessment”).

12. Public Art Assessment. Developer hereby covenants and agrees that, prior to the issuance of a certificate of occupancy for the Project, it shall provide artwork within the Property or on a mutually agreed upon public property of a quality and design reasonably acceptable to the City Manager or its designee, at a value not to exceed \$40,000, in compliance with and satisfaction of Subsection 24-58.3(O)(3) of the Land Development Regulations (the “Public Art Assessment”) in order to receive any allowable tax incentive, which may be available from the North Miami Beach Community Redevelopment Agency, if any. If no tax incentives are sought from the North Miami Beach Community Redevelopment Agency by the Project, then the Public Art Assessment shall not be required.

13. Police Impact Fees. ~~The Developer shall pay the park impact fee associated with the Project to the City in accordance with Article XVII of the Land Development Regulations.~~ Fee. The Developer shall pay the police impact fee associated with the Project to the City in accordance with Article XVIII of the Land Development Regulations (2017).

14. Applications for Development Approvals and Development Permits. Following the effective date of this Agreement, the Developer will initiate and diligently pursue all applications for Development Orders and Development Permits that were not previously initiated. The City shall process all Development Permit and Development Order applications in a timely fashion and join in application(s) as may be necessary. Notwithstanding the foregoing, Developer shall be solely responsible for obtaining all final, non-appealable Development Orders and Development Permits for the Project, and the Roadway Improvements. No extension of any

time period herein shall be deemed to be an extension of any time periods contained within the Development Permits or Development Orders.

15. Site Plan. The Site Plan has been designed to conform with the terms and criteria provided in this Agreement and with the Land Development Regulations in effect as of the Effective Date. Any modification of the Site Plan shall be approved so long as the site development criteria within the Development subject to the Site Plan is in compliance with the Project Approvals and generally consistent with the terms contained in this Agreement. If it is found during the review of said plan that the proposed Development does not comply with the Project Approvals, the applicant shall either revise the Site Plan to so comply or request approval of the deviation of the City Commission as provided in the Land Development Regulations.

15.1 In the event that the City does not approve the Site Plan, the Developer of that portion of the Property, owner of the parcel, or their successors and/or assigns maintain, in addition to any and all legal remedies, the right and the ability to appeal the administrative decision directly to the City Commission for the City Commission to determine whether the City administrator erred in its decision to deny the approval of the Site Plan based on the plan's conformance with this Agreement, the Project Approvals and the Land Development Regulations in effect as of the Effective Date. The City agrees to process any appeal to the City Commission in accordance with the procedures defined in the City Code.

15.2 Downzoning. For the duration of this Agreement, the City shall not downzone or otherwise limit the ability of the Developer to develop the Property in accordance with the Project Approvals and nothing shall prohibit the issuance of further development orders and approvals in conformity with same, except as provided in Section 163.3233(2), Florida Statutes. For the term of this Agreement, the City hereby agrees that it shall permit the

development of the Project in accordance with the Land Development Regulations, the Comprehensive Plan, and existing laws and policies as of the Execution Date which are or may be applicable to the Property, subject to the conditions of this Agreement. However, nothing herein shall prohibit an increase in developmental density or intensity within the Project in a manner consistent with the Comprehensive Plan and Land Development Regulations, or any change requested or initiated by the Developer in accordance with applicable provisions of law. Moreover, the City may apply subsequently adopted laws and policies to the Property solely pursuant to, and in accordance with, Section 163.3233(2), Florida Statutes.

16. Further Development Review. This Agreement and the Project Approval establish the criteria upon which the Project shall be developed and set forth the sole and exclusive limitation upon the development of the Project. Any Site Plan for the Project approved pursuant to the provisions of this Paragraph may be modified from time to time in accordance with Section 24-172 and Section 24-58.4 of the City's Land Development Code, as may be amended from time to time. Reasonable variations to the building placement, building style, and lot configuration may be approved administratively by the Director of the Community Development Department, or the executive officer of the successor of such Department, as provided in the City's Land Development Regulations.

17. Laws Governing this Agreement. For the entire term of this Agreement, the City hereby agrees that the City's Land Development Regulations governing the development of the Property as they exist as of the Execution Date of this Agreement shall govern the development of the Property and the Project during the Term. Notwithstanding the foregoing, the City may apply subsequently adopted laws or policies to the Property and the Project (particularly as they may relate to quality of life issues such as, but not limited to noise, litter, and hours of operation)

as permitted or required by the Act, including, without limitation, Section 163.3233(2), Florida Statutes, as same may be amended from time to time; provided, however, that this provision shall not be deemed to apply to regulations governing height, floor area ratio (FAR), density, parking requirements or permitted uses.

18. Compliance with Local Regulations Regarding Development Permits. This Agreement is not and shall not be construed as a Development Permit, approval or authorization to commence any development, fill, or other land modification. The Developer and the City agree that the failure of this Agreement to address a particular permit, approval, procedure, condition, fee, term or restriction in effect on the Execution Date of this Agreement shall not relieve Developer of the necessity of complying with the regulation governing said permitting requirements, conditions, fees, terms or restrictions, subject to the terms of Section 13 of this Agreement.

19. Reservation of Rights. This Agreement shall not affect any rights that may have accrued to any party to this Agreement under applicable laws and each party hereto reserves any and all of such rights. Furthermore, nothing set forth in this Agreement shall in any way prohibit or restrict Developer's right to submit all or any part of the Property to a condominium form of ownership and/or submit all or any part of the Property to any associations or other governing documents, so long as, in either case, the rights provided to City in this Agreement are not ~~materially and~~ adversely reduced as a result of the creation of such condominium regime(s) or association(s) or the like. The mere conversion of style of ownership or subsequent conveyance of ownership shall not be deemed to be adverse.

20. Consistency with the City's Comprehensive Plan. The City has adopted and implemented the Comprehensive Plan. The City hereby finds and declares that the provisions of

this Agreement dealing with the Property and the Project are consistent with the City's Comprehensive Plan and Land Development Regulations (subject to all applicable requirements, permits and approvals).

21. Concurrency. Developer shall be solely responsible for obtaining all land use permits, including, but not limited to, all permits and approvals required pursuant to Section 163.3180, Florida Statutes (2016), with respect to concurrency requirements for roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation, and schools (the "Concurrency Requirements"). Prior to applying for its building permit for the Project, Developer shall apply to the appropriate Governmental Authorities and obtain letters or other evidence that Developer has obtained all applicable Concurrency Requirements, and shall diligently and in good faith obtain such letters or other evidence that the Project meets all applicable Concurrency Requirements and shall pay such impact fees as may then be due or applicable to meet Concurrency Requirements.

22. Effective Date and Duration (Term).

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

(b) This Agreement shall run for an initial term of thirty (30) years from the Effective Date (the "Term"), and may be extended by mutual consent of the City and the Developer subject to a public hearing pursuant to Section 163.3225, Florida Statutes. Consent to any extension of this Agreement is within the sole discretion of each party to this Agreement. No notice of termination shall be required by either party upon the expiration of this Agreement, and thereafter the parties hereto shall have no further obligations under this Agreement.

23. Presently Permitted Development. The development that is presently permitted on the Property, including population densities, and building intensities and height, which are subject to this Agreement, are more specifically set forth in Exhibit [FG](#) hereto.

24. Public Facilities to Serve the Property. A description of the public facilities that will service the Project of the properties subject to this Agreement, including who shall provide such facilities; the date any new facilities, if needed, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of the development is included as Exhibit [GH](#) hereto.

25. Required Development Permits. Attached and made a part hereof as Exhibit [HI](#) is a listing and description of all local development permits approved or needed to be approved for the development of the Project.

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

- a) If Developer shall fail to observe or perform any term, covenant or condition of this Agreement on Developer's part to be observed or performed and Developer shall fail to cure or remedy the same within ten (10) days of Developer's receipt of

written notice from the City, with respect to monetary defaults, or within thirty (30) days of Developer's receipt of written notice from the City with respect to non-monetary defaults (each, a "Default Notice"). If such non-monetary default is susceptible to cure but cannot reasonably be cured within said thirty (30) day period, then Developer shall have an additional ~~one hundred eighty (180)~~ninety (90) day period to cure such failure and no Event of Default shall be deemed to exist hereunder so long as Developer commences such cure within the initial thirty (30) day period and diligently and in good faith pursues such cure to completion within such resulting ~~one hundred eighty (180)~~ninety (90) day period from the date of the Default Notice.

- b) If, after the Final Closing Date, Developer shall fail to obtain all Development Orders and Development Permits which are necessary for the Project and the Parking Area Spaces by the date that is two (2) years from the Effective Date.
- c) If, after the Final Closing Date, Developer shall fail to obtain a full building permit for the Project by the date that is three (3) years from the Effective Date.
- d) If, during the construction phase of the Project, Developer shall stop work on any of the aforesated for a period of ~~three hundred sixty five (365)~~ninety (90) days subject to force majeure.
- e) Subject to Developer's right to extend as set forth in Section 3.22(e), the Developer has not obtained a final certificate of occupancy prior to the Outside Certificate Date.
- f) If Developer shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall



consent to the appointment of a receiver or trustee or liquidator of all of its property or the major part thereof or if all or a substantial part of the assets of Developer are attached, seized, subjected to a writ or distress warrant, or are levied upon, or come into the possession of any receiver, trustee, custodian or assignee for the benefit of creditors.

- g) If Developer shall commence a voluntary case under the Title 11 of the United States Code (the "Bankruptcy Code") ; or an involuntary proceeding is commenced against Developer under the Bankruptcy Code and relief is ordered against Developer, or the petition is controverted but not dismissed or stayed within one hundred fifty (150) days after the commencement of the case, or a custodian (as defined in the Bankruptcy Code) is appointed for or takes charge of all or substantially all of the property of Developer and is not discharged or dismissed within one hundred fifty (150) days; or Developer commences any other proceedings under any reorganization, arrangement, readjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar Law of any jurisdiction whether now or hereafter in effect relating to Developer; or there is commenced against Developer any such proceeding which remains undismissed or unstayed for a period of one hundred fifty (150) days; or Developer fails to controvert in a timely manner any such case under the Bankruptcy Code or any such proceeding, or any order of relief or other order approving any such case or proceeding is entered; or Developer consents to or approves of, in any such case or proceeding or the appointment of any custodian or the like of or for it for any substantial part of its property or suffers any such appointment to continue

undischarged or unstayed for a period of one hundred fifty (150) days.

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

27. Enforcement of Performance; Damages and Termination. If an Event of Default occurs hereunder, the City, upon prior written notice to Developer, and a reasonable opportunity to cure which shall not be less than thirty (30) days, may terminate this Agreement. Upon ~~such termination~~ any default by the Developer, and notwithstanding anything to the contrary herein, if the City elects to terminate this Agreement after the occurrence of the Final Closing Date and Developer's delivery of the Cash Payment to the City, then the Developer shall retain ownership of the Parking Area, but shall be obligated to grant to the benefit of the City a parking easement for the use of twenty-six (26) unreserved parking spaces to be located on the Property pursuant to an easement agreement to be otherwise reasonably acceptable to the City and Developer.

28. Strict Performance; Waiver. The City's election of a remedy hereunder with respect to any one or more Events of Default shall not limit or otherwise affect City's right to elect any of the remedies available to it hereunder with respect to any other Event of Default. No failure by the City or Developer to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy available to such party by reason of the other party's default or an Event of Default, hereunder shall constitute a waiver of

any such default, Event of Default, or of such other covenant, agreement, term or condition hereunder.

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

If to the City at:                      City of North Miami Beach, City Hall  
17011 N.E. 19th Avenue  
North Miami Beach, Florida 33162  
Attn: City Manager

With a copy to:                        City of North Miami Beach, City Hall  
17011 N.E. 19th Avenue  
North Miami Beach, Florida 33162  
Attn: City Attorney

With copies to:                        [ \_\_\_\_\_ ]

If to Developer at:                    [ \_\_\_\_\_ ]

With a copy to:                        Tracy R. Slavens, Esq.  
Holland & Knight, LLP.  
701 Brickell Avenue  
Suite 3300  
Miami, Florida 33131

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

30. Modification, Amendment or Release / Cancellation and Enforcement. Reasonable modifications of this Agreement as defined in the Land Development Regulations (requested by the Developer), shall be approved by the Director of the Community Development

Department or his/her successor, or by the director or head of any successor department of the City that then has responsibility for development planning for the City. Such minor modifications shall be reflected in a recordable instrument prepared, executed and recorded by the Director or his/her successor. All other modifications of this Agreement may only be modified, amended, or released, by written instrument signed by the Director of the Department of Community Development or his/her successor, or by the director or head of any successor department of the City that then has responsibility for development planning for the City and Developer with respect to any portion of the Property that the Developer then has the power and authority to act on with regard to their respective individual portions of the Property, provided that such modification, amendment, or release has been approved by the City after public hearing, pursuant to Sections 163.3225, and 163.3229, Florida Statutes.

31. Governing Laws, Construction and Litigation. This Agreement shall be governed and construed in accordance with the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The Developer and the City agree that Miami-Dade County, Florida is the appropriate and exclusive state court venue, and that the U.S. District Court, Southern Division of Florida is the appropriate and exclusive federal court venue, in connection with any litigation between the parties with respect to this Agreement. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof; and accordingly, this Agreement shall not be more strictly construed against any of the parties hereto. In construing this Agreement, captions, and section and paragraph headings shall be disregarded and the use of any gender shall include every other and all genders. All of the exhibits referenced in this Agreement are incorporated in, and made a part of, this Agreement. In the event of any litigation between the parties under this Agreement for a breach thereof, the prevailing party shall

be entitled to reasonable attorney's fees and court costs at all trial and appellate levels. BY ENTERING INTO THIS AGREEMENT THE CITY AND DEVELOPER EXPRESSLY WAIVE ANY RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT. The terms of this Section shall survive the termination of this Agreement.

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

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

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

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

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

37. Mortgagee Rights; Transfer and Assignment.

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

(b) The Recognized Mortgagee shall have a period of ten (10) days as to monetary defaults and thirty (30) days as to non-monetary defaults after receipt of the Notice of Failure to Cure to (1) cure the Event of Default referred to in the Notice of Failure to Cure or (2) cause it to be cured. Nothing contained herein shall be construed as imposing any obligation upon any Mortgagee to so perform or comply on behalf of Developer.

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

(d) Notwithstanding the foregoing provisions of this Section 37, if a Recognized Mortgagee fails (for any reason) to cure any Event of Default by Developer within ten (10) days as to monetary defaults or thirty (30) days as to non-monetary defaults following

receipt of the Notice of Failure to Cure (as extended or excused as herein above provided), then City may, but shall be under no obligation to, perform the obligation of Developer the breach of which gave rise to such Event of Default, without waiving or releasing Developer from its obligations with respect to such Event of Default and without waiving any remedies available to City at law or in equity or under this Agreement.

(e) If there is more than one Recognized Mortgagee, only that Recognized Mortgagee, to the exclusion of all other Recognized Mortgagees, whose Mortgage is most senior in lien shall be recognized as having rights under this Section 37, unless such first priority Recognized Mortgagee has designated in writing to City a Recognized Mortgagee whose Mortgage is junior in lien to exercise such right.

(f) City shall, from time to time within fifteen (15) days following such request of Developer, furnish to the Developer an estoppel letter containing such truthful information as the Developer may reasonably request pertaining to this Agreement or the transaction contemplated hereby.

(g) The Developer shall be entitled to assign or transfer its rights under this Agreement without the prior written consent of the City. Additionally, the City hereby agrees that it shall recognize any transfer to a Mortgagee who has acquired the Property through a foreclosure sale or deed-in-lieu of foreclosure. Any such transferee (including through foreclosure or deed-in-lieu thereof) shall assume all remaining obligations of the Developer under this Agreement including, without limitation:

- (i) The Developers obligation to pay a Cash Payment to the City;
- (ii) The Developer's obligation to provide Roadway Improvements;

and

(iii) The Developer's obligation to provide a Public Art and Infrastructure contribution.

Notwithstanding the foregoing, the Developer shall be permitted to assign this Agreement without the consent of the City after the earlier to occur of (1) issuance of the final certificate of occupancy for the Project; or (2) payment to the City of the Cash Payment of \$175,000.

38. Indemnification. In addition to Developers obligations set forth herein, Developer shall defend, indemnify and hold harmless the City, its agents and employees, from and against any loss, cost, expense, claim, demand or cause of action of whatever kind or nature arising out of or related to the conduct, act or omission of Developer and/or its officers, directors, officials, employees, contractors and agents, related to (1) this Agreement, and/or (2) the Project. The Developer shall directly pay all costs and expenses related to any expense or cost charged, or legal defense required by the City, using legal counsel reasonably acceptable to the City, pursuant to the foregoing. The City shall reasonably cooperate and collaborate (but not at any expense to the City) with the Developer in connection with any legal proceeding in which the Developer is defending the City. This Section shall survive termination or expiration of this Agreement.

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

40. Police Power.



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

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

41. Timing. Notwithstanding anything to the contrary herein, to the extent that any legal, or quasi-legal, action and/or proceeding (each an "Action") is necessary to effectuate the obligations, covenants and/or objectives set forth in this Agreement, so long as the Developer is utilizing good-faith efforts to address such Action(s) in a timely manner, all time periods contemplated hereunder shall be tolled accordingly until such Action(s) has reached a final, non-appealable, conclusion. Furthermore, to the extent that the City's cooperation is necessary to effectuate the preceding, the City hereby agrees to shall utilize reasonable efforts to assist the Developer in resolving any such Action(s).

[EXECUTION PAGES FOLLOW]

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

Signed, sealed and delivered  
in the presence of:

CITY OF NORTH MIAMI BEACH,  
a Florida municipal corporation

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Attest: \_\_\_\_\_

City Clerk

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by George Vallejo, as Mayor of the City of North Miami Beach, a municipal corporation, on behalf of the Corporation. He is personally known to me or has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

\_\_\_\_\_  
NOTARY PUBLIC

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

Signed, sealed and delivered  
in the presence of:

[\_\_\_\_\_] ,  
a [\_\_\_\_\_]

Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Alan S. Macken, Managing Member

Print Name: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017 by Alan S. Macken, as managing member of [\_\_\_\_\_], a [\_\_\_\_\_], on behalf of the company. He is personally known to me or has produced \_\_\_\_\_ as identification and who did/did not take an oath.

\_\_\_\_\_  
NOTARY PUBLIC

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

**EXHIBIT A**  
**LEGAL DESCRIPTIONS**

**EXHIBIT A-1**

**LEGAL DESCRIPTION OF THE DEVELOPER PROPERTY**

All of "A SUBDIVISION OF A PORTION OF TRACT "A" GREYNOLDS PARK GARDENS", according to the Plat thereof, as recorded in Plat Book 55, at Page 57, of the Public Records of Miami-Dade County, Florida.

**EXHIBIT A-2**

**LEGAL DESCRIPTION OF THE ALLEY**

A 20 FOOT ALLEY LYING EAST OF AND ADJACENT TO BLOCK 5 OF "A SUBDIVISION OF A PORTION OF TRACT "A" GREYNOLDS PARK GARDENS", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 55, PAGE 57 OF THE PUBLIC RECORDS OF MIAMI/DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF SAID BLOCK 5;

THENCE NORTH 00°00'00" EAST ALONG THE EAST LINE OF SAID BLOCK 5, A DISTANCE OF 620.24 FEET;

THENCE NORTH 17°31'43" WEST ALONG THE EAST LINE OF SAID BLOCK 5, A DISTANCE OF 41.70 FEET;

THENCE NORTH 25°42'39" EAST ALONG THE EASTERLY RIGHT-OF-WAY LINE OF WEST DIXIE HIGHWAY, A DISTANCE OF 29.20 FEET;

THENCE SOUTH 17°31'43" EAST, A DISTANCE OF 66.04 FEET;

THENCE SOUTH 00°00'00" WEST ALONG THE WEST RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY, A DISTANCE OF 623.32 FEET;

THENCE SOUTH 90°00'00" WEST, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE, LYING AND BEING IN MIAMI/DADE COUNTY, FLORIDA; CONTAINING 13,513 SQUARE FEET MORE OR LESS.

**EXHIBIT A-3**

**LEGAL DESCRIPTION OF THE PARKING AREA**

Tract "B" of "A SUBDIVISION OF A PORTION OF TRACT "A" GREYNOLDS PARK GARDENS", according to the Plat thereof, as recorded in Plat Book 55, at Page 57, of the Public Records of Miami-Dade County, Florida.



**EXHIBIT A-4**

**LEGAL DESCRIPTION OF THE PROPERTY**

ALL OF "A SUBDIVISION OF A PORTION OF TRACT "A" GREYNOLDS PARK GARDENS", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 55, PAGE 57 OF THE PUBLIC RECORDS OF MIAMI/DADE COUNTY, FLORIDA.

TOGETHER WITH:

TRACT "B", "OFF STREET PARKING AREA", AS RECORDED ON OFFICIAL RECORDS BOOK 4145, PAGE 386 OF THE PUBLIC RECORDS OF MIAMI/DADE COUNTY, FLORIDA.

TOGETHER WITH:

A 20 FOOT ALLEY LYING EAST OF AND ADJACENT TO BLOCK 5 OF "A SUBDIVISION OF A PORTION OF TRACT "A" GREYNOLDS PARK GARDENS", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 55, PAGE 57 OF THE PUBLIC RECORDS OF MIAMI/DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF SAID BLOCK 5;

THENCE NORTH 00°00'00" EAST ALONG THE EAST LINE OF SAID BLOCK 5, A DISTANCE OF 620.24 FEET;

THENCE NORTH 17°31'43" WEST ALONG THE EAST LINE OF SAID BLOCK 5, A DISTANCE OF 41.70 FEET;

THENCE NORTH 25°42'39" EAST ALONG THE EASTERLY RIGHT-OF-WAY LINE OF WEST DIXIE HIGHWAY, A DISTANCE OF 29.20 FEET;

THENCE SOUTH 17°31'43" EAST, A DISTANCE OF 66.04 FEET;

THENCE SOUTH 00°00'00" WEST ALONG THE WEST RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY, A DISTANCE OF 623.32 FEET;

THENCE SOUTH 90°00'00" WEST, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE, LYING AND BEING IN MIAMI-DADE COUNTY, FLORIDA.

## EXHIBIT B

<b>Land Use Exchange Rates</b>							
				<b>TO:</b>			
				High-Rise Apartment	General Office	Specialty Retail	Hotel
Land Uses	Net External PM Peak Hour	Units	Rate:	Dwellings	TH.SF	TH.SF	Rooms
<b>FROM:</b>	Trip Rates - Note 1			0.35	2.22	3.11	0.60
<b>EXCHANGE RATES</b>							
High-Rise Apartment	0.35	Dwellings		1.0000	0.1574	0.1123	0.5823
General Office	2.22	TH.SF		6.3524	1.0000	0.7133	3.6992
Specialty Retail	3.11	TH.SF		8.9055	1.4019	1.0000	5.1859
Hotel	0.60	Rooms		1.7172	0.2703	0.1928	1.0000

Note 1 - Trip Generation Rates	The Trip Generation Rates were developed on Table A3-B using the PM peak Hour and comparing both the ITE Rates and ITE Equations, then calculating a Equivalent Rate Using the ITE Equation when available.		
Note2 - Exchange Example 1	Apartment to Office	The exchange rate between <b>Apartment and Office</b> is 1 Apartment for every 0.1574 Thousand Square Feet (TH.SF) of Office, where 1 Apartment is equal to 157.4 SF of Retail.	
Note 3 - Exchange Example 2	Office to Retail	The exchange rate between <b>Office and Retail</b> is 1 Thousand Square Feet (TH.SF) of Office for every 0.7133 Thousand SF of Retail, where 1,000 SF Office is equal to 713.3 SF of Retail.	
Note 4 - Exchange Example 3	Retail to Hotel	The exchange rate between <b>Retail and Hotel</b> is 1 Thousand Square Feet (TH.SF) of Retail for every 5.1859 Room, where 10,000 SF of Retail is equal to 51.859 Rooms.	
Richard Garcia & Associates, Inc.		Prepared: Jan. 12th, 2017	

**EXHIBIT C**

**SPECIAL WARRANTY DEED**

This Instrument Was Prepared By,  
and Return to After Recording:

Tracy R. Slavens, Esq.  
Holland & Knight LLP  
701 Brickell Avenue, Suite 3300  
Miami, Florida 33131

Property Appraiser  
Identification No.: \_\_\_\_\_

(RESERVED)

**SPECIAL WARRANTY DEED**

**THIS SPECIAL WARRANTY DEED** is made as of \_\_\_\_\_, 20\_\_, by THE CITY OF NORTH MIAMI BEACH, a Florida municipal corporation, whose address is \_\_\_\_\_ (the "Grantor"), to \_\_\_\_\_, a \_\_\_\_\_, whose address is: \_\_\_\_\_ (the "Grantee").

**IN CONSIDERATION** of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by Grantee, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant, bargain, sell and convey to Grantee and Grantee's successors and assigns forever all of the real property located in the County of Miami-Dade, State of Florida, and more particularly described as follows (the "Property"):

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

**TOGETHER WITH** all easements, tenements, hereditaments and appurtenances belonging to the Property.

**SUBJECT TO:** (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by governmental authority; (b) easements, restrictions and reservations of record, none of which are intended to be reimposed by this conveyance; and (c) taxes for the year 20\_\_, and thereafter.

**TO HAVE AND TO HOLD**, the same in fee simple forever.

AND Grantor hereby fully warrants the title to the Property and will defend the same against the lawful claims (excluding those arising out of the encumbrances described above) of all persons whomsoever.

**IN WITNESS WHEREOF**, Grantor has caused this instrument to be duly executed on the day and year first above written.

Signed, sealed and delivered  
in the presence of:

CITY OF NORTH MIAMI BEACH,  
a Florida municipal corporation

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Attest: \_\_\_\_\_

City Clerk

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as Mayor of the City of North Miami Beach, a municipal corporation, on behalf of the Corporation. He is personally known to me or has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

\_\_\_\_\_  
NOTARY PUBLIC

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

EXHIBIT "A"

(Legal Description of the Property)

The land referred to herein below is situated in the County of Miami-Dade, State of Florida, and is described as follows:

Tract "B" of "A SUBDIVISION OF A PORTION OF TRACT "A" GREYNOLDS PARK GARDENS", according to the Plat thereof, as recorded in Plat Book 55, at Page 57, of the Public Records of Miami-Dade County, Florida.

**EXHIBIT D**

**TERMINATION OF DEED RESTRICTION**

This Instrument Was Prepared By,  
and Return to After Recording:

Tracy R. Slavens, Esq.  
Holland & Knight LLP  
701 Brickell Avenue, Suite 3300  
Miami, Florida 33131

(RESERVED)

**RELEASE AND TERMINATION OF RESTRICTIONS**

**THIS RELEASE AND TERMINATION OF RESTRICTIONS** (this "Termination") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by THE CITY OF NORTH MIAMI BEACH, a Florida municipal corporation, whose address is \_\_\_\_\_ (the "City") and \_\_\_\_\_, a \_\_\_\_\_, whose address is: \_\_\_\_\_ ("\_\_\_\_\_" and together with City, the "Parties").

**RECITALS**

A. On or about June 10, 1955, Sun Isle Land Co., Inc. ("Sun Isle"), executed and delivered a Special Warranty Deed, dated as of June 10, 1955, from Sun Isle to City and recorded in Official Records Book 4145, Page 387, of the Public Records of Miami-Dade County, Florida (the "Sun Isle Deed") conveying to City the real property located at \_\_\_\_\_ as more particularly described on Exhibit "A" attached hereto (the "Parking Lot Property").

B. The Sun Isle Deed contains a restriction that the Parking Lot Property be used only "as an off-street parking area (and for no other purpose) as provided by said Plat recorded in Plat Book 55, at Page 57, of the Public Records of Dade County, Florida" (the "Restriction").

C. Sun Isle dissolved on or about 1963 and ceased to exist.

D. The Parties, as the owners of the entirety of the real property subject to the Restriction, have the power to, and desire to, terminate, discharge, cancel, release and extinguish the Restriction contained in the Sun Isle Deed.

NOW THEREFORE, for the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties state as follows:

1. Recitals. The above recitals are true and correct and are expressly incorporated into and form a part of this Termination.

2. Release and Termination of Restrictions. The Parties hereby terminate, discharge, cancel, release and extinguish the Restriction in the Deed and release the Property in total from the operation and effect of the Restriction.

3. Recordation. \_\_\_\_\_ may record this Termination in the Public Records of Miami-Dade County, Florida at its sole cost and expense.

4. Governing Law. This Termination shall be governed by the law of the State of Florida.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties have executed this Termination as of the day and year first written above.

Signed, sealed and delivered  
in the presence of:

CITY OF NORTH MIAMI BEACH,  
a Florida municipal corporation

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Attest: \_\_\_\_\_

City Clerk

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as Mayor of the City of North Miami Beach, a municipal corporation, on behalf of the Corporation. He is personally known to me or has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

\_\_\_\_\_  
NOTARY PUBLIC

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

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]



\_\_\_\_\_:

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

STATE OF FLORIDA )

) SS:

COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_ by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_, a  
\_\_\_\_\_.

He or she is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Print or Stamp Name: \_\_\_\_\_

Notary Public, State of Florida at Large

Commission No.:

My Commission Expires:

EXHIBIT A

PROPERTY - LEGAL DESCRIPTION

Tract "B" of "A SUBDIVISION OF A PORTION OF TRACT "A" GREYNOLDS PARK GARDENS", according to the Plat thereof, as recorded in Plat Book 55, at Page 57, of the Public Records of Miami-Dade County, Florida.

**EXHIBIT E**

**PERMITTED EXCEPTIONS**

1. Dedications, conditions and other matters shown on the plat of A SUBDIVISION OF A PORTION OF TRACT "A" GREYNOLDS PARK GARDENS, recorded in Plat Book 55, AT Page 57.
2. Easement between the City of North Miami Beach and JAAL, LLC, a Florida limited liability company, recorded August 14, 2008, in Official Records Book 26524, at Page 3978.

**EXHIBIT F**

**FORM OF PARKING AREA EASEMENT**

This Instrument Was Prepared By  
and Record and Return to:

Tracy Slavens, Esq.  
Holland & Knight LLP  
701 Brickell Avenue, Suite 3300  
Miami, Florida 33131

**PARKING EASEMENT AGREEMENT**

This Parking Easement Agreement (the “Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, a \_\_\_\_\_ (the “Grantor”) having an address at \_\_\_\_\_, and THE CITY OF NORTH MIAMI BEACH, a Florida municipal corporation (the “Grantee”) having an address at \_\_\_\_\_

**RECITALS**

A. Grantor is the owner of the property legally described on **Exhibit “A”** attached hereto and made a part hereof (the “Property”).

B. Grantor and Grantee entered into that certain Development Agreement, dated as of \_\_\_\_\_, 2017, and recorded in Official Records Book \_\_\_\_\_, at Page \_\_\_\_\_, of the Public Records of Miami-Dade County, Florida (as amended from time to time, the “Development Agreement”) whereby, among other things, Grantee approved the development on the Property of up to (i) multi-family residential dwelling units, including condominiums and apartments, and associated amenities; (ii) square feet of gross leasable area of general business, retail, and service uses; (iii) 72,000 square feet of gross leasable area of office use; and (iv) parking facilities (the “Project”).

C. The Development Agreement requires Grantor to grant to Grantee a non-exclusive Parking Easements (as defined herein) to utilize twenty-six (26) parking spaces (the “Public Parking Spaces”) to be assigned by Grantor on a unreserved basis within the parking facility constructed on the Property (the “Parking Facilities”) together with a non-exclusive access easement over the Access Easement Area (as defined herein), as more particularly set forth herein.

**AGREEMENT**

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

1. Recitals. The above recitals are true and correct and by this reference are incorporated as if fully set forth herein.

2. Parking Easements.

(a) Temporary Parking Easement. Grantor hereby grants to Grantee for its use and benefit a non-exclusive temporary easement (the "Temporary Parking Easement") for the lawful use of the property located at \_\_\_\_\_, as more particularly described on **Exhibit "B"** attached hereto (the "Parking Lot"). The term of the Temporary Parking Easement shall commence upon the date hereof and shall automatically terminate no earlier than twenty (20) days after the Grantee has received written notice from Grantor that Grantor is electing, in its sole discretion, to terminate the Temporary Parking Easement (the "Easement Termination Notice"). Grantor may only provide the Easement Termination Notice if Grantor reasonably believes it will commence construction of the Project within sixty (60) days of the date of delivery of the Easement Termination Notice.

(b) Perpetual Parking Easement. Upon the later to occur of (i) the issuance of a final certificate of occupancy for the Project or (ii) the date the Parking Facilities open to the residents of the Project, Grantor shall be deemed to have granted to Grantee an easement to utilize the Parking Facilities for the sole purpose of parking non-commercial vehicles in the Public Parking Spaces. The Public Parking Spaces shall be on the \_\_\_ floor of the Project and shall be clearly and conspicuously designated as Public Parking Spaces. The foregoing shall also include an ingress/egress easement over and across the Property, utilizing the roads, driveways or other vehicular areas constructed for ingress and egress over and across the Property (the "Perpetual Easement", and together with the Temporary Parking Easement, the "Parking Easements"). The term of the Perpetual Easement shall be perpetual in nature.

3. Parking Lot Maintenance Covenants. During the Term of this Agreement, Grantor agrees to maintain the Parking Facilities, at its sole cost and expense, in good and serviceable condition for its use thereof and in compliance with all federal, state, and local laws.

4. Conversion to Condominium. Nothing set forth in this Agreement shall prohibit the Grantor to converting all or part of the Property to one or more declarations of condominiums so long as the creation of, or conveyance to, any condominium association does not result in a ~~materially~~ adverse reduction of any of Grantee's rights hereunder. The mere conversion of style of ownership on subsequent conveyance of ownership shall not be deemed to be adverse.

5. Alterations to the Parking Facilities; Use by Grantor. During the term of this Agreement Grantor may make such alterations to the Parking Facilities or all or any part of the Project which (a) may be required by any applicable governmental authority, and/or (b) Grantor may deem necessary as part of Grantor's development of the Property, in each case.

Grantor shall be permitted to use the Parking Facilities during the term of this Agreement. Grantor may relocate the Parking Easements without prior written consent of Grantee so long as such relocation does not result in a materially adverse reduction of any of Grantee's rights hereunder. Grantor reserves the right to use the Property in any manner and for any purpose that does not materially and unreasonably interfere with Grantee's Parking Easements set forth in this Agreement.

~~6. Insurance. During the term of this Easement, Grantee shall maintain commercial general liability insurance in an aggregate sum of not less than One Million and 00/100 Dollars (\$1,000,000.00) each occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) aggregate limit insuring against bodily injury or property damage occurring on or arising from the use by Grantee of the Property. Grantee shall provide Grantor with an ACORD certificate evidencing the insurance policy providing the coverage required hereunder prior to Grantee's entry onto the Property, and Grantee shall provide renewal ACORD certificates to Grantor at least thirty (30) days prior to the expiration of such policy. The insurance required hereunder shall be provided by responsible insurers licensed in the State of Florida, and shall have a general policy holder's rating of at least "A" and a financial rating of at least "X" in the then current edition of Best's Insurance Reports.~~

6. ~~7.~~ Indemnity. Each of the parties hereto agrees to indemnify the other and hold each of the other parties and their respective officers, directors, agents, employees, successors, and assigns subject to the limitations of Section 768.28, Florida Statutes, (the "Indemnitees") from and against any and all claims, losses, damages, lawsuits, causes of action, proceedings, settlements, or judgments (including reasonable attorney's fees and court costs) arising against or incurred by the Indemnitees and resulting from either the breach of the indemnifying party's obligations under this Agreement or the negligent or intentional action or omission of the indemnifying party, or its tenants, agents, employees, or contractors. Nothing herein shall obligate a party to indemnify the Indemnitees, however, for matters resulting from the negligent or intentional actions of the Indemnitees.

7. ~~8.~~ Reservation of Rights. All right, title and interest in and to the Parking Easements under this Agreement, which may be used and enjoyed without interfering with the rights conveyed by this Agreement are reserved to Grantor. Grantor shall have the right to grant additional easement rights in the Parking Easements.

8. ~~9.~~ Representations and Warranties. Each party represents and warrants to the other (a) that the execution and delivery of this Agreement has been fully authorized by all necessary corporate or limited liability company action, as applicable, (b) that the persons signing this Agreement have the requisite authority to do so and the authority and power to bind the entity on whose behalf they have signed, and (c) this Agreement is valid, binding and legally enforceable in accordance with its terms.

9. ~~10.~~ Grantor Not Liable. In no event shall Grantor be liable for any damage to, or loss of personal property or equipment sustained by Grantee within the Parking Easements, whether or not it is insured, ~~even if such loss is caused by the negligence of Grantor.~~

10. ~~11.~~ Limitation of Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN THE EVENT OF A DEFAULT BY GRANTOR HEREUNDER, OR FOR ANY OTHER REASON, GRANTOR SHALL NOT BE LIABLE TO GRANTEE FOR ANY INDIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES WHATSOEVER, INCLUDING LOSS OF GOODWILL OR LOSS OF PROFITS.

11. ~~12.~~ Waiver; Subsequent Modification. Except as expressly provided herein, no waiver by any party or any failure or refusal of the other party to comply with its obligations under this Agreement shall be deemed a waiver of any other or subsequent failure or refusal to so comply by such other party. No waiver or modification of the terms hereof shall be valid unless in writing and signed by the party to be charged, and then only to the extent therein set forth.

12. ~~13.~~ Recording. An original of this Agreement, and all subsequent modifications or amendments hereto, shall be recorded in the Public Records of Miami-Dade County, Florida.

13. ~~14.~~ Successors and Assigns. This Agreement shall bind, and the benefit thereof shall inure to, the respective successors and assigns of the parties hereto.

14. ~~15.~~ No Public Dedication. Nothing contained in this Agreement shall, in any way, be deemed or constituted a gift of or dedication of any portion of any lands described herein to the general public or for the benefit of the general public whatsoever, it being the intention of the parties hereto that this Agreement shall be limited to and utilized for the purposes expressed herein and only for the benefit of the parties herein named.

15. ~~16.~~ Remedies. Upon a default by any party hereto the non-defaulting party shall have any and all remedies available at law or in equity.

16. ~~17.~~ Enforcement. In the event it becomes necessary for any party to defend or institute legal proceedings as a result of the failure of either party to comply with the terms, covenants and conditions of this Agreement, the prevailing party in such litigation shall recover from the other party all costs and expenses incurred or expended in connection therewith, including, without limitation, reasonable attorneys' fees and costs, at all levels.

17. ~~18.~~ Amendment. The parties hereto agree that this Agreement may not be amended, released or terminated without the prior written consent of the holder of any mortgage encumbering the property to be affected by such amendment.

18. ~~19.~~ No Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each party shall be considered a separate owner, and no party shall have the right to act as an agent for another party, unless expressly authorized to do so in this Agreement.

19. ~~20.~~ Interpretation. No provision of this Agreement will be interpreted in favor of, or against, any of the parties hereto by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof.

20. ~~21.~~ Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute a single document.

21. ~~22.~~ Notices. All notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered (i) upon the delivery (or refusal to accept delivery) by messenger or overnight express delivery service (or, if such date is not on a business day, on the business day next following such date), or (ii) on the third (3rd) business day next following the date of its mailing by certified mail, postage prepaid, at a post office maintained by the United States Postal Service, or (iii) immediately when sent via electronic mail transmission, provided that on the same day such electronic mail transmission is sent, notice is also sent via one of the methods set forth in either subsection (i) or (ii), addressed as follows:

If to Grantor, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Email: \_\_\_\_\_

with a copy to:

Holland & Knight LLP  
701 Brickell Avenue, Suite 3300  
Miami, Florida 33131  
Attention: Tracy Slavens, Esq.  
Email: [tracy.slavens@hklaw.com](mailto:tracy.slavens@hklaw.com)

If to Grantee, to:

\_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Email: \_\_\_\_\_

22. ~~23.~~ Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto relating in any manner to the subject matter of this Agreement. No prior agreement or understanding pertaining to same shall be valid or of any force or effect, and the covenants and agreements herein contained cannot be altered, changed or supplemented except in writing and signed by the parties hereto.



23. ~~24.~~ Severability. If any clause or provision of this Agreement is deemed illegal, invalid or unenforceable under present or future laws effective during the term hereof, then the validity of the remainder of this Agreement shall not be affected thereby and shall be legal, valid and enforceable.

24. ~~25.~~ Venue; Jurisdiction. This Agreement shall be governed and construed in all respects in accordance with the laws of the State of Florida, without regard to its conflicts of laws provisions. Further, all parties hereto agree to avail themselves of and submit to the personal jurisdiction of the Courts of the State of Florida in Miami-Dade County.

25. ~~26.~~ Covenant to Run with the Land; Binding Effect. It is the express intention of Grantor and Grantee that this Agreement and the Easements be a covenant to run with the land, encumbering each of the properties and it shall bind and inure to the benefit of Grantor and Grantee, their respective successors, assigns, and/or grantees as their interests may appear, perpetually, unless terminated pursuant to Section 3 of this Agreement. Any transfer of fee simple title to any part of the Property or any portion thereof shall be subject to and at all times bound by the terms, conditions and covenants of this Agreement.

**SIGNATURES APPEAR ON FOLLOWING PAGES**

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

**GRANTOR:**

Witnesses: \_\_\_\_\_,  
a \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_ by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_, a  
\_\_\_\_\_.

He or she is personally known to me or has produced \_\_\_\_\_ as identification.

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

**GRANTEE:**

Signed, sealed and delivered  
in the presence of:

CITY OF NORTH MIAMI BEACH,  
a Florida municipal corporation

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as Mayor of the City of North Miami Beach, a municipal corporation, on behalf of the Corporation. He is personally known to me or has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

\_\_\_\_\_  
NOTARY PUBLIC

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

EXHIBIT A  
PROPERTY - LEGAL DESCRIPTION

EXHIBIT "B"

PARKING LOT - LEGAL DESCRIPTION

**EXHIBIT FG**

**PRESENTLY PERMITTED DEVELOPMENT**

(a) Permitted Development and Uses. The Property, including the Parking Area, is designated as MU/NC Mixed-Use Neighborhood Center on the Comprehensive Plan Future Land Use Map and as MU/NC Mixed-Use Neighborhood Center District on the City Zoning Map, high density and intensity according to the City's adopted Comprehensive Plan. The MU/NC zoning district permits multi-family residential units, townhomes; eating and drinking establishments; general business; office; retail; hotels; institutional uses; recreation and open spaces (private and public). The Property may be used for the purposes permitted and regulated in these land use designations and zoning districts, as further limited by the by the City's Land Development Regulations and Comprehensive Plan.

(b) Density, Building Heights, Setbacks and Intensities. The maximum density, heights, setbacks and intensities for any development on the Property shall be regulated by the City's Land Development Regulations, Comprehensive Plan and any applicable Federal, State or County laws and regulations. The contemplated maximum residential density of 500 multi-family residential dwelling units, height of 19 stories and intensity of 104,000 square feet of non-residential use is consistent with the MU/NC Mixed-Use Neighborhood Center land use category designation.

**THIS EXHIBIT DESCRIBES THE PRESENTLY PERMITTED DEVELOPMENT FOR PURPOSES OF THE ACT ONLY. THE PROJECT SHALL CONFORM TO THE DESCRIPTION PROVIDED IN SECTION 3.11 OF THIS AGREEMENT.**

**EXHIBIT GH**

**PUBLIC FACILITIES**

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

The proposed development will also be serviced by any and all public facilities, as such are defined in Section 163.3221(12) of the Act, that are described in the Comprehensive Plan, specifically including but not limited to those facilities described in the Infrastructure Element

and the Capital Improvements Element therein, a copy of which is available for public inspection in the offices of the City Clerk of the City of North Miami Beach.



## **EXHIBIT H**



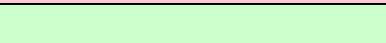
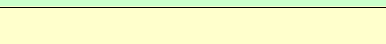

### **REQUIRED DEVELOPMENT PERMITS AND VARIANCES**

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

1. Design Review Board, Planning and Zoning Board, and City Commission approvals, pursuant to Chapter [24] of the City of North Miami Beach Code.
2. Utility Permits
3. Demolition Permits
4. Building Permits
5. Street vacations and related permits
6. Environmental Permits
7. Variances, pursuant to Chapter 118 of the City of North Miami Beach Code
8. Hazardous Materials Removal Permit, if removal of hazardous materials is found necessary.
9. Coastal Construction Control Line Permit
10. Public Works Permit, Paving and Drainage
11. Public Works Permit, Water and Sewer
12. Certificates of Use and/or Occupancy
13. All other local governmental approvals as may be applicable to the subject Property from time to time pursuant to the terms of this Development Agreement.

Document comparison by Workshare Compare on Thursday, February 16, 2017  
6:00:54 PM

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Rendering set	Standard

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