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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into as of the 1st day of ~~September~~ 1999 (the "**Commencement Date**") by and between the **CITY OF MIAMI BEACH, FLORIDA** ("**Owner**"), a municipal corporation duly organized and existing under the laws of the State of Florida, **LINCOLN PLAZA PARTNERS LLC**, a Florida limited liability company ("**Developer**").

RECITALS:

WHEREAS, on December 30, 1997, pursuant to the authorization of the Mayor and City Commission, the Administration issued a Request for Proposals for the development of public-private parking facilities in the area of south Dade Boulevard (the "**RFP**"); and

WHEREAS, the City issued the RFP in order to solicit qualified development teams to bid on certain publicly-owned sites identified in the RFP and/or to propose the development of parking on privately owned property; and

WHEREAS, on April 6, 1998, the City received proposals from five (5) different development teams for various sites throughout the South Beach area; and

WHEREAS, on June 30, 1998, an Evaluation Committee appointed by the City Manager and approved by the Mayor and City Commission, heard presentations from the five teams; and

WHEREAS, in accordance with the criteria identified in the RFP, the Evaluation Committee ranked the proposals and provided their recommendations to the City Manager; and

WHEREAS, on July 15, 1998, the City Commission adopted Resolution No. 98-22857, authorizing the Administration to negotiate with a joint venture composed of SRC Lincoln Plaza LLC, a Florida limited company and RDP Lincoln Plaza LLC, a Florida limited liability company and Michael Milberg (which joint venture is now known as Lincoln Plaza Partners LLC), with regard to the site located between 17th Street and Lincoln Lane and Jefferson and Michigan Avenues in the City; and

WHEREAS, said negotiations have been concluded and the Mayor and City Commission, in Resolution No. 99-23236, adopted after two (2) duly noticed public hearings held pursuant to the Development Agreement Act and Sections 82-36 through 82-40 of the City Code. It is in the best interest of the City to enter into an Agreement of Lease and Development Agreement with Lincoln Plaza Partners LLC for the development of the aforementioned Project Site.

TERMS OF AGREEMENT:

NOW, THEREFORE, it is hereby mutually covenanted and agreed by and between the parties hereto that this Agreement is made upon the terms, covenants and conditions hereinafter set forth.

ARTICLE 1

DEFINITIONS

All capitalized terms used herein and not specifically defined herein shall have the meanings ascribed thereto in the Ground Lease. For all purposes of this Agreement the terms defined in this Article 1 shall have the following meanings and the other provisions of this Article 1 shall apply:

"Accounting Principles" shall have the meaning provided in the Ground Lease.

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

"Architect" means a person or firm licensed to operate as an architect in Miami-Dade County, Florida.

"Building Permit" means a "Full Building Permit" as such term is defined in the Land Development Regulations, issued by the Building Department of the City, which allows building or structures to be erected, constructed, altered, moved, converted, extended, enlarged, or used, for any purpose, in conformity with applicable codes and ordinances.

"Building Equipment" has the meaning provided in the Ground Lease.

"Business Day" or "business day" means a day other than Saturday, Sunday or a day on which banking institutions in the State of Florida are authorized or obligated by law or executive order to be closed.

"City" means the City of Miami Beach, Florida, a municipal corporation duly organized and existing under the laws of the State of Florida.

"City Code" means the Code of the City of Miami Beach, Florida, as amended through the date hereof.

"**City Commission**" means the Mayor and City Commission of the City of 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.

"**City Manager**" means the chief administrative officer of the City, or his or her designee.

"**Commence Construction**" or "**Commencement of Construction**" means the commencement of major work (such as pilings or foundations) for construction of the Improvements in accordance with the Plans and Specifications to be performed in connection with Construction of the Project. Promptly after Commencement of Construction, Owner and Developer shall enter into an agreement acknowledging the date of Commencement of Construction. Any and all preliminary site work (including, without limitation, any environmental remediation and ancillary demolition) shall not be deemed to be Commencement of Construction.

"**Commencement Date**" has the meaning provided in the preamble of this Agreement.

"**Completion Deadline**" means the date that is twenty-four (24) months from the Construction Commencement Date.

"**Comprehensive Plan**" means the Comprehensive Plan which the City adopted and implemented for the redevelopment and continuing development of the City pursuant to Chapter 163, Part II, Florida Statutes.

"**Concurrency Requirements**" has the meaning provided in Section 2.4(b).

"**Consenting Party**" has the meaning provided in Section 20.2(c)(i).

"**Construction**" or "**Construction of the Project**" means the construction on the Land of the Project.

"**Construction Agreement(s)**" means, collectively, any general contractor's agreement, architect's agreement, engineers' agreements, or any other agreements for the provision of labor, materials or supplies entered into with respect to the Construction of the Project, as the same may be amended or otherwise modified from time to time.

"**Construction Commencement Date**" has the meaning provided in Section 2.7.

"**Construction Work**" means any construction work performed under any provision of this Agreement and/or the Construction Agreements with respect to the Construction of the Project.

"**Contractor**" means any contractor, subcontractor, supplier, vendor or materialman supplying services or goods in connection with the Construction of the Project.

"**Controlling Interest**" means the ownership of greater than fifty percent (50%) of the voting ownership interests in a Person or the ownership of greater than fifty percent (50%) of the votes necessary to elect a majority of the board of directors or other governing body of such Person.

"**CPM**" has the meaning provided in Section 4.2(b).

"**CPM Schedule**" has the meaning provided in Section 4.2(b).

"**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.

"**Default Date**" means the date which is twenty-four (24) months after the Construction Commencement Date.

"**Default Notice**" has the meaning provided in Section 19.1(b).

"**Design Review Board**" or "**DRB**" means the Design Review Board of the City created and established pursuant to the Land Development Regulations, or any board or body which may succeed to its function.

"**Detailed Plans**" has the meaning provided in Section 4.2(a)(iv)(2).

"**Developer**" means Lincoln Plaza Partners, LLC, a Florida limited liability company.

"**Development Agreement**" (or this "**Agreement**") means collectively, this Development Agreement and all exhibits and attachments hereto, as any of the same may hereafter be supplemented, amended, restated, severed, consolidated, extended, revised and otherwise modified, from time to time, either in accordance with the terms of this Agreement or by mutual agreement of the parties.

"**Development Agreement Act**" means the Florida Local Government Development Agreement Act, Section 163.3220, et. seq., Florida Statutes (1998).

"**Development Approval**" includes any zoning, rezoning, conditional use special exception, variance or subdivision approval, concurrency approval under Section 163.3180, Florida Statutes, or any other official action of local government having the effect of approving development of land.

"**Development Arbitrator**" shall have the meaning provided in Section 22.1(j).

"**Development Budget**" has the meaning provided in Section 3.4(a).

"**Development Dispute**" has the meaning provided in Section 3.6.

"Event of Default" has the meaning provided in Section 19.1.

"Fees" has the meaning provided in Section 6.2(a).

"Final CO" has the meaning provided in the Ground Lease.

"Floor Area" means the floor area of any development (measured in square feet), as defined in, and measured in accordance with, the Land Development Regulations.

"Funded Equity" has the meaning provided in Section 3.4(b) of this Development Agreement.

"General Contractor" means the general contractor under that certain guaranteed maximum price contract for the Construction of the Project entered into by Developer and such general contractor.

"Governmental Authority or Authorities" means the United States of America, the State of Florida, Miami-Dade County, the City (in its governmental as opposed to proprietary capacity) and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, having jurisdiction over Developer or any owner, tenant or other occupant of, or over or under the Project Site or any portion thereof or any street, road, avenue or sidewalk comprising a part of, or in front of, the Project Site, or any vault in or under the Project Site, or airspace over the Project Site.

"Ground Lease" means, that certain Agreement of Lease between Owner and Developer dated as of the date hereof, pursuant to which Developer (as tenant) has agreed to lease the Land.

"Hearing" has the meaning provided in Section 22.1(b).

"Historic Preservation Board" or "HPB" means the Historic Preservation Board of the City created and established pursuant to the Land Development Regulations or any board or body which may succeed to its functions.

"Improvement(s)" means any building (including footings and foundations), Building Equipment and other improvements and appurtenances of every kind and description now existing or hereafter erected, constructed, or placed upon the Land (whether temporary or permanent), and any and all alterations and replacements thereof, additions thereto and substitutions therefor.

"Institutional Lender" has the meaning provided in the Ground Lease.

"Joint Board" means the Joint Historic Preservation and Design Review Board created and established pursuant to the Land Use Regulations or any board or body which may succeed to its functions.

"**Land**" means the real property and air rights, if any, described in **Exhibit A** attached hereto and incorporated by reference herein and subject to the provisions of **Section 2.1(a)** in the Ground Lease.

"**Land Development Regulations**" means Subpart B (Chapters 114 through 142) of the Code of the City of Miami Beach, Florida, as the same was in effect as of the date of this Development Agreement.

"**Late Charge Rate**" has the meaning provided in the Ground Lease.

"**Loan Documents**" means, collectively, any loan agreement, promissory note, mortgage, guaranty or other document evidencing or securing a loan secured by, among other collateral, Developer's interest in the Ground Lease or the Project.

"**Mortgage**" has the meaning provided in the Ground Lease.

"**Mortgagee**" means the holder of a Mortgage.

"**Notice**" has the meaning provided in **Section 20.1(a)**.

"**Notice of Failure to Cure**" has the meaning provided in **Section 10.1(b)**.

"**Operating Equipment**" has the meaning provided in the Ground Lease.

"**Owner**" means the City, acting in its proprietary capacity, and any assignee or transferee of the City of the entire Owner's Interest in the Premises, from and after the date of the assignment or transfer pursuant to which the entire Owner's Interest in the Premises was assigned or transferred to such assignee or transferee.

"**Owner's Consultant**" means such Person as Owner may designate in writing to Developer from time to time.

"**Owner's Interest in the Premises**" has the meaning provided in the Ground Lease.

"**Payment and Performance Bond**" has the meaning provided in **Section 2.6(d)**.

"**Permits and Approvals**" shall mean any and all permits and approvals required to be issued by Governmental Authorities in connection with the Construction of the Project, including, without limitation, the City of Miami Beach building permits, the approvals of the City of Miami Beach Design Review Board, the Miami-Dade County Department of Environmental Resources Management permits, the Florida Department of Environmental Protection coastal construction permit, and any utility access agreements with all applicable utility companies.

"Person" means an individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, estate, trust, unincorporated association or other entity; any Federal, state, county or municipal government or any bureau, department, political subdivision or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Planning Board" means the Planning Board of the City or any board or body which may succeed to its functions.

"Plans and Specifications" means the final plans and specifications for the Project, including, foundation, structural, electrical, plumbing and HVAC plans, the finish schedule, the Project program, the differentiation schedule and such other plans and specifications customarily required to obtain a full building permit, each as established in accordance with **Article 3**, as the same may be modified from time to time in accordance with the provisions of **Section 3.2**.

"Preliminary Plans and Specifications" has the meaning provided in **Section 2.3(a)** of this Development Agreement.

"Project" has the meaning provided in the Ground Lease.

"Project Construction Costs" means all hard and soft construction costs incurred in connection with the development and Construction of the Project. The projected Project Construction Costs are as set forth in the Development Budget, attached hereto and incorporated by reference herein as **Exhibit 3.4(a)**.

"Project Opening Date" has the meaning provided in the Ground Lease.

"Project Site" means the Land and all portions of the Improvements.

"Proposal" means the development proposal submitted by Developer in response to the RFP.

"RFP" or **"Request for Proposals"** has the meaning provided in **Article 1** of the Ground Lease.

"Recognized Mortgage" has the meaning provided in the Ground Lease.

"Recognized Mortgagee" means the holder of a Recognized Mortgage; provided, however, that, except to the extent permitted by the Ground Lease, a Recognized Mortgagee may not be an Affiliate of Developer (except if Developer is an Affiliate of a Recognized Mortgagee that has caused the Ground Lease to be assigned to such Affiliate in lieu of foreclosure of the Recognized Mortgage of such Recognized Mortgagee).

"Requirements" has the meaning provided in **Section 13.1(b)**.

"Sale of the Project" has the meaning provided in the Ground Lease.

"Substantial Completion" or "Substantially Complete" or "Substantially Completed" means, with respect to the Project, that (1) it shall have been substantially completed in accordance with the Plans and Specifications, (2) the certificate of the Architect described in Section 2.8(c)(i) shall have been obtained, and (3) all of the Improvements therein shall have been issued Certificates of Occupancy.

"Term" means the period commencing on the Commencement Date and, unless sooner terminated as provided hereunder, expiring on the issuance of a Final CO and the completion of all remaining punch list items with respect to completion of the Project in accordance with the terms of this Agreement, subject, however, to survival of any provisions of this Agreement that are expressly stated herein to survive such expiration or termination (as the case may be).

"Unavoidable Delays" means delays due to strikes, slowdowns, lockouts, acts of God, inability to obtain labor or materials, war, enemy action, civil commotion, fire, casualty, catastrophic weather conditions, eminent domain, a court order which actually causes a delay (unless resulting from disputes between or among the party alleging an Unavoidable Delay, present or former employees, officers, members, partners or shareholders of such alleging party or Affiliates (or present or former employees, officers, partners, members or shareholders of such Affiliates) of such alleging party), the application of any Requirement, or another cause beyond such party's control or which, if susceptible to control by such party, shall be beyond the reasonable control of such party. Such party shall use reasonable good faith efforts to notify the other party not later than twenty (20) days after such party knows of the occurrence of an Unavoidable Delay; provided, however, that either party's failure to notify the other of the occurrence of an event constituting an Unavoidable Delay shall not alter, detract from or negate its character as an Unavoidable Delay or otherwise result in the loss of any benefit or right granted to the delayed party under this Development Agreement. In no event shall (i) any party's financial condition or inability to fund or obtain funding or financing constitute an "Unavoidable Delay" (except for an Institutional Lender's inability to fund, which inability is not caused by Tenant) with respect to such party and (ii) any delay arising from a party's (or its Affiliate's) default under this Development Agreement or any of the Project Agreements constitute an "Unavoidable Delay" with respect to such party's obligations hereunder. The times for performance set forth in this Development Agreement (other than for monetary obligations of a party) shall be extended to the extent performance is delayed by Unavoidable Delay, except as otherwise expressly set forth in this Development Agreement.

ARTICLE 2.

CONSTRUCTION

Section 2.1 Consistency with City's Comprehensive Plan and Zoning Regulations.

The City has adopted and implemented the Comprehensive Plan. The City hereby finds and declares that the provisions of this Development Agreement dealing with the Land are consistent with the City's adopted Comprehensive Plan and Land Development Regulations, subject to all applicable Requirements, Permits and Approvals.

Section 2.2 Planning Board Approval.

(a) Developer has heretofore submitted an application to the Planning Board for its review of the Project, and the Planning Board has reviewed the Project.

(b) If at any time in the future it shall be necessary in connection with the construction, reconstruction or renovation of the Premises to apply to the Planning Board for its review or approval of any changes or modifications to the Premises, Developer shall be solely responsible for making such application.

Section 2.3 Design of the Project.

(a) The Developer shall be solely responsible for the design of the Project, and such design shall be (1) substantially in accordance with the design shown in Developer's response to the Request for Proposals (RFP No. 20-97/98 (Amended)) issued by the City on December 30, 1997, except to the extent that changes thereto have been negotiated with, and approved, by Owner, and (2) at the sole cost and expense of Developer. Developer shall be solely responsible for obtaining the approval of the City's Design Review Board, and the City's Historic Preservation Board or the Joint Board, if applicable, and the City shall have no duty or obligation to approve any particular design. Prior to submission of the Project design to the DRB and HPB or Joint Board, if applicable, Developer shall submit to Owner (acting in its proprietary capacity as owner of the Land) all of the Preliminary Plans and Specifications for the Project which shall include, but not be limited to, a detailed site plan, elevation drawings of each facade, a detailed floor plan for each of the floors of the Project, a calculation of the floor areas for each floor of the Project, and a calculation of the total floor area dedicated to each use within the Project (the "Preliminary Plans and Specifications") which shall be submitted to Owner's City Manager for approval within twenty-four (24) weeks of the Commencement Date. The City Manager shall have twenty (20) Business Days to review the Preliminary Plans and Specifications, and shall review the Preliminary Plans and Specifications solely for consistency with the Developer's response to the RFP. If Owner disapproves the Preliminary Plans and Specifications, then Developer shall, at its election, either (x) submit Owner's disapproval to expedited arbitration pursuant to Section 3.6 and Section 22.1 as to the reasonableness of the disapproval, or (y) submit a revised modification to the Preliminary Plans and Specifications to meet

Owner's objections, which revised modification shall be submitted and reviewed as provided in **Section 3.1(b)**. Failure of the Developer to submit Preliminary Plans and Specifications by the date which is twenty-four (24) weeks from the Commencement Date shall constitute a Default under this Development Agreement.

(b) Developer shall, within eight (8) weeks of Owner's approval of the Preliminary Plans and Specifications, submit an application for approval of the Project design to the City's Design Review Board and to the Historic Preservation Board or Joint Board, if applicable. Failure of the Developer to submit its application, as provided in this Section, to the DRB and HPB or Joint Board, if applicable, by the date which is eight (8) weeks from the receipt of Owners Approval as above provided shall constitute a Default under this Development Agreement.

(c) Developer shall pursue approval of its application to the DRB, HPB or Joint Board, if applicable, diligently and in good faith.

Section 2.4 Public Facilities and Concurrency.

(a) Owner and Developer anticipate that the Project will be served by those roadway transportation facilities currently in existence as provided by state, county and local roadways. It is also anticipated that the Project will be served by public transportation facilities currently in existence, including those provided by Miami-Dade County, the City, and other governmental entities as may presently operate public transportation services within the City. Sanitary sewer, solid waste, drainage, and potable water services for the proposed Project are expected to 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. The Project will also be serviced by any and all public facilities, as such are defined in Section 163.3221(12), Florida Statutes (1997), as such are described in the City's Comprehensive Plan, specifically including, but not limited to, those facilities described in the Infrastructure Element and Capital Improvements Element therein, a copy of which is available for public inspection in the offices of the Planning, Design and Historic Preservation Department of the City of Miami Beach. The foregoing, however, shall not be deemed to be an approval of, nor shall it be deemed to relieve Developer of the obligation to comply with, Section 163.3180, Florida Statutes (1997).

(b) 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 (1997), with respect to concurrency requirements for roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation (the "Concurrency Requirements"). Developer shall, within twenty-four (24) weeks of the Commencement Date, apply to the appropriate Governmental Authorities for letters or other evidence that Developer is pursuing all applicable Concurrency Requirements, and shall diligently and in good faith pursue such letters or other evidence that the Project meets all applicable Concurrency Requirements, or shall attempt to negotiate agreements acceptable to Tenant to mitigate the impacts of developing the Project.

Section 2.5 Plans and Specifications.

(a) Upon receipt of the DRB's approval of the Project, and the HPB's or Joint Board's approval if applicable, Developer shall prepare Plans and Specifications for construction of the Project, consistent with the Preliminary Plans and Specifications, as approved by the DRB, and the HPB or Joint Board's, if applicable, for review by Owner. The Plans and Specifications shall be submitted to the Owner within thirty-two (32) weeks from the date on which the DRB and the HPB or Joint Board, as applicable, approves the Project. Failure of the Developer to submit Plans and Specifications to the Owner within thirty-two (32) weeks from the date on which the DRB approves the Project shall constitute a Default under this Development Agreement. The Plans and Specifications shall be reviewed by the City Manager solely for consistency with the Preliminary Plans and Specifications as the same have been modified by the DRB and HPB, or Joint Board, if applicable. If Owner disapproves the Plans and Specifications, then Developer shall, at its election, either (x) submit Owner's disapproval to expedited arbitration pursuant to **Section 3.6** and **Section 22.1** as to the reasonableness of the disapproval, or (y) submit a revised modification to the Plans and Specifications to meet Owner's objections, which revised modification shall be submitted and reviewed as provided in **Section 3.1(b)**.

(b) Developer shall pursue approval by the City of the Plans and Specifications diligently and in good faith.

Section 2.6 Conditions Precedent to Developer's Commencement of Construction of the Project.

(a) Developer shall obtain a Building Permit for the entire Project by not more than twenty-four (24) months from the Commencement Date and failure to do so shall constitute a Default under this Development Agreement. Subject to **Section 2.6(c)**, Developer shall not Commence Construction of the Project unless and until (i) Developer shall have obtained and delivered to Owner's Consultant copies of all Permits and Approvals required to Commence Construction and (ii) Developer shall have delivered to Owner original certificates of the policies of insurance required to be carried pursuant to the provisions of **Article 7** of this Agreement.

(b) Owner (solely in its capacity as the owner of the Project Site and not in its governmental capacity) shall reasonably cooperate with Developer in obtaining the Permits and Approvals required by **Sections 2.2(a)** and **2.10(a)** and any necessary utility access agreements, shall sign any application reasonably made by Developer which is required in order to obtain such Permits and Approvals and utility access agreements and shall provide Developer with any information and/or documentation not otherwise reasonably available to Developer (if available to Owner) which is necessary to procure such Permits and Approvals and utility access agreements. Any such accommodation by Owner shall be without prejudice to, and shall not constitute a waiver of, Owner's rights to exercise its discretion in connection with its governmental functions. Developer shall reimburse Owner, within ten (10) days after Owner's demand, for any reasonable out-of-pocket cost or expense payable to Owner's technical consultants (other than Owner's Consultant and Owner's

employees), such as architects and engineers, so incurred by Owner in connection with Owner's assistance in obtaining the Permits and Approvals and utility access agreements required by Sections 2.6(a) and 2.10(a).

(c) Developer shall not Commence Construction of the Project, or any portion thereof, unless and until Owner shall have approved the Plans and Specifications, as provided in Section 2.5. However, if Developer chooses to perform any Construction of the Project on a "fast-track" basis, Developer may request the necessary approval of Owner in stages and perform that portion of the Construction Work which has been approved (provided Developer shall comply with all other requirements with respect to such portion of the Construction Work), even if progress plans and specifications for other portions of the Construction Work have not yet been prepared.

(d) Payment and Performance Bond. Prior to Commencement of Construction of the Project, Developer shall cause the General Contractor to furnish to Owner a payment and performance bond (the "**Payment and Performance Bond**"), in a form reasonably acceptable to Owner, issued by a surety listed in the most recent United States Department of Treasury listing of approved sureties, guaranteeing the performance of the General Contractor under that certain guaranteed maximum price contract for the Construction of the Project. Owner may accept, in its sole and absolute discretion, for any reason and/or for no reason whatsoever, a completion guarantee from the General Contractor in substitution for such Payment and Performance Bond. Owner shall be named as a dual obligee under the Payment and Performance Bond; provided, however, Owner's rights under the Payment and Performance Bond shall be subordinate to the Recognized Mortgagee's (as defined in the Ground Lease) rights under the Payment and Performance Bond and Owner shall agree in writing with such Recognized Mortgagee that Owner shall only seek to enforce its rights under the Payment and Performance Bond if the Ground Lease is terminated and such Recognized Mortgagee fails to exercise its rights under Section 11.6 of the Ground Lease for the execution of New Tenant's Documents (as defined in the Ground Lease).

Section 2.7 Commencement and Completion of Construction of the Project.

Developer shall at its expense (a) Commence Construction on or before sixty (60) days after all Permits and Approvals necessary for the Commencement of Construction are issued (the "**Construction Commencement Date**") and (b) thereafter continue to prosecute Construction of the Project with diligence and continuity to completion. If, after Developer has Commenced Construction, Developer fails to diligently prosecute Construction of the Project (subject to Unavoidable Delays), and such failure continues (subject to Unavoidable Delays) for thirty (30) consecutive days after Developer's receipt of notice of such failure, Owner shall, in addition to all of its other remedies under this Agreement and the Ground Lease, have the right to seek such equitable relief (either mandatory or injunctive in nature) as may be necessary to cause diligent and continuous prosecution of Construction of the Project (subject to Unavoidable Delays) by Developer, it being understood that Construction of the Project is a material inducement to Owner to enter into the Ground Lease and monetary damages shall be inadequate to compensate Owner for harm resulting from such failure. Notwithstanding anything to the contrary contained herein, if Developer fails to

Substantially Complete Construction of the Project by the Default Date, then the same shall constitute a Default under this Agreement and under the Ground Lease.

Section 2.8 Completion of Construction of the Project.

(a) Substantial Completion of the Project shall be accomplished in a diligent manner, and in any event by the Completion Deadline, and final completion of the Construction of the Project, including but not limited to completion of all punch-list items, shall be accomplished in a diligent manner thereafter, in each case in a good and workerlike manner, in substantial accordance with the Plans and Specifications (with no material deviations except as expressly permitted herein), in accordance with all applicable Requirements and, except as provided in Article 6, at Developer's sole cost and expense.

(b) Upon Substantial Completion of Construction of the Project, Developer shall furnish Owner with the following:

(i) a certification of the Architect (certified to Owner on the standard AIA certification form) that it has examined the Plans and Specifications and that, in its professional judgment, after diligent inquiry, Construction of the Project has been Substantially Completed in accordance with the Plans and Specifications applicable thereto and, as constructed, the Improvements comply with all applicable Requirements;

(ii) if Requirements require the same, a copy or copies of the temporary certificates of occupancy for the Project (or portion thereof, as applicable) issued by the City of Miami Beach Building Department;

(iii) lien waivers in form and substance reasonably satisfactory to Owner from each contractor, subcontractor, supplier or materialman retained by or on behalf of Developer in connection with the Construction of the Project, evidencing that such Persons have been paid in full for all work performed or materials supplied in connection with the Construction of the Project;

(iv) a complete set of "as built" plans and a survey showing the Improvement(s) (excluding personalty) for which the Construction of the Project has been completed. Owner shall have an unrestricted license to use such "as built" plans and survey for any purpose related to the Project Site without paying any additional cost or compensation therefor, subject to copyright and similar rights of the Architect to prohibit use of designs for purposes unrelated to the Project Site, as such rights exist in law or may appear in the Architect's contract, and subject to applicable public records laws. The foregoing requirement with respect to "as built" plans shall be satisfied by Developer furnishing to Owner, at Developer's expense, a complete set of Plans and Specifications, with all addenda thereto and change orders in respect

thereof, marked to show all changes, additions, deletions and selections made during the course of the Construction of the Project; and

(v) a Contractor's Final Affidavit in form and substance reasonably satisfactory to Owner executed by the General Contractor (i) evidencing that all contractors, subcontractors, suppliers and materialmen retained by or on behalf of Developer in connection with the Construction of the Project have been paid in full for all work performed or materials supplied in connection with the Construction of the Project and (ii) otherwise complying with all of the requirements under the Florida Construction Lien Law, Chapter 713, Florida Statutes, as amended.

(c) In the event that Developer has not Substantially Completed construction of the Improvements by the Completion Deadline, Developer shall forfeit the Security Deposit held pursuant to Section 3.6 of the Lease to Owner as liquidated damages, and not as a penalty, the Parties agreeing that it is impossible to ascertain actual damages to Owner in the event that Developer does not Substantially Complete construction of the Improvements by the Completion Deadline.

Section 2.9 Confirmation of Land Development Regulations.

The City Commission held a duly noticed public hearing on July 7, 1999, after which it determined, pursuant to Section 142-425 of the City Code, that the zoning district classification of the Land under the Lease is CD-3, as defined in the Land Development Regulations.

Section 2.10 Required Development Permits.

(a) Developer shall be solely responsible for obtaining the Development Approvals listed in Exhibit 2.10 attached hereto, if applicable.

(b) There are no reservations and/or dedications of land for public purposes that are proposed under the terms of this Development Agreement.

Section 2.11 Proposed Permitted Development.

The proposed permitted development on the Land shall not exceed a Floor Area Ratio (as defined in the City's Land Use Regulations) of 2.75, and the height of the development on the Land shall not exceed One Hundred (100) feet.

Section 2.12 Developer's Right of Termination.

Notwithstanding anything to the contrary contained herein, Developer shall have the right to be released from its liability and obligations [except the obligation to pay Rental and/or Impositions prior to the Possession Date pursuant to Section 3.2(a) of the Ground Lease] and to terminate this Development Agreement and the Ground Lease prior to the Possession Date because (a) changes to

the Preliminary Plans and Specifications required by the DRB, Joint Board, or any other Governmental Authority (including the City), render the Project economically unfeasible in the reasonable business judgment of Developer, (b) the Project cannot meet concurrency requirements under Section 163.3180, Florida Statutes (1997), or the costs of concurrency mitigation are, in the reasonable business judgment of Developer, economically unfeasible, or (c) Developer, after good faith efforts, has been unable to obtain a full building permit for the Project pursuant to the Plans and Specifications submitted by Developer. In the event of termination of this Development Agreement and the Ground Lease pursuant to this **Section 2.12**, each Party shall bear its own costs and expenses incurred in connection with this Development Agreement and the Ground Lease and neither Party shall have any further liability to the other.

ARTICLE 3.

PLANS AND SPECIFICATIONS

Section 3.1 Approval and Modification of Plans and Specifications.

(a) In accordance with **Section 2.5**, and prior to submitting its application for the required Building Permits, Developer shall prepare and submit to Owner (acting in its proprietary capacity as owner of the Land), the Plans and Specifications, which Plans and Specifications shall be used to obtain the required building permits. If such submitted Plans and Specifications are materially inconsistent with, or contain material modifications to, the Preliminary Plans and Specifications as approved by the DRB and the HPB or Joint Board, if applicable, then such Plans and Specifications shall clearly indicate, by "ballooning", highlighting, blacklining or describing in writing in sufficient detail in a memorandum accompanying such Plans and Specifications, all such modifications to the Preliminary Plans and Specifications. Within ten (10) Business Days of its receipt of such Plans and Specifications, Owner shall notify Developer, in writing, describing, with specificity, the basis for such disapproval of any material inconsistencies or material modifications of which Owner disapproves between the proposed Plans and Specifications and the Preliminary Plans and Specifications, it being agreed however, that Owner's failure to so notify Developer of its disapproval within such time period shall be deemed to constitute Owner's conclusive approval of such Plans and Specifications; provided, however, that if Owner shall notify Developer within ten (10) Business Days following its receipt that any of such inconsistencies or modifications to the Preliminary Plans and Specifications are not indicated as required by this **Section 3.1(a)** or that the complexity of such changes from the Preliminary Plans and Specifications necessitates an extension of such time period to complete Owner's review, such period shall be extended to the date which is thirty (30) days after Owner's receipt of the proposed inconsistencies or modifications; provided, further, however, that Owner shall not be responsible for, and shall not be deemed to have approved, any such material inconsistency or modification that is not indicated as required by this **Section 3.1(a)**, except that when Developer advises Owner in writing, and Owner agrees with Developer in writing, that the Plans and Specifications, as approved as herein provided above, are complete and sufficient and suitable to construct, furnish and equip the entire Project in accordance with the provisions of this Agreement, such written agreement shall be deemed to constitute Owner's conclusive approval of all

modifications and inconsistencies, whether or not the modifications are highlighted, in such Plans and Specifications; provided, however, that the foregoing exception relating to Owner's conclusive approval does not apply to those changes which, in Owner's opinion, (i) diminish any of the levels of quality of the Project, (ii) materially diminish, individually or in the aggregate, any of the physical components of the Project, or (iii) have a material adverse effect (a) on the ability of Developer to complete Construction of the Project or (b) on the financial feasibility of the Project. Notwithstanding anything to the contrary contained herein, Owner shall not object to any inconsistencies with or modifications to the Preliminary Plans and Specifications which are necessitated by Requirements or as a result of a drafting, coordination, mechanical or technical error in the Preliminary Plans and Specifications.

(b) If Developer desires to modify previously approved Plans and Specifications (as such may have been modified by approved Plans and Specifications), Developer shall submit any such modified Plans and Specifications to Owner for Owner's approval. Such modified Plans and Specifications shall clearly indicate, by "ballooning", highlighting, blacklining or describing in writing in sufficient detail in a memorandum accompanying such modified Plans and Specifications, all such proposed modifications to the Plans and Specifications. Within ten (10) Business Days of its receipt of the proposed modifications, Owner shall notify Developer in writing, with specificity of any material inconsistencies or material modifications of which Owner disapproves between the Plans and Specifications as modified and the Plans and Specifications previously approved by Owner, it being agreed however, that Owner's failure to so notify Developer of its disapproval during such time period shall be deemed to constitute Owner's conclusive approval of such Plans and Specifications; provided, however, that if Owner shall notify Developer within ten (10) Business Days following its receipt that any of the proposed modifications to the Plans and Specifications are not indicated as required by this **Section 3.1(b)** or that the complexity of the proposed modifications necessitates an extension of such time period to complete Owner's review, such period shall be extended to the date which is thirty (30) days after Owner's receipt of the proposed modifications; provided, further, however, that Owner shall not be responsible for, and shall not be deemed to have approved, any such proposed modification that is not indicated as required by this **Section 3.1(b)**. Notwithstanding anything to the contrary contained herein, Owner shall not object to any modifications to the Plans and Specifications which are necessitated by Requirements or as a result of a drafting, coordination, mechanical or technical error in the Plans and Specifications.

(c) If Owner disapproves any material inconsistencies or material modification in the Plans and Specifications from the Preliminary Plans and Specifications pursuant to **Section 3.1(a)** above, or Owner disapproves any of the material modifications to or material inconsistencies in the Plans and Specifications pursuant to **Section 3.1(b)** above, then Developer shall, at its election either: (x) submit Owner's disapproval to expedited arbitration pursuant to **Section 3.6** and **Section 22.1** as to the (i) materiality of the inconsistency or modification and/or (ii) the reasonableness of the disapproval or (y) within thirty (30) days after receiving Owner's disapproval notice, submit revised Plans and Specifications or a revised modification to the Plans and Specifications to meet Owner's objections, which revised Plans and Specifications or revised modification shall be reviewed as provided in **Section 3.1 (a)** or **(b)**, as applicable.

Section 3.2 Reserved

Section 3.3 Compliance with Requirements; Construction Standards.

(a) Notwithstanding anything to the contrary contained herein, the Plans and Specifications shall comply with all applicable Requirements. It is Developer's responsibility to assure such compliance. Owner's approval in accordance with this **Article 3.3** of any Plans and Specifications shall be deemed to be a determination by Owner that the Plans and Specifications so approved are in substantial conformity with the Proposal, but shall not be, and shall not be construed as being, or relied upon as, a determination that such Plans and Specifications comply with other applicable Requirements, including, without limitation, any Requirements providing for the review and approval of the Plans and Specifications by any Governmental Authority (in its governmental capacity as opposed to its proprietary capacity).

(b) Construction of the Project shall be carried out pursuant to Plans and Specifications prepared by licensed architects and engineers, with controlled inspections conducted by a licensed architect or professional engineer as required by applicable Requirements.

Section 3.4 Project Budget.

(a) Developer has previously submitted to Owner, and Owner has approved, a pre-construction budget and development budget for the Project (collectively, the "**Development Budget**"), copies of which are attached hereto and incorporated by reference herein as **Exhibit 3.4(a)**. Information copies of any material modifications to the Development Budget shall be promptly delivered to Owner.

(b) Developer hereby covenants and agrees that:

(i) Developer shall initially invest or cause to be invested (including amounts that are financed and all costs associated with, and directly related to, the acquisition of, and the conveyance to, the City of Parcel 2 as described in **Exhibit A**) not less than Thirty Million Six Hundred Forty-Four Thousand Dollars (\$30,644,000) for the total initial Project cost, subject to any adjustments due to value engineering which do not change the design quality or scope of the Project and subject to Developer not expending all funds in the contingency line items of **Exhibit 3.4(a)**; and

(ii) Not less than Twenty One Million One Hundred Twenty-Eight Thousand Dollars (\$21,128,000) shall be spent on hard construction costs of the initial Project, subject to any adjustments due to value engineering which do not change the design quality or scope of the Project; and

(iii) Developer shall invest not less than Seven Million Six Hundred Sixty-One Thousand Dollars (\$7,661,000) as its equity contribution to the total initial Project cost (the "**Funded Equity**").

(c) Upon Substantial Completion of the Project, Developer shall certify to Owner that it has, in fact, expended not less than said amounts for total construction costs and hard construction costs.

Section 3.5 Design and Decor.

Notwithstanding anything to the contrary contained in this Agreement, Owner shall not have any approval rights with respect to matters of interior design and decor of the Project except to the extent the same are reflected in the Plans and Specifications.

Section 3.6 Development Dispute.

Any dispute or disagreement between Owner and Developer arising prior to the Project Opening Date with respect to the following matters (a "Development Dispute") shall be finally resolved in accordance with the provisions of Section 22.1:

(a) Any dispute as to whether Developer's modifications to the Preliminary Plans and Specifications or the Plans or Specifications pursuant to Section 2.3 or Section 2.5, or Section 3.1(a) or (b), respectively, are material and/or materially inconsistent and are therefore subject to Owner's approval; and

(b) Any contention by Developer that Owner has unreasonably failed to approve or give its consent to any modifications to the Preliminary Plans and Specifications pursuant to Section 2.3 or to the Plans and Specifications pursuant to Section 2.5, Section 3.1(a) or (b).

ARTICLE 4.

OWNER PARTICIPATION

Section 4.1 Owner's Right to Use Field Personnel.

Owner reserves the right, at its sole cost and expense, to maintain one (1) on-site representative (from Owner's Consultant, Owner or another entity designated by Owner) at the Project Site to conduct inspections of the Project Site (provided, however, that Owner shall be entitled to maintain additional on-site representatives from time to time to the extent reasonably necessary to perform such inspections), and Developer agrees to provide safe access to the Project Site, including, without limitation, access to inspect the Construction Work, including, without limitation, the preparation work and work in progress wherever located. No such inspection by the Owner's on-site representatives shall impose upon Owner responsibility or liability for any failure by Developer to observe any Requirements or safety practices in connection with such Construction Work, or constitute an acceptance of any work which does not comply with the provisions of this Agreement, and no such inspection shall constitute an assumption by Owner of any responsibility or liability for the performance of Developer's obligations hereunder, nor any liability arising from the

improper performance thereof. The Owner's on-site representatives shall not interfere with any Construction Work being performed at the Project Site and shall comply with all safety standards and other job-site rules and regulations of Developer. Owner's on-site representative is an inspector only. The on-site representative shall make only such communications with Developer's construction manager(s), the General Contractor, its subcontractors, or any other Person involved in the Construction of the Project, as are reasonably necessary to enable such on-site representative to conduct its investigations, and in no event shall the on-site representative give directions to such Persons. Developer shall provide a reasonable work area and services for Owner's on-site representative as is customarily provided at similar construction sites. All expenses incurred by Owner's on-site representative shall be paid by Owner.

Section 4.2 Owner's Right to Notice, Access and Review.

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

(i) the opportunity for attendance by the Owner's Consultant at regularly scheduled Construction Work meetings (which shall be scheduled not less frequently than twice each month) and at any special meetings which Developer deems necessary in its reasonable discretion as to change orders, delays and other material issues concerning the Project;

(ii) the inspection by the Owner's Consultant of all Construction Work (in accordance with the provisions of **Section 4.1**);

(iii) the opportunity for attendance by the Owner's Consultant at the interior design presentations given to Developer (or an equivalent presentation);

(iv) the delivery by Developer to the Owner's Consultant of two (2) copies of:

(1) the executed contract between Developer and the General Contractor for the Project;

(2) the Plans and Specifications (and modifications thereto, with such modifications being clearly indicated, by "ballooning", highlighting, or blacklining on the Plans and Specifications or describing in writing in sufficient detail in a memorandum accompanying such

modified Plans and Specifications), working and other drawings, renderings, blueprints, specifications, layouts and change orders (collectively, the "Detailed Plans");

(3) all insurance certificates required by Article 7 of this Agreement (including those of Developer and all contractors and subcontractors);

(4) a monthly construction cost-to-date report reasonably acceptable to Owner;

(5) all periodic (but not less than monthly) updates to the Development Budget, which updates shall show all variances; and

To the extent the exercise of the Owner's rights hereunder requires the opportunity for review of any documents or the opportunity for participation in any meetings, Developer agrees, without request therefor by Owner, to promptly provide copies of such documents or notice of such meetings to Owner and the Owner's Consultant, as applicable, after receipt of the same by Developer and reasonably in advance of any meetings to allow for appropriate travel arrangements to the extent practical under the circumstances. If Owner's Consultant is not in attendance, the meeting will proceed and Developer will promptly provide Owner's Consultant with minutes of the meeting. The Owner's Consultant shall not interfere with any Construction Work being performed at the Project Site and shall comply with all safety standards and other job-site rules and regulations of Developer.

(b) Prior to the Commencement of Construction, Developer shall provide to Owner a construction schedule for each phase of the Project, which schedule shall be prepared using the critical path method ("CPM"; such schedule, as it shall be amended from time to time in accordance with the Construction Agreements, shall be referred to as the "CPM Schedule"), including a CPM network diagram, for use in scheduling and controlling the Construction. The CPM Schedule shall, at a minimum, show:

- (i) the early and late start and stop times for each major construction activity;
- (ii) all "critical path" activities and their duration;
- (iii) the sequencing of all procurement, approval, delivery and work activities;
- (iv) manpower levels;
- (v) late order dates for all long lead time materials and equipment; and
- (vi) critical Developer and Owner decision dates.

Developer shall promptly provide to the Owner's Consultant information copies of the CPM Schedule. The CPM Schedule shall (1) be revised by Developer whenever there is a material variance in the progress of the Construction from the then current CPM Schedule and otherwise at appropriate intervals, but in no event less frequently than monthly and (2) provide for expeditious and practicable execution of the Construction.

A copy of the CPM network diagram highlighting the completed and partially completed activities and manpower schedule shall be maintained by Developer on a current basis, at the Project Site, to accurately reflect the actual progress of the Construction and shall be displayed at all times in a manner that is readily accessible to the Owner's Consultant. Three (3) copies of the updated CPM Schedule, CPM network diagram and manpower schedule shall be delivered to the Owner's Consultant promptly after the same have been revised as required herein. The CPM network diagram shall reflect the actual progress of Construction to date. The manpower schedule shall reflect actual manpower levels each week compared to manpower levels set forth in the CPM Schedule.

Developer shall keep the Owner's Consultant informed on a periodic (but not less than twice per month) basis, unless circumstances dictate the need to do so more frequently, as to actual progress made. Developer shall provide the Owner's Consultant with reasonable access to the reports, logs and other systems in which Developer records or notes the daily progress of the Construction Work. Developer shall inform the Owner's Consultant of any deviation from the CPM Schedule which, in Developer's good faith determination, is likely to cause a material delay in the Substantial Completion of the Project (as shown on the current CPM Schedule), within three (3) Business Days after such deviation becomes apparent to Developer.

ARTICLE 5.

MISCELLANEOUS CONSTRUCTION PROVISIONS

Section 5.1 Reserved.

Section 5.2 Names of Contractors, Materialmen, etc.

All Persons employed by Developer with respect to Construction of the Project shall be paid, without subsequent deduction or rebate unless expressly authorized by Requirements, not less than the relevant prevailing wage as prescribed by the City of Miami Beach Prevailing Wage Ordinance, Miami Beach City Code, Section 31A-27, as amended, but only to the extent such Prevailing Wage Ordinance is applicable to the construction of the Improvements.

Section 5.3 Construction Agreements.

(a) Required Clauses. All Construction Agreements which provide for the performance of labor on the Project Site shall include the following provisions (or language substantially similar thereto which is approved in advance by Owner); provided, however, that any

Construction Agreement having aggregate payments of Five Hundred Thousand Dollars (\$500,000) or less shall not be required to include the provisions set forth in paragraph (i) below:

(i) an agreement by the Contractor to provide, prior to the commencement of its portion of the work, and maintain during the performance thereof, the insurance set forth on **Exhibit 5.3(a)** attached hereto and incorporated by reference herein. Such Contractor shall procure an appropriate clause in, or endorsement on, any policy of insurance carried by it pursuant to which the insurance company waives subrogation or consents to a waiver of right of recovery consistent with the release, discharge, exoneration and covenants not to sue contained herein. Original Certificates of Insurance, in quadruplicate (all of which shall be original signed counterparts) and including the City of Miami Beach, Florida (and any successor Owner), as additional insureds (the "Certificate of Insurance"), shall be furnished to Developer by Contractor prior to commencement of work, denoting all insurance required of Contractor pursuant to the terms of the Contract. The Contractor shall secure an original Certificate of Insurance from each of its sub-contractors and/or suppliers with limits of liability equal to those carried by the Contractor;

(ii) "Contractor hereby waives all rights of recovery, claims, actions or causes of action against the City of Miami Beach, Florida (and any successor Owner), and their respective elected and appointed officials (including, without limitation, the City's Mayor and City Commissioners), directors, officials, officers, shareholders, members, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, lessees, mortgagees, trustees, partners, principals, invitees and affiliates, for any loss or damage to property of Contractor which may occur at any time in connection with the Project.";

(iii) "To the fullest extent permitted by law, Contractor shall and does hereby indemnify and hold harmless the City of Miami Beach, Florida (and any successor Owner), and their respective elected and appointed officials (including the City's Mayor and City Commissioners), directors, officials, officers, shareholders, members, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, lessees, mortgagees, trustees, partners, principals, invitees and affiliates, from and against any and all liability, claims, demands, damages, losses, fines, penalties, expenses and costs of every kind and nature, including, without limitation, costs of suit and attorneys' fees and disbursements (collectively, "Expenses"), resulting from or in any manner arising out of, in connection with or on account of: (1) any act, omission, fault or neglect of Contractor, or anyone employed by it in connection with the work or any phase thereof, or any of its agents, contractors, subcontractors, employees, invitees or licensees in connection with the work, or anyone for whose acts any of them may be liable, (2) claims of injury (including physical, emotional, economic or otherwise) to or disease, sickness or death of persons or damage to property (including, without limitation, loss of use resulting therefrom) occurring or resulting directly or indirectly from the work or any portion thereof or the activities of Contractor or anyone employed by it in connection with the work, or any portion thereof, or any of its respective agents, contractors, subcontractors, employees, invitees or licensees in connection with the work, or anyone for whose acts any of them may be liable, or (3) mechanics' or materialmen's or other liens or claims (and all costs or expenses associated therewith) asserted, filed or arising out of the work or any phase thereof other than liens

or claims arising out of Developer's failure to make the required payments properly due Contractor. In no event shall Contractor be able to seek or be entitled to consequential damages (including, without limitation, loss of profits or loss of business opportunity) for claims arising under this contract. This indemnification obligation shall not be limited in any way by: (x) any limitation on the amount or type of damages, compensation or benefits payable to Contractor under worker's compensation acts, disability benefit acts or other employee benefit acts or other insurance provided for by this contract; or (y) the fact that the Expenses were caused in part by a party indemnified hereunder. The Contractor further agrees that this indemnification shall be made a part of all contracts and purchase orders with sub-contractors or material suppliers. The indemnification agreement included in this contract is to be assumed by all sub-contractors.";

(iv) (1) the right of Developer to assign to Owner, subject and subordinate to the rights of Lender, the contract and Developer's rights thereunder, at the Owner's request, without the consent of the Contractor, and (2) that without the necessity of such assignment and without thereby assuming any of the obligations of Developer under the contract occurring prior to such assignment and/or purchase order, except for Developer's payment obligations, Owner shall have the right to enforce the full and prompt performance by the Contractor of such Contractor's obligations under the contract;

(v) "Contractor agrees to comply with all laws and requirements applicable to Contractor and the Project, including, without limitation, the City of Miami Beach Prevailing Wage Ordinance, Miami Beach City Code, Section 31A-27, as amended, if such provision is applicable to construction of the Improvements.";

(vi) "Upon an Event of Default by Developer resulting in a termination of that certain Agreement of Lease between Developer and Owner, dated as of September 1, 1999, pursuant to which Developer (as tenant) has agreed to lease the Land on which the Project is to be constructed, Contractor shall, at the option of the City of Miami Beach, Florida, subject and subordinate to the rights of Lender, be terminated or Contractor will honor this agreement as if this agreement had been originally entered into with the City of Miami Beach, Florida.";

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

(viii) "Upon an Event of Default by Developer resulting in a termination of that certain Agreement of Lease between Developer and Owner, dated as of September 1, 1999, pursuant to which Developer (as tenant) has agreed to lease the Land on which the Project is to be constructed, all covenants, representations, guarantees and warranties of Contractor hereunder shall be, subject and subordinate to the rights of Lender, deemed to be made for the benefit of the City of Miami Beach, Florida, (and the City of Miami Beach, Florida, shall be deemed to be a third-party

beneficiary hereof) and shall be, subject and subordinate to the rights of Lender, enforceable by the City of Miami Beach, Florida.";

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

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

Section 5.4 Demolition of the Project Site.

Except as necessary and as provided in the Plans and Specifications in connection with Construction of the Project or as part of a Casualty Restoration or Condemnation Restoration or as may be otherwise permitted under this Development Agreement or the Ground Lease, Developer shall not demolish any portion of the Project Site. Any demolition permitted hereunder shall be performed in accordance with all applicable Requirements.

ARTICLE 6.

FINANCING OF PROJECT CONSTRUCTION AND DISBURSEMENT PROCEDURES

Section 6.1 Developer's Contributions.

Developer shall provide the Funded Equity as set forth in Section 3.4(b). Developer shall also provide all of the funds necessary to complete Construction of the Project.

Section 6.2 Fees.

(a) City Permit Fees. Developer assumes payment responsibility for any and all Permits, now or hereafter, required to be obtained from the City for the construction of the Project, which include, without limitation, building permit applications, inspection, certification, impact and connection fees that the City may levy by or through its Public Works Department (including, without limitation, water and sewer fees) and those fees, to the extent applicable, listed in the City of Miami Beach Building Department Fee Schedule, as amended through September 16, 1992 by Ordinance Number 92-2796, or the most current edition adopted by the City, which fee schedule is hereby

incorporated by reference and made a part of this Agreement (collectively, the "Fees"). Developer shall remain responsible for payment of the Fees notwithstanding any and all modifications or changes in price structure as imposed by the City or any other Governmental Authority authorized to impose such Fees.

(b) Non-City Permit Fees. Developer shall assume responsibility for payment of all fees charged by Governmental Authorities relating to the Project.

ARTICLE 7.

INSURANCE

Developer shall, in accordance with the Ground Lease, carry or cause to be carried the insurance required under Section 7.10 of the Ground Lease, including the relevant provisions of Sections 7.2, 7.3, 7.6 and 7.14 of the Ground Lease.

ARTICLE 8.

DAMAGE, DESTRUCTION AND RESTORATION

Section 8.1 Casualty.

If the Project Site is damaged or destroyed in whole or in part by fire or other casualty, the provisions of the Ground Lease applicable to damage or destruction by fire or other casualty to the "Premises" described under the Ground Lease shall govern the rights and obligations of Developer, Owner and any Recognized Mortgagee hereunder.

Section 8.2 Effect of Casualty on this Agreement.

Except as provided in **Section 8.1** or the Ground Lease, this Development Agreement shall not terminate, be forfeited or be affected in any manner, by reason of any damage to, or total or partial destruction of, or untenability of the Project Site or any part thereof resulting from such damage or destruction.

ARTICLE 9.

CONDEMNATION

Section 9.1 Taking.

If all or any portion of the Project Site is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Owner, Developer, any Recognized Mortgagee and those authorized to exercise

such right, the provisions of the Ground Lease applicable to such taking of the "Premises" described under the Ground Lease shall govern the rights and obligations of Developer, Owner and any Recognized Mortgagee hereunder.

Section 9.2 Effect of Taking on this Agreement.

Except as provided in Section 9.1 or the Ground Lease, this Development Agreement shall not terminate, be forfeited or be affected in any manner, by reason of any taking of the Project Site or any part thereof.

ARTICLE 10.

RIGHTS OF RECOGNIZED MORTGAGEE

Section 10.1 Notice and Right to Cure Developer's Defaults.

(a) Owner shall give to the Recognized Mortgagee and/or Affiliate 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 or Affiliate Mortgagee unless and until a copy thereof shall have been so received by or refused by such Recognized Mortgagee or Affiliate Mortgagee, as applicable. All such notices to a Recognized Mortgagee or Affiliate Mortgagee shall be sent as set forth in Section 11.4(a) of the Ground Lease. Owner shall also give the Recognized Mortgagee or Affiliate 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 sixty (60) days after receipt of the Notice of Failure to Cure, in the case of any Event of Default, to (1) cure the Event of Default referred to in the Notice of Failure to Cure or (2) cause it to be cured, subject to the same additional time periods provided to Developer pursuant to the provisions of Section 19.1(b) unless such default is not susceptible of being cured by a Recognized Mortgagee (i.e., defaults stated in Section 19.1(e), (f) and (g)). Nothing contained herein shall be construed as imposing any obligation upon any Mortgagee to so perform or comply on behalf of Developer.

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

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

(e) Notwithstanding the foregoing provisions of this **Section 10.1**, if a Recognized Mortgagee fails (for any reason) to cure any Event of Default by Developer within sixty (60) days following receipt of the Notice of Failure to Cure regarding such Event of Default, then Owner may, but shall be under no obligation to, perform the obligation of Developer the breach of which gave rise to such Event of Default (including, without limitation, the performance of any of the obligations of Developer under any Construction Agreement), without waiving or releasing Developer from its obligations with respect to such Event of Default. Developer hereby grants Owner access to the Project Site in order to perform any such obligation. Any amount paid by Owner in performing Developer's obligations as provided in this **Section 10.1(e)**, including, without limitation, all costs and expenses incurred by Owner in connection therewith, shall be reimbursed to Owner within thirty (30) days following Owner's demand therefor, together with a late charge on amounts actually paid by Owner, calculated at the Late Charge Rate from the date of notice of any such payment by Owner to the date on which payment of such amounts is received by Owner.

(f) If there is more than one Recognized Mortgagee, only that Recognized Mortgagee, to the exclusion of all other Recognized Mortgagees, whose Recognized Mortgage is most senior in lien shall be recognized as having rights under this **Article 10**, unless such first priority Recognized Mortgagee has designated in writing to Owner a Recognized Mortgagee whose Mortgage is junior in lien to exercise such right.

ARTICLE 11.

NO SUBORDINATION

Owner's Interest in the Premises, including, without limitation, Owner's interest in the Ground Lease and this Agreement, as the same may be modified, amended or renewed, shall not be subject or subordinate to (a) any Mortgage now or hereafter existing, (b) any other liens or encumbrances hereafter affecting Developer's Interest in the Premises and Developer's interest in this Development Agreement or (c) any sublease or any mortgages, liens, or encumbrances now or hereafter placed on any subtenant's interest in the Project Site. Developer's Interest in the Premises and this Development Agreement and all rights of Developer hereunder are and shall be subject to the Title Matters as set forth on Exhibit 2.1 to the Ground Lease.

ARTICLE 12.

MAINTENANCE AND REPAIR

Section 12.1 Maintenance of Project Site.

(a) Maintenance and Repair.

(i) Developer shall take good care of, and keep and maintain, the Project Site in good and safe order and condition, and shall make all repairs reasonably necessary to keep the Project Site in good and safe order and condition.

(ii) Developer shall not commit, and shall use all reasonable efforts to prevent waste, damage or injury to the Project Site, except with respect to the Construction of the Project (but subject, however, to the provisions of **Section 12.1(a)(i)**).

(b) Cleaning of Project Site. Developer shall keep clean and free from rubbish all areas of the Project Site.

(c) Other Areas. Developer shall promptly rectify any damage or interference caused by Developer to any improvements, equipment, structures or vegetation outside of the Project Site which is owned or controlled by Owner or the City. The City or Owner shall promptly rectify any damage or interference caused by the City or Owner to the Project Site.

Section 12.2 Waste Disposal.

Developer shall dispose of waste from all areas of the Project Site in accordance with Requirements and in a prompt, sanitary and aesthetically reasonable manner.

ARTICLE 13.

REQUIREMENTS

Section 13.1 Requirements.

(a) Obligation to Comply. In connection with any Construction Work, and with the maintenance, management, use, construction and operation of the Project Site and Developer's performance of its obligations hereunder, Developer shall comply promptly with all Requirements, without regard to the nature of the work required to be done, whether extraordinary or ordinary, and whether requiring the removal of any encroachment (but Developer may seek to obtain an easement in order to cure an encroachment, if permitted by Requirements), or affecting the maintenance, use or occupancy of the Project Site, or involving or requiring any structural changes or additions in or to the Project Site and regardless of whether such changes or additions are required by reason of any particular use to which the Project Site, or any part thereof, may be put. No consent to, approval of or acquiescence in any plans or actions of Developer by Owner, in its proprietary capacity as Owner, or Owner's designee shall be relied upon or construed as being a determination that such are in compliance with the Requirements, or, in the case of construction plans, are structurally sufficient, prudent or in compliance with the Requirements. Failure of this Development Agreement to address a particular permit, condition, term or restriction shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, term or restriction.

(b) Definition.

"Requirements" means:

- (i) any and all laws, constitutions, rules, regulations, orders, ordinances, charters, statutes, codes, executive orders and requirements of all Governmental Authorities having jurisdiction over a Person and/or the Project Site or any street, road, avenue or sidewalk comprising a part of, or lying in front of, the Project Site or any vault in, or under the Project Site (including, without limitation, any of the foregoing relating to handicapped access or parking, the Building Code of the City and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions);
- (ii) the temporary and/or permanent certificate or certificates of occupancy issued for the Project Site as then in force;
- (iii) the requirements of the City of Miami Beach Prevailing Wage Ordinance, Miami Beach City Code, Section 31A-27, as amended, if applicable; and
- (iv) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Developer under this Agreement.

ARTICLE 14.

DISCHARGE OF LIENS

Section 14.1 Creation of Liens.

- (a) Developer shall not create, cause to be created, or suffer or permit to exist (1) any lien, encumbrance or charge upon this Agreement, the Project Site or any part thereof or appurtenance thereto, which is not removed within the time period required pursuant to **Section 14.2**, (2) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Owner, or (3) any other matter or thing whereby Owner's Interest in the Premises or any part thereof or appurtenance thereto might be materially impaired. Notwithstanding the above, Developer shall have the right to execute Mortgages and other loan documents, subleases and other instruments (including, without limitation, equipment leases) as provided by, and in accordance with, the provisions of the Ground Lease.
- (b) Owner shall not create, cause to be created, or suffer or permit to exist (i) any lien, encumbrance upon this Agreement, the Ground Lease or the income therefrom (except as expressly provided in the Ground Lease), the Project Site, or any part thereof or appurtenance thereto, which is not removed within the time period required pursuant to **Section 14.2**, (ii) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Developer, or (iii) any other

matter or thing whereby Developer's Interest in the Premises any part thereof or appurtenant thereto might be materially impaired.

Section 14.2 Discharge of Liens.

(a) If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Developer by the Requirements or by a provision of this Development Agreement) is filed against the Project Site or any part thereof, or if any public improvement lien created, or caused or suffered to be created by Developer shall be filed against any assets of, or funds appropriated to, Developer or Owner, Developer shall, within thirty (30) days after Developer receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien or public improvement lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, Developer shall not be required to discharge any such lien if Developer shall have (i) furnished Owner with, at Developer's option, a cash deposit, bond, letter of credit from an Institutional Lender (in form reasonably satisfactory to Owner) or other security (such as a personal guaranty or title company indemnity) reasonably satisfactory to Owner, in an amount sufficient to pay the lien with interest and penalties; and (ii) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding with diligence and continuity; except that if, despite Developer's efforts to seek discharge of the lien, Owner reasonably believes that a court judgment or order foreclosing such lien is about to be entered or granted and so notifies Developer, Developer shall, within ten (10) days of notice to such effect from Owner (but not later than three (3) Business Days prior to the entry or granting of such judgment or order of foreclosure), cause such lien to be discharged of record or Owner may thereafter discharge the lien in accordance with **Section 18.2** and look to the security furnished by Developer for reimbursement of its cost in so doing. Notwithstanding anything to the contrary contained in this **Section 14.2(a)**, in the case of a public improvement lien which provides for installment payments as a means of satisfying such lien, Developer shall be required only to pay, on a timely basis, all installments when due.

(b) Notwithstanding anything to the contrary contained in **Section 14.2(a)**, if any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Developer by the Requirements or by a provision of this Development Agreement) is filed against the Project Site or any part thereof or Developer's Interest in the Premises or Owner's Interest in the Premises as a result of any action of Owner, its officers, employees, representatives or agents, Owner shall, within thirty (30) days after Owner receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, Owner shall not be required to discharge any such lien if Owner shall have (i) furnished Developer with, at Owner's option, a cash deposit, bond, letter of credit from an Institutional Lender (in form reasonably satisfactory to Developer) or other security (such as a personal guaranty or title company indemnity) reasonably satisfactory to Developer, in an amount sufficient to pay the lien with interest and penalties and (ii) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding with diligence and continuity; except that if,

despite Owner's efforts to seek discharge of the lien, Developer reasonably believes that a court judgment or order foreclosing such lien is about to be entered or granted and so notifies Owner, Owner shall, within ten (10) days of notice to such effect from Developer (but not later than three (3) Business Days prior to the entry or granting of such judgment or order of foreclosure), cause such lien to be discharged of record or Developer may thereafter discharge the lien in accordance with **Section 18.2** and look to the security furnished by Owner for reimbursement of its cost in so doing.

Section 14.3 No Authority to Contract in Name of Owner.

Nothing contained in this **Article 14.3** shall be deemed or construed to constitute the consent or request of Owner, express or implied, by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of, the Project Site or any part thereof, nor as giving Developer any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against Owner's Interest in the Premises or any part thereof or against any assets of Owner. Notice is hereby given, and Developer shall cause all Construction Agreements to provide, that to the extent enforceable under Florida law, Owner shall not be liable for any work performed or to be performed at the Project Site or any part thereof for Developer or for any subtenant or for any materials furnished or to be furnished to the Project Site or any part thereof for any of the foregoing, and no mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials shall attach to or affect Owner's Interest in the Premises or any part thereof or any assets of Owner. The foregoing shall not require Developer to request advance waivers of lien from contractors or subcontractors.

ARTICLE 15.

NO LIABILITY FOR INJURY OR DAMAGE, ETC.

The provisions of **Article 19** of the Ground Lease shall be applicable to this Agreement as if the references to the "Premises" in such **Article 19** were references to the "Project Site".

ARTICLE 16.

INDEMNIFICATION

Section 16.1 Indemnification Generally.

The provisions of **Article 20** of the Ground Lease shall be applicable to this Agreement as if the references to the "Premises" in such **Article 20** were references to the "Project Site".

Section 16.2 Governs Agreement.

The provisions of this **Article 16** shall govern every other provision of this Agreement. The absence of explicit reference to this **Article 16** in any particular provision of this Agreement shall not be construed to diminish the application of this **Article 16** to such provision.

Section 16.3 Survival.

The provisions of this **Article 16** shall survive the expiration of the Term of this Agreement.

ARTICLE 17.

CERTIFICATES BY OWNER AND DEVELOPER

Upon request for reasonable purposes, either party shall provide a written statement to the requesting party certifying as to the relevant information required pursuant to **Article 27** of the Ground Lease with respect to this Agreement and the date to which amounts payable hereunder by either party have been paid.

ARTICLE 18.

RIGHT TO PERFORM THE OTHER PARTY'S COVENANTS

Section 18.1 Right to Perform Other Party's Obligations.

(a) If an Event of Default shall occur, Owner may, but shall be under no obligation to, perform the obligation of Developer the breach of which gave rise to such Default, without waiving or releasing Developer from any of its obligations contained herein, provided that Owner shall exercise such right only in the event of a *bona fide* emergency or after five (5) Business Days notice, and Developer hereby grants Owner access to the Project Site in order to perform any such obligation.

(b) If a default by Owner under this Agreement shall occur and be continuing beyond any applicable grace period, Developer may, but shall be under no obligation to, perform the obligations of Owner (other than those which are governmental as opposed to proprietary obligations) the breach of which gave rise to such default, without waiving or releasing Owner from any of its obligations contained herein, provided that Developer shall exercise such right only in the event of a *bona fide* emergency or after five (5) Business Days notice to Owner or the City, as applicable.

Section 18.2 Discharge of Liens.

(a) If Developer fails to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Developer by the Requirements or by a provision of this Development Agreement) to be discharged of record in accordance with the provisions of **Article 14**, Owner may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings.

(b) If Owner fails to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including, tax liens, provided the underlying tax is an obligation of Developer by the Requirements or by a provision of this Development Agreement) to be discharged of record in accordance with the provisions of **Article 14**, Developer may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. If Developer's Interest in the Premises (or any portion thereof) is threatened or a material interest of Developer is impaired, Developer may also, if Owner has not done so (or bonded such lien), compel the prosecution of an action for the foreclosure of such lien by the lienor and the payment of the amount of the judgment in favor of the lienor with interest, costs and allowances.

Section 18.3 Reimbursement for Amounts Paid Pursuant to this Article.

(a) Any amount paid by Owner in performing Developer's obligations as provided in this **Article 18**, including all costs and expenses incurred by Owner in connection therewith, shall constitute additional Rental under the Ground Lease and shall be reimbursed to Owner within thirty (30) days of Owner's demand, together with a late charge on amounts actually paid by Owner, calculated at the Late Charge Rate from the date of notice of any such payment by Owner to the date on which payment of such amounts is received by Owner.

(b) Any amount paid by Developer in performing Owner's obligations as provided in this **Article 18**, including all costs and expenses incurred by Developer in connection therewith, shall be reimbursed to Developer within thirty (30) days of Developer's demand, together with a late charge on amounts actually paid by Developer, calculated at the Late Charge Rate from the date of notice of any such payment by Developer to the date on which payment of such amounts is received by Developer.

Section 18.4 Waiver, Release and Assumption of Obligations.

(a) Owner's payment or performance pursuant to the provisions of this **Article 18** shall not be, nor be deemed to constitute, Owner's assumption of Developer's obligations to pay or perform any of Developer's past, present or future obligations hereunder.

(b) Developer's payment or performance pursuant to the provisions of this Article 18 shall not be, nor be deemed to constitute, Developer's assumption of Owner's obligations to pay or perform any of Owner's past, present or future obligations hereunder.

ARTICLE 19.

EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 19.1 Definition.

Each of the following events shall be an "Event of Default" hereunder:

(a) an Event of Default under the Ground Lease shall have occurred and be continuing beyond any applicable cure period, including any cure period applicable to a Recognized Mortgagee; or

(b) if Developer shall default in the observance or performance of any term, covenant or condition of this Agreement on Developer's part to be observed or performed and, if no cure period is expressly provided for herein, Developer shall fail to remedy such Default within thirty (30) days after notice by Owner of such Default (the "Default Notice"), or if such a Default is of such a nature that it cannot reasonably be remedied within thirty (30) days (but is otherwise susceptible to cure), Developer shall not (i) within thirty (30) days after the giving of such Default Notice, advise Owner of Developer's intention to institute all steps necessary (and from time to time, as reasonably requested by Owner, Developer shall advise Owner of the steps being taken) to remedy such default (which such steps shall be reasonably designed to effectuate the cure of such Default in a professional manner), and (ii) thereafter diligently prosecute to completion all such steps necessary to remedy the same; or

(c) to the extent permitted by law, if Developer admits, in writing, that it is generally unable to pay its debts as such become due; or

(d) to the extent permitted by law, if Developer makes an assignment for the benefit of creditors; or

(e) to the extent permitted by law, if Developer files a voluntary petition under Title 11 of the United States Bankruptcy Code, or if Developer files a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Developer, of all or any substantial part

of its properties, or of all or any part of Developer's Interest in the Premises, and the foregoing are not stayed or dismissed within one hundred fifty (150) days after such filing or other action; or

(f) to the extent permitted by law, if, within one hundred fifty (150) days after the commencement of a proceeding against Developer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, such proceeding has not been dismissed, or if, within one hundred eighty (180) days after the appointment, without the consent or acquiescence of Developer, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Developer, of all or any substantial part of its properties, or of all or any part of Developer's Interest in the Premises, such appointment has not been vacated or stayed on appeal or otherwise, or if, within one hundred eighty (180) days after the expiration of any such stay, such appointment has not been vacated; or

(g) if a levy under execution or attachment in an aggregate amount of One Hundred Thousand Dollars (\$100,000) (as adjusted for inflation in accordance with the Ground Lease) at any one time is made against the Project Site or any part thereof or rights appertaining thereto (except for a levy made in connection with actions taken by Owner (other than holding Owner's Interest in the Premises)), or this Agreement and such execution or attachment is not vacated or removed by court order, bonding or otherwise within a period of sixty (60) days, subject to Unavoidable Delays after such levy or attachment;

In the event of a Default which with the giving of notice to Developer and the passage of time would constitute an Event of Default, Owner's notice to Developer shall state with specificity the provision of this Agreement under which the Default is claimed, the nature and character of such Default, the facts giving rise to such Default, the date by which such Default must be cured pursuant to this Agreement, if applicable, and, if applicable, that the failure of Developer to cure such Default by the date set forth in such notice will result in Owner having the right to terminate this Agreement. With respect only to Development Disputes, Owner's allegation of a Default shall be subject to expedited arbitration in accordance with the provisions of **Article 22**, provided Tenant shall initiate any such arbitration within the applicable grace period provided in this **Section 19.1** or within ten (10) Business Days after receipt of Owner's notice if no such grace period is provided therein.

Notwithstanding the foregoing, no Event of Default shall be deemed to have occurred until such time as Owner shall have given Developer notice of the occurrence of an Event of Default; provided, however, if Developer shall dispute, in accordance with the provisions of **Article 22**, Owner's assertion that an Event of Default has occurred within ten (10) Business Days after the giving of such notice by Owner, an Event of Default shall not be deemed to have occurred and Owner shall not be permitted to exercise any rights against Developer stated herein to arise out of an Event of Default until such time as the Arbitrator or a court, if applicable, has determined that an Event of Default has occurred.

Notwithstanding anything to the contrary contained herein, Owner shall be entitled to seek any injunctive or other equitable relief that may be available to Owner during the pendency of any Default.

Section 19.2 Enforcement of Performance; Damages and Termination.

If an Event of Default occurs, Owner may elect to (a) enforce performance or observance by Developer of the applicable provisions of this Agreement or (b) recover damages for breach of this Agreement or (c) in the circumstances described in **Section 19.3(a)**, terminate this Agreement pursuant to **Section 19.3(a)**. Owner's election of a remedy hereunder with respect to an Event of Default shall not limit or otherwise affect Owner's right to elect any of the remedies available to Owner hereunder with respect to any other Event of Default.

Section 19.3 Expiration and Termination of Agreement.

(a) If an Event of Default occurs under the Ground Lease which results in a termination of the Ground Lease, this Agreement shall terminate. If such termination is stayed by order of any court having jurisdiction over any case described in **Sections 19.1(e)** or **19.1(f)** or by federal or state statute, then, following the expiration of any such stay, or if the trustee appointed in any such case, Developer or Developer as debtor-in-possession fails to assume Developer's obligations under this Agreement within the period prescribed therefor by law or within thirty (30) days after entry of the order for relief or as may be allowed by the court, Owner, to the extent permitted by law or by leave of the court having jurisdiction over such case, shall have the right, at its election, to terminate this Agreement on five (5) days notice to Developer, Developer as debtor-in-possession or the trustee. Upon the expiration of the five-day period this Agreement shall expire and terminate and Developer, Developer as debtor-in-possession and/or the trustee immediately shall quit and surrender Developer's Interest in the Premises and possession thereof.

(b) If this Agreement is terminated as provided in **Section 19.3(a)**, Owner may, without notice, re-enter and repossess Developer's Interest in the Premises and may dispossess Developer by summary proceedings, writ of possession, proceedings in bankruptcy court or otherwise, subject to applicable Requirements.

Section 19.4 Strict Performance.

No failure by Owner 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, shall constitute a waiver of any such Default or Event of Default or of such covenant, agreement, term or condition or of any other covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by either party, and no default by either party, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any Default or Event of Default shall affect or alter this Agreement, but each and every covenant,

agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Default. Developer's compliance with any request or demand made by Owner shall not be deemed a waiver of Developer's right to contest the validity of such request or demand.

Section 19.5 Right to Enjoin Defaults.

With respect to Development Disputes and all other disputes, in the event of Developer's Default or an Event of Default, Owner shall be entitled to seek to enjoin the Default or Event of Default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent Owner's remedies are expressly limited by the terms hereof. With respect to Development Disputes and all other disputes, in the event of any default by Owner of any term, covenant or condition under this Agreement, Developer shall be entitled to seek to enjoin the default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent Developer's remedies are expressly limited by the terms hereof. Each right and remedy of Owner and Developer provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, except to the extent Owner's remedies and Developer's remedies are expressly limited by the terms hereof, and the exercise or beginning of the exercise by Owner or Developer of any one or more of the rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Owner or Developer of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, except to the extent Owner's remedies and Developer's remedies are expressly limited by the terms hereof.

Section 19.6 Remedies under Bankruptcy and Insolvency Codes.

If an order for relief is entered or if any stay of proceeding or other act becomes effective against Developer, Developer's Interest in the Premises, or Developer's interest in this Agreement, or Owner, Owner's Interest in the Premises, or Owner's interest in this Agreement, as applicable, in any proceeding which is commenced by or against Developer or Owner, as applicable, under the present or any future Federal Bankruptcy Code or in a proceeding which is commenced by or against Developer or Owner, as applicable, seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, Owner or Developer, as applicable, shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law or this Agreement (except to the extent Owner's remedies and Developer's remedies are expressly limited by the terms hereof).

Without in any way limiting **Article 4**, Owner and its representatives shall have the right, upon twenty-four (24) hours prior notice to Developer, to enter upon the Project Site to conduct inspections for the purpose of determining whether a Default or an Event of Default has occurred, provided that Owner shall be accompanied by a representative of Developer and provided further that such entry shall not unreasonably interfere with the Construction of the Project. Developer agrees to make a representative of Developer available to accompany Owner on any such inspection.

ARTICLE 20.

NOTICES, CONSENTS AND APPROVALS

Section 20.1 Service of Notices and Other Communications.

(a) In Writing. Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the parties by the other (or any Recognized Mortgagee), or whenever either of the parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to the Project Site, each such notice, demand, request, consent, approval or other communication (referred to in this **Section 20.1** as a "Notice") shall be in writing (whether or not so indicated elsewhere in this Agreement) and shall be effective for any purpose only if given or served by (i) certified or registered U.S. Mail, postage prepaid, return receipt requested, (ii) personal delivery with a signed receipt or (iii) a recognized national courier service, addressed as follows:

if to Developer: Lincoln Plaza Partners LLC
c/o SRC Lincoln Plaza LLC
230 Fifth Street
Miami Beach, FL 33139
Attention: Scott Robins, Managing Member

with a copy to: Stuart K. Hoffman, Esq.
Holland & Knight
701 Brickell Avenue
Suite 3000
Miami, FL 33131

if to Owner: City of Miami Beach
City Manager
1700 Convention Center Drive
Miami Beach, Florida 33139

with a copy to:

City of Miami Beach
City Attorney
1700 Convention Center Drive
Miami Beach, Florida 33139

with a copy to:

Bloom & Minsker
1401 Brickell Avenue, Suite 700
Miami, Florida 33131
Attention: Joel N. Minsker, P.A.

Any Notice may be given, in the manner provided in this Section 20.1, (x) on either party's behalf by its attorneys designated by such party by Notice hereunder, and (y) at Developer's request, on its behalf by any Recognized Mortgagee designated in such request.

(b) Effectiveness. Every Notice shall be effective on the date actually received, as indicated on the receipt therefor or on the date delivery thereof is refused by the recipient thereof.

(c) References. All references in this Agreement to the "date" of Notice shall mean the effective date, as provided in the preceding subsection (b).

Section 20.2 Consents and Approvals.

(a) Effect of Granting or Failure to Grant Approvals or Consents. All consents and approvals which may be given under this Development Agreement shall, as a condition of their effectiveness, be in writing. The granting by a party of any consent to or approval of any act requiring consent or approval under the terms of this Development Agreement, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any other act.

(b) Standard. All consents and approvals which may be given by a party under this Development Agreement shall not (whether or not so indicated elsewhere in this Development Agreement) be unreasonably withheld or conditioned by such party and shall be given or denied within the time period provided, and if no such time period has been provided, within a reasonable time. In furtherance of the foregoing, in determining whether Owner has acted reasonably in not giving its consent or approval, the trier of fact shall take into consideration (for so long as Owner is the City or any Governmental Authority) that Owner is a political body governed by elected officials or persons that are appointed, directly or indirectly, by elected officials. Upon disapproval of any request for a consent or approval, the disapproving party shall, together with notice of such disapproval, submit to the requesting party a written statement setting forth with specificity its reasons for such disapproval.

(c) Deemed Approval.

(i) If a party entitled to grant or deny its consent or approval (the "Consenting Party") within the specified time period shall fail to do so, then, except as otherwise provided in Section 20.2(c)(ii) below, and provided that the request for consent or approval (and the envelope in which such request is transmitted to the extent permitted by the carrier) bears the legend set forth below in capital letters and in a type size not less than that provided below, the matter for which such consent or approval is requested shall be deemed consented to or approved, as the case may be:

"FAILURE TO RESPOND TO THIS REQUEST WITHIN THE TIME PERIOD PROVIDED IN THE DEVELOPMENT AGREEMENT BETWEEN CITY OF MIAMI BEACH, FLORIDA AND LINCOLN PLAZA PARTNERS, LLC SHALL CONSTITUTE AUTOMATIC APPROVAL OF THE MATTERS DESCRIBED HEREIN WITH RESPECT TO SECTION [FILL IN APPLICABLE SECTION] OF SUCH DEVELOPMENT AGREEMENT."

(ii) Notwithstanding anything to the contrary contained in Section 20.2(c)(i) above, if the "Owner" hereunder and the matter, other than a matter referred to in Section 20.2(c)(iii) below, to be consented to or approved requires the consideration of the City Commission, as applicable (whether pursuant to Requirements or the written opinion of the City Attorney, then, provided Owner gives Developer notice of such requirement within the time period provided for such consent or approval, such matter shall not be deemed approved or consented to unless Owner shall fail to respond to Developer's request by the date which is five (5) Business Days after the first regular meeting of the City Commission which occurs no earlier than ten (10) days following the receipt of such request (or second request, as applicable); but in any event not later than sixty (60) days following such request (or second request), as applicable.

(iii) Owner hereby agrees, for so long as the City shall be the "Owner" hereunder, that, subject to Requirements, the City Manager, as applicable, shall be authorized to grant consents or approvals on behalf of the City with respect to Section 2.4(c) and Article 3 and Article 7.

(iv) The foregoing provisions of this Subsection shall not be construed to modify or otherwise affect a party's right to arbitrate or litigate, as applicable, the failure of a party to act reasonably in granting or denying a request for consent or to timely respond to a request for a consent, but such right to arbitrate or litigate, as applicable, shall not serve to delay the time period within which a grant or denial of such request is required hereunder.

(d) Remedy for Refusal to Grant Consent or Approval. If, pursuant to the terms of this Agreement, any consent or approval by Owner or Developer is alleged to have been unreasonably withheld, conditioned or delayed, then any dispute as to whether such consent or approval has been unreasonably withheld, conditioned or delayed shall be settled by arbitration or

litigation, as applicable. In the event there shall be a final determination that the consent or approval was unreasonably withheld, conditioned or delayed so that the consent or approval should have been granted, the consent or approval shall be deemed granted and the party requesting such consent or approval shall be entitled to any and all damages resulting therefrom, subject to the limitations provided in this Agreement.

(e) No Fees, etc. Except as specifically provided herein, no fees or charges of any kind or amount shall be required by either party hereto as a condition of the grant of any consent or approval which may be required under this Agreement (provided that the foregoing shall not be deemed in any way to limit Owner acting in its governmental, as distinct from its proprietary, capacity from charging governmental fees on a nondiscriminatory basis).

(f) Governmental Capacity. Notwithstanding anything to the contrary contained in this Section 20.2, the City shall not be required by this Development Agreement to give its consent to any matter arising from or in connection with this Development Agreement when the City is acting in its governmental capacity.

Section 20.3 Notice of Detailed Plans.

Notwithstanding anything to the contrary contained in this Agreement (including without limitation Articles 3, 4 and 20):

- (a) Copies of the Detailed Plans shall be submitted solely to Owner's Consultant.
- (b) Copies of all Notices to Owner pursuant to Sections 3, 4 and 5 (whether or not such Notice includes Detailed Plans) shall be distributed to Owner's Consultant.

ARTICLE 21.

FINANCIAL REPORTS AND RECORDS

Section 21.1 Books and Records; Audit Rights.

(a) Developer shall at all times during the Term keep and maintain (separate from any of Developer's other books, records and accounts), accurate and complete records pertaining to the construction of the Project and such other matters referenced in this Agreement, in accordance with the Accounting Principles with such exceptions as may be provided for in this Agreement. Owner and its representatives shall have, during normal business hours and upon reasonable advance notice, access to the books and records of Developer pertaining to the Project for the purpose of examination and audit (including copying), including books of account properly reflecting the construction of the Project.

(b) The obligations of Developer under this Article to maintain, and to provide Owner and its representatives access to, the books and records related to the Project shall survive the expiration of this Agreement for a period of seven (7) years.

(c) The right of Owner to audit the books and records of Developer pertaining to the Project, including, without limitation, the books of account regarding the Construction Work, shall be governed by the provisions of **Article 28** of the Ground Lease as if such books and records were specifically described in such **Article 28** as being part of the "books and records" described in such **Article 28**; provided, however, copying of all such "books and records" shall specifically be allowed.

ARTICLE 22.

ARBITRATION

Section 22.1 Expedited Arbitration of Development Disputes.

(a) If Developer or Owner asserts that a Development Dispute has arisen, such asserting party shall give prompt written notice thereof to the other party and to the Development Arbitrator.

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

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

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

and the Florida Arbitration Code to the extent not inconsistent with the CPR Rules and this Section 22.1.

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

(f) Once it has been determined by the Development Arbitrator or by agreement of the parties with respect to any Development Dispute that Developer's proposed modifications are material with regard to, or materially inconsistent with, the Preliminary Plans and Specifications or the Plans or Specifications pursuant to Section 3.1 the Development Arbitrator shall take into account, in determining whether Owner has acted unreasonably in failing to grant an approval or consent as described in Section 3.6(b) such factors as he deems relevant which are not inconsistent with this Agreement (including items 1 through 7, below), which in all events shall include the following factors:

(1) Owner does not have any approval rights with respect to the matter of interior design and decor of the Project except to the extent the same is reflected in the Preliminary Plans and Specifications or pursuant to Section 3.6(b).

(2) The Project shall be a first class office building with retail space and Garage at a quality compatible with the quality set forth in the original approved Preliminary Plans and Specifications or the original approved Plans and Specifications (without regard to changes thereto).

(3) The mutual goal of Developer and Owner that Project Construction Costs overruns shall be minimized.

(4) The mutual goal of Developer and Owner that the Construction of the Project be completed within approximately twenty-four (24) months from the Possession Date.

(5) Applicability of any Requirement.

(6) The magnitude of the modification to the previously approved Preliminary Plans and Specifications or Plans and Specifications, as applicable.

(7) The magnitude of the consistency or inconsistency from the previously approved Preliminary Plans and Specifications or Plans and Specifications, as applicable.

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

(h) The Development Arbitrator shall render a decision, in writing, as to any Development Dispute not later than two (2) Business Days following the conclusion of the Hearings regarding such Development Dispute and shall provide a brief written basis for its decision not later than five (5) Business Days thereafter. As to each Development Dispute, the Development Arbitrator's decision shall be limited to (i) whether or not Developer's proposed modification(s) to the Preliminary Plans and Specifications or the Plans or Specifications pursuant to **Section 3.1** is material, (ii) whether or not Developer's proposed modification(s) to the Preliminary Plans and Specifications or the Plans or Specifications pursuant to **Section 3.1(a)** or **(b)**, respectively, is materially inconsistent, (iii) whether or not Owner has unreasonably failed to approve or give its consent to any modifications to the Preliminary Plans or Specifications or the Plans and Specifications pursuant to **Section 3.1(a)** or **(b)**; and/or (iv) whether or not Developer or Owner is entitled to any extension of time for performance. The Development Arbitrator may not award any other or different relief.

(i) The decision of the Development Arbitrator shall be final and binding on the parties for all purposes and may be entered in any court of competent jurisdiction.

(j) The parties shall cooperate to select an independent, neutral, professional firm having hotel development or construction experience to serve as the arbitrator (the "**Development Arbitrator**"). If the parties cannot agree, then any party may ask the CPR Institute for Dispute Resolution to select a substitute who will act as Development Arbitrator of that Development Dispute.

Section 22.2 Litigation.

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

ARTICLE 23.

NO PERMIT OR WAIVER OF FEES

This Development Agreement is not and shall not be construed as a Development Approval, Building Permit or authorization to commence development, nor shall it relieve Developer of the obligations to obtain necessary Development Approvals, Building Permits and other required permits that are required under applicable law and under and pursuant to the terms of this Development Agreement. Nothing contained in this Development Agreement shall be deemed to constitute a waiver of any fee, charge or cost imposed by the City in connection with the issuance of any Development Approval, Building Permit or other permit.

ARTICLE 24.

INVESTIGATIONS, ETC.

To the extent required by Requirements, Developer shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by any Governmental Authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by a Governmental Authority that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry. In addition, Developer shall promptly report in writing to the City Attorney of the City of Miami Beach, Florida any solicitation, of which Developer's officers or directors have knowledge, of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of Owner, City or other Person relating to the procurement or obtaining of this Development Agreement by Developer or affecting the performance of this Development Agreement.

ARTICLE 25.

HAZARDOUS MATERIALS

Section 25.1 General Provision.

The provisions of **Article 35** of the Ground Lease shall be applicable to this Agreement as if the references in such **Article 35** to "Owner", "Tenant" and the "Premises" were references to Owner, Developer and the Project Site, respectively.

Section 25.2 Survival.

The provisions of this **Article 25** shall survive the expiration or sooner termination of this Agreement.

ARTICLE 26

MISCELLANEOUS

Section 26.1 Governing Law and Exclusive Venue.

This Agreement shall be governed by, 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 exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court. The exclusive venue for any expedited arbitration arising out of this Agreement shall be as specified in **Article 22** herein.

Section 26.2 References.

(a) Captions. The captions of this Development Agreement are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Development Agreement or in any way affect this Development Agreement. All captions, when referring to Articles or Sections, refer to Articles or Section in this Development Agreement, unless specified otherwise.

(b) Table of Contents. The Table of Contents is for the purpose of convenience of reference only, and is not to be deemed or construed in any way as part of this Agreement.

(c) Reference to Owner and Developer. The use herein of the neuter pronoun in any reference to Owner or Developer shall be deemed to include any individual Owner or Developer, and the use herein of the words "successors and assigns" or "successors or assigns" of Owner or Developer shall be deemed to include the heirs, legal representatives and assigns of any individual Owner or Developer.

(d) City's Governmental Capacity. Nothing in this Agreement or in the parties' acts or omissions in connection herewith shall be deemed in any manner to waive, impair, limit or otherwise affect the authority of the City in the discharge of its police or governmental power.

(e) Reference to "herein", "hereunder", etc. All references in this Agreement to the terms "herein", "hereunder" and words of similar import shall refer to this Agreement, as distinguished from the paragraph, Section or Article within which such term is located.

(f) Reference to "Approval" or "Consent", etc. All references in this Agreement to the terms "approval", "consent" and words of similar import shall mean "reasonable written approval" or "reasonable written consent" except where specifically provided otherwise.

Section 26.3 Entire Agreement, etc.

(a) Entire Agreement. This Development Agreement, together with the attachments hereto, contains all of the promises, agreements, conditions, inducements and understandings between Owner and Developer concerning the development and construction of the Project on the Project Site and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as expressly set forth herein and in such attachments thereto or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the parties hereto. Notwithstanding anything to the contrary set forth in this Agreement, the terms of this Agreement shall supersede the terms of the Letter of Intent and the RFP and Developer's response thereto. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall represent one instrument.

(b) Waiver, Modification, etc. No covenant, agreement, term or condition of this Development Agreement shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by Owner and Developer. No waiver of any Default or default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Default or default thereof.

(c) Effect of Other Transactions. No Mortgage, whether executed simultaneously with this Agreement or otherwise, and whether or not consented to by Owner, shall be deemed to modify this Agreement in any respect, and in the event of an inconsistency or conflict between this Agreement and any such instrument, this Agreement shall control.

Section 26.4 Invalidity of Certain Provisions.

If any provision of this Agreement or the application thereof to any Person or circumstances is, to any extent, finally determined by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 26.5 Remedies Cumulative.

Each right and remedy of either party provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), and the exercise or beginning of the exercise by a party of any one or more of the rights or remedies provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement).

Section 26.6 Performance at Each Party's Sole Cost and Expense.

Unless otherwise expressly provided in this Agreement, when either party exercises any of its rights, or renders or performs any of its obligations hereunder, such party shall do so at its sole cost and expense.

Section 26.7 Recognized Mortgagee Charges and Fees.

Developer shall pay any and all fees, charges and expenses owing to a Recognized Mortgagee in connection with any services rendered by it as a depository pursuant to the provisions of this Agreement.

Section 26.8 Time is of the Essence.

Time is of the essence with respect to all matters in, and requirements of, this Development Agreement as to both Owner and Developer including, but not limited to, the times within which Developer must commence and complete Construction of the Project.

Section 26.9 Successors and Assigns.

The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, Owner and Developer, and, except as otherwise provided herein, their respective successors and permitted assigns. If, while City is the Owner hereunder, the City shall cease to exist, the City, by its signature hereto, hereby agrees to be bound with respect to all of the terms, covenants and conditions of Owner hereunder and Developer agrees to recognize the City as Owner hereunder. There can be no assignment by Developer of its rights or obligations hereunder or its interest in this Agreement, except Developer may assign all its rights hereunder to a Recognized Mortgagee as security for the performance of Developer's obligations under the Loan Documents. This Development Agreement, however, shall automatically transfer in connection with a transfer of Developer's (as Tenant) interest in the Ground Lease in accordance with the provisions of the Ground Lease.

Section 26.10 Notice of Defaults.

Notwithstanding anything to the contrary set forth in this Development Agreement, under no circumstances shall any party to this Development Agreement lose any right or benefit granted under this Agreement or suffer any harm as a result of the occurrence of any Default or default of such party as to which Default or default such party has not received notice thereof from the other party.

Section 26.11 No Representations.

Owner and City have made no representations herein as to the condition of the Project Site.

Section 26.12 Corporate Obligations.

It is expressly understood that this Development Agreement and obligations issued hereunder are solely corporate obligations, and, except as otherwise provided in **Article 15** that no personal liability will attach to, or is or shall be incurred by, the incorporators, stockholders, officers, directors, elected or appointed officials (including, without limitation, the Mayor and City Commissioner of the

City) or employees, as such, of Owner or Developer, or of any successor corporation, or any of them, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom; and, except as otherwise provided in **Article 15**, that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer, director, elected or appointed officials (including, without limitation, the Mayor and City Commissioner of the City) or employee, as such, or under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

Section 26.13 Nonliability of Officials and Employees.

Except as otherwise provided in **Article 15**, no member, official or employee of Owner shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by Owner or for any amount or obligation which may become due to Developer or successor under the terms of this Agreement; and, except as otherwise provided in **Article 15**, any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such Person, under or by reason of the obligations, covenants or agreements contained in this Development Agreement or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Development Agreement.

Section 26.14 Partnership Disclaimer.

Developer acknowledges, represents and confirms that it is an independent contractor in the performance of all activities, functions, duties and obligations pursuant to this Development Agreement.

The parties hereby acknowledge that it is not their intention to create between themselves a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship for the purpose of developing the Project, or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Agreement, the Ground Lease or the other documents executed by the parties with respect to the Project shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship of any kind or nature whatsoever between the parties hereto. The provisions of this **Section 26.14** shall survive expiration of this Development Agreement.

Section 26.15 Time Periods.

Any time periods in this Agreement of less than thirty (30) days shall be deemed to be computed based on Business Days (regardless of whether any such time period is already designated

as being computed based on Business Days). In addition, any time period which shall end on a day other than a Business Day shall be deemed to extend to the next Business Day.

Section 26.16 No Third Party Rights.

Nothing in this Development Agreement, express or implied, shall confer upon any Person, other than the parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement; provided, however, that a Recognized Mortgagee or its Designee (as such term is defined in the Ground Lease) shall be third party beneficiaries hereunder to the extent same are granted rights hereunder.

Section 26.17 No Conflict of Interest.

Developer represents and warrants that, to the best of its actual knowledge, 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, to the best of its knowledge, no officer, agent, employee or representative of the City has received any payment or other consideration for the making of this Agreement, directly or indirectly, from Developer. Developer represents and warrants that it has not been paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, and attorneys. Developer acknowledges that Owner is relying upon the foregoing representations and warranties in entering into this Agreement and would not enter into this Agreement absent the same.

Section 26.18 Recording of Development Agreement.

Within fourteen (14) days after the City executes this Development Agreement, the City shall record this Development Agreement with the Clerk of the Circuit Court of Miami-Dade County. The Developer shall submit a copy of the recorded Development Agreement to the State of Florida's Land Planning Agency within fourteen (14) days after this Development Agreement is recorded. This Development Agreement shall become effective only after (i) it has been recorded in the Public Records of Miami-Dade County, and (ii) thirty (30) days have elapsed after the State of Florida Land Planning Agency's receipt of a copy of the recorded Development Agreement. 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 Development Agreement as described in this **Section 26.18**. The provisions hereof shall remain in full force and affect during the term hereto, and subject to the conditions of this Development Agreement shall be binding upon the undersigned, and all successors in interest to the parties to this Development Agreement. Whenever an extension of any deadline is permitted or provided for under the terms of this Development Agreement, at the request of either party, the other party shall join in a short-form recordable Memorandum of Agreement confirming such extension to be recorded in the Public Records of Miami-Dade County.

Section 26.19 Duration of This Development Agreement.


The duration of this Development Agreement shall not exceed ten (10) years from the date first written above; provided, however, that the duration of this Development Agreement may be extended by mutual agreement of the Owner and Developer. During the term of this Development Agreement, the City's laws and policies governing the development of land in effect as of the date hereof shall govern development of the Land. The City may apply subsequently adopted laws and policies to the Project only if the City has held a public hearing pursuant to Section 163.3225, Florida Statutes, and determined:

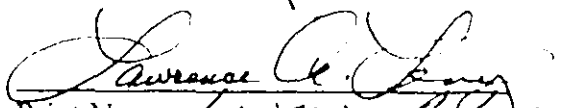
- (a) they are not in conflict with the laws and policies governing this Development Agreement and do not prevent development of the land uses, intensities, or densities in this Development Agreement; or
- (b) they are essential to the public health, safety, or welfare, and expressly state that they shall apply to a development that is subject to a development agreement; or
- (c) they are specifically anticipated and provided for in this Development Agreement; or
- (d) the City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of Development Agreement; or
- (e) this Development Agreement is based on substantially inaccurate information supplied by Developer.

EXECUTION

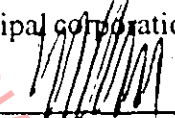
IN WITNESS WHEREOF, Owner and Developer intending to be legally bound, have executed this Development Agreement as of the day and year first above written.

WITNESSES:


 Print Name: JOEL N. MINSKOFF


 Print Name: LAWRENCE A. LEVY

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

By: 
 Neisen O. Kasdin, Mayor

ATTEST:
 By: 
 Robert Parcher, City Clerk

APPROVED AS TO
 FORM & LANGUAGE
 & FOR EXECUTION

[SEAL]


 City Attorney 9/1/99
 Date

List of Exhibits

Exhibit A	Legal Description
Exhibit 2.10	List of Required Development Approvals
Exhibit 3.4(a)	Lincoln Plaza Development Costs
Exhibit 5.3(a)	Insurance Required of Contractor

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1

Lots 7 through 10, and Lots 16 through 20, Block 37, PALM VIEW SUBDIVISION, as recorded in Plat Book 6, Page 29 of the Public Records of Miami-Dade County, Florida.

PARCEL 2

Lots 14 and 15, Block 37, PALM VIEW SUBDIVISION, according to the Plat thereof, recorded in Plat Book 6, at Page 29, of the Public Records of Miami-Dade County, Florida.

OFF. REC. 18770PC 733

EXHIBIT 2.10

LIST OF REQUIRED DEVELOPMENT APPROVALS

Certificate of Use and Occupancy
Demolition Permit
Department of Environmental Protection Permit
Department of Environmental Resource Management Permit
FDOP Permit
Full Building Permit, covering
 Foundation
 Electrical
 Plumbing
 Mechanical and Cooling Towers
 Elevator
 Fire/Life Safety Systems
 Roofing
 Glazing (Windows and Doors)
 Stair and Balcony Railings
 Signs
Miami-Dade County Public Works Department Permit
Miami-Dade Water and Sewer Authority Approval
Public Works Permit, Paving and Drainage
Public Works Permit, Water and Sewer
South Florida Water Management District Permit (Storm Water Management)
Such other permits as may be required by Federal, State and local law.

OFF. REC. 18770PC 734

**EXHIBIT 3.4(a)
DEVELOPMENT BUDGET
LINCOLN PLAZA PARTNERS LLC**

		SPACES	S.F.	TOTALS
		711	34,510	
HARD COSTS				
Parking Structure @ \$/sp	\$ 11,000	\$ 7,821,000		\$ 7,821,000
Retail space @ \$/sf	\$ 35		1,207,850	\$ 1,207,850
Office Building	\$ 100		106,000	\$ 10,600,000
Land	\$ 1,500,000			\$ 1,500,000
TOTAL HARD COSTS				\$ 21,128,850
SOFT COSTS				
Pre-development				\$ 211,288
Rent during construction and option money				\$ 500,000
Consultants Services				\$ 845,154
Development Overhead				\$ 1,056,442
Construction management				\$ 633,866
Legal/appraisal/Misc				\$ 211,288
Impact fees				\$ 422,577
Marketing				\$ 42,258
Taxes/Insurance				\$ 105,844
Parking control equipment				\$ 25,000
TOTAL SOFT COSTS				\$ 4,053,518
SUBTOTAL				\$ 25,182,368
OTHER COSTS				
Contingency (hard and soft)				2,518,237
Construction Interest (12mo/prkg)(15 mo/office)			\$	1,600,000
Leasing commissions			\$	966,000
Financing Fees				377,736
TOTAL OTHER COSTS				\$ 5,461,972
TOTAL PROJECT COST				\$ 30,644,340

EXHIBIT 5.3(a)

INSURANCE REQUIRED OF CONTRACTOR

(a) Worker's compensation insurance covering all employees of the Contractor as required by the laws of the State of Florida and employer's liability insurance of not less than One Million Dollars (\$1,000,000) per occurrence.

(b) Comprehensive general liability insurance in an amount of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate covering personal injury and property damage. Such coverage shall include, but not be limited to, the following:

1. Blanket contractual liability insurance covering all indemnity or hold harmless agreements.
2. Protective liability insurance for the operation of the Independent Contractors.
3. XCU coverage (explosion, collapse or damage to underground property).
4. Products and completed operations (for two year extension beyond completion of project).

(c) Excess umbrella liability insurance with a limit of not less than Twenty-Five Million Dollars (\$25,000,000) per occurrence and in the aggregate in excess of the above mentioned insurance; which shall be required only in any "wrap up" policy.

(i) Developer may cause the insurance listed in this subsection (i) to be provided through an overall "wrap up" policy, in lieu of individual policies provided by Contractors.

(ii) Comprehensive automobile insurance in an amount of not less than Two Million Dollars (\$2,000,000) combined single limit for bodily injury and property damage covering all owned, non-owned or hired vehicles, trailers or semi-trailers, including any machinery or apparatus attached thereto.