

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

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(Space reserved for Clerk)

DEZER INTRACOASTAL MALL LLC
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into as of the ____ day of _____, 2020, by and among the CITY OF NORTH MIAMI BEACH, a Florida municipal corporation (the “City”), and DEZER INTRACOASTAL MALL LLC, a Florida limited liability company, its successors and/or assigns (the “Developer”):

Recitals

A. This Agreement is intended to and shall constitute a development agreement between the parties pursuant to Sections 163.3220-163.3243, Florida Statutes (2020), the “Florida Local Government Development Agreement Act” and Section 24-214 of the City of North Miami Beach Code of Ordinances (2020).

B. The Developer directly, or indirectly through its affiliates, is the legal or equitable owners of approximately 29.08 acres of real property located at 3501 Sunny Isles Boulevard, 3745 NE 163 Street, and 3909 NE 163 Street in the City of North Miami Beach, Florida, and more particularly legally described on Exhibit A attached hereto (the “Property”).¹

¹ Includes a portion of the Florida Department of Transportation (FDOT) parcel to the south (no folio number available).

C. The Property is designated Eastern MU/EWF Mixed-Use East Waterfront District on the City's Comprehensive Plan 2015 Future Land Use Map and located in the MU/EWF District on the official Zoning Map for the City of North Miami Beach.

D. The Developer intends to redevelop the Property with a multi-use Project (as described in Section 3.16 below) that may include and is planned to have retail, office, hotel, and residential uses substantially in accordance with the provisions contained in this Agreement, including, but not limited to, the Development Program and Project Approvals (as defined in Sections 3.10 and 3.17 below), and the MU/EWF district regulations set forth in the City Code (2020).

E. The City and Developer agree that the redevelopment of the Property with the Development Program (as defined below) in accordance with this Agreement is in the best interests of the City, and the permitted uses within the Project are to be construed in accordance with Section 24-58.7 of the City of North Miami Beach Code of Ordinances (2020).

F. This Agreement shall not constitute a joint venture or public-private partnership between the parties.

G. This Agreement shall supersede and terminate that certain Declaration of Restrictive Covenants recorded in Official Records Book 12533 at Page 1322 of the Public Records of Miami-Dade County, Florida and amended by that certain Amendment to Declaration of Restrictions recorded in Official Records Book 13960 at Page 1577 of the Public Records of Miami-Dade County, Florida (collectively, the "Declaration"), and which the City hereby terminates and releases in accordance with the terms of the Declaration.

H. The City is a Florida municipal corporation with power and authority conferred under the Florida Constitution, the Municipal Home Rule Powers Act, Florida Statutes, and the

North Miami Beach City Charter and Code of Ordinances. The City has all governmental, corporate and proprietary powers to enable it to convey property, conduct municipal government, perform municipal and governmental functions, and render municipal services, including the authority to adopt, implement and enforce (together with any other required governmental approvals) comprehensive plans, zoning ordinances, redevelopment plans, this Agreement, along with all other proprietary and police powers and legislative measures necessary to assure the health, safety and general welfare of the City and its inhabitants.

I. Having fully considered this Agreement at a duly noticed public hearing before the Planning and Zoning Board, and two duly noticed public hearings before the City Commission in compliance with Section 163.3225 of the Act (2020) and Section 24-214 of the City of North Miami Beach Code of Ordinances (2020); having determined that the Project and this Agreement are in compliance with the City's Comprehensive Plan and Land Development Regulations as of the Effective Date, in accordance with Section 163.3227(1)(g), Florida Statutes (2020), and having further determined that it is in the City's best interest to address the issues covered by this Agreement in a comprehensive manner, in compliance with all applicable laws, ordinances, plans, rules and regulations of the City, the City has agreed to enter into this Agreement with the Developer.

J. The Project has been analyzed for and determined to be in satisfaction of infrastructure concurrency requirements set forth by the City Comprehensive Plan and Land Development Regulations, including roadways, mass transit, parks and open spaces, police, the provision of public services and providing for resiliency from the impacts of hurricanes, climate change, and sea level rise. Fire rescue and public school concurrency shall be addressed through separate agreements with the appropriate agencies.

K. All capitalized words herein shall be considered to be defined terms as defined in these Recitals, Section 3 or elsewhere in this Agreement.

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

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

2. Authority. This Agreement is entered into pursuant to the authority and procedures contained within the Act.

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

3.1 “Act” shall mean the Florida Local Government Development Agreement Act (Sections 163.3220 - 163.3243, Florida Statutes (2020)).

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

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

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

3.5 “Comprehensive Plan” shall mean the comprehensive plan which the City has adopted and implemented for the redevelopment and continuing development of the City pursuant to Chapter 163 Part II, of the Florida Statutes (2020).

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

3.7 “Developer” means Dezer Intracoastal Mall LLC or any subsequent heir, successor or assignee responsible for undertaking the development of the Property, as defined in the preamble to this Agreement.

3.8 “Development Order” is as defined in Section 163.3164(15), Florida Statutes (2020).

3.9 “Development Permit” shall have the meaning set forth in Section 163.3221(5), Florida Statutes (2020).

3.10 “Development Program” shall mean the initial permitted development program consisting of up to 375,000 square feet of commercial/retail space, 200,000 square feet of office space, 2,000 multi-family residential units, and 250 hotel keys. The total impact of all development in the Project based on this initial Development Program is projected to generate 679 net new external pm peak hour trips and 837 net new external am peak hour trips, which have been determined in connection with the traffic analysis for the Project. The actual development program and combination of uses and intensities may vary from the initial approved Development Program in accordance with the Equivalency Matrix provided in Exhibit B hereto and made a part hereof, without amending this Agreement. For the avoidance of doubt, this Development Program may be modified administratively by the City pursuant to Chapter 24 of the City Code.

3.11 “Effective Date” is the date when the City records the executed Agreement in the Public Records of Miami-Dade County, as provided in Section 163.3239, Florida Statutes (2020), and Paragraph 22 of this Agreement.

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

3.13 “Land Development Regulations” shall have the meaning set forth in Section 163.3221(8), Florida Statutes (2020) and shall also include, without limitation, Chapter XXIV and the definition of “Development” in Section 24-22 of the City Code (2020), and the Project Approvals.

3.14 “Laws” means all ordinances, resolutions, regulations, the Comprehensive Plan, Land Development Regulations, and rules adopted by a local government having jurisdiction affecting the development of land, specifically including the City’s Comprehensive Plan and the Land Development Regulations (2020).

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

3.16 “Project” shall mean the construction and development of the Property in accordance with the provisions contained in this Agreement, including, but not limited to, the Development Program and Project Approvals (as defined in Sections 3.10 and 3.17 hereto), and the Eastern Mixed-Use Waterfront District (MU/EWF) zoning district regulations of Section 24-58.7 of the City Code (2020).

3.17 “Project Approvals” shall mean the Development Order issued by the City for the development of the Project, the Development Plan, and this Agreement.

3.18 “Property” shall mean the parcel of real property described in paragraph B of the Recitals hereto.

3.19 “Recognized Mortgagee” means a mortgagee who has notified City that it is a Recognized Mortgagee and provided an address for notices.

3.20 “Development Plan” shall mean that certain plan for the Project entitled “Intracoastal Mall Redevelopment” as prepared by Zyscovich Architects, dated ~~_____~~ May 20, 2020, approved pursuant to City Ordinance No. _____, passed and adopted by the City Commission on _____, 2020, as may be amended from time to time.

4. Developmental Density, Intensity, and Height.

4.1 The development density and intensity (total number of residential and hotel units and retail/commercial/office floor area) permitted upon the Property shall not exceed those provided in the Development Program, as such Project may be modified from time to time pursuant to Section 3.10 of this Agreement, and as otherwise provided by the City’s Land Development Regulations in effect as of the Effective Date, for the purposes of determining population densities and building intensities as required by the Act.

4.2 The height of any habitable building on the Property shall not exceed those heights provided in Figure MU/EWF-4: Building Heights Regulating Plan as provided in Sections 24-58, 24-58.7(E), and 24-58.7(J) of the City Code (2020).

4.3 The uses permitted on the Property shall include (i) general business, retail, and service uses; (ii) office use; (iii) hotel and lodging uses; (iv) multi-family residential use; and (v) any use, including ancillary or accessory and other uses permitted pursuant to Section 24-58.7(G) of the City Code (2020).

5. Parking. The Project shall include on-site parking in accordance with the provisions of the Land Development Regulations.

6. Phasing. It is anticipated that the Project will be constructed in phases. It is recognized that phases may overlap in light of market and other external forces (such as retail, residential and/or office market forces, environmental factors, or other issues). Thus, the timing and order of phases may be modified administratively. See Phasing Plan, attached as Exhibit C hereto.

7. Phase I Improvements. The roadway, transit, open space, and bicycle improvements described in this shall be completed prior to the issuance of a Certificate of Occupancy for the final building in Phase I. All other on-site roadway and parks and open space improvements not listed above shall be constructed in accordance with the Phasing Plan (Sheet A1-28) of the Master Plan.

7.1 Phase I Roadway Improvements. The NE 35 Avenue and SR 826/NE 163 Street off-site roadway improvements and the park and open space improvements shown in Blocks N1, S1, and the west half of C1 on the Open Space Plan (Sheet A1-27) of the Master Plan shall be completed prior to the issuance of a Certificate of Occupancy for the final building in Phase I. Said off-site roadway improvements are:

- a. The addition of the signalized intersection of SR 826/NE 163rd Street and NE 36th Avenue. The proposed signalized intersection will operate as a continuous green T-intersection
- b. The addition of one (1) southbound left-turn lane, the addition of one (1) additional southbound right-turn lane, the addition of one (1) eastbound left-turn lane, and the addition of one (1) receiving lane to the west leg of the intersection of SR 826/NE 163rd Street and NE 36th Avenue;

- c. The addition of one (1) eastbound left-turn lane at the intersection of SR 826/NE 163rd Street and NE 35th Avenue;
- d. The elimination of the exclusive westbound left-turn lane along Frontage Road at NE 34th Street;
- e. The intersection of SR 826/NE 163rd Street and NE 35th Avenue is proposed to be modified to remove the eastbound partial continuous green T-intersection as well as the exclusive pedestrian phase;
- f. The reconfiguration of the intersection of SR 826/NE 163rd Street and NE 35th Avenue to include signalized eastbound through and left-turn lanes, signalized southbound left and right-turn lanes, and signalized westbound through and shared through/right-turn lanes;
- g. The addition of sharrow pavement markings, a 10-foot shared-use path, and a buffered bicycle lane on NE 163rd Street westbound fronting the site; and
- h. The addition of crosswalks on both the east and west sides of NE 35th Avenue at NE 164th Street.
- i. Prior to the issuance of the building permit in this phase, in the event that the Developer, after good faith efforts, does not receive the approval from the Florida Department of Transportation for the construction of the preferred alternative for NE 163rd Street and NE 35th Avenue, the Developer shall submit to the City a revised alternative plan, with traffic study, for review and approval by the City, that maintains or improves upon the level of standards as originally proposed.

The roadway improvements described in this section and in Exhibit D satisfy the City's Eastern Mixed-Use Waterfront District (MU/EWF) Code requirements by providing for multiple access

points, including direct east and west access to and from SR 826/NE 163rd Street, and acceptable traffic mitigation measures. Each of the above-described roadway improvements are under FDOT jurisdiction, shall be subject to FDOT approval. The construction of those roadway improvements occurring within the public rights-of-way shall comply with the bond requirements set forth by the agencies having jurisdiction over said rights-of-way.

7.2 Phase I Transit Improvements. Prior to the first Certificate of Occupancy for the final building in Phase I, the Developer shall demonstrate through its plans the opportunity for improved or maintained levels of transit service to serve the Project, including accessibility and transferability between existing transit lines. The Developer will maintain or enhance the current level of service by providing access in the form of a premium transit facility with collocated transit and trolley stops for the North Miami Beach and Sunny Isles Beach on NE 35th Avenue, subject to each agency's option. The premium transit facility shall include capacity for features including, but not necessarily limited to, premium shelters or facilities; digital routing displays, including real time information; seating; and WiFi hotspots. The premium transit facility shall be ADA compliant.

7.3 Phase I Park and Open Space Improvements. The park and open space improvements required to be completed prior to the issuance of the Certificate of Occupancy for Phase I are delineated on the Open Space Plan (Sheet A1-27) of the Master Plan and are more specifically described as:

- a. Block N1: Green areas and open spaces.
- b. Block S1: Green areas and open spaces.
- c. West half of Block C1: Park space and green areas.

7.4 Phase I Bicycle Facility Improvements. Prior to the issuance of a C.O. for the final building in Phase I, the Developer shall seek FDOT approval to provide bicycle facilities along eastbound 826/NE 163rd Street between NE 34th Avenue and NE 35th Avenue consistent with FDOT's standards and the proposed FDOT RRR roadway improvement project.

8. Maintenance of Traffic. The Developer shall submit a Maintenance of Traffic Plan or Temporary Traffic Control Plan ("MOT Plan") to the City, and, if applicable, to the FDOT for review and approval prior to the commencement of construction of any building in Phase I. Subject to FDOT approval, if applicable, the MOT Plan shall encourage construction traffic resulting from the development of the Project to use NE 36th Avenue or any existing temporary road in the proximate location of future NE 36th Avenue. Any necessary improvements to NE 36th Avenue required by FDOT in connection with the MOT Plan shall be completed prior to the issuance of a building permit for the vertical construction of the first building in Phase I.

9. ~~8.~~ Truck Routes. Commercial truck traffic circulation shall be in compliance with the Circulation Ingress and Circulation Egress Plans (Sheets A1-21 and A1-22) of the Master Plan. Commercial vehicles shall be prohibited from entering and exiting the site at the northern most access point on NE 35th Avenue.

10. ~~9.~~ Canal Approval. In the event that the Developer, after good faith efforts, cannot receive the approvals for the construction of a the central canal shown in the Development Plan, the Developer shall submit to the City a revised open space plan for review and approval by the City Manager, or designee. Completion of an approved revised open space plan, if needed, shall be deemed to meet this condition.

11. ~~10.~~ Public Infrastructure and Streetscape Assessment and Fund. Prior to the issuance of a building permit for any phase of the Project involving the construction of residential units, the Developer shall provide a Public Infrastructure Assessment on a per unit basis in the amount of Four Hundred Fifty Dollars (\$450.00) per residential unit, for a total contribution of Nine Hundred Thousand Dollars (\$900,000) (the “Public Infrastructure Assessment Payment”), minus any eligible credits related to public infrastructure and streetscape improvements as outlined in the development agreement. This shall satisfy the Public Infrastructure and Streetscape Assessment and Fund as outlined in Section 24-58.7(O)(1). The Public Infrastructure Assessment Payment fund may be used by the City for public infrastructure, streetscape improvements, and maintenance of that segment of NE 35th Avenue abutting the Project and that segment of NE 163rd Street abutting the Project, or as determined by the City Commission.

12. ~~11.~~ Eastern Shores Entrance. The Developer shall, prior to the issuance of a Certificate of Occupancy for the final building in Phase I, permit and construct or cause the construction of the following improvements for the entrance features to the Eastern Shores neighborhood (hereinafter collectively referred to as the “Entrance Feature Improvements”):

- (a) One (1) guard house on NE 164th Street, west of NE 35th Avenue.
- (b) One (1) guard house on NE 35th Avenue, north of NE 165th Street.
- (c) Entry feature on NE 35th Avenue, at NE 164th Street.

Said guard houses shall be in the same location and size as the existing guard houses and shall include a workspace, a toilet facility, air conditioning, gate arms, security cameras, internet access, and landscaping, and ~~shall be built (i)~~ of a scope generally in accordance with the plans entitled “Miami Dade EDP Guardhouse,” as prepared by Revuelta Architecture International,

dated May 5, 2014 ~~(the “Entrance Feature Plans”), and (ii) in the same location and size as the existing guard houses. Permitting and construction of.~~ The approval of site plans for the Entrance Feature Improvements shall be subject to the authority of the City Commission and approval of the Entrance Feature Improvements shall not be unreasonably withheld. The City represents that the Eastern Shores Security Guard Special Taxing District Advisory Board ~~has~~shall been given the opportunity to review the ~~design of~~proposed site plans for the Entrance Feature ~~Plans. The denial by~~Improvements. In the event that the City Commission ~~of~~denies the Developer’s application for site plan, ~~permitting, or construction approval of~~ of the Entrance Feature Improvements or it is determined by the City Commission that the Entrance Feature Improvements ~~shall be deemed as a waiver of Developer’s~~are no longer required, the obligation to construct the Entrance Feature Improvements shall be waived.

13. ~~12.~~ Public Services. The Developer shall make the following additional public service improvements (the “Public Services Benefit”) at the appropriate phase of development of the Project as identified in the Phasing Plan provided in Exhibit C, which shall satisfy Subsection 24-58.7(O)(2) of the City Code (2020):

13.1 ~~12.1~~ Miami-Dade County Fire Rescue Station. Prior to the issuance of a Certificate of Occupancy for the building in Phase I where the Miami-Dade County Fire Rescue Station is located pursuant to the Master Plan, the Developer shall coordinate with the Miami-Dade County to design and construct or cause the construction of a fire rescue station in accordance with the terms and schematic details provided by the Miami-Dade County Fire Rescue Department. The Developer expressly acknowledges that Miami-Dade County may impose a cap on credit for contribution in lieu of impact fees equivalent to the cost of construction for said fire rescue station. The Developer shall enter into a separate agreement

with Miami-Dade County to define the construction and occupancy terms for the fire rescue station.

13.2 ~~12.2~~ Police Substation. Prior to the issuance of a C.O. for the building in Phase I where the substation is located, Developer and City shall agree on lease terms for the police substation shown on the Master Plan. The lease shall: (i) establish the term of the lease agreement such that, at a minimum, it shall not be less than the term of the development agreement unless mutually agreed to by both City and Developer; (ii) establish that the city shall only pay common area maintenance fees typically charged to Developer's tenants and maintain insurance as required by the lease agreement; (iii) that any additional beneficial lease terms agreed to by the Developer between the County or the City shall be equally applied to both City and County; (iv) if at any time relocation is necessary, the costs shall be borne by the Developer and the same terms shall be made available to the City; and (v) any other terms mutually agreed upon between City or County, and Developer.

13.3 ~~12.3~~ The development and maintenance, of a minimum of six (6) acres of publicly accessible open space in the MU/EWF zoning district of which a minimum of sixty-five thousand (65,000) square feet shall be designated as a new publicly accessible neighborhood park (the "Public Open Space").

13.4 ~~12.4~~ The development and maintenance, of a publicly accessible waterfront promenade, which shall generally extend along the entire northern and eastern site boundary edges adjacent to the water. The general location of the publicly accessible waterfront promenade is approximately shown in the Designated Publicly Accessible Open Spaces and Urban Greenway Systems Regulating Plan (Figure MU/EWF-3) of the Land Development Regulations (the "Waterfront Promenade").

[13.5](#) ~~12.5~~ Multiple access points, including direct east and west access to and from SR 826, and acceptable traffic mitigation measures, such that the Project addresses impacts upon NE 35th Avenue, consisting of the roadway improvements referenced above in Section 7 of this Agreement.

[13.6](#) ~~12.6~~ Streetscape improvements for NE 35th Avenue shall be designed and constructed or caused to be constructed generally in accordance with the Street Network Connectivity Regulating Plan (Figure MU/EWF-2), the City's NE 35th Avenue Roadway Enhancements Project, and subject to any adjustments and approvals required by FDOT or Miami-Dade County.

[13.7](#) ~~12.7~~ The Developer shall provide publicly accessible artwork with a total aggregate value of at least One Hundred Thousand Dollars (\$100,000). The artwork, which may consist of murals, graphics, interactive fountains, streetscape designs, or similar pieces of artwork to be provided by Developer shall consist of a minimum of two (2) pieces of art to be installed on-site or on adjacent rights of way or public property and shall be of a quality and design reasonably acceptable to the City Manager or designee.

[13.8](#) ~~12.8~~ The construction of an on-site community center (the "Community Center").

[13.9](#) ~~12.9~~ The Developer shall pay the Park Impact Fee associated with the Project to the City in accordance with Article XVII of the Land Development Regulations (2020). The Developer shall pay the Police Impact Fee associated with the Project to the City in accordance with Article XVIII of the Land Development Regulations (2020). Water and sewer connections for the Project shall be made in accordance with the Chapter XIX of the City Code (2020) and applicable Miami-Dade County regulations.

14. ~~13.~~ Hotel Standards. Any hotel use developed within the Project shall be rated with a minimum of a AAA Three Diamond rating, which indicates comprehensive amenities, style, and comfort level, in order to ensure overall quality, range of facilities and level of hospitality offered in connection with this use.

15. ~~14.~~ Commencement of Construction. The Developer, its successors and/or assigns shall apply for and obtain a building permit for the vertical construction of the Project or portion thereof (the “First Building Permit”) prior to the expiration of the seventh (7th) year from the effective date of the Development Agreement. Prior to the issuance of the First Building Permit, the Developer shall obtain design approval from the Florida Department of Transportation (FDOT) Access Management Board for an additional access point into the Project, which approval shall be for the design presented in Development Plan or a comparable design which satisfies Section 24-58.7(O)(e) - Eastern Mixed-Use Waterfront District (MU/EWF) pertaining to an access point with direct east and west access to and from SR 826/NE 163rd Street and traffic mitigation such that the development does not over burden NE 35th Avenue (the “NE 36th Avenue Access”).

16. ~~15.~~ Water and Sanitary Sewer Connections. Water and sanitary sewer connections for the Project shall be made in accordance with the Chapter XIX of the City Code (2020) and applicable Miami-Dade County regulations.

17. ~~16.~~ Park Impact Fee. The Developer shall pay a park impact fee in the amount of One Thousand Forty-Four Dollars and Forty-Two Cents (\$1,044.42) per multi-family residential dwelling unit to the City in accordance with Article XVII, Chapter XXIV of the City Code (the “Park Impact Fee”); or, alternatively, make a park improvement contribution/payment to the City, creditable to the assessed Park Impact Fee, in satisfaction of a cash payment and in lieu of

the Park Impact Fee as may be further agreed to in a future agreement of the parties, and which shall satisfy Subsection 24-190 et. seq. of the City Code (2020). The City acknowledges that the construction of the Public Open Space, Waterfront Promenade, and Community Center shall constitute a contribution-in-lieu of and/or credit against the Park Impact Fee in satisfaction of Subsection 24-190 et. seq. of the City Code (2020).

18. ~~17.~~ Police Impact Fee. Prior to the issuance of a building permit for each building, the Developer shall pay the police impact fee associated with the development of said building to the City in accordance with Article XVIII, Chapter XXIV of the City Code (2020) (the “Police Impact Fee”). The construction of the Police Substation shall be considered a contribution-in-lieu of and/or credit against the Police Impact Fee in satisfaction of Article XVIII, Chapter XXIV of the City Code (2020).

19. ~~18.~~ Contribution In Lieu of Miami-Dade County Impact Fees. The City and Developer shall work cooperatively obtain impact fee contribution in lieu credits for Miami-Dade County fire rescue, roadway/transportation and transit impact fees.

20. ~~19.~~ Public Art Condition. The Developer shall provide artwork with a total aggregate value of at least One Hundred Thousand Dollars (\$100,000). The artwork, which may consist of murals, graphics, interactive fountains, streetscape designs, or similar pieces of artwork to be provided by Developer shall consist of a minimum of two (2) pieces of art to be installed on-site or on adjacent rights of way or public property and shall be of a quality and design reasonably acceptable to the City Manager, or designee, with a recommendation by the Director of the Community Development or successor department.

21. ~~20.~~ Applications for Project Approvals and Development Permits. Following the Effective Date of this Agreement, the Developer will diligently pursue, subject to applicable

tenant lease terms, appropriate applications for Development Orders and Development Permits for the horizontal site development of the Project, including site waste remediation, filling, and construction of infrastructure. It is expressly recognized that vertical construction is subject to market forces and that such development may be phased over time. The City shall process all Development Permits and the Development Order applications timely and join in application(s), as may be necessary. Notwithstanding the foregoing, Developer shall be solely responsible for obtaining all final, non-appealable Development Orders and Development Permits for the Project.

22. ~~21.~~ Site Plan Approval. The Development Plan has been designed to conform with the terms and criteria provided in this Development Agreement and with the Land Development Regulations in effect as of the Effective Date. Prior to development of the Property or portion thereof, the Developer shall seek and obtain approval of a site plan for that portion of the Property (“Site Plan”). Review of the Site Plan shall be to ensure that it is generally in accordance with Section 24-172 of the City Code (2020) and the Development Plan, except that the Site Plan and any modifications thereto shall be approved administratively wherever possible, within the scope of the Land Development Regulations.

23. ~~22.~~ Special and Temporary Events. Any site plan approval that includes special and temporary event spaces shall include design schematics for said spaces, including any mechanisms for closures, for streets designated for potential temporary closures that demonstrates the ability to effect emergency access for all buildings at all times. Bollards and any other devices used to temporarily close primary and secondary streets shall be easily removable so as to effect quick and direct emergency vehicle access to all buildings on that site.

24. ~~23.~~ Maintenance of Certain Improvements. Prior to the issuance of the first C.O., the Developer and City shall enter into an agreement to address the Developer's the ongoing maintenance of onsite and abutting Streetscape Improvements required by Section 24-58 and Section 24-58.7 of the City Code (2020).

25. ~~24.~~ Downzoning. For the duration of this Agreement, the City shall not downzone or otherwise limit the ability of the Developer to develop the Property in accordance with the Project Approvals and nothing shall prohibit the issuance of further development orders and approvals in conformity with same. For the term of this Agreement, the City hereby agrees that it shall permit the development of the Project in accordance with the Land Development Regulations, the Comprehensive Plan, and existing laws and policies as of the Execution Date which are or may be applicable to the Property, subject to the conditions of this Agreement. However, nothing herein shall prohibit an increase in developmental density or intensity within the Project in a manner consistent with the Comprehensive Plan and Land Development Regulations, or any change requested or initiated by the Developer in accordance with applicable provisions of law. Moreover, the City may apply subsequently adopted laws and policies to the Property that are essential to the public health, safety, or welfare pursuant to, and in accordance with, Section 163.3233(2), Florida Statutes (2020).

26. ~~25.~~ Further Development Review. This Agreement and the Project Approvals establish the criteria upon which the Project shall be developed and set forth the sole and exclusive limitation upon the development of the Project for the Term of this Agreement. Any Development Plan for the Project approved pursuant to the provisions of this Paragraph may be modified from time to time in accordance with Section 24-172, Section 24-58.7 and Section 24-214 of the City's Land Development Code (2020). Reasonable variations to the building

placement, building style, and lot configuration may be approved administratively by the Director of the Community Development Department, or the executive officer of the successor of such Department, as provided in the City Code.

27. ~~26.~~ Extension of Time-Frames. Extensions of all time-frames listed above may be granted administratively by the City Manager, or designee, with a recommendation of the Community Development Director following the demonstration of good cause and good faith efforts by the Developer. Such extensions shall not be unreasonably withheld. Said time-frames shall also be extended in accordance with Section 252.363, Florida Statutes. Finally, said time-frames shall be tolled in the event of litigation which prevents development of the Project from proceeding in accordance with the Development Plan and Phasing.

28. ~~27.~~ Laws Governing this Agreement. For the entire term of this Agreement, the City hereby agrees that the Land Development Regulations governing the development of the Property as they exist as of the Effective Date of this Agreement shall govern the development of the Property and the Project during the Term. Notwithstanding the foregoing, the City may apply subsequently adopted laws or policies of Citywide applicability to the Property and the Project (particularly as they may relate to quality of life issues such as, but not limited to noise, litter, alcohol use and hours of operation) as permitted or required by the Act, including, without limitation, Section 163.3233(2), Florida Statutes (2020), as same may be amended from time to time; provided, however, that this provision shall not be deemed to apply to regulations governing height, floor area ratio (FAR), density, concurrency, parking requirements or permitted uses.

29. ~~28.~~ Compliance with Local Regulations Regarding Development Permits. This Agreement is not and shall not be construed as a Development Permit, approval or authorization

to commence any development, fill, or other land modification. Pursuant to Section 163.3227(1)(i), Florida Statutes (2020), the Developer and the City agree that the failure of this Agreement to address a particular permit, approval, procedure, condition, term or restriction in effect on the Execution Date of this Agreement shall not relieve Developer of the necessity of substantially complying with the regulation governing said permitting requirements, conditions, fees, terms or restrictions, subject to the terms of this Agreement.

30. ~~29.1~~ Annual Reporting. The developer shall provide an Annual Report to the Community Development Director within six (6) months of approval of the development agreement and then annually on October 1st, in accordance with Section 24-214(12) of the City Code (2020).

30.1 ~~29.1~~ The annual report shall, at a minimum, include the following information:

- (a) Compliance with the terms of the development agreement;
- (b) Identification of any substantial changes warranting an amendment or revocation of the development agreement;
- (c) List any substantial local, state and federal permits which have been obtained, applied for, or denied during this reporting period. Specify the agency, type of permit, and duty for each.
- (d) Attach copies of approved or modifications of development orders such as, but not limited to, site plans, Resolutions, building permits, environmental permits, or any other development orders or permits received by developer in the reporting year.

(e) Provide a summary comparison of development activity proposed pursuant to the phasing plan and actually conducted for the reporting year as well as a cumulative total of development proposed and actually conducted to date

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

32. ~~31.~~ Disclaimer of Third Party Beneficiary. This Agreement is solely for the benefit of the parties hereto and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party not a party hereto. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or entity any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof, other than the parties hereto and their respective representatives, successors and assigns.

33. ~~32.~~ Consistency with the City's Comprehensive Plan. The City has adopted and implemented the Comprehensive Plan for the City of North Miami Beach ("Comprehensive Plan"). The City hereby finds and declares that the Project and the provisions of this Agreement

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

34. ~~33.~~ Concurrency Reservations. Project has been determined to meet the concurrency requirements set forth by and in compliance with Article XIV of the Land Development Regulations (2020). Pursuant to Section 24-214(10), the development agreement provides that the entire development or any phase thereof be commenced or completed in a phased manner.

35. ~~34.~~ Local Hiring. The Developer shall work with the City of North Miami Beach Human Resources Department to advertise employment opportunities and use good faith efforts to promote the hiring of City residents to fill employment positions within the development during all phases of construction and development.

36. ~~35.~~ Effective Date and Duration (Term).

36.1 ~~35.1~~ Within fourteen (14) business days following approval at two public hearings and execution by all parties, the City shall record the Agreement in the Public Records of Miami-Dade County. This Agreement shall become effective only after it has been recorded in the Public Records of Miami-Dade County, Florida. The Developer agrees that it shall be responsible for all recording fees and other related fees and costs related to the recording and delivery of this Agreement as described in this Section.

36.2 ~~35.2~~ This Agreement shall run for an initial term of thirty (30) years from the Effective Date (the "Term"), and may be extended by mutual consent of the City and the Developer subject to a public hearing pursuant to Section 163.3225, Florida Statutes (2020). Consent to any extension of this Agreement is within the sole discretion of each party to this Agreement. No notice of termination shall be required by either party upon the expiration of this

Agreement, and thereafter the parties hereto shall have no further obligations under this Agreement. All time frames provided herein may be extended pursuant to Sections 163.3229, 163.3225, and 252.363, Florida Statutes (2020).

37. ~~36.~~ Presently Permitted Development. The development that is presently permitted on the Property, including population densities, and building intensities and height, which are subject to this Agreement, are more specifically set forth in Exhibit E hereto.

38. ~~37.~~ Public Facilities to Serve the Property. A description of the public facilities that will service the Project of the properties subject to this Agreement, including party responsible for providing such facilities; whether and when any new facilities, if needed, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of the development is included as Exhibits F-1 through F-5 hereto.

39. ~~38.~~ Reservations and Dedications of Land. A description of any reservation(s) or dedication(s) of land for public purposes is provided in Exhibit G.

40. ~~39.~~ Required Development Permits. Attached and made a part hereof as Exhibit H is a listing and description of all local development permits approved or needed to be approved for the development of the Project. City shall cooperate with Developer to assist in Developer's efforts to obtain the Permits and any other permits or entitlements that Developer may need from City, or any other governmental or quasi-governmental authority, in order to construct and operate the Project. The failure of this 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, terms, or restrictions.

41. ~~40.~~ Notices. Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by

recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

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

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

If to Developer at:: Dezer Intracoastal Mall LLC
18001 Collins Avenue , 31st Floor
Sunny Isles Beach, Florida 33160
Attention: Legal Department

With a copy to: Joseph G. Goldstein, Esq.
Holland & Knight, LLP.
701 Brickell Avenue Suite 3300
Miami, Florida 33131

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

42. ~~41.~~ Modification, Amendment or Release / Cancellation and Enforcement.

Reasonable modifications of this Agreement as defined in the Land Development Regulations (requested by the Developer), including the assignment of the role of Developer to another party, shall be approved by the Director of the Community Development Department or his/her successor, or by the director or head of any successor department of the City that then has responsibility for development planning for the City. Such minor modifications shall be reflected in a recordable instrument prepared, executed and recorded by the Director or his/her

successor. All other modifications of this Agreement may only be modified, amended, or released, by written instrument signed by the Director of the Department of Community Development or his/her successor, or by the director or head of any successor department of the City that then has responsibility for development planning for the City and Developer with respect to any portion of the Property that the Developer then has the power and authority to act on with regard to their respective individual portions of the Property, provided that such modification, amendment, or release has been approved by the City after public hearing, pursuant to Sections 163.3225, and 163.3229, Florida Statutes (2020).

43. ~~42.~~ Governing Laws, Construction and Litigation. This Agreement shall be governed and construed in accordance with the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The Developer and the City agree that Miami-Dade County, Florida is the appropriate and exclusive state court venue, and that the U.S. District Court, Southern Division of Florida is the appropriate and exclusive federal court venue, in connection with any litigation between the parties with respect to this Agreement. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof; and accordingly, this Agreement shall not be more strictly construed against any of the parties hereto. In construing this Agreement, captions, and Section and paragraph headings shall be disregarded and the use of any gender shall include every other and all genders. All of the exhibits referenced in this Agreement are incorporated in, and made a part of, this Agreement. In the event of any litigation between the parties under this Agreement for a breach thereof, the prevailing party shall be entitled to reasonable attorney's fees and court costs at all trial and appellate levels. BY ENTERING INTO THIS AGREEMENT THE CITY AND DEVELOPER EXPRESSLY WAIVE ANY RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO

ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT. The terms of this Section shall survive the termination of this Agreement.

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

45. ~~44.~~ Time of Essence. Time shall be of the essence for each and every provision hereof.

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

47. ~~46.~~ Other Agreements. This Agreement shall supersede and terminate the Declaration, and which the City hereby terminates and releases in accordance with the terms of the Declaration. Except as provided herein, this Agreement has no effect on any other agreement, the City's development orders, or declaration of restrictions otherwise encumbering the Property. Any and all agreements currently in the public records remain valid. The parties incorporate by reference each and every requirement set forth in the Act.

48. ~~47.~~ Binding Effect. The obligations imposed pursuant to this Agreement upon the Developer and upon the Property shall run with and bind the Property as covenants running with

the Property, and this Agreement shall be binding upon and enforceable by and against the parties hereto, their personal representatives, heirs, successors, grantees and assigns.

49. ~~48.~~ Mortgagee Rights; Transfer and Assignment.

49.1 ~~48.1~~ City shall give to any Recognized Mortgagee a copy of each notice of Default at the same time as it gives notice of such Default to Developer, and no such notice of Default shall be deemed effective with respect to any Recognized Mortgagee unless and until a copy thereof shall have been so received by or refused by such Recognized Mortgagee. All such notices to a Recognized Mortgagee shall be sent as set forth herein. City shall also give the Recognized Mortgagee notice (“Notice of Failure to Cure”) in the event Developer fails to cure a Default within the period, if any, provided in this Agreement for such cure, promptly following the expiration of such period (i.e., an Event of Default).

49.2 ~~48.2~~ The Recognized Mortgagee shall have a period of ten (10) days as to monetary defaults and thirty (30) days as to non-monetary defaults after receipt of the Notice of Failure to Cure to (1) cure the Event of Default referred to in the Notice of Failure to Cure or (2) cause it to be cured. Nothing contained herein shall be construed as imposing any obligation upon any Mortgagee to so substantially perform or comply on behalf of Developer.

49.3 ~~48.3~~ City shall accept performance by a Recognized Mortgagee of any covenant, condition or agreement on Developer’s part to be performed hereunder with the same force and effect as though performed by Developer.

49.4 ~~48.4~~ Notwithstanding the foregoing provisions of this Section, if a Recognized Mortgagee fails (for any reason) to cure any Event of Default by Developer within ten (10) days as to monetary defaults or thirty (30) days as to non-monetary defaults following receipt of the Notice of Failure to Cure (as extended or excused as herein above

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

49.5 ~~48.5~~ If there is more than one Recognized Mortgagee, only that Recognized Mortgagee, to the exclusion of all other Recognized Mortgagees, whose Mortgage is most senior in lien shall be recognized as having rights under this Section, unless such first priority Recognized Mortgagee has designated in writing to City a Recognized Mortgagee whose Mortgage is junior in lien to exercise such right.

49.6 ~~48.6~~ City shall, from time to time within fifteen (15) days following such request of Developer, furnish to the Developer an estoppel letter containing such truthful information as the Developer may reasonably request pertaining to this Agreement or the transaction contemplated hereby.

49.7 ~~48.7~~ The Developer shall only be entitled to assign or transfer its rights under this Agreement with the prior written consent of the City Manager whose consent shall not be unreasonably withheld, conditioned or delayed. Additionally, the City hereby agrees that it shall recognize any transfer to a Mortgagee who has acquired the Property through a foreclosure sale or deed-in-lieu of foreclosure. Any such transferee (including through foreclosure or deed-in-lieu thereof) shall assume all remaining obligations of the Developer under this Agreement including, without limitation (collectively “Pre-Assignment Obligations”):

- (i) The Developer’s obligation to pay the Public Infrastructure Assessment; and
- (ii) The Developer’s obligation to provide a Public Services Benefit and Infrastructure contribution.

Notwithstanding the foregoing, the Developer shall be permitted to assign this Agreement without City Manager approval to the Developer's affiliates, condominium associations, or any other entity or person who is regularly engaged in the business of constructing, developing or owning commercial real estate properties ("Qualified Operator") subject to the Pre-Assignment Obligations.

50. ~~49.~~ Indemnification. In addition to the Developer's obligations set forth herein, the Developer shall defend, indemnify and hold harmless the City, its agents and employees, from and against any loss, cost, expense, claim, demand or cause of action of whatever kind or nature arising out of or related to the conduct, act or omission of Developer and/or its officers, directors, officials, employees, contractors and agents, related to (1) this Agreement, and/or (2) the Project, including its approval. Pursuant to the foregoing, the Developer shall directly pay all appropriate costs and expenses for legal defense of this Agreement and the Project as may be required of the City, using legal counsel and other necessary and appropriate professionals with requisite experience and at a fee arrangement reasonably acceptable to the City and the Developer. The City shall reasonably cooperate and collaborate (but not at any unreasonable expense to the City) with the Developer in connection with any legal proceeding in which the Developer is defending the City. This Section shall survive termination or expiration of this Agreement.

51. ~~50.~~ No Conflict of Interest. Developer represents and warrants that no member, official or employee of the City has any direct or indirect financial interest in this Development Agreement nor has participated in any decision relating to this Development Agreement that is prohibited by law. Developer represents and warrants that no officer, agent, employee, or

representative of the City has received any payment or other consideration for the making of this Agreement, directly or indirectly, from Developer.

52. ~~51.~~ Police Power. The parties hereto recognize and agree that certain provisions of this Agreement require the City and its boards, departments or agencies, acting in their governmental capacity, to consider governmental actions, as set forth in this Agreement. All such considerations and actions shall be undertaken in accordance with established requirements of state statutes and municipal ordinances, in the exercise of the City's jurisdiction under the police power. Nothing contained in this Agreement shall entitle the Developer to compel the City to take any such actions, save and except the consents, if applicable, to the filing of such applications for Development Permits or Development Orders, as more fully set forth herein, and to timely process such applications. The parties further recognize and agree that these proceedings shall be conducted openly, fully, freely and fairly in full accordance with the law and with both procedural and substantive due process to be accorded the Developer and any member of the public. Nothing in this Agreement shall be construed to prohibit the City from duly acting under its police power to approve, approve with conditions, or reject any public hearing application dealing with the Property.

53. ~~52.~~ Cancellation and Enforcement. Enforcement of this Agreement shall be by action against any parties or person violating, or attempting to violate, any covenants set forth in this Agreement. The prevailing party in any action or suit pertaining to or arising out of this Agreement shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of his/her/its attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity, or both. The terms of this section shall survive the termination of this Agreement.

54. ~~53.~~ Cumulative Remedies. Nothing contained herein shall prevent the Developer from exercising its rights and remedies it may have under law.

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

Default and Dispute Resolution. Without limiting the provisions set forth in this Agreement, in the event of a Default the City shall give the Developer 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). The Developer shall have a period of ten (10) days as to monetary defaults and thirty (30) days as to non-monetary defaults after receipt of the Notice of Failure to Cure to (1) cure the Default referred to in the Notice of Failure to Cure or (2) cause it to be cured. If a dispute arises from or relates to a Default or a breach of this Agreement, and if the dispute cannot be settled through direct discussions, the parties agree to endeavor first to settle the dispute by mediation. If the parties cannot settle the dispute by mediation, the parties agree to bring suit in equity or judicial proceedings for the enforcement of this Agreement or any provision hereof in the courts of the State of Florida or federal courts, and venue for any such actions shall be exclusively in a court of

competent jurisdiction in Miami-Dade County, provided that nothing herein shall prevent arbitration by mutual consent of the parties.

[EXECUTION PAGES FOLLOW]

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

Signed, sealed and delivered
in the presence of:

CITY OF NORTH MIAMI BEACH,
a Florida municipal corporation

Print Name: _____

By: _____

Name: _____

Name: _____

Print Name: _____

Attest: _____

City Clerk

STATE OF FLORIDA)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___ day of _____, ____, by _____, as _____ of _____, a _____, on behalf of the _____, who is personally known to me or who has produced _____ as identification.

[NOTARIAL SEAL]

Print Name: _____
Notary Public, State of Florida
Commission #: _____
My Commission Expires: _____

Signed, sealed and delivered
in the presence of:

DEZER INTRACOASTAL MALL LLC, a
Florida limited liability company,

Print Name: _____

By: _____
Name: _____
Title: _____

Print Name: _____

STATE OF FLORIDA)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of physical presence
or online notarization, this ___ day of _____, ____, by _____, as
_____ of _____, a _____, on behalf of
the _____, who is personally known to me or who has produced
_____ as identification.

[NOTARIAL SEAL]

Print Name: _____
Notary Public, State of Florida
Commission #: _____
My Commission Expires: _____

JOINDER BY MORTGAGEE

The undersigned, _____, the Mortgagee under that certain _____ executed as of the ____ day of _____, _____ by Dezer Intracoastal Mall LLC a Florida limited liability company, and recorded in Official Records Book ____, at Page ____, of the Public Records of Miami-Dade County, Florida, covering all/or a portion of the property described in the foregoing instrument, does hereby join in this Covenant for the purpose of subjecting the lien and operation of the above-described Mortgage to the terms of this instrument.

IN WITNESS WHEREOF, these presents have been executed this ____ day of _____, 2020.

WITNESSES:

[MORTGAGEE]

Signature

By: _____

Print or Type Name

Print Name: _____

Title: _____

Address: _____

Signature

Print or Type Name

(Corporate Seal)

STATE OF FLORIDA)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, _____, by _____, as _____ of _____, a _____, on behalf of the _____, who is personally known to me or who has produced _____ as identification.

[NOTARIAL SEAL]

Print Name: _____
Notary Public, State of Florida
Commission #: _____
My Commission Expires: _____

EXHIBIT A**LEGAL DESCRIPTION****OVERALL LEGAL DESCRIPTION:**

Tract "A", Lots 2 through 18 and a portion of Lots 1, 19 and 20, Block 19 and also that vacated street known as NE 165th Street extending from NE 35th Avenue Eastward to the Western Boundary of Lots 5 and 6; thence Southerly to State Road 826, all in Block 19 of EASTERN SHORES 2nd ADDITION, according to the Plat thereof, recorded in Plat Book 65, Page 43, and that portion of Lessee's interest in that certain Sovereignty Submerged Lands Lease between the Board of Trustees' of the Internal Improvement Trust Fund of the State of Florida and MSW Intracoastal Mall, L.L.C., recorded on February 2, 2009 in Official Records Book 26738, Page 946, all being recorded in the Public Records of Miami-Dade County, Florida and being more particularly described as follows:

Begin at the Southwest corner of Lot 20 of said Block 19; thence N 00°53'14" E along the West line of said Lot 20 for 30.41 feet; thence N 58°36'22" E for 128.16 feet; thence N 31°23'42" W for 33.10 feet to a point on the North line of said Lot 20; thence N 86°46'13" E along the North line of said Block 19 for 1605.47 feet to the Northeast corner of said Lot 6; thence

N 04°46'53" W for 1.86 feet; thence N 39°53'07" E for 1.99 feet; thence N 05°06'53" W for 5.99 feet; thence N 86°29'12" E for 25.80 feet; thence S 04°59'49" E for 144.76 feet; thence

N 86°44'31" E for 9.64 feet; thence S 04°42'35" E for 496.02 feet; thence S 85°31'00" W for 36.72 feet; thence S 04°46'53" E along the East line of Block 19, for 31.70 feet to a point on the Northerly Right-of-Way line of State Road 826, per Official Records Book 12103, Page 1685, of the Public Records of Miami-Dade County, Florida; the following two (2) courses being along said Northerly Right-of-Way line; (1) thence S 83°09'49" W for 77.17 feet to a point of curvature of a 1952.86 foot radius curve leading to the left; (2) thence Westerly along said curve through a central angle of 02°49'34" for an arc of 96.32 feet; the following two (2) courses being along the Easterly and Northerly lines of the Warranty Deed granted to Miami Dade Water and Sewer Authority as described in Official Records Book 11323, Page 1086, of the Public Records of Miami-Dade County, Florida; (1) thence N 04°50'25" W for 102.70 feet; (2) thence S 86°46'13" W for 75.11 feet (75.19 feet Deed); thence N 64°54'39" W along said Northerly line of Miami Dade Water and Sewer property and the Northerly line of the property granted to Florida Power and Light Company as described in Official Records Book 6829, Page 118, of the Public Records of Miami-Dade County, Florida for 57.61 feet (57.66 feet Deed) to the Northeast corner of the corrective Warranty Deed granted to Florida Power and Light Company as recorded in Official Records Book 270, Page 60 of the Public Records of Miami-Dade County, Florida; the following (2) courses being along the Northerly and Westerly boundaries of said Florida Power and Light property; (1) thence

S 85°09'35" W for 150.00 feet; (2) thence S 04°50'25" E for 150.33 feet (Deed 150.00 feet) to a point on the Northerly Right-of-Way line of State Road No. 826 per property described in Parcel 103, Case Number 84-15796, Miami-Dade County, Florida, said point lying on a circular curve of a 1757.28 foot radius, leading to the left and whose point bears S 07°24'51" E; thence

Westerly along said Northerly Right-of-Way line through a central angle of $6^{\circ}48'46''$ for an arc of 208.95 feet to a point on a non-tangent line; thence $S\ 58^{\circ}36'07''\ W$ along said Northerly Right-of-Way line of State Road No. 826 as described in Parcel 103 per said Case 84-15796, said line also being the Southeasterly line of said Tract "A" for 675.36 feet to a point of curvature of a 25.00 foot radius curve leading to the right; thence Westerly and Northerly along said curve being along the Southerly line of said Tract "A" through a central angle of $90^{\circ}00'00''$ for an arc of 39.27 feet to a point of tangency; thence $N\ 31^{\circ}23'53''\ W$ along the Southwesterly line of said Tract "A" and its Northwesterly prolongation thereof, said Westerly line also being the Easterly Right-of-Way line of NE 35th Avenue for 1006.59 feet to a point on the centerline of said vacated and abandoned NE 165th Street; thence $N\ 86^{\circ}46'13''\ E$ along said centerline for 35.79 feet; thence $N\ 03^{\circ}13'47''\ W$ for 30.00 feet to the POINT OF BEGINNING.

EXHIBIT B

Intracoastal Mall Redevelopment

TABLE 1: Trip Generation Equivalency Matrix

Land Use	Net External PM Peak Hour	TO: Units	General Office Building	Shopping Center	Supermarket	Health/Fitness Club	High-Rise Apartment	Mid-Rise Apartment	Low-Rise Apartment	Hotel
	Equivalency Rates ⁽¹⁾		ksf	ksf	ksf	ksf	du	du	du	room
	FROM:		0.705	1.886	4.140	2.067	0.176	0.250	0.371	0.452
General Office Building	0.705	ksf	1.000	0.374	0.170	0.341	4.006	2.820	1.900	1.560
Shopping Center	1.886	ksf	2.675	1.000	0.456	0.912	10.716	7.544	5.084	4.173
Supermarket	4.140	ksf	5.872	2.195	1.000	2.003	23.523	16.560	11.159	9.159
Health/Fitness Club	2.067	ksf	2.932	1.096	0.499	1.000	11.744	8.268	5.571	4.573
High-Rise Apartment	0.176	du	0.250	0.093	0.043	0.085	1.000	0.704	0.474	0.389
Mid-Rise Apartment	0.250	du	0.355	0.133	0.060	0.121	1.420	1.000	0.674	0.553
Low-Rise Apartment	0.371	du	0.526	0.197	0.090	0.179	2.108	1.484	1.000	0.821
Hotel	0.452	room	0.641	0.240	0.109	0.219	2.568	1.808	1.218	1.000

Note: (1) Based on P.M. peak hour trip generation equivalency rate developed in Table 2.

Example Equivalency Calculations

Shopping Center to General Office Building	The exchange rate between retail is 1 ksf of retail for every 2.675 ksf of office, where 1,000 sf of retail is equal to 2,675 sf of office and 10,000 sf of retail is equal to 26,750 sf of office.
Shopping Center to Hotel	The exchange rate between retail is 1 ksf of retail for every 4.173 hotel rooms, where 1,000 sf of retail is equal to 4.173 hotel rooms and 10,000 sf of retail is equal to 41.73 hotel rooms.
General Office to Supermarket	The exchange rate between office is 1 ksf of office for every 0.170 ksf of supermarket, where 1,000 sf of office is equal to 170 sf of supermarket, and 10,000 sf of office is equal to 1,700 sf of supermarket.
General Office to High-Rise Apartment	The exchange rate between office is 1 ksf of office for every 4.006 apartments, where 1,000 sf of office is equal to 4.006 apartments and 10,000 sf of office is equal to 40.06 apartments.
Supermarket to Low-Rise Apartment	The exchange rate between supermarket is 1 ksf of supermarket for every 11.159 apartments, where 1,000 sf of supermarket is equal to 11.159 apartments and 10,000 sf of office is equal to 111.59 apartments.
Mid-Rise Apartment to Office	The exchange rate between mid-rise apartment is 1 apartment for every 0.355 ksf of office, where 100 apartments is equal to 35.5 ksf of office and 250 apartments is equal to 88.75 ksf of office.
Health/Fitness Club to Shopping Center	The exchange rate between health/fitness club is 1 ksf of health/fitness club for every 1.096 ksf of retail, where 1,000 sf of health/fitness club is equal to 1,096 sf of retail and 10,000 sf of health/fitness club is equal to 10,960 sf of retail.
Hotel to Mid-Rise Apartment	The exchange rate between hotel is 1 hotel room for every 1.808 apartments, where 100 hotel rooms is equal to 181 apartments and 250 hotel rooms is equal to 452 apartments.

TABLE 2: P.M. Peak Hour Trip Generation for Proposed Development Program

Land Use	ITE Edition	ITE Code	ITE Scale	ITE Units	Net New Trips ⁽¹⁾	Equivalency Rate
General Office Building	10	710	200	ksf	141.00	0.705 trips/ksf
Shopping Center	10	820	280	ksf	528.00	1.886 trips/ksf
Supermarket	10	850	50	ksf	207.00	4.140 trips/ksf
Health/Fitness Club	10	492	45	ksf	93.00	2.067 trips/ksf
High-Rise Apartment	10	222	1917	du	337.00	0.176 trips/du
Mid-Rise Apartment	10	221	48	du	12.00	0.250 trips/du
Low-Rise Apartment	10	220	35	du	13.00	0.371 trips/du
Hotel	10	310	250	room	113.00	0.452 trips/room

Note: (1) Based on net new P.M. peak hour trip generation contained in the December 2, 2019 Trip Generation Analysis.

EXHIBIT C
PHASING PLAN

PHASE	DESCRIPTION	TIMING
Phase I	Mixed-Use Buildings for Existing Tenant Relocation and Roadway Improvements. Phase I will involve the construction of NE 35 Avenue and SR 826/NE 163 Street off-site roadway improvements, the park and open space improvements shown in Blocks N1, S1, and the west half of C1 on the Open Space Plan (Sheet A1-27), and provide bicycle facilities along eastbound 826/NE 163rd Street between NE 34th Avenue and NE 35th Avenue. This Phase will also involve the construction of multi-level mixed-use building along NE 35 Avenue, which will also include, the construction of the Fire Rescue Station, Police Substation, community center, and transit stop.	This will be the first phase of construction and may take up to 7 years.
Phase II	Infrastructure, Park and Open Space and Canal. Phase II will involve the construction of onsite roadway improvements, the east half of the N1 park and additional publicly accessible open space, the canal, the onsite streetscape improvements and bay walk features.	Phase II will overlap with other phases of construction, will commence during Phase I and will likely take the balance of the project.
Phase III	Waterfront Promenade. Phase III will involve the construction of the waterfront promenade along the canal, together with the retail, restaurants and other commercial uses along the water.	The development of Phase III will take approximately 2 years.
Phase IV	Residential and Hotel Development. Phase IV involves residential development of townhomes, rental apartments, and high-rise condominiums together with a 250-key hotel.	Phase IV will likely overlap with Phase III and the timing will completely depend on market absorption of the residential units.

NOTE: It is recognized that phases may overlap in light of market and other external forces (such as retail, residential and/or office market forces, environmental factors, or other issues). The timing and order of phases may be modified administratively.

NOTE: Development Program and Uses identified in in each phase may be modified

administratively in accordance with the Equivalency Matrix and subject to site plan approval.

EXHIBIT D**ROADWAY IMPROVEMENTS**

The Project proposes to construct or cause the construction of the following roadway improvements:

1. The signalization of the intersection of SR-826/NE 163rd Street and Intracoastal Mall Driveway.
2. The addition of one (1) southbound left-turn lane, the addition of one (1) additional southbound right-turn lane, the addition of one (1) eastbound left-turn lane, and the addition of one (1) receiving lane to the west leg of the intersection of SR 826/NE 163rd Street and Intracoastal Mall Driveway.
3. The addition of one (1) eastbound left-turn lane at the intersection of SR 826/NE 163rd Street and NE 35th Avenue
4. The elimination of the exclusive westbound left-turn lane along Frontage Road at NE 34th Street.
5. The intersection of SR-826/NE 163rd Street and NE 35th Avenue is proposed to be modified to remove the eastbound partial continuous green T-intersection as well as the exclusive pedestrian phase.
6. The reconfiguration of the intersection of SR-826/NE 163rd Street and NE 35th Avenue to include signalized eastbound through and left-turn lanes, signalized southbound left and right-turn lanes, and signalized westbound through and shared through/right-turn lanes.
7. The addition of sharrow pavement markings, a 10-foot shared-use path, and a buffered bicycle lane on westbound SR-826/NE 163rd Street westbound fronting the site.
8. The addition of crosswalks on both the east and west sides of NE 35th Avenue at NE 164th Street.
9. The addition of bicycle facilities on eastbound SR-826/NE 163rd Street between NE 34th Avenue and NE 35th Avenue, consistent with FDOT's standards and the proposed FDOT RRR roadway improvement project.

The roadway improvements described herein satisfy the City of North Miami Beach's Eastern Mixed-Use Waterfront District (MU/EWF) requirements by providing for multiple access points with direct east and west access to and from SR 826/NE 163rd Street and traffic mitigation such that the development does not over burden NE 35th Avenue. Each of the above-described improvements shall be subject to FDOT approval and, if approved, completed prior to the issuance of a Certificate of Occupancy (C.O.) for the final building in Phase I.

EXHIBIT E**PRESENTLY PERMITTED DEVELOPMENT**

The Property currently legally developed and operating as a shopping center comprised of 272,240 square feet of retail use and 33,260 square feet of office use. Nothing herein shall be deemed to divest the Developer of continuing same. The Property is designated as MU/EFW Mixed-Use East Waterfront on the Comprehensive Plan Future Land Use Map and located in the MU/EFW district on the City Zoning Map, high density and intensity according to the City's adopted Comprehensive Plan. The Property can be developed with 2,000 dwelling units and approximately 2,500,000 sf of non-residential square footage pursuant to the Comprehensive Plan. The MU/EFW zoning district permits a mix of land uses consistent with the underlying zoning designation, pursuant to Section 24-58.7 of the City Code. The Property may be used for the purposes permitted and regulated in these land use designations and zoning districts, as further limited by the by the Project Approvals, City's Land Development Regulations and Comprehensive Plan.

THIS EXHIBIT DESCRIBES THE PRESENTLY PERMITTED DEVELOPMENT FOR PURPOSES OF THE ACT ONLY. THE PROJECT SHALL CONFORM TO THE DESCRIPTION OF THE DEVELOPMENT PROGRAM PROVIDED IN SECTION 3.10 OF THIS AGREEMENT.

EXHIBIT F-1

PUBLIC FACILITIES

Roadway Transportation Facilities:

In accordance with Section 163.3227(1)(d), Florida Statutes (2020), the Project will be serviced by those roadway transportation facilities currently in existence as provided by state, county, and local roadways. The Project will also be serviced by public transportation facilities currently in existence, as provided by Miami-Dade County, the City of North Miami Beach, and such other governmental entities as may presently operate public transportation services within the City of North Miami Beach.

EXHIBIT F-2

PUBLIC FACILITIES

Sanitary Sewer, Solid Waste, Drainage, and Potable Water Facilities:

Sanitary sewer, solid waste, drainage, and potable water services for the Project shall be those services currently in existence and owned or operated by Miami-Dade County, the Miami-Dade County Water and Sewer Department, and the City of North Miami Beach. Said sanitary sewers, potable water facilities may be enhanced by the provision of additional pipes and lift stations to serve the Project. Drainage and stormwater shall be developed in a manner consistent with federal, state and local requirements.

EXHIBIT F-3

PUBLIC FACILITIES

Educational Facilities:

The Project shall generally be serviced by those existing educational facilities owned or operated by the Miami-Dade Public Schools District, consistent with the Interlocal Agreement between the School District and the City.

EXHIBIT F-4

PUBLIC FACILITIES

Parks and Recreational Facilities:

The Project shall be serviced by those existing parks and recreational facilities owned or operated by the United States Government within Miami- Dade County, by the State of Florida, by Miami-Dade County, and by the City of North Miami Beach. Said existing facilities may be enhanced through the development of a publicly accessible open space within the Project. The Project shall be serviced by those existing and future park and recreational opportunities and facilities operated by the United States Government within Miami-Dade County, by the State of Florida, by Miami-Dade County, and by the City of North Miami Beach.

EXHIBIT F-5

PUBLIC FACILITIES

Other Facilities:

The Project will also be serviced by any and all public facilities, as such are defined in Section 163.3221(13) of the Act, that are described in the Comprehensive Plan, specifically including but not limited to those facilities described in the Infrastructure Element and the Capital Improvements Element therein, a copy of which is available for public inspection in the offices of the City Clerk of the City of North Miami Beach.

EXHIBIT G

LAND TO BE DEDICATED FOR PUBLIC PURPOSES

At this time, the Developer is expected or is contemplating the conveyance of the following and for public purposes:

1. Public road and easement right of way within and serving to provide access to the Property;
2. Potable water and sewer facilities, property conveyances and easements; and
3. Possible public park or recreational facilities.

EXHIBIT H**REQUIRED DEVELOPMENT PERMITS**

Pursuant to Section 163.3227(1)(f), Florida Statutes (2020), the following constitutes a generalized list of local² permits minimally anticipated as necessary to be approved by the terms of this Agreement:

1. Design Review, Technical Review of Applications for Development (TRAD), Planning and Zoning Board, and City Commission approvals, pursuant to Chapter 24 of the City of North Miami Beach Code.
2. Miami-Dade County Shoreline Development Review Application.
3. Utility Permits
4. Demolition Permits
5. Building Permits
6. Subdivision/Plat approvals
7. Environmental Permits
8. Variances, pursuant to Chapter 118 of the City of North Miami Beach Code
9. Hazardous Materials Removal Permit, if removal of hazardous materials is found necessary.
10. Public Works Permit, Paving and Drainage
11. Public Works Permit, Water and Sewer
12. Certificates of Use and/or Occupancy
13. All other local governmental approvals as may be applicable to the subject Property from time to time pursuant to the terms of this Development Agreement.

² Permits from Federal, State, Regional and County agencies will also be required.

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