

**This instrument Prepared by and
after Recording Return To:**

T. Spencer Crowley, Esq.
Akerman LLP
1 SE Third Avenue, 25th Floor
Miami, FL 33131

**SECOND AMENDED AND RESTATED
DEVELOPMENT AGREEMENT BETWEEN THE
CITY OF MIAMI, FLORIDA AND BRICKELL
CITY CENTRE PROJECT LLC AND 700
BRICKELL CITY CENTRE LLC, REGARDING
DEVELOPMENT OF THE BRICKELL CITY
CENTRE PROJECT**

THIS AGREEMENT is entered this ___ day of _____, 2014, and effective as of the Twenty Seventh (27th) day of March, 2014, by and between BRICKELL CITY CENTRE PROJECT LLC, a Florida for profit corporation and 700 BRICKELL CITY CENTRE LLC (together known as "Swire"), and the CITY OF MIAMI, FLORIDA, a municipal corporation and a political subdivision of the State of Florida ("City") (Swire and the City together referred to as the "Parties").

WITNESSETH:

WHEREAS, Swire held fee simple title to approximately nine (9) acres of property in the Brickell area of downtown Miami ("Original Property"); and

WHEREAS, the Original Property was more specifically located south of the Miami River, west of Brickell Avenue, north of SW 8th Street, and east of NW 1st Avenue; and

WHEREAS, the Original Property spanned four (4) city blocks and was located between two (2) mass transit lines; and

WHEREAS, the Original Property was currently underutilized in that it predominantly consisted of vacant, undeveloped lots secured by chain link fencing; and

WHEREAS, the status of the Original Property was inconsistent with the City's vision to develop a world class downtown, and the City wished to encourage redevelopment of the Property; and

WHEREAS, Swire wished to redevelop the Original Property as a higher density, mixed-use, pedestrian oriented, urban development known as Brickell City Centre which would provide much needed retail for the Brickell and Downtown area of Miami ("Project"); and

WHEREAS, in order to maximize efficiency and design of Brickell City Centre, Swire desired to construct two (2) levels of underground parking; and

WHEREAS, a process existed within the City's zoning code ("Miami 21") which allows parcels of more than nine (9) abutting acres to be master planned to allow greater integration of public improvements and infrastructure, and greater flexibility so as to result in higher or specialized quality building and streetscape design; and

WHEREAS, the result of this master planning process is known as a "Special Area Plan" or "SAP"; and

WHEREAS, on July 28, 2011, the City approved an SAP for the Project; and

WHEREAS, Miami 21 requires development within an SAP to be governed by a Development Agreement between the property owner and the City; and

WHEREAS, on October 24, 2011, Swire recorded a Development Agreement for the Project; and

WHEREAS, on March 28, 2013, the City approved an amendment to the SAP for the Project to include a city block known as "N2" and also approved an amended Development Agreement; and

WHEREAS, on _____, _____, Swire recorded the Amended and Restated Development Agreement for the Project; and

WHEREAS, Swire recently acquired additional property located between SE 7th Street and SE 8th Street, lying west of Brickell Avenue and lying east of the "BCC Plaza" site, known as "One BCC", consisting of approximately 67,449 sq. ft. (1.55 acres); and

WHEREAS, Swire is now the owner of all of the properties described in the original Development Agreement dated October 24, 2011, the Amended and Restated Development Agreement dated _____, 2014 and the additional properties described herein ("Amended Property," sketch and legal descriptions of which are attached as Exhibit "A"); and

WHEREAS, the One BCC block has been rezoned from a mixture of T6-48B-O and T6-48A-O to the Brickell City Centre SAP with an underlying Transect Zone of T6-48B-O; and

WHEREAS, the City and Swire wish to amend the Development Agreement for Brickell City Centre to include the One BCC block in order to encourage redevelopment of the Amended Property and effectuate the Project; and

WHEREAS, this Amended and Restated Development Agreement ("Agreement") supersedes the Development Agreement which was recorded on October 24, 2011 and also

supersedes the Amended and Restated Development Agreement which was recorded on _____, __, 20__ and satisfies the requirement set forth in Miami 21; and

WHEREAS, the City and Swire wish for development of the Project to proceed substantially in accordance with the Regulating Plan as amended and Design Guidelines adopted on July 28, 2011, March 28, 2013, and March 27, 2014 and kept on file with the City and known as 11-00380ap and 11-00380ap1 ("Regulating Plan and Design Guidelines"); and

WHEREAS, the Amended Property is designated Restricted Commercial, with an Urban Central Business District Overlay, in the Miami Comprehensive Neighborhood Plan ("Comprehensive Plan"); and

WHEREAS, the City and Swire wish for development of the Project to proceed in a manner which is consistent with the Comprehensive Plan; and

WHEREAS, the Project is located in the Downtown Development of Regional Impact ("DDRI"); and

WHEREAS, as of the Effective Date, the DDRI has sufficient development capacity to accommodate the Project and Swire has reserved such capacity through appropriate means with the City; and

WHEREAS, the lack of certainty in the approval of development can result in a waste of economic and land resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development, and discourage commitment to comprehensive planning; and

WHEREAS, assurance to a developer that it may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring there are adequate capital facilities for the development, encourages private participation in comprehensive planning, and reduces the economic costs of development; and

WHEREAS, the City Commission, pursuant to Ordinance No. _____ adopted March 27, 2014, has authorized the City Manager to execute this Agreement upon the terms and conditions as set forth below; and

WHEREAS, the Boards of Directors have authorized Swire to execute this Agreement upon the terms and conditions set forth below;

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the Parties mutually agree and bind themselves as set forth herein:

Section 1. Consideration. The Parties hereby agree that the consideration and obligations recited and provided for under this Agreement constitute substantial benefits to both Parties and thus adequate consideration for this Agreement.

Section 2. Rules of Legal Construction.

For all purposes of the Agreement, unless otherwise expressly provided:

- (a) A defined term has the meaning assigned to it;
- (b) Words in the singular include the plural, and words in plural include the singular;
- (c) A pronoun in one gender includes and applies to other genders as well;
- (d) The terms "hereunder", "herein", "hereof", "hereto", and such similar terms shall refer to the instant Agreement in its entirety and not to individual sections or articles;
- (e) The Parties hereto agree that this Agreement shall not be more strictly construed against either the City or Swire, as all Parties are drafters of this Agreement; and
- (f) The recitals are true and correct and are incorporated into and made a part of this Agreement. The attached exhibits shall be deemed adopted and incorporated into the Agreement; provided, however, that this Agreement shall be deemed to control in the event of a conflict between the exhibits and this Agreement.

Section 3. Definitions. Capitalized terms which are not specifically defined herein shall have the meaning given in Miami 21.

"Agreement" means this Agreement between the City and Swire.

"City" means the City of Miami, a municipal corporation and a political subdivision of the State of Florida, and all departments, agencies, and instrumentalities subject to the jurisdiction thereof.

"Comprehensive Plan" means the comprehensive plan known as the Miami Comprehensive Neighborhood Plan, adopted by the City pursuant to Chapter 163, Florida Statutes (2010), meeting the requirements of Section 163.3177, Florida Statutes (2010), Section 163.3178, Florida Statutes (2010), and Section 163.3221(2), Florida Statutes (2010), which is in effect as of the Effective Date.

"County" means Miami-Dade County, a political subdivision of the State of Florida.

"Development" means the carrying out of any building activity, the making of any material change in the use or appearance of any structure or land, or the dividing of

land into three (3) or more parcels and such other activities described in Section 163.3221(4), Florida Statutes (2010).

"Effective Date" is the date of recordation of the executed version of this Agreement.

"Existing Zoning" means the zoning designation and regulations of the Miami 21 Code, City Charter, and City Code in effect as of October 24, 2011 which comprise the effective land development regulations governing development of the Property as of the date of recordation of the original Development Agreement.

"Land" means the earth, water, and air, above, below, or on the surface and includes any improvements or structures customarily regarded as land.

"Laws" means all ordinances, resolutions, regulations, comprehensive plans, land development regulations, and rules adopted by a local or state government affecting the development of land.

Section 4. Purpose. The purpose of this Agreement is for the City to authorize Swire to develop the Project pursuant to the Brickell City Centre SAP. This Agreement will establish the land Development regulations, referred to as the "Existing Zoning" which will govern Development of the Project, thereby providing the Parties with additional certainty during the Development process. This Agreement also satisfies Section 3.9.1.f., Miami 21.

Section 5. Intent. Swire and the City intend for this Agreement to be construed and implemented so as to effectuate the purpose of the Brickell City Centre SAP, this Agreement, the Comprehensive Plan and the Florida Local Government Development Agreement Act, Section 163.3220 - 163.3243, Florida Statutes (2010), Existing Zoning, and City Code.

Section 6. Applicability. This Agreement only applies to the Project.

Section 7. Term of Agreement, Effective Date, and Binding Effect. This Agreement shall have a term of thirty (30) years from the Effective Date and shall be recorded in the public records of Miami-Dade County and filed with the City Clerk. The term of this Agreement may be extended by mutual consent of the Parties subject to a public hearing, pursuant to Section 163.3225, Florida Statutes (2010). This Agreement shall become effective on the Effective Date and shall constitute a covenant running with the land that shall be binding upon, and inure to, the benefit of the Parties, their successors, assigns, heirs, legal representatives, and personal representatives.

Section 8. Permitted Development Uses, and Building Intensities.

(a) Brickell City Centre SAP Designation. The City has designated the Amended Property as Brickell City Centre SAP on the official zoning Atlas of the City, pursuant to the applicable procedures in Miami 21. The Regulating

Plan and Design Guidelines are attached as Exhibit "B". In approving the Brickell City Centre SAP, the City has determined that the uses, intensities, and densities of Development permitted thereunder are consistent with the Comprehensive Plan and the Existing Zoning.

(b) Density, Intensity, Uses, and Building Heights.

- (i) As of the Effective Date and pursuant to the Brickell City Centre SAP, the density proposed for the Amended Property is approximately 124 units per acre, and the intensity proposed for the Amended Property is measured by an above-ground Floor Lot Ratio of approximately 18.0 (specifically excluding underground parking and circulation).
- (ii) The non-residential Development permitted on the Amended Property includes, but is not limited to, the following uses: office, hotel, retail, entertainment, medical office, academic space, and any other uses permitted by the Existing Zoning.
- (iii) As of the Effective Date and pursuant to the Brickell City Centre SAP, the maximum height proposed for the Project is 1,049 feet (above mean sea level), and the maximum height proposed for the Pedestal is 160 feet for the One BCC and N2 blocks and 129 feet for all other blocks.
- (iv) Nothing herein shall prohibit Swire from requesting an increase in the density or intensity of Development permitted on the Amended Property, as long as such increase in density or intensity is consistent with the Comprehensive Plan, Existing Zoning, the SAP, and this Agreement as it exists on the Effective Date.

(c) Environmental. The City finds that the Project will confer a significant net improvement upon the publicly accessible tree canopy in the area. The City and Swire agree that Swire will comply with the intent and requirements of Chapter 17 of the City Code. Any tree replacement shall be within one (1) mile of the Project, with an emphasis along 7th Street, 8th Street, and South Miami Avenue. The City agrees to facilitate the permitting and planting of replacement trees on all publicly owned properties in this area.

(d) Archaeological. Because of the Project's location in a high probability archaeological zone, Swire is required to obtain a certificate to dig prior to any ground disturbing activities. However, in no case shall the City require archaeological monitoring during excavation of the limestone bedrock.

Section 9. Connectivity and Activity within Public Right-of-Way.

(a) Connectivity. A critical element to the success of the Project is above grade and below grade connectivity between blocks and through public rights-of-way.

This connectivity should be encouraged both within the Project and between the Project and abutting property. This connectivity will result in ease of access, minimized pedestrian and vehicular conflicts, and reduction of the Project's traffic impacts by permitting internalized traffic circulation. In order to activate the above grade connections, Swire proposes to locate commercial activity in this area.

Swire recognizes that such connectivity and commercial usage may require approval of other governmental agencies such as Miami-Dade County and the Florida Department of Transportation. The City finds and determines that establishing such connectivity and commercial usage serves a public purpose, and the City agrees to support Swire's efforts to obtain any authorization to establish such connectivity and commercial usage.

The City finds that the authorization of such uses within the public right-of-way will have no adverse effects on the provision of natural light or circulation of air, or increase the adverse effects resulting from fire, floods, tornadoes, and hurricanes. It is further found that the presence of such uses within the public rights-of-way shall in no way diminish access for firefighting apparatus or rescue and salvage operations; diminish traffic, transportation, and circulation; or adversely impact the advancement of the safety, health, amenity, and general welfare within the City.

Given the public benefits conferred upon the City by the above-grade and below-grade connectivity between blocks and across the public rights-of-way, the provisions of Sec. 54-186 shall not apply within the Brickell City Centre SAP.

- (b) Construction of encroachments within the Public Right-of-Way. The City finds that the proposed encroachments do not unduly restrict the use of the public right-of-way and is a necessary and essential element in the construction of the pedestrian walkways above the public rights-of-way and vehicular underpasses below the same rights-of-way. The adoption of this Agreement shall serve to satisfy the requirements set forth in Sec. 55-14(b) of the City Code.

Notwithstanding the requirements of Sec. 55-14(c) of the City Code, the City agrees to waive any and all claims to payment of a user fee in connection with the construction of the aforementioned encroachments into the public rights-of-way.

Further, this Agreement shall satisfy the requirements of Sec. 55-14(d) of the City Code. In consideration for authorizing the construction of the aforementioned encroachments and in anticipation of the amended SAP being approved and adopted by the City Commission in the spring of 2014, Swire further covenants to:

- (i) Maintain the above-grade pedestrian walkways and below-grade vehicular underpasses in accordance with the Florida Building Code, the City Charter, the City Code, and any other applicable federal, state, or local statutes, laws, rules, orders, or regulations.
 - (ii) Provide an insurance policy, in an amount determined by the City's Risk Management Department, naming the City as an additional insured for public liability and property damage. The insurance shall remain in effect for as long as the encroachment(s) exist in the public right-of-way. Should Swire fail to continue to provide the insurance coverage, the City shall have the right to secure a similar insurance policy in its name and place a special assessment lien against the owner's abutting Swire and all properties subject to this Agreement for the total cost of the premium.
 - (iii) Swire shall hold harmless and indemnify the City, its officials, and its employees from any claims for damage or loss to property and injury to persons of any nature whatsoever arising out of the use, construction, maintenance, or removal of the pedestrian walkways and vehicular underpasses and from and against any claims which may arise out of the granting of permission for the encroachment or any activity performed under the terms of this Agreement.
- (c) Activity within the Public Right-of-Way. Notwithstanding the limitations set forth in Sec. 54-186 of the City Code, the City shall permit Food Service Establishment(s) and General Commercial uses, as defined in Miami 21, in the above-grade pedestrian walkways located within the public right-of-way, following approval by SAP Permit.
- (d) Extension of SE 1st Avenue/Brickell Plaza. Due to the public benefits of the Project as enumerated in Section 8(b)(5) of this Agreement, the extension of SE 1st Avenue/Brickell Plaza through the One BCC site, as originally contemplated by Resolutions 83-1054 and 90-942, is no longer necessary as evidenced by approval of the first Agreement on July 28, 2011, the first Amended Agreement on March 28, 2013 and this Second Amended Agreement.
- (e) Easement, Insurance, and Indemnification. Swire has previously executed a construction easement with the City's Public Works Department and included insurance and indemnification language in said construction easement. The language is incorporated into this Agreement by reference.

Section 10. Project Approval.

- (a) Future Development Review. Future Development within the Brickell City Centre SAP shall proceed pursuant to the process established in the Regulating

Plan and Design Guidelines and shall be consistent with the Comprehensive Plan, this Agreement, and the Brickell City Centre SAP.

(b) Prohibition on Downzoning.

- (i) The Comprehensive Plan, this Agreement, and the Brickell City Centre SAP shall govern Development of the Amended Property for the duration of the Agreement. The City's laws and policies adopted after the Effective Date may be applied to the Amended Property only if the determinations required by Section 163.3233(2), Florida Statutes (2010) have been made after thirty (30) days written notice to Swire and after a public hearing.
- (i) Pursuant to Section 163.3233(3), Florida Statutes (2010), this prohibition on downzoning supplements, rather than supplants, any rights that may vest to Swire under Florida or Federal law. As a result, Swire may challenge any subsequently adopted changes to land Development regulations based on (A) common law principles including, but not limited to, equitable estoppel and vested rights, or (B) statutory rights which may accrue by virtue of Chapter 70, Florida Statutes (2010).

(c) Development of Regional Impact.

- (i) The City and Swire agree that as of the Effective Date, sufficient capacity remains under the DDRI to accommodate the Project and that Swire has reserved the capacity necessary to develop the Project.
- (ii) The City agrees that any DRI Development order which the City adopts after the Effective Date and which applies to the Amended Property will (A) be consistent with this Agreement and the Brickell City Centre SAP and (B) include a Use/Intensity conversion table to allow for a reasonable level of flexibility with respect to the mix and intensity of uses in order to respond to changing market conditions.
- (iii) The City agrees that if the Miami Downtown Development Authority (“DDA”) decides to abandon, terminate, rescind, or otherwise render ineffective the DDRI Development Order, Swire shall no longer be responsible for payment of DDRI fees. Further, if the DDA decides to abandon, terminate, rescind, or otherwise render ineffective the DDRI Development Order, the City agrees to refund any payment of DDRI fees made by Swire within twenty four (24) months of the decision to abandon, terminate, rescind, or otherwise render ineffective the DDRI Development Order.

Section 11. Retail Specialty Center Designation and Entertainment Specialty District Designation. Pursuant to Chapter 4 of the City Code, each block of the five-block

Project is designated as a retail specialty center and each block is designated as an entertainment specialty district.

Any establishments located within the Project shall be entitled to the benefits afforded to establishments in a retail specialty center and entertainment specialty district, as codified by Chapter 4 of the City Code. Notwithstanding the requirements of Sec. 4-3.2 of the City Code, PZAB and City Commission approval shall not be required for alcohol establishments as principal uses proposed to be located within the Project.

Each alcohol establishment within the Project shall not count towards the maximum number of establishments in the Brickell Riverside Entertainment District. Each alcohol establishment within the Brickell Riverside Entertainment District shall not count towards the maximum number of establishments within the Project.

The maximum number of establishments selling alcoholic beverages permitted within the Project's retail specialty centers and entertainment specialty districts shall not exceed five (5) per block, exclusive of any bona fide, licensed restaurants where the sale of alcoholic beverages is entirely incidental to and in conjunction with the principal sale of food (e.g. bona fide, licensed restaurants with a 2-COP, 2-COP SRX, 4-COP, 4-COP SRX or equivalent license). However, the maximum number of establishments classified as nightclubs (as defined by Chapter 4, Article I of the City Code) shall not exceed two (2) per block, unless otherwise approved by an SAP Permit.

The total number of alcohol establishments (exclusive of any bona fide, licensed restaurants where the sale of alcoholic beverages is entirely incidental to and in conjunction with the principal sale of food) shall not exceed twenty-five (25) for the entire SAP. The number of approved establishments may be increased by amendment to this Agreement before the City Commission.

Section 12. Job Creation. Swire shall consult with local and state economic Development entities regarding job training and job placement services to City residents seeking employment opportunities with potential employers which will locate or establish business within the Project.

Section 13. Local Development Permits.

- (a) The Development of the Amended Property in accordance with the Existing Zoning is contemplated by Swire. The Project may require additional permits or approvals from the City, County, State, or Federal government and any divisions thereof. Subject to required legal process and approvals, the City shall make a good faith effort to take all reasonable steps to cooperate with and facilitate all such approvals, including acting as an applicant when applicable. Such approvals include, without limitation, the following approvals and permits and any successor or analogous approvals and permits:

- (i) Subdivision plat or waiver of plat approvals;
 - (ii) Covenant in Lieu of Unity of Title, Unity of Title, or Restrictive Covenant acceptance or the release of existing unities or covenants;
 - (iii) Building permits;
 - (iv) Certificates of use;
 - (v) Certificates of occupancy;
 - (vi) Stormwater Permits;
 - (vii) DDRI approval, modification, or exemption; and
 - (viii) Any other official action of the City, County, or any other government agency having the effect of permitting Development of the Project.
- (b) In the event that the City substantially modifies its land Development regulations regarding site plan approval procedures, authority to approve any site plan for a project on one (1) of the Properties shall be vested solely in the City Manager, with the recommendation of the Planning Director. Any such site plan shall be approved if it meets the requirements and criteria of the Existing Zoning, the Comprehensive Plan, and the terms of this Agreement.

Section 14. Consistency with Comprehensive Plan. The City finds that Development of the Amended Property in conformity with the Existing Zoning is consistent with the Comprehensive Plan. As of the Effective Date, Swire is conducting an extensive analysis of the Public Facilities available to serve the Project. In the event that the Existing Zoning or the Comprehensive Plan requires Swire to provide additional Public Facilities to accommodate the Project, Swire will provide such Public Facilities consistent with the timing requirements of Section 163.3180, Florida Statutes (2010). Swire shall be bound by the City impact fees and assessments in existence as of the Effective Date of this Agreement.

Section 15. Necessity of Complying with Local Regulations Relative to Development Permits. Swire and the City agree that the failure of this Agreement to address a particular permit, condition, fee, term, license, or restriction in effect on the Effective Date shall not relieve Swire of the necessity of complying with the regulation governing said permitting requirements, conditions, fees, terms, licenses, or restrictions.

Section 16. Reservation of Development Rights.

- (a) For the term of this Agreement, the City hereby agrees that it shall permit the Development of the Amended Property in accordance with the Existing Zoning, the Comprehensive Plan, and this Agreement.
- (b) Nothing herein shall prohibit an increase in the density or intensity of Development permitted on the Amended Property in a manner consistent with (i) the Existing Zoning or the Comprehensive Plan, (ii) any zoning change subsequently requested or initiated by Swire in accordance with applicable provisions of law, or (iii) any zoning change subsequently enacted by the City.
- (c) The expiration or termination of this Agreement shall not be considered a waiver of, or limitation upon, the rights, including, but not limited to, any claims of vested rights or equitable estoppel, obtained or held by Swire or its successors or assigns to continue Development of the Amended Property in conformity with Existing Zoning and all prior and subsequent Development permits or Development orders granted by the City concerning this Project.

Section 17. Brickell Trolley. Swire acknowledges that the City is currently planning to develop a trolley system which may traverse or abut the Project. Swire agrees to cooperate with the City so that any portion of the trolley route which runs through or adjacent to the Project can be accommodated within the dedicated public rights-of-way. The City agrees to evaluate whether at least one (1) northbound and one (1) southbound trolley stop can be incorporated into the Project.

Section 18. Annual Review.

- (a) Swire shall provide the City on an annual basis a status of the Project in order for the City to conduct an annual review of the Development. This requirement shall commence twelve (12) months after the Effective Date.
- (b) During its annual review, the City may ask for additional information not provided by Swire. Any information required of Swire during an annual review shall be limited to that necessary to determine the extent to which Swire is proceeding in good faith to comply with the terms of this Agreement.
- (c) If the City finds on the basis of competent substantial evidence that Swire has not proceeded in good faith to comply with the terms of the Agreement, the City may terminate or amend this Agreement after providing 30 days written notice to Swire and after a public hearing.

Section 19. Emergency Management. Swire shall ensure public safety and protection of the property within the coastal zone from the threat of hurricanes. The Project is within the Coastal High Hazard Area (CHHA) as depicted in the Map and Appendix CM-1 of the MCNP. Swire will review the Development's potential impact on evacuation times and shelter needs in the event of a hurricane or any other natural disaster. Swire will advise

the City at the time of receipt of any Certificate of Occupancy or Temporary Certificate of Occupancy of the status of the evacuation times and shelter needs and how Swire will address any short comings.

Section 20. Notices.

- (a) All notices, demands, and requests which may or are required to be given hereunder shall, except as otherwise expressly provided, be in writing and delivered by personal service or sent by United States Registered or Certified Mail, return receipt requested, postage prepaid, or by overnight express delivery, such as Federal Express, to the Parties at the addresses listed below. Any notice given pursuant to this Agreement shall be deemed given when received. Any actions required to be taken hereunder which fall on Saturday, Sunday, or United States legal holidays shall be deemed to be performed timely when taken on the succeeding day thereafter which shall not be a Saturday, Sunday, or legal holiday.

To the City:

City Manager
City of Miami
3500 Pan American Drive
Miami, FL 33133

With a copy to:

City Attorney
Miami Riverside Center
444 S.W. 2nd Avenue
9th Floor
Miami, FL 33130

To Swire:

Stephen Owens
501 Brickell Key Drive
Suite 600
Miami, FL 33131

With a copy to:

Akerman LLP
Attn: Neisen Kasdin
1 SE 3rd Avenue
25th Floor
Miami, FL 33131

- (b) Any party to this Agreement may change its notification address(es) by providing written notification to the remaining Parties pursuant to the terms and conditions of this section.

Section 20. Exclusive Venue, Choice of Law, Specific Performance. It is mutually understood and agreed by the Parties hereto, that this Agreement shall be governed by the laws of the State of Florida, and any applicable federal law, both as to interpretation and performance, and that any action at law, suit in equity, or judicial proceedings for the enforcement of this Agreement or any provision hereof shall be instituted only in the courts of the State of Florida or federal courts and venue for any such actions shall lie exclusively in a court of competent jurisdiction in Miami-Dade County. In addition to any other legal rights, the City and Swire shall each have the right to specific performance of this Agreement in court. Each party shall bear its own attorney's fees. Each party waives any defense, whether asserted by motion or pleading, that the aforementioned courts are an improper or inconvenient venue. Moreover, the Parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction. The Parties irrevocably waive any rights to a jury trial.

Section 21. Voluntary Compliance. Swire and the City agree that in the event all or any part of this Agreement is struck down by judicial proceeding or preempted by legislative action, Swire and the City shall continue to honor the terms and conditions of this Agreement to the extent allowed by law.

Section 22. No Oral Change or Termination. This Agreement and the exhibits and appendices appended hereto and incorporated herein by reference, if any, constitute the entire Agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes any prior agreements or understandings between the Parties with respect to the subject matter hereof, including but not limited to the original Development Agreement recorded October 24, 2011 and the Amended and Restated Development Agreement recorded _____, and no change, modification, or discharge hereof in whole or in part shall be effective unless such change, modification, or discharge is in writing and signed by the party against whom enforcement of the change, modification, or discharge is sought. This Agreement cannot be changed or terminated orally.

Section 23. Compliance with Applicable Law. Subject to the terms and conditions of this Agreement, throughout the Term of this Agreement, Swire and the City shall comply with all applicable federal, state, and local laws, rules, regulations, codes, ordinances, resolutions, administrative orders, permits, policies and procedures, and orders that govern or relate to the respective Parties' obligations and performance under this Agreement, all as they may be amended from time to time.

Section 24. Representations; Representatives. Each party represents to the others that this Agreement has been duly authorized, delivered, and executed by such party and constitutes the legal, valid, and binding obligation of such party, enforceable in accordance with its terms.

Section 25. No Exclusive Remedies. No remedy or election given by any provision in this Agreement shall be deemed exclusive unless expressly so indicated. Wherever possible, the remedies granted hereunder upon a default of the other party shall be cumulative and in

addition to all other remedies at law or equity arising from such event of default, except where otherwise expressly provided.

Section 26. Failure to Exercise Rights not a Waiver; Waiver Provisions. The failure by either party to promptly exercise any right arising hereunder shall not constitute a waiver of such right unless otherwise expressly provided herein. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

Section 27. Events of Default.

- (a) Swire shall be in default under this Agreement if any of the following events occur and continue beyond the applicable grace period: Swire fails to perform or breaches any term, covenant, or condition of this Agreement which is not cured within thirty (30) days after receipt of written notice from the City specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within thirty (30) days, then Swire shall not be in default if it commences to cure such breach within said thirty (30) day period and diligently prosecutes such cure to completion.
- (b) The City shall be in default under this Agreement if the City fails to perform or breaches any term, covenant, or condition of this Agreement and such failure is not cured within thirty (30) days after receipt of written notice from a Swire specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within thirty (30) days, the City shall not be in default if it commences to cure such breach within said thirty (30) day period and diligently prosecutes such cure to completion.
- (c) It shall not be a default under this Agreement if either party is declared bankrupt by a court of competent jurisdiction. All rights and obligations in this Agreement shall survive such bankruptcy of either party. The Parties hereby forfeit any right to terminate this Agreement upon the bankruptcy of the other party. This section does not absolve Swire of any of its obligations pursuant to the City Code should it declare bankruptcy, including but not limited to ensuring that all construction sites, buildings, structures, and excavation sites are safe.
- (d) The default of a successor or assignee of any portion of Swire's rights hereunder shall not be deemed a breach by Swire.

Section 28. Remedies Upon Default.

- (a) Neither party may terminate this Agreement upon the default of the other party, but shall have all of the remedies enumerated herein.
- (b) Upon the occurrence of a default by a party to this Agreement not cured within the applicable grace period, Swire and the City agree that any party may seek specific performance of this Agreement, and that seeking specific performance

shall not waive any right of such party to also seek monetary damages, injunctive relief, or any other relief other than termination of this Agreement. The City hereby acknowledges that any claim for damages under this Agreement is not limited by sovereign immunity or similar limitation of liability. Each party shall bear its own attorney's fees in any such action.

Section 29. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, hereafter be determined to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

Section 30. Assignment and Transfer. This Agreement shall be binding on Swire and its heirs, successors, and assigns, including the successor to or assignee of any Amended Property Interest. Swire, at its sole discretion, may assign, in whole or in part, this Agreement or any of its rights and obligations hereunder, or may extend the benefits of this Agreement, to any holder of an Amended Property Interest without the prior written consent or any other approval of the City. Any such assignee shall assume all applicable rights and obligations under this Agreement. Any reference to Swire in this Agreement also applies to any heir, successor, or assignee of Swire.

Section 31. Obligations Surviving Termination Hereof. Notwithstanding and prevailing over any contrary term or provision contained herein, in the event of any lawful termination of this Agreement, the following obligations shall survive such termination and continue in full force and effect until the expiration of a one (1) year term following the earlier of the effective date of such termination or the expiration of the Term: (i) the exclusive venue and choice of law provisions contained herein; (ii) rights of any party arising during or attributable to the period prior to expiration or earlier termination of this Agreement; and (iii) any other term or provision herein which expressly indicates either that it survives the termination or expiration hereof or is or may be applicable or effective beyond the expiration or permitted early termination hereof.

Section 32. Lack of Agency Relationship. Nothing contained herein shall be construed as establishing an agency relationship between the City and Swire and neither Swire nor its employees, agents, contractors, subsidiaries, divisions, affiliates, or guests shall be deemed agents, instrumentalities, employees, or contractors of the City for any purpose hereunder, and the City, its contractors, agents, and employees shall not be deemed contractors, agents, or employees of Swire or its subsidiaries, divisions, or affiliates.

Section 33. Cooperation; Expedited Permitting; and Time is of the Essence.

- (a) The Parties agree to cooperate with each other to the full extent practicable pursuant to the terms and conditions of this Agreement. The Parties agree that time is of the essence in all aspects of their respective and mutual responsibilities pursuant to this Agreement. The City shall use its best efforts to expedite the permitting and approval process in an effort to assist Swire in achieving its Development and construction milestones. The City will accommodate requests from Swire's general contractor and subcontractors for review of phased or

multiple permitting packages, such as those for excavation, site work and foundations, building shell, core, and interiors. In addition, the City Manager will designate an individual who will have a primary (though not exclusive) duty to serve as the City's point of contact and liaison with Swire in order to facilitate expediting the processing and issuance of all permit and license applications and approvals across all of the various departments and offices of the City which have the authority or right to review and approve all applications for such permits and licenses.

- (b) Notwithstanding the foregoing, the City shall not be obligated to issue Development permits to the extent Swire does not comply with the applicable requirements of the Existing Zoning, the Comprehensive Plan, this Agreement, applicable building codes, and any other statute, ordinance, rule, or regulation.

Section 34. Enforcement.

- (a) In the event that Swire, its successors, or assigns fails to act in accordance with the terms of the Existing Zoning or this Agreement, the City shall seek enforcement of said violation upon the subject Amended Property.
- (b) 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.
- (c) This enforcement provision shall be in addition to any other remedies available at law, in equity, or both.

Section 35. Amendment or Termination by Mutual Consent. This Agreement may not be amended or terminated during its term except by mutual written agreement of Swire and the City. Prior to any amendment or termination of this Agreement during its term, the City shall hold two (2) public hearings before the City Commission to consider and deliberate such amendment or termination.

Section 36. Third Party Defense. The City and Swire shall each, at their own cost and expense, vigorously defend any claims, suits, or demands brought against them by third parties challenging the Agreement or the Project, or objecting to any aspect thereof, including, without limitation, (i) a consistency challenge pursuant to Section 163.3215, Florida Statutes (2010), (ii) a petition for writ of certiorari, (iii) an action for declaratory judgment, or (iv) any claims for loss, damage, liability, or expense (including reasonable attorneys' fees). The City and Swire shall promptly give the other written notice of any such action, including those that are pending or threatened, and all responses, filings, and pleadings with respect thereto.

Section 37. No Conflict of Interest. Swire agrees to comply with Section 2-612 of the City Code as of the Effective Date, with respect to conflicts of interest.

Section 38. No Third-Party Beneficiary. No persons or entities other than Swire and the City, their heirs, permitted successors, and assigns, shall have any rights whatsoever under this Agreement.

Section 39. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same agreement.

Section 40. Abutting Property Owners. The City and Swire have a mutual interest in ensuring that construction of the Project proceeds in a manner which is respectful of and sensitive to owners of property abutting the Project ("Abutting Owners"). In recognition of this concern, during construction of the Project, Swire agrees to insure Abutting Owners against any actual damages which directly result from accidental loss of utility service caused by Swire, its contractors, or subcontractors.

Section 41. Status. Upon request from time to time by Swire, or its successor, assigns, or any mortgagee of Swire, its successor, or assign, the City shall deliver to such requesting party a letter (in recordable form, if requested) stating whether the obligations of Swire or its successor or assign under this Agreement are current and in good standing or have been satisfied. In the event Swire or its successor or assign is not current in its obligations or such obligations are not satisfied, said letter shall state the particular manner in which such person's obligations under this Agreement are not current and in good standing or have not yet been satisfied.

Section 42. Estoppel. Within ninety (90) days of receipt of written request from a Developer party, the City Manager or his designee, on behalf of the City, shall execute an estoppel certificate or similar document, in form and substance reasonably acceptable to the City Attorney, affirming Swire's compliance with the conditions set forth in the Agreement. Should the City fail to execute the requested estoppel certificate within the aforementioned time period, the City's non-response shall be presumed to indicate Swire's compliance with the terms of the Agreement.

NOW, WHEREOF, the City and Swire have caused this Agreement to be duly executed.

[Signature blocks for City and Swire on next page]

ATTEST:

Print Name: _____
(Corporate Seal)

SWIRE PROPERTIES, INC, a Florida for Profit Corporation

BY: _____
Print Name _____
Title: _____
(Authorized Corporate Officer)

ATTEST:

Todd B. Hannon, City Clerk

CITY OF MIAMI, a municipal corporation

BY: _____
Daniel J. Alfonso, City Manager

APPROVED AS TO FORM AND
CORRECTNESS:

Victoria Méndez
City Attorney

Exhibit "A" (to Development Agreement)

Legal Descriptions of the Property

Brickell CityCentre North

Lots 1 through 6, the West half of Lot 7, and Lots 9-14, Block 107S, of Patterson and Olive Subdivision, according to the map or Plat Book B, at Page 77, of the public records of Miami-Dade County, Florida.

Less and except that portion of the above described parcel conveyed by right-of-way deed records in Official Records Book 26161, Page 1547, public records of Miami-Dade County, Florida.

Together with;

Brickell CityCentre East

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, in Block 106S, of S.I. & J.B. Patterson and J.F. and B.T. Olive Subdivision, according to the plat thereof as recorded in Plat Book B, at Page 77, of the public records of Miami-Dade County, Florida.

Less:

Those portions of lots 1, 9, 10, 11, 12, 13, 14, and 15, block 106S, of the S.I. & J.B. Patterson and J.F. and B.T. Olive Subdivision, according to the plat book thereof as recorded in Plat Book B, at Page 77, of the public records of Miami-Dade County, Florida, lying in Section 38, Township 54 South, Range 41 East, and more particularly described as follows:

Begin at the southwest corner of said Lot 9; thence run $N02^{\circ}16'51''$ W along the westerly boundary of said Lots 9 and 1, for a distance of 299.90 feet to the point of intersection with the northerly boundary of said Lot 1; thence run $N87^{\circ}47'15''$ E along said northerly boundary of Lot 1 for a distance of 30.03 feet to a point of cusp and curvature of a circular curve concave to the southeast and having a radius of 25.00 feet and a tangent bearing of $S87^{\circ}35'49''$ W; thence turning 180° , run westerly, southwesterly and southerly along said curve to the left through a central angle of $90^{\circ}04'06''$ for an arc length of 39.30 feet to a point of tangency on a line that is 5.00 feet easterly and parallel with the westerly boundary of said Lots 1 and 9; thence run $S02^{\circ}16'51''$ E along said line that is 5.00 feet easterly and parallel to said westerly boundary of Lots 1 and 9, for a distance of 234.80 feet to the point of beginning of a circular curve concave to the left, through a central angle of $90^{\circ}07'20''$ for an arc distance of 39.32 feet to the point of tangency and a point on a line that is 15.00 feet northerly and parallel with the southerly boundary of said Lots 9, 10, 11, 12, 13, 14, and 15; thence run $N87^{\circ}35'49''$ E along said line that is 15.00 feet northerly and parallel to the southerly boundary of Lots 9, 10, 11, 12, 13, 14, and 15, for a distance of 319.95 feet to a point on the easterly boundary of said Lot 15; thence run

S02°16'51" E along said easterly boundary of said Lot 15, for a distance of 15.00 feet to the southeast corner of said Lot 15; thence run S87°35'49" W along said southerly boundary of Lots 9, 10, 11, 12, 13, 14, and 15, for a distance of 350.00 feet to the point of beginning.

Together with;

Brickell CityCentre West

Lots 1, 2, 3 in block S3S, of amended Plat Book 38A and the North 1/2 of Block 53S City of Miami, according to plat thereof as recorded in Plat Book 1, at Page 74, of the public records of Miami-Dade County, Florida.

And:

Lots 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 22, 23, and 24, in Block 53S, of map of Miami-Dade County, Florida; less the South 10 feet of the West 55 feet of said Lot 22 and less the South 10.00 feet of said Lots 16,17, 19, 20, and 21.

Less:

That portion of Lot 22, Block 53S, of the map of Miami-Dade County, Florida, according to the plat thereof as recorded in Plat Book B, at Page 41, of the public records of Miami-Dade County, Florida, and being more particularly described as follows:

Begin at the point of intersection of the northerly right of way line of S.W. 8th Street with the westerly right of way of S. Miami Avenue as shown on the Florida Department of Transportation right of way maps for Section 87120-2513; thence run South 87°42'43" West along said northerly right of way line for a distance of 25 feet to the point of beginning of a circular curve concave to the northwest and having for its elements a radius of 25.00 feet and a tangent bearing of North 87°42'43" East; thence run northeasterly, northerly, and northwesterly along the arc of said circular curve to the left, through a central angle of 89°59'34" for a distance of 39.27 feet to the point of tangency and a point of said westerly right of way line; thence run South 02°16'51" East along said westerly right of way line for a distance of 25.00 feet to the point of beginning,

Per right of way dedication, recorded in Official Records Book 12159, page 482 of the public records of Miami-Dade County, Florida.

Parcel ii:

The East 50 feet of Lots 10, 11, and 12 in Block 53A, amended plat of Blocks 38A and the North half of Block 53S City of Miami, according to the plat thereof as recorded in Plat Book 1, at Page 74, of the public records of Miami-Dade County, Florida.

Parcel iii:

The East 50 feet of Lots 13, 14, and 15, Block 53S, map of Miami-Dade County, Florida, according to the plat thereof as recorded in Plat Book B, at Page 41, of the public records of Miami-Dade County, Florida, less the South 10 feet thereof.

Together with;

Brickell CityCentre N2

Lots 1 through 7, in Block 108 South, of S.I. & J.B. Patterson and J.F. & B.T. Olive Subdivision, according to the plat thereof, as recorded in Plat Book B, Page 77, of the public records of Miami-Dade County, Florida; less and except that portion of the above described parcel conveyed by order of taking recorded in Official Records Book 11810, Page 2274, of the public records of Miami-Dade County, Florida.

Together with;

One BCC

Lot 1, Less the Easterly 5 feet thereof, Block 106A, of MARY BRICKELL'S ADDITION TO THE MAP OF MIAMI, according to the Plat thereof, as recorded in Plat Book "B", Page 113, of the Public Records of Miami-Dade County, Florida.

TOGETHER WITH:

Lots 2, Less the Easterly 5 feet thereof, and all of Lots 3, 4, 12, 13, Block 106A, of MARY BRICKELL'S ADDITION TO THE MAP OF MIAMI, according to the Plat thereof, as recorded in Plat Book "B", Page 113, of the Public Records of Miami-Dade County, Florida.

TOGETHER WITH:

Lots 14 and 15, of Block 106A, of MARY BRICKELL'S ADDITION TO THE MAP OF MIAMI, according to the Plat thereof, as recorded in Plat Book "B", Page 113, of the Public Records of Miami-Dade County, Florida;

LESS AND EXCEPT therefrom that part thereof conveyed to the City of Miami for street and sidewalk purpose pursuant to that Warranty Deed recorded in Official Records Book 1790, Page 604, of the Public Records of Miami-Dade County, Florida, and being more particularly therein described as follows: Beginning at the Northeasterly corner of Lot 15, Block 106A, of the AMENDED MAP OF BRICKELL'S ADDITION TO THE MAP OF MIAMI, according to the Plat thereof, as recorded in Plat Book "B", at Page 113, of the Public Records of Miami-Dade County, Florida; thence run Southwardly along the Easterly line of Lots 15 and 14 of said Block 106A for a distance of 138 feet, more or less, to the Southeasterly corner of said Lot 14; thence

run Westwardly along the Southerly line of said Lot 14 for a distance of 30 feet to a point; thence run Eastwardly, Northeastwardly and Northwardly along the arc of a curve to the left, having a radius of 25 feet, through a central angle of $89^{\circ}59'50''$ with an arc distance of 39.27 feet to a point of tangency; thence run Northwardly along a line 5 feet West of and parallel with the Easterly line of said Lots 14 and 15 for a distance of 113 feet to a point of intersection with the Northerly line of said Lot 15; thence run Easterly along the Northerly line of said Lot 15 for a distance of 5 feet to the Point of Beginning.

Said lands situate, lying and being in Miami-Dade County, Florida.

AND TOGETHER WITH:

Lots 5, 6, 8, $8\frac{1}{2}$, 9, 10 and 11, Block 106A, "AMENDED MAP OF BRICKELLS ADDITION TO THE MAP OF MIAMI", according to the Plat thereof as recorded in Plat Book "B", Page 113 of the Public Records of Dade County, Florida, LESS therefrom a portion of the South 10 feet of said Lot 9 (as deeded to the City of Miami in Official Records Book 10551, Page 1004, of the Public Records of Dade County, Florida), said portion being more particularly described as follows:

BEGINNING at the most Southwesterly corner of said Lot 9, said point of beginning being also on the North Right-of-Way Line of S.E. 8th Street; thence, along the West Line of said Lot 9, $N.0^{\circ}07'30''E.$ for 10.00 feet to its intersection with the North Base Building Line of said S.E. 8th Street; thence, along said Base Building Line, East for 10.61 feet to its intersection with the Northwesterly extension of the South Line of Block 106A; thence, along said South Line of said Block 106A, $S.74^{\circ}39'31''E.$ for 37.80 feet to a point on the Northerly Right-of-Way Line of said S.E. 8th Street; thence, along said Right-of-Way Line and along the South Line of said Lot 9, West for 47.08 feet to the POINT of BEGINNING.

EXHIBIT “B” (to Development Agreement)

**INSURANCE REQUIREMENTS
BRICKELL CITY CENTRE PROJECT LLC-SWIRE**

I. Commercial General Liability (*Primary & Non Contributory*)

A. Limits of Liability

Bodily Injury and Property Damage Liability	
Each Occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operations	\$1,000,000
Personal and Advertising Injury	\$1,000,000

B. Endorsements Required

City of Miami listed as an additional insured
Contingent & Contractual Liability
Premises & Operations Liability
Explosion, Collapse and Underground Hazard
Primary Insurance Clause Endorsement

II. Business Automobile Liability

A. Limits of Liability

Bodily Injury and Property Damage Liability	
Combined Single Limit	
Any Auto/Owned Autos/Scheduled	
Including Hired, Borrowed or Non-Owned Autos	
Any One Accident	\$1,000,000

B. Endorsements Required

City of Miami listed as an additional insured

III. Worker’s Compensation

Limits of Liability

Statutory-State of Florida
Waiver of subrogation

Employer’s Liability

- A. Limits of Liability
 - \$500,000 for bodily injury caused by an accident, each accident.
 - \$500,000 for bodily injury caused by disease, each employee
 - \$500,000 for bodily injury caused by disease, policy limit

IV. Umbrella Policy/Excess Liability (Excess Follow Form)

- A. Limits of Liability
 - Bodily Injury and Property Damage Liability
 - Each Occurrence \$2,000,000
 - Aggregate \$2,000,000

- B. Endorsements Required
 - City of Miami listed as an additional insured

V. Owners & Contractor’s Protective

- Each Occurrence \$1,000,000
- General Aggregate \$1,000,000

City of Miami listed as named insured

The above policies shall provide the City of Miami with written notice of cancellation or material change from the insurer not less than (30) days prior to any such cancellation or material change, or in accordance to policy provisions.

Companies authorized to do business in the State of Florida, with the following qualifications, shall issue all insurance policies required above:

The company must be rated no less than “A-” as to management, and no less than “Class V” as to Financial Strength, by the latest edition of Best’s Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent. All policies and /or certificates of insurance are subject to review and verification by Risk Management prior to insurance approval.