

DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIAMI, FLORIDA AND 4201 NE 2ND AVE LLC REGARDING THE DEVELOPMENT OF THE BLOCK 5 EAST PORTION OF THE MIAMI DESIGN DISTRICT RETAIL STREET SPECIAL AREA PLAN PROJECT.

THIS AGREEMENT is entered into the ____ day of _____, 2015, by and between 4201 NE 2ND AVE LLC, a Florida limited liability company (hereinafter, “Owner” or “Developer”) and the CITY OF MIAMI, FLORIDA, a municipal corporation and subdivision of the State of Florida (“City”) (Developer and the City together referred as the “Parties”).

WITNESSETH:

WHEREAS, the Owner holds fee simple title to approximately 1.9 acres +/- of property situated on east side of NE 2nd Avenue between NE 42nd and 43rd Streets as more particularly described in Exhibit “A” (the “Property”), and located within the Miami Design District (“District”) in the City; and

WHEREAS, the District is in the midst of a transformation to an internationally recognized center for design, the arts, high fashion, luxury retail, and a center of creative employment; and

WHEREAS, the emerging status of the District is consistent with the City’s vision to become a world class city and the City wishes to encourage redevelopment within the District; and

WHEREAS, the Developer wishes to integrate the Property as part of the more than 20 acres that comprise the boundaries of the Miami Design District Retail Street Special Area Plan (“SAP”), approved pursuant to the adoption of Ordinance No. 13334 by the City Commission and subsequently amended by Ordinance No. 13414, in order to ensure that its redevelopment is carried out in a fashion consistent with that master plan’s goals and standards; and

WHEREAS, Section 3.9.1 of Miami 21 and the Florida Local Government Development Agreement Act, s. 163.3220 through 163.3243, Florida Statutes (2013), requires development within an a special area plan to be governed by a Development Agreement between the property owner(s) and the City; and

WHEREAS, the City and the Developer mutually desire the Property to become part of the SAP pursuant to Section 3.9 of Miami 21; and

WHEREAS, the City and Developer wish for development on Property of the SAP to proceed substantially in accordance with the Miami Design District Retail Street SAP Regulating Plan and Concept Book attached as Exhibit “B” (“Regulating Plan and Concept Book”); and

WHEREAS, the City and Developer wish for the redevelopment of Property to proceed in a manner consistent with the Comprehensive Plan; and

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

WHEREAS, the 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 on _____, has authorized the City Manager to execute this Agreement upon substantially similar terms and conditions set forth herein below, and the Developer has been duly authorized 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 ascribed 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 other 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 Owner, as all Parties are drafters of this Agreement; and
- (f) The recitals are true and correct and are incorporated into and made 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 any conflict between the attachments 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 4201 NE 2nd Ave LLC.

“**Block 5 East**” means that portion of the SAP area comprised of the Property.

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

“**Code**” means the City Charter and Code of Ordinances in effect as of the Effective Date.

“**Comprehensive Plan**” means the comprehensive plan known as the Miami Comprehensive Neighborhood Plan, adopted by the City pursuant to Chapter 163, Florida Statutes (2011), meeting the requirements

of Section 163.4177, Florida Statutes (2011), Section 163.3178, Florida Statutes (2011), and Section 163.3221(2), Florida Statutes (2011), which is in effect as of the Effective Date.

“Concept Book” means the Miami Design District Retail Street SAP Concept Book attached hereto as part of Exhibit “B”.

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

“Developer” means 4201 NE 2nd Ave LLC.

“Effective Date” means the date of recordation of the executed, original version of this Agreement.

“Existing Zoning” means (a) the Miami 21 Code, April 2013, specifically including the Miami Design District Retail Street Special Area Plan Regulating Plan and Concept Book, as amended, and related modifications to the Transect designations of lots within the Miami Design District Retail Street Special Area Plan area, and (b) the provision of the Charter and City Code of Miami (“Code”) which regulate development, specifically including Chapters 10, 13, 22, 23, 36, 54, 55 and 62 of the Code, as amended, through the Effective Date, which together comprise the effective land development regulations governing the development of the SAP Area.

“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, development regulations, and rules adopted by a local government affecting the development of land.

“Owner” has the same meaning as Developer.

“Parties” means Developer and the City, both of whom are signatories to this Agreement.

“Property” means the parcel more specifically described in Exhibit “A” to this Agreement and which more commonly referred to as 220 NE 43rd Street, Miami, FL 33137 (Folio No. 01-3219-009-0070).

“Public Facilities” means major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, streets, parking, and health systems and facilities.

“Regulating Plan” means the Miami Design District Retail Street SAP Regulating Plan attached hereto as part of Exhibit “B”.

“SAP” means the Miami Design District Retail Street Special Area Plan.

“SAP Area” means the area within the boundary or forming part of the Miami Design District Retail Street Special Area Plan.

“Special Area Plan” or “SAP” means the Miami Design District Retail Street Special Area Plan, Second Amendment, including the Regulating Plan and Concept Book.

“Term” means the duration of this Agreement which shall commence on the Effective Date and continue in force for 30 years thereafter, consistent with the authority provided pursuant to s. 163.3229, Florida Statutes (2013).

Section 4. Purpose. The purpose of this Agreement is for the City to authorize Owner to redevelop the Block 5 East, as identified in the Block Key Plan of the Concept Book, pursuant standards set forth in the Special Area Plan. This Agreement will establish, as of the Effective Date, the land development regulations, referred to as the “Existing Zoning” which will govern development of the Block 5 East, thereby the providing the Parties with additional certainty during the development process. This Agreement satisfies the requirements of Section 3.9.1.f, Miami 21.

Section 5. Intent. Developer and the City intend for this Agreement to be construed and implemented so as to effectuate the purpose of the Miami Design District Retail Street Special Area Plan, Second Amendment, this Development Agreement, the Comprehensive Plan and the Florida Local Government Development Agreement Act, s. 163.3220 – 163.3242, Florida Statutes (2011).

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

Section 7. Term of Agreement, Effective Date & Binding Effect. This Agreement shall have a term of thirty (30) years from the Effective Date, shall be recorded in the public records of Miami-Dade County, and shall be filed with the City Clerk. The term of this Agreement may be extended by mutual consent of the Parties in writing and subject to a public hearing, pursuant to s. 163.3225, Florida Statutes (2013). 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) Miami Design District Retail Street SAP Designation. The City has designated the Property as part of the Miami Design District Retail Street 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” and provide for any deviations from the underlying zoning regulations of the Zoning Ordinance. In approving the SAP, the City has determined that the uses and intensities of development permitted thereunder are consistent with the Comprehensive Plan and the Existing Zoning.
- (b) Density, Intensity, Uses and Building Heights.
 - (1) As of the Effective Date and pursuant to the Special Area Plan, the intensity proposed for the SAP shall be consistent with the intensities permitted by the Existing Zoning and are consistent with the Comprehensive Plan.
 - (2) As of the Effective Date and pursuant to the Special Area Plan, the Uses proposed for the SAP are permitted by the Existing Zoning and are consistent with the Comprehensive Plan.
 - (3) As of the Effective Date and pursuant to the Special Area Plan, the Building Heights proposed for the SAP are permitted by the Existing Zoning and are consistent with the Comprehensive Plan.

- (4) Nothing herein shall prohibit Developer from requesting a change of zoning, pursuant to the requirements of Article 7 of Miami 21, to increase the density or intensity of development permitted on the Property, as long as such increase in density or intensity is consistent with the Comprehensive Plan as it exists on the Effective Date.
- (5) In the event the City should amend its Comprehensive Plan to permit the transfer of densities within a specified area so as to permit densities in excess of the density limits set forth in a particular Future Land Use Map category, nothing herein shall prohibit the Developer from requesting such a density transfer.
- (c) Environmental. The City finds that the proposed development will significantly improve the publicly accessible tree canopy in the area. The Parties will comply with the intent and requirements of Chapter 17 of the City Code.

Section 9. Public Facilities. As of the Effective Date, Developer has conducted an extensive analysis of the Public Facilities available to serve the proposed development. In the event that the Existing Zoning and/or Comprehensive plan require Developer to provide Public Facilities to address any deficiencies in required levels of service occasioned by future development on Block 5 East, Developer shall provide such Public Facilities consistent with the timing requirements of s. 163.3180(2)(a), (b), and (c), Florida Statutes (2013), or as otherwise required by Chapter 13 of the City Code, if applicable. Developer shall be bound by the City impact fees and assessments in existence as of the Effective Date of this Agreement.

Section 10. Project Approval.

- (a) Future Development Review. Future development on Block 5 East shall proceed pursuant to and in accordance with the processes and standards established in the Regulating Plan and Concept Book, attached as Exhibit "B." The criteria to be used in determining whether future development shall be approved are: (i) consistency with the Comprehensive Plan; (ii) consistency with this Agreement; and (iii) substantial compliance with the Miami Design District Retail Street Special Area Plan.
- (b) Prohibition on Downzoning.
 - (1) The Comprehensive Plan, the Existing Zoning, and this Agreement shall govern the development of Block 5 East within the Miami Design District Retail Street Special Area Plan area. The City's laws and policies adopted after the Effective Date may be applied to the SAP only if the determination required by s. 163.3233(2), Florida Statutes (2013) have been made following a public hearing or as otherwise provided herein.
 - (2) Pursuant to s. 163.3233(3), Florida Statutes (2013), this prohibition on downsizing supplements, rather than supplants, any rights that may vest to Developer under Florida or Federal law. As a result, Developer 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 (2011).

Section 11. Alcoholic Beverage Sales. A certificate of use and/or occupancy may be issued to any applicant for the consumption or sale of liquor either on premises or off the premises and/or beer and wine for consumption on

the premises, as defined under the laws of the State of Florida, on Block 5 East notwithstanding any minimum distance requirements for such license establishments set forth in Section 4-7 of the City Code.

Section 12. Street Right-of-Way Improvements. In order to foster a uniform aesthetic within the SAP Area, Developer agrees to coordinate with other SAP Area property owners in order to replicate or complement the street right-of-way improvements implemented elsewhere within the SAP Area. Developer agrees to maintain, at its sole cost and expense, any non-standard improvements within the right-of-way.

Section 13. Open Space Contribution. Developer shall strive to provide a minimum of ten percent (10%) of Open Space on the subject property, but in no event shall provide less than six and one-half percent (6.5%) of Open Space consistent with the requirements set forth in the Regulating Plan and Concept Book. Should the Open Space on the subject property at completion of all phases of the proposed development or within five (5) years of the Effective Date of this Agreement, whichever is earlier, equal less than the aforementioned 10% goal, then Developer shall make a cash contribution to the City's Public Parks and Open Space Trust Fund, as contemplated under Section 3.14.4.b.3 of Miami 21, at the rate of \$10.81 per square foot for the square footage comprising the difference between the 10% Open Space goal and the actual Open Space actually provided at or above the minimum requirement of 6.5% of Open Space on the subject property.

Section 14. Local Development Permits.

- (a) The development of Block 5 East in accordance with the SAP is contemplated by Developer. Redevelopment of Block 5 East may require additional permits or approvals from the City, County, State or Federal government and any division 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. Such approvals include, without limitation, the following approvals and permits and any successor or analogous approvals and permits:
 - (1) Subdivision plat and/or waiver of plat approvals;
 - (2) Covenant or Unity of Title acceptance or the release of existing unities or covenants;
 - (3) Building permits;
 - (4) Certificates of use and/or occupancy;
 - (5) Stormwater Permits; and
 - (6) Any other official action of the City, County, or/and other government agency having the effect of permitting development of the Property.
- (b) In the event that the City substantially modifies its land development regulations regarding site plan approval procedures, authority to approve any plans, buildings, or development on the Properties shall be vested solely in the City Manager, with the recommendation of the Planning Director or any other relevant party. 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 15. Necessity of Complying with Local Regulations Relative to Development Permits. The Parties agree that failure of this Agreement to address a particular permit, condition, fee, term, license, or restriction in effect on the Effective Date shall not relieve Developer of the necessity of complying with the regulation governing said permitting requirements, conditions, fees, terms, licenses, or restrictions.

Section 16. Job Creation and Employment Opportunities. Developer shall consult with the City and other local economic development entities regarding job training and job placement services for area City residents seeking employment opportunities with potential employers which will locate or establish a business on Block 5 East.

(a) **Construction Employment.** Developer shall use diligent, good faith efforts to work with the City in the following areas:

- (1) Job Sourcing. Developer shall require its general contractor to use diligent, good faith efforts to work with the City's CareerSource South Florida Career Center or similar program(s) to source job opportunities for both skilled and unskilled labor seeking employment opportunities within the construction industry.
- (2) Local Subcontractor Participation. Developer shall require its general contractor(s) to use diligent, good faith efforts to award a minimum of twenty percent (20%) of the hard construction contract costs to subcontractors located within the City of Miami.
- (3) Local Workforce Participation. Developer shall require its general contractor(s) to use diligent, good faith efforts to employ a minimum of twenty percent (20%) of on-site labor from persons residing within the municipal boundaries of the City of Miami.

(b) **Retail Employment.** Developer anticipates that a number of job opportunities in the hospitality sector will be generated on Block 5 East. The Developer shall use diligent, good faith efforts to work with Miami Dade College, through its hospitality institute, or similar institutions and organizations, in consultation with the City, to place qualified program graduates in employment opportunities created on Block 5 East.

Section 17. Reservation of Development Rights.

- (a) For the term of this Agreement, the City hereby agrees that it shall permit the development of Block 5 East in accordance with the Existing Zoning, the Comprehensive Plan, and the Agreement.
- (b) Nothing herein shall prohibit an increase in the density or intensity of development permitted in the SAP area or Block 5 East in a manner consistent with (i) the Existing Zoning and/or the Comprehensive Plan, (ii) any zoning change subsequently requested or initiated by a Developer 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 Developer or its successor or assigns to continue development of the Property in conformity with Existing Zoning and all active prior and subsequent development permits or development orders granted by the City.

Section 18. Annual Review.

- (a) The City shall review the development that is subject to this Agreement once every 12 months, commencing 12 months after the Effective Date. The City shall begin the review process by giving notice to Developer a minimum of 30 days prior to the anniversary date of the Agreement, of its intention to undertake the annual review of this Agreement.
- (b) Any information required of Developer during an annual review shall be limited to that necessary to determine the extent to which the Developer 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 Developer has not proceeded in good faith to comply with the terms of the Agreement, the City may terminate or amend this Agreement after providing thirty (30) days written notice to the Developer and shall commence a public hearing before the City Commission.

Section 19. 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 Developer:

4201 NE 2nd Ave LLC
c/o Helm Equities
150 Broadway, Ste. 800
New York, NY 10038

With a copy to:

Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
Attn: Javier E. Fernández, Esq.
Museum Tower, Ste. 2200

150 W. Flagler Street
Miami, FL 33130

- (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 that this Agreement shall be governed by the laws of the State of Florida, and any applicable federal law, both as to the 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 the County. In addition to other legal rights, the Parties 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. The Parties agree that in the event all or any part of this Agreement is struck down by judicial proceeding or preempted by legislative action, the Parties 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, and no 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, Parties shall comply with all applicable federal, state, or local laws, 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 obligations 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 of 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) Developer shall be in default under this Agreement if Developer fails to perform or breaches any term(s), covenant(s), or condition(s) 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 be reasonably cured within thirty (30) days, then Developer shall not be in default if it commences to cure such breach within thirty (30) days 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 Developer specifying the nature of such breach; provided, however, that if such breach cannot be reasonably cured within thirty (30) days, then City shall not be in default if it commences to cure such breach within thirty (30) days 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 right 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.
- (d) The default of a successor or assignee of any portion of Developer's rights hereunder shall not be deemed a breach by Developer.

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, Developer and the City agree that any party may seek specific performance of this Agreement, and that seeking specific performances 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 on liability.

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 of 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 & Transfer. This Agreement shall be binding on Developer and its heirs, successors and assigns, including the successor to or assignee of any property interest. Developer, in 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 a property interest without the prior written consent of or any other approval of the City. Notice of any assignment or transfer shall be provided to the City in accordance with the requirements of Section 18. Any such assignee shall assume all applicable rights and obligations under this Agreement.

Section 31. Obligations Surviving Termination Hereof. Notwithstanding and prevailing over any term or provision to the contrary 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-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) right so 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 Developer and neither Developer or 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 Developer or their subsidiaries, divisions, or affiliates.

Section 33. Cooperation; Expedited Permitting; Time 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 approvals in an effort to assist Developer in achieving its development and construction milestones. The City will accommodate requests from Developer'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 will designate an individual within the City Manager's office who will have a primary (though not exclusive) duty to serve as the City's point of contact and liaison with Developer in order to expedite the processing and issuance of all permit and license applications and approvals across the various departments and office 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 that Developer does not comply with the applicable requirements of the Existing Zoning, the Comprehensive Plan, this Agreement and the applicable building codes.

Section 34. Enforcement.

- (a) In the event that Developer, their successors, or assigns fail 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 property.
- (b) Enforcement of this Agreement shall be by action any parties or persons 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 provisions 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 Developer and the City. Prior to any amendment or termination of this Agreement during its term, the City shall hold two (2) public hearings to consider and deliberate such amendment or termination.

Section 36. Third Party Defense. The City and Developer 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) consistency challenge pursuant to s. 163.3215, Florida Statutes (2013); (ii) 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 Developer shall promptly give the other written notice of any such action, including those that are pending or threatened and all responses, filings, and pleading with respect thereto.

Section 37. No Conflict of Interest. Developer 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 Developer and the City, their heirs, 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.

NOW, WHEREOF, the City and Developer have caused his Agreement to be duly executed.

[Signature Pages to Follow]

IN WITNESS WHEREOF, I have hereunto set my/our hand(s) and seal(s) this ____ day of _____, 2015.

CITY

ATTEST:

CITY OF MIAMI, a municipal corporation located within the State of Florida

Todd Hannon
City Clerk

BY: _____
Daniel J. Alfonso
City Manager

APPROVED AS TO FORM AND CORRECTNESS:

Victoria Méndez, Esq.
City Attorney

IN WITNESS WHEREOF, I have hereunto set my/our hand(s) and seal(s) this ____ day of _____, 2015.

DEVELOPER:

4201 NE 2ND AVE LLC, a Florida limited liability company

WITNESSES:

Print Name: _____

Print Name: _____

BY: _____

Print Name: _____

Title: _____

(Authorized Corporate Officer)

STATE OF FLORIDA)

)

COUNTY OF MIAMI-DADE)

The foregoing was acknowledged before me this ____ day of _____, 2015, by _____, in his/her capacity as _____, on behalf of 4201 NE 2nd Ave LLC. He/she is personally known to me or produced _____ as identification.

(Notary Seal)

Print Name: _____

Notary Public, State of Florida

Commission No. _____

My Commission Expires _____

Exhibit "A"

Legal Description of the Property

DRAFT

LOT 5, BLOCK 2, OF BRENTWOOD, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 40, PAGE 66, PUBLIC RECORDS OF DADE COUNTY, FLORIDA AND TRACT 2, OF REVISED PLAT OF TRACT 'A' AND BLOCKS 1, 2, 3, 8, 9, 10, 11, AND 12, OF BRENTWOOD, ACCORDING TO THE PLAT THEREOF AND RECORDED IN PLAT BOOK 44, PAGE 6, PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

SAID LANDS SITUATE, LYING AND BEING IN THE CITY OF MIAMI, MIAMI-DADE COUNTY, FLORIDA, AND CONTAINING 80,980 SQUARE FEET (1.8590 ACRES) MORE OR LESS.

Also known as: 220 NE 43rd Street, Miami, FL 33137
Folio ID No. 01-3219-009-0070

Exhibit “B”

Miami Design District Retail Street SAP Regulating Plan & Concept Book

Original copies of the Miami Design District SAP Regulating Plan and Concept Book are on file and available for public review at the Office of the City Clerk, City of Miami, 3500 Pan American Drive, Miami, FL 33133