

**CITY OF CORAL GABLES, FLORIDA**

**RESOLUTION NO. 2012-69**

RESOLUTION AUTHORIZING A LAND EXCHANGE WITH CENTURY LAGUNA, LLC FOR THE CITY PROPERTY HAVING A TAX IDENTIFICATION NUMBER OF 03-4120-017-0050 WITH 4012 LAGUNA STREET, AND WAIVER OF CERTAIN PROVISIONS OF THE PROCUREMENT CODE IN ACCORDANCE WITH SECTION 2-583(d) THEREOF.

**WHEREAS**, the City will benefit from having the prominent corner of Bird Road and Le Jeune Road be developed with an attractive building, and will receive more taxes from an improved lot than the currently unimproved land; and

**WHEREAS**, Century Laguna, LLC ("Century") has offered to exchange 4012 Laguna Street with the City's parcel having a tax identification number of 03-4120-017-0050; and

**WHEREAS**, 4012 Laguna is a larger parcel than the City's parcel, and was appraised by Quilivan Appraisal, P.A. and Blazejack & Company as having a greater value than the City's parcel; and

**WHEREAS**, Century will pay to the City \$65,000 to compensate for the additional value to Century in having an assembled parcel, \$5,000 to compensate internal staff time on this transaction; and all outside third party costs incurred by the City with regard to this transaction; and

**WHEREAS**, Century has agreed to improve 4012 Laguna with a parking lot and alleyway at Century's sole cost and expense in accordance with a plan approved by the City; and

**WHEREAS**, Section 2-2011 of the Procurement Code authorizes the City Commission to waive any provisions of Article VIII, Division 12 of the Procurement Code relating to the purchase, sale or lease of public lands or buildings upon a four-fifths vote where it finds that the public interest would be served by such waiver; and

**WHEREAS**, the City Commission finds that it is in the best interests of the City to waive the further requirements of the Procurement Code with regard to this transaction because the City property to be swapped is uniquely located to uniquely benefit Century;

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA:**

**SECTION 1.** That the foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon the adoption hereof.

**SECTION 2.** That a Land Exchange Agreement is hereby approved (the "Agreement") in substantially the form attached hereto as Exhibit "A."

**SECTION 3.** That the City Commission does hereby authorize the City Manager to execute the Agreement with such modifications to the form attached hereto as Exhibit "A" as may be approved by the City Manager and City Attorney and are necessary to implement the intent of this resolution.

**SECTION 4.** That this resolution shall become effective upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS TWENTY-SEVENTH DAY OF MARCH, A.D., 2012.

(Moved: Kerdyk/ Seconded: Anderson)  
(Yeas: Anderson, Cabrera, Kerdyk, Quesada, Cason)  
(Unanimous: 5-0 Vote)  
(Agenda Item: H-1)

APPROVED:

  
JIM CASON  
MAYOR

ATTEST:

  
WALTER J. POEMAN  
CITY CLERK

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

  
CRAIG E. LEEN  
CITY ATTORNEY

EXHIBIT A  
PROPOSED LAND EXCHANGE AGREEMENT

## LAND EXCHANGE AGREEMENT

**THIS LAND EXCHANGE AGREEMENT** (the “**Agreement**”) is made and entered into as of the Effective Date (hereinafter defined in Section 26(n)), by and between City of Coral Gables, a Florida municipal corporation (“**City**”), and Century Laguna, LLC, a Florida limited liability company (“**Century**”).

### RECITALS

A. Century owns or is under contract to purchase certain real property located in Miami-Dade County, Florida, more particularly described on **Exhibit “A”** attached hereto (“**Century Land**”).

B. City is the owner of that certain real property located in Miami-Dade County, Florida, more particularly described on **Exhibit “B”** attached hereto (“**City Land**”).

C. City desires to acquire fee simple title to the Century Land.

D. Century desires to acquire fee simple title to the City Land.

E. Upon the terms and conditions set forth below, City is willing to convey to Century fee simple title to the City Land in exchange for Century conveying to City the Century Land; and Century is willing to convey to City fee simple title to the Century Land in exchange for City conveying the City Land to Century, subject to the terms and conditions contained in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises herein set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

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

2. **Property.** In addition to the City Land, City shall transfer to Century, at Closing (as hereinafter defined), the following property and rights:

- (a) any existing improvements on the City Land;
- (b) all of City’s right, title and interest, if any, in and to all easements, privileges, appurtenant rights to use adjacent streets or roads, and other appurtenances pertaining to or accruing to the benefit of the City Land;
- (c) all of City’s right, title and interest, if any, in and to all licenses, permits, authorizations and approvals pertaining to ownership of the City Land and to the extent transferable;
- (d) all of City’s right, title and interest, if any, to all general intangible rights pertaining to the ownership of the City Land and to the extent transferable; and

- (e) all other rights, privileges and appurtenances, if any, owned by the City, reversionary or otherwise, and in any way related to the City Land to the extent transferable.

The City Land and all other property and rights as set forth immediately above are hereinafter collectively referred to as the “**City Property**”. It is understood and agreed that the City Property is being exchanged and will be conveyed to Century in its “as is”, “where is”, “with all faults” condition without any representation or warranty of any kind except as specifically stated herein. Century has been or will be given an opportunity to inspect the City Property and is relying upon its own investigations in connection with the exchange contemplated herein.

In addition to the Century Land, Century shall transfer to City, at Closing, the following property and rights owned and/or held by Century:

- (a) any existing improvements on the Century Land;
- (b) all of Century’s right, title and interest, if any, in and to all easements, privileges, appurtenant rights to use adjacent streets or roads, and other appurtenances pertaining to or accruing to the benefit of the Century Land;
- (c) all of Century’s right, title and interest, if any, in and to licenses, permits, authorizations and approvals and contract rights pertaining to the ownership of the Century Land and to the extent transferable;
- (d) all of Century’s right, title and interest, if any, in and to all general intangible rights pertaining to the ownership of the Century Land and to the extent transferable; and
- (e) all other rights, privileges and appurtenances, if any, owned by Century, reversionary or otherwise, and in any way related to the Century Land to the extent transferable.


The Century Land and all other property and rights as set forth immediately above are hereinafter collectively referred to as the “**Century Property**”. It is understood and agreed that the Century Property is being exchanged and will be conveyed to City in its “as is”, “where is”, “with all faults” condition without any representation or warranty of any kind except as specifically stated herein (including Century’s obligations to City to develop and construct the New Alley and Parking Lot pursuant to Sections 3(b)(ii) and 18 below). City has been or will be given an opportunity to inspect the Century Property and is relying upon its own investigations in connection with the exchange contemplated herein.

### 3. Consideration.

- (a) the consideration for the conveyance of the Century Property to the City shall be:
  - (i) the conveyance of the City Property to Century.

(b) the consideration for the conveyance of the City Property to Century shall be:

(i) the conveyance of the Century Property to City;

 (ii) The development and construction upon the Century Land to be conveyed to the City, at Century's sole cost and expense, of an alley and a new municipal surface parking lot to replace at least eight (8) parking spaces that are currently on the City Land pursuant to the Construction Plans as approved by the City pursuant to Section 18(b) hereof (the "New Alley and Parking Lot") and otherwise in accordance with the terms and conditions set forth in this Agreement. The provisions of this Section 3(b)(ii) shall survive the Closing;

(iii) the payment of the sum of sixty five thousand Dollars and no/100 (\$65,000.00) by Century to City at Closing;

(iv) Century shall also reimburse the City the following costs and expenses incurred and to be incurred by the City, to wit:

(1) A flat fee of \$5,000.00 to cover the City's costs of those City employees which have and will in the future devote time to this transaction (the "Flat Fee") which Flat Fee shall be payable at Closing; and

(2) All fees and expenses of outside attorneys and third-party consultants that the City engages (collectively, the "Reimbursable Expenses"), in regards to the negotiation and implementation of this Agreement (including, without limitation closings and post closings matters). Century has provided a retainer to the City in the amount of \$15,000.00 towards the payment of the Reimbursable Expenses and agrees that in no event shall the retainer drop below \$15,000.00 at any time. Century further agrees to replenish such retainer from time to time so that there is always a retainer balance of at least \$5,000.00. Century will be provided copies of all monthly invoices to be paid from such retainer as a courtesy to Century. Any overage remaining in such retainer shall be returned to Century upon conclusion of the aforesaid services of such outside attorneys and third-party consultants. It is further understood and agreed that the Reimbursable Expenses shall include, without limitation, expenses incurred by the City in connection with services that are (1) required to close the transaction contemplated herein (including, without limitation, review, analysis, negotiation and/or resolution of any title and/or survey matters); (2) required to implement and/or enforce Century's obligations set forth in Sections 3(b)(ii), 3(b)(v) and 3(b)(vi); and (3) customary post closing expenses such

as preparation of the closing binder and review of documents related to closing conditions, if any.

The provisions of this Section 3(b)(iv) shall survive Closing.

- (v) Century agrees and shall assure that the development of the Chase Bank Project (hereinafter defined in Section 4(a)(v)) on the Project Site (the “**Project Site**” being more particularly described in **Exhibit “E-1”** attached hereto and made a part hereof) shall be designed and constructed in accordance with all Project Site Public Approvals (hereinafter defined), in keeping with and subject to the provisions of Section 26(q) below, and in accordance with the attached composite **Exhibit “E-2”** (the “**Chase Bank Project Elevations**” consisting of six (6) pages) attached hereto and made a part hereof, including, without limitation the use of travertine material (the kind and quality of which shall be the same as the sample thereof approved by the City’s Architect as shown in said Exhibit E-2 attached hereto) on the façade of the building and in the locations shown in said Chase Bank Project Elevations. Century further agrees to finally complete construction of the Chase Bank Project within a period of two (2) years after the Closing hereunder. “**Project Site Public Approvals**” shall mean all necessary approvals, including without limitation (1) staff approvals when necessary; (2) Board of Adjustments approval; (3) planning and zoning approvals and, in particular, a site plan approval and Board of Architects approval authorizing Century to commence and complete construction of the Chase Bank Project in accordance with the Chase Bank Project Elevations and that certain site plan (“**Site Plan**”) prepared by CKE Group Incorporated, entitled CHASE dated October 25, 2011, a copy of which Site Plan is attached hereto and made a part hereof as **Exhibit “E-3”**. The provisions of this Section 3(b)(v) shall survive the Closing.
- (vi) Century acknowledges and agrees that remedies at law may be inadequate to protect against Century’s breach of Sections 3(b)(ii) and/or 3(b)(v) above, and Century hereby agrees in advance to the granting of injunctive relief in the City’s favor without proof of actual damages, in addition to any other remedies available at law or in equity. Century shall reimburse the City for all cost and expenses, including reasonable attorneys’ fees and cost incurred by the City in enforcing Century’s obligations under said Sections 3(b)(ii) and/or 3(b)(v). The provisions of this Section 3(b)(vi) shall survive the Closing.
- (vii) The parties hereto further agree that a Declaration of Restrictive Covenants in the form attached hereto and made a part hereof as **Exhibit “G”**, be duly executed, delivered and recorded among the Public Records of Miami-Dade County, Florida against the Project Site at Closing.

4. (a) **Conditions Precedent to Century's obligation to close.**
- (i) No uncured event of default of this Agreement on the part of City shall exist and be continuing.
  - (ii) all conditions precedent to the conveyance by Century to the City of the Century Land shall have been satisfied or waived in writing.
  - (iii) No material adverse change shall have occurred with respect to the City Land or the condition thereof, including title, environmental, or legal.
  - (iv) The representations and warranties of the City herein shall be true and correct as of Closing.
  - (v) In keeping with and subject to the provisions of Sections 26(q) below, Century shall have obtained, at its sole cost and expense, all Project Site Public Approvals for Century's proposed development of the Chase Bank Project to be located at the Project Site and all appeal periods for said Project Site Public Approvals shall have expired or, if any appeal of said Project Site Public Approvals shall have been filed, such appeal shall have been denied and such denial shall be final.
- (b) **Conditions Precedent to City's obligation to close.**
- (i) No uncured event of default of this Agreement on the part of Century shall exist and be continuing.
  - (ii) All conditions precedent to the conveyance by the City to Century of the City Land shall have been satisfied or waived in writing.
  - (iii) No material adverse change shall have occurred with respect to the Century Land or the condition thereof, including title, environmental, or legal.
  - (iv) The representations and warranties of Century herein shall be true and correct as of Closing.
  - (v) Century must have reimbursed the City the Flat Fee and any and all Reimbursable Expenses pursuant to Section 3(b)(iv) hereof incurred by the City to the date of Closing then remaining unpaid.
  - (vi) At least ten (10) days prior to Closing, Century shall execute and deliver to City an affidavit in recordable form which shall state the name and address of every person having a beneficial interest in the Century Property, and as required by the provisions of Section 286.23, Florida Statutes in the form attached hereto as Exhibit C (the "**Beneficial Interest Affidavit**").



- (vii) In keeping with and subject to the provisions of Sections 26(q) below, Century shall have obtained, at its sole cost and expense, all Project Site Public Approvals (hereinafter defined) for Century's proposed development of a Chase Bank branch project to be located at the Project Site ("Chase Bank Project") and all appeal periods for said Project Site Public Approvals shall have expired or, if any appeal of said Project Site Public Approvals shall have been filed, such appeal shall have been denied and such denial shall be final.
- (c) Except for the condition precedent set forth in Sections 4(a)(v) above which can not be waived by Century, in the event any of the other foregoing conditions precedent are not fulfilled as of Closing (or earlier date if specified otherwise), then Grantee (hereinafter defined) shall have the option of either: (i) waiving the condition and closing "as is" without claim against Grantor (hereinafter defined), or (ii) canceling this Agreement by written notice to Seller given by Closing (or earlier date if specified otherwise). In such event both parties shall be released from all further obligations under this Agreement.

5. **Conveyances.** The term "Grantor", as used herein, shall mean and refer to City for purposes of conveying title to the City Property to Century, and Century for purposes of conveying title to the Century Property to City. The term "Grantee", as used herein, shall mean and refer to City with respect to acquiring title to the Century Property from Century, and Century with respect to acquiring title to the City Property from City. As used below, the term "Grantor's Property" shall mean and refer to the City Property as to City, and the Century Property as to Century. The term "Acquisition Property" shall mean and refer to the City Property as to Century, and the Century Property as to City.

6. **Property Exchange.** Simultaneously at Closing, City agrees to transfer title to the City Property to Century and Century agrees to transfer title to the Century Property to City, on the terms and conditions set forth herein.

7. **Title/Survey.**

(a) Anything herein contained to the contrary notwithstanding, it is understood and agreed (1) that all costs related to obtaining a title insurance commitment ("Commitment") from a title insurance company acceptable to the Grantee agreeing to insure marketable title to the Grantor's Property in favor of Grantee and subsequent updates and endorsements (pursuant to this Section 7) and a boundary survey ("Survey") and subsequent recertifications and updates (pursuant to this Section 7) for both the City Property and the Century Property shall be borne solely by Century as the case may be and (2) that Century shall also be solely responsible to timely obtain and deliver to the City the said Commitment (and subsequent updates and endorsements) and Survey (and subsequent recertifications) for the Century Land within fifteen (15) days following the Effective Date hereof (and such subsequent updates, endorsements and/or recertifications). The premiums and any other related fees and costs for the owner's title insurance policy insuring title pursuant to the Commitment (as the same may be amended as provided in this Agreement) in favor of City with respect to the Century Property and in favor of Century with respect to the City Property shall be borne solely by Century, as the case may be, in accordance with the terms of this Agreement.

(b) Within forty (40) days following the Effective Date of this Agreement (the “**Title Review Period**”), Grantee shall review the Commitment and the Survey. Grantor shall convey marketable and insurable fee simple title to the Grantor’s Property to Grantee subject only to the matters set forth in the Commitment (as may be subsequently endorsed or updated) and the Survey (as may be subsequently recertified or updated) with only such changes as Grantor may be required to cause to be remedied as provided below (hereinafter referred to as the “**Permitted Exceptions**”). Prior to the expiration of the Title Review Period, Grantee shall deliver written notice to Grantor of Grantee’s objections to the status of title and objections to matters shown on the Survey, if any; provided that Grantee may only object to matters which render title to the Grantor’s Property unmarketable and uninsurable according to the applicable title standards adopted by the authority of The Florida Bar and in accordance with law or which restrict the Grantee’s intended use of the Grantor’s Property (“**Initial Title Defects**”). Grantee may raise as additional objections, however, any title defects first shown by any endorsement or update issued subsequent to the initial effective date of the Commitment and/or re-certifications or updates made subsequent to the initial date of the Survey obtained by Grantee (a “**Subsequent Title Defects**”). If Grantee has given Grantor timely written notice of Initial Title Defects prior to the expiration of the Title Review Period or of a Subsequent Title Defect within seven (7) days from Grantee’s receipt of any endorsement or update issued subsequent to the initial effective date of the Commitment and/or re-certifications or updates made subsequent to the initial date of the Survey, Grantor shall diligently, and in good faith, proceed to cause all of such Initial Title Defects and/or Subsequent Title Defects to be cured by the date of Closing. At Grantor’s or Grantee’s option, the date of Closing may be extended for a period not to exceed forty-five (45) days for purposes of eliminating any Initial Title Defects and/or Subsequent Title Defects with respect to Grantor’s Property. In the event that, despite its diligent good faith efforts, Grantor does not eliminate all of the Initial Title Defects and Subsequent Title Defects as of the date of Closing as the same may be extended under the preceding sentence, Grantee shall have the option of either: (i) closing and accepting the title “as is”, without additional consideration to or claim against Grantor or (ii) pursuing its default remedies under this Agreement since failure to cure such Initial Title Defects and/or Subsequent Title Defects shall constitute an event of default of Grantor under this Agreement. Notwithstanding anything herein to the contrary, Grantor shall always be obligated to obtain the release of any mortgages and liens in a liquidated amount encumbering the Grantor’s Property at or before Closing.

**8. Intentionally Deleted.**

9. **Deliveries.** Within ten (10) days following the date hereof, Grantor shall deliver to Grantee true, correct and complete copies of the following, if any, in Grantor’s possession:

- (a) The bill or bills issued for the year 2011 for real estate taxes and any subsequently issued notices pertaining to real estate taxes or assessments applicable to the Grantor Property; and
- (b) Any prior environmental review, studies or reports of Grantor’s Property.

**10. Inspection Period.**

- (a) Anything herein contained to the contrary notwithstanding, it is understood and agreed (1) that all costs related to obtaining, in accordance with Section 11 below, a Phase I and, if needed and with the prior written consent of the Grantor, a Phase II environmental review (“**Initial Environmental Report**”) and subsequent updates for both the City Land and the Century Land shall be borne solely by Century and (2) that Century shall also be solely responsible to timely obtain and deliver to the City the said Initial Environmental Report (and subsequent updates) for the Century Land at least fifteen (15) days prior to the expiration of the Inspection Period (hereinafter defined). It is further understood and agreed that all costs related to all other inspections and investigations, including making tests and studies thereon for both the City Property and the Century Property (by Century or the City, as the case may be) shall be borne solely by Century.
- (b) Within sixty (60) days following the Effective Date of this Agreement (the “**Inspection Period**”), Grantee shall review the Initial Environmental Report. To the extent the Initial Environmental Report reflects any recognized environmental condition and the Grantor does not elect to remediate the same prior to Closing, Grantee may terminate this Agreement by delivering written notice to Grantor on or before the expiration of the Inspection Period, whereupon all parties hereto shall be released from all further obligations under this Agreement except those that specifically survive. In the event Grantee has not so timely delivered written notice of cancellation, then any such environmental condition shall automatically be deemed to be satisfied in full and waived by Grantee.
- (c) Additionally, Grantee, during the Inspection Period may examine the Acquisition Property and to make such physical, zoning, land use and other examinations, inspections and investigations of the Acquisition Property or the use or operation thereof which Grantee, in Grantee’s sole discretion, may determine to make. In the event that Grantee is not satisfied with any of the foregoing, or for any other reason, in Grantee’s sole discretion, Grantee may cancel this transaction by delivering written notice of cancellation to Grantor on or prior to the expiration of the Inspection Period, whereupon all parties hereto shall be released from all further obligations under this Agreement except those that specially survive. In the event that Grantee has not so timely delivered written notice of cancellation, then any such condition shall automatically be deemed to be satisfied in full and waived by Grantee.

11. **Entry on Property for Inspections.** Grantee, and Grantee’s agents and contractors, shall have the right during the term of this Agreement to enter upon Grantor’s Property at reasonable times for purposes of inspection and investigation, including making tests and studies thereon. Grantee shall provide Grantor with at least two (2) business days’ prior written notice of its intention to conduct any inspections, so that Grantor shall have an opportunity to have a representative present during any such inspection, and Grantor expressly reserves the right to have such a representative present throughout the inspection. Grantee shall restore and repair any damage to the Grantor’s Property caused by Grantee’s inspections. It is understood and agreed that all costs related to the inspection and investigation, including making tests and studies thereon for both the City Property and the Century Property shall be borne

solely by Century. Additionally, Grantee (and in the case of the City, as Grantee regarding the Century Property, subject to the terms and conditions set forth in Section 26(s) below) shall indemnify, defend (with counsel reasonably acceptable to the Grantor) and hold Grantor harmless from and against any and all costs, expenses, liabilities and claims arising from or in connection with the inspections and investigations by Grantee of the Grantor's Property. This Section 11, shall survive the Closing and any cancellation or termination of this Agreement.

12. **Grantor's Representations and Warranties.** Grantor represents and warrants to Grantee as follows:

- (a) Except of those certain leases set forth in **Exhibit "F"** attached hereto and made a part hereof, there are no leases or other occupancy agreement, either written or oral, which affect Grantor's Property and Grantor has, and at closing will have, exclusive possession of Grantor's Property.
- (b) There are no service contracts, employment agreements or other contracts or agreements which would affect Grantor's Property after Closing.
- (c) No fact or condition exists which would result in the termination or impairment of access to the Grantor's Property or the discontinuation of necessary sewer, water, electric, gas, telephone or other utilities or services to the Grantor's Property.
- (d) Grantor shall comply prior to closing with all laws, rules, regulations, and ordinances of all governmental authorities having jurisdiction over the Grantor's Property. Grantor shall be responsible for and shall promptly pay all amounts owed for labor, materials supplied, services rendered and/or any other bills or amounts related to Grantor and Grantor's ownership and/or operation of the Grantor's Property prior to closing.
- (e) At any time after the Effective Date hereof to the date of Closing, no portion of Grantor's Property or any interest therein shall be alienated, encumbered, conveyed or otherwise transferred.
- (f) Grantor shall be responsible and shall properly pay all amounts owed for labor and services rendered, and material supplied, to the Grantor's Property and/or any other bills or amounts related to Grantor and Grantor's ownership and/or operation of the Grantor's Property prior to Closing.
- (h) Grantor is not a "foreign person" within the meaning of the United States tax laws and to which reference is made in Internal Revenue Code Section 1445(b)(2). At Closing, Grantor shall deliver to Grantee a certificate to such effect.
- (i) There are no parties other than Grantor in possession or with right of possession of any portion of the Grantor's Property as lessees, tenants at sufferance, licensees or trespassers.
- (j) No commitments relating to the Grantor's Property have been made to any governmental authority, utility company, school board, or any other organization,

group or individual which would impose an obligation upon Grantee or its successors or assigns to make any contribution or dedication of money or land or to construct, install or maintain any improvements of a public or private nature on or off the Grantor's Property.

- (k) There is no condemnation, eminent domain or taking proceeding currently affecting any portion of any of the Grantor's Property, nor to the best of Grantor's knowledge, are any such actions presently contemplated or threatened.
- (l) Grantor has not received any written order or notice from any governmental authority having jurisdiction over the Grantor's Property which has not been previously fully complied with or cured.
- (m) To the best of Grantor's knowledge, but without further inquiry (i) there are no pending or threatened claims, actions, suits or proceedings (by governmental authorities, private parties or otherwise) involving any Hazardous Materials on the Grantor's Property, and (ii) Grantor has not received written notice from any governmental authorities regarding the presence of Hazardous Materials on the Grantor's Property in violation of applicable laws. The term "Hazardous Substances", as used herein, includes any substances or materials presently or hereinafter identified to be toxic or hazardous according to any of the Environmental Laws, including, without limitation, any asbestos, PCB, radioactive substances, methane, volatile hydrocarbons, acids, pesticides, paints, petroleum based products, lead, cyanide, DDT, printing inks, industrial solvents or any other material or substance that has in the past or could presently or at any time in the future cause or constitute a health, safety or other environmental hazard to any person or property. The term Hazardous Substances includes hazardous wastes, hazardous substances, extremely hazardous substances, hazardous materials, toxic substances, toxic chemicals, oil, petroleum products and their by-products, and pollutants or contaminants as those terms are defined in the Environmental Laws. The term "Environmental Laws", as used herein, means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq.; the Toxic Substances Control Act, 15 U.S.C. 2601 et. seq.; the Clean Water Act, 33 U.S.C. 1251 et seq.; the Clean Air Act, 42 U.S.C. 7401 et. seq.; the Oil Pollution Act, 33 U.S.C. 2701 et. seq., the Hazardous Materials Transportation Act, 49 U.S.C. 1801 et. seq.; the Refuse Act of 1989, 33 U.S.C. 407; the Occupational Safety and Health Act, 29 U.S.C. 651 et. seq., as such laws have been amended or supplemented from time to time, and the regulations promulgated thereunder; and any analogous future federal, or present or future state or local laws, statutes, rules, ordinances, or regulations
- (n) No liens, claims, actions, suits or other proceedings have been instituted, or, to the best of Grantor's knowledge, without investigation or inquiry, threatened against or affecting the Grantor or the Grantor's Property, except as set forth in this Agreement.

- (o) From the Effective Date of this Agreement until Closing or the earlier termination of this Agreement, Grantor shall maintain the Grantor's Property in substantially the same condition as it is in on the date of this Agreement.
- (p) Grantor has not (i) entered into any other contracts for the sale of the Grantor's Property, (ii) granted any options to purchase the Grantor's Property, or (iii) granted any rights of first refusal with respect to the sale of any of the Grantor's Property, which are currently in effect and enforceable.
- (q) Between the Effective Date of this Agreement and Closing, Grantor shall continue to (i) adequately insure the Grantor's Property against casualty and other damage and (ii) pay all taxes imposed upon the Grantor's Property.

The provisions of this Section 12 shall survive Closing.

13. **Century's Representations.** Century represents to City as follows:

Century is a limited liability company validly existing and in good standing under the laws of the State of Florida. The execution, delivery and performance of this Agreement by Century and the person executing this Agreement on behalf of Century have been duly authorized and no consent of any other person or entity to such execution, delivery and performance is required to render this document a valid and binding instrument enforceable against Century in accordance with its terms. Neither the execution of this Agreement or the consummation of the transactions contemplated hereby will: (i) result in a breach of, or default under, any agreement to which Century is a party or by which the Century Property is bound, or (ii) violate any restrictions to which Century is subject. The provisions of this Section 13 shall survive Closing.

14. **City's Representations.** City represents to Century as follows:

City is a municipal corporation validly existing and in good standing under the laws of the State of Florida. The execution, delivery and performance of this Agreement by City and the person executing this Agreement on behalf of the City have been duly authorized and no consent of any other person or entity to such execution, delivery and performance is required to render this document a valid and binding instrument enforceable against City in accordance with its terms. Neither the execution of this Agreement or the consummation of the transactions contemplated hereby will: (i) result in a breach of, or default under, any agreement to which City is a party or by which the City Property is bound, or (ii) violate any restrictions to which City is subject. The provisions of this Section 14 shall survive Closing.

15. **Default Provisions.**

- (a) In the event of any failure of compliance by any party hereto with respect to any of its obligations as provided for herein (other than failure to close this transaction on the applicable date of Closing as may be extended by other provisions of this Agreement, including without limitation, Sections 7(b), 24(c) and 26(u) hereof)

such action shall constitute a default by such party under this Agreement. Upon any such default, the non-defaulting party ("**Non-Defaulting Party**") shall provide to the defaulting party ("**Defaulting Party**") notice of such default, which notice (a "**Default Notice**") shall state in reasonable detail the actions that the Non-Defaulting Party must take to cure the same. The Defaulting Party shall cure any such default within five (5) business days following the date of the Default Notice. If the nature of the Defaulting Party's obligations are such that more than five (5) business days is required to effect cure and the Non-Defaulting Party provides its prior written consent (which may be withheld or granted in its sole and absolute discretion) with a time period to cure, then the Defaulting Party shall not be in default hereunder if the Defaulting Party commences cure within the said five (5) business days and thereafter diligently pursues cure to completion of performance within the time period prescribed by the Non-Defaulting Party.

In the event the Defaulting Party fails timely to effect any required cure as provided for herein, the Defaulting Party shall be deemed to be in an uncured default status hereunder, whereupon the Non-Defaulting Party, shall have the right to: (i) terminate this Agreement by delivering written notice of such uncured default to Defaulting Party, whereupon all parties hereto shall be released from all further obligations hereunder, except those that specifically survive termination, including that the Non-Defaulting Party shall be entitled to exercise any rights or remedies it may have by virtue of any indemnity created or granted herein (including, without limitation, those set forth in Sections 11, 21 and 26(v) hereof) or, alternatively, (ii) seek specific performance of the Non-Defaulting Party's obligations hereunder, without thereby waiving any right to seek damages.

- (b) Each of the parties hereto waives the right to seek punitive damages in connection with the occurrence of a default by the other party under this Agreement.


16. **Real Estate Taxes/Assessment.** Century acknowledges and agrees that the Century Property is being acquired by the City as an exempt governmental entity and agrees to comply, at Century's sole cost and expense, with Section 196.295, Florida Statutes, with regard to the escrowing of prorated real estate taxes. In connection with the foregoing, prior to Closing, Century shall cause the Miami-Dade County Property Appraiser and Tax Collector, as applicable, to identify in writing the amount of prorated real estate taxes to the date of Closing for the Century Property to be paid to the Miami-Dade County Tax Collector for the current year in order to comply with Section 196.295, Florida Statutes. At Closing, the amount of the prorated real estate taxes shall be paid to and held in escrow by the Miami-Dade County Tax Collector in the manner provided for in Section 196.295, Florida Statutes. The provisions of this Section 16 shall survive the Closing.

17. **Improvement Liens.** Certified, confirmed or ratified special assessments or improvement liens upon the Century Property as of the date of Closing, if any, shall be paid in full by Century at Closing. Pending special assessments or improvement liens as of the date of Closing, provided that the improvement for which the special assessment or improvement lien was levied has been substantially completed as of the date of Closing, shall be considered as

certified, confirmed or ratified and Century shall, at Closing, be charged an amount equal to the estimated assessment for the improvement.

18. **Construction of New Alley and Parking Lot.**

(a) **Century's Responsibilities.** Century shall be responsible, at its sole cost and expense, for the preparation of all plans and specifications for the construction of the New Alley and Parking Lot, and such plans and specifications shall be subject to the approval of the City pursuant to the terms and conditions set forth in Section 18(b) hereof. Notwithstanding any other provision or term of this Agreement or any Exhibit hereto, Construction Plans and all Work (hereinafter defined in Section 18(e) hereof) by Century with respect to the Century Land and the construction of the New Alley and Parking Lot thereon shall be in conformity with all Applicable Laws and, to the extent consistent with the above, the provisions of this Agreement.

 (b) **Construction Plans.** Century shall submit to the City two (2) sets of Construction Plans within ninety (90) days from the Effective Date hereof. "Construction Plans" shall consist of final working drawings and specifications prepared in accordance with all Applicable Laws including (without limitation) the following information, (i) definitive architectural drawings; (ii) definitive foundation and structural drawings; (iii) definitive electrical and mechanical drawings; including and (iv) final specifications.

Upon receipt of the Construction Plans, the City shall review the same and shall promptly (but in any event within thirty (30) days after such receipt), give Century written notice of its approval or disapproval setting forth its reasons for any disapproval in reasonable detail. If no written response from the City is delivered to Century within thirty (30) days after the submission of such Construction Plans, or any resubmission thereof as hereinafter provided, they shall be deemed approved, except that no violations of applicable governmental ordinances, codes, plans, laws, regulations or of this Agreement shall be deemed waived thereby. In the event of a disapproval, Century shall, within fifteen (15) days after the date Century receives the written notice of such disapproval, resubmit such Construction Plans to the City, altered to meet the grounds of disapproval. Any resubmission shall be subject to review and approval by the City, in accordance with the procedure hereinabove provided for an original submission, until the same shall be approved by the City, provided, that in any event Century shall submit all Construction Plans for the construction of the New Alley and Parking Lot which meet all of the grounds for disapproval of which the City has given written notice not later than the date shown in the Century Schedule (hereinafter defined). The City and Century shall in good faith attempt to resolve any disputes concerning the Construction Plans.



Century acknowledges and agrees that any approval given by or submission to City pursuant to this Section 18 shall not constitute an opinion or agreement by the City that the Construction Plans are structurally sufficient or in compliance with any Applicable Laws.

Any proposed subsequent modification to the Construction Plans shall require the prior written consent of the City. The City's consent may be granted or denied in the City's sole and absolute discretion. In the event a modification is required, then if no written response from the City is delivered to Century within ten (10) business days after the date such modification to the Construction Plans is delivered to the City, such modification shall be deemed approved, except that no violations of applicable governmental ordinances, codes, plans, laws, regulations or of this Agreement shall be deemed waived thereby. In the event of a disapproval, Century shall, within fifteen (15) days after the date Century receives the written notice of such disapproval, resubmit such modification to the Construction Plans to the City, altered to meet the grounds of disapproval. Any resubmission shall be subject to review and approval by the City, in accordance with the procedure hereinabove provided (i.e. the City shall have ten (10) business days to approve or disapprove such modification to the Construction Plans). The City and Century shall in good faith attempt to resolve any disputes concerning any modification to the Construction Plans pursuant to the terms hereof. Any disapproval by the City of a modification under this Section 18(b) shall be in good faith, and the City shall include a description in reasonable detail of the changes that the City is requiring, with respect to the modification to the Construction Plans for which Century is seeking approval, in order that the City will consent to the same. Century acknowledges and agrees that any approval given by the City of such modification or resubmission pursuant to this Section 18 shall not constitute an opinion or agreement by the City that the Construction Plans are structurally sufficient or in compliance with any Applicable Laws.

- (c) **Construction Contract/General Contractor.** Century shall enter into a construction contract (the "Construction Contract") by and between Century, as owner, and a duly licensed Florida general contractor ("General Contractor") for the construction of the New Alley and Parking Lot pursuant to the Construction Plans. Pursuant to the Construction Contract, the General Contractor shall warrant and guaranty that General Contractor shall repair, replace or correct any defective Work (hereinafter defined in Section 18(e) below) or materials which are discovered and brought to the attention of the General Contractor in writing within a period of one (1) year from the date the final certificate of occupancy or final certificate of completion of the New Alley and Parking Lot is issued.

Upon execution of same, Century shall provide City with a copy of the Construction Contract among Century and the General Contractor.

- (d) **Century Schedule.** Attached hereto as **Exhibit “D”** is a schedule of performance by Century (“**Century Schedule**”) setting forth the outside dates and times of delivery of the various plans, approvals by the City, preparation and filing of applications for and obtaining the various permits and public approvals and schedule for the construction of the New Alley and Parking Lot pursuant to the Construction Plans (collectively the “**Work**”). Century shall maintain the progress of the Work in accordance with the Century Schedule, subject to the terms and conditions of Section 26(u) hereof. Notwithstanding anything in this Agreement to the contrary, Century shall have the right, by providing written notice thereof to the City, to extend any date set forth in the Century Schedule, provided that in no event shall such extensions extend the (1) Commencement Date set forth in the Century Schedule beyond a date which is ninety (90) days from the Closing hereof or (2) Outside Date (as hereinafter defined).
- (e) **Permits and Approvals.** Century shall have the sole responsibility, at its sole and cost and expense, of timely obtaining the necessary Century Land Public Approvals (hereinafter defined) for the New Alley and Parking Lot. “**Century Land Public Approvals**” shall mean the approvals by the City (in its sole and absolute discretion) for construction of the New Alley and Parking Lot, a building permit from the City authorizing Century to commence construction of the New Alley and Parking Lot in accordance with the Construction Plans, together with any and all other permits or approvals (including zoning approvals, if any) required by the City and any other governmental agencies or departments for the construction of the New Alley and Parking Lot.
- (f) **Construction Period.**
- (i) Century, by executing this Agreement, represents it has visited the Century Land site, is familiar with local conditions under which the construction and operation are to be performed, at the appropriate time will perform all test borings and subsurface engineering generally required at the site under sound and prudent engineering practices, and will correlate the results of its test borings and subsurface engineering and other available studies and its observations with the requirements of the construction and operation of the New Alley and Parking Lot. Century shall provide the City with a copy of all such results for informational purposes only without obligation on the part of the City to review and/or provide Century with any comments thereon.

At all times during the construction period Century shall be responsible , at its sole cost and expense, to provide the City, for Café Vialetto’s and its patrons’ use, not less than eight (8) valet parking spaces to be located at or among any of the following parcels, to wit: (1) the City Land, (2) the Century Land, and/or (3) the vacant lot owned by Century immediately adjacent to the north of the Century Land.

- (ii) Century shall commence construction of the New Alley and Parking Lot not later than the Commencement Date set forth in the Century Schedule and shall reach Substantial Completion (hereinafter defined), as determined by the City, and obtain a temporary certificate of occupancy or temporary certificate of completion, as applicable, from the City for the New Alley and Parking Lot, on or before the date that is nine (9) months following the Closing (the “**Outside Date**”). Except for the Outside Date, the terms of this Section 18(f)(ii) are subject to the provisions of Section 26(u) hereof. For purposes of this Agreement, the term “**Substantial Completion**” means the stage in the progress of the construction of the New Alley and Parking Lot when the New Alley and Parking Lot is sufficiently complete in compliance with the Construction Plans, Construction Contract, Century Land Public Approvals and all Applicable Laws, so that the City can occupy and use the New Alley and Parking Lot for its intended use and purpose, excepting only such minor matters, typically referred to as “punch-list” items, that do not interfere with or diminish the City’s access, occupancy, possession, use or enjoyment of the New Alley and Parking Lot for its intended use and purpose.
- (iii) Century shall have the obligation, at its sole cost and expense, to do or cause the following to be done on or before the Outside Date, subject to the provisions of Section 26(u) hereof:
- (1) Perform and complete the Work.
  - (2) Select the means and methods of construction. Only adequate and safe procedures, methods, structures and equipment shall be used.
  - (3) Furnish, erect, maintain and remove such construction plant and such temporary work as may be required; and be responsible for the safety, efficiency and adequacy of the plant, appliance and methods used and any damage which may result from failure, improper construction, maintenance or operation of such plant, appliances and methods.
  - (4) Provide all architectural and engineering services, scaffolding, hoists, or any temporary structures, light, heat, power, toilets and temporary connections, as well as all equipment, tools and materials and whatever else may be required for the proper performance of the Work.
  - (5) Order and have delivered all materials required for the Work and shall be responsible for all materials so delivered to remain in good condition.

- (6) Collect all paper, cartons and other debris caused by the performance of its Work and personnel and remove same from the New Alley and Parking Lot site.
  - (7) Intentionally Deleted.
  - (8) Protect all Work prior to its completion and acceptance.
  - (9) Restore and repair, at Century's sole cost and expense, any properties adjacent to the New Alley and Parking Lot site that may have been damaged as a result of the construction of the New Alley and Parking Lot whether such properties are publicly or privately owned.
  - (10) Upon completion, delivering to the City an "as built" survey (full size print) and plans and specifications of the New Alley and Parking Lot (which plans and specifications can be provided by electronic format), along with all warranties pertaining to the construction of the New Alley and Parking Lot and the equipment installed therein.
  - (11) It is understood and agreed that Century shall have up to sixty (60) days following the issuance of the temporary certificate of occupancy or completion (as applicable) to obtain the final certificate of occupancy or final certificate of completion (as applicable), issued by the City for the New Alley and Parking Lot.
- (iv) Century (i) shall carry on any construction, maintenance or repair activity with diligence and dispatch and shall use diligent efforts to complete the same in the shortest time reasonably possible under the circumstances, and (ii) shall not, except in the event of an emergency, carry on any construction, maintenance or repair activity in any easement area, in such a manner as to unreasonably interfere with the use and enjoyment of the property encumbered by such easement or the property adjacent to such easement, and, (iii) shall not, in carrying on such activities, do so in such a manner as to unreasonably interfere with business or businesses then being conducted on the property encumbered by the easement or the property adjacent to such easement.
  - (v) Except in the event of emergency, Century shall not carry on any construction, replacement, maintenance or repair activity at any time in any offsite easement area.
  - (vi) Promptly upon the completion of any such construction, repair or maintenance activity, Century shall restore the surface of the easement area substantially to its former condition and appearance.

- (vii) Century shall take necessary precautions to protect, and shall not damage property adjacent to the New Alley and Parking Lot site, or which is in the vicinity of or is in anywise affected by the Work, and shall be entirely responsible and liable for all damage or injury as a result of its operations to all adjacent public and private property.
- (viii) Century shall at all times enforce discipline and good order among its employees, the contractor and its employees, and the subcontractors and its employees at the New Alley and Parking Lot site.
- (g) **Progress of Construction.** Subsequent to the commencement of construction and until the New Alley and Parking Lot has been completed, Century shall keep the City apprised of the progress of Century with respect to such construction by written reports delivered on a monthly basis.

The City, at City's sole cost and expense, shall have the right to have an independent inspector ("City Inspector") of its choosing visit the site from time to time to keep informed about the progress of and ascertain the quality and quantity of the Work completed and to determine the date or dates of Substantial Completion and Final Completion as the same are set forth in the Century Schedule. The City Inspector may be a City employee. However, visits by the City Inspector shall not be construed to create an obligation on the part of the City to make on-site inspections to check the quality or quantity of the Work. In the event reasonable objection is made by the City Inspector during said visits, Century and/or General Contractor, at their sole cost and expense, shall promptly correct all defective Work failing to conform to the construction contract and/or Construction Plans before or after Substantial Completion.

After Substantial Completion of the New Alley and Parking Lot (which in no event shall be later than the date that the City issues a temporary certificate of occupancy or temporary certificate of completion, as applicable, for the New Alley and Parking Lot), the City shall perform an inspection of the New Alley and Parking Lot at a reasonable time jointly established by Century and the City for the purpose of preparing a list of those items of Work which the City reasonably determines, in good faith, fail to substantially conform to the Construction Contract and/or the Construction Plans (the "Non-Conforming Work"). Such list (the "Non-Conforming Work List") shall be set forth in a writing to be signed by Century, the General Contractor and the City. The City may be accompanied by representatives of Century and the General Contractor on this inspection. Century and the General Contractor shall be obligated to correct such Non-Conforming Work at their sole cost and expense as soon thereafter as it is possible but no later than the date of Final Completion as set forth in the Century Schedule.

- (h) **Intentionally Deleted.**

- (i) **Intentionally Deleted.**
  - (j) **Compliance with Applicable Laws.** Century will comply in every respect with any and all Applicable Laws now or hereafter in force or issued which may be applicable to any and all of the Work to be done, performed or carried on by Century under the provisions of this Agreement.
  - (k) **Time of the Essence.** Subject to the terms and conditions set forth in Section 26(u), time is of the essence with respect to all matters in and requirements of this Agreement as to Century and City.
19. **Closing Costs.** The parties shall bear the following costs:
- (a) Century shall be responsible for payment of the following: (i) the cost of examining title, obtaining the Commitment and any updates or endorsements thereof on the Century Property, and the premiums and any other related fees and costs for the owner's title insurance policy insuring title pursuant to the Commitment (as the same may be amended as provided in this Agreement) in favor of City with respect to the Century Property, (ii) all costs of the Survey and any updates, recertifications, or reasonable modifications required by the City with respect to the Century Property, (iii) all costs and expenses of the Environmental Reports, and all supplements, updates and additions required thereto with respect to the Century Property, (iv) state documentary stamps and surtax on the special warranty deed with respect to the Century Property, (v) recording fees for the special warranty deed with respect to the Century Property, (vi) all recording costs of documents necessary to clear title with respect to the Century Property, (vii) all costs and expenses incurred by City for inspections and investigations of the Century Property, and (viii) the Flat Fee and any Reimbursable Expenses then remaining unpaid pursuant to Section 3(b)(iv) hereof.
  - (b) Century shall be responsible for payment of the following: (i) the cost of examining title, obtaining the Commitment and any updates or endorsements thereof on the City Property, and the premiums and any other related fees and costs for the owner's title insurance policy insuring title pursuant to the Commitment (as the same may be amended as provided in this Agreement) in favor of Century with respect to the City Property, (ii) all costs of the Survey and any updates, recertifications or reasonable modifications required by Century with respect to the City Property, (iii) all costs and expenses of the Environmental Reports, and all supplements, updates and additions required thereto with respect to the City Property, (iv) state documentary stamps and surtax on the special warranty deed with respect to the City Property, (v) recording fees for the special warranty deed with respect to the City Property, (vi) all recording costs of documents necessary to clear title with respect to the City Property, (vii) all costs and expenses incurred by Century for inspections and investigations of the City

Property, and (viii) the Flat Fee and any Reimbursable Expenses then remaining unpaid pursuant to Section 3(b)(iv) hereof.

20. **Closing.** Subject to other provisions of this Agreement for extension (including, without limitation, Sections 7(b), 24(c), and 26(u) hereof), the closing shall be held on no later than twenty (20) business days following the satisfaction of the City Land Conditions Precedent and the Century Land Conditions Precedent (the "Closing"). The Closing shall take place at the offices agreed upon by the parties or through a so-called "Mail-Away" closing. In the event of a "Mail-Away" closing, the same shall be conducted in the manner as the parties hereto and their respective counsel may agree.

At Closing, Grantor shall execute and/or deliver (as applicable) to Grantee the following closing documents, each of which shall be form and substance reasonably acceptable to Grantor and Grantee:

- (a) a special warranty deed conveying Grantor's Property, subject to the Permitted Exceptions (and any other matters consented to by Grantee),
- (b) appropriate assignments of all other rights with respect to Grantor's Property included in this transaction, if any, without representation or warranty of any kind;
- (c) a "non-foreign" affidavit or certificate pursuant to Internal Revenue Code Section 1445; and
- (d) a construction lien affidavit with respect to Grantor's Property;
- (e) an affidavit of exclusive possession with respect to Grantor's Property;
- (f) a "GAP" affidavit;
- (g) an appropriate bill of sale with warranty of title for all personal property included in this transaction (where applicable); and
- (h) such other documents as may be reasonably required by Grantor or Grantee to comply with the terms and conditions of this Agreement.

Century shall deliver to City, and City shall deliver to Century, a resolution and/or such other evidence of authority and good standing as may be reasonably required by opposing counsel and/or the title insurance company insuring title to the City Property and the Century Property, as applicable.

Both parties shall execute and deliver counterpart closing statements.

21. **Brokers.** The parties each represent and warrant to the other that they have not dealt with any real estate brokers, salesman (salesmen) or finders involved in this transaction. If a claim for commission(s) in connection with this transaction is made by any broker, salesman or finder, or any other party claiming to have dealt through or on behalf of one of the parties

hereto (“**Indemnitor**”), the Indemnitor shall indemnify, defend and hold harmless the other party hereunder and their officers, directors, agents and representatives (“**Indemnitee**”), from and against all liabilities, damages, claims, costs, fees and expenses whatsoever (including reasonable attorneys’ and paraprofessionals’ fees and court costs at trial and all appellate levels) with respect to said claim for commissions. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section 21 shall survive the Closing and any cancellation or termination of this Agreement.

22. **Assignability.** Neither City, nor Century, shall be entitled to assign its rights hereunder without the prior written consent of the other, provided that Century may assign its rights hereunder to any entity owned or controlled by Century or its principals.

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

If to City at:

City of Coral Gables  
405 Biltmore Way  
P.O. Drawer 141549  
Coral Gables, Florida 33134  
Attn: City Manager  
Telecopy No: (305) 460-5350

and to:

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.  
2525 Ponce de Leon Blvd., Suite 700  
Coral Gables, Florida 33134  
Attn: Stephen J. Helfman, Esq. and  
Ignacio G. del Valle, Esq.  
Telecopy No: (305) 854-2323

If to Century at:

Century Laguna, LLC  
2301 NW 37<sup>th</sup> Avenue, 6<sup>th</sup> Floor  
Doral, Florida 33172  
Attn: Sergio Pino, Manager  
Telecopy No. (305) 470-1900

and to:



Holland & Knight  
701 Brickell Avenue, Suite 3000  
Miami, Florida 33131  
Attention: Mr. Juan Mayol and Ms. Ines Marrero-Priegues  
Telecopy No. 305-789-7799

Notices personally delivered or sent by overnight courier shall be deemed given on the date of delivery (or rejection) and notices otherwise mailed in accordance with the foregoing shall be deemed given three (3) days after deposit in the U.S. mails. Any notice sent by telecopy shall be deemed delivered on the day given, provided that a confirmation report of delivery has been printed by such transmitting telecopy device reflecting the date, time and phone number to which same was transmitted.

24. **Risk of Loss.**

- (a) In the event that the City Property or any portion thereof is damaged by fire, wind storm, or other casualty prior to the Closing, the City and Century shall proceed with the Closing in accordance with the terms and conditions of this Agreement, in which case the City shall be entitled to all insurance proceeds resulting from such casualty, if any.
- (b) In the event that the City Property is taken in whole by eminent domain or otherwise, or if such taking is pending, threatened or contemplated prior to the Closing, this Agreement shall terminate, in which event all parties shall be relieved of all further obligations under this Agreement except those that specifically survive. In the event that a portion of the City Property is taken by eminent domain or otherwise, or if such partial taking is pending, threatened or contemplated prior to the Closing, Century shall have the option of either: (i) canceling this Agreement, in which event all parties shall be relieved of all further obligations under this Agreement except those that specifically survive, or (ii) proceeding with the Closing in accordance with the terms and conditions of this Agreement, in which case Century shall be entitled to all condemnation awards and settlements resulting from such taking, reduction or restriction.
- (c) In the event that the Century Property or any portion thereof is damaged by fire, wind storm, or other casualty prior to the Century Land Closing, Century shall promptly repair such damage and the Closing shall be extended for a reasonable time pending completion of such repairs, in which case Century shall be entitled to all insurance proceeds resulting from such casualty, if any.
- (d) In the event that the Century Property is taken in whole by eminent domain or otherwise, or if such taking is pending, threatened or contemplated prior to the Closing, this Agreement shall terminate, in which event all parties shall be relieved of all further obligations under this Agreement except those that specifically survive. In the event that a portion of the Century Property is taken

by eminent domain or otherwise, or if such partial taking is pending, threatened or contemplated prior to the Closing, the City shall have the option of either: (i) canceling this Agreement, in which event all parties shall be relieved of all further obligations under this Agreement except those that specifically survive, or (ii) proceeding with the Closing in accordance with the terms and conditions of this Agreement, in which case the City shall be entitled to all condemnation awards and settlements resulting from such taking, reduction or restriction.

25. **Radon Gas.** RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY PUBLIC HEALTH UNIT. NOTE: THIS PARAGRAPH IS PROVIDED FOR INFORMATIONAL PURPOSES PURSUANT TO SECTION 404.056(7), FLORIDA STATUTES (1988).

26. **Miscellaneous.**

- (a) This Agreement shall be construed and governed in accordance with the laws of the State of Florida. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof, and, accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto.
- (b) In the event any term or provision of this Agreement be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.
- (c) In the event of any litigation between the parties under this Agreement, the prevailing party shall be entitled to reasonable attorneys' and paraprofessionals' fees and court costs at all trial and appellate levels. This provision shall survive Closing and any cancellation or termination of this Agreement.
- (d) In construing this Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular, the use of any gender shall be held to include every other and all genders, and captions and paragraph or section headings shall be disregarded.
- (e) All of the exhibits attached to this Agreement are incorporated in, and made a part of, this Agreement.
- (f) Unless expressly set forth herein, the covenants, agreements, terms, and provisions of this Agreement shall not survive the Closing and such covenants, agreements, terms and provisions shall be deemed merged into the special warranty deed and extinguished at Closing; provided, however, any indemnity

provisions of the parties in this Agreement shall survive the Closing of this transaction or the termination of this Agreement.

- (g) Time shall be of the essence for each and every provision of this Agreement.
- (h) Neither this Agreement nor any notice or memorandum of this Agreement shall be recorded in any public records.
- (i) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (j) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- (k) No waiver, modification, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is sought.
- (l) No elected official, officer, administrator, official, agent or employee of the City shall be charged personally or held contractually liable under any term or provision of this Agreement (or any other document executed in connection with this Agreement) or of any supplement or amendment hereof or because of any breach hereof, or because of his/her execution hereof, or any obligation or liability arising out of or in connection with any of the foregoing.
- (m) Nothing in this Agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.
- (n) For purposes of calculation of all time periods within which City or Century or Century must act or respond as herein described, all phrases such as "the date of this Agreement" or any other like phrase referring to the date of the Agreement, shall mean and refer to the Effective Date of this Agreement(hereinafter defined). The parties understand and agree that after Century executes and dates this Agreement and delivers two (2) executed counterparts thereof to City, the same shall thereupon become Century's offer to enter into this Agreement with the City (the "Century Offer"). The Century Offer shall then be submitted to the City's approval process and subject to the City Commission's acceptance and approval in its sole and absolute discretion. The Century Offer shall be irrevocable from the date of submission to the City's approval process until the same is accepted or rejected by the City. In the event the City Commission accepts and approves the Century Offer, the same shall be executed and dated by the City and one fully executed counterpart thereof delivered to Century. The "Effective Date" shall be the date when the last one of City or Century has signed this Agreement, as stated on the signature page and has delivered its executed counterpart to the other party.

Any reference in this Agreement to “**Business Days**” shall mean any day the City of Coral Gables is open for business.

- (o) **WAIVER OF TRIAL BY JURY.** CITY AND CENTURY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT AND ANY OTHER DOCUMENT OR INSTRUMENT NOW OR HEREAFTER EXECUTED AND DELIVERED IN CONNECTION THEREWITH. THIS SECTION 26(o) SHALL SURVIVE THE CLOSING AND DELIVERY OF THE DEED.
- (p) Computation of Time. Any time period provided for herein which shall end on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. (EST) of the next full Business Day.
- (q) Police/Regulatory Powers. City cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations of general applicability which may govern the City Property or Century Property or any operations at the City Property or Century Property. Nothing in this Agreement shall be deemed to create an affirmative duty of City to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances, rules and regulations, federal laws and regulations, state laws and regulations, and grant agreements. In addition, nothing herein shall be considered zoning by contract nor be construed as an approval by the City of the Chase Bank Project.
- (r) Further Assurances. City and Century agree that at any time, and from time to time before the Closing, they will on request of the other execute and deliver such further documents and do such further acts and things as such other party may reasonable request in order to fully effectuate the purposes of this Agreement.
- (s) No Waiver of Sovereign Immunity/Consequential Damages. Notwithstanding anything contained in this Agreement to the contrary, (1) the City does not waive any rights of sovereign immunity that it has under applicable law; (2) this Agreement is subject to the provisions and monetary limitations of Section 768.28, Florida Statutes (which statutory provisions and monetary limitations shall apply as if the parties hereto had not entered into this Agreement); and (3) in no event shall the City be liable for any consequential and/or punitive damages in connection with this Agreement.
- (t) No Third Party Beneficiaries. Neither City nor Century intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and no third party shall be entitled to assert a claim against any of the parties based upon this

Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

- (u) Unavoidable Delay or Force Majeure. Notwithstanding any of the provisions of this Agreement to the contrary, and except as provided herein, neither the City, Century, as the case may be, nor any successor in interest, shall be considered in breach of or in default of any of its obligations, including but not limited to the beginning and completion of construction of the Trolley Station, or progress in respect thereto, in the event of unavoidable delay in the performance of such obligations due to strikes, lockouts, acts of God, unusual delay in obtaining or inability to obtain labor or materials due to governmental restrictions, enemy action, civil commotion, fire, hurricane, sabotage, unavoidable casualty or other similar causes beyond the reasonable control of a party (not including such party's insolvency or financial condition ), and the applicable time period shall be extended for the period of unavoidable delay.
  
- (v) Indemnification Against Claims. Century shall indemnify, defend (with counsel acceptable to the City, in its sole and absolute discretion, at Century's sole cost and expense) and save harmless the City and the City's commission members, staff, representatives, officers, employees, agents and independent contractors (the "Indemnified Parties") from and against any and all claims, actions, proceedings, damages, losses, liabilities, costs and expenses of any nature whatsoever (including, without limitation, reasonable attorneys' fees and costs of suit incurred in connection with such claims at all trial and appellate levels), arising out of, or resulting from, the injury to or the death of any person (including wrongful death), damage to the property of any person occurring in or upon the Century Property in connection with or related to Century's ownership of and/or construction of the New Alley and Parking Lot and any and all activities relating thereto on the Century Property prior to the Closing or final completion of the New Alley and Parking Lot, whichever occurs later (the "Indemnified Matters"), whether any such Indemnified Matters are asserted prior to or after the Closing. However, the foregoing indemnification obligation of Century shall not apply to, and Century need not indemnify the Indemnified Parties, if the matter for which indemnification is sought results from the sole gross negligence or willful misconduct of any Indemnified Party. In case any action or proceeding is brought against any of the Indemnified Parties by reason of any of the Indemnified Matters, Century, within sixty (60) days of written notice from the City, shall resist or defend the action or proceeding (with counsel acceptable to the City, in its sole and absolute discretion, at Century's sole cost and expense). The City shall also be entitled to appear, defend (with the City's own counsel), or otherwise take part in such action or proceeding at Century's sole cost and expense provided that: (i) any such action by the City shall not limit or render void any obligation of any insurer of Century or the City with respect to the claim or matter in question; and (ii) the City shall not, without Century's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed), settle any such action or proceeding or interfere with Century's defense or prosecution of such action or proceeding. Century agrees that Century shall not, without the City's

prior written consent (which consent may be granted or denied by the City in its sole and absolute discretion), settle any such action or proceeding or interfere with the City's defense of such action or proceeding. The provisions of this Section shall survive the termination of this Agreement.

27. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and there are no other agreements, representations or warranties other than as set forth herein. This Agreement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought. This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns.

## **LIST OF EXHIBITS**

- Exhibit A: Century Land Legal Description**
- Exhibit B: City Land Legal Description**
- Exhibit C: Beneficial Interest Affidavit**
- Exhibit D: Century Schedule**
- Exhibit E-1: Project Site Legal Description**
- Exhibit E-2: Chase Bank Project Elevations**
- Exhibit E-3: Site Plan**
- Exhibit F: List of Leases that affect the City Land or the Century Land**
- Exhibit G: Declaration of Restrictive Covenants**

EXECUTED as of the Effective Date in several counterparts, each of which shall be deemed an original, but all constituting only one agreement.

By authority of Resolution No. 2012-69  
duly passed and adopted by the Coral Gables  
City Commission on 3/27, 2012

CITY:

CITY OF CORAL GABLES, a Florida  
municipal corporation

By: Patrick G. Salerno  
Name: Patrick G. Salerno  
Title: City Manager *jr/CSB*

ATTEST:

By: Walter J. Foeman  
Name: Walter J. Foeman  
Title: City Clerk

APPROVED AS TO FORM AND  
SUFFICIENCY:

By: Craig E. Leen  
Name: Craig E. Leen  
Title: City Attorney

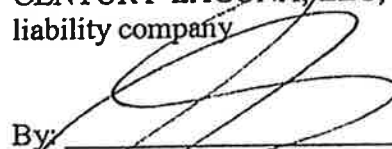
Date: 4/26/, 2012



**EXECUTED** as of the Effective Date in several counterparts, each of which shall be deemed an original, but all constituting only one agreement.

**CENTURY:**

CENTURY LAGUNA, LLC, a Florida limited liability company

By:   
Name: Sergio Pino  
Title: Manager

Date: 3/26/, 2012

## **EXHIBIT "A"**

### **CENTURY LAND LEGAL DESCRIPTION**

Lots 7 and 8, Block 1, **Coral Gables Industrial Section**, according to the Plat thereof as recorded in Plat Book 28, at Page 22 of the Public Records of Miami-Dade County, Florida; and a portion of Lot 6, Block 1 of **Revised Plat of Coral Gables Industrial Section** according to the Map or Plat thereof as recorded in Plat Book 28, Page 22 of the Public Records of Miami-Dade County, Florida, to wit: Begin at the Southeast corner of Lot 6, thence run North along the East line of said Lot 6 a distance of 10 feet; thence run West a distance of 90.06 feet; thence run in a Southwesterly direction a distance of 14.14 feet to the Southwest corner of said Lot 6; thence East along the South line of Lot 6 a distance of 100.8 feet to the Point of Beginning.

## **EXHIBIT "B"**

### **CITY LAND LEGAL DESCRIPTION**

Lot 5 and Lot 6, less beginning 10 feet north of the southeast corner of Lot 6, thence westerly 90.06 feet, thence southwesterly 14.14 feet, thence easterly 100.08 feet, and thence northerly 10 feet to point of beginning, Block 1, Coral Gables Industrial Section, according to the Plat thereof as recorded in Plat Book 28, at Page 22 of the Public Records of Miami-Dade County, Florida.



6. Affiant further states that he is familiar with the nature of an oath, and with the penalties as provided by the laws of the State of Florida for falsely swearing to statements made in an instrument of this nature.

FURTHER AFFIANT SAYETH NOT.

**CENTURY LAGUNA, LLC,**  
a Florida limited liability company

By: \_\_\_\_\_  
Name: Sergio Pino  
Title: Manager

SWORN TO AND SUBSCRIBED before me this \_\_\_\_ day of \_\_\_\_\_,  
2012, by Sergio Pino, as Manager of Century Laguna, LLC, a Florida limited liability company,  
who is [ ] personally known to me or who has [ ] produced  
\_\_\_\_\_ as identification and who did take an oath.

[SEAL]

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print Name of Notary  
Commission No. \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**  
**TO DISCLOSURE OF BENEFICIAL INTEREST AFFIDAVIT**

**CENTURY PROPERTY DESCRIPTION**

Lots 7 and 8, Block 1, Coral Gables Industrial Section, according to the Plat thereof as recorded in Plat Book 28, at Page 22 of the Public Records of Miami-Dade County, Florida; and a portion of Lot 6, Block 1 of Revised Plat of Coral Gables Industrial Section according to the Map or Plat thereof as recorded in Plat Book 28, Page 22 of the Public Records of Miami-Dade County, Florida, to wit: Begin at the Southeast corner of Lot 6, thence run North along the East line of said Lot 6 a distance of 10 feet; thence run West a distance of 90.06 feet; thence run in a Southwesterly direction a distance of 14.14 feet to the Southwest corner of said Lot 6; thence East along the South line of Lot 6 a distance of 100.8 feet to the Point of Beginning.

**EXHIBIT "D"**  
**CENTURY SCHEDULE**

Commencement Date

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Final Completion Date

As per Section 18(f)(iii)(11)

***TO BE COMPLETED ON OR PRIOR TO CLOSING***

**EXHIBIT E-1**

**PROJECT SITE LEGAL DESCRIPTION**

(390 Bird Road -Corner Lot)

Lots 1 thru 4, inclusive of Lots 39 thru 42, block 1, Coral Gables Industrial Section, according to the map or plat thereof as recorded in Plat Book 28, Page 22, Public Records of Miami-Dade County, Florida. Less that portion of said Lot 42 conveyed to the County of Dade by deed dated October 18, 1961, and recorded in the Public Records of Miami-Dade County, Florida, described as the external area formed by a 15-foot radius arc concave to the Southeast, tangent to the north line of said Lot 42 and tangent to the West line of said Lot 42.

and

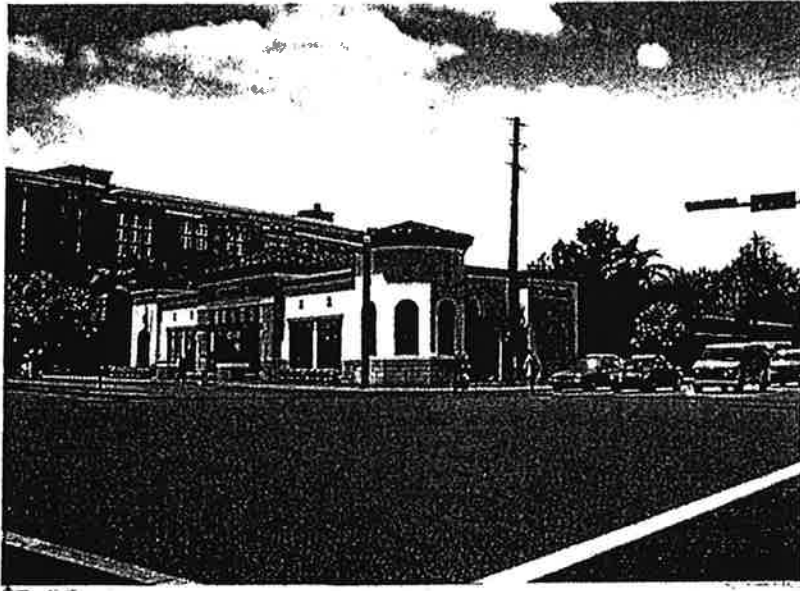
(City Land to be swapped)

Lot 5 and Lot 6, less beginning 10 feet north of the southeast corner of Lot 6, thence westerly 90.06 feet, thence southwesterly 14.14 feet, thence easterly 100.08 feet, and thence northerly 10 feet to point of beginning, Block 1, **Coral Gables Industrial Section**, according to the Plat thereof as recorded in Plat Book 28, at Page 22 of the Public Records of Miami-Dade County, Florida.

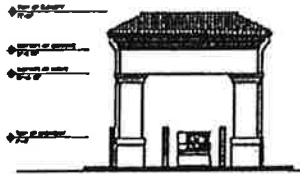


**EXHIBIT E-2**  
*(consisting of 6 pages)*

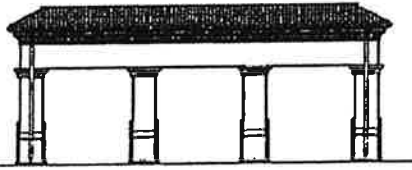
**CHASE BANK PROJECT ELEVATIONS**



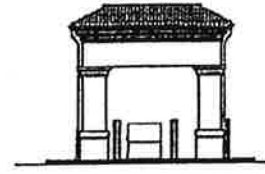




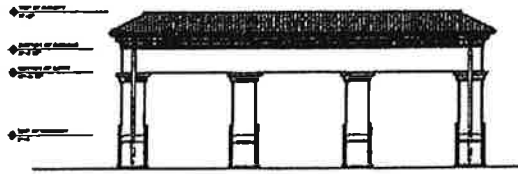
DRIVE - THRU  
SOUTH ELEVATION



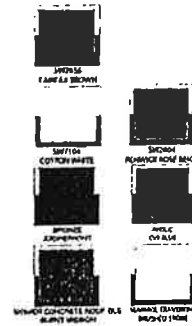
DRIVE - THRU  
EAST ELEVATION



DRIVE - THRU  
NORTH ELEVATION



DRIVE - THRU  
WEST ELEVATION

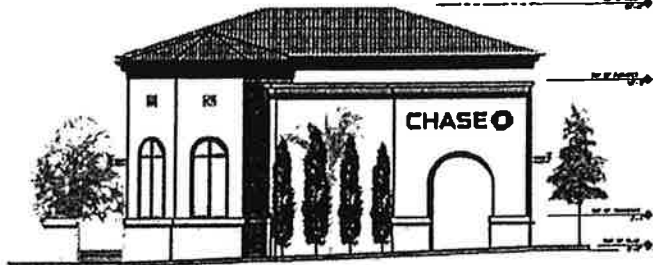


CHASE BANK  
BIRD ROAD AND LEJEUNE ROAD  
CORAL GABLES, FLORIDA 33146

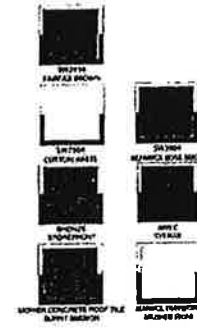




NORTH ELEVATION



WEST ELEVATION

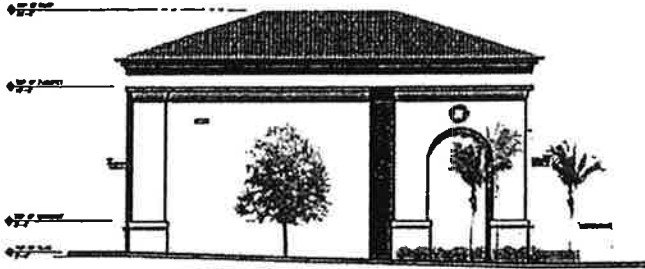


**CHASE BANK**  
 BIRD ROAD AND LEJEUNE ROAD  
 CORAL GABLES, FLORIDA 33146

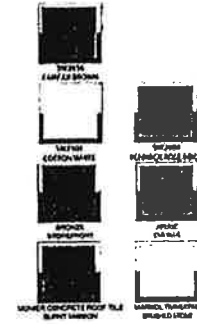




SOUTH ELEVATION



EAST ELEVATION



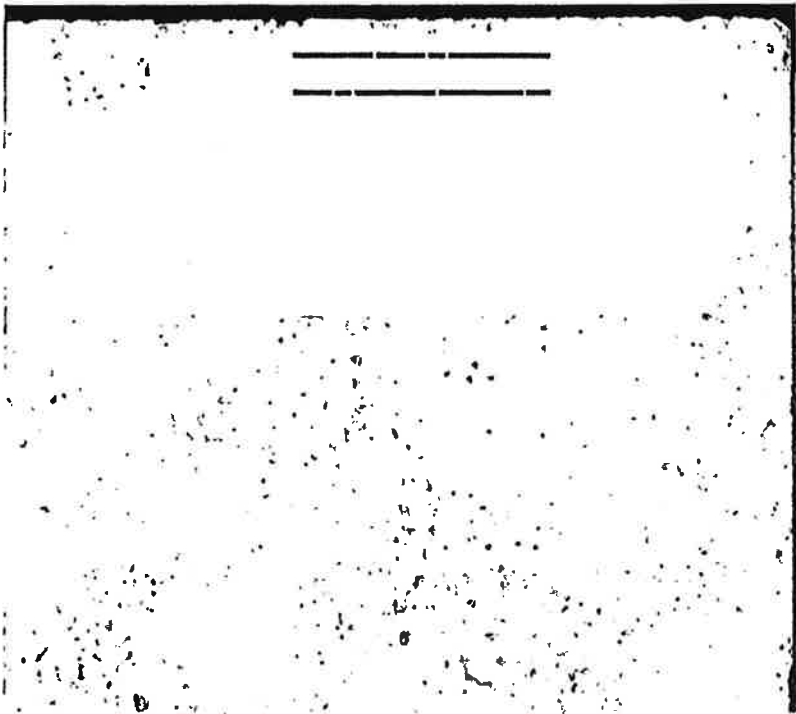
**CHASE BANK**  
 BIRD ROAD AND LEJEUNE ROAD  
 CORAL GABLES, FLORIDA 33146





CHASE BANK  
BIRD ROAD  
+ LEJONS

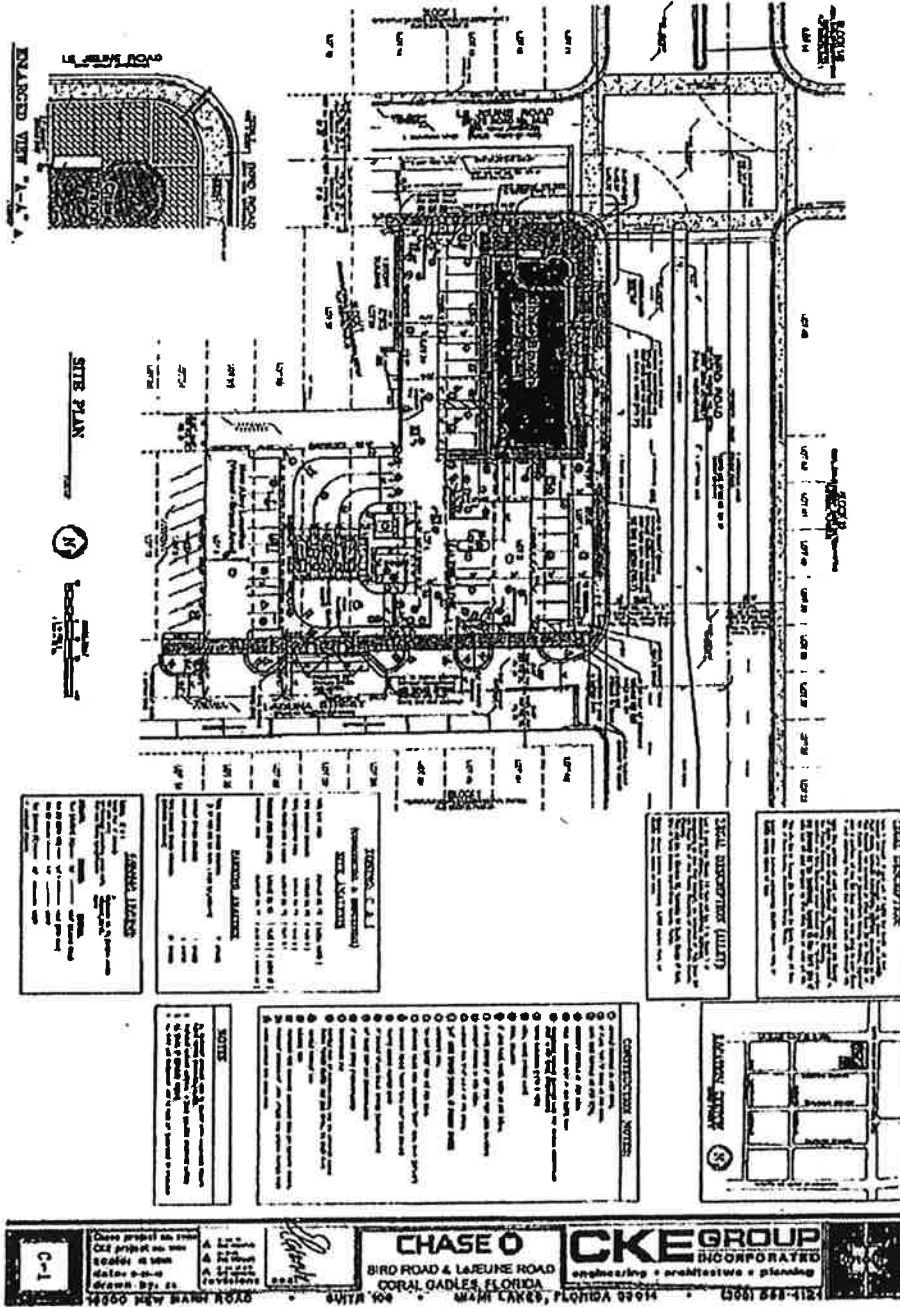
BOARD OF ARCHITECTS  
APPROVED  
Architectural Design Only  
*City*  
EL MAR  
City of Coral Gables  
Florida



# EXHIBIT E-3

## SITE PLAN

**NOTE:** This preliminary Site Plan will be revised so that all of the Chase Bank facilities depicted herein will lie wholly within the boundaries of the Project Site without any encroachment onto the Century Land (as those terms are defined in the attached Land Exchange Agreement)



**EXHIBIT F**

**LIST OF LEASES THAT AFFECT THE CITY LAND OR THE CENTURY LAND**

**NONE**



## EXHIBIT G

### DECLARATION OF RESTRICTIVE COVENANTS GENERAL COVENANT

#### KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Century Laguna, LLC ("Century") is the fee simple owner(s) of the following described property situated and being in the City of Coral Gables, Florida:

Lots 1 thru 4, inclusive of Lots 39 through 42, block 1, Coral Gables Industrial Section, according to the map or plat thereof as recorded in Plat Book 28, Page 22, of the Public Records of Miami-Dade County, Florida. Less that portion of said Lot 42 conveyed to the County of Dade by deed dated October 18, 1961, and recorded in the Public Records of Miami-Dade County, Florida, described as the external area formed by a 15-foot radius arc concave to the Southeast, tangent to the north line of said Lot 42 and tangent to the West line of said Lot 42, (the "Bird Road/Le Jeune Corner Parcel"); and

Lot 5 and Lot 6, less beginning 10 feet north of the southeast corner of Lot 6, thence westerly 90.06 feet, thence southwesterly 14.14 feet, thence easterly 100.08 feet, and thence northerly 10 feet to point of beginning, Block 1, Coral Gables Industrial Section, according to the Plat thereof as recorded in Plat Book 28, at Page 22 of the Public Records of Miami-Dade County, Florida, (the "Former City Parcel")

WHEREAS, Century has acquired the Former City Parcel, which is adjacent to the Bird Road/Le Jeune Corner Parcel, pursuant to a Land Exchange Agreement dated \_\_\_\_\_, 2012 with the City of Coral Gables (the "Land Exchange Agreement");

WHEREAS, in connection with that Land Exchange Agreement Century has agreed to certain obligations which the City of Coral Gables and Century wish to memorialize in this covenant;

WHEREAS, Century does hereby declare and agree as follows:

1. That Century shall construct a parking lot and alley as proposed in, and within the time frame contemplated by, the Land Exchange Agreement.
2. Should Century be unable timely to comply with the final construction (as evidenced by a certificate of completion or certificate of occupancy, as applicable) of the project (the "Chase Bank Project") on the Bird Road/Le Jeune Corner and Former City Parcels (collectively, the "Project Site") as contemplated by Section 3(b)(v) of the Land Exchange Agreement, that Century shall submit any new bona fide proposed project ("New Project") to be constructed on the Project Site to the City for approval by the City Manager of Coral Gables, in his/her sole and absolute discretion.

Notwithstanding the foregoing, should Century and the City Manager of Coral Gables after two (2) years of good faith negotiations after submission of a New Project for approval not reach an agreement for the New Project on the Project Site, Century may then request that the Coral Gables City Commission approve or disapprove the New Project in its sole and absolute discretion.

NOW, THEREFORE, for good and valuable consideration, the undersigned do(es) hereby declare that he/she will not convey or cause to be conveyed the title to the Project Site without requiring the successor in title to abide by all terms and conditions set forth herein.

FURTHER, the undersigned declare(s) that this covenant is intended and shall constitute a restrictive covenant concerning the use, enjoyment and title to the Project Site and shall constitute a covenant running with the land and shall be binding upon the undersigned, his/her successors and assigns and may only be released by the City

of Coral Gables, or its successor, in accordance with the applicable ordinances of said City then in effect; provided, however, that in the event that Century timely constructs (as evidenced by a duly issued certificate of completion or certificate of occupancy, as applicable) the parking lot and alley as required by the Land Exchange Agreement, and the Chase Bank Project on the Project Site as contemplated by Section 3(b)(v) of the Land Exchange Agreement or such other project that may be approved by the City Manager or the City Commission, as the case may be, that this covenant shall be released by the City of Coral Gables at Century's request at Century's cost and expense.

IN WITNESS WHEREOF, the undersigned has caused \_\_\_\_\_ hand(s) and seal(s) to be affixed hereto on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

WITNESS(ES)

OWNER(S)

\_\_\_\_\_  
Sign above and print name here \_\_\_\_\_

Sign above and print name here

\_\_\_\_\_  
Sign above and print name here \_\_\_\_\_

Sign above and print name here

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

I HEREBY CERTIFY that on this day personally appeared before me \_\_\_\_\_ who is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification and he/she acknowledge that he/she executed the foregoing, freely and voluntarily, for purposes therein expressed.

SWORN TO AND SUBSCRIBED before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My commission expires:

\_\_\_\_\_

NOTARY PUBLIC STATE OF FLORIDA

PREPARED BY:

\_\_\_\_\_

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_

Telephone: \_\_\_\_\_

\_\_\_\_\_  
 Craig E. Leen

Date: \_\_\_\_\_