

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”), dated this ____ day of September, 2018, is by and between **Miami Development Fund, LLC**, a Florida limited liability company (“**Purchaser**”), and the **City of Coral Gables**, a municipal corporation existing under the laws of the State of Florida (the “**Seller**”). In consideration of the mutual covenants and promises herein set forth, the parties agree as follows:

1. **Purchase and Sale.** Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller all of Seller’s right, title and interest in and to that certain parcel of real property, consisting of approximately 4.15 acres, and located at 7350 Coral Way, Miami, Florida 33155 (such real property, together with all tenements, hereditaments and appurtenances pertaining thereto, including, without limitation, any and all right, title and interest of Seller in and to any existing roads, streets, alleys, rights-of-way and easements located within, adjacent to or benefitting such real property, is referred to herein collectively as the “**Property**”). Purchaser acknowledges that the legal description of the Property shall be, after review and approval by the City, the legal description noted in the Commitment (as defined herein) and the Survey (as defined herein) to be obtained by Purchaser, as provided in this Agreement.

2. **Deposit.** To secure the performance by Purchaser of its obligations under this Agreement, Purchaser shall have delivered to Deluxe Title and Escrow (“**Purchaser’s Escrow Agent**”), as escrow agent, the total sum of ONE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$150,000.00), within twenty-four (24) hours of the Effective Date (as hereinafter defined), which initial deposit shall be held as an initial earnest money deposit hereunder (the “**Initial Deposit**”). Within twenty-four (24) hours following the expiration of the Inspection Period (as hereinafter defined), and provided that Purchaser has not elected to terminate this Agreement prior to the expiration of the Inspection Period, (i) Purchaser shall deposit the total sum of FOUR HUNDRED THOUSAND AND 00/100 DOLLARS (\$400,000.00) (the “**Second Deposit**” and together with the Initial Deposit, collectively, the “**Deposit**”) with Holland & Knight LLP (“**Seller’s Escrow Agent**”), as escrow agent, and (ii) Purchaser’s Escrow Agent shall transfer the Initial Deposit to Seller’s Escrow Agent. All references herein to the “**Escrow Agent**” prior to the expiration of the Inspection Period shall mean the Purchaser’s Escrow Agent and all references herein to the “**Escrow Agent**” after the Inspection Period shall mean Seller’s Escrow Agent, provided that Purchaser’s Escrow Agent has transferred the Initial Deposit to Seller’s Escrow Agent in accordance with the terms of this paragraph.

3. **Purchase Price.** The purchase price to be paid by Purchaser to Seller for the Property is TEN MILLION FOUR HUNDRED THOUSAND AND 00/100 DOLLARS (\$10,400,000.00) (the “**Purchase Price**”).

4. **Title.** Purchaser, at Purchaser’s expense, shall obtain a title insurance commitment (the “**Commitment**”). Subsequent to Closing (as hereinafter defined), Purchaser, at Purchaser’s expense, shall have its title agent issue a title insurance policy for the Property. Purchaser, at Purchaser’s expense, may obtain a survey of the Property (the “**Survey**”) and a municipal lien search (the “**Lien Search**”). Within three (3) business days of Purchaser’s receipt of the Commitment and Survey, Purchaser shall deliver the Commitment and Survey to the City for the City to review and approve the legal description of the Property. Purchaser shall examine

the Commitment, the Survey and the Lien Search prior to the expiration of the Inspection Period. If Purchaser finds title to be defective as evidenced by the Commitment, Survey and/or Lien Search (“**Title Defects**”), Purchaser may, prior to the expiration of the Inspection Period, notify Seller in writing specifying the defect(s) (the “**Title Notice**”). The failure by Purchaser, or Purchaser's attorney, to deliver the Title Notice on or before the expiration of the Inspection Period shall constitute Purchaser's irrevocable acceptance of the Commitment and Survey and Purchaser shall be deemed to have unconditionally waived any right to object to any matters set forth therein.

In addition, Purchaser shall have the right to object to any matter(s) first appearing on any updates to the Commitment, Survey and/or Lien Search after the expiration of the Inspection Period and which are not caused by or on behalf of or consented to by Purchaser, by giving written notice thereof to Seller within three (3) days of receiving notice thereof, and any such matter(s) will be treated as a Title Defects and will be subject to the terms of this Section 4. Purchaser shall be deemed to have unconditionally waived any such matters which it fails to give such notice to Seller within three (3) days after the date Purchaser receives same.

In the event there exist any Title Defects, Seller shall have a reasonable time to cure such Title Defects in order to deliver fee simple title to Purchaser, provided that in no event shall Seller be required to cure any Title Defects or to bring any lawsuit in order to cure a Title Defect. At Seller's option, the date of Closing may be extended for a period not to exceed ninety (90) days for purposes of allowing Seller to continue to proceed diligently, and in good faith, in eliminating any Title Defects. In the event that Seller is unable to eliminate any such Title Defects as of the date of Closing, as the same may be extended under the preceding sentence, Purchaser shall have the option of either: (i) Closing and accepting the title “as is,” without reduction in the Purchase Price, or (ii) canceling this Agreement in which event the Escrow Agent shall return the Deposit to Purchaser, whereupon both parties shall be released from all further obligations under this Agreement, except those that expressly survive termination hereof.

Notwithstanding anything to the contrary in this Agreement, Purchaser shall accept title to the Property subject to any and all violations, or notes or notices of violations of law or municipal ordinances, orders or requirements noted or issued prior to, on or after the date of this Agreement (collectively, the “**Violations**”), if any. Purchaser acknowledges and accepts that Seller shall not be obligated to comply with, or take any action or incur any expense in connection with any Violations.

5. **Permitted Exceptions.** Notwithstanding the terms and provisions of this Agreement, including, but not limited to, Section 4 above, Purchaser and Seller acknowledge that the Property shall be sold, assigned and conveyed by Seller to Purchaser, and Purchaser shall accept and assume same, subject to the following matters (collectively, the “**Permitted Exceptions**”):

(a) Any and all present and future zoning, building, environmental and other laws, statutes, ordinances, codes, rules, regulations, requirements or executive mandates of all governmental authorities having jurisdiction with respect to the Property, including, without limitation, landmark designations and all zoning variances and special exceptions, if any.

(b) Possible encroachments and/or projections of stoop areas, roof cornices, window trims, vent pipes, cellar doors, steps, columns and column bases, flue pipes, signs, piers, lintels, window sills, fire escapes, satellite dishes, protective netting; sidewalk sheds, ledges, fences, coping walls (including retaining walls and yard walls), air conditioners and the like, if any, on, under or above any street or highway, the Property or any adjoining property.

(c) Any state of facts that an accurate survey of the Property would disclose, provided same does not render title unmarketable.

(d) All presently existing and future liens for unpaid real estate taxes, assessments and water and sewer charges that are not due and payable as of the Closing Date (as hereinafter defined), subject to any prorations as provided for in this Agreement.

(e) All covenants, restrictions and rights and all easements and agreements for the erection and/or maintenance of water, gas, steam, electric, telephone, sewer or other utility pipelines, poles, wires, conduits or other like facilities, and appurtenances thereto, over, across and under the Property.

(f) Any lien or encumbrance arising out of the acts or omissions of the Purchaser.

(g) Consents by Seller or any former owner for the erection and maintenance of any structures on, under or above any streets or roads on which the Property may abut, provided same do not render title unmarketable.

(h) Such other matters as any reputable title insurer licensed to do business in the State of Florida shall be willing, without special premium, to omit as exceptions to title insurance coverage.

7: **Inspection Period.**

(a) Subject to the terms of this Agreement, Purchaser, at Purchaser's expense, shall have a period of thirty (30) days from the Effective Date (the "**Inspection Period**"), to make such physical, legal, zoning, title, survey, land use, environmental, and other examinations, inspections and investigations of the Property, that Purchaser, in Purchaser's sole discretion, may determine to make. Purchaser shall give Seller not less than 72 hours advance written notice of its intent to enter upon the Property for purposes of performing the foregoing inspections and investigations. After completing its inspection of the Property, Purchaser shall, at its sole cost and expense, repair any damage it has caused to the Property as a result of such inspections and investigations. All inspections shall be conducted during normal business hours with prior written notice to Seller as provided herein, and Seller shall have the right to have one of Seller's representatives present at any on-site inspections. All inspections of the Property shall be conducted in such a manner as to avoid any interference with any business operations on the Property. Purchaser agrees not to contact any employees of Seller without the permission of Seller.

(b) Purchaser shall have the right to terminate this Agreement, for any reason or no reason, by giving written notice to Seller (the "**Termination Notice**"), pursuant to the notice provisions set forth in Section 15 hereof, before 4:00 p.m. (Eastern Time) on or before the date on which the Inspection Period shall expire ("**Inspection Period Expiration Date**"), as the same may be extended as provided above, whereupon (i) this Agreement shall be terminated, the parties hereto shall have no further obligations to or recourse against each other (except for any provisions of this Agreement which expressly survive the termination of this Agreement), (ii) the Initial Deposit shall be returned to Purchaser, and (iii) Purchaser shall promptly return and/or deliver to Seller all due diligence materials delivered by Seller and/or third party reports obtained by Purchaser in accordance with the terms and conditions hereof. If Purchaser does not deliver the Termination Notice prior to 4:00 p.m. (Eastern Time) on the Inspection Period Expiration Date, then (i) Purchaser shall be deemed to have waived the foregoing termination right and elected to proceed to the Closing, (ii) this Agreement shall remain in full force and effect in accordance with its terms, (iii) Purchaser shall be obligated to deliver to the Seller's Escrow Agent the Second Deposit, (iv) Purchaser's Escrow Agent shall deliver the First Deposit to Seller's Escrow Agent; and (v) the Deposit shall be deemed non-refundable to Purchaser unless otherwise provided for by the terms and conditions of this Agreement.

(c) Purchaser agrees to indemnify and hold harmless Seller and Seller's commissioners, officers, directors, partners, principals, members, employees, agents, contractors, attorneys, accountants, consultants and any successors or assigns of the foregoing, (collectively with Seller, the "**Indemnified Parties**") from and against any and all costs, damages, liens or expenses (including, but not limited to, reasonable attorneys' fees) incurred by any of the Indemnified Parties, that derives from Purchaser's and/or its representatives' access to, or inspection of the Property, or any tests, inspections or other due diligence conducted pursuant to this Agreement. Additionally, the right of third parties to enter the Property on behalf of the Purchaser to assist with due diligence (e.g., surveyors, environmental inspectors, contractors) shall be subject to Purchaser's prior delivery to Seller of an insurance binder, certificate or other documentation reasonably satisfactory to Seller, evidencing the fact that said third party has liability insurance coverage (an ACORD form certificate of insurance issued by or on behalf of an insurance company authorized to do business in the State of Florida) for the Property, naming Seller as an additional insured, in an amount reasonably acceptable to Seller.

(d) The provisions of this Section 7 shall survive the Closing or earlier termination of this Agreement.

8. **As-Is Agreement.** Subject to Section 7 of this Agreement, Purchaser acknowledges that Purchaser has made thorough inspections and investigations of the Property and Purchaser agrees to take title to the Property "AS-IS, WHERE IS, AND WITH ALL FAULTS" and in the condition existing as of the date of this Agreement, subject to reasonable use, ordinary wear and tear and without any reduction in or abatement of the Purchase Price.

As of the expiration of the Inspection Period, Purchaser shall have undertaken all such investigations of the Property as Purchaser deemed necessary or appropriate under the circumstances as to the status of the Property and the existence or non-existence of curative action to be taken with respect to any hazardous or toxic substances on or discharged from the Property, and based upon same, Purchaser will be relying strictly and solely upon such

inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel and officers.

Neither party to this Agreement is relying on any statement or representation not expressly stated in this Agreement. Purchaser specifically confirms and acknowledges that in entering into this Agreement, Purchaser has not been induced by, and has not relied upon, whether express or implied, warranties, guaranties, promises, statements, inducements, representations or information pertaining to the Property or its uses, the physical condition, environmental condition, state of title, income, expenses or operation of the Property, or any other matter or thing with respect thereto, written or unwritten, whether made by Seller or any agent, employee or other representative of Seller, or any broker or any other person representing (or purporting to represent) Seller, which are not expressly set forth in this Agreement. Seller shall not be liable for or bound by any written or unwritten statements, representations, warranties, brokers' statements or other information pertaining to the Property furnished by Seller, any broker, any agent, employee or other actual (or purported) representative of Seller, or any person, unless and only to the extent the same are expressly set forth in this Agreement.

Except as expressly set forth in this Agreement, Seller makes no warranty with respect to the presence of any hazardous or toxic substances on, above, beneath or discharged from the Property (or any adjoining or neighboring property) or in any water on or under the Property. Purchaser acknowledges that it has received and reviewed various environmental reports regarding the existence of lead contaminated soils on the Property. Notwithstanding anything to the contrary herein, the Closing hereunder shall be deemed to constitute an express waiver of Purchaser's right to recover from Seller, and forever releases, covenants not to sue and discharges Seller from, any and all damages, demands, claims, losses, liabilities, penalties, fines, liens, judgments, costs or expenses whatsoever, including attorneys' fees and costs, whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with the physical condition of the Property. Except as otherwise disclosed herein, Seller has no actual knowledge of (1) notice of city, county, state, federal, building, zoning, fire or health codes, regulations or ordinances filed or issued against the Property, unless recorded in the Public Records of Miami-Dade County, Florida, (2) current pending lawsuits, investigations, inquiries or actions, or (3) any leasehold interest affecting the Property. If Seller is notified of any of the above matters prior to closing, Seller shall notify Purchaser, in writing, within five (5) business days.

The provisions of this Section 8 shall survive the Closing and shall not be deemed to have merged into any of the documents executed or delivered at the Closing.

9. **Parking Covenant with Miami-Dade County.**

The Purchaser acknowledges that the City is a party to that certain Agreement with the Waterway Neighborhood Association, dated as of February 2000, as amended by that certain Amendment to Agreement dated May 2, 2007 (as amended, the "**Waterway Neighborhood Association Agreement**"), and that certain Interlocal Agreement Between the City of Coral Gables and Miami-Dade County dated as of October 9, 2006 (the "**Parking Agreement**"). Pursuant to the Waterway Neighborhood Association Agreement and the Parking Agreement, the City agreed to make eighty (80) parking spaces available to Miami-Dade County (the "**County**")

for so long as the County operates the adjacent Brothers to the Rescue Park (the “**Park**”). The City further agreed that any agreement which the City enters into with a third party to lease, license or otherwise dispose of the Property shall preserve the County’s right to utilize eighty (80) parking spaces on the Property. The Purchaser agrees to execute and deliver at Closing a restrictive covenant where Purchaser agrees to provide eighty (80) parking spaces on the Property to the County for so long as the County operates the Park. Purchaser acknowledges that Seller cannot require the County to perform any action. Notwithstanding the foregoing, Seller will use best efforts to ensure that the County complies with all terms of the Waterway Neighborhood Agreement and the Parking Agreement and that the County grant all of Seller’s rights thereunder to Purchaser. Furthermore, Seller agrees to assign all of its rights under the Waterway Neighborhood Agreement and Parking Agreement to Purchaser.

10. **Seller’s Representations/Covenants.**

(a) Seller represents and warrants to Purchaser as follows:

(i) Seller has the full right, power and authority to enter into this Agreement and to sell and convey the Property to Purchaser as provided herein and to carry out its obligations hereunder.

(ii) The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary persons 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 Seller in accordance with its terms.

(iii) Seller 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, Seller shall deliver to Purchaser an affidavit to such effect.

(iv) Seller is vested with, and has good and valid, title to the Property.

(v) Seller represents that there are no known facts to Seller materially affecting the value of the Property, which have not been disclosed to Purchaser.

As of the Closing, all of Seller’s representations and warranties shall be true and correct in all material respects, except as otherwise disclosed by Seller to Purchaser.

(b) **Covenants.** Seller covenants that:

(i) From and after the Effective Date through Closing or earlier termination of this Agreement, Seller shall continue to operate and manage the Property in a manner consistent with its operation and management prior to the Effective Date.

(ii) From and after the Effective Date, no portion of the Property or any interest therein shall be encumbered, conveyed or otherwise transferred.

11. **Default Provisions.** In the event of a default by Purchaser under this Agreement, Seller shall receive the Deposit, as agreed and liquidated damages for said breach, and as Seller's sole and exclusive remedy for default of Purchaser, whereupon this Agreement shall terminate and the parties shall be relieved of all further obligations under this Agreement, except those that expressly survive termination hereof. Purchaser and Seller acknowledge and agree that actual damages are difficult or impossible to ascertain and that the amount of such Deposit is a fair and reasonable estimation of the damages of Seller. In the event of a default by Seller under this Agreement, Purchaser shall have the right, as sole and exclusive remedy for default of Seller, to receive the return of the Deposit, whereupon this Agreement shall terminate and the parties shall be relieved of all further obligations under this Agreement, except those that expressly survive termination hereof.

12. **Prorations.** Real estate taxes, personal property taxes, prepaid expenses, and all other fees and items of income and expense with respect to the Property shall be prorated as of 11:59 p.m. of the date immediately preceding the Closing. In the event the taxes for the year of Closing are unknown, the tax proration will be based upon the taxes for the prior year (with maximum discount) and at the request of either party, the taxes for the year of Closing shall be re-prorated and adjusted when the tax bill for such year is received and the actual amount of taxes is known.

The provisions of this Section 11 shall survive the Closing for a period of six (6) months.

13. **Closing Costs.** The parties shall bear the following costs:

- (a) The Seller shall be responsible for payment of the following: (i) the cost of recording any documents necessary to cure title to the Property, and (ii) the recording fees for the Deed (as hereinafter defined).
- (b) The Purchaser shall be responsible for payment of the following: (i) any and all costs and expenses of inspections and feasibility studies and reports incident to Purchaser's inspections, (ii) the cost of the Survey obtained by Purchaser, (iii) the cost of the preparation of the Commitment and the premium for the owner's title insurance policy together with any endorsements to be issued from the Commitment, (iv) the cost of the municipal lien search obtained by Purchaser, and (v) documentary stamp taxes on the Deed and the Miami-Dade County Surtax. Florida municipal corporations are exempt from documentary stamp taxes. If one party to a transaction is exempt from documentary stamp taxes, the nonexempt party is required to pay the tax.
- (c) Each party shall pay its own legal fees and costs.

14. **Closing.** The closing of the transactions contemplated hereunder (the "**Closing**") shall occur on that day that is thirty (30) days after the expiration of the Inspection Period (the "**Closing Date**"). The Closing may take place through a so-called "Mail-Away" closing, it being understood that neither Seller nor Purchaser nor their respective counsel need be physically present at Closing so long as all documents that are required to be delivered at Closing are fully executed, delivered in escrow to the Escrow Agent and available on the date of the Closing, and

an authorized signatory of the affected party is available either in person or by telephone and facsimile at Closing.

At or prior to Closing, Seller shall deliver to the Escrow Agent all of the following instruments, each of which shall have been duly executed and, where applicable, acknowledged and/or sworn, on behalf of Seller, and shall be dated to be effective as of the Closing Date:

- (i) A Special Warranty Deed (the “**Deed**”), in recordable form.
- (ii) A “gap” affidavit, to delete the gap title exception, and mechanic’s lien affidavit sufficient in form and content to delete standard title exceptions.
- (iii) An affidavit of non-foreign status.
- (iv) A general assignment of all general intangible rights and any other rights of Seller included in the Property.
- (v) A restrictive covenant granting eighty (80) parking spaces at the Property to the County, in a form reasonably agreed upon by Seller and Purchaser.
- (vi) Closing statement.
- (vii) Such additional assignments, instruments and documents appropriate to be executed and delivered by Seller as may be reasonably necessary to complete the transaction and to carry out the intent and purposes of this Agreement.

At or prior to Closing, Purchaser shall deliver to the Escrow Agent all of the following instruments, each of which shall have been duly executed and, where applicable, acknowledged and/or sworn, on behalf of Purchaser, and shall be dated to be effective as of the Closing Date:

- (i) A general assignment and assumption of all general intangible rights and any other rights of Seller included in the Property.
- (ii) Closing statement.
- (iii) Such additional assignments, instruments and documents appropriate to be executed and delivered by Purchaser as may be reasonably necessary to complete the transaction and to carry out the intent and purposes of this Agreement.

15. **Escrow Agent.** The Escrow Agent shall not be liable for any actions taken in good faith, but only for its gross negligence or willful misconduct. To the extent permitted by applicable law, the parties hereby indemnify, save, defend, keep and hold harmless the Escrow Agent from any and all loss, damage, cost, charge, liability, cost of litigation, or other expense, including without limitation reasonable attorneys’ fees and court costs, arising out of its obligations and duties under this Agreement, including, but not limited to, (i) disputes arising or concerning amounts of money to be paid, (ii) funds available for such payments, (iii) persons to

whom payments should be made, or (iv) any delay in the electronic wire transfer of funds, as Escrow Agent, unless Escrow Agent's actions constitute gross negligence or willful misconduct. If there be any dispute as to disposition of any proceeds held by the Escrow Agent pursuant to the terms of this Agreement, the Escrow Agent is hereby authorized to interplead said amount or the entire proceeds with any court of competent jurisdiction and thereby be released from all obligations hereunder. Further, the parties shall be jointly and severally liable to Escrow Agent for payment of its reasonable expenses in carrying out the duties set forth herein. In no event shall the Escrow Agent be required to expend its own funds for any out of pocket costs, but may give notice of such cost, without being required to do so, to the parties and decline to proceed unless and until such costs have been paid or advanced. The Escrow Agent shall not be liable for any failure of the depository.

16. **Notices.** All notices, demands, requests and other communications hereunder will be in writing and will be deemed to have been given (i) on the same business day if delivered personally, (ii) three (3) business days following mailing by registered or certified mail, return receipt requested, postage pre-paid, (iii) on the date transmitted if sent by facsimile with printed confirmation of transmittal, (iv) on the date sent if transmitted via electronic mail with printed confirmation of transmittal, or (v) on the following business day if delivered by Federal Express or other similar reputable national overnight delivery service, to either party at its address set forth below. Any notice given by a party to the other party relating to its entitlement to any portion of the Deposit shall be simultaneously given to the Escrow Agent. Notice given by an attorney of a party hereto shall be deemed to be given by such party.

Seller: City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Attn: Leonard Roberts
Phone: 305-460-5314
E-mail: lroberts@coralgables.com

copy to: Holland & Knight, LLP
701 Brickell Avenue, Suite 3300
Miami, Florida 33131
Attn: Vivian de las Cuevas-Diaz, Esq.
Email: Vivian.Cuevas@hkclaw.com
Fax Number: (305) 789-7799

Purchaser: Miami Development Fund, LLC
c/o Vincent Chen
5955 Ponce de Leon Boulevard
Coral Gables, Florida 33146
E-mail: vchen_law@yahoo.com
Phone: 305-661-6561

17. **Risk of Loss/Condemnation.** In the event that the Property or any portion thereof is taken by eminent domain prior to Closing, Purchaser shall have the option of either: (i)

canceling this Agreement and receiving a refund of the Deposit, whereupon both parties shall be relieved of all further obligations under this Agreement, except those that expressly survive termination hereof; or (ii) proceed with Closing without reduction of the Purchase Price, and Purchaser shall be entitled to all condemnation awards and settlements, if any, with respect to the Property.

18. **Brokerage.** Seller and Purchaser represent and warrant to each other that neither Seller nor Purchaser has engaged or employed any broker, agent, finder or other similar party with respect to the sale of the Property, and agree to hold each other harmless from any claims arising therefrom.

19. **Miscellaneous.**

- (a) **Governing Law; Venue.** This Agreement shall be construed and governed in accordance with the laws of the State of Florida. Venue shall be in Miami-Dade County, Florida.
- (b) **Partial Invalidity.** 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) **Assignment.** Purchaser shall have the right to assign this Agreement to an entity which Purchaser may elect to organize or incorporate and which Purchaser shall own or be in control of, or an existing entity under the ownership or control of Purchaser, for the purpose of vesting at the time of Closing. Except as provided herein, Purchaser may not otherwise assign this Agreement without the prior written consent of Seller, which consent may be withheld by Seller in Seller's sole discretion. The Purchaser's permitted assignee shall assume all of Purchaser's obligations hereunder and Purchaser shall be released from any and all liability hereunder at Closing.
- (d) **Attorneys' Fees.** In the event of any litigation between the parties under this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs at all trial and appellate levels.
- (e) **Effective Date.** The term "**Effective Date,**" as used herein, shall mean the date on which this Agreement is fully executed by Seller or Purchaser and a fully executed counterpart is delivered to both parties.
- (f) **1031 Exchange – Parties' Cooperation.** The parties acknowledge that either may be eligible to submit this transaction to a Section 1031 Exchange and each party agrees to cooperate in the event either or both make such an election. The parties further agree and understand that the cost and fees for such election shall be borne by the party making the election.

- (g) **Time.** Except as otherwise expressly set forth herein, time periods shall be calculated using calendar days. In the event that any time period herein shall end on a Saturday, Sunday or legal holiday, then such time period shall be automatically extended to the end of the next day which is not a Saturday, Sunday, or legal holiday.
- (h) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties 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 assigns.
- (i) **Counterparts.** This Agreement may be executed in several counterparts or in counterpart signature pages, and all so executed shall constitute one Agreement, notwithstanding that all of the undersigned are not signatories to the original or the same counterpart or counterpart signature page. A facsimile or .pdf of a signature to the Agreement shall be deemed and treated for all purposes of execution to be as valid as an original signature thereto.
- (j) **Force Majeure.** In the event that the performance by either party of any of its obligations hereunder is delayed by natural disaster, terrorist activity, war, labor dispute, or similar matter beyond the control of such party, without such party's fault or negligence, then the party affected shall notify the other party in writing of the specific obligation delayed, and the duration of the delay, and the deadline for completion of such obligation shall be extended by a like number of days. An extension of the obligations hereunder shall include, without limitation, an extension of the Closing Date until such time as the parties are able to perform their respective obligations hereunder. Further, the foregoing shall apply to Purchaser's failure to obtain insurance for the Property or Seller's inability to maintain current insurance at the Property due to the Property being located within the projected path of a hurricane (also known as "the cone" of the hurricane), in which event the Closing shall occur no earlier than ten (10) days after the Property is no longer located within the projected path of a hurricane
- (k) **Time is of the Essence.** Time is of the essence with respect to each and every provision of this Agreement.
- (l) **Waiver of Trial by Jury.** SELLER AND PURCHASER HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED ON THIS AGREEMENT OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENT OR INSTRUMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY HERETO. THIS PROVISION

IS A MATERIAL INDUCEMENT FOR SELLER AND PURCHASER ENTERING INTO THE SUBJECT TRANSACTION.

- (m) **Amendment**. No modification or amendment of this Agreement shall be of any force or effect unless in writing executed by both Seller and Purchaser.
- (n) **Recording**. Neither this Agreement nor any portion thereof nor memorandum relating hereto shall be placed of record by any party to this Agreement.
- (o) **Section Headings**. The section headings of this Agreement are for the purposes of reference only and shall not be used for limiting or interpreting the meaning of any section.
- (p) **Sovereign or Governmental Immunity**. Seller and Purchaser acknowledge that the Florida Doctrine of Sovereign Immunity bars all claims against Seller other than claims arising out of this Agreement. Specifically, Purchaser acknowledges that it cannot and will not assert any claims against Seller, unless the claim is based upon a breach by Seller of this Agreement. Furthermore, Purchaser understands that it has no right and will not make any claims based upon any of the following: (i) claims based upon any alleged breach by Seller of warranties or representations not specifically set forth in this Agreement; (ii) claims based upon negligence or any tort arising out of this Agreement; (iii) claims upon alleged acts or inaction by Seller, its elected officials, attorneys, administrators, consultants, agents, or any Seller employee; or (iv) claims based upon an alleged waiver of any of the terms of this Agreement. Nothing in this Agreement is intended to operate as a waiver of Seller's sovereign immunity, as set forth in the Florida Constitution and Florida Statutes Chapter 768.28.
- (q) **Limitation of Liability**. The Indemnified Parties shall have no personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, theretofore or hereafter.
- (r) **Further Assurances**. Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby, provided such documents are customarily delivered in real estate transactions in the State of Florida and do not impose any material obligations upon any party hereunder except as set forth in this Agreement.
- (s) **No Waivers**. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party providing the waiver. No waiver by either party of any failure or refusal to comply with any obligations under this Agreement shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

- (t) **Required Disclosure.** In accordance with Section 2-1095 of the City's Code of Ordinance, prior to the Closing Date, the Purchaser agree that they will file with the City a document identifying the extent of their ownership interest in the Property.

[SIGNATURE PAGES TO FOLLOW]

EXECUTED as of the date set forth below each signature in several counterparts, each of which shall be deemed an original, but all constituting only one agreement.

SELLER:

CITY OF CORAL GABLES, a municipal corporation existing under the laws of the State of Florida

By: _____
Name: Cathy Swanson-Rivenbark
Title: City Manager
Date: _____

Approved for Form and Legal Sufficiency:

By: _____
Name: Miriam Ramos
Title: City Attorney
Date: _____

Attestation of Signatures:

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

[ADDITIONAL SIGNATURES TO FOLLOW]

EXECUTED as of the date set forth below each signature in several counterparts, each of which shall be deemed an original, but all constituting only one agreement.

PURCHASER:

MIAMI DEVELOPMENT FUND, LLC, a
Florida limited liability company

By: _____

Print Name: Vincent Chen

Title: Manager

Date: September C, 2018