

Re: Lease dated October 22, 1991, as amended and restated as of December 31, 1996, between **CITY OF CORAL GABLES**, a Florida municipal corporation, as lessor, and **MERRICK CENTER, LTD.**, a Florida limited partnership, as lessee, as evidenced by Memorandum of Ground Lease dated December 30, 1996, recorded January 30, 1997 in Official Records Book 17512, Page 1986, Miami-Dade County, Florida records, as amended by that certain First Amendment dated as of December 18, 1998, recorded December 22, 1998 in Official Records Book 18401, Page 4217, Miami-Dade County, Florida records, and that certain Second Amendment dated as of December 16, 2003, recorded January 13, 2004 in Official Records Book 21967, Page 2995, Miami-Dade County, Florida records, with respect to Real Property described on Exhibit A (the “Real Property”)

THIRD AMENDMENT

THIS THIRD AMENDMENT (“Third Amendment”) to the Amended and Restated Lease Agreement (as amended, the “Lease”), dated October 22, 1991, as amended and restated as of December 31, 1996, as amended by that certain First Amendment dated as of December 18, 1998, and that certain Second Amendment dated as of December 16, 2003, is made and entered into as of January __, 2016, between the **CITY OF CORAL GABLES**, a Florida municipal corporation (“City”) and **SCG ATLAS GABLES GRAND PLAZA, L.L.C.**, a Delaware limited liability company (“SCG”).

RECITALS:

SCG was assigned the interest of “Developer” under the Lease pursuant to that certain Assignment of Ground Lease, dated as of January __, 2016, by ERP Operating Limited Partnership, as to an undivided 73% interest in the Lease and EQR-SWN Line Vistas, Inc., as to an undivided 27% interest in the Lease (collectively, “EQR”). It is SCG’s intention to place debt financing on its leasehold interest in the Real Property coterminous with or shortly following closing of its acquisition of the leasehold interest in the Real Property although that is not an obligation.

In connection with the assignment of the Lease to SCG, it is helpful for SCG to determine, as was determined in the Second Amendment to the Lease prior to the acquisition by EQR of the interest of “Developer”, the Internal Rate of Return (defined in Section 2.5(c) of the

Lease as the “IRR”) for calculation of Transaction Rent that will be applicable to sale or refinancing transactions by SCG of the interest of SCG under the Lease.

Accordingly, SCG has requested the City to modify the Lease in the manner set forth herein, and for the periods of time set forth herein, and the City has agreed to such modifications as set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties hereto mutually covenant and agree as follows:

1. IRR Determination. With respect to the calculation of Transaction Rent for the sale or first refinancing transaction by SCG subsequent to its acquisition of the interest of “Developer” under the Lease from SCG, City hereby agrees as follows:

- (a) Unleveraged Investment. If the investment by SCG in the acquisition of the interest of “Developer” under the Lease is unleveraged (that is, a 100% equity investment in the purchase price for the interest of “Developer” under the Lease, without third party, arm’s length mortgage debt financing, herein referred to, for purposes of this Third Amendment, as “Debt”), the IRR for calculation of Transaction Rent (as defined in the Lease) shall be equal to seven percent (7.0%) per annum.
- (b) Equity Investment of 40% down to 20% or less (Debt of 60% to 80% or more). If the investment by SCG in the acquisition of the interest of “Developer” under the Lease is concurrently leveraged (that is, a portion of the purchase price for the interest of “Developer” under the Lease, is financed with Debt), the IRR (as defined in the Lease) for calculation of Transaction Rent shall be based on a sliding scale ranging from:
 - (i) an IRR of eleven percent (11.0%) per annum if the equity equals 40% of “SCG’s Acquisition Costs” (defined as the total cost of the acquisition by SCG, including the purchase price and all closing costs incurred by SCG) (and 60% financed by Debt) to
 - (ii) a maximum IRR of fifteen percent (15.0%) per annum if the equity equals 20% or less of SCG’s Acquisition Costs (and 80% or more financed by Debt).

The foregoing calculation of IRR would be calculated on a straight-line basis within those 20%/40% equity parameters, so that, for example, if the equity equals 30% of SCG’s Acquisition Costs (and 70% financed by Debt), the IRR would be set at thirteen percent (13.0%) per annum.

- (c) Equity Investment of more than 40% (Debt of less than 60%). If the investment by SCG in the acquisition of the interest of “Developer” under the Lease is concurrently leveraged with Debt and the equity is in excess of 40% of SCG’s Acquisition Costs (and less than 60% financed by Debt),

the IRR (as defined in the Lease) for calculation of Transaction Rent shall be based on a “blended” rate, but in no event less than seven percent (7.0%), comprised of (i) an IRR of eleven percent (11.0%) per annum as to the amount of such equity which equals 40% of SCG’s Acquisition Costs, and (ii) an IRR equal to the applicable fixed interest rate under the Debt as to the amount of such equity which is in excess of 40% of SCG’s Acquisition Costs; provided, that to the extent that SCG uses floating rate debt, the fixed interest rate equivalent for purpose of the calculation of the IRR to be applied to the portion of equity in excess of 40% shall be an interest rate equal to the interest spread (the interest margin SCG pays over LIBOR) actually obtained by SCG plus the published swap rate that matches the term of the applicable financing as published in the Wall Street Journal on the day the financing is put in place (but in no event shall the term of the swap used for this calculation be more than 10 years). As examples (if SCG obtains a 10 year floating rate financing with a spread of 230 basis points and the 10 year swap in the Wall Street Journal on the day the financing is put in place is 2%, then the fixed rate equivalent for determining the IRR on the portion of equity above 40% would be 4.3%):

- (A) if 50% of the total of SCG’s Acquisition Costs were supplied by Debt and 50% supplied by equity, the IRR would be set at nine and sixty-six hundredths percent (9.66%) per annum, based on eleven percent (11.0%) per annum for 80% of the equity investment, and four and three tenths percent (4.3%) per annum for the remaining 20% of the equity investment;
 - (B) if 40% of the total of SCG’s Acquisition Costs were supplied by Debt and 60% supplied by equity, the IRR would be set at eight and seventy seven hundredths percent (8.77%) per annum, based on eleven percent (11.0%) per annum for two thirds of the equity investment, and four and three tenths percent (4.3%) per annum for the remaining one third of the equity investment; and
 - (C) if 30% of the total of SCG’s Acquisition Costs were supplied by Debt and 70% supplied by equity, the IRR would be set at eight and thirteen hundredths percent (8.13%) per annum, based on eleven percent (11.0%) per annum for 57.14% of the equity investment, and four and three tenths percent (4.3%) per annum for the remaining 42.86% of the equity investment.
- (d) For the purpose of determining the appropriate IRR to apply to leveraged equity from the time of a financing or refinancing until the subsequent Transaction, Debt shall be calculated not as a percentage of SCG’s Acquisition Costs, but as a percentage of the market value of Developer’s interest in the Project at the time of such Debt financing or refinancing (and references in subsection (b) or (c) above to “SCG’s Acquisition

Costs” shall for the purposes of this subsection (d) be deemed to mean such value). The market value shall be determined based upon the appraisal used by the lender for underwriting the financing, a copy of which shall be submitted to the City. If the City questions the market value estimate in that appraisal, it may engage its own appraiser to perform an independent appraisal. If the value estimates in the two appraisals are within 5%, the average shall be used and, if greater than 5% different, a third appraiser shall be jointly appointed by the City’s and Developer’s appraisers and the value used shall be that estimated by that appraiser, but in no event shall the value be above the higher or below the lower of the two previous value estimates. The timeframes for notification and execution of the appraisal process shall be the same as those specified in Section 2.5(c) of the Lease for disputes relative to determination of the IRR.

- (e) Should SCG subsequently place or refinance Debt on the interest of “Developer” under the Lease in accordance with the terms of the Lease, then:
 - (i) If such financing or refinancing Transaction does not yield sufficient proceeds such that, along with prior cash flows (from operation and any prior financing or refinancing transactions), SCG has not received a full return of and on its Developer Equity (at the applicable IRR specified in subsection (a), (b), (c) or (d), above for the period prior to the newly placed Debt or refinance Debt), then, calculation of Net Proceeds and Transaction Rent at the time of a subsequent Transaction shall be based on an IRR equal to the weighted average of time, amount of actual Developer Equity (at the time of the Transaction commencing the period) and IRR (at the applicable rate specified in subsection (a), (b) or (c)) for each time period characterized by a different IRR, and this approach will be repeated for any subsequent Transactions until a Transaction occurs which results in SCG having received a full return of and on its Developer Equity;
 - (ii) If such financing or refinancing Transaction yields sufficient proceeds such that, along with prior cash flows (from operation and any prior financing or refinancing transactions), SCG has received a full return of and on its Developer Equity (at the applicable rate specified in subsection (a), (b) or (c), (as may be blended as specified above) for the period prior to the newly placed Debt or refinance Debt), then, Transaction Rent due from any Net Proceeds calculated from that Transaction will be paid at that time and, at the time of a subsequent Transaction, Net Proceeds available for Transaction Rent shall be calculated after deducting a return of and on any Developer Equity that may subsequently be invested in the Project, with the IRR for such

return being the applicable rate specified in subsection (a), (b) or (c), above, for the period(s) following that previous Transaction which yielded a full return of and on Developer Equity.

- (f) The IRR determination set forth in Sections 1(d) and (e) would be calculated as set out in the following illustrations; for the purpose of simplifying these illustrations, no closing or other transaction costs, reserves, net cash flow from operations, amortization of debt principal or Developer contributions to operations are assumed (though, in actuality, if these were received or incurred, they would adjust the amount of Developer Equity and factor into the return of and on Developer Equity as and to the extent specified in the Lease).

(A) Illustrations:

- (i) SCG acquires the interest in the Project for \$1,000 on an all-equity, unleveraged basis.
- (ii) One year later, the interest is valued at \$1,100 and SCG places \$660 of Debt on it.
- (iii) One year after the first financing, the interest is valued at \$1,200 and SCG refinances, placing \$900 of debt on it.
- (iv) Two years after the refinancing specified in (iii), the interest is valued at \$1,600 and SCG refinances, placing \$1,280 of debt on it.

(B) Calculation of Net Proceeds for each of the above and a subsequent Transaction would treat IRR on Developer Equity as follows:

- (i) A 7% IRR is applied to the Developer Equity of \$1,000 for the period from the acquisition until the time the first financing is placed upon the interest.
- (ii) The first financing (in Section 1(f)(A)(ii) above) does not result in a return of and on (at the 7% IRR) Developer Equity. Upon this first financing, the Developer Equity balance is reduced from \$1,000 to \$340. The IRR to be applied to Developer Equity for the period from the placement of this Debt until the subsequent refinancing or sale is 11.0% (based upon the imputed equity percentage of 40% of market value at the time of the first financing, i.e. market value of \$1,100 less \$660 Debt equals \$340 of imputed equity, divided by market value equals 40%).

- (iii) Upon the refinancing of that Debt (specified in Section 1(f)(A)(iii) above), calculation is made to determine whether SCG has received a full return of and on Developer Equity. The IRR to be applied to the entire holding period for this calculation is 8.01%, which is the weighted average of the time, the imputed equity amount at the start of each period and the IRR for each of the two periods. More specifically, this calculation is as follows:
- (a) The product of 7.0% (the IRR for calculation of Transaction Rent for the first period) multiplied by 1,000 (the product of the amount of Developer Equity at the start of the first period - \$1,000, multiplied by the length of the first period - 1 year); plus
 - (b) The product of 11.0% (the IRR for calculation of Transaction Rent for the second period) multiplied by 340 (the “Time-Equity Adjustment Factor”, which is the product of the amount of Developer Equity at the start of the second period - \$340, multiplied by the length of the second period - 1 year);
 - (c) The sum of the above two products are divided by 1,340 (the total of the Time-Equity Adjustment Factors for the two periods).

In this example, the refinancing does not result in a return of and on (at the 8.01% IRR) Developer Equity. Upon this refinancing, the Developer Equity balance is reduced from \$340 to \$100. The IRR to be applied to Developer Equity for the period from the time of this refinancing until a subsequent refinancing or sale is 14% (based upon the imputed equity percentage of 25% of value at the time of this refinancing, i.e. market value of \$1,200 less \$900 Debt equals \$300 of imputed equity, divided by market value equals 25%).

- (iv) Assuming the prior Transaction has not resulted in SCG receiving a full return of and on its Developer Equity, as is the case in the above example, upon the second refinancing (specified in Section 1(f)(A)(iv) above) two years after the first refinancing, calculation is made to determine whether SCG has received a full return of and on Developer Equity. The IRR, to be applied to the entire holding period is 8.79%, based on the following calculation:

- (a) The product of 7.0% (the IRR for calculation of Transaction Rent for the first period) multiplied by the Time Adjustment Factor of 1,000 (the product of the amount of Developer Equity at the start of the first period - \$1,000, multiplied by the length of the first period - 1 year); plus
- (b) The product of 11.0% (the IRR for calculation of Transaction Rent for the second period) multiplied by the Time Adjustment Factor of 340 (the product of the amount of Developer Equity at the start of the second period - \$340, multiplied by the length of the second period - 1 year); plus
- (c) The product of 14% (the IRR for calculation of Transaction Rent for the third period) multiplied by the Time Adjustment Factor of 200 (the product of the amount of Developer Equity at the start of the third period - \$100, multiplied by the length of the third period - 2 years);
- (d) The sum of the above three products are divided by 1,540 (the total of the Time-Equity Adjustment Factors for the three periods).

In this example, this Transaction does result in Developer receiving a return of and on its Developer Equity over the holding period to that time, with Net Proceeds of \$113, resulting in Transaction Rent to the City, at 20%, equaling \$22.60.

The Developer Equity balance is reduced from \$100 to zero. The IRR to be applied to any Developer Equity that may subsequently be invested for the period from the time of this refinancing until a subsequent refinancing or sale is 15% (based upon the imputed equity percentage of 20% of value at the time of this refinancing, i.e. market value of \$1,600 less \$1,280 Debt equals \$320 of imputed equity, divided by market value equals 20%). At the time of the next Transaction, any Developer Equity would be due an IRR return of 15% (with the prior Transaction having “wiped the slate clean”, the IRRs for the previous periods would not be considered).

- (g) Notwithstanding the foregoing, if SCG elects, in its sole and absolute discretion, to acquire rate protection for the Real Property in the form of a hedge, interest rate cap agreement or similar financial instrument (“Rate

Protection”) or an affiliate of SCG elects, in its sole and absolute discretion, to acquire Rate Protection for a portfolio of properties that includes the Real Property, and such Rate Protection ultimately benefits the IRR of SCG, such Rate Protection put in place at the Real Property or portfolio level, and all costs and expenses incurred in connection with the acquisition and maintenance of such Rate Protection, shall be included in the IRR determination set forth in this amendment. The City acknowledges and agrees that SCG and its affiliates shall not be obligated to acquire nor to maintain any such Rate Protection for the Real Property or the portfolio that includes the Real Property, and SCG and its affiliates may elect, in their sole and absolute discretion, at any time to terminate any such Rate Protection.

2. Subsequent Calculations of IRR. The above IRRs would apply only to SCG’s sale, or to any refinancing transaction by SCG, and not to any sale or refinancing transaction of any subsequent owner following SCG. Notwithstanding the terms of this Third Amendment or any other term of the Lease to the contrary, any sale or refinancing transactions by SCG’s successors or assigns, would be subject to the process for setting the IRR set forth in Section 2.5(c) of the Lease as applying to successors and assigns of The Prudential Insurance Company of America, unless agreed otherwise by the parties at that time, with the following clarifications and modifications:

- A. Where IRR is to be determined, it shall be the rate appropriate to an unleveraged equity investment for the time that Developer holds the interest in the Project on an unleveraged basis, and then, for the period following a Debt financing, the rate appropriate to a leveraged equity investment, considering the leverage ratio of Debt relative to market value at time of financing, with all such rates being those that would be considered most likely in the investment market as of the date of such Developer’s acquisition of the interest in the Project.
- B. Any placement of Debt financing upon Developer’s interest in the Project which results in Net Proceeds, as defined in Section 2.5(c) of the Lease and as amended herein, shall be considered a Refinancing, triggering Transaction Rent.

3. Costs. SCG agrees that SCG will reimburse the City’s third party professional consultant, appraisal and legal expenses reasonably incurred in evaluating and implementing this modification in advance of the transaction, with reimbursement(s) due within 30 days of submittal of invoices by the City, which invoices may be submitted from time to time. The reimbursed expenses would be credited against transaction rent, if any, for the proposed transaction.

4. Reaffirmation. The terms and provisions of the Lease, as hereby amended, are hereby ratified and confirmed by the parties hereto.

IN WITNESS WHEREOF, **SCG ATLAS GABLES GRAND PLAZA, L.L.C.** has caused this Third Amendment to be signed in its name by a _____ duly authorized hereunto, and the **CITY OF CORAL GABLES** has caused this Third Amendment to be signed in its name by _____, the City Manager, and duly attested to by the City Clerk, on the day and year first above written, and by the City Attorney.

Signed, sealed and delivered in the presence of: **SCG ATLAS GABLES GRAND PLAZA, L.L.C.**, a Delaware limited liability company

Witness
Printed Name: _____

By: _____
Name:
Title:

Witness
Printed Name: _____

Tax Parcel ID No.:03-4108-006-3340

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of January, 2016, by _____, a _____, on behalf of **SCG ATLAS GABLES GRAND PLAZA, L.L.C.**, a Delaware limited liability company. Said officer is personally known to me or has produced a valid drivers license as identification.

Notary Public
Commission Number: _____
My Commission Expires: _____

(NOTARY SEAL)

Originally by authority of Resolution No. 27794 duly passed and adopted by the Coral Gables City Commission on October 22, 1991, and as Amended and Restated by Authority of Resolution No. 29085, duly passed and adopted by the Coral Gables City Commission on June 11,1996

Signed, sealed and delivered in the presence of: CITY OF CORAL GABLES, a Florida municipal corporation

Witness
Printed Name: _____

By: _____
Cathy Swanson-Rivenbark, City Manager

Witness
Printed Name: _____

ATTEST:

City Clerk

APPROVED AS TO FORM AND SUFFICIENCY:

By: _____

City Attorney

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this ____ day of January, 2016, by _____, on behalf of the City of Coral Gables, said officer is personally known to me or has produced _____ as identification.

Notary Public
Commission Number: _____
My Commission Expires: _____

(NOTARY SEAL)

EXHIBIT A

(Legal Description)

THE EASTERNMOST 12.64 FEET OF LOT 3 AND ALL OF LOTS 4 THROUGH 45, INCLUSIVE, OF BLOCK 35, OF "CORAL GABLES SECTION "K"", ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 8 AT PAGE 33 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, TOGETHER WITH THE 20-FOOT WIDE ALLEY IN SAID BLOCK 35 THAT LIES BETWEEN THE ABOVE DESCRIBED LOTS, AS SHOWN ON SAID PLAT.