

CITY OF CORAL GABLES

RESOLUTION NO. _____

RESOLUTION APPROVING MODIFICATIONS TO AN APPROVED DEVELOPMENT AGREEMENT FOR MEDITERRANEAN VILLAGE (N/K/A THE PLAZA CORAL GABLES) PLANNED AREA DEVELOPMENT FOR THE PROPERTY LOCATED AT 2801, 2901, and 3001 PONCE DE LEON BOULEVARD, CORAL GABLES, FLORIDA 33134.

WHEREAS, Agave Ponce, LLC (“Owner”) holds the fee simple title to the land at 2801, 2901, and 3001 Ponce de Leon Boulevard in the City of Coral Gables, Florida (hereinafter the “Property”), which is legally described on the attached **Exhibit “A”**; and

WHEREAS, the City Commission on June 10, 2015, approved a Planned Area Development (“PAD”) on the Property known as Mediterranean Village (the “Project”) pursuant to Ordinance No. 2015-13 along with several other land use, zoning and development approvals for the Project (the “Approvals”); and

WHEREAS, the Project, now known as “The Plaza Coral Gables” has been further elaborated and certain modifications have been proposed so as to better balance the Project’s multiple uses, preserve its historic structures and neighboring properties, to provide for additional and larger open space areas, and to better ensure the Project’s economic viability; and

WHEREAS, as part of the Approvals, the Owner and City entered into that certain Development Agreement dated August 14, 2015, recorded at Book 30093, Page 1483 in the Public Records of Miami-Dade County (the “Development Agreement”); and

WHEREAS, pursuant to Zoning Code Section 3-2010, the City Manager has reviewed the Development Agreement and has determined that the Development Agreement needs to be modified in order to correct the Project’s non-compliance with the Development Agreement construction schedule and to provide for a mix of uses and Developer’s contributions which will allow for an economically viable Project; and

WHEREAS, in an effort to demonstrate good-faith compliance with the terms of the Development Agreement and after meeting with City Staff, Owner and City Staff acknowledge that certain modifications to the previously approved PAD and site plan have become necessary to ensure the Project’s viability and to meet the City’s high standards and to update the Project’s construction timeline, and that, therefore, the approved Development Agreement must also be modified to be consistent with the modifications to the PAD site plan; and

WHEREAS, the proposed modifications to the Development Agreement (the “Agreement Modifications”) attached as **Exhibit “B”**, are the result of thoughtful

consideration by the Owner after consulting with both City Staff and outside experts to ensure that the Project will be both economically viable and a valued community asset; and

WHEREAS, on March 14, 2017, the City Commission reviewed and expressed its support for the proposed modifications to the approved PAD site plan; and

WHEREAS, pursuant to Zoning Code Section 3-2010, the City Commission is authorized to approve modifications to the Development Agreements; and

WHEREAS, the City finds that the Agreement Modifications are consistent and compatible with the City's Comprehensive Plan and Zoning Code;

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

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

SECTION 2. The City finds the applicable provisions of the Zoning Code for amending development agreements have been satisfied.

SECTION 3. The City finds good-faith compliance with the Development Agreement and further finds that the proposed Agreement Modifications are necessary to fulfill the intent of the Development Agreement and hereby approves the amendments to the Development Agreement pursuant to the Agreement Modifications attached as **Exhibit "B"** and authorizes the City Manager to execute an Amendment to the Development agreement which is consistent with this Resolution

SECTION 4. The approval of the Agreement Modifications is consistent with the City's Comprehensive Plan and compliant with the Zoning Code.

SECTION 5. That this Resolution shall become effective upon the dated of its passage and adoption herein.

PASSED AND ADOPTED THIS _____ DAY OF MARCH, A.D., 2017

APPROVED:

JIM CASON
MAYOR

ATTEST:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

WALTER J. FOEMAN
CITY CLERK

CRAIG E. LEEN
CITY ATTORNEY

EXHIBIT "A"

LEGAL DESCRIPTION

EXHIBIT "B"
AGREEMENT MODIFICATIONS

MIA_ACTIVE 4588756.1

EXHIBIT "A"

LEGAL DESCRIPTION

LEGAL DESCRIPTION:

PARCEL ①:

LOTS 1 THROUGH 36, BLOCK 20, CRAFTS SECTION OF CORAL GABLES, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 10, AT PAGE 40, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

PARCEL ②:

ALL OF THE NORTH-SOUTH ALLEY, WHICH EXTENDS FROM SEVILLA AVENUE TO PALERMO AVENUE, AND THE EAST-WEST ALLEY IN BLOCK 20, CRAFTS SECTION OF CORAL GABLES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 10, AT PAGE 40, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, AS VACATED BY CITY OF CORAL GABLES ORDINANCE 2006-24.

PARCEL ③:

LOTS 1, 2, 3, 16, 17, 18 AND 19, BLOCK 30, OF CORAL GABLES CRAFTS SECTION ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 10, PAGE 40 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; AND TRACTS A, B AND C OF CATAMAL CORNER, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 102, PAGE 69 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; AND LOTS 6 AND 7, LESS THE NORTHEASTERLY 107.5 FT. THEREOF, BLOCK 30, OF CORAL GABLES CRAFTS SECTION ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 10, PAGE 40 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

PARCEL ④:

ALL THAT PORTION OF THE NORTH-SOUTH ALLEY IN BLOCK 30, CORAL GABLES CRAFTS SECTION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 10, PAGE 40, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, WHICH LIES SOUTH OF THE EASTERLY EXTENSION OF THE NORTH LINE OF LOT 1, BLOCK 30, CORAL GABLES CRAFTS SECTION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 10, PAGE 40, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, AS VACATED BY CITY OF CORAL GABLES ORDINANCE 2006-24.

PARCEL ⑤:

LOTS 14 AND 15 AND THE WEST 10 FEET OF LOT 13, BLOCK 30, OF CORAL GABLES CRAFTS SECTION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 10, PAGE 40 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

PARCEL ⑥:

LOTS 12 AND 13, LESS THE WEST 10 FEET OF LOT 13, BLOCK 30, OF CORAL GABLES CRAFTS SECTION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 10, PAGE 40 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

PARCEL ⑦:

LOTS 10 AND 11, IN BLOCK 30, OF CORAL GABLES CRAFTS SECTION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 10, PAGE 40 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

PARCEL ⑧:

LOTS 8 AND 9, BLOCK 30, OF CORAL GABLES CRAFTS SECTION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 10, PAGE 40 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

PARCEL ⑨:

NORTHEASTERLY 107.5 FEET OF LOTS 6 AND 7, BLOCK 30, OF CORAL GABLES CRAFTS SECTION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 10, PAGE 40 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

PARCEL ⑩:

ALL OF THE LANDS AS CONTAINED IN THAT CERTAIN RECORD PLAT OF "PONCE PLACE VILLAS EAST," ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 168 AT PAGE 42, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

EXHIBIT "B"
AGREEMENT MODIFICATIONS

MIA_ACTIVE 4588756.1

THIS INSTRUMENT RETURN TO:

Walter Foeman, City Clerk
City of Coral Gables
405 Biltmore Way, 1st Floor
Coral Gables, FL 33134

THIS INSTRUMENT PREPARED BY:

Susan L. Trevarthen, Esq.
Weiss Serota Helfman Cole & Bierman, P.L.
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, Florida 33134

Mario Garcia-Serra, Esq.
Gunster, Yoakley & Stewart, P.A.
600 Brickell Avenue, Suite 3500
Miami, Florida 33131

DEVELOPMENT AGREEMENT

between

AGAVE PONCE, LLC, a
Florida limited liability company

and

CITY OF CORAL GABLES, a
Florida municipal corporation

EFFECTIVE DATE OF

August 14, 2015

AMENDED DEVELOPMENT AGREEMENT

THIS AMENDED DEVELOPMENT AGREEMENT (“Agreement” or “Amended Development Agreement”) is executed this _____ day of ~~April, 2016,~~ 2017, by and between the CITY OF CORAL GABLES, a Florida municipal corporation (“City”) and AGAVE PONCE, LLC, a Florida limited liability company (“Owner”, as more specifically defined herein).

RECITALS:

A. Owner is the owner in fee simple of the property more particularly described in **Exhibit A** attached hereto (the “Property”).

B. Owner has applied to the City Commission for approval of a Mediterranean Village Planned Area Development (“PAD”) pursuant to Section 3-510 of the City’s Zoning Code.

C. Section 3-510(F) of the City’s Mediterranean Village PAD regulations requires a Development Agreement to be entered into with respect to the Property which grants certain assurances regarding the construction, operation and maintenance of the proposed PAD.

D. The City and Owner desire to enter into this Agreement amending the Development Agreement executed May 25, 2016 recorded at Book 30093, Page 1483 in the Miami-Dade Public Records for the purpose of providing the terms and conditions on which the Property is to be developed; and to reflect a decrease in the approximate Project construction costs from \$500 Million to \$400 Million. The City may require further amendment of this Agreement if there are substantial increases in the Project construction costs.

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

ARTICLE I. EXHIBITS, DEFINITIONS, AND FURTHER ASSURANCES

Section 1.1 Exhibits. Attached hereto and forming a part of this Agreement are the following Exhibits:

- Exhibit A Legal Description of Property
- Exhibit B Development Schedule
- Exhibit C Hotel Standards of Operations
- Exhibit D Reserved
- Exhibit E Retail Standards of Operation

“Section”, “Subsection”, “Paragraph”, “Subparagraph”, “Clause”, or “Subclause” followed by a number or letter means the section, subsection, paragraph, subparagraph, clause, or subclause of this Agreement so designated.

Section 1.3 Terms from City Codes. Terms used in this Agreement which are defined in the City’s Code of Ordinances and Zoning Code will have the meaning set forth in the those codes.

Section 1.4 Approvals and Consents. Wherever in this Agreement the approval or consent of any party is required, it is understood and agreed that, except as otherwise specified, such approval or consent will not be unreasonably withheld or delayed.

ARTICLE II. PLANS, DEVELOPMENT AND OPERATING STANDARDS, PARKING, AND IMPROVEMENTS

Section 2.1 Development Plans. The Owner and the City acknowledge and agree that the Property shall be developed in **substantial** conformance with the architectural and landscaping plans and the Sign Package prepared by RTKL that are included in the packet for the June 10, 2015 City Commission Meeting and were approved by the City Commission, as the same may be amended from time to time after City approval (collectively, the “Approved PAD Plans”), and the terms and conditions of this Agreement; it being agreed that any amendments to the Approved PAD Plans shall comply with the City’s process for amending PADs as codified at Section 3-507 of the City’s Zoning Code. Owner acknowledges that any proposed change to the exterior façade of a building shall require review and approval of the Board of Architects, at the discretion of the Development Review Official.

Section 2.2 Uses. The following uses, together with all ancillary uses, shall be permitted on the Property (as such uses and ancillary uses are defined or described, as applicable, under the City’s Zoning Code):

- (i) Retail uses of approximately ~~265,000~~137,000 square feet (the “Retail Component”).
- (ii) Restaurant uses of approximately ~~29,000~~40,000 square feet (the “Restaurant Component”).
- (iii) Office uses of approximately ~~317,000~~474,000 square feet (the “Office Component”).
- (iv) Residential uses of approximately ~~214~~136 multi-family units and 15 townhomes.
- (v) Hotel uses of approximately ~~184~~220 rooms (the “Hotel”).
- (vi) Publicly Accessible Open Spaces as depicted on **Exhibit L** attached hereto.

Section 2.3 Changing of Uses. The shifting of floor area from one use to another is subject to the following:

operate at the Operating Standards required to qualify for at least a AAA four diamond rating or an equivalent standard will give the City the rights and remedies provided for in Exhibit C.

Section 2.7 Retail Component Operating Standards. The Retail Component shall be operated in accordance with the standards set forth on Exhibit E attached hereto.

Section 2.8 Restaurant Component Operating Standards. The Restaurant Component shall be operated in accordance with the standards set forth on Exhibit F attached hereto.

Section 2.9 Office Component Operating Standards. The Office Component shall be operated in accordance with the standards set forth on Exhibit G attached hereto.

Section 2.10 Publicly Accessible Open Spaces. All Publicly Accessible Open Spaces will be open to the public in perpetuity, subject to (a) closures required from time to time for replacement and repair, (b) closures for occasional scheduled events in accordance with Section 7.7 hereof, (c) reasonable limitations on hours of operation as established by the Owner from time to time, which at a minimum shall be no less than the regular City Park hours, unless other approved by the City Manager, and (d) closures once per year required to prevent dedication to the public. The Publicly Accessible Open Spaces will be maintained by the Owner at a level of quality equal to or higher than the City's actual maintenance standard for the public open spaces at the Biltmore Hotel, will meet the requirements of Article VII hereof, and will be placed and operated in conformance with the descriptions in Exhibit L attached hereto.

Section 2.11. Public Safety; Public Art; [Ponce Circle Park](#).

(i) Satisfaction of Code requirements. The City's "Art in Public Places" Ordinance (the "Art Ordinance") requires 1% of the Aggregate Project Value to be spent on on-site public art installations or contributions to the City's "Art in Public Places" fund (the "Art Fund") or both. The Owner proposes to satisfy the Art Ordinance by providing on-site public art installations. The public art installations that will be proposed by the Owner from time to time will be reviewed and approved by the City under the Art Ordinance review process in effect on the date hereof, except that the time for payment or installation of such art may be extended from building permit to the date of the Project's first Temporary Certificate of Occupancy in the discretion of the City Manager. The maintenance of, and public access to, artwork will comply with requirements of the City's Art Ordinance.

(ii) Additional contribution. In addition to complying with the Art Ordinance and all other applicable fees and costs related to Governmental Requirements, the Owner hereby commits to contribute an additional \$2.7 million to the City no later than the first Temporary Certificate of Occupancy. This contribution is proffered by the Owner in relation to the Approved PAD Plans, to be used by the City for one or both of the two following purposes. The allocation of the contribution is in the sole discretion of the City Commission.

(a) Public Safety. All or part of the contribution may be used for the public safety needs specified in the Public Safety Memo attached as Exhibit M.

(b) Public Art. All or part of the contribution may be used for installation of publicly accessible artwork into the Project or in Ponce Circle Park, adjacent to the Project, or in both places, for the benefit of the Project and of the City. The artwork to be acquired shall be compatible with the Project design and aesthetics. The City Manager will inform the Owner of, and give the Owner an opportunity to comment on, the identity of the artist and the specific works of art that the City intends to purchase using this additional contribution. The exact placement of art purchased with this additional contribution shall be determined by the City Manager, after providing the Owner an opportunity to comment on the proposed location.

(iii) Additional Ponce Circle Park Contribution. The Owner shall, prior to the issuance of the first initial phase or master building permit for the Project, contribute \$2 Million to the City for improvements to Ponce Circle Park.

Section 2.12 Arts Center Building.

(i) Intent. Both Owner and the City acknowledge that the historic Arts Center Building located at 2901 Ponce de Leon Boulevard (the “Arts Center Building”) is a focal point of the Project, and a building of great public importance. Its adaptive reuse is a critical component of the Project’s overall success, but the reuse should not overly commercialize the historic values of the Arts Center Building and should be oriented towards and intended to activate pedestrian activity. Accordingly, Owner and City agree that any proposed use of the Arts Center Building should celebrate its important role in civic planning and architectural history and in the history of the City, and should increase the prestige of the overall Project. The building will be used and managed in accordance with the City Code governing Historic Resources. Examples of the kinds of uses that the Owner may propose, which are listed only to exemplify the parties’ mutual intent and not to predetermine the acceptability of any particular use, include museums, art galleries or art schools; architectural colleges, design studios or research institutes; institutions of city planning education or research; and special events compatible with the building’s historic nature. Limited ground floor retail or restaurant uses that are unique and further the intent of this section, such as a high quality café similar to Chocolate Fashion, Café Curuba or Café Demetrio, may also be proposed. Owner agrees to maintain the Arts Center Building in compliance with Section 3-1108 of the City Code at all times, and to provide reasonable access to City representatives upon request to assure such compliance.

(ii) Procedure. Owner will petition the City for approval of the initial and future proposed uses of and tenants for the Arts Center Building. Owner agrees not to propose uses that are prohibited or are not permitted by the Zoning Code, by the form-based planned area development criteria and other Project approvals, or by Section 5.1(i) – (xii) and (xiv) – (xv) of this Agreement. The City Manager will review the petition and the recommendation of the Historic Resources Officer, along with the applicable zoning provisions and Project approvals, and, in his or her sole discretion, will choose to either approve, deny or recommend modifications to the petition or make a written recommendation to the City Commission for its consideration and action on the petition. In making this decision, the City Manager will only consider high quality uses that respect the importance of the building, not only for its architecture but also for the defining role it played in shaping the beauty and vision of the City. The parties agree that disputes concerning the decisions to be made under this Section 2.12 shall be handled in accordance with Section 4.2 of this Agreement.

Section 2.13. Offsite Improvements. Subject to and conditioned upon the issuance of required building permits from the applicable Governmental Authorities, the Owner shall construct and install the improvements required by the traffic study meeting all City and other applicable Governmental Requirements described on, and in accordance with the time frames and procedures set forth on **Exhibit B**. Owner shall contribute the costs of Offsite Improvements to enhance surrounding neighborhoods such as those shown and in the locations described in **Exhibit H** (including, without limitation, the residential parking zones as shown in Attachment D to the April 2, 2015 City Commission agenda memo, typical street sections, and conceptual drawings) attached hereto. The design, planning and construction of the Exhibit H improvements shall follow a schedule to be determined by the City Manager, which shall include ample opportunities for the neighborhoods to provide design input and shall accomplish the construction as soon as practical, phasing the work as necessary to avoid conflicts with or damage resulting from the construction of the Project, but which shall provide that work in all areas identified in Exhibit H that will not interfere with or be affected by construction of the Project shall be commenced within six months of the execution of this Amended Development Agreement. The City Manager shall determine, in coordination with the Owner, which party will be responsible for each step of the planning, design and construction of the Offsite Improvements, as set forth in Exhibit H.

Section 2.14. Parking.

(i) Amount. Parking shall be provided for the Project pursuant to the Approved PAD Plans. The valet operating plan for the Project is set forth as **Exhibit I** attached hereto. The Project is availing itself of reduced parking requirements pursuant to the shared parking analysis and reduction permitted by the Mediterranean Village Planned Area Development regulations. No shared parking is proposed or will be allowed for residential uses. Parking for all other uses will not be reserved, except for (a) approved valet parking spaces, and (b) spaces for the office tower in the north block may be reserved from 8 am – 6 pm Monday through Friday.

(ii) Enforcement. Certain types of use assumptions have been made by the City in granting reductions in parking requirements pursuant to the shared parking analysis. The City has the right to enter upon the Property at any time to confirm that the type of use assumptions previously made continue to be accurate and, in the event that the City has any doubts as to the accurateness of these assumptions, it may request that Owner conduct further analysis so as to satisfy the City of the appropriateness of the parking provided for the Project. The City has the right to withhold permits for the Project until it is reasonably satisfied that the shared parking analysis provided is accurate and reliable.

(iii) Loss of Onstreet Parking Spaces. In accordance with the requirements of Chapter 74 Traffic and Vehicles, Article III. Stopping, Standing and Parking, Division 5. Parking Replacement Assessment of the City Code of Ordinances, the Owner agrees to mitigate for the loss of ten (10) on-street parking spaces attributable to the prior approved project on the Property, at the current City rate of \$42,000 per parking space lost. Payment shall be made prior to issuance of a foundation permit.

(iv) Employee Parking. Owner will submit a conceptual employee parking management plan to limit spillover parking impacts on residential streets, and obtain the approval of the plan by the City Parking Director, prior to issuance of a Temporary Certificate of Occupancy for any non-residential building.

Section 2.15. Mobility Improvements.

(i) Upfront Contribution. In order to mitigate the Project's impact on public mobility, the Owner shall pay to the City \$~~1,342,592~~ million (the "Upfront Contribution") prior to the issuance of the foundation permit, to be used by the City towards the purchase of up to four new trolley buses, construction of garage space attributable to up to four trolley buses, or equivalent capital and/or operational expenditures supporting mobility that provide comparable access to the Project and comparable circulation between the Project and the Central Business District. The amount of this Upfront Contribution shall be credited against any future fee on development for the same purposes that may be legislatively adopted by the City and enforced against the Project for five years from the date of this Amended Development Agreement. In the event that a list of the expenses and amounts for which the Upfront Contribution is spent is not available through a public records request to the City, then the City shall provide such a list to the Owner within a reasonable time after a written request.

~~(ii) Annual Mobility Contribution. Owner shall also pay \$626,000 per year (the "Mobility Contribution"), commencing prior to the issuance of the first Temporary Certificate of Occupancy for the Project, continuing on January 1 of each calendar year following the year of the initial payment date, and concluding the year of the 25th anniversary of the issuance of the first Temporary Certificate of Occupancy for the Project. The Mobility Contribution may be utilized for any desired enhancement, either capital or operational, of the City's trolley system including the improvements recommended by the Project's traffic consultants, which are summarized in the attached Exhibit J, or improvements to any future public transportation system or technology that may replace or accompany the trolley system. The amount of this Mobility Contribution shall be credited against any future fee on development for the same purposes that may be legislatively adopted by the City and enforced against the Project. Prior to using the Mobility Contribution for an expenditure that is not in Exhibit J, the City will obtain an opinion of a qualified transportation or mobility expert that the alternative expenditure provides equal or better access to the Project, and equal or better circulation between the Project and the Central Business District than the improvements specified in Exhibit J. In the event that a list of the expenses and amounts for which the Mobility Contribution is spent annually is not available through a public records request to the City, then the City shall provide such a list to the Owner within a reasonable time after a written request.~~

~~Failure to timely make the agreed upon annual payments of the Mobility Contribution may trigger liquidated damages for delay as follows, as determined by the City Manager:~~

~~(a) Payments that are 10 or fewer calendar days late: No liquidated damages;~~

~~(b) Payments that are 11—30 calendar days late: Shall be accompanied by liquidated damages of \$1,000 per day late, up to a maximum of \$30,000; and~~

~~(c) Payments that are more than 30 calendar days late. Shall be accompanied by liquidated damages of \$5,000 per day late, up to a maximum of \$250,000.~~

Section 2.16. Traffic Improvements. Prior to the issuance of the first Temporary Certificate of Occupancy for the Project, Owner shall complete all traffic improvements recommended by the Traffic Study prepared by Kimley Horn and Associates and dated May 18, 2015. City Commission Ordinance No. 15-3842 requires that certain follow up analyses take place after issuance of the first Temporary Certificate of Occupancy for the Project. Within one year of City receipt and approval of these follow up traffic analyses, the Owner shall complete the traffic improvements, if any, recommended by said follow up analyses.

ARTICLE III. LAND USES, PROJECT QUALITY AND ASSURANCES

Section 3.1. Land Uses. The Owner and the City agree, during the term of this Agreement, to devote the Property and the Owner Improvements only to the uses specified in this Agreement and to be bound by and comply with all of the provisions and conditions of this Agreement. However, nothing contained herein shall be or be deemed to be any contract or agreement by the City, in its municipal capacity, to grant approvals for the Project or with respect to any zoning decisions affecting the Project. For additional consideration given, the sufficiency and nature all of which is hereby acknowledged, the Owner hereby agrees that this Agreement does not constitute contract zoning or contract planning prohibited by Florida law, and the Owner hereby waives any claim, pleading, or affirmative defense that this section or this Agreement constitutes prohibited contract zoning or contract planning.

Section 3.2 Character and Operation Standards of Property and Owner Improvements. The parties recognize and acknowledge that the manner in which the Project is developed, operated, and maintained is a matter of critical concern to the City. The Owner hereby agrees to develop, redevelop, operate, repair, rehabilitate, demolish, and maintain the Project and all other property, whether real or personal, and equipment located thereon which are owned, leased maintained, or subject to the control of or by the Owner in good order, condition, repair and appearance and in a manner consistent with (i) presently existing comparable projects (such as “The Village of Merrick Park” located in the City, “Mizner Park” located in Boca Raton, Florida, and “CityPlace” in West Palm Beach, Florida); (ii) the operational standards set forth in the exhibits attached hereto, including but not limited to **Exhibits C, E, F, G, I and L**, (collectively the “Operational Standards”); and (iii) in compliance with all Governmental Requirements. To help accomplish this result, the Owner will establish reasonable rules and regulations incorporating the Operational Standards governing the use and operation of the Project in order to assure the level of quality and character of operation of the Project required herein, and Owner shall use all reasonable efforts to promptly and immediately enforce such rules and regulations.

ARTICLE IV. AGREEMENT AS COVENANT; PERFORMANCE AND DEFAULT

Section 4.1. Agreement as Covenant or Equitable Servitude. Anything to the contrary herein notwithstanding and without limiting the generality (and subject to the limitations) hereof, it is the intention of the City and the Owner (as Owner of the Property and the Project) that the provisions of this Agreement shall constitute covenants running with the land and with title to the Property, or as equitable servitudes upon the land, as the case may be. If any covenant or

(ii) This Agreement and the provisions hereof shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the City, the Owner, and the Owner of any part or portion of the Property subject to this Agreement, and their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the Effective Date, after which time said Agreement shall be automatically extended for successive periods of five (5) years each, unless an instrument signed by the City has been recorded, agreeing to revoke or terminate said Agreement in part or in whole.

Section 11.21 Security. ~~Prior to the issuance of the foundation permit for the Project,~~ ~~the~~The Owner shall provide to the City a surety bond or other form of security deemed acceptable by the City, in an amount determined acceptable by the Public Works Director, and in a form acceptable to the Building Official for the following purposes and amounts:

(i) Security for Restoration of Arts Center Building, Residence, and City Property. ~~The~~Prior to the issuance of the initial phase or master permit for the Project the Owner shall provide to the City a surety bond or other form of security deemed acceptable by the City, for the estimated maximum cost of restoration and replacement for: (1) any damage to the historic Arts Center Building located at 2901 Ponce de Leon Boulevard; and (2) any damage as a result of the negligent acts or omissions of Owner, its contractors or agents to (i) the residence located at 2915 Coconut Grove Drive or (ii) adjacent City property and infrastructure. Said surety bond or other form of security may be acted upon by the City Manager in the event of either (a) the damage described above to the Arts Center Building, residence or adjacent City property and infrastructure which is not repaired by Owner within 30 days of notice, or (b) a complete cessation of construction activities on the Property, as evidenced by the passing of more than 180 days without receiving approval of an inspection of construction work on the Property. Owner shall be granted such additional time as is reasonably required to repair such damage for which it is responsible under this Subsection 11.21(i) so long as Owner is diligently pursuing efforts to repair the damage, such as applying for building permits and other governmental permits and/or applying for insurance proceeds to fund such repairs or restoration.

(ii) Security for Restoration of Property if Project is Abandoned. ~~The~~Within 60 days of execution of this Amended Development Agreement, the Owner shall provide to the City a surety bond or other form of security deemed acceptable by the City for the estimated cost of the full restoration of the Property, including (1) filling any excavated areas, (2) installation of sod and landscaping to City Code standards, and (3) the removal, restoration, or completion of partially constructed buildings and structures as agreed upon by the City and Owner for the purposes of ensuring public safety and maintaining the appearance of the Property and (4) removal of all construction fencing. Said surety bond or other form of security may be acted upon in the event of a cessation of construction activities on the Property until completion of the subterranean and surface improvements. Said surety bond shall be returned once master permit is issued.

(iii) Terms. For purposes of Subsections 11.21(i) and (ii), the following definitions shall apply:

The phrase “completion of the subterranean and surface improvements” means that the parking garage has received a Temporary Certificate of Occupancy, the underground

utilities have been completed and accepted by the City or other agency responsible for the utility, and the pedestrian and vehicular rights-of-way are completed as proposed in the Project or completely restored, all as determined in the sole discretion of the City Manager or designee;

The phrase “cessation of construction activities on the Property” means (A) a failure to complete substantial work on the Project for a cumulative total of ninety (90) business days (excluding weekends and national holidays), or (B) progress in constructing the Project on the Property that is valued at less than five (5%) percent of the total value of the Project in any six-month period; and

The phrase “total value of the Project” means the estimated building permit valuation of the Project as determined by the Building Official pursuant to the Florida Building Code.

(iv) Bond Requirements. If the City in its discretion accepts a surety bond, the Owner and the surety shall be jointly and severally liable under the terms of the bond. The bond shall be issued by a surety having a minimum rating of A-1 in Best’s Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the City Attorney; and shall provide that: “This bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew.”

(v) Security for Construction of Offsite Improvements. ~~Prior to issuance of the foundation permit for the Project~~ Within 60 days of execution of this Amended Development Agreement, the Owner shall provide to the City a surety bond, or other form of security deemed acceptable by the City, in an amount that is one hundred fifteen (115%) percent of the estimated total hard and soft cost of all Offsite Improvements, to secure construction of such Offsite Improvements within the time periods established in **Exhibit B** and as otherwise required by this Agreement or in the event that the Project is abandoned.

(vi) Insufficiency of Security. If a bond or other security proves insufficient to complete the improvements or restoration covered, the City shall have the right to finish all work by creating a special assessment district, and assess the amount of the additional funds required against the Property after notice to Owner and expiration of the applicable grace period. Owner hereby expressly consents to the creation and imposition of a special assessment loan against the Property for this purpose.

(vii) Master Bond. Upon the authorization of the City, Owner may substitute a master surety bond or other form of security deemed acceptable by the City, which may include, in part, a general contractor’s completion bond, in lieu of the various separate bonds that secure the Owner’s various obligations required under this Agreement to be secured by a surety bond. With the approval of the City, the amount of the surety bond(s) may be reduced from time to time as the work or obligation secured by such bond is completed or the risk secured by such bond is eliminated or reduced.

(viii) Security for Temporary Safety Improvements. Within 60 days of execution of this Amended Development Agreement, temporary safety improvements for the rights of way

abutting the Property and the Property, as agreed to with the Public Works Department shall be completed. Owner shall provide to the City a surety bond, or other form of security deemed acceptable by the City, in an amount of the estimated costs of the agreed upon temporary safety improvements upon execution of this Development Agreement.

Section 11.22. Enforcement of Agreement. Except for claims of discrimination pursuant to Section 5.2, parties to this Agreement, and their successors and assigns, shall enforce this Agreement as provided in this Section 11.22. This section shall not be interpreted as a pledge of *ad valorem* tax or other revenues.

(i) Change of Laws. This Agreement is enforceable by any party to this Agreement as provided in the Community Planning Act, Part II, Chapter 163, Florida Statutes, despite a change in the applicable general or specific plans, comprehensive planning, zoning subdivision, building, or other land development regulations adopted by the City which alter or amend the rules, regulations or policies governing permitted uses of the land, density, intensity, or design.

(ii) Institution of Legal Action. In addition to any other rights or remedies, any party hereto, or their successors and assigns, may institute legal action to cure, correct or remedy any default, to enforce any covenants or agreements herein, or to enjoin any threatened or attempted violation thereof; to recover damages for any default; or to obtain any remedies consistent with the purpose of this Agreement, in accordance with Article IV. Enforcement of this Agreement may be by the Owner or the City, and may be accomplished by any proceeding at law or in equity against any Person or Persons violating or attempting to violate any provision hereof, either to restrain a violation, to seek specific performance, or to recover damages. However, neither Owner nor City will be permitted to obtain damages for, and the Owner and City hereby waive, all rights to claim punitive, incidental and consequential damages against the other. Failure to enforce any covenant or provision herein contained shall in no event be deemed a waiver of the right to do so thereafter. The City shall not be obligated or bound to enforce any of the covenants or provisions herein or be liable to or for any Person or Persons for non-enforcement.

(iii) Venue. Such legal actions must be instituted in the Circuit Court or County Court, as applicable, of the County of Miami-Dade, State of Florida, or in the Federal District Court in the Southern District of Florida.

Section 11.23. Interpretation. All of the parties hereto have had the opportunity to consult with legal counsel and to participate in the drafting of this Agreement. Consequently, this Agreement shall not be more strictly or more harshly construed against any party to this Agreement as the drafter hereof.

ARTICLE XII. INDEMNIFICATION AND INSURANCE

Section 12.1 Indemnification by Owner.

(i) To the fullest extent permitted by Governmental Requirements and subject to monetary limitation described below, the Owner hereby agrees to defend, indemnify and hold

EXHIBIT "B"

Development Schedule

All time periods provided below are measured from the date of final City Commission planning and zoning approval (August 14, 2015), and represent an enforceable commitment by the Owner to proceed expeditiously with the Project. The timeline below may not be enforced against the City. The City Manager is authorized by the City Commission's approval hereof to extend any time period listed below for good cause shown up to 6 months. Extension of a time period by more than 6 months requires City Commission approval. In approving any extension, the City Manager or City Commission, as may be applicable, shall determine whether the traffic monitoring period required by Condition 12.c. of the PAD Ordinance must also be extended concurrently, and may impose conditions on the approval of the extension.

| | |
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| Expiration of Appeal Period for Zoning Approvals | [30 Days <u>days</u>] |
| Submittal of Initial/Phase Foundation Building Permit Plans <u>2017</u> | [7—Months <u>December 31,</u> |
| Commencement of Construction (Foundation) | [within 24 <u>24</u> Months of issuance of foundation permit] |
| Substantial Completion of Project Buildout, as measured by the issuance of the last | [46 Months] <u>from</u> |
| Temporary Certificate of Occupancy or Certificate of Completion, as applicable, for the Project | <u>issuance of foundation permit]</u> |
| Completion of improvements required by the traffic study, as measured by their acceptance by the Public Works Director | [Prior to issuance of first Temporary Certificate of Occupancy for the Project] |

EXHIBIT “H”
Offsite Improvements

Mediterranean Village
Summary of Off-Site Streetscape Improvements

| | Proposed Improvement | Estimated Cost | Description |
|---|---------------------------------------|-----------------------|---|
| 1 | Neighborhood Streetscape – East | \$2,000,000 | Streetscape and landscape improvements similar to those indicated on the attached street sections. Installation of decorative signs for Residential Parking Zone indicated on the attached map. |
| 2 | Santander / San Sebastian Streetscape | \$200,000 | Streetscape and landscape improvements similar to those indicated on the attached street sections. Installation of decorative signs for the Residential Parking Zone indicated on the attached map. |
| 3 | Neighborhood Streetscape – West | \$2,000,000 | Streetscape and landscape improvements |

| | | | |
|---|-----------------------------------|------------------------|--|
| | | | similar to those indicated on the attached street sections. |
| 4 | Ponce de Leon Streetscape – North | \$2,000,000 | Streetscape, sidewalk, and landscape improvements which are similar to and continuous with the new proposed streetscape for Miracle Mile. Please see attached conceptual plan. Promptly after execution of the Development Agreement, Owner shall retain a landscape architect acceptable to the City and Owner to design the streetscape, sidewalk, and landscape improvements for the transition from the Miracle Mile project to the landscaping contemplated for the Project. The |

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|--|--|---|
| | | <p>design costs shall be deducted from the \$2,000,000 cost of the Ponce de Leon Streetscape – North.</p> <p>Owner’s landscape architect will coordinate the design and construction of the Ponce de Leon Streetscape – North with the City’s landscape architect. Owner will substantially complete construction of the streetscape, sidewalk, and landscape improvements to both the east and west sides of Ponce de Leon from Miracle Mile to Andalusia by December 31, 2016<u>2017</u> or such later date as is authorized for the completion of the segment of the Miracle</p> |
|--|--|---|

| | | | |
|---|--------------------------------------|-----------|--|
| | | | Mile Streetscape closest to this work. Owner will complete construction of the remaining portions of the streetscape, sidewalk, and landscape improvements of Ponce de Leon Streetscape – North prior to the issuance of a Temporary Certificate of Occupancy for the first building |
| 5 | University Drive Streetscape – South | \$125,000 | Sidewalk and bike lane installation. |

| | | |
|-----------------------|--|------------------------|
| <u>6</u> | <u>Total Estimated Cost</u> | <u>\$6.325 Million</u> |
| 6 <u>7</u> | Owner shall cover total costs of final design and construction drawings for the improvements listed in 1- 5 <u>5</u> <u>as part of the total \$6.325 Million budget</u> . Owner shall retain a landscape architect within 30 days following execution of this Agreement, who shall review and respond to the streetscape plans previously proposed and presented to the East Neighborhood and incorporated into the June 10, 2015, City Commission agenda item. | |
| <u>8</u> | <u>The total contribution amount of \$6.325 Million for all off-site improvements shall not be reduced but is still subject to further refinement among sub-areas based on refinement of plans and budget</u> | |