CITY DRAFT 6.2.15

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:
_____
_____
_____
_____, Florida 33___

Tax Parcel ID#_____

DEVELOPMENT AGREEMENT

between

AGAVE PONCE, LLC, a
Florida limited liability company

and

CITY OF CORAL GABLES, a
Florida municipal corporation

DATED AS OF

_____, 2015

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is executed as of this _____ day of _____, 2015, 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 for the purpose of providing the terms and conditions on which the Property is to be developed.

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
Exhibit F	Restaurant Standards of Operation
Exhibit G	Office Standards of Operation
Exhibit H	Offsite Improvements
Exhibit I	Valet Standards of Operation

Exhibit J Recommended Trolley Enhancements

Exhibit K Encroachments

Exhibit L Publicly Accessible Open Spaces

Exhibit M Public Safety Memo

To the extent that any exhibit is in conflict with the language and terms of this Agreement, the language and terms of this Agreement shall govern.

Section 1.2 Defined Terms. In addition to other terms defined in this Agreement, the following terms, as used herein and unless the context affirmatively demonstrates to the contrary, will have the following meanings:

"Aggregate Project Value" has the meaning ascribed to it by Section 3-2106-"Definitions" of the City's Zoning Code which, at the time of execution hereof, is "the total of all Construction Costs associated with a particular construction or renovation project regardless of the number of permits associated with the project, or whether it is a phased project."

"Agreement" means this Development Agreement, including all of its exhibits, as the same may be modified or amended from time to time in writing and recorded in the Public Records of Miami-Dade County.

"Approved PAD Plans" shall have the meaning set forth in Section 2.1.

"City" unless otherwise specified or required by the context, means the City of Coral Gables, a Florida municipal corporation, in its proprietary capacity as licensor hereunder and in its governmental capacity, and any successor governmental entity.

"City Manager" means the city manager of the City.

"Owner Improvements" consists of the improvements contemplated to be constructed by Owner pursuant to the Approved PAD Plans.

"Development" is defined as set forth in Sections 163.3164 and 380.04, Florida Statutes (2014).

"Event of Default" has the meaning ascribed to it in Section 4.2.

"Effective Date" means the date this fully executed Agreement is recorded in the Public Records of Miami-Dade County.

"Governmental Authority" means any federal, state, county, municipal or other governmental department, entity, authority, commission board, bureau, court, agency, or any instrumentality of any of them.

"Governmental Requirement" means any law, enactment, statute, code, ordinance, rule, regulation, judgment, decree, writ, injunction, order, permit, certificate, license, authorization, agreement, or other direction or requirement of any Governmental Authority now existing or hereafter enacted, adopted, promulgated, entered, or issued, and applicable to the Owner, the Project, or this Agreement.

"Lender" means any lender, and any successor, assignee, transferee or designee of such lender, which provides financing, secured or unsecured, in connection with the Project, and shall include, without limitation, any mortgagee.

"Offsite Improvements" means the improvements depicted on **Exhibit H** attached hereto.

"Owner" means Agave Ponce, LLC, a Florida limited liability company, which at the time of the making of this Agreement is the owner in fee simple of the Property, and any heir, successor or assign who obtains any interest in all or any part of the Project or the Property, or who obtains any interest in Owner. Any entity other than Agave Ponce, LLC, that may one day meet this definition of "Owner" is equally entitled to the rights and bound by the obligations of the Owner under this Agreement. In the event that, at any time during the term of this Agreement and any extensions and renewals thereof, the Owner is a corporation or an entity other than a Florida limited liability company, then any references herein to member, membership interest, manager and the like which are applicable to a Florida limited liability company shall mean and be changed to the equivalent designation of such term which is appropriate to the nature of the new Owner entity, all as reasonably construed by the City.

"Person" means any corporation; unincorporated association or business; limited liability company; business trust; real estate investment trust common law trust or other trust; general partnership; limited partnership; limited liability limited partnership; limited liability partnership; joint venture; two or more persons having a joint or common economic interest; nominee; or other entity; or any individual or estate of an individual.

"Project" means the improvements developed by the Owner on the Property pursuant to the Approved PAD Plans.

"Property" means the real property legally described in **Exhibit A** attached hereto.

"Publicly Accessible Open Spaces" means those areas of the Property, whether below, at, or above grade, which are approved and set aside as areas accessible to the public, as depicted on **Exhibit L** attached hereto. These spaces are not publicly owned and are not City parks.

"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, entitled _____, prepared under Project/Drawing No. _____, containing _____ pages, and dated _____ (for each page) with last date of revision (for each page) being _____, 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 PAD's 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 square feet (the "Retail Component").

(ii) Restaurant uses of approximately 29,000 square feet (the "Restaurant Component").

(iii) Office uses of approximately 317,000 square feet (the "Office Component").

(iv) Residential uses of approximately 214 multi-family units and 15 townhomes.

(v) Hotel uses of approximately 184 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:

(i) the City review procedure for amendments to PAD Development Plans codified at Section 3-507 of the City's Zoning Code, and

(ii) the submittal, at the time of application to modify the Approved PAD Plans or of application for a change of use, of a revised shared parking reduction analysis which, subject to City approval, establishes that sufficient parking is provided for the new use being introduced, and

(iii) An amendment to the Development Agreement is only required if one of the following is proposed:

(a) the square footage of restaurant use is proposed to increase by 20% or more, or

(b) the square footage of any use listed in Section 2.2 other than the restaurant use is proposed to increase or decrease by 10% or more of the stated unit of measurement (for example, an increase or decrease of office use of 31,700 square feet or more), or

(c) the square footage of ground floor retail uses shown on the Approved PAD Plans is proposed to be reduced by any amount.

Section 2.4 Development Schedule. The Property shall be developed in accordance with the time frames and procedures set forth on **Exhibit B** attached hereto.

Section 2.5 Hotel Standards of Operation. The Hotel shall be operated in accordance with the standards set forth on **Exhibit C** attached hereto. Owner will submit a conceptual plan for the hotel taxi loading, unloading and queuing in the Project and not on the streets in and surrounding the Project, and obtain the approval of the City Parking Director prior to approval of the Temporary Certificate of Occupancy for the hotel. The uses of the top two floors of the Hotel shall always be available only for those uses that conform to the City's Comprehensive Plan, which may include, without limitation, restaurant and banquet facilities.

Section 2.6 Hotel Certification**.** The Hotel shall be certified as a four- or five-diamond hotel, as per AAA standards, and certification shall be kept current throughout the life of the Project.

(i) Failure to Achieve Initial Certification. If the hotel fails to achieve a four- or five-diamond AAA certification, by one year after Temporary Certificate of Occupancy is issued for the hotel, then the Owner shall post an escrow account or letter of credit in a form acceptable to the City of Coral Gables and approved by the Building Official. The City may draw down on the escrow funds or letter of credit if hotel certification is not achieved and accepted by the City within one year of the City issuance of Temporary Certificate of Occupancy for the hotel. The escrow or letter of credit shall be determined based on the difference between the value of land per square foot of building that is similarly certified and the value of land per square foot of building that is not similarly certified, which values shall be based on the area of the City in which the proposed project is located and may be adjusted from time to time based on market conditions. The methodology for determining the value of land per square foot of building shall be maintained by the Department of Economic and Cultural Development. Funds that become available to the City from the forfeiture of the escrow or letter of credit shall be placed in the Historic Public Art Fund as defined in Section 3-2106 of the Zoning Code.

(ii) Failure to Maintain Certification. If the hotel fails to maintain a four- or five-diamond AAA certification throughout the life of the Project, the Owner shall promptly take the steps necessary to regain such certification, and the City Manager may request another escrow or letter of credit be posted in accordance with the requirements of subsection 2.6(i) above.

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, and (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. 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.

(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.

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; and institutions of city planning education or research. 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.

(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 Offsite Improvements meeting all City and other applicable Governmental Requirements described on, and in accordance with the time frames and procedures set forth on **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.

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 $1.34 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 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.

(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.** 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_____, 2015. City Commission Ordinance No. _____ 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 equitable servitude created by this Agreement is determined to be invalid by a court with jurisdiction, Owner shall nevertheless comply with the obligations set forth in this Agreement and in the covenant or equitable servitude.

Section 4.2 Owner's Default of Agreement and Covenants.

(i) Failure of the Owner, or other Person in possession of or using a portion of the Property or Project to perform in accordance with or to comply with any of the covenants, conditions and agreements which are to be performed or complied with by the Owner, a Property or Project tenant, future owner, or other Person in possession of or using a portion of the Property or Project, and the continuance of such failure for a period of thirty (30) days after mailing of notice thereof in writing from the City to the Owner in accordance with Section 11.5 of this Agreement (which notice shall specify the respects in which the City contends that the Owner or other Person in possession of or using a portion of the Property or Project has failed to perform or comply with any such covenants, conditions and agreements), shall constitute an event of default ("Event of Default") on the part of the Owner; provided, however, if such default cannot be cured within thirty (30) days of notice and (i) the Owner within said thirty (30) day period shall have commenced and thereafter shall have continued diligently to prosecute all actions necessary to cure such default, and (ii) the Project continues to operate in the ordinary course of business, then the Owner shall have an additional reasonable time within which to cure such matter or Event of Default; provided that in no event shall such Event of Default extend more than 365 days from the date of mailing of the notice of default. Until the City has provided the Owner with written notice of default pursuant to this Section 4.2 and the time periods for cure set forth in this Agreement have elapsed without such cure having been effected, the failure of the Owner or any other Person in possession of or using a portion of the Property or Project to perform or comply with the covenant(s), condition(s) and agreement(s) of this Agreement specified in such notice shall not be deemed an Event of Default.

(ii) Failure to timely install, build, connect to governmental systems, or operate any of the Offsite Improvements based on the time schedule set forth in **Exhibit B** attached hereto, including any extensions that may be approved by the City in accordance with **Exhibit B**, shall be an Event of Default and a material breach of this Agreement.

(iii) Failure to timely install, build, connect to governmental systems, or operate the Project based on the time schedule set forth in **Exhibit B** attached hereto, including any extensions that may be approved by the City in accordance with **Exhibit B**, shall be an Event of Default and a material breach of this Agreement.

(iv) If the City determines, in its sole discretion, that Owner's failure to perform constitutes an imminent threat to the public health, safety and welfare, no prior 30 day notice is required, and the City may seek an injunction to remedy that threat without delay or other preconditions.

Section 4.3 City Default. In an event of default or alleged default by the City with regard to this Agreement and any of its terms or conditions, Owner shall give the City not less than 30 days' written Notice of Default, as measured from the time of mailing in conformance with Section 11.5. The Notice of Default shall specify the nature of the alleged default and, where appropriate, the manner and period of time in which said default may be satisfactorily cured. If such default cannot be cured within thirty (30) days and the City within said thirty (30) day period shall have commenced and thereafter shall have continued diligently to prosecute all actions necessary to cure such default, then the City shall have an additional reasonable time within which to cure such matter or Event of Default; provided that in no event shall such Event of Default extend more than 365 days from the date of mailing of the Notice of Default. Until Owner has provided the City with written notice of default pursuant to this Section 4.3 and the time periods for cure set forth in this Agreement have elapsed without such cure having been effected, the failure of the City to perform or comply with any part of this Agreement specified in such notice shall not be deemed an Event of Default.

Section 4.4. Unavoidable Delay or Force *Majeure*. Any one or more of the following events will be a "Force Majeure" under this Agreement: strikes, lockouts, acts of God, unusual delay in obtaining or inability to obtain labor or materials due to Governmental Requirements, enemy action, civil commotion, fire, hurricane, sabotage, casualty or other similar causes beyond the reasonable control of a party. A party's insolvency or financial condition or anything that causes a default in any Project financing or difficulty in obtaining financing will not constitute a Force Majeure. Neither the City nor the Owner, as the case may be, nor any successor in interest, shall be considered in breach of or in default of any of its obligations, including, but not limited to, the preparation of the Property for Development, or the beginning, progress, or completion of construction of the Owner Improvements or the Offsite Improvements, in the event of a Force Majeure, and the applicable time period shall be extended for the period of unavoidable delay caused by the Force Majeure. With respect to any Force Majeure that results in any damage to the Owner Improvements or the Offsite Improvements, the time periods shall be extended for the following periods of time: (i) the time period from the date of the Force Majeure through and including the date the Owner receives the insurance proceeds related to such damage, and (ii) following receipt of the insurance proceeds, the reasonable time period which is needed for the

Owner to restore the Owner Improvements or Offsite Improvements to the condition which existed immediately preceding the Force Majeure.

Section 4.5. Obligations, Rights and Remedies Cumulative. The parties agree that any party may seek specific performance of this Agreement, and that the rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by any party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach, or of any of its remedies for any other default or breach by the other party.

Section 4.6 Waiver. Failure or delay in giving a Notice of Default or seeking enforcement of this Agreement shall not constitute a waiver of any default. Except as otherwise expressly provided in this Agreement and except for any waiver expressly provided in writing, any failure or delay by another party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

ARTICLE V. RESTRICTIVE COVENANTS.

Section 5.1. Use Prohibitions of the Property and Owner Improvements. The Property shall not be used by the Owner or other Person in possession of or using any portion of the Property or the Project, nor shall the Owner permit the use of the Property, the Project or any Development Improvements for the following:

(i) Any unlawful or illegal business, use or purpose, or for any business, use or purpose, which is immoral, disreputable (including without limitation “adult entertainment establishments” and “adult” bookstores), or extra-hazardous, or in such manner as to constitute a nuisance of any kind (public or private), or for any purpose or in any way in violation of the certificates of occupancy (or other similar approvals of applicable governmental authorities) or of rules, regulations, ordinances or laws applicable to the Property; or

(ii) Any unlawful or illegal business, use or purpose, or for any business, use or purpose which is hazardous, or in such manner as to constitute a nuisance of any kind (public or private), or for any purpose or in any way in violation of any governmental law, regulation, or rule relating to hazardous substances. As used in this paragraph the term "hazardous substances" shall be defined as including petroleum and petroleum products and as set forth in 42 U.S.C. §9601(14), Section 101(14) of the Comprehensive, Environmental, Response Compensation, and Liability Act of 1980 ("CERCLA")(as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Resource Recovery and Restoration Act as set forth in 42 U.S.C. §6901 et seq. (“RCRA”), Chapter 376, Florida Statutes, or any other Federal, State of Florida, local, or City law, rule, administrative decision, or regulation pertaining to the protection of the environment or employee safety and health, and all as adopted or amended form time to time, including but not limited to any and all liabilities or obligations in the nature of remedial action(s) that may be required of the Owner, a tenant or other Person in possession or occupancy of any part or portion of the Project or the Property; or

(iii) Any storage warehouse operation; or

(iv) Any "second hand" store, "surplus" store, or pawn shop; or

(v) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation; or

(vi) Any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to customary supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer; or

(vii) Any automobile, truck, trailer or recreational vehicle sales, leasing, display or body shop repair operation; or

(viii) Any pet shop or animal raising facility; or

(ix) Any mortuary, crematorium, or funeral home; or

(x) Any establishment selling or exhibiting drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff; or

(xi) Any massage parlors or similar establishments; however, this language shall not be construed to preclude massage services at a high end spa in conjunction with the Hotel or with any fitness club to be located in the retail areas of the Project; or

(xii) Any flea market, amusement arcade or video arcade, pool hall or billiard hall, car wash or dance hall; or

(xiii) Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; or

(xiv) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall; or

(xv) any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation.

Section 5.2. Non-Discrimination.

(i) No covenant, agreement, lease, conveyance or other instrument concerning the sale, lease, use or occupancy of the Property and Owner Improvements or any portion thereof shall be permitted, effected, or executed by the Owner or other Person in possession or occupancy of any part or portion of the Project or the Property, whereby the Property, or the Owner Improvements, or any portion thereof, is restricted by the Owner or other Person in possession or occupancy of any part or portion of the Project or the Property, upon the basis of race, color,

religion, sex, national origin, or handicap, or any other condition, or in violation of Chapter 760, Florida Statutes, or any other Governmental Requirement. The Owner will comply with, and shall require any Person in possession or occupancy of any part or portion of the Project or the Property, to comply with, all applicable Governmental Requirements in effect from time to time, prohibiting discrimination or segregation by reason of race, color, religion, sex, national origin, handicap, or any other condition, in the sale, lease, use or occupancy of the Property or the Owner Improvements or any portion thereof. The Owner agrees to make reasonable accommodations for the handicapped as required by law and agrees that no otherwise qualified handicapped individual shall, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, be denied access to facilities within the Property or the Owner Improvements, or be subjected to discrimination under any program or activity allowed under this Agreement, except as permitted by law.

(ii) Anything in Section 11.22 hereof to the contrary notwithstanding, if the City believes that a default has occurred because of a failure by the Owner, or any other Person in possession or occupancy of any part or portion of the Project or the Property to comply with the terms of this Section 5.2, it may send to the Owner and/or other Person a written notice of intent to declare a default because of such failure (the "Pre-Default Notice"). The Pre-Default Notice is not a declaration of a default hereunder. If the Owner and/or other Person, after reviewing the Pre-Default Notice (which shall specify the respects in which the City contends that such a failure should be considered a default), believes that such a failure is not a default under this Section 4.2, the Owner and/or other Person shall within thirty (30) days of receipt of such Pre-Default Notice, advise the City in writing of the reasons why the Owner and/or other Person contends that such a failure should not be considered a default under this Section 5.2. If the City, after considering the response, still believes that such failure is a default, the City shall issue a Notice of Default pursuant to Section 4.2.

Section 5.3 Green Building.

(i) Requirement. The Owner agrees that, as indicated in the Approved PAD Plans, the Project shall be certified as a LEED-ND (Leadership in Energy and Environmental Design for Neighborhood Development) project or equivalent nationally recognized green building certification program, and all buildings other than the Arts Center Building shall be individually LEED-certified or equivalently certified.

(ii) Enforcement.

a) LEED-ND. If at the time the first Temporary Certificate of Occupancy is issued for the project, "Stage 3 – Certified Neighborhood Development" LEED or equivalent certification has not been achieved for the Project, then the Owner shall post an escrow accounty or letter of credit in a form acceptable to the City of Coral Gables and approved by the Building Official. The City will draw down on the escrow funds or letter of credit if "Stage 3 – Certified Neighborhood Development" LEED or equivalent certification for the Project has not been achieved and accepted

by the City within one year of the City issuance of the first Temporary Certificate of Occupancy for any building.

b) LEED. If any building other than the Arts Center Building fails to achieve LEED or equivalent certification at the time the Temporary Certificate of Occupancy is issued for that building, then the Owner shall post an escrow or letter of credit in a form acceptable to the City of Coral Gables and approved by the Building Official. The City will draw down on the escrow funds or letter of credit if LEED or equivalent certification for any building is not achieved and accepted by the City within one year of the City issuance of the Temporary Certificate of Occupancy for that building; or if LEED or equivalent certification is not maintained.

c) Escrow or Letter of Credit. The escrow or letter of credit shall be determined based on the difference between the value of land per square foot of building that is similarly certified and the value of land per square foot of building that is not similarly certified, which values shall be based on the area of the City in which the proposed project is located and may be adjusted from time to time based on market conditions. The methodology for determining the value of land per square foot of building shall be maintained by the Department of Economic and Cultural Development. Funds that become available to the City from the forfeiture of the escrow or letter of credit shall be placed in the Historic Public Art Fund as defined in Section 3-2106 of the Zoning Code.

ARTICLE VI. SIGNS

Section 6.1 Sign Package. Owner shall create a Master Sign Package or a Special Sign Package for the Project (collectively, "Sign Package") to accomplish the following goals: (i) moving pedestrians and vehicle traffic throughout the Property safely and efficiently, including, but not limited to, residents, guests, visitors, and motorists along surrounding thoroughfares, and (ii) properly identifying the Property, the Project and various tenants, events, and components within the Project. The Sign Package as approved by the City Commission shall be incorporated into the Approved PAD Plans approved by the City Commission.

Section 6.2 Sign Types. The Sign Package will include only those sign types in those dimensions, fabrications, illumination, and locations allowed by the City's Zoning Code. The Sign Package will not include digital signs or other signs prohibited by the City Zoning Code.

Section 6.3 Application. The Sign Package shall apply to all signage in the Project.

Section 6.4 Regulation. All Project signs shall be subject to applicable Governmental Requirements.

ARTICLE VII. RESERVATION OR DEDICATION OF LAND/PUBLICLY ACCESSIBLE OPEN SPACES

Section 7.1 No Dedication. The Owner is not dedicating any land within the Property to the City, but agrees to grant the City various easements as referenced in this Agreement.

Section 7.2 Approved PAD Plans. The Owner agrees to create within the Project: (i) Publicly Accessible Open Spaces as defined herein, as generally indicated on **Exhibit L** attached hereto, and as further addressed in Section 2.10 hereof; and (ii) sidewalks designed to accommodate increased pedestrian activity that will include shopping, entertainment, and outdoor seating, all as generally labeled on the Approved PAD Plans.

Section 7.3 Ownership of Publicly Accessible Open Spaces. The Owner will retain ownership of the Publicly Accessible Open Spaces but shall grant the City a non-exclusive easement allowing public access to the Publicly Accessible Open Spaces. The Owner and the City agree to execute and record a Publicly Accessible Open Spaces Easement and Maintenance Agreement ("Publicly Accessible Open Spaces Easement Agreement"), to specifically designate the areas to be Publicly Accessible Open Spaces and to assign their respective responsibilities and obligations with respect to the future construction, maintenance and operation of the Publicly Accessible Open Spaces. The Publicly Accessible Open Spaces Easement Agreement shall be in a form acceptable to the City Attorney, incorporating the recommendations of a Crime Prevention Through Environmental Design review to be performed by the City Police Department. The Publicly Accessible Open Spaces Easement Agreement shall be consented to and joined in by any Lender, other lien holder, or holder of any other security interest, in the portion of the Property subject to the Publicly Accessible Open Spaces Easement Agreement.

Section 7.4 Timing of Publicly Accessible Open Spaces Easement Agreement. The City and the Owner agree to execute and record the Easement Agreement prior to the City issuing the first Temporary Certificate of Occupancy for the Project.

Section 7.5 Location and Dimensions of the Publicly Accessible Open Spaces. The general location and dimensions of the Publicly Accessible Open Spaces shall be substantially in accordance with the Approved PAD Plans. Changes to the location and dimensions of the Publicly Accessible Open Spaces will be reviewed in accordance with the PAD amendment process outlined in Section 3-507 of the Zoning Code. The specific location and dimensions of the Publicly Accessible Open Spaces will be set forth in the Publicly Accessible Open Spaces Easement Agreement, in accordance with **Exhibit L** attached hereto.

Section 7.6 Owner's Rights Regarding Publicly Accessible Open Spaces. Subject to City regulations as may be adopted or amended from time to time, the terms and conditions of the Publicly Accessible Open Spaces Easement Agreement, and such other agreements as the Owner and the City may agree to, Owner shall retain the right to design, landscape, and determine the programming for the Publicly Accessible Open Spaces, subject to compliance with the Approved PAD Plans, this Agreement and **Exhibit L** attached hereto.

Section 7.7 Events in and Around Publicly Accessible Open Spaces. Subject to City regulations as may be adopted or amended from time to time, the Owner may sponsor or similarly partner with organizations to hold temporary events in and around the Publicly Accessible Open Spaces. In advance of a temporary event, the Owner shall submit an application to the City consistent with the requirements contained in the City Zoning Code to

obtain the necessary permits and approvals. The City shall have the right to hold events in Publicly Accessible Open Spaces, and the parties agree to cooperate in the scheduling of these spaces.

ARTICLE VIII. ENCROACHMENTS AND UTILITIES **[NOTE: RISK MGMT. NEEDS TO REVIEW BEFORE EXECUTION]**

Section 8.1 Construction of Encroachments within City Owned Public Rights-of-Way. The City finds that the construction of encroachments in, above, and under the public rights-of-way will not unduly restrict the use of such public rights-of-way and is a necessary and essential element in the future construction of pedestrian walkways or commercial uses above such public rights-of-way as generally depicted on **Exhibit K** attached hereto. The precise locations and dimensions of the proposed areas of encroachment will be resolved at the time of City approval of the encroachment agreements, which shall occur prior to the issuance of the foundation permit.

Section 8.2 Applications. The Owner shall file applications for approval of all above grade, at grade and below grade encroachments, and must obtain approval by resolution of the City Commission in accordance with all applicable local laws, including but not limited to Sections 5-301 and 5-1911 of the Zoning Code and Section 62-3 of the City Code of Ordinances, prior to applying for the foundation permit. The Owner shall provide indemnities and insurance in the amounts and of the types acceptable to the City Attorney and the City's Risk Manager, as approved in such encroachment agreements.

Section 8.3 Below grade parking areas. Subterranean parking areas may be constructed below rights-of-way if both sides of the right-of-way are owned by the Owner, and shall be subject to approval by the Development Review Official. Notwithstanding the foregoing, subterranean parking areas may also occur below the rights-of-way adjacent to the excluded parcel at 2915 Coconut Grove Drive. Trees planted along these rights-of-way shall be given adequate depth to allow for a mature tree canopy above the underground parking deck. Air ventilation exhausts shall not obstruct sidewalks and other pedestrian spaces. Exhausts may be located in the above the ground level in the public access easement, back of house locations, and upper level parking decks, but shall not vent onto Publicly Accessible Open Spaces. These vents shall be screened to match the character of the adjacent buildings.

Section 8.4 Activity within the Public Right-of-Way. The City shall permit those uses allowed in the Approved PAD Plans in the habitable areas in Levels B2 (hotel back-of-house), B1 (hotel back-of-house) and 2 (retail) to be located within the public right-of-way, in locations and to the extent shown in the Approved PAD Plans and generally depicted on **Exhibit K** attached hereto.

Section 8.5 Utilities. The Owner shall be responsible for the proper repair and maintenance of all utility lines within the Property, including within public rights-of-way where underground encroachments exist as shown in the Approved PAD Plans.

Section 8.6 Covenant for Encroachments and Utilities. Prior to the issuance of the foundation permit for the Project, Owner shall execute and record in the public records of

Miami-Dade County, a restrictive covenant regarding encroachments and utilities in, below and above the public rights-of-way, in a form acceptable to the Public Works Director, the Risk Management Division, and the City Attorney.

Section 8.7. Public Access Easement. No parking will be allowed in the Public Access Easement to be dedicated by the Owner at the rear of the townhouses shown on the Approved PAD Plans. Access to the parcel at 2915 Coconut Grove Drive will be maintained for as long as the Owner does not own that parcel. The precise locations and dimensions of the Public Access Easement will be resolved at the time of City approval of the encroachment agreements, which shall occur prior to the issuance of the foundation permit.

ARTICLE IX. LOCAL DEVELOPMENT PERMITS

Section 9.1 Development Permits. The Owner intends to develop the Property consistent with the Approved PAD Plans and this Agreement. The Project may require additional permits or approvals from the City, County, State, or Federal government, including their respective internal agencies. Subject to the required legal processes and approvals, the City shall make a good faith effort to take all necessary and reasonable steps to cooperate with and expedite the issuance of all such approvals and permits. Such approvals may include, but are not limited to:

(i) Subdivision plat approvals;

(ii) Covenant in Lieu ("Covenant") of Unity of Title or Unity of Title ("Unity") acceptance or the release of existing Covenants or Unities;

(iii) Water and Sanitary Sewage Agreements;

(iv) Drainage Permits;

(v) Temporary Use Permits;

(vi) Tree Removal Permits;

(vii) Demolition Permits;

(viii) Environmental Resource Permits;

(ix) Building Permits;

(x) Certificates of Use;

(xi) Certificates of Occupancy;

(xii) Stormwater Permits;

(xiii) Miami-Dade Transit approvals;

(xiv) Federal Aviation Administration determination(s) and approval(s); and

(xv) Any other official action of the City or other government agency having the effect of permitting Development of the Property.

ARTICLE X. CREATION OF PROJECT-WIDE OWNERS ASSOCIATIONS

Section 10.1 Creation of Residential Condominium Associations. Prior to the first conveyance of any property interest in a residential condominium unit on the Property by the Owner to an unaffiliated third party, Owner shall create a property owners association, in accordance with Section 3-510-1.D.6. of the City's Zoning Code, whose articles of incorporation shall require all property owners within the Project to be members, including Owner if Owner retains any property interest in a residential condominium unit (the "Residential Property Owners Association" or "Residential POA").

Section 10.2 Creation of Non-residential Associations. In the event that any property interest in a non-residential property is proposed to be conveyed to one or more unaffiliated third parties, Owner shall submit documentation acceptable to the City Attorney demonstrating continued unified control of the Project prior to conveying such property interest, and shall create a property owners association, in accordance with Section 3-510-1.D.6. of the City's Zoning Code, whose articles of incorporation shall require all such unaffiliated third party owners of non-residential property within the Project and Owner if Owner retains any property interest in non-residential Property, to be members (the "Non-residential Property Owners Association" or "Non-residential POA"). For purposes of this Agreement, the term "POA" refers to both a Residential POA and a Non-residential POA.

Section 10.3 Purpose of POA. The POA shall be the successor entity to the Owner for the purposes of fulfilling the obligations and requirements of this Agreement, including but not limited to the following within the area of the Project covered by the relevant POA:

(i) Ownership and maintenance of any common areas on the Property, including Publicly Accessible Open Spaces, Public Art, recreational facilities, and private streets and walkways.

(ii) Maintaining liability insurance and payment of property taxes for common areas.

(iii) Collecting the pro rata share of each property owner for the maintenance and operation of the common areas, and the liening of property in the event of nonpayment of the pro rata share of each property owner for the maintenance and operation of the common areas.

Section 10.4 Recourse. In the event the POA fails to maintain its common area in good order and in accordance with the Approved PAD Plans and this Agreement, the City Commission may serve notice upon the POA and hold a public hearing. If deficiencies of maintenance are not corrected within thirty (30) days after such notice and hearing, the City Commission shall call upon the Owner to maintain the common area for a period of one year. When the City Commission determines that the subject organization is not prepared or able to

maintain the common area, the Owner shall continue maintenance for yearly periods. The cost of such maintenance shall be assessed proportionally against the properties within the Project that have a right of enjoyment of the common areas and shall become a lien on said properties.

ARTICLE XI. MISCELLANEOUS PROVISIONS

Section 11.1 No Partnership or Joint Venture; No Third Party Beneficiaries. It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners, or creating or establishing the relationship of a joint venture between the City and Owner, or as constituting Owner as the agent or representative of the City for any purpose or in any manner whatsoever. It is specifically understood and agreed to by and between the parties hereto that: (1) the subject Development is a private Development; (2) the City has no interest or responsibilities for or duty to third parties concerning any improvements until such time, and only until such time, that the City accepts such interest or responsibilities pursuant to the provisions of this Agreement or in connection with the various approvals; (3) the Owner shall have full power and exclusive control of the Property herein described subject only to the limitations and obligations of said parties under this Agreement; and (4) the contractual relationship between the City and the Owner is such that the Owner is an independent contractor and not an agent of the City. There are no third party beneficiaries to this Agreement, expressed, implied or intended.

Section 11.2 Recording; Documentary Stamps. The Owner shall be responsible for recording in the Public Records of Miami-Dade County, Florida this Agreement, any amendment hereto, and any other agreement or document required to be recorded pursuant to this Agreement, including but not limited to those referenced in Sections 6.4 and 7.3, at Owner's expense. The recorded original of this Agreement, any amendment hereto, and any other document recorded pursuant to this Agreement, shall be returned to the City within 10 days after execution for filing in the City's records.

Section 11.3 Florida and Local Laws Prevail. This Agreement shall be governed by the laws of the State of Florida. This Agreement is subject to and shall comply with the Charter of the City of Coral Gables as the same is in existence as of the execution of this Agreement and the ordinances of the City of Coral Gables. Future ordinances of the City shall not affect the terms and provisions of this Agreement (i) unless uniformly applicable to property similarly situated with the Property, Offsite Improvements and Owner Improvements; provided, however, to the extent the Owner would otherwise be grandfathered or not subject to such ordinances if this Agreement did not exist, the Owner shall not be subject to such ordinances or (ii) if the same shall impair the rights of the Owner or the obligations of the City hereunder. Subject to the foregoing, any conflicts between this Agreement and the aforementioned Charter and ordinances shall be resolved in favor of the latter. If any term, word, phrase, section, covenant, or condition of this Agreement or the application thereof to any Person or circumstances shall to any extent, be illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity or becomes unenforceable because of judicial construction, the remaining terms, words, phrases, sections, covenants and conditions of this Agreement, or application of such term, covenant or condition to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and

each term, word, phrase, section, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 11.4 Conflicts of Interest: City Representatives Not Individually Liable. No member, official, representative, or employee of the City or the City Manager shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, representative or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. No member, official, elected representative or employee of the City or the City Manager shall be personally liable to the Owner or any successor in interest in the event of any default or breach by the City or the City Manager or for any amount which may become due to the Owner or successor or on any obligations under the terms of the Agreement.

Section 11.5 Notice. All notices, demands, requests and other communications required under this Agreement must be given in writing and may be delivered (a) by hand, or (b) by certified mail, return receipt requested, or (c) by a nationally recognized overnight delivery service such as Federal Express. Notice shall be deemed to have been given upon receipt of notice or refusal of delivery thereof. All notices, demands, requests and other communications required under this Agreement may be sent by electronic mail provided that the electronic communication is promptly followed up by notice given pursuant to one of the three methods in the preceding sentence. Any party may designate a change of address by written notice to the other party, received by such other party at least ten days before the change of address is to become effective.

(i) Owner. In the case of a notice or communication to the Owner if addressed as follows:

To: Agave Ponce, LLC
2601 South Bayshore Drive, Suite 250
Miami, Florida 33133
Attn: Alejandro Martinez

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

and: Any Mortgagee of the Owner whose address has been provided to the City in writing and, in the case of a Notice of Default sent to the Owner, a copy shall be sent to any Lender as registered with the City as required hereunder. NOTICE OF DEFAULT TO THE OWNER IS NOT EFFECTIVE UNTIL A NOTICE IS SENT TO ALL LENDER(S) SO REGISTERED WITH THE CITY.

(ii) City. In the case of a notice or communication to the City, if addressed as follows:

To: City of Coral Gables
405 Biltmore Way
P.O. Drawer 141549
Coral Gables, Florida 33134
Attn: City Manager

cc: City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Attn: City Attorney
cleen@coralgables.com

and

Weiss Serota Helfman Cole & Bierman, P.L.
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, Florida 33134
Attn: Susan L. Trevarthen, Esq.
slt@wsh-law.com

A party may unilaterally change its address or addressee by giving notice in writing to other parties as provided in this Section. Thereafter, notices, demands and other pertinent correspondence shall be addressed and transmitted to the new address.

Section 11.6 Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 11.7 Counterparts. This Agreement is executed in counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument. This Agreement shall become effective only upon execution and delivery of this Agreement by the parties hereto.

Section 11.8 Amendments. No amendments to this Agreement shall be binding on either party unless in writing, signed by the City and Owner, and adopted in accordance with the procedures outlined in Section 3-2009 of the Zoning Code. If any portion of the Property has been submitted to the condominium form of ownership, consent of the condominium association will be required for any amendment to this Agreement. The consent of a condominium association will be deemed to have been granted, unless such consent is expressly withheld. An amendment is required for changes in use meeting the criteria of Section 2.3 hereof.

Section 11.9 Authorization and Approvals by the City.

(i) Decision Maker. All requests for action or approvals by the City related to this Agreement shall be sent to the City Manager for decision, who shall be the representative of the City that must act or approve the matter on behalf of the City. The City Manager, in his or her

sole discretion, may delegate such matters consistent with his or her powers established under the City Charter and City Code of Ordinances. Matters requiring official City approvals, such as applications for building permits, shall be handled in accordance with all applicable laws; it is specifically not the intent of the parties that this section shall have any effect on such approval processes.

(ii) Extensions. Without limiting the generality of the foregoing or the general authority of the City Manager, the City Manager, by virtue of the City Commission's approval of this Agreement, is hereby delegated authority by the City Commission to have the authority himself or herself to grant extensions of time for performance by the Owner for up to ninety (90) days (extensions of time in excess of ninety (90) days shall require City Commission approval). If the City Manager's office shall be vacant or if the City Manager shall not have the full authority to act or approve matters required of the City pursuant to this Agreement, then the City Commission shall, promptly upon written request by the Owner, designate such other officer or department as may be appropriate to perform the City's obligations.

(iii) Timing. Unless otherwise specified to the contrary herein, all decisions, approvals and actions required of the City hereunder must be decided, given or taken within sixty (60) consecutive days after the receipt of written notice requesting same unless the City Manager requests an alternative timeframe in writing prior to the sixtieth day following receipt of written notice.

Section 11.10 Exculpation. Notwithstanding any provision contained in this Agreement to the contrary, it is specifically agreed and understood that there is no personal liability on the part of any manager or member in the Owner (provided such member is acting within the limitations placed on same by Florida law or has not assumed in writing any greater liability with respect to this Agreement) other than authorized by the articles of agreement and operating agreement of the limited liability company. The foregoing shall not be construed to exculpate or immunize any manager, member, director, official, or agent of the Owner for statements made under oath or penalties of perjury. Likewise, notwithstanding any provision contained in this Agreement to the contrary, it is specifically agreed and understood that there is no personal liability on the part of any City elected or appointed officer, employee, or agent, with respect to the performance, manner or time of performance, delay, or lack of performance, of any of the obligations, terms, covenants and conditions of this Agreement.

Section 11.11 Attorneys' Fees. In the event either party hereto institutes legal proceedings in connection with, or for the enforcement of, this Agreement, each party shall bear its own costs of suit, including attorneys' and paralegals' fees, at both trial and appellate levels.

Section 11.12 Caption. The article and section headings and captions of this Agreement and the table of contents preceding this Agreement are for convenience and reference only and in no way define, limit, describe the scope or intent of this Agreement or any part thereof, or in any way affect this Agreement or any part thereof.

Section 11.13 Holidays. It is hereby agreed and declared that whenever a notice or performance under the terms of this Agreement is to be made or given on a Saturday or Sunday

or on a legal holiday observed by the City, it shall be postponed to the next following business day that is not a Saturday, Sunday, or legal holiday.

Section 11.14 Owner as Independent Contractor. Nothing contained in this Agreement shall be construed or deemed to name, designate, or cause (either directly or implicitly) the Owner, or any contractor of the Owner to be an agent of or in partnership with the City.

Section 11.15 Severability; Unlawful Provisions Deemed Stricken. If this Agreement contains any unlawful provisions that are not an essential part of this Agreement and which do not appear to have been a controlling or material inducement to the making of this Agreement, such provisions shall be deemed of no effect and shall be deemed stricken from this Agreement without affecting the binding force of the remainder. In the event any provision of this Agreement is capable of more than one interpretation, one which would render the provision invalid and one which would render the provision valid, the provision shall be interpreted so as to render it valid.

Section 11.16 No Liability for Approvals and Inspections. Except as may be otherwise expressly provided herein, no approval to be made by the City or any City official, employee, or agent of the Property or the Project under this Agreement, shall render the City or any City official, employee, or agent, personally or in said individual's official capacity, liable for its failure to discover any defects or nonconformance with any federal, state or local statute, regulation, ordinance or code, or to enforce any laws, rules, codes, or other governmental requirements.

Section 11.17 Reserved

Section 11.18 Cooperation; Expedited Permitting; and Time is of the Essence.

(i) The Parties agree to cooperate with each other to the full extent practicable pursuant to the terms and conditions of this Agreement. The Parties agree that time is of the essence in all aspects of their respective and mutual responsibilities pursuant to this Agreement. The City shall use its best efforts to expedite the permitting review and approval process in an effort to assist the Owner in meeting its demolition, Development, and construction completion schedules, all as is consistent with this Agreement. Due to the large and complex scope of work, accelerated schedule and high cost of development, the Owner shall reimburse the City for acquiring the services of an outside Peer Review Consultant for plan review and inspections by all disciplines. The Peer Review Consultant shall ensure code compliance for all building, mechanical, electrical, plumbing, and structural aspects of the project. The Peer Review Consultant shall be identified, hired and managed by the Building Division under the direct supervision of the City's Building Official. The City will accommodate requests from the Owner's agents, representatives, general contractor(s), subcontractors, and private plan reviewers and inspectors for simultaneous review of multiple permitting packages, such as those for site work and foundations, and building shell, core, and interiors. Under no circumstances will the City be obligated to issue Development permits if the Owner does not comply with the applicable requirements of the City Zoning Code, the Project's zoning approvals, the Comprehensive Plan, this Agreement, applicable building codes, or any other Governmental Requirements.

(ii) The ordinances and regulations of the City governing the Development of the land on the Effective Date of this Agreement shall continue to govern the Development of the Property, except as otherwise provided herein. At the termination of this Agreement, all then existing codes shall become applicable to the Development of the Property. Except as otherwise specifically set forth herein during the term of this Agreement or thereafter, no fee (including the existence or lack thereof), fee structure, amount computation method or fee amount, including any impact fees, then in existence or hereafter imposed, shall be vested by virtue of this Agreement.

(iii) In the event that state or federal laws or regulations are enacted after the approval, effectiveness, or execution of this Agreement which are applicable to and preclude the parties' compliance with the terms of this Agreement, this Agreement shall be modified or revoked as is necessary to comply with the relevant state or federal laws or regulations, such modification or revocation to take place only after any applicable notice provisions provided for the adoption of this Agreement have been complied with. The City shall cooperate with the Owner in the securing of any permits which may be required as a result of such modifications.

(iv) The City may apply changes to vested City ordinances and City policies, or new City requirements, adopted subsequent to the execution of this Agreement to the Property, only if the City has held a public hearing and determined that: (i) such new City ordinances or City policies are not in conflict with the laws and policies governing the Agreement and do not prevent Development of the land uses, as allowed under the terms of this Agreement; (ii) such new City ordinances or City policies are essential to the public health, safety, or welfare and the new City ordinances or City policies expressly state that they shall apply to a Development that is subject to an Agreement of this type; (iii) such new City ordinances or City policies are specifically anticipated and provided for in this Agreement; (iv) the City has demonstrated that substantial changes have occurred in pertinent conditions existing at the time of the approval of this Agreement; or (v) this Agreement is based on substantially inaccurate information supplied by the Owner.

Section 11.19. Reserved.

Section 11.20. Effective Date; Duration of Agreement; Termination.

(i) The term of this Agreement shall commence upon the Effective Date.

(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. 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." Security shall be provided for the following:

(i) Security for Restoration of Arts Center Building, Residence, or City Property. Prior to the issuance of the foundation permit for the Project, the Owner shall provide to the City a surety bond, or other form of security deemed acceptable by the City, in an amount determined by the Public Works Director and in a form acceptable to the Building Official, covering the estimated maximum cost of site restoration and replacement cost for: (1) the historic Arts Center Building located at 2901 Ponce de Leon Boulevard; (2) the residence located at 2915 Coconut Grove Drive; and (3) adjacent City property and infrastructure. Said surety bond or other security instrument may be acted upon by the City Manager in the event of either (a) damage 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.

(ii) Security for Restoration of Property if Project is Abandoned. Prior to issuance of the foundation permit for the Project, the Owner shall provide to the City a surety bond, or other form of security deemed acceptable by the City, covering the estimated maximum cost of the full restoration of the Property, including installation of sod and landscaping to City Code standards, and removal of all construction fencing. Said surety bond or other security instrument may be acted upon in the event of a complete cessation of construction activities on the Property, as evidenced by the passing of more than 180 days with no approved inspection of construction work on the Property.

(iii) Security for Construction of Offsite Improvements. Prior to issuance of the foundation permit for the Project, 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.

(iv) 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. Owner hereby expressly consents to the creation and imposition of a special assessment loan against the Property for this purpose.

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. 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, the Owner hereby agrees to defend, indemnify and hold harmless the City and its former, current and future elected officials, directors, attorneys, appointed officials, administrators, consultants, agents, and employees from and against all claims, damages, losses, and expenses direct, indirect, or consequential (including but not limited to fees and charges of attorneys and other professionals and court and arbitration costs) arising out of or resulting from (i) the City's granting of permission for any activity performed under the terms of this Agreement and (ii) the installation and/or maintenance of the Project and caused, in whole or in part, by any willful, intentional, reckless, or negligent act and/or omission of Owner or any person, employee, agent, or third party acting on Owner's behalf (including any contractor, subcontractor, or any person or organization directly or indirectly employed by any of them or anyone for whose acts any of them may be liable). Inclusive in this indemnity provision is the agreement to fully indemnify the City from any claims or actions alleged to have been caused by the City's acts or omissions.

Owner shall maintain insurance, which will provide for the indemnity provision provided herein as further specified below.

(ii) In any and all claims against the City or any of its consultants, agents, or employees by any employee of Owner or any employee of any person, employee, agent, or third party acting on Owner's behalf (including contractors, subcontractors, or any person or organization directly or indirectly employed by any of them or anyone for whose acts any of them may be liable), the indemnification obligation of this section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Owner or by or for any person, employee, agent, or third party acting on Owner's behalf (including contractors, subcontractors, or other persons or organizations directly or indirectly employed by any of them or anyone for whose acts any of them may be liable) under workers' or workman's compensation acts, disability benefit acts, other employee benefit acts or any other service of law. This indemnification provision shall survive the termination of any City permit and this Agreement, however terminated.

Section 12.2. No Waiver of City's Immunity. Nothing in this Agreement shall be considered to increase or otherwise waive any limits of liability or to waive any immunity established by Florida Statutes, case law, or any other source of law. This indemnification provision shall survive the termination of any City permit or Agreement with the City, however terminated. Nothing contained herein shall be construed as a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity in Section 768.28, Florida Statutes. Inclusive in this Indemnity provision is the agreement to fully indemnify the City from any claims or actions alleged to have been caused by the City's acts or omissions. Owner shall maintain insurance, which will provide for the indemnity provision provided herein as further specified below.

Section 12.3 Insurance.

(i) The Owner agrees to obtain an insurance policy, in an amount and coverage determined by the City's Risk Management Division (or its successor agency) and the City Attorney, naming the City as an additional insured — on a primary and non-contributory basis — for public liability and a loss payee for damage to public property. All insurance is subject to the reasonable approval of the City's Risk Management Division (or its successor agency) and the City Attorney. The insurance must be issued by an insurance company licensed and approved to do business selling insurance within the State of Florida by the Florida Insurance Commissioner, or successor regulatory agency of the State of Florida. The insurance must be rated as A+ or better with a financial quality rating of at least VII by A.M. Best's Rating Guide or its successor. If the rating and financial quality system shall be revised by A.M. Best's Rating Guide or its successor, the Owner and the City shall promptly agree in a recordable writing to a successor rating system or rating system operator. If the Owner and the City are unable to agree, the parties shall select three (3) arbiters expert in insurance who are members of the American Arbitration Association who shall make the selection. All insurance shall be occurrence based, and in no event shall claims made insurance be acceptable as coverage. The insurance shall remain in effect for the life of the Project. Should the Owner fail to continue to provide the insurance coverage, the City shall have the right to secure a similar insurance policy in its name

and place a special assessment lien against the Owner's abutting private property for the total cost of the premium.

(ii) The insurance shall at a minimum be what is known on the Effective Date of this Agreement as commercial general liability insurance, single limit liability with a minimum coverage of at least $3,000,000. Claims made insurance shall not be acceptable insurance under this Agreement, and all insurance shall be occurrence based. A copy of the policy and all endorsements shall be maintained on file with the City's Risk Management Division (or its successor agency) and the City Attorney. As the policy is revised or insurers are changed, new copies shall be immediately filed with the City's Risk Management Division (or its successor agency) and the City Attorney within thirty (30) days of receipt of any policy revision or obtaining a new policy. A certificate of insurance shall not be deemed to be acceptable proof of insurance. Proof of insurance shall be demonstrated by use of a policy declaration page, naming the insured, loss payee, additional insured, term of coverage, liability coverage and amounts, and other pertinent and material information as is normally displayed on insurance policy declaration pages. Evidence of insurance will not be approved unless all of the requirements have been met to the satisfaction of the Risk Management Division.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Owner has caused this Agreement to be signed in its name by its Managing Member, and the City Commission of Coral Gables has caused this Agreement to be signed in its name by the City Manager, duly attested to by the City Clerk, and approved as to form and sufficiency by the City Attorney, on the day and year first above written.

OWNER:

ATTEST:

AGAVE PONCE, LLC, a Florida limited liability company

By:
Name:
Title: Manager

Name:

Name:

[NOTE: at time of execution, all Lenders and lien holders in the Property, if any, must execute in a form acceptable to the City Attorney]

[NOTE: at least 21 days prior to execution, City needs an opinion of title and updated survey showing Owner control of the entire Property]

CITY:

By authority of Ordinance No. _____ duly passed and adopted by the Coral Gables City Commission on _____, 2015.

ATTEST:

CITY OF CORAL GABLES, a Florida municipal corporation

By:
Name: Walter Foeman
Title: City Clerk

By:
Name:
Title: City Manager

APPROVED AS TO FORM AND SUFFICIENCY:

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

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

The foregoing instrument was acknowledged before me, this ____ day of _____, 2015, by _____, as Manager of Agave Ponce, LLC, a Florida Limited Liability company, on behalf of the company. He is personally known to me or has produced _____ as identification.

_____
Notary Public State of Florida at Large
My Commission Expires:
Print Name:

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

The foregoing instrument was acknowledged before me, this ___ day of _____, 2015, by Cathy Swanson-Rivenbark, as City Manager of the City of Coral Gables, Florida, a Florida Municipal Corporation, on behalf of the municipal corporation. She is personally known to me or has produced _____ as identification.

_____
Notary Public State of Florida at Large
My Commission Expires:
Print Name:

EXHIBIT "A"

Legal Description of Property

LEGAL DESCRIPTION:

Parcel 1:

Lots 8 through 13, inclusive and Lots 26 through 29, inclusive, all in 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, 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.

And

All that part of 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, which lies west of a line 20 feet West of and parallel to the East lines extended Lots 10 and 27, 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.

LESS

That portion of the North-South alley and the portion of the East-West alley which lies West of the East property line of Lots 30 and 7 projected North and South respectively, Block 20, "CORAL GABLES CRAFTS SECTION", according to the Plat thereof, recorded in Plat Book 10, at Page 40, of the Public Records of Miami-Dade County, Florida.

Parcel 3:

Lots 14 through 25, inclusive, 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.

Parcel 10:

Lot 45, Block 31, of CRAFTS SECTION OF CORAL GABLES, as recorded in Plat Book 10, at Page 40, of the Public Records of Miami-Dade County, Florida.

Parcel 12:

Lots 12 and 13, in Block 33, of CORAL GABLES CRAFTS SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 10, at Page 40, of the Public Records of Miami-Dade County, Florida.

Parcel 14:

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 15:

INTENTIONALLY DELETED (Partial Release recorded in O.R. Book 27291, Page 2036)

Parcel 16:

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 17:

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 18:

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 19:

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 20:

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.

Together With:

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, LESS Tract "A" thereof.

Together With:

All that portion of the East-West Alley in Block 20, 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 East of a line 20 feet West of and parallel to the East lines extended Lots 10 and 27, in Block 20, 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.

Together With:

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.

EXHIBIT "B"

Development Schedule

All time periods provided below are measured from the date of final City Commission zoning approval, 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.

Expiration of Appeal Period for Zoning Approvals	[30 Days]
Submittal of Initial/Foundation Building Permit Plans	[7 Months]
Commencement of Construction (Foundation)	[within 2 Months of issuance of foundation permit]
Complete Project Buildout, as measured by the issuance of final Certificates of Occupancy or Certificates of Completion, as applicable, for the Project	[46 Months]
Completion of Offsite Improvements, as measured by their acceptance by the Public Works Director	[Prior to issuance of first Temporary Certificate of Occupancy for the Project]

EXHIBIT "C"

Hotel Standards of Operation

- The hotel shall obtain a Four- or Five-Diamond Certification from AAA and shall maintain such certification throughout the life of this Agreement.
- The hotel shall provide banquet and meeting spaces to meet the needs for large banquets, conferences, and other events with a banquet hall that seats a minimum of 500 guests.
- The hotel shall have a spa that is operated at the same standard of quality as the Biltmore Hotel in Coral Gables or The Standard Hotel in Miami Beach.
- The hotel shall use high-quality materials on its exterior and interior, in keeping with the standards required for Four- or Five-Diamond hotels certified by AAA.

EXHIBIT "D"

Reserved

EXHIBIT "E"
Retail Standards of Operation

The retail portions of the project shall be operated, leased, and maintained in a manner consistent with projects such as The Village of Merrick Park, Mizner Park, and CityPlace.

The retail portions of the project shall be a first class regional shopping center consistent with the Approved PAD Plan and all applicable agreements, and shall be kept in good order, condition, repair, and maintenance, with reasonable wear and tear excepted.

The Owner shall provide private security for the Project.

The Owner shall maintain a minimum of 75% occupancy of all retail spaces; if less than 75% occupancy is provided for a period of more than 6 months, the Owner will be considered to be in an Event of Default, and the penalties outlined in this Agreement may be pursued by the City.

The Owner acknowledges and agrees that active and attractive retail uses that are of interest to and service the project residents, hotel guests, office workers, and the immediate neighborhood and can garner reason for the general public and tourist to consider downtown Coral Gables as a destination for shopping and entertainment activity are of importance to the city as part of its vision for this area.

The Owner acknowledges it has received and reviewed the following: the Mediterranean Village at Ponce Circle Technical Memorandum of January 26, 2015 by Lambert Associates, and the transcripts of the Peer Review Meetings on the project which took place on November 21, 2014 and September 19, 2014.

The Owner agrees with the goals described in these reports and panel discussions and will exercise its best efforts generally to achieve a targeted leasing strategy and operational practices consistent with said goals. The Owner will target an activating of approximately 300,000 square feet of retail, entertainment, food and beverage. Design refinements throughout the development period will be targeted at maximization of the Ponce de Leon frontage, circulatory promptings to the interior plazas and recruitment of two level uses that better feed traffic to the above grade space.

The retail component will include fashion specialty stores, lifestyle retailers, restaurants and cafes, other specialty product shops, services, and other high appeal commerce. All of the retailers will operate compliant to design criteria requiring attractive retail transparent windows assuring clear views into their operations. They will feature professional creative signage within guidelines of the project design criteria to assure compatibility to city requirements and the project's overall architecture. Stores will operate seven days a week: Sunday through Thursday from 10 am to 9 pm, Friday - Saturday from 10 am – 11 pm. Restaurants and other food and beverage establishments will be required to operate, at minimum, during the retail hours of operation, and they may operate later in the evening subject to other City regulations. Systems

and tenant operating rules will prompt back of store delivery, sanitary and functional considerations for trash and wet trash disposal, and subliminal security applications. Customer pickup of large merchandise will be from Level B2.

The two larger retail spaces indicated on the project site plan are intended for large scale tenants which presently cannot locate on Miracle Mile because of space constraints and which can be expected to attract more customers to Miracle Mile also. The Owner is obligated to use its best efforts to attract high quality tenants for these anchor spaces, and to avoid tenants which could be characterized as “big box”, discount, or outlet retailers.

In the event that any portion of the Project’s second floor of retail space cannot be successfully leased, the Owner will convert all or a portion of the second floor to professional office use. An inability to successfully lease a second floor retail space means that the space has remained vacant for at least 180 days without active building permits. Owner agrees to report the occupancy of the second floor retail to the City Development Services Director no later than January 31 and July 31 of each year for the life of the Agreement. The first report for a particular second floor retail space shall be provided at the first report deadline after the issuance of a Temporary Certificate of Occupancy for that space. In addition to the general waiver provisions of this Agreement, the parties specifically agree that the City’s failure to object to a retail space that is vacant for more than 180 days does not waive the City’s subsequent ability to object to such vacancy or other subsequent vacancies. If the Owner ever seeks to return a professional office space to second floor retail use, the Owner must demonstrate that the parking impacts of such a change can be accommodated, in accordance with the change of use requirements of Section 2.3 of the Agreement.

EXHIBIT "F"

Restaurant Standards of Operation

- The restaurants will be a mix of fine dining and family/casual full table service restaurants. Three restaurants are identified as quality restaurants and high-turnover (sit-down) restaurants.

- Examples of fine dining restaurants are Capital Grille, Cantina la Veinte, Cipriani, Zuma and Il Gabbiano.

- Examples of family/casual restaurants with full table service are Carrabbas Italian Grill, My Ceviche, and Tony Romas.

- The restaurant proposed for the top two levels of the hotel shall be a fine dining establishment designed in a manner so that members of the public who are not restaurant patrons can still access the space and outdoor terraces so as to admire views of the City and surrounding area.

- All restaurants will be fully open to the public and operate the same or greater hours as the retail stores.

- All restaurants will maintain a high standard of appearance, cleanliness, quality and service.

- All restaurants will feature professional signage compatible with City requirements and the project's overall architecture and signage program.

EXHIBIT "G"
Office Standards of Operation

- The Office Building shall be ranked as Class A office space, and shall be operated and maintained as such.

- There shall be no smoking in or within 100' of the Office Building.

- The Office Building shall have valet service.

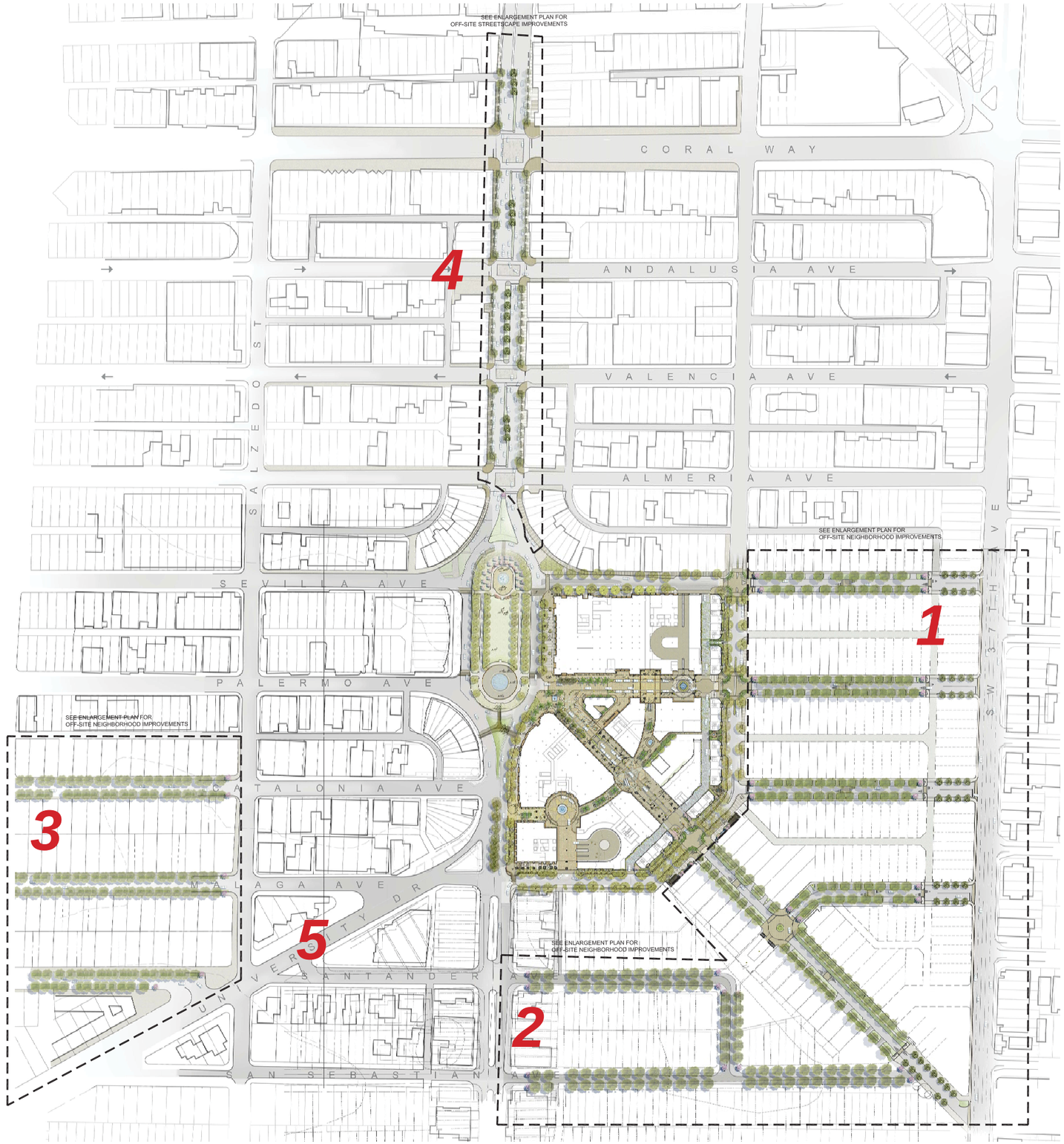
- The interior and exterior of the Office Building shall have high quality finishes that shall be maintained and may be periodically updated to maintain positioning as Class A office space.

- The Office Building shall only have reserved parking spaces for office uses until 6 pm on weekdays.

EXHIBIT "H"
Offsite Improvements

Exhibit H

OFF-SITE 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.
5	University Drive Streetscape – South	$125,000	Sidewalk and bike lane installation.

EAST NEIGHBORHOOD ENHANCEMENTS

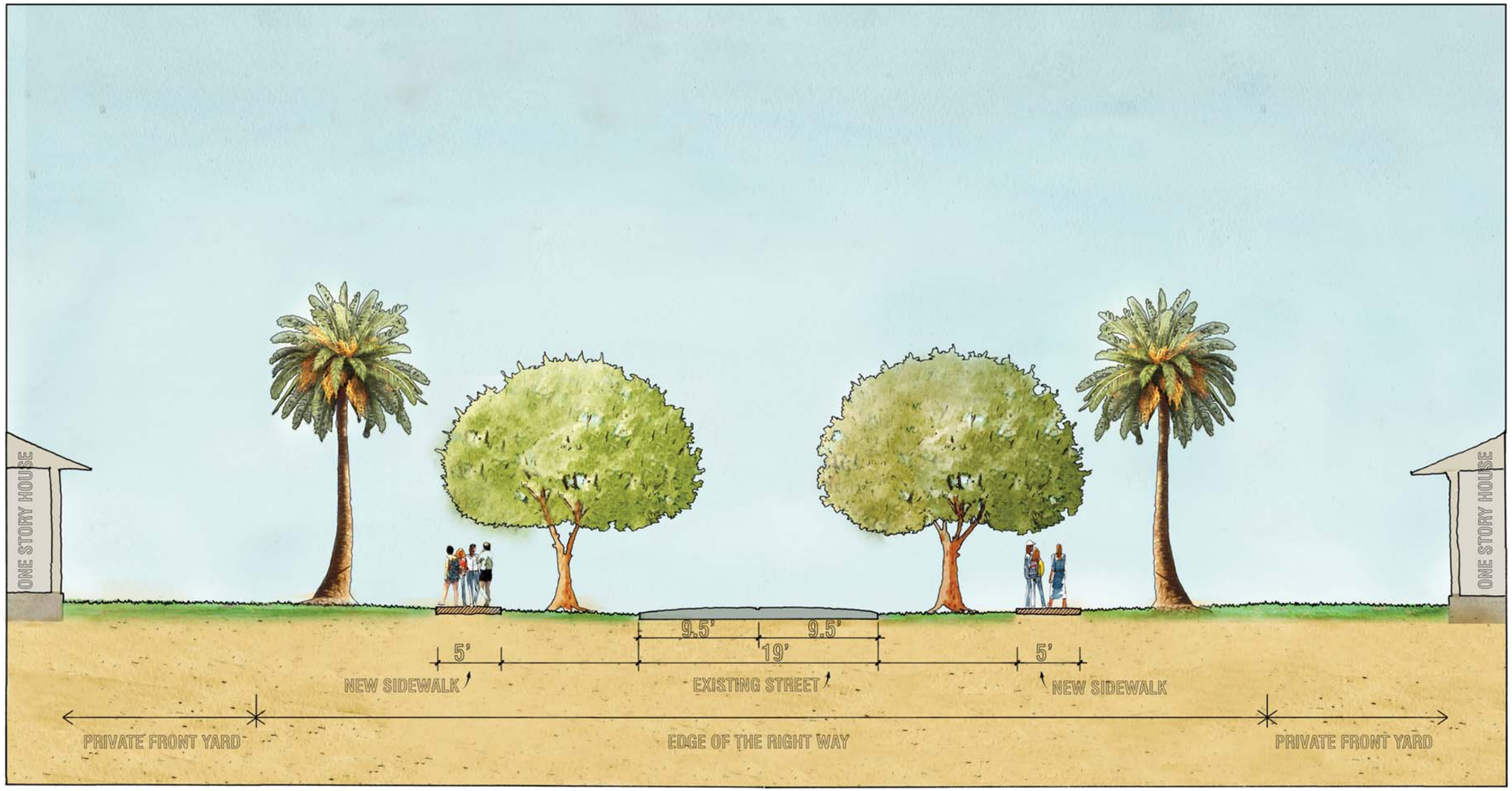




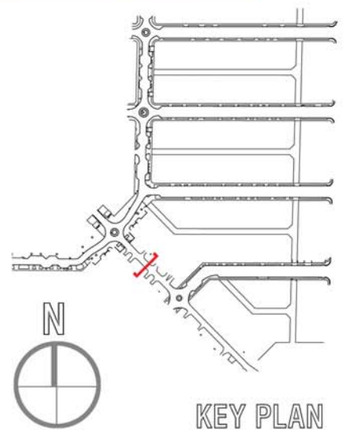
WEST NEIGHBORHOOD ENHANCEMENTS



COCONUT GROVE DRIVE STREET SECTION

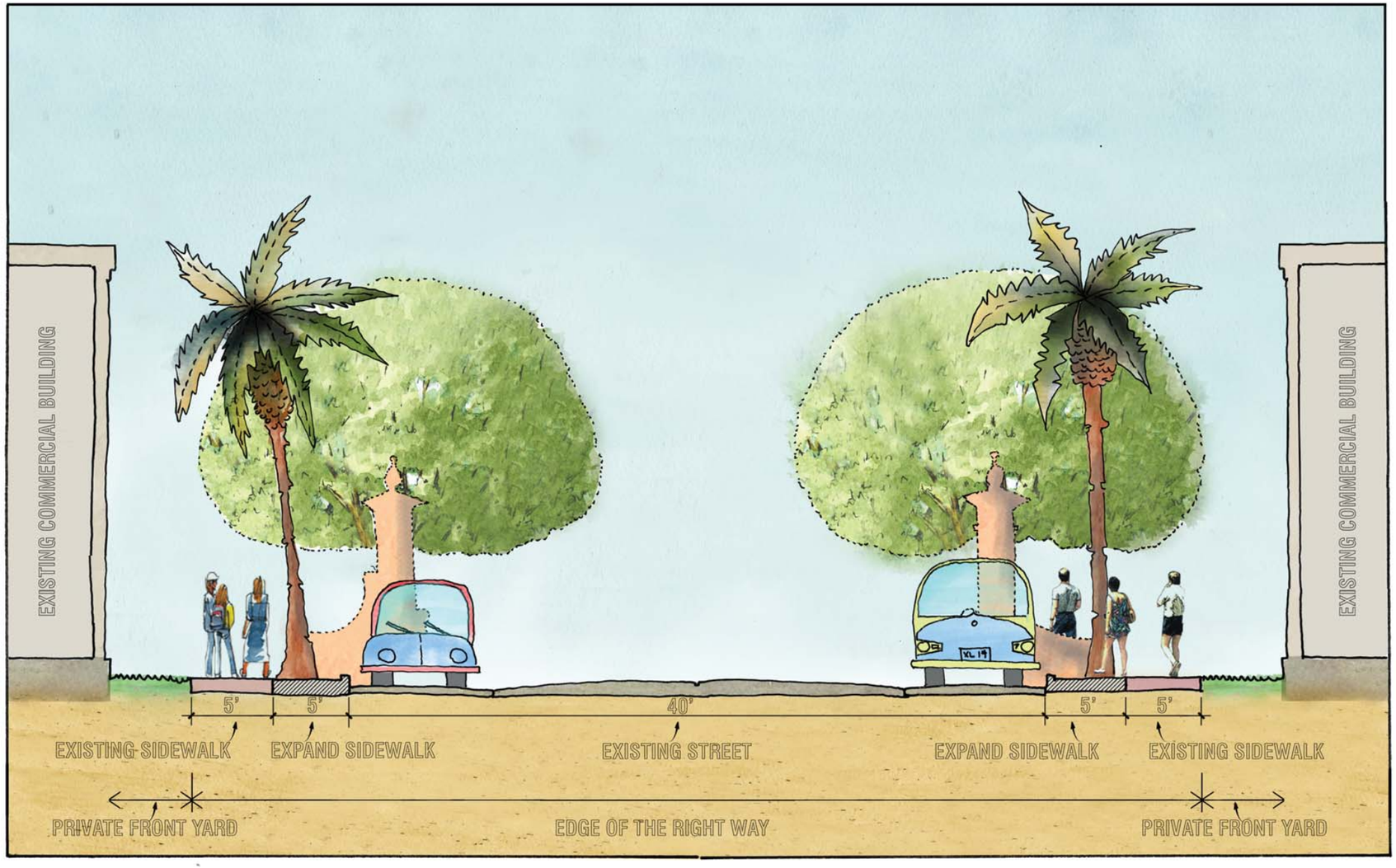


COCONUT GROVE DRIVE

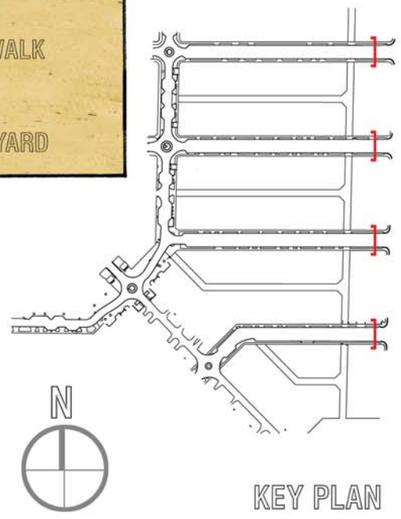


KEY PLAN

TYPICAL COMMERCIAL STREET SECTION

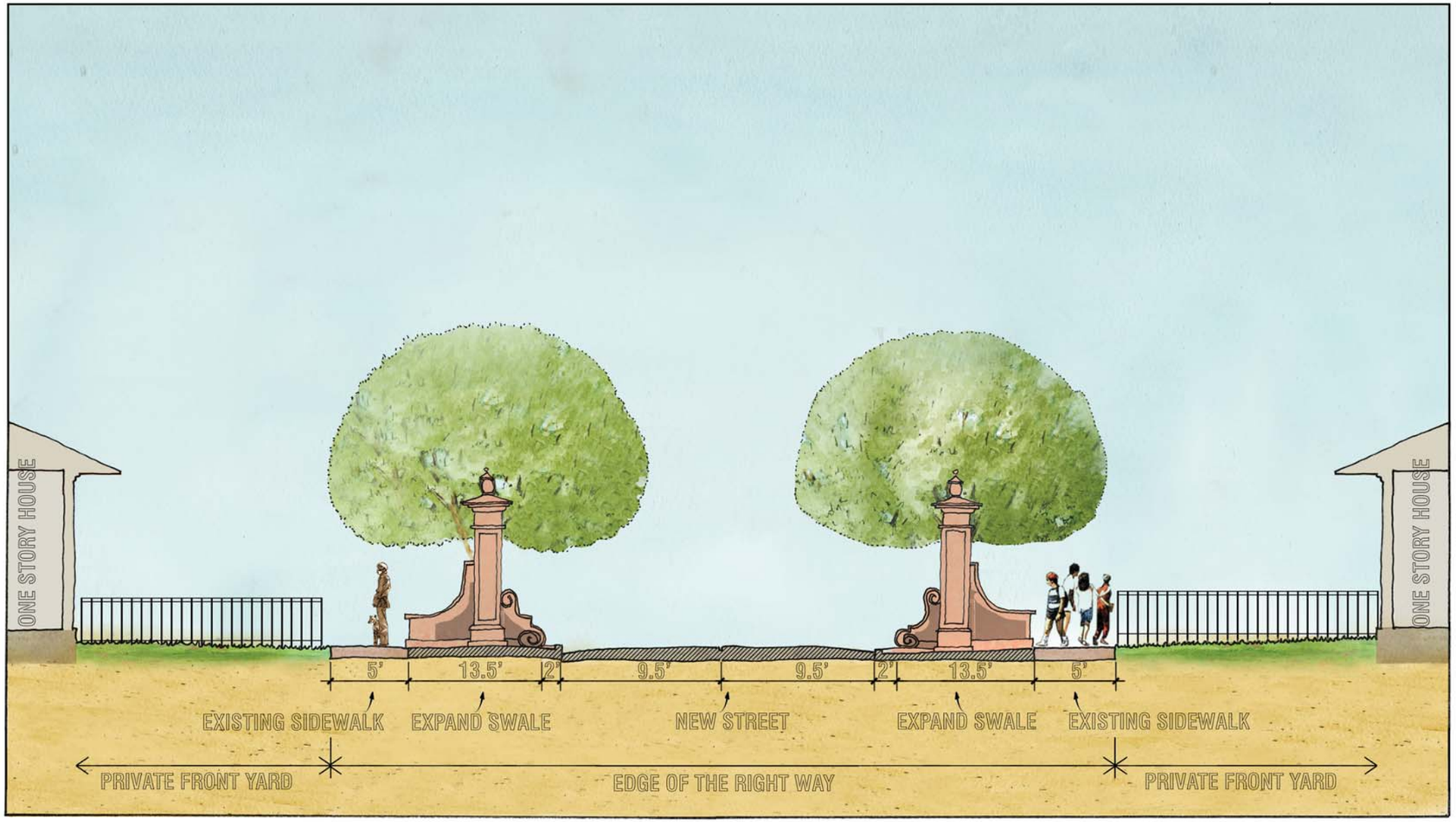


TYPICAL COMMERCIAL AREA STREET
VIEW FROM SW 37TH AVE

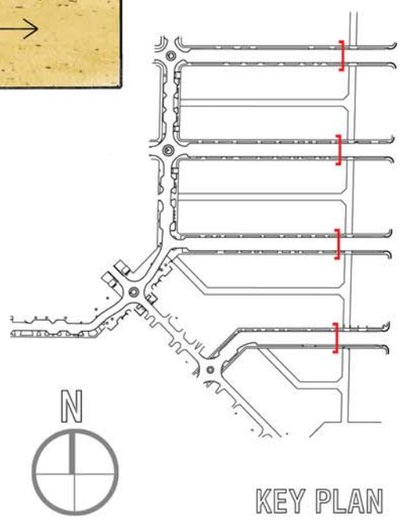


KEY PLAN

TYPICAL NEIGHBORHOOD ENTRANCE FEATURE

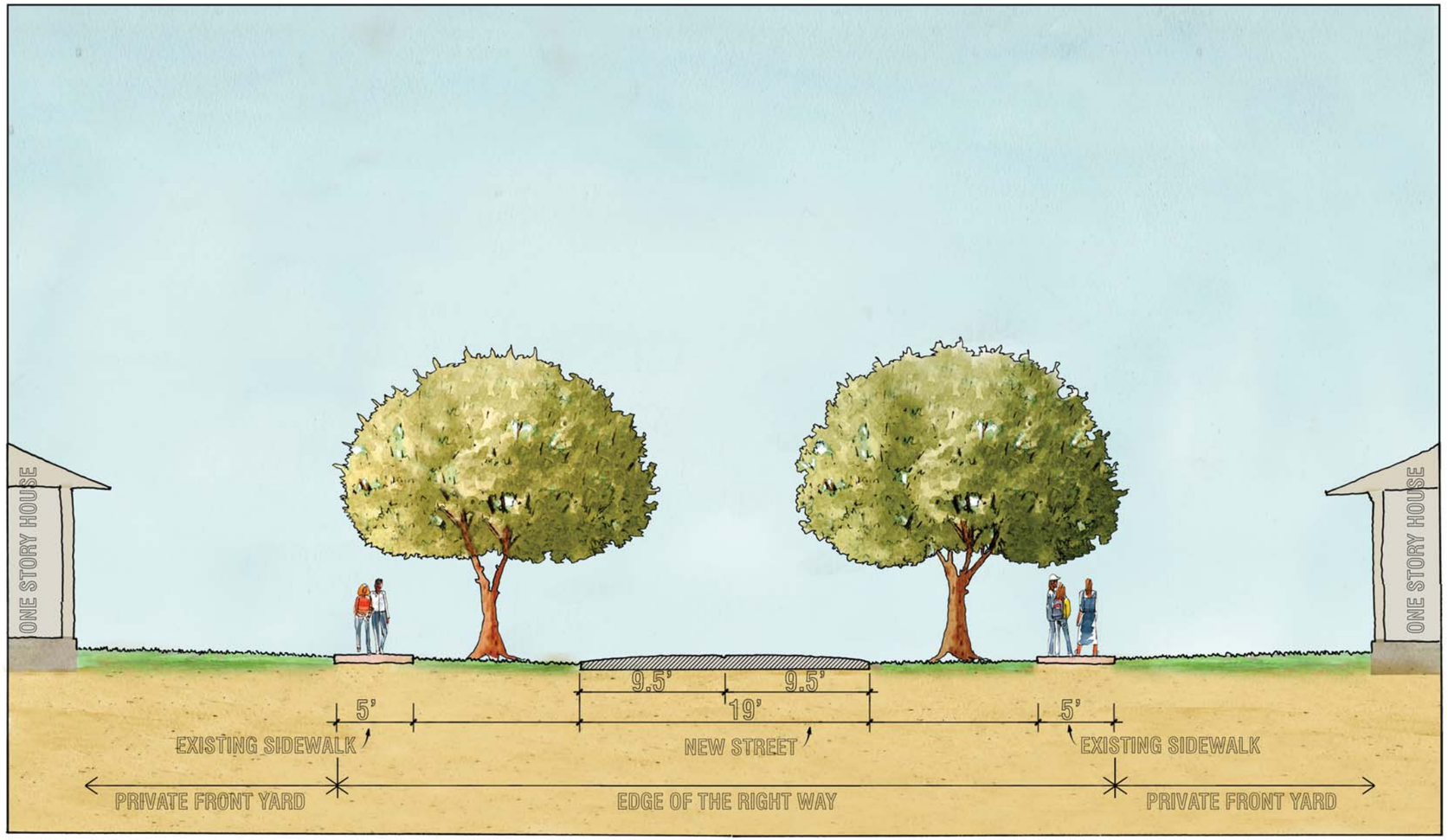


TYPICAL NEIGHBORHOOD ENTRANCE FEATURE

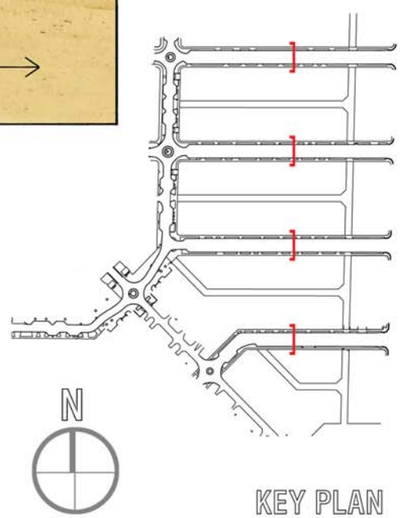


KEY PLAN

TYPICAL RESIDENTIAL STREET SECTION

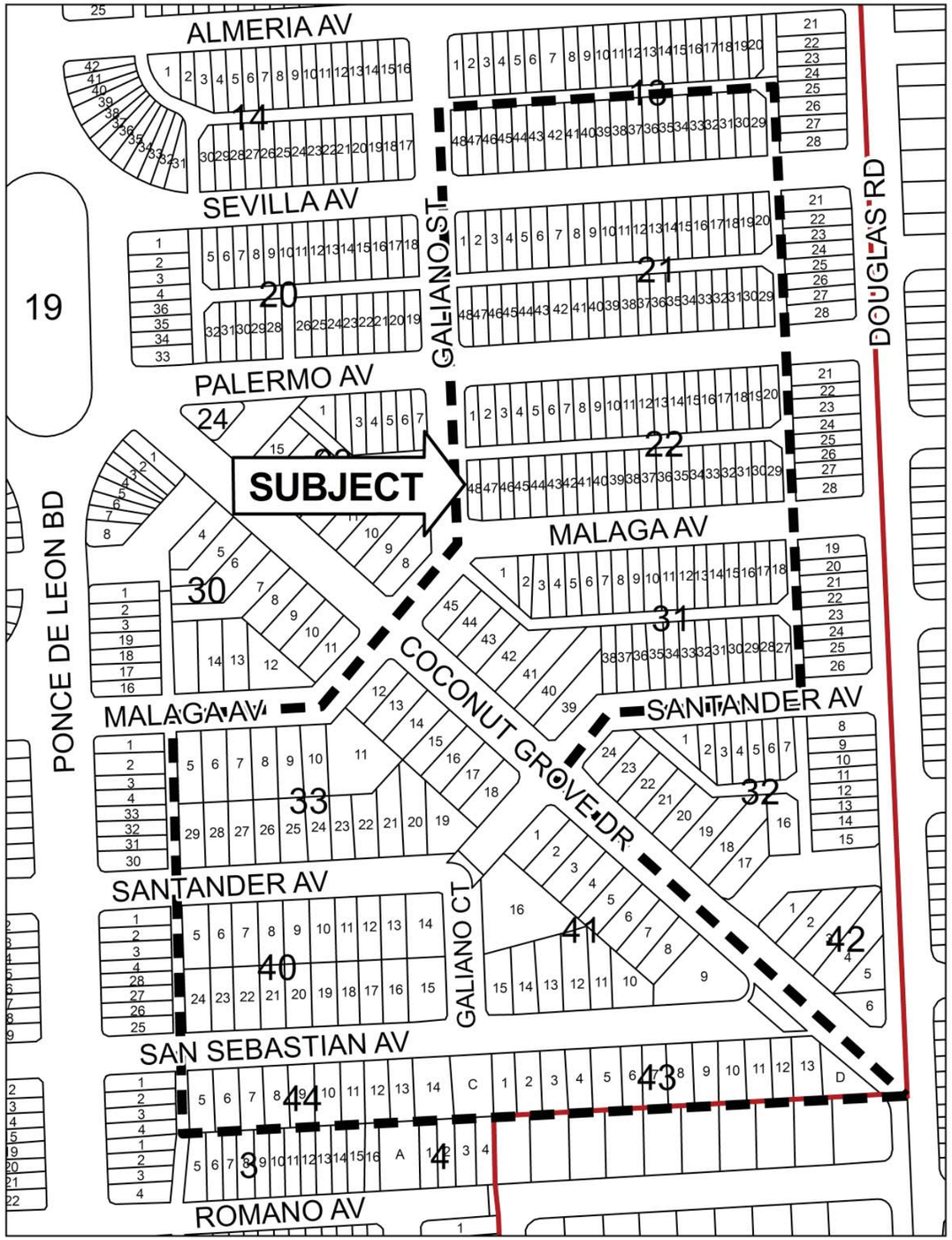


TYPICAL RESIDENTIAL ROADWAY



KEY PLAN

RESIDENTIAL PARKING ZONE MAP



PONCE DE LEON STREETSCAPE ENHANCEMENTS

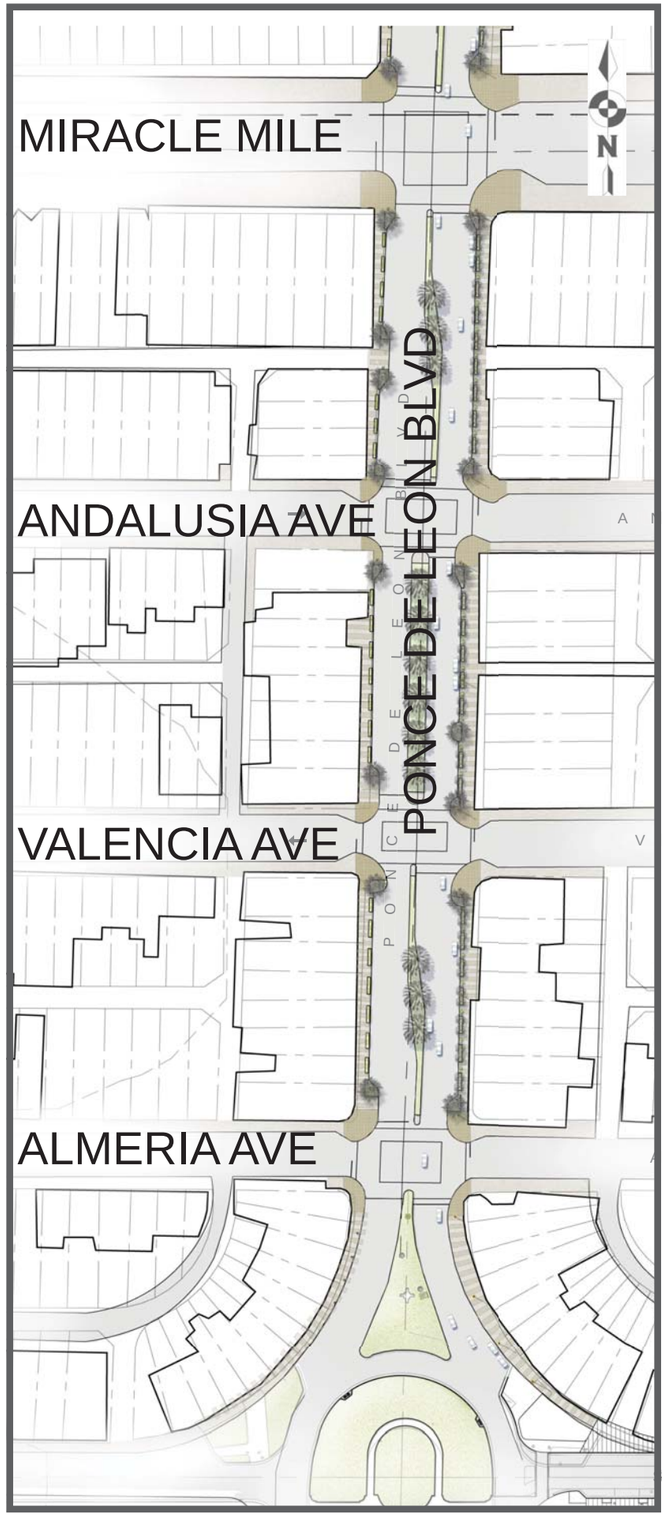




EXHIBIT "I"

Valet Standards of Operation

Exhibit I

Mediterranean Village Conceptual Valet Operating Plan – 05 27 2015

Valet service is planned for several uses within the overall project for hotel guests, residential visitors, and retail patrons. The following sections summarize the anticipated location of the valet stand for each use and the valet route for each valet stand.

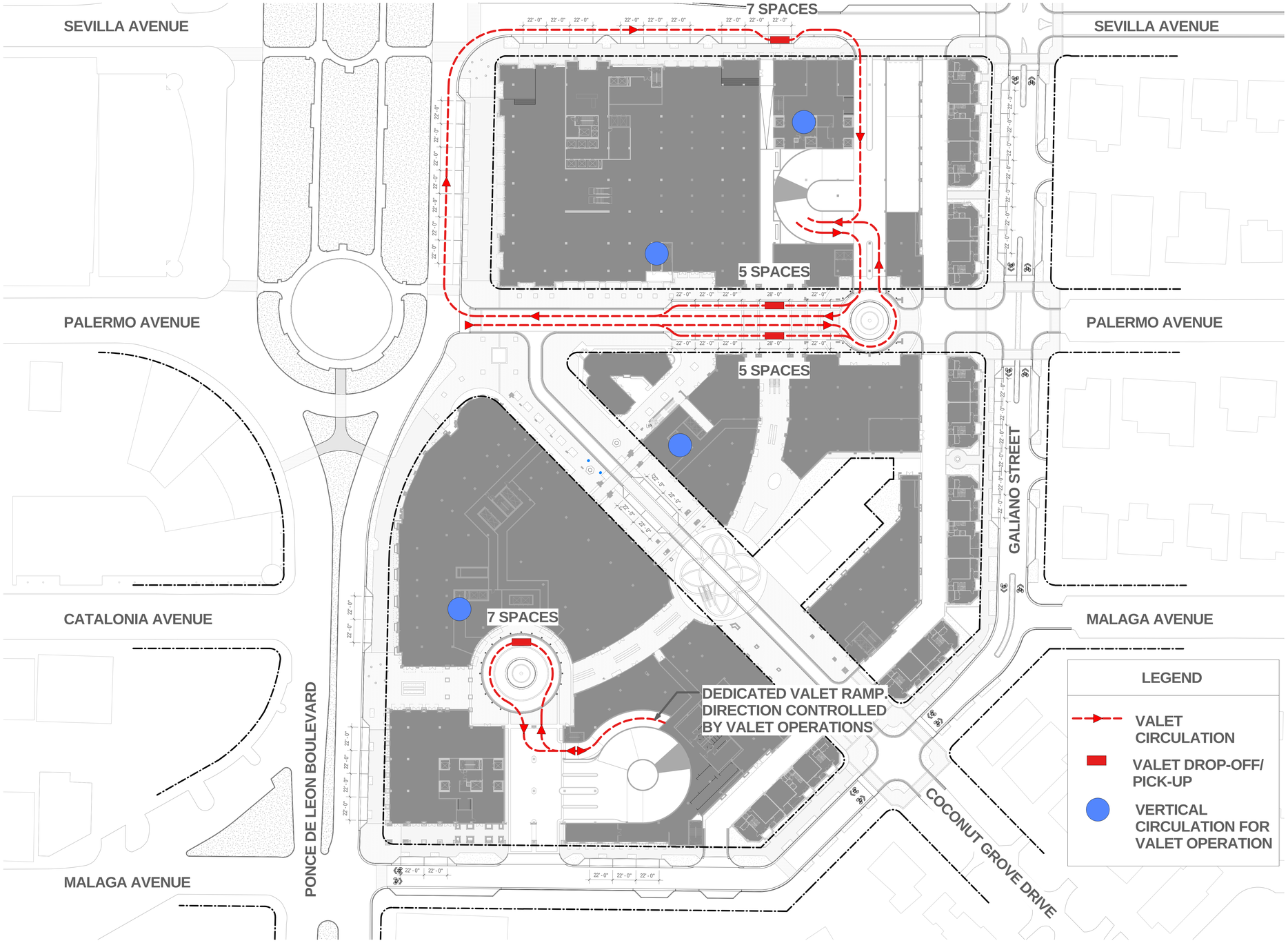
- A hotel/south residential tower valet stand will be provided for hotel guests and guest of the south residential tower within the hotel porte cochere roundabout located off of the north-side driveway from Malaga Avenue. Valet drivers will enter/exit the parking area via the adjacent parking helix located south of the roundabout. The porte cochere has a vehicle queuing capacity of approximately 7 spaces which is expected to be adequate.

- A valet drop-off stand will be provided along Palermo Avenue west of the site's main parking garage access point. The valet drop-off stands will be provided along the south side of the roadway serving general retail/restaurant patrons. A total of five (5) on-street parking spaces are provided for this primary valet drop-off stand. Valet operators will enter the parking area from the valet drop-off stand by performing an eastbound left-turn onto the internal north-south parking service drive and performing a northbound left-turn onto the helix to the valet parking area.

  A valet pick-up stand will be provided along the north side of Palermo Avenue serving general retail/restaurant patrons. Valet drivers will retrieve vehicles by traveling on the helix, performing an eastbound right-turn onto the north-south parking service drive, performing a southbound right-turn onto Palermo Avenue, and returning to the valet stand. A total of five (5) on-street parking spaces are provided for this valet pick-up stand.

- A valet stand will be provided along the south side of Sevilla Avenue adjacent to the north residential tower lobby and Paseo. This valet stand will serve both residential guests of the north tower and a portion of the retail/restaurant patrons. Valet drivers will access the parking area by performing an eastbound right-turn onto the north-south parking service drive southbound, performing a southbound right-turn onto the helix. Valet drivers will retrieve by traveling from the helix to north-south parking service drive, performing an eastbound right-turn onto the north-south parking service drive, performing a southbound right-turn onto Palermo Avenue westbound, and return to the valet stand via Palermo Avenue westbound, Ponce De Leon Boulevard northbound, and Sevilla Avenue eastbound (clockwise route). A maximum of nine (9) on-street parking spaces can be provided provided for this valet stand.

Detailed valet operations/staff plans for each location will be further developed as the project is refined and operating companies are retained.



1 LEVEL 01 FLOOR PLAN
1" = 40'-0"

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04_jbailey@rtkl.com.rvt

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PROJECT NUMBER 45-14002.00

CONSULTANT

PROJECT

MEDITERRANEAN VILLAGE at Ponce Circle

CLIENT

AGAVE PONCE LLC.
2901,2901, 3001 PONCE DE
LEON BOULEVARD

ISSUE DRAWING LOG

SEAL

SHEET IDENTIFICATION

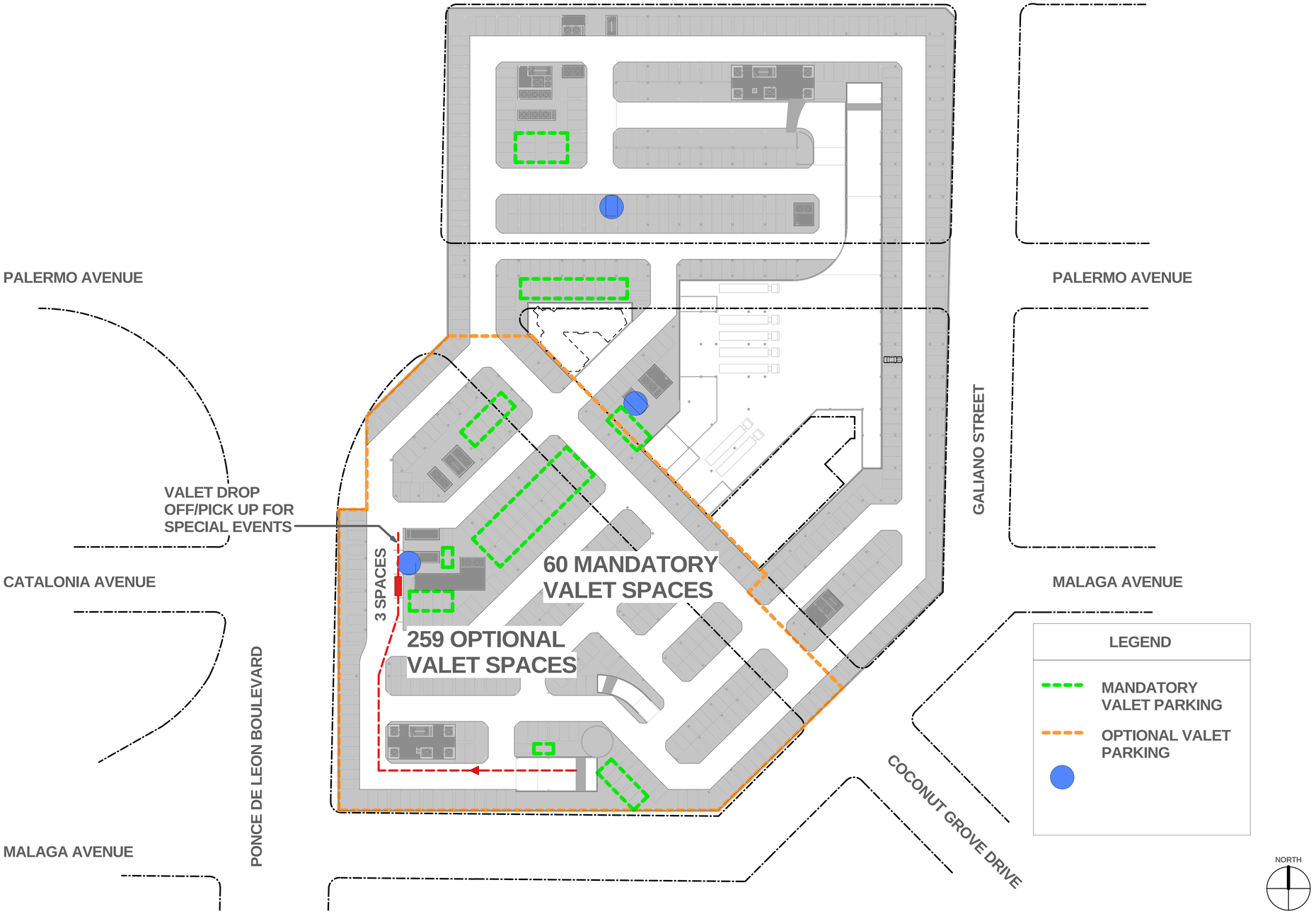
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VALET OPERATING PLAN - LEVEL 01

NUMBER

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2014 RTKL ASSOCIATES INC.



2 LEVEL B1 FLOOR PLAN
1" = 40'-0"

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TITLE

VALET OPERATING PLAN - LEVEL B1

NUMBER

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2014 RTKL ASSOCIATES INC.

EXHIBIT "J"

Recommended Mobility Enhancements

Kimley»Horn

To: Mr. Mario Garcia-Serra, Esq.
Gunster, Yoakley & Stewart, P.A.

From: John McWilliams, P.E.

Cc: Eduardo Avila
Agave Holdings, Inc.

Date: May 27, 2015
Revised June 1, 2015

Subject: ***Mediterranean Village Development – Coral Gables, Florida***
Coral Gables Trolley Service Enhancements

Per your request, Kimley-Horn and Associates, Inc. has reviewed the existing City of Coral Gables trolley operations to identify potential enhancements to the service to better serve the City's central business district. The following sections summarize our proposed operations and service enhancements.

New Trolley Vehicles

Expansion of the trolley service is limited by the number and age of the fleet. As such we are proposing to make a contribution of approximately $1.34 million to the City of Coral Gables to purchase up to four (4) new trolley vehicles. This cost estimate was provided by City staff. These additions to the fleet will allow for vehicle replacement, new trolley routes, and/or the expansion of new trolley service.

New or Expanded Trolley Service

In addition to funding new trolley vehicles, the following contributions are proposed:

New Downtown Trolley Route

The Trolley Service Master Plan recommended further investigation of a downtown loop traversing the City's core along Alhambra Circle, Merrick Way, Galiano Street, Almeria Avenue, and Salzedo Street in a clockwise direction. We consider this concept a worthwhile complement to the existing north-south trolley route along Ponce De Leon Boulevard. However, the 2013 study did not contemplate the proposed Mediterranean Village project located one (1) block south of Almeria Avenue. Therefore, we recommend a minor modification to the Master Plan route circulating along Sevilla Avenue from Galiano Street to Ponce De Leon Boulevard, and back to Almeria Avenue. Refer to the attachment for a map of the existing and proposed routes. The proposed service would operate Monday through Friday from 10 a.m. to 2 p.m. at a cost of $176,000 per year for 25 years ($4.40 million) per estimates provided by City staff. Approximate headways for the service will be 10 minutes consistent with the current trolley service.

Existing Trolley Route Enhancements

Existing enhancements to the trolley route should be considered including extension of operating hours, weekend operations, and holiday service. The existing trolley currently operates from 6:30 a.m. to 8 p.m. on weekdays with 10-15 minute headways. The proposed enhancements would include the following:

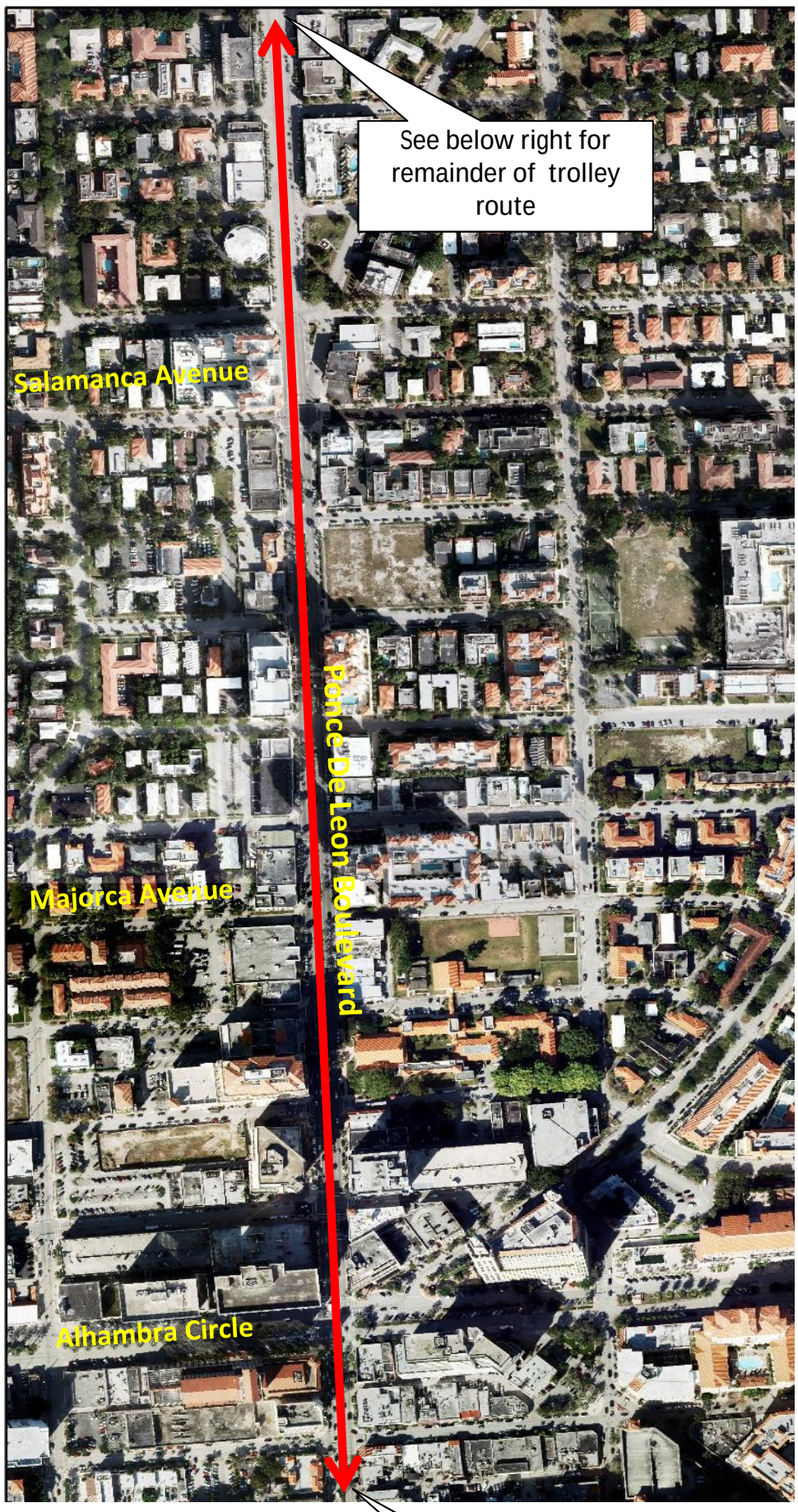
- Extension of weekday operating hours (Monday through Thursday) until 10 p.m.
- Extension of Friday operating hours until 12 a.m.
- Saturday operating hours from 6 a.m. to 12 a.m.
- Sunday operating hours from 8 a.m. to 8 p.m.
- Holiday operating hours from 8 a.m. to 10 p.m.

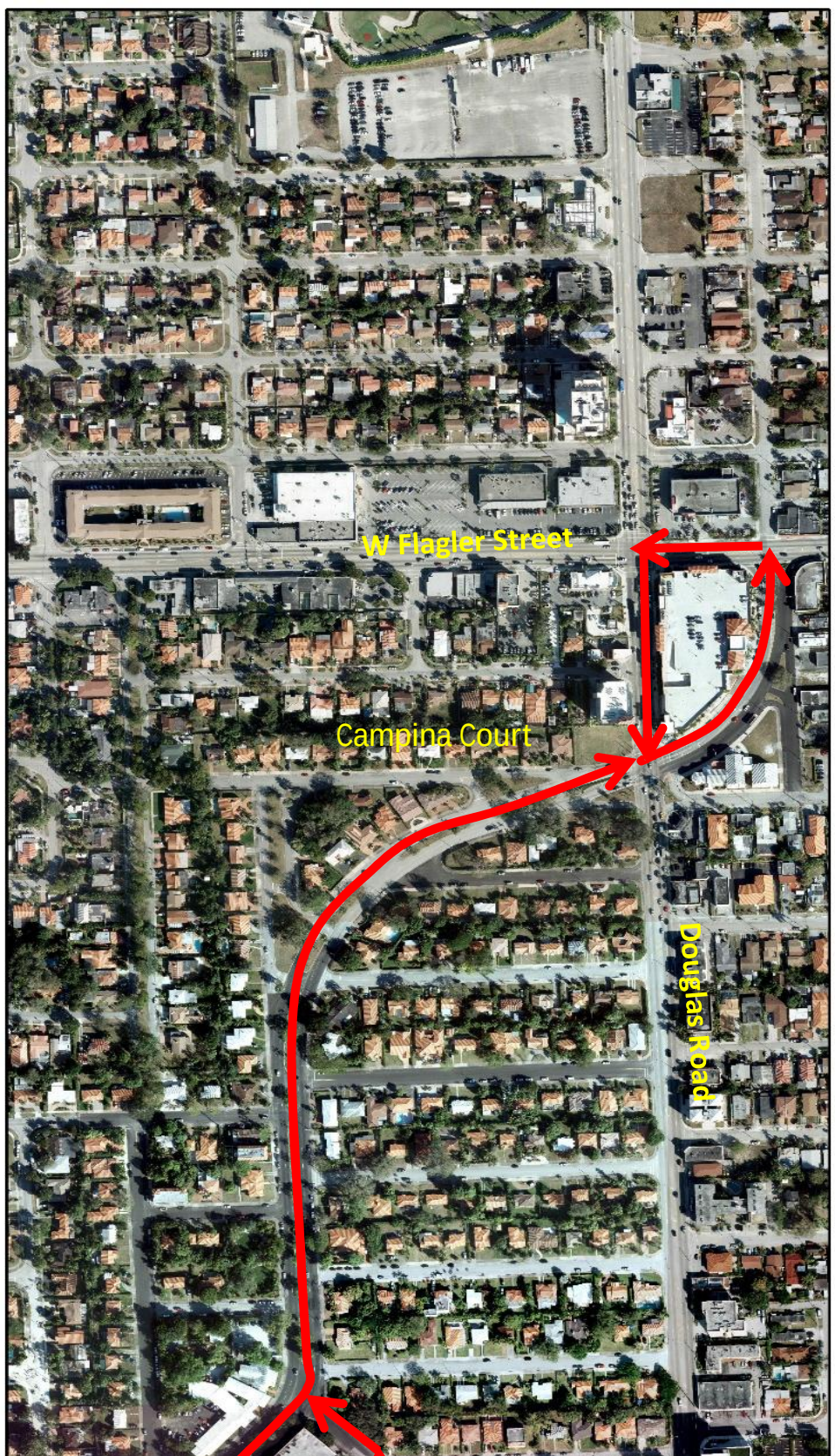
The existing headways would be maintained under this operations plan. Based upon estimates provided by City staff, these service enhancements are $11.25 million for 25 years of operation.

In summary, the total contribution towards enhancement of the City's trolley services is $16.990 million per estimated provided by City staff.

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See Sheet 2 for north portion of existing trolley route
N
NOT TO SCALE
Alhambra Circle
Salzedo Street
Merrick Way
Galiano Street
Coral Way/SW 22nd Street
Le Jeune Road
Almeria Avenue
Previous Master Plan Route Alignment
Sevilla Avenue
Proposed Route Alignment
SITE
Coconut Grove Drive
University Drive
Douglas Road/SW 37th Avenue
Ponce De Leon Boulevard
SW 40th Street/Bird Road
South Dixie Highway/US 1
Mediterranean Village Trolley Enhancements
Existing Trolley Service Route
Proposed Trolley Service Route
Sheet 1 of 2





Mediterranean Village Trolley Enhancements

Existing Trolley Service Route

EXHIBIT “K”

Encroachments



1 LEVEL B1 FLOOR PLAN
1" = 40'-0"

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CONSULTANT

PROJECT

MEDITERRANEAN VILLAGE at Ponce Circle

CLIENT

AGAVE PONCE LLC.
2801,2901, 3001 PONCE DE
LEON BOULEVARD

ISSUE DRAWING LOG

SEAL

SHEET IDENTIFICATION

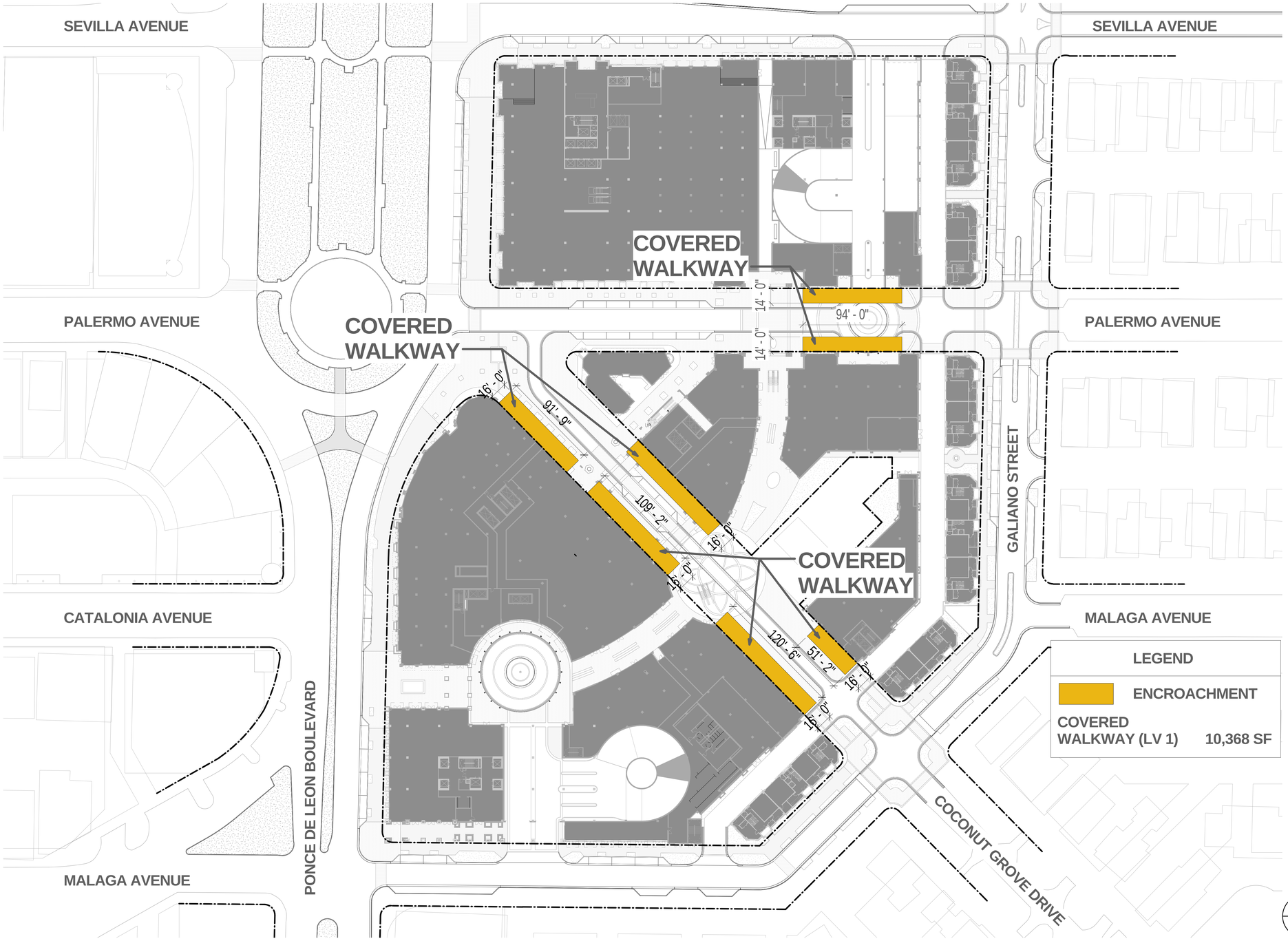
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ENCROACHMENT DIAGRAM

NUMBER

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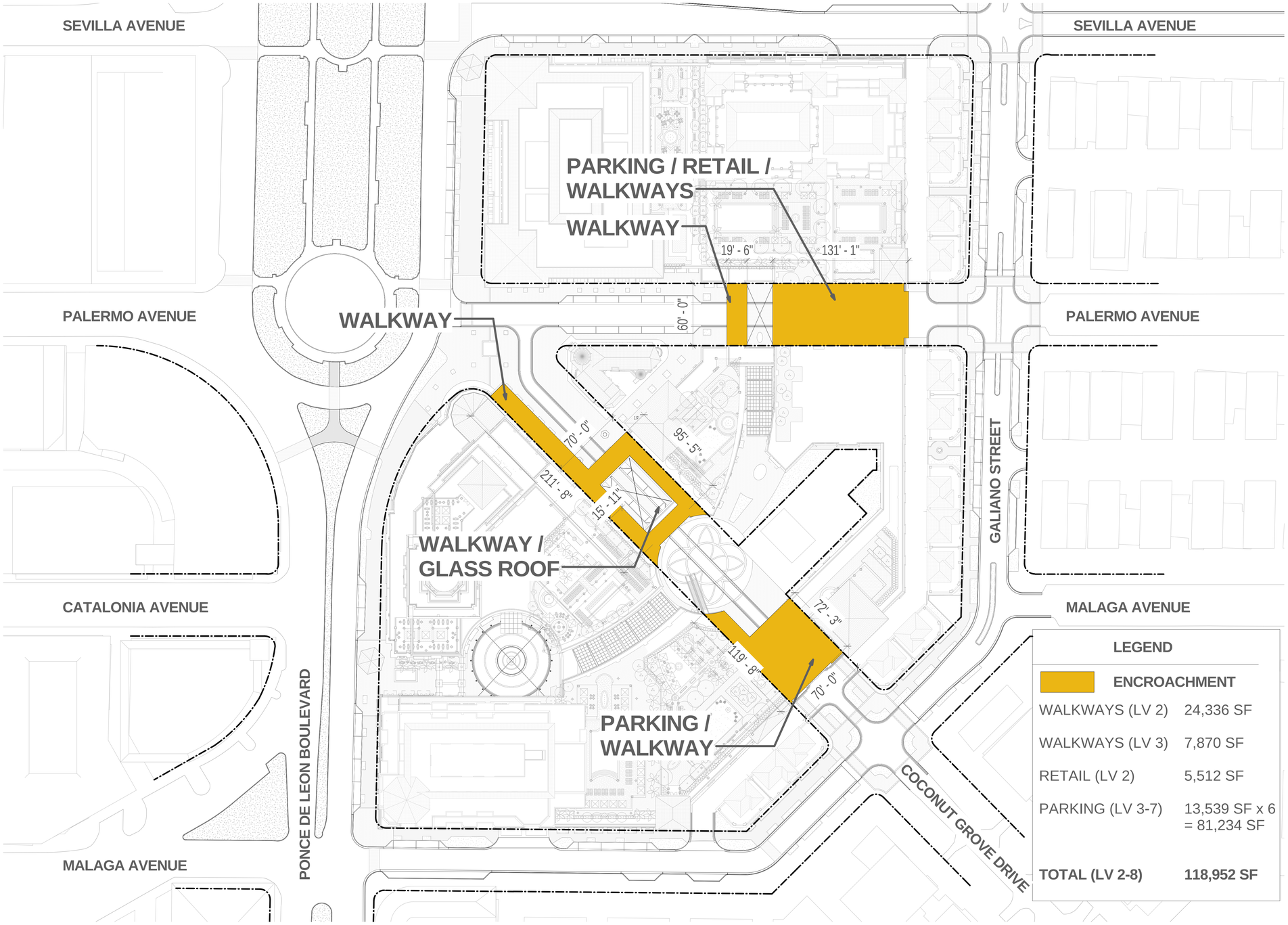
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1 RIGHT OF WAY ENCROACHMENT (ROOF LEVEL)
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SHEET IDENTIFICATION

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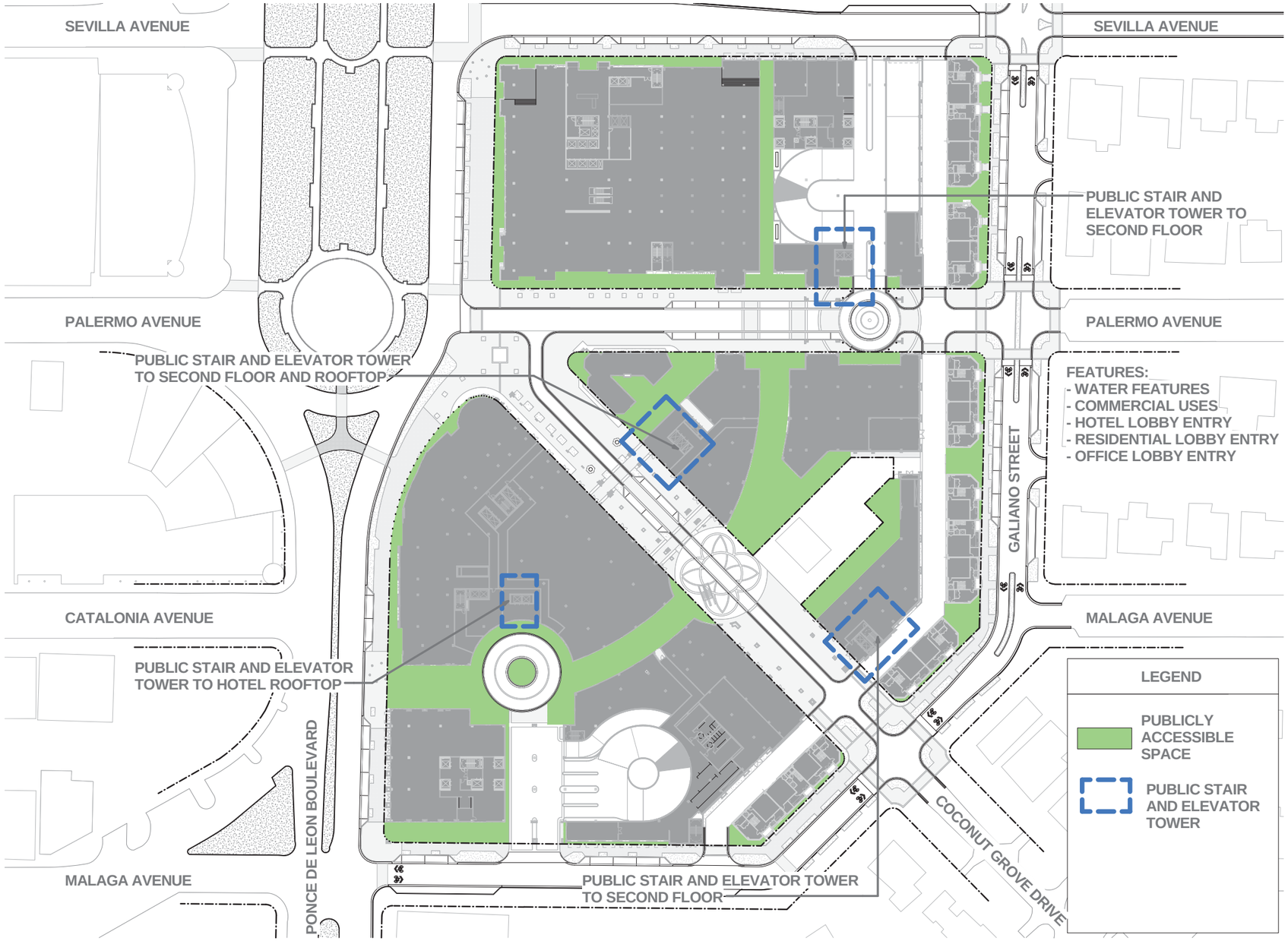
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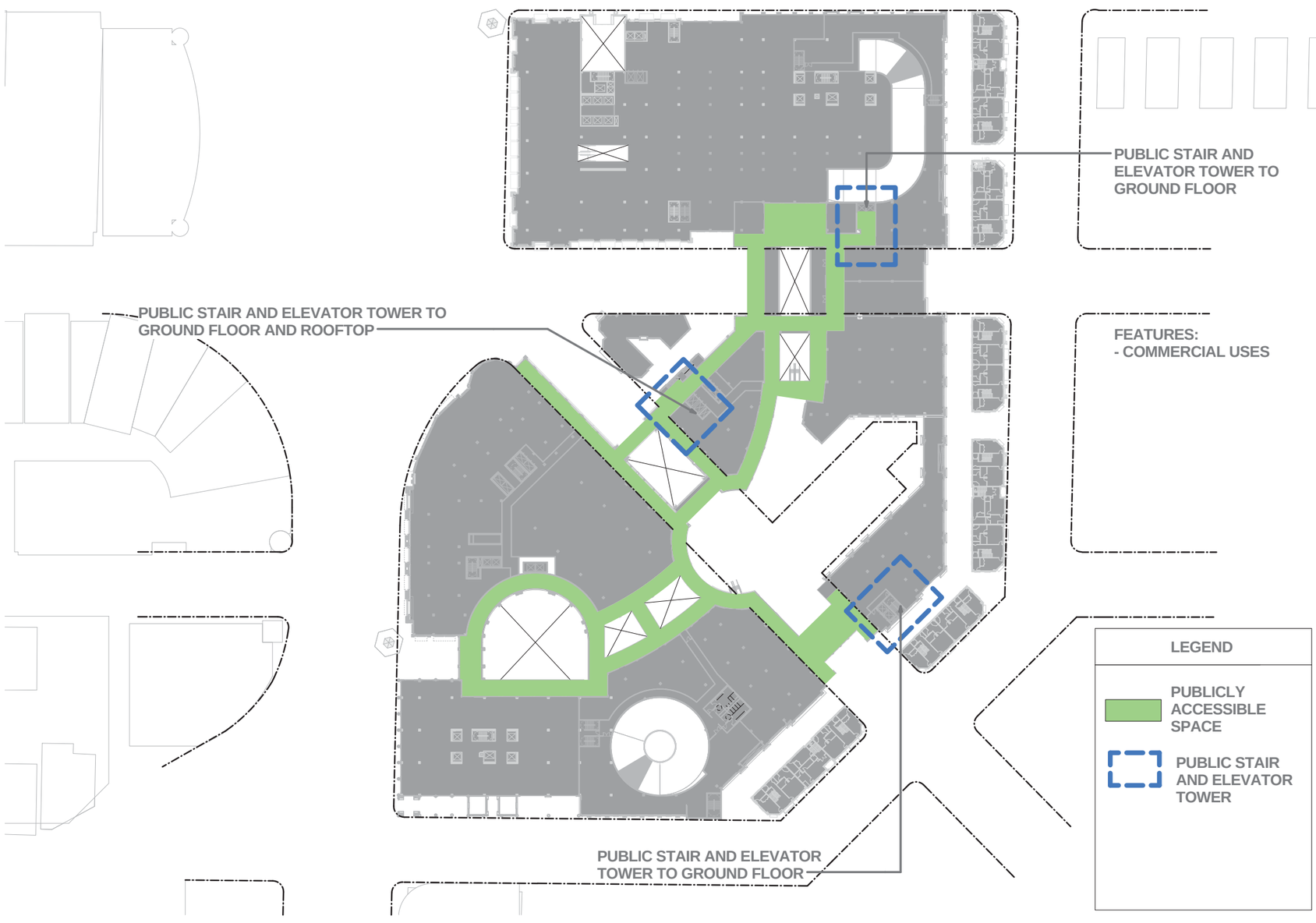
EXHIBIT "L"

Publicly Accessible Open Spaces

PUBLIC ACCESSIBILITY - GROUND FLOOR PLAN



PUBLIC ACCESSIBILITY - SECOND FLOOR PLAN



PUBLIC ACCESSIBILITY - ROOF PLAN

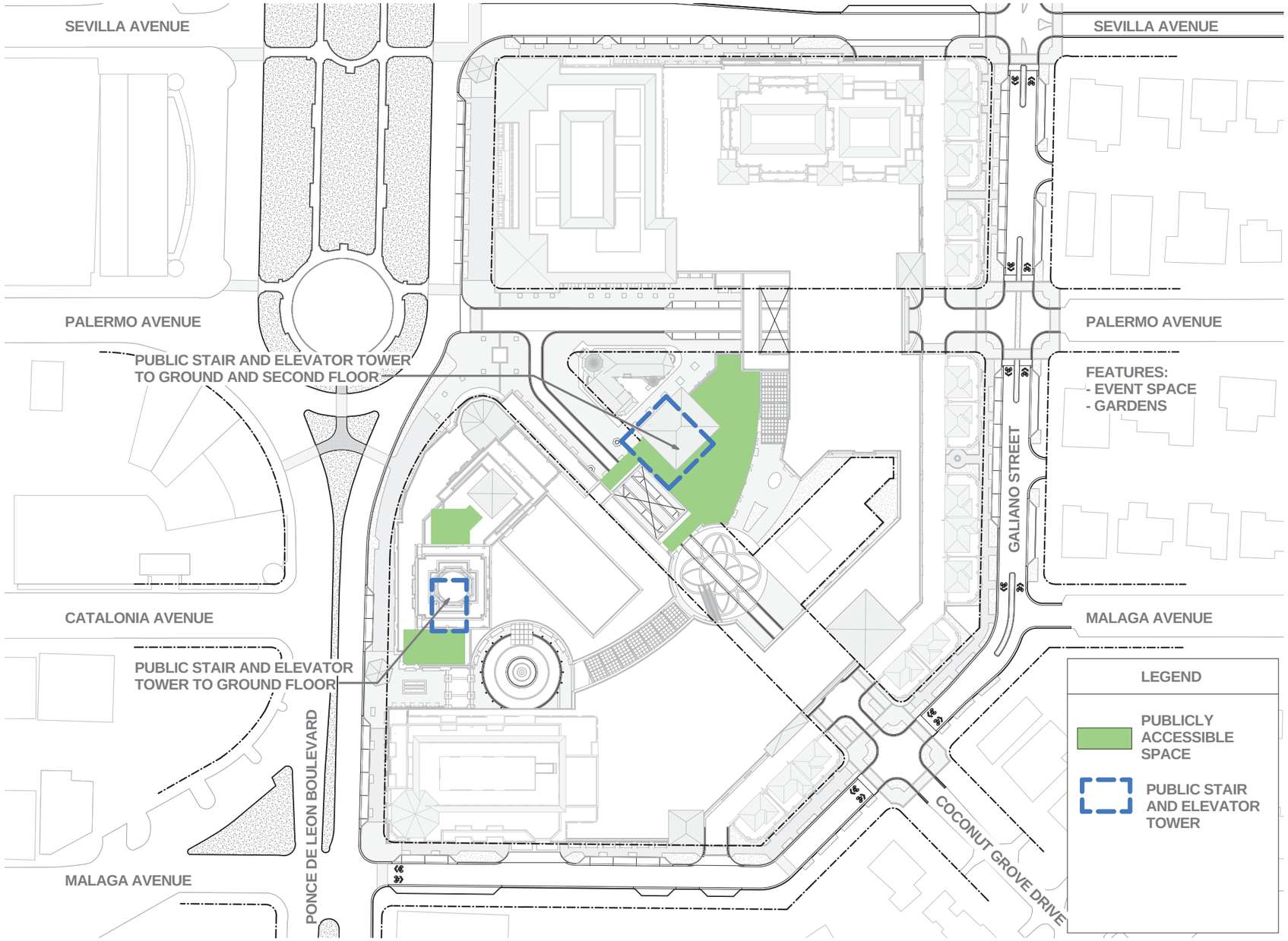


EXHIBIT "M"

Public Safety Memo

CITY OF CORAL GABLES

-MEMORANDUM-

TO: CARMEN OLAZABAL
ASSISTANT CITY MANAGER

DATE: MARCH 30, 2015

FROM: EDWARD J. HUDAK, JR.
INTERIM CHIEF OF POLICE

SUBJECT:
COST ANALYSIS: 4 NEW OFFICERS FOR MEDITERRANEAN VILLAGE DEVELOPMENT

Per a cost analysis conducted by the Police Department, we have determined it would cost an estimated $629,316 to completely fund four new officer positions for the new Mediterranean Village development. This estimate takes into account the salary and benefits, training, equipment, information technology, radio and vehicle costs required for each new officer.

Below is a condensed version of the cost analysis:

Salary and Benefits Costs:

- Non-Certified Officer: **$91,239**
  - Breakdown:
    - Salary: $44,179.20 – $67,823.18 → $44,180
    - F.I.C.A. (includes Medicare, Social Security): $44,180 x 7.65% = $3,379.77 → $3,380
    - Health (City contribution): $7,983
    - Annual Leave (80 hours): 21.24/hour x 80 = $1,699.20 → $1,700
    - Sick Leave (96 hours): 21.24/hour x 96 = $2,039.08 → $2,040
    - Workers Compensation: $44,180 x 5.98% = $2,641.96 → $2,642
    - Retirement: $44,180 x 66.35% = $29,313.43 → $29,314

Training Costs:

- Academy tuition (Miami Police Training Center): **$6,100**

New Office Equipment Costs:

- Uniform and equipment (includes body armor, taser, gun, etc.): **$7,200**
- Ammunition: **$800**

IT Costs:

- Car hardware (includes Toughbook laptop, mounts, etc.): **$5,500**
- Software licenses: **$900**

Radio Costs:

- Radio and associated equipment: **$8,537**

- Breakdown:
  - Console: $503
  - Radio tray: $442.48 → $443
  - Mobile radio: $4,062.50 → $4,200
  - Portable radio: $3,229.80 → $3,230
  - Antennas/antenna mounts/voltage timer: $160.85 → $161

Vehicle Costs:

- Vehicle and associated equipment: **$37,053**
  - Breakdown:
    - Vehicle with factory accessories: $29,283
    - Vehicle accessories (includes cages, boxes, consoles, etc.): $3,206
    - Outside vendor installation and accessories costs: $4,564

Overall Total Cost: $157,329 per officer x 4 new officers = **$629,316, for initial first year cost.**

Annual Reoccurring cost to Department,
Annual Salary $91.239 x 4 Officers = $364,956
Uniforms $4,000
Ammunition $ 3,200

Total Annual Reoccurring Cost: **$372,156**

CITY OF CORAL GABLES

- MEMORANDUM -

TO: CARMEN OLAZABAL
ASST. CITY MANAGER

DATE: March 31, 2015

FROM: MARC STOLZENBERG
FIRE CHIEF

SUBJECT:
MEDITERRANEAN VILLAGE

In response to the proposed MEDITERRANEAN VILLAGE project, the Fire Department has identified operational needs. An increase in Fire Department staffing would be required. Staffing adjustments are necessary to include;

- A fully serviceable and staffed Ladder Truck
- To ensure the fourth Rescue Truck is in service daily
- The addition of one Life Safety Fire Inspector

In addition, to ensure a rapid Public Safety response for both Police and Fire, it is also recommended to incorporate a preemption traffic light control system in various intersections.

Current Ladder staffing of two firefighters is not consistent to match the operational needs of this project. In order to achieve this recommendation, the daily operational staffing would increase with two additional positions.

- Staffing two additional positions, utilizing a 3.75 staffing factor requires 3 Firefighters to be promoted to Lieutenant and to hire 6 Firefighters.
    - Salary and Benefits = $570,580

Benefits	Lieutenant	Firefighter	Inspector
Salary	$3,500 (5% Promotion)	$66,700	$57,600
F.I.C.A 1.45%	n/a	$967	$824
Health Insurance	n/a	$7983	$7983
Workers Comp. Ins 5.98%	n/a	$3988	$3,445
Uniforms/Protective Gear	n/a	$2000	$400
Total	$3,500 (x3)	$81,638 (x6)	$70,252 (x1)
Positions	$10,500	$489,828	$70,252
Total $570,580			

The department would need to ensure daily staffing incorporates a fourth Rescue Truck. This vehicle is currently available when staffing permits. To ensure proper coverage within the City, it is vital to maintain this vehicle. It is estimated there is an associated cost of $60,000 to maintain a Rescue Truck and its associated staffing.

The increase in density associated to vehicular traffic remains a growing concern. The demand for service as associated to the project will require traffic control methods to help expedite public safety response. The recommendation to incorporate a minimum of 6 intersections with a emergency vehicle preemption system along with approximately 22 emergency vehicle installations.

- Traffic Control Preemption
  - 6 Intersections @ $10,000 = $60,000
  - 12 Fire Vehicles @ $5000 = $60,000
  - 10 Police Vehicles @ $5000 = $50,000
  - Total = $170,000

Associated Costs

- Salary and Benefits = $570,580
- Staffing Fourth Rescue = $60,000
- Six Traffic Control Devices = $170,000
- **Overall Cost Total Estimate = $800,580**