

CITY OF CORAL GABLES

- MEMORANDUM -

TO: PATRICK G. SALERNO
CITY MANAGER

DATE: SEPTEMBER 27, 2010

FROM: ERIC RIEL, JR.
PLANNING DIRECTOR

SUBJECT:
REVISED UNIVERSITY OF MIAMI
DEVELOPMENT AGREEMENT

Please find attached a revised UM Development Agreement. Since distribution last week, two additional changes are included in this document (noted in red underline/strikeout format).

1. Paragraph 17(b), pages 13-14. Modification to the sale of alcoholic beverages at the Bank United Center.
2. Paragraph 25(g), pages 21-22. Clarification regarding the reimbursement of consultants for implementation of the Agreement.

Thank you.

**DISCLAIMER
(TO BE DELETED UPON ADOPTION
BY CITY COMMISSION)**

THIS DRAFT DEVELOPMENT AGREEMENT ("DRAFT") BETWEEN THE CITY OF CORAL GABLES ("CITY") AND THE UNIVERSITY OF MIAMI ("UNIVERSITY") HAS BEEN PREPARED FOR THE PURPOSES OF NEGOTIATING AN AGREEMENT WITH REGARD TO EXISTING REAL PROPERTY, LAND USE AND FISCAL ISSUES BETWEEN THE CITY AND THE UNIVERSITY.

THE DRAFT PROVISIONS ARE INTENDED TO BE A PART OF A DISCUSSION OF OUTSTANDING ISSUES BETWEEN THE CITY AND THE UNIVERSITY. THE INDIVIDUAL PROVISIONS ARE INTENDED TO BE READ AND UNDERSTOOD AS "*IN PARI MATERIA*" WITH EACH AND EVERY OTHER PROVISION OF THE DRAFT.

NO INDIVIDUAL PROVISION IS INTENDED TO REPRESENT A PROPOSED TERM OR CONDITION OF AN AGREEMENT, EXCEPT IN THE CONTEXT OF EACH AND EVERY OTHER PROVISION IN THE DRAFT.

MOREOVER, THE DRAFT PROVISIONS HAVE BEEN PREPARED BY COUNSEL FOR THE PARTIES AND DO NOT REPRESENT OFFICIAL OR UNOFFICIAL POSITIONS OF CITY ON ANY PARTICULAR SUBJECT AND NONE OF THE TERMS SET FORTH IN THIS DRAFT AGREEMENT HAVE BEEN APPROVED BY THE CITY.

**CITY OF CORAL GABLES AND
UNIVERSITY OF MIAMI AGREEMENT**

THIS AGREEMENT is made and entered into as of this _____ day of _____, 2010, by and between the CITY OF CORAL GABLES, a Florida municipal corporation ("City") and the UNIVERSITY OF MIAMI, a Florida nonprofit corporation ("University").

RECITALS

WHEREAS, the University is the owner of the real property located within the City of Coral Gables commonly referred to as the University of Miami Coral Gables Campus ("UM Campus") which is more particularly shown and legally described in the map and legal description attached hereto as Exhibit A;

WHEREAS, in approximately 1925, the University and its founders commenced the development of the UM Campus in accordance with multiple development approvals and permits and pursuant to various City-approved plans. The most recently approved UM Campus Plan – referred to as the University of Miami Campus Area District (“UMCAD”) plan – approved pursuant to Ordinance 2007-16, together with the concurrent Declarations of Restrictive Covenants – is attached hereto as Composite Exhibit B;

WHEREAS, annual UMCAD approvals have been granted for the years 1993, 1995, 1996, 1998, 2000, 2001, 2002, 2003, 2004, and 2006;

WHEREAS, the City and the University recognize that their existing good relationship can be improved for the University, the City and its residents;

WHEREAS, the City and the University both recognize that the prosperity of one impacts the prosperity of the University, the City and its residents;

WHEREAS, the City recognizes that the University’s rise to the top tier of the nation’s academic research institutions is desirable for and beneficial to the City;

WHEREAS, the City recognizes that the growth and expansion of the University on the UM campus is consistent with the Goals, Policies and Objectives of the City’s comprehensive plan;

WHEREAS, the City and the University agree that it is in the best interests of the City and the University to continue to promote the virtues of the City and the University as a premier university in a premier City;

WHEREAS, many of the University’s faculty and students have knowledge, talent, experience and expertise in areas of interest and importance to the City in the areas of the arts, technology, science, and medicine;

WHEREAS, collaborative programming between the University and the City would be of mutual benefit and advantage to the University, the City, and its residents;

WHEREAS, the existing UMCAD zoning district regulations can be improved and made more efficient for the City and the University;

WHEREAS, the City wishes to replace the existing UMCAD district regulations with more effective and efficient land development regulations;

WHEREAS, this Agreement provides for the orderly development and redevelopment of the University and for protecting surrounding residential neighborhoods from any potential impacts;

WHEREAS, this Agreement promotes a stronger commitment to comprehensive and capital facilities planning and ensures the provision of adequate public facilities for development, encourages the efficient use of resources and reduces the economic cost of development and redevelopment;

WHEREAS, this Agreement is entered into in accordance with the Florida Local Government Development Agreement Act, section 163.3220-163.3243, Fla. Stat. (2009) ("Act") and pursuant to the provisions of Article 3, Division 19 of the Zoning Code of the City of Coral Gables;

WHEREAS, the Planning and Zoning Board of the City of Coral Gables conducted a public hearing on August 11, 2010 pursuant to notice required in section 163.3225(2)(b) Fla. Stat. (2009) with regard to this Agreement and the Board recommended approval of the Agreement to the City Commission;

WHEREAS, the City Commission of the City of Coral Gables gave notice in accordance with the requirements of the Florida Statutes and conducted a public hearing pursuant to notice required in section 163.3225(2)(b) Fla. Stat. (2009) with regard to this Agreement.

NOW THEREFORE, in consideration of the mutual covenants entered into between the parties, and in consideration of the benefits to accrue to each, it is agreed as follows:

1. Recitals.

The above recitals are true and correct, deemed to be findings, and are incorporated herein and made a part hereof.

2. Statement of Intent.

With this Agreement, the City and the University seek to establish a new era in their relationship by promoting the health, safety, welfare, and cultural advancement of the City and its residents while providing for the coordinated, comprehensive, and orderly development of the UM Campus. The Agreement seeks to accomplish many goals, principal among them is making more accessible to the citizenry of Coral Gables the resources of the University in the areas of culture, music, research, medical treatment and care. To this end, it is the policy

statement of the City that it would welcome the University's efforts to bring world-class medical care to the City and its residents.

At the same time, this Agreement seeks to promote greater efficiencies in the regulatory regime that governs the University so that it can continue to compete with our nation's colleges and universities. Both the City and the University recognize the unique, multi-factorial relationship that exists between them by virtue of the location of the UM Campus within the City and the residential student population that exists thereon.

3. Defined Terms.

Unless the specific context indicates otherwise, all definitions set forth within Florida's Growth Management Act, including the Florida Local Government Development Agreement Act, shall be adopted and included herein. The following terms as used herein shall have the following meanings:

Agreement. The City of Coral Gables and University of Miami Agreement between the City of Coral Gables and the University of Miami dated _____, 2010.

Bank United Center. The Convocation Center, also known as the Bank United Center, located in the Coral Gables Campus of the University of Miami.

Comprehensive Plan. As defined in the Zoning Code of the City.

Events of Default. The phrase "Events of Default" shall have the meaning assigned to it in Paragraph 44 below.

Fire Station Property. The land owned by the City of Coral Gables as described in Paragraph 22 of this Agreement.

Full-Time Equivalent (FTE). Full-time equivalent means: 1) one (1) FTE for each full-time undergraduate student taking a minimum of 12 semester hours, and 2) the fraction produced by dividing a part time undergraduate student's credit load by 12.

GRID. The Gables Redevelopment and Infill District as defined in the Comprehensive Plan of the City.

Gross Floor Area. Gross Floor Area is the total floor area including the gross horizontal area of the several stories of any building or buildings on the site, as measured from the exterior facing of exterior walls, and shall include any building area except for: a) balconies which extend from exterior walls and extensions; b)

off-street parking areas within the building; c) lobbies; d) atriums; e) open stair wells and f) open plazas.

Health Center. A medical facility, serving both the University and the general public, which could be located on the UM Campus in the University Multi-use Area that provides a range of medical care on an out-patient basis across a wide spectrum of areas including but not limited to radiation, diagnostic imaging, chemotherapy, sports medicine, and out-patient surgery and accessory uses..

Internal Road. The internal roadway (north and south segments) that is a condition of approval to certain specific UMCAD 2006 Amendments, as provided for in City of Coral Gables Ordinance No. 2007-16, adopted March 27, 2007.

Mobility Plan. An element of the Campus Master Plan that promotes the goals, policies and objectives of the mobility element of the City's Comprehensive Plan, providing for land use and transportation programs designed to promote the internal capture of trips on campus, use of alternative modes of transportation, including walking, biking, shuttles, car and/or van pooling and transit within the campus and to and from the campus, parking management and other strategies to reduce dependency on the single occupant automobile.

UMCAD Approvals. Refers to and defines collectively all original and subsequent approvals and amendments to the UMCAD Plan originally adopted pursuant City of Coral Gables Ordinance number 2964, adopted December 10, 1991, as amended.

UCD. The University Campus District, as such district is defined in Section 4-202 of the City of Coral Gables Zoning Code.

4. Term.

This Agreement shall have a term of twenty (20) years after the Effective Date.

5. Annual Meeting.

(a) The University and the City agree to convene an annual State of the City/University Meeting involving the Mayor and City Commission and officials of the City and the officers and representatives of the Board of Trustees of the University during the term of this Agreement ("Annual Meeting").

The purpose of the Annual Meeting is for the leadership of the City and the leadership of the University to exchange information with regard to future plans and programs and to explore opportunities of mutual benefit.

(b) The University and the City agree that the location of the Annual Meeting will rotate each year between an on-campus venue and an off-campus venue elsewhere in the City.

(c) The City and the University agree to share the costs of the Annual Meeting, with the City paying for the costs when the Annual Meeting is located off-campus and the University paying for the costs when the Annual Meeting is located on-campus.

(d) The Annual Meeting shall be publicly noticed and conducted in accordance with all applicable laws that govern public meetings.

(e) The University and the City shall agree on the agenda for the Annual Meeting no less than thirty (30) days prior to the date thereof.

6. Gables Fellows Program.

(a) The University and the City agree to create and establish an annual student internship to be known as Gables Fellows (“Gables Fellows Program”) for students with a demonstrated commitment to public service, local government, planning, architecture, and economic development.

(b) The Gables Fellows Program shall be the University’s preeminent undergraduate internship program with the City of Coral Gables for local government scholarship. At its start, it shall be administered through the Office of the Provost in conjunction with the University’s Center for Civic Engagement (the “Center”).

(c) The City, leadership from the University, and the Office of the Provost, shall develop the criteria for acceptance into the Gables Fellows Program, shall conduct an application process, and shall interview eligible candidates. The criteria shall seek to attract the best and brightest candidates. The City and the University shall review the Gables Fellows Program and amend the criteria on each fifth year anniversary of this Agreement.

(d) The University shall nominate appropriate candidates for the Gables Fellows Program at the end of each spring semester.

(e) From this list of nominees, the City shall select one (1) student as a Gables Fellow for the upcoming Fall Semester and one (1) student as a Gables Fellow for the following Spring Semester.

(f) Gables Fellows will perform various functions in City departments as mutually agreed by the City and University.

(g) The City and the University agree that the Gables Fellows internship program shall comply with all applicable University regulations regarding internship/work study programs. The University shall pay a Gables Fellow an hourly rate determined by the University commensurate with the quality of the program and its fellows.

(h) Gables Fellows shall be evaluated at the conclusion of each semester by both the University and the City. If appropriate, each Gables Fellow shall receive an appropriate plaque and letter of recommendation.

7. University of Miami's Coral Gables Lecture Series.

(a) The City and the University agree to establish an annual lecture program to be entitled the UM's Coral Gables Lecture Series featuring members of the faculty of the University and distinguished speakers in lecture and panel presentations ("UM Lectures"). UM Lectures will be given six (6) times year.

(b) The City and the University agree that the UM Lectures may be presented on the UM Campus or off of the UM Campus at venues that are mutually agreed upon by the City and the University.

(c) The City and the University agree that the UM Lectures will be presented free of charge to Coral Gables residents and that the University shall be responsible for all aspects of the content of the UM Lectures including the cost, if any, of speaker fees.

(d) When the UM Lectures are presented at off-campus venues, the City shall cover the costs of the venue and all associated costs including insurance and security. When the programs are presented on-campus, the University shall cover the associated costs, including insurance and security.

8. University Performance and Concert Series.

(a) The City and the University agree to co-host a concert series comprised of four (4) concerts annually featuring student and faculty performers ("UM Concert Series").

(b) The City and the University agree that the UM Concert Series may be presented on the UM Campus or off of the UM Campus at venues that are mutually agreed upon by the City and the University.

(c) The City and the University agree that the UM Concert Series shall be free of charge to Coral Gables residents and that the University shall be responsible for all aspects of the content of the concerts. The University shall make available to the City an appropriate allocation of free tickets for each concert and it shall be the City's sole responsibility to distribute the tickets. Any tickets that are not distributed within three (3) days of an event shall be returned to the University. Each ticket recipient shall provide the City with his or her name, address and e-mail address, if available.

(d) When the concerts are presented at venues off the UM Campus, the City shall cover the costs of the venue and all associated costs including insurance and security. When the programs are presented on-campus, the University shall cover the associated costs, including insurance and security.

(e) The University agrees to be responsible for the cost of talent for concerts presented on campus and off-campus.

(f) In addition to the four (4) concerts referenced above in subparagraph 8(a), the University shall present two (2) cultural programs that shall feature performances or exhibitions open to Coral Gables residents. The intent of this subparagraph (f) is to provide programming in the cultural arts in addition to musical performances. By way of illustration, dramatic presentations, poetry readings, photography, painting, or sculptural exhibitions are the types of programs that are intended to be presented in accordance with this subparagraph (f). The choice of venue, provision of content, and covering of the costs for these programs shall be the sole responsibility of the University.

9. Ponce de Leon Boulevard Beautification Improvements.

(a) The City and the University agree that the beautification of the Ponce de Leon Boulevard between Red Road and the intersection of Ponce de Leon Boulevard and LeJeune Road is beneficial to the University, the City and its citizens.

(b) The City agrees to design and install beautification improvements for Ponce de Leon Boulevard between Red Road and the intersection of Ponce de Leon Boulevard and LeJeune Road. The City agrees to coordinate the design of the beautification improvements in consultation with the University.

(c) The City agrees that the City will be responsible for the cost of the Ponce de Leon beautification improvements between Granada and the intersection of Ponce de Leon Boulevard and LeJeune Road.

(d) The University agrees to contribute up to \$100,000 to the cost of the Ponce de Leon Boulevard beautification improvements between Red Road and Granada.

(e) The University's financial contribution is payable: (i) upon reasonable advance written notice from the City; and (ii) if and when the City commences construction of the beautification work more particularly described in subparagraph (b) above.

(f) The City shall be solely responsible for maintaining the improvements constructed in accordance with this Paragraph 9.

10. "Meet the Docs" Health Care Program.

(a) The City and the University agree that a regular program addressing health care issues would be of substantial value to the City and its residents ("Meet the Docs").

(b) The University agrees to establish and present a quarterly Meet the Docs program to be held on the UM Campus or off of the UM Campus at venues mutually agreed upon by the City and the University.

(c) When the Meet the Docs programs are presented at off-campus venues, the City shall cover the costs of the venue and all associated costs including insurance and security. When the programs are presented on-campus, the University shall cover the associated costs including insurance and security. The presentation of content at these lectures shall be the sole responsibility of the University.

(d) The City and the University recognize and acknowledge that the intention of this Paragraph is to address in an introductory or lecture fashion a wide range of health care issues of current interest. It is not the intent of

the "Meet the Docs" program to provide actual medical care or diagnosis to any individual.

11. Consulting Services.

The University will provide, at its expense, up to eighty (80) hours per year of consulting services to the City in areas such as information technology, procurement, architecture and design and business processes. Specific consulting projects will be by mutual agreement. The University will provide an estimate of non-labor expenses in advance of a project; said expenses will be the responsibility of the City. Unused hours in any calendar year may not be carried over to subsequent years.

12. Hurricane Athletics Ticket Program.

(a) The University and City agree to establish a Hurricane Athletics Ticket program to promote men's and women's team sports to City residents ("Ticket Program"). All tickets referred to in this Paragraph shall be for home games.

(b) The University agrees that Hurricane Athletics will establish a "Buy One, Get Two Free" Ticket Program for one home football game, designated by the University as "Coral Gables Day," during the regular season. The game will be a conference game or a mutually agreed upon non-conference game. Proof of residency will be required at the time of purchase. Tickets will be made available for purchase two weeks prior to the Coral Gables Day game. All available tickets, excluding suites and club seating, will be made available for purchase as part of the "Buy One, Get Two Free" program. Each ticket recipient shall provide the University with his or her name, mailing address, and e-mail address, if available.

(c) The University also agrees to provide 1,000 general admission tickets free of charge for each of the following programs; men's basketball, women's basketball and men's baseball. A minimum of one-half of the tickets to each program shall be against a conference opponent which are selected by the University during the regular season of men's and women's basketball and men's baseball. Proof of residency will be required at time of pick up. Two tickets will be distributed for free per household until a maximum of 1,000 is reached.

(d) Ticket sales and distribution will be managed by the University of Miami's Athletics Tickets Office located at the Hecht Athletics Center. The distribution of the tickets for the football, men's and women's

basketball and men's baseball games will be the sole responsibility of the University.

13. Student Enrollment.

(a) The enrollment of full-time equivalent undergraduate degree-seeking students enrolled in classes on the UM Campus ("Student Enrollment") has historically varied between approximately 9,000 and 11,500. For the purposes of this Agreement, the baseline student enrollment ("Baseline Enrollment") is 10,000 and the number of beds as of the Effective Date of this Agreement is 4,845.

(b) If and when, Student Enrollment reaches 12,000, the University shall submit a report for review and approval by the City ("Enrollment Reporting Threshold") identifying: (i) the number of Student Enrollment; (ii) the number of beds constructed on the UM Campus since the Effective Date; (iii) all traffic mitigation implemented by the University from the Effective Date, and (iv) a proposed plan that addresses any unmitigated traffic impacts caused by an increase in Student Enrollment between 12,000 and 13,000. Each year thereafter, the University shall submit an Enrollment Report thirty (30) days following commencement of the Fall Semester.

(c) The University agrees that if and when Student Enrollment on the UM Campus exceeds 13,000 ("Undergraduate Enrollment Mitigation Threshold") the following provisions shall apply:

(i) The University shall submit an application for an amendment to this Agreement which addresses the net new impacts not previously mitigated caused by the increase in Student Enrollment above the Undergraduate Enrollment Mitigation Threshold. The Undergraduate Enrollment Threshold shall be subject to a credit as described in Paragraph 13c(ii) below.

(ii) For each new bed of student housing developed by the University on the UM Campus after the Effective Date (as evidenced by a certificate of occupancy), the University shall receive a one/half student-to-one bed on campus credit ("On-Campus Housing Credit") adjustment to its mitigation obligations arising under 13c(i) above. The purpose of the On-Campus Housing Credit is to encourage the University to house its students within the UM Campus. To illustrate the intention of the On-Campus Housing Credit, if the University develops six (6) beds of on-campus student housing after the Effective Date, then the University mitigation obligations shall be calculated based on a net increase of Student Enrollment by three (3). The On-Campus Housing Credit shall be limited solely to the provisions of this Paragraph 13.

(iii) The On-Campus Housing Credits shall only be effective for potential increases in Student Enrollment from 12,000 to 13,000.

14. Uses, Intensity of Use, Public Facilities, Reservations.

(a) Campus Generally. The City agrees that with applicable approvals the UM Campus can be developed with a maximum Gross Floor Area of 6.8 million square feet of university-related uses.

(b) The City agrees that the following uses and activities shall be authorized on the UM Campus subject to the provisions of this Agreement: classrooms; lecture halls; research laboratories, offices, and related research facilities; dormitories; residential; administrative and faculty offices; social, cultural, charitable and community facilities; government uses; camps; recreational and athletic facilities; commencement and graduation ceremonies; outdoor teaching and recreational uses; parking lots and garages; theaters; concert halls, arenas and collaboration and conference centers; museums, galleries and exhibition areas; libraries; religious facilities; private clubs, fraternities and sororities; commercial retail uses, food services, personal services, and entertainment uses intended to principally serve on campus needs; maintenance activities; greenhouses, outdoor eating and seating facilities; amateur radio, satellite earth stations, and telecommunication facilities; emergency phones, lighting and surveillance systems and other public safety facilities and temporary uses.

(c) University Multi-Use Area. In addition to the uses listed in subparagraph 14(ba), the following uses are permitted: conference center, office, lodging, commercial/retail and medical/healthcare uses intended to serve the University's needs and the broader needs of the general public.

(d) The maximum permitted heights of buildings on the UM Campus remain unchanged by this Agreement and are expressly set forth within the UMCAD approvals as amended.

(e) No new public facilities are necessary to service the intensity of use referenced in subparagraph (a) above, except as provided for in Paragraphs 24 and 25 of this Agreement.

(f) No new reservation or dedication of land is necessary for public purposes in connection with the development referenced in subparagraph (a) above.

(g) In light of the express provisions of this Agreement, no new terms, conditions, restrictions, or other requirements are necessary to assure the public health, safety, and welfare of the citizens of Coral Gables.

(h) The City finds that the development permitted by this Agreement is consistent with the comprehensive plan.

15. Comprehensive Plan Amendments.

The City agrees to process the comprehensive plan amendments (text and map) attached hereto as Composite Exhibit "C" by taking final Commission action on the amendments on or before October 29, 2010.

16. Zoning Code Amendments and Change of Zoning District Application.

The City agrees to process the zoning code amendments (text and map), attached hereto as Exhibit "D", and the change in zoning district application attached hereto as Composite Exhibit "E" by taking final Commission action on the proposed amendments and change in zoning district on or before December 31, 2010.

17. Bank United Center.

Notwithstanding any prior City restriction, regulation or approval, the City and the University agree as follows:

(a) Ordinance 2007-16 is hereby amended to increase the authorized seating capacity of the Bank United Center to a maximum of 9,830 seats, provided however that no additional seats shall be installed until an updated Bank United Center Parking and Traffic Management Program, which includes an updated eEvent mManagement and sSecurity pPlans which reflects the additional seats, has been submitted to the City and approved by the City Manager or his designee.

(b) Alcoholic beverages may be served at the Bank United Center. Subject to compliance with the Florida Statutes, the University may sell alcoholic beverages pursuant to a 2COP license in the Bank United Center at all publically ticketed events including, but not limited to concerts, awards programs and professional sporting events in all public areas and the Hurricane 100 room. Public areas means concourse and event levels, including portable stands in these areas. The City hereby amends Resolution #2003-7, attached hereto as Exhibit

~~"F" to allow the University to sell alcoholic beverages in accordance with this Paragraph by adopting the Resolution attached hereto as Exhibit "F.~~

- i) at University Athletic and Academic Programs only in and restricted to the Hurricane 100 facilitiesathletic and suites level. For the purposes of this paragraph, "University Athletic and Academic Programs" means programs, events and extra-curricular activities commonly associated with a college education, including commencement ceremonies, student orientation, student activities, student banquets, instructional lectures, symposia, intercollegiate basketball, volleyball, and other intercollegiate sports, high school sports, practices, coaching clinics, and sports.
- ii) at programs and events which are not University athletic and academic programs and events, in public spaces (including the concourse, floor, and event levels, suites and the Hurricane 100 facilities as well as temporary seating in such areas).

The City hereby amends Resolution #2003-7, attached hereto as Exhibit "F" to authorize the sale of alcoholic beverages at the Bank United Center in accordance with this subparagraph, which amendment shall become effective when the University makes the first annual payment pursuant to paragraph 25 (a) of this Agreement, provided however, that alcoholic beverages may not be served until the University has submitted and the City Manager has approved an Event Management and Security Plan.

(c) Upon the build-out of the additional seats described in paragraph (a) above as measured by the issuance of a certificate of completion, the University shall make available free of charge to Coral Gables residents \$20,000 worth of tickets each calendar year for events at the Bank United Center. Where tickets for events do not contain a face value, the University may impute a fair value to such tickets and the City is free to accept or reject such tickets. Rejection of such tickets does not relieve the University of the obligations under the provisions of this paragraph. The selection of the events shall be in the sole discretion of the University. The distribution of the tickets shall be the sole responsibility of the City and the City agrees to establish a program for the public distribution of the tickets. Each Coral Gables resident receiving a free ticket shall furnish the City with appropriate identification to demonstrate residency together with a mailing address and email address (if available).

18. Miscellaneous Uses and Temporary Occupancies.

The City and the University agree that within the corporate limits of the City:

(a) Unless expressly approved by an amendment to this Agreement, the University's academic programs, academic uses and activities; instructional uses and activities, and student housing facilities (collectively, "University Academic Uses") shall be permitted to be established only within the boundaries of the UM Campus.

(b) Conferences, symposia, institutes and the like sponsored in whole or in part by the University shall be permitted in off-campus commercial establishments with conference facilities, meeting rooms and/or overnight accommodations, located outside of the UM Campus. The activities authorized by this subparagraph shall not exceed fourteen (14) days, unless approved by the City Manager upon a determination that the proposed activity does not constitute a University Academic Use, in the City Manager's discretion.

(c) Nothing in this paragraph shall be construed to prohibit temporary occupancy of a hotels and other overnight accommodations which are located outside the UM Campus by students awaiting dormitory assignments or participating in athletic and/or other special events, on or off campus, provided however, no such occupancy shall not exceed a single semester unless approved by the City Manager or his designee. The University agrees to provide the City with a report with regard to the students in temporary occupancy pursuant to this subparagraph no later than three (3) weeks after the start of each semester.

(d) Notwithstanding the provisions of subparagraph 18(a), occupancies to accommodate the University's Academic Uses shall be permitted on a temporary basis outside of the UM Campus during the repair, renovation, design, planning and construction, rehabilitation or redevelopment of on-campus facilities, provided that: i) the University provides written notice to the City of its establishment of the temporary occupancy including the nature of the use and the location of the facilities where the use is to be established, ii) no temporary occupancy shall be permitted in a single family zoning district except for the use of single family residences for single family purposes, iii) the zoning district in which the temporary occupancy to be established permits the class of use to be established (e.g. no office of any type in a residential zoning district); and iv) the temporary occupancy does not exceed three (3) years, unless an additional term is requested for good cause shown and approved by administrative order of the City Manager in the discretion of the City Manager.

(e) Nothing in this paragraph shall be construed to prohibit UM students from participating in community-based charitable, clinical and social

service projects and programs outside of the UM Campus. To illustrate the intention of this paragraph 18(d), students of the University from time to time provide and participate in providing legal aid assistance, clinical and social work type counseling, charitable, and like missions and services throughout the community including the City. Nothing within this paragraph 18 should be construed to limit or prohibit UM students from participating in these types of activities. Nothing in this Agreement shall be construed to allow the University to establish University Academic Uses outside of the UM Campus.

(f) Nothing within this Agreement should be construed to affect or determine, in any way, the University's right to own or use land or buildings which are located outside of the UM Campus and not expressly addressed herein. Nothing in this Agreement is intended to be, nor shall be construed to be, a waiver, release, compromise, abandonment, or precedent by the City or the University with regard to uses outside of the UM Campus.

19. **Internal Road and Access.**

Ordinance #2007-16, previously recorded on October 3, 2007 in the public records at OR Book 25968, Pages 4593-4609 UMCAD 2006, and the concurrent Declaration of Covenants and Restrictions are hereby amended to extend the deadline:

(a) for submitting construction plans for the entire Internal Road to:

- i. December 31, 2015, or
- ii. the issuance of a building permit for any 2006 UMCAD amendments located north of Lake Osceola, or
- iii. the issuance of a building permit for UMCAD 2006 Amendment H4, whichever occurs first;

(b) for the completion of the construction of the closure/relocation/consolidation of access drives and the realignment of the existing Miller Road to south of the arboretum to:

- i. December 31, 2015, or
- ii. City approval/acceptance of a certificate of occupancy for 2006 UMCAD Amendment H21, whichever occurs first;

(c) for the completion of the Internal Road to:

- i. December 31, 2017, or
- ii. City approval/acceptance of a certificate of occupancy for 2006 UMCAD Amendment H4, whichever occurs first

20. Mobility Plan.

(a) The University shall submit for and review and approval by the City Manager a Mobility Plan on or before June 1, 2011. The Mobility Plan shall be consistent with the Mobility Element of the City's Comprehensive Plan and shall identify specific programs to promote the use of alternative modes of transportation other than the single occupant automobile including walking, bicycles, intra-campus shuttles, transit, van pools, car pools, parking management strategies and programs designed to reduce external trips and shorten trips lengths wherever possible. The Mobility Plan shall provide for management programs for on-campus parking. The Mobility Plan shall establish measurable targets for various modes of travel and identify sources and means for achieving those targets. The University agrees to implement the approved Mobility Plan as soon as practicable after the approval of the Plan by the City and throughout the term of this Agreement. The University may propose amendments to the Mobility Plan from time to time, subject to review and approval by the City Manager, or his designee.

(b) The University agrees to prepare an annual report on the University's progress with regard to the implementation of the Mobility Plan with specific references to the measurable targets for various modes of travel.

21. Conveyance of Internal Streets and Waterways.

The City recognizes that the UM Campus includes certain waterways and streets which are uniquely internal to the University and which are shown with greater particularity on Exhibits "G" (the "Streets") and "H" (the "Waterways"). As such, these Streets and Waterways are not readily utilized by the City's residents for any significant public purpose, these Streets and Waterways do not further any component of the City's roadway network, and they do not contribute to any public benefit or convenience. The University has historically maintained the subject Streets and Waterways.

(a) The University shall submit all applications and documents required for final action with the appropriate City boards for the vacation of the Streets.

(b) The City agrees to convey title to the internal streets and waterways described in Exhibits "G" and "H", subject to:

- i. a perpetual easement of access for law enforcement, fire and life safety, code enforcement and any and all other municipal purposes; and

ii. a perpetual easement in favor of the City for the purposes of owning, maintaining and operating sixty (60) metered parking spaces which are located on and are a part of the internal roads which are more particularly described in Exhibit "I" attached to this Agreement; provided however, at any time after December 31, 2011 during which the amount of annual net revenue generated by the existing meters will be established, the University may relocate the sixty (60) metered parking spaces to other locations on roads within the UM Campus. The relocation of the metered parking spaces shall be subject to a determination by the City Manager, in the City Manager's discretion, that the relocated parking spaces will generate revenue equal to or greater than the revenues generated by the meters at the original location. In the event that the parking meters are relocated, the City and the University agree that if after one (1) year of operations, the annual revenue from the parking meters is less than the annual revenue from the original sixty (60) meters, the University shall install additional parking meters to increase the annual revenue to the revenue generated by the original meters. The location of the additional metered parking spaces shall be subject to a determination by the City Manager, in the City Manager's discretion, that the additionally located parking spaces will generate sufficient revenue to be greater than the revenues generated by the meters at the original location. The City and the University agree that the parking rates to be charged for the metered parking spaces shall be as established by the City Commission from time to time. The perpetual easement for the metered parking spaces may be released at any time if the University and City agree to a buyout of the metered parking spaces for the net present value of the revenue generated by the original meters.

22. Re-Conveyance of Fire Station Property.

The City is the owner of the property legally described on Exhibit "J" to this Agreement, which was acquired from the University for the purpose of constructing a fire station (the "Fire Station Site"). The Fire Station Site is no longer used for fire station purposes.

(a) Within 60 days of the Execution Date of this Agreement, the City shall commence the process to re-convey the Fire Station Site with clean and marketable title free of all liens and encumbrances.

(b) The University shall pay all reasonable and customary closing costs and expenses associated with the Fire Station re-conveyance transaction. The closing shall occur no later than December 31, 2010, unless extended by the mutual agreement of the parties.

(c) The City shall deliver the property at closing free of all City or other personal property that may be located thereon.

(d) Upon the re-conveyance, the parties agree that the Fire Station Site will be included as part of the UM Campus, as defined in this Agreement, and, subject to the terms of this Agreement, and any applicable City regulations, the Fire Station Site may be developed and used by the University in accordance with the applicable regulations.

23. Encroachments.

The City and the University agree to undertake a survey study of all University improvements on the UM Campus to determine whether any of the University's improvements and or buildings encroach on City property including rights of way. The survey study shall be prepared by the University and submitted to the City for review and acceptance. The City and the University agree that in the event the survey study identifies any encroachments, the University shall have the option of removing or not removing any such encroachments, provided that for any encroachment which the University determines not to remove, the City agrees to grant and the University agrees to accept, an easement of use to maintain such existing improvements which encroach on City property including rights of way. The University agrees that it will indemnify, defend and hold the City harmless from and against any and all loss, expense damage and liability resulting from the claims arising out of or resulting from the encroachments as provided for in this Paragraph. The City and the University agree that upon completion of the survey study and the grant of easements of use, the University shall prepare a re plat sketch of the University Campus updated to reflect all existing easements encroachments, or, the provisions of this Development Agreement including any encumbrances identified pursuant to this Paragraph. The City and the University agree that the survey and approval of the replatsketch of the University Campus shall be completed on or before the second anniversary of the Effective Date of this Agreement.

24. Use of Name, Logo, Trademark.

The parties each agree to seek from the other the prior written approval of all advertising and/or marketing materials whether intended for print or electronic distribution which contains the name, logo, trademark, likeness or other similar

identifier when promoting any of the events identified in this Agreement. The approval required by this paragraph for the City and the University shall be given promptly by the designated representative of each party and shall not be unreasonably withheld.

25. Consideration and Mitigation.

The City and the University agree that:

(a) In consideration for the terms and conditions of this agreement, the University shall make annual payments to the City pursuant to the payment schedule attached as Exhibit "K" commencing on December 1, 2010. ~~In the event that~~Provided that the City has satisfied the approval obligations of subparagraphs (i), (ii) and (vii) ~~and the City fails to complete any of the approval obligations set out in this subparagraph on or before December 1, 2010, the first annual payment shall be paid into to~~ an agreed upon escrow agent paid by the University to be held in an escrow account for the benefit of the City, which escrow, plus any interest earned, shall be released to the City upon the completion of the last of the following approval obligations:

- i. final action approving the Zoning Code amendments attached as Exhibit "D";
- ii. final action approving the Comprehensive Plan amendments attached as Exhibit "C";
- iii. final action approving the sale of alcohol at the Bank United Center and approval of an increase in the maximum permitted number of seats in accordance with the provision Paragraph 18;
- iv. final action vacating the internal roads in accordance with Exhibit "G" attached hereto, provided however, that in the event that the University fails to submit a complete application, together with a survey of the roads to be vacated on or before September 15, 2010, the vacation of the roads shall not be an approval obligation;
- v. final action conveying the Fire Station Property to the University in accordance with Exhibit "J";
- vi. final action conveying the internal waterways to the University in accordance with Exhibit "H"; and
- vii. final action granting a development order amending the campus Master Plan to authorize and approve the Health

Center as a permitted use within the University Multi-use Area.

In all succeeding years, the annual payments shall be due on December 1 of each year.

(b) The payments in consideration for the conveyance of internal streets and waterways provided for in Paragraph 21 and the re-conveyance of the Fire Property in Paragraph 22 and as mitigation for the uses and intensities of use authorized in Paragraph 14, which payments are in addition to the University's obligations under UMCAD 2006, Ordinance 2007-16. The University agrees that the payments provided for in this Paragraph do not entitle the University to a credit of any kind against the obligations of UMCAD 2006, Ordinance 2007-16 or against conditions of approval for any future modifications, changes or amendments to the Campus Master Plan.

(c) The Campus Master Plan as amended by UMCAD 2006, Ordinance 2007-16 (and by this Agreement) shall remain in full force and effect and shall be deemed for all purposes to be the approved and adopted Campus Master Plan ("Campus Master Plan") if and when the City adopts the University Campus zoning district ("Zoning District Code") in accordance with the draft attached hereto as Exhibit D. Future Regional Traffic Studies shall be conducted pursuant to the methodology developed for the 2008 Regional Traffic Study which is attached hereto as Exhibit "L".

(d) All rights, obligations, conditions of approval and mitigation obligations imposed in connection with the adoption of Ordinance 2007-16 shall remain in full force and effect unless modified by future City action, or performed (or satisfied) by the University.

(e) If and when the City adopts the University Campus District in accordance with the form of the draft attached hereto as Exhibit D, changes and amendments to the Campus Master Plan shall be governed by the UCD Zoning District.

(f) If and when a change or amendment to the Campus Master Plan is approved at the request of the University, the City may impose reasonable conditions of approval to mitigate the net new traffic impacts caused by the change or amendment at the time of issuance of a building permit.

(g) The University agrees to reimburse the City for the reasonable cost of any professional consultants, including planners, economists, engineers, public safety/security experts and attorneys required by the City with regard to any request, application, report or other submission by the University in the implementation of this Agreement and all actions related thereto, including any amendments to the Campus Master Plan or this Agreement; and in the defense of any challenge by a party other than the University to this Agreement or any City action taken pursuant to this Agreement. The City agrees that it will comply with its procurement code and regulations. Furthermore, the City agrees to require a Favored Nations Clause from such consultants to the effect that prices charged the

City shall not exceed the prices charged to other clients for the same or substantially similar and comparable items or services under similar circumstances and conditions. The City agrees to give the University prompt notice that the City has engaged a professional consultant other than an attorney. In addition, the City agrees to require that all consultants provide the City with monthly bills, which the City agrees to review and approve and to promptly forward to the University. The City agrees, prior to authorizing any legal services to be reimbursed pursuant to this subparagraph, to provide the University with a budget for such services for review and approval, which approval shall not be unreasonably withheld. In the event the scope or cost of the required legal services is to be modified, the City agrees to submit a revised budget to the University. The University and the City agree that the provisions of this subparagraph shall not serve to prevent the continued reimbursement of the City's present consultants through and until December 1, 2010.

26. Impact Fees, Special Assessments and Other Municipal Fees.

Nothing in this Agreement shall relieve the University from the obligation to pay any impact fees, special assessments, building permit fees, user fees or other municipal fees, charges or taxes which are generally applicable to any other development, property and/or use in the City. The City expressly recognizes the rights of the University, like any other property owner, to challenge the adoption of a new impact fee or the application of an existing fee to it, or to otherwise seek relief from said fee or assessment in accordance with law. The University acknowledges the right of the City to challenge any tax exemption for improvements in the University Multi-Use Area.

27. Failure of the University to Timely Submit an Application or Information

In the event that any City obligation requires the University to submit an application or information, the failure of the University to timely submit any required application, request or information shall toll the date of the City's performance until [sixty (60) days] after receipt of such application or information.

28. Conflicts and Amendment of Prior Ordinances and Agreements

(a) In the event of conflicts between the terms of this Agreement, a previously imposed condition of development approval, and/or the City's Zoning Code, the provisions of this Agreement shall control.

(b) With respect to the development approvals sought herein, with the adoption of an Ordinance approving this Agreement, the following Ordinances and Resolutions are hereby amended according to the provisions of this Agreement:

- (i) Ordinance No. 2964 through UMCAD approvals
Ordinance No. 2007-16;
- (ii) Resolution No. 2003-7; and
- (iii) Ordinance No. 2007-16.
- (iv) Declaration of Covenants recorded on October 3, 2007, at
OR Book 25968 Pages 4593-4609.

(c) Nothing in this Agreement shall be construed to abrogate or otherwise affect any existing agreements between the City and the University or to limit in any way the application of any existing regulations of the City to the University unless such agreements or regulations are expressly modified or pre-empted by the provisions of this Agreement.

29. Existing UMCAD Obligations.

Except as expressly set forth in this Agreement, nothing in this Agreement shall abrogate or otherwise eliminate any approval previously granted or any obligation previously imposed on the development and use of the UM Campus under the existing UMCAD zoning, unless expressly provided for in this Agreement or approved after a duly noticed public hearing by the City Commission of the City of Coral Gables pursuant to the provisions of the City's Zoning Code and the requirements of the Florida Statutes.

30. Amendments.

This Agreement may be amended by the mutual consent of the City and University, subject to compliance with the procedural requirements for the initial approval of this Agreement pursuant to the Florida Local Government Development Agreement Act, section 163.3220-163.3243, Fla. Stat. (2009) ("Act") and pursuant to the provisions of Division 19 of the Zoning Code of the City of Coral Gables, or any subsequent laws or ordinances

31. Applicable Laws and Construction.

The laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement. This Agreement has been negotiated by the City and the University, and the Agreement, including, without limitation, the

Exhibits, shall not be deemed to have been prepared by the City or the University, but by all equally.

32. Venue and Jurisdiction.

(a) For purposes of any suit, action, or other proceeding arising out of or relating to this Agreement, the Parties hereto do acknowledge, consent, and agree that venue therefore is Miami-Dade County, Florida.

(b) Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the 11th Judicial Circuit in and for Miami-Dade County, Florida. Each party irrevocably consents to the personal jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court.

33. Estoppel Certificates.

The University and the City shall at any time and from time to time, upon not less than thirty (30) days prior notice by another party hereto, execute, acknowledge and deliver to the other party, a statement in recordable form certifying that this Agreement has not been modified and is in full force and effect (or if there have been modifications that the said Agreement as modified is in full force and effect and setting forth a notation or a full copy of such modifications), and that to the knowledge of such party, neither it nor any other party is then in default hereof (or if another party is then in default hereof, stating the nature and details of such default), it being intended that any such statement delivered pursuant to this paragraph may be relied upon by any prospective purchaser, mortgagee, successor, assignee of any mortgage or assignee of the respective interest in University Property, if any, of any party to this Agreement.

34. Complete Agreement; Amendments.

(a) This Agreement, and all the terms and provisions contained herein, including without limitation the Exhibits hereto, constitute the full and complete agreement between the Parties hereto to the date hereof with respect to the matters expressly set forth herein, and supersedes and controls any and all prior agreements, understandings, representations, correspondence and statements, whether written or oral. The rule of contract interpretation known as *expressio unius est exclusio alterius* shall not be applied when interpreting this Agreement to address matters not expressly identified within this Agreement.

(b) Any provision of this Agreement shall be read and applied in *pari materia* with all other provisions hereof.

(c) This Agreement cannot be changed or revised except by written amendment signed by both Parties hereto or otherwise permitted herein.

35. Captions.

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 construe any article, section, subsection, paragraph or provision hereof.

36. 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.

37. Exhibits.

Each Exhibit referred to and attached to this Agreement is an essential part of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement and incorporated herein.

38. Public Purpose.

The University and the City acknowledge and agree that this Agreement satisfies, fulfills and is pursuant to and for a public and municipal purpose and is in the public interest, and is a proper exercise of the City's power and authority.

39. No General Obligation.

In no event shall any obligation of the City under this Agreement be or constitute a general obligation or indebtedness of the City, a pledge of the ad valorem taxing power of the City, the lending of credit, or a general obligation or indebtedness of the City within the meaning of the Constitution of the State of Florida or any other applicable laws.

40. Approvals Not Unreasonably Withheld.

The University and the City represent that it is their respective intent as of the Effective Date and do covenant and agree in the future that all approvals, consents, and reviews will be undertaken and completed as expeditiously as possible, in good faith, and will not be arbitrarily or unreasonably withheld, unless otherwise expressly authorized by the terms of this Agreement. This paragraph relates solely to the legislative, ministerial or administrative approvals or actions of the City and does not relate to any quasi-judicial approval or action.

41. Preservation of Rights.

The University and the City further acknowledge and agree that certain provisions of this Agreement will require the City and/or its boards, departments or agencies, acting in their government capacities, to consider governmental action as set forth herein. The University and the City acknowledge and agree that all such actions undertaken by the City shall be undertaken in strict accordance with established requirements of the general laws of the State of Florida and City ordinances or regulations. Nothing in this Agreement or in the University's and the City's acts or omissions in connection herewith shall be deemed in any manner to waive, limit, impair, or otherwise affect the authority of the City in the discharge of its police or governmental power expressly including the land use and zoning power.

42. Technical Amendments; Survey Corrections.

In the event that due to minor inaccuracies contained herein or any Exhibit attached hereto or any other agreement contemplated hereby, or due to changes resulting from technical matters arising during the term of this Agreement, the University and the City agree that amendments to this Agreement required due to such inaccuracies, unforeseen events or circumstances which do not change the substance of this Agreement may be made and incorporated herein. The City Manager is authorized to approve such technical amendments on behalf of the City, and is authorized to execute any required instruments, to make and incorporate such amendment to this Agreement or any Exhibit attached hereto or any other agreement contemplated hereby.

43. Notices.

All notices given hereunder shall be made in writing and either (i) deposited in the United States Mail, certified, return receipt requested, with sufficient postage pre-paid thereon to carry them to their addressed destinations,

or (ii) delivered by courier or messenger service, and the notices shall be addressed as follows:

For the City:

City Manager
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

With a copy to:

City Attorney
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

For the University:

Senior Vice President for Business and
Finance and Chief Financial Officer
Ashe Building Suite 230
1252 Memorial Drive
Coral Gables, Florida 33146

With a copy to:

Vice President, Secretary and General
Counsel
1320 South Dixie Highway, Suite 1250
Coral Gables, Florida 33136

Mailing of written notice by the City of Coral Gables to the University by means of U.S. Postal Service shall constitute *prima facie* evidence of delivery. Either party may change the person or address for notices by notice in writing to the other party as hereinabove provided.

44. Default and Enforcement.

(a) **Default.** The occurrence of any of the following shall constitute an event of default ("Event of Default") under this Agreement.

(i) **University Monetary Obligation.** The University's failure to pay any amount due on the date required under this Agreement ("Event of Monetary Default").

(ii) **University Non-Monetary Compliance Obligation.** The University's failure to comply with a

non-monetary obligation pursuant to this Agreement (“Event of Non-Monetary Compliance”).

(iii) City Approval Obligation.

- a. The City’s failure to take final action approving the amendments to the Comprehensive Plan and Zoning Code in substantial compliance with the applications attached as Exhibits “C” and “D”, respectively by October 29, 2010 and December 31, 2010.
- b. The City’s failure to take final action in vacating and conveying real property in substantial compliance with Exhibits “G” by December 31, 2010.
- c. The City’s imposition of any material condition to an approval, conveyance or similar action that materially frustrates the ability to use and develop the University Campus in accordance with the uses and intensities described in paragraph 14 above.
- d. The City’s failure to take final action granting a development order of approval for the development of the Health Center within the Multi-Use Area on or before December 31, 2010.

(iv) City Compliance Obligation. The City’s failure to comply with an obligation under this Agreement that does not involve a City Approval Obligation.

(b) **Notice.** Written Notice of Default shall be given in the manner provided for in paragraph 43 of this Agreement.

(c) **Event of Monetary Default.** If and when the City Manager or his designee determines pursuant to the terms of this Agreement that an Event of Monetary Default has occurred, the City Manager or his designee shall provide the University with written notice of the Event of Monetary Default, the University shall have fifteen (15) days after receipt of the written notice to cure such default. The University may cure the Event of Monetary Default by making

full payment within fifteen days of the amount due and owing plus interest in the amount of 1 ½ percent per month (not to exceed the maximum allowed by law) of the past due amount from the date due until the date paid. If at the time the University makes such payment, the University takes the position that the City is in default as to an obligation(s) of this Agreement and the City disagrees, the University agrees to make the disputed payment, but may do so under protest, reserving all of its right to seek administrative or judicial relief with regard to the City's compliance with the obligations at issue. The payment under protest shall constitute a cure of the Event of Monetary Default. The payment under protest shall not serve to waive, abandon, compromise, or create an estoppel with respect to the merits of the potential dispute.

(d) **Acceleration.** If the University fails to cure an Event of Monetary Default within fifteen (15) days after the University receives written notice from the City, the City may, at its sole discretion, give Notice to the University in accordance with the provisions of paragraph 43 and all future payments under this Agreement shall thereby be accelerated and shall become immediately due and owing, together with interest thereon at the rate set forth in subparagraph (c) above.

(e) **Event of Default by City.** In the Event of Default by the City with regard to an approval obligation, the University shall give the City written notice of default. The City shall have fifteen (15) days after receipt of written notice of default, together with the required period of notice for City action on the required approval, to cure said Event of Default. If the City fails to cure the Event of Default, then the University's obligation to pay the mitigation provided for in this Agreement shall be suspended until the default is cured then the mitigation shall become due and owing.

(f) **Event of Non-Monetary Default by University.** In the Event of Default by the University with respect to its non-monetary obligations, the City shall give the University written notice of the Event of Default. The University shall have fifteen (15) days after receipt of written notice to cure the Event of Default. If the University is unable to cure the Event of Default within fifteen (15) days, the University shall submit a plan and a timeline for implementing the cure ("Cure Plan"). If the Cure Plan and timeline are acceptable to the City, the University shall implement the Cure Plan according to its terms in a timely fashion.

(g) **Enforcement.** Either party may file an action for declaratory or injunctive relief in the Circuit Court of Miami-Dade County to enforce the terms of this Agreement. The parties acknowledge that any failure to comply with the non-monetary obligations of this Agreement may result in

irreparable injury, not compensable by monetary damages, and accordingly, each party hereby consents to the entry of injunctive relief against it in the event of such failure; the enforcement provisions of this sub paragraph shall be in addition to any other remedies available at law or equity or both. In the event the City or the University is required to seek enforcement of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party all costs of such action, including reasonable attorney's fees.

45. Audited Financial Statements.

The University shall make available to the City for inspection a copy of its most recent audited financial statements within thirty (30) days after a written request from the City.

46. Recording of Agreement and Submission to the Department of Community Affairs.

The City shall, within fourteen (14) days of the approval of this Agreement, record the Agreement with the Clerk of the Court of Miami-Dade County. Within fourteen (14) days after the Agreement is recorded, the City shall submit the Agreement to the Department of Community Affairs.

47. Successors in Interest.

The obligations and benefits of this Agreement shall inure to all successors in interests to the parties to this Agreement.

48. Effective Date.

This Agreement shall become effective: (i) when it is signed by the authorized agent of each party, and (ii) it is approved by the City in accordance with applicable law.

49. Annual Review.

The University shall submit an annual report documenting the University's compliance with the requirements of this Agreement at least thirty (30) days prior to the anniversary of the Effective Date of the Agreement. The City Manager or his designee shall review the annual report submitted by the University and prepare a written report which shall be presented to the City Commission at a duly noticed public meeting for review and approval. After the annual review is approved by the Commission, the report shall be submitted to the Department of Community Affairs.

50. Force Majeure.

In the event that either party hereto is prevented from fully and timely performing any of its obligations hereunder due to acts of God, strikes and/or lock-outs, other industrial disturbances, acts of the public enemy, laws, rules and regulations of governmental authorities, wars or warlike action (whether actual, impending or expected, and whether de jure or de facto), arrest or other restraint of government (civil or military), blockades, insurrections, acts of terrorists or vandals, riots, epidemics, landslides, sinkholes, lightning, hurricanes, storms, floods, washouts, fire or other casualty, condemnation, earthquake, civil commotion, explosion, breakage or accident to equipment or machinery, any interruption of utilities, confiscation or seizure by any government or public authority, nuclear reaction or radiation, radioactive contamination, accident, repairs or other matter or condition beyond the reasonable control of either party (collectively called "Force Majeure", financial inability to perform hereby expressly excluded) such party shall be relieved of the duty to perform such obligation until such time as the Force Majeure has been alleviated; provided that the party relying upon the provisions of this paragraph shall give the other party written notice of such reliance and upon the removal of the Force Majeure, the obligation prevented from being fulfilled will be automatically reinstated without the necessity of any notice whatsoever.

51. No Third Party Beneficiaries.

Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties hereto and their respective administrators, executors, other legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third person's legal standing or any right of subrogation or action over or against any party to this Agreement.

52. Relationship of the Parties.

The parties hereto acknowledge that they are separate and independent entities and nothing contained herein shall be deemed to create a joint venture, association, partnership, agency or employment relationship between the two. Neither party shall have the power to act in the name of, on behalf of, or incur obligations binding upon the other party. Neither party shall acquire an interest in the business or operations of the other by virtue of this Agreement. Furthermore, neither party endorses or warrants the activities of the other or their business, business practices, projects, products, services or other activities.

53. Time is of the Essence.

Time is of the essence for each and every provision of this Agreement.

54. Further Assurances.

The parties agree to execute and deliver from time to time such documents, and to perform all actions which may be necessary to effectively and completely carry out the intended effect of this Agreement including but not limited to defending the Agreement from legal or administrative challenge. On this point, the University agrees to cooperate with and fund the costs of defending any challenge to this Agreement by any third parties, including reasonable attorney's fees and costs incurred by the City for independent outside counsel if necessary.

55. Construction.

The language used in this Agreement will be deemed to be the language chosen by all of the parties to express their mutual intent, and no rule of strict construction shall be applied against any party. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

56. Approvals.

(a) The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the University of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

(b) It is anticipated that local development permits and approvals will be necessary: (i) Development Review Committee for the alignment, re-alignment, or replat of properties or rights-of-ways; (ii) Board of Architects as required by the Zoning Code; (iii) Planning and Zoning Board as required by the Zoning Code; (iv) City Commission as required by the Zoning Code.

(c) In addition, it is anticipated that additional local permits will be necessary during the term of this Agreement as are normal and customary for land development, including building permits, wastewater collection system permits, roadway improvement permits, tree removal permits, water distribution permits, and surface water management permits.

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IN WITNESS THEREOF, the Parties hereto have caused the execution of this Agreement by their duly authorized officials as of the day and year first written above.

Signed, sealed and delivered in the presence of:

Witness

UNIVERSITY OF MIAMI,
a Florida nonprofit corporation

Print Name: _____

By: _____

Its: _____

Witness

CITY OF CORAL GABLES, FLORIDA

Print Name: _____

By: _____

Its: _____

Approved by the City Commission on
_____, 2010, with the adoption of
Ordinance _____.

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

ATTEST:

BY: _____
Elizabeth Hernandez, City
Attorney

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this ____ day of ____, 2010, by _____, the _____ of the **University of Miami**, a **Florida nonprofit corporation**, who is ____ personally known to me, or who has produced _____ as identification who ____ did/ ____ not take an oath.

Notary Seal

Notary Public, State of Florida

Print Name: _____

Date: _____

My Commission Expires: _____

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this ____ day of ____, 2010, by _____, the _____ of the **City of Coral Gables**, who is ____ personally known to me, or who has produced _____ as identification who ____ did/ ____ not take an oath.

Notary Seal

Notary Public, State of Florida

Print Name: _____

Date: _____

My Commission Expires: _____

EXHIBITS
(To be prepared)

Exhibit A: Legal Description of the UM Campus
Exhibit B: Ordinance No. 2007-16 and accompanying (2006 UMCAD); and concurrent Declaration of Restrictive Covenants
Exhibit C: Proposed Comprehensive Plan Amendments
Exhibit D: Proposed University Campus Zoning District (UCD)
Exhibit E: Properties Proposed to be Rezoned to University of Miami Campus District (UCD)
Exhibit F: Resolution #2003-7, as modified
Exhibit G: Streets to be Vacated
Exhibit H: Waterways to be Deeded
Exhibit I: Parking Meter Map
Exhibit J: Fire Station Site
Exhibit K: Payment Schedule
Exhibit L: 2009 Regional Traffic Study