RESOLUTION No. 10 – 124

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, AUTHORIZING THE CITY MANAGER TO ENTER INTO A PURCHASE AND SALE AGREEMENT WITH CM DORAL CH DEVELOPMENT LLC MANAGEMENT FOR CITY HALL; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on May 3, 2010, the City Council of the City of Doral approved the proposed CM Doral CH Development LLC site as the site for the City Hall and authorized the City Manager to negotiate a land purchase and a design build contract with CM Doral CH Development LLC; and

WHEREAS, pursuant to such authorization, the City Manager and the City Attorney have negotiated an Agreement with CM Doral CH Development LLC; and

WHEREAS, the Agreement is attached hereto as Exhibit "A" (hereinafter the "Agreement").

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DORAL AS FOLLOWS:

Section 1. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a part of this Resolution upon adoption hereof.

Section 2. The Mayor and the City Council of the City of Doral hereby authorize the City Manager to enter into the Agreement in substantially the form attached.

Section 3. The Mayor and the City Council further authorize the City Manager to negotiate, finalize and execute any applicable exhibits to the Agreement and any ancillary documents in connection with the Agreement.

Section 4. This Resolution shall become effective upon its passage and adoption by the City Council.

The foregoing resolution was offered by Councilman DiPietro who moved its adoption. The motion was seconded by Vice Mayor Van Name and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Robert Van Name	Yes
Councilman Pete Cabrera	Yes
Councilwoman Sandra Ruiz	Yes
Councilman Michael DiPietro	Yes

PASSED and ADOPTED this 11th day of August 2010.

JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:

BARBARA HERRERA, CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

JIMMY MORALES, ESQ., CITY ATTORNEY

EXHIBIT "A"

Memorandum

Date: August 5, 2010

To: Honorable Mayor and Council Members

From: Yvonne Soler-McKinley, City Manager

Subject: City Hall Contract

At its May 3, 2010 Special Council meeting CM Doral presented a proposal for the future site of the City Hall Building. City Council unanimously authorized the City Manager to enter into negotiations with CM Doral for the land purchase and design build contract of the future City Hall site.

I respectfully request your approval to enter into a contractual agreement with CM Doral for the future site and development of the City Hall Building.

AGREEMENT OF PURCHASE AND SALE

BETWEEN

CM DORAL CH DEVELOPMENT LLC,
a Delaware limited liability company

("**DEVELOPER**")

AND

CITY OF DORAL, FLORIDA,
a municipal corporation existing under the laws
of the State of Florida

("**CITY**")

August ___, 2010

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AGREEMENT OF PURCHASE AND SALE

This **AGREEMENT OF PURCHASE AND SALE** ("**Agreement**") is made as of the [____] day of August, 2010 (the "**Effective Date**"), by and between **CM DORAL CH DEVELOPMENT LLC**, a Delaware limited liability company ("**Developer**") and **CITY OF DORAL, FLORIDA**, a municipal corporation existing under the laws of the State of Florida ("**City**"). Capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in the Glossary of Defined Terms attached hereto as **Exhibit A** and by this reference made a part hereof (the "**Glossary**").

RECITALS

A. Pursuant to the RFP, the City solicited the Development Proposals.

B. In response to the RFP, the Developer Affiliate submitted to City the Developer Affiliate's Proposal, which contemplates the construction of the City Hall Facilities on the Land.

C. At a hearing before the City Council on May 3, 2010, the City Council selected the Developer Affiliate's Proposal as the Development Proposal based upon which City should pursue negotiations for the construction and purchase and sale of the City Hall Facilities.

D. With City's consent, as evidenced by City's execution of this Agreement, the Developer Affiliate has created Developer as a single purpose entity for purposes of acquiring the Land and contracting with City for the construction and purchase and sale of the City Hall Facilities and the Land.

E. Immediately prior to the execution of this Agreement, Developer has acquired the fee title to the Land.

NOW THEREFORE, in consideration of the foregoing recitals and the promises, covenants and agreements made herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Agreement of Purchase and Sale**. Subject to and upon the terms and conditions herein, Developer hereby agrees to sell to City, and City hereby agrees to purchase from Developer, for an amount equal to the Purchase Price, the Property.

2. Intentionally Deleted.

3. **Payment of Purchase Price**.

A. **Deposit.**

(1) No later than two (2) Business Days after the Effective Date, City shall deliver the Deposit to Escrow Agent. If City fails to deliver

the Deposit to Escrow Agent as required by this Agreement, at Developer's election, this Agreement shall be null, void **ab initio** and of no force or effect.

(2) Provided that no Pre-GMP Developer Default shall have occurred and remain continuing, Escrow Agent shall release the Deposit to Developer on a monthly basis for the payment of Pre-GMP Soft Costs incurred by Developer. The Deposit shall be disbursed in accordance with the terms and conditions of the Escrow Agreement.

(3) In the event that any portion of the Deposit shall remain undisbursed following the Base Building Contract Date and the payment in full of all Pre-GMP Soft Cost Expenses, such portion of the Deposit shall be disbursed subject to the same terms and conditions as the Monthly Progress Payments and applied against the Monthly Progress Payments until such time as the Deposit has been fully expended. For example, in the event that (1) the portion of the Deposit remaining on deposit with Escrow Agent following the Base Building Contract Date and the payment in full of all Pre-GMP Soft Cost Expenses shall be $50,000 and (2) the amount of the initial Monthly Progress Payment which Developer shall be entitled to receive pursuant to **Section 3.C.(1)** hereof, without regard to this **Section 3.B.(3)** shall be $575,000, Escrow Agent shall pay such $50,000 sum to Developer and the amount of such Monthly Progress Payment shall be reduced to $525,000.

B. **Progress Payments.**

(1) Subject to the satisfaction of the Disbursement Conditions and Procedures and the other terms and conditions hereof, City shall disburse the Monthly Progress Payments to Developer on each Monthly Payment Date for the payment of Base Building GMP Hard Costs, Space Improvements GMP Hard Costs and Soft Costs (to the extent not previously paid out of the Deposit).

(2) Each Monthly Progress Payment shall be applied to the payment of the Hard Costs and Soft Costs, other than Pre-GMP Soft Costs paid out of the Deposit, provided for in the Budget actually incurred by Developer in connection with the design, development and construction of the Base Building Improvements and/or the Space Improvements, as applicable.

(3) Notwithstanding anything to the contrary contained herein, if at any time a Shortfall shall exist, City shall not be required to make any further disbursement of Monthly Progress Payments with respect to the construction of the Improvements as to which a Shortfall may exist (i.e., the Base Building Improvements or Space Improvements, as applicable) until such time as the Applicable Shortfall Amount shall be reduced to zero. In the event of any dispute between City and Developer as to whether a Shortfall may exist, such dispute shall be resolved in accordance with the dispute resolution provisions of **Section 20** of this Agreement.

(4) Developer acknowledges and agrees that City shall have no obligation to make Monthly Progress Payments during the continuance of a Shortfall, and Developer shall be solely responsible for the payment of all Development Costs out of its own funds until such Shortfall is cured.

C. **Purchase Price Adjustments.**

(1) In the event that (a) Closing shall not occur on or before the Scheduled Closing Date and (b) there shall be at least one (1) day of Net Developer Delay as of the Closing Date, the Purchase Price shall be decreased by an amount equal to the Applicable Purchase Price Reduction Amount.

(2) In the event that (a) Closing shall not occur on or before the Scheduled Closing Date and (b) there shall be at least one (1) day of Net City Delay as of the Closing Date, the Purchase Price shall be increased by an amount equal to the Developer Adjustments. To the extent that the full amount of the Developer Adjustments cannot be determined as of the Closing Date, the amount thereof shall be estimated by City and Developer as of the Closing Date and the parties shall make such adjustments as may be appropriate once the amount of such Developer Adjustments is finally determined, provided, however, that in no event shall the amount that City is required to pay Developer on account of the final amount of the Developer Adjustments exceed the amount of the Developer Adjustments estimated at Closing by more than twelve and one-half percent (12.50%).

(3) City and Developer acknowledge and agree that there shall be no adjustment of the Purchase Price on account of Unavoidable Delay.

D. **Closing Date Payment.** On the Closing Date:

(1) The full amount of the Deposit and the aggregate amount of the Monthly Progress Payments made by City to Developer shall be credited against the Purchase Price; and

(2) City shall make a payment to Developer in an amount equal to the amount by which the Purchase Price, as adjusted pursuant to **Section 3.C.(1)** or **Section 3.C.(2)** (as applicable) and after giving effect to the other adjustments and prorations provided for herein, shall exceed the sum of the Deposit and the aggregate amount of the Monthly Progress Payments made by City to Developer.

E. **Additional Adjustments.**

(1) In the event of Developer's exercise of its rights under **Section 7.A.(2)**, City and Developer agree that:

(a) On the Closing Date, City shall make a payment to Developer on account of the Purchase Price in an amount equal to the amount by which the Estimated Purchase Price Amount shall exceed the Estimated Completion Costs; and

(b) Upon the Final Completion of the Space Improvements, City and Developer shall make such adjustments to the amounts paid at Closing so that the aggregate amount paid by City and the aggregate amount received by Developer pursuant to this Agreement shall equal the Purchase Price, subject to such adjustments thereto as may be provided for elsewhere herein. Without limiting the generality of the foregoing, the Parties shall make such adjustments to the Profit Component paid by City to Developer at the time of Closing to account for any discrepancies between the Actual Completion Costs and the Estimated Completion Costs described in **Section 3.E.(1)(a)** hereof, provided that in no event shall the amount of the Profit Component be less than the Minimum Profit Component Amount or more than the Maximum Profit Component Amount.

(2) Notwithstanding anything to the contrary contained herein, in the event that City shall exercise its rights under **Section 7.A.(3)(a)**, City shall make a final payment to Developer at Closing in an amount equal to the Adjusted Purchase Price and the full amount of the Deposit shall be credited against such amount. In such event, there shall be no further adjustment of the Purchase Price between the Parties on account of any difference between the Actual Completion Costs and the Estimated Completion Costs. Nothing contained in this Agreement shall be deemed to imply any obligation on the part of the City to exercise the City's rights under Section 7.A.(3)(a) of this Agreement; it being expressly agreed that the City's election to exercise such right or not exercise such right shall be in the sole and absolute discretion of City.

(3) Provided that all of the conditions set forth in **Section 6.A.** of this Agreement shall have been satisfied, in the event that there shall be any Punch List Items remaining to be completed as of the Closing Date:

(a) On the Closing Date, (i) City shall pay Developer the Purchase Price based on the assumption that the Punch List Items will be completed by Contractor within the time periods required under this Agreement and in accordance with the requirements of the Base Building Contract and/or the Space Improvements Contract, as applicable, and (ii) Developer shall deposit into the Punch

List Items Escrow Account an amount equal to the Punch List Items Escrow Amount;

(b) Developer shall utilize the funds in the Punch List Items Escrow Account (and such other of Developer's funds as may be required, if any) for purposes of completing or causing Contractor to complete the Punch List Items in accordance with the requirements of the Base Building Contract and/or the Space Improvements Contract, as applicable; and

(c) Upon the Final Completion of the Punch List Items, Developer shall be entitled to receive all of the funds remaining in the Punch List Items Escrow Account.

(4) Notwithstanding anything to the contrary contained herein, in the event that (a) Closing shall not occur on or before the Scheduled Closing Date and (b) there shall be at least one (1) day of Net Developer Delay as of any date prior to the Closing Date, City, at its option, shall have the right to (1) require that Developer pay the amount of any Additional City Expenses on a monthly basis as such Additional City Expenses are incurred by City or (2) withhold the amount of such Additional City Expenses from the Monthly Progress Payments to be disbursed hereunder, provided that the Parties shall make appropriate adjustments as of the Closing Date or any termination of this Agreement to the extent that City shall not ultimately be entitled to receive payment of such Additional City Expenses from Developer.

F. **Survival.** The provisions of this **Section 3** shall survive the Closing.

4. **Due Diligence Matters**.

A. **Investigations.**

(1) City acknowledges that during the Feasibility Period, Developer has granted City the right, subject to the restrictions contained in this **Section 4**, to conduct such Investigations as it has deemed appropriate.

(2) City acknowledges that it has completed all of its the Investigations as of the date hereof and approved the results of the same. Developer shall continue to afford City reasonable access to the Land during normal business hours on any Business Day upon reasonable notice for the purpose of conducting such additional Investigations as it may reasonably require; however, City waives any right it may have to terminate this Agreement based on the results of such Investigations.

(3) City shall:

(a) promptly repair any damage to the Land resulting from any Investigations and replace, refill and regrade any holes made in, or excavations of, any portion of the Land used for such Investigations so that the Land shall be in the same condition that it existed in prior to such investigations or inspections;

(b) fully comply with all laws applicable to the Investigations and all other activities undertaken in connection therewith;

(c) permit Developer to have a representative present during all Investigations undertaken hereunder;

(d) take all reasonable actions and implement all reasonable protections necessary to ensure that the Investigations and the equipment, materials and substances generated, used or brought onto the Land in connection with the Investigations cause no damage thereto (except for de minimis damage in connection with any physically intrusive inspections authorized by Developer that shall be promptly repaired by City at its sole cost and expense) and do not pose any threat to the health, safety or well-being of any person or the environment;

(e) cause any consultants (other than Surveyor) retained by City for purposes of performing Investigations to maintain insurance coverage reasonably satisfactory to Developer naming Developer as an additional insured and furnish evidence of such insurance to Developer prior to any entry upon the Land by such consultants;

(f) not permit the Investigations or any other activities undertaken by City or any City Related Parties to result in any liens, judgments or other encumbrances being filed or recorded against the Land;

(g) immediately discharge of record any lien or encumbrance that may be filed or recorded against the Land as the result of the Investigations or any other activities undertaken by City Related Parties at, around or with respect to the Land; and

(h) indemnify and hold Developer and all Developer Related Parties harmless from and against any and all claims, demands, causes of action, losses, damages, liabilities, reasonable attorneys' fees and disbursements

(whether incurred at the pre-trial, trial or any appellate level) arising or resulting from the activities on the Land by City and any City Related Parties, provided, however, that in no event shall City or any City Related Parties be liable to Developer for any consequential, special or punitive damages pursuant to this **Section 4.A.(3)**.

The foregoing obligations of City shall survive the Closing or earlier termination of this Agreement.

B. **Title and Survey Matters.**

(1) The Property shall be sold and conveyed subject to the Permitted Exceptions.

(2) City acknowledges that it has received the Title Commitment from the Title Company and the Survey from Surveyor and hereby approves said Title Commitment and Survey.

(3) Subject to the provisions of **Section 4.B.(4)** hereof, City shall have the right to update the Title Commitment and Survey from time to time prior to Closing and object to any Unpermitted Exceptions disclosed by any such update first arising from and after the date of the Title Commitment or the Survey, as applicable.

(4) City hereby waives the right to advance objection to any title or survey matter as an Unpermitted Exceptions unless (i) such matter shall have first arisen subsequent to the date of the Title Commitment or Survey, or most recent update thereof, as the case may be, and (ii) City shall deliver a Title Objection Notice to Developer within five (5) Business Days after City shall have first received an updated Title Commitment or updated Survey reflecting such matter (failure to so notify Developer shall be deemed to be a waiver by City of its right to object to such matter as an Unpermitted Exception or as grounds for City's refusal to proceed to Closing).

(5) In the event that City shall make timely objection to any Unpermitted Exception, other than a Monetary Encumbrance (which Developer shall be required to remove pursuant to this Agreement), Developer shall deliver a Title Response Notice to City within ten (10) Business Days of City's delivery of its Title Objection Notice. Developer shall have the right to adjourn the Closing for purposes of causing the cure or removal of any Unpermitted Exception to which City shall make timely objection pursuant to a Title Objection Notice, provided that in no event shall Developer have the right to extend the Closing Date beyond the Outside Closing Date. Developer's right to adjourn the Closing pursuant to this Section 4.B.(5) shall not affect any right that City may have to receive a credit for the Applicable Purchase Price Reduction Amount.

(6) In the event that Developer shall deliver a Title Response Notice to City pursuant to which Developer shall elect not to eliminate any one or more Unpermitted Exceptions (excluding Monetary Encumbrances, which Developer shall be required to remove pursuant to this Agreement) in accordance with the provisions of this **Section 4.B.**, or to arrange for normal and customary affirmative title insurance or special endorsements generally accepted by institutional investors in commercial real estate, without special premium to City and in form and substance reasonably acceptable to City in all material respects, insuring against enforcement of such Unpermitted Exceptions against, or collection of the same out of, the Property, and to convey title to the Property in accordance with the terms of this Agreement on or before the Closing Date (whether or not the Closing is adjourned as provided in **Section 4.B.(5)**), City, as its sole remedy for such election of Developer, shall have the option, exercisable by delivery of written notice to Developer within five (5) Business Days following City's receipt of Developer's Title Response Notice, to either (a) (i) if the Base Building Contract Date has not occurred as of the time of the City's delivery of its Title Objection Notice, terminate this Agreement by written notice to Developer, in which case the provisions of **Section 4.D.** shall be applicable and (ii) if the Base Building Contract Date has occurred as of the time of the City's delivery of its Title Objection Notice or Title Update Objection Notice, treat the failure by Developer to remove any such Unpermitted Exceptions as a Post-GMP Developer Default, in which case the provisions of **Section 15** shall be applicable, or (b) accept title to the Property subject to such Unpermitted Exception(s) without an abatement in or credit against the Purchase Price. The failure of City to deliver timely any written notice of election under this **Section 4.B.(7)** shall be conclusively deemed to be an election under clause (a) above.

(7) Except as otherwise expressly provided herein, Developer shall not be required or obligated to cause the cure or removal of any Unpermitted Exception including, without limitation, to bring any action or proceeding, make any payments or otherwise incur any expense in order to eliminate any Unpermitted Exception or to arrange for title insurance insuring against enforcement of such Unpermitted Exception against, or collection of the same out of, the Property, notwithstanding that Developer may have attempted to do so, or may have obtained an adjournment of the Closing for such purpose. Notwithstanding anything to the contrary contained herein, Developer shall be required to satisfy any Monetary Encumbrances as a condition precedent to City's obligation to close on the purchase of the Property.

(8) If, on the Closing Date, there are any Unpermitted Exceptions that Developer is obligated (or has otherwise agreed) to discharge under this Agreement, Developer shall have the right (but, except as otherwise expressly provided in **Section 4.B.(7)** with respect to Monetary Encumbrances,

not the obligation) to either (i) arrange, at Developer's cost and expense, for normal and customary affirmative title insurance or special endorsements generally accepted by institutional investors in commercial real estate, without special premium to City and in form and substance reasonably acceptable to City in all material respects, and insuring against enforcement of such Unpermitted Exceptions against, or collection of the same out of, the Property, or (ii) use any portion of the Purchase Price to pay and discharge the same, or transfer the same to other security satisfactory to the Title Company, and the same shall not be deemed to be Unpermitted Exceptions.

(9) In the event that Developer shall be unable to discharge, on or before the Closing Date, any Unpermitted Exceptions that Developer is obligated (or has otherwise agreed) to discharge under this Agreement, Developer shall notify City, in which event City shall have the right, as its sole remedy, by delivery of written notice to Developer within five (5) Business Days following receipt of notice from Developer of its inability to remove such Unpermitted Exceptions, to either (i) treat the failure of Developer to remove any such Unpermitted Exceptions as a Post-GMP Developer Default, in which case the provisions of **Section 15** shall be applicable, or (ii) accept title to the Property subject to such Unpermitted Exceptions without an abatement in or credit against the Purchase Price. The failure of City to deliver timely any written notice of election under this **Section 4.B.(9)** shall be conclusively deemed to be an election under clause (i) above.

C. Intentionally Deleted.

D. **Termination.**

(1) In the event that City shall exercise any right to terminate this Agreement pursuant to **Section 4.B.(6)(a)(i)**, the City shall have the right to receive from Escrow Agent the return of the Deposit, less any portion thereof required to be applied to the payment of the Pre-GMP Soft Costs, and to receive from Developer, at City's option, either:

(a) the amount by which the total amount of the Deposit shall exceed the portion of the Deposit returned to City by Escrow Agent in accordance with the terms of the Escrow Agreement, whereupon the parties shall be released from any and all further liability hereunder, except for obligations that this Agreement expressly provides shall survive the termination thereof; or

(b) the delivery of any and all Construction Documents then in Developer's possession or control, together with an assignment of all of Developer's right, title and interest in such Construction Documents, to the extent assignable, whereupon the parties shall be released

from any and all further liability hereunder, except for obligations that this Agreement expressly provides shall survive the termination thereof.

(2) In the event that (1) City or Developer shall exercise any right to terminate this Agreement pursuant to **Section 5.B.(11)(b)** or (2) this Agreement shall otherwise terminate pursuant to or **Section 5.C.(5)**:

(a) The Deposit, less any portion thereof required to be applied to the payment of the Pre-GMP Soft Costs, shall be returned to City by Escrow Agent in accordance with the terms of the Escrow Agreement and the parties shall be released from any and all further liability hereunder, except for obligations that this Agreement expressly provides shall survive the termination thereof; and

(b) Developer shall deliver to City any and all Construction Documents then in Developer's possession or control and assign to City, to the extent assignable, all of Developer's right, title and interest in such Construction Documents.

5. **Design and Construction of Improvements**.

A. **Construction of Improvements.** Developer shall cause Contractor to construct the Base Building Improvements and, unless City or Developer shall make the Space Improvements Assumption Election, the Space Improvements in accordance with the requirements of this **Section 5.**

B. **Base Building Improvements Design Development.**

(1) Developer has delivered the Design Development Plans to City and the same have been approved by City.

(2) Developer has delivered the 50% Base Building Construction Documents to City and the same have been approved by City.

(3) Developer and Architect shall enter into the Architect's Agreement no later than August 31, 2010. Developer agrees that it shall consult with City regarding the terms of the Architect's Agreement and exercise commercially reasonable efforts to incorporate therein such commercially reasonable comments as City may request on a reasonably timely basis.

(4) Within five (5) Business Days following Architect's delivery of the 50% Base Building Construction Documents to City, City shall

furnish in writing to Architect and Developer such comments as City may have with respect to the 50% Base Building Construction Documents.

(5) Developer shall deliver or cause Architect to deliver the 90% Base Building Construction Documents to City no later than the later of (x) September 13, 2010 and (y) thirty-nine (39) days following City's delivery of its comments on the 50% Base Building Construction Documents to Developer.

(6) Within seven (7) Business Days following Architect's delivery of the 90% Base Building Construction Documents to City, City shall furnish in writing to Architect and Developer such comments as City may have with respect to the 90% Base Building Construction Documents.

(7) If City delivers comments with respect to the 90% Base Building Construction Documents, Developer shall deliver or cause Architect to deliver Revised 90% Base Building Construction Documents five (5) Business Days following City's delivery of its comments on the 90% Base Building Construction Documents to Developer.

(8) City shall deliver a Base Building Plans Approval Notice or Base Building Plans Disapproval Notice to Developer no later than (x) if City comments on the 90% Base Building Construction Documents, three (3) Business Days after Architect's delivery of the Revised 90% Base Building Construction Documents to City or (y) if City does not comment on the 90% Base Building Construction Documents, ten (10) Business Days after Architect's delivery of the 90% Base Building Construction Documents to City.

(9) If City delivers a Base Building Plans Disapproval Notice to Developer, Developer shall deliver or cause Architect to deliver Revised Base Building Plans to City no later than three (3) Business Days following City's delivery of its Base Building Plans Disapproval Notice to Developer.

(10) The process described in **Section 5.B.(8)** and **Section 5.B.(9)** above shall continue until City delivers a Base Building Plans Approval Notice to Developer with respect to a set of Revised Base Building Plans, whereupon such Revised Base Building Plans shall become the Approved Base Building Plans for all intents and purposes hereunder.

(11) Notwithstanding anything to the contrary contained herein, City and Developer agree that:

(a) City may not provide comments on (x) the 50% Base Building Construction Documents to the extent that such comments are inconsistent with the Approved Building Schematics in any material respect, (y)

the 90% Base Building Construction Documents to the extent that such comments are inconsistent with the Approved Building Schematics or the 50% Base Building Construction Documents in any material respect; and

(b) In the event that City shall not have delivered a Base Building Plans Approval Notice to Developer on or before the earlier of (i) October 27, 2010 and (ii) three (3) Business Days following Developer's delivery of a second set of Revised Base Building Plans to City pursuant to **Section 5.B.(9)** above, each of the Parties shall have the right to terminate this Agreement by delivery of written notice to the other Party; provided, however, that Developer's right to exercise such termination option shall be contingent upon Developer's timely performance of its obligations under **Section 4.B.** above.

C. **Base Building Contract.**

(1) Provided that neither Party shall have exercised its right to terminate this Agreement pursuant to **Section 5.B.(11)** above:

(a) Developer shall deliver or cause Contractor to deliver the Base Building GMP to Developer by a date no later than the Base Building GMP Delivery Date; and

(b) Developer shall deliver (i) the Base Building GMP Notice and (ii) the proposed Base Building Contract to City no later than one (1) Business Day following Contractor's delivery of the Base Building GMP to Developer, but in no event later than one (1) Business Day following the Base Building GMP Delivery Date.

(2) Notwithstanding anything to the contrary contained herein, in the event that the Base Building GMP shall exceed the Base Building GMP Pro Forma Amount, City shall deliver a Base Building GMP Approval Notice or a Base Building GMP Disapproval Notice to Developer within five (5) Business Days of Developer's delivery of the Base Building GMP Notice to Developer. Failure of City to deliver a Base Building GMP Approval Notice or a Base Building GMP Disapproval Notice to Developer shall be deemed to constitute the delivery of a Base Building GMP Disapproval Notice.

(3) Notwithstanding anything to the contrary contained herein, in the event that (a) the Base Building GMP shall not exceed the Base Building GMP Pro Forma Amount or (b) the Base Building GMP shall exceed the Base

Building GMP Pro Forma Amount, but City shall deliver a Base Building GMP Approval Notice to Developer pursuant to **Section 5.C.(2)** above:

(a) Developer shall enter into the Base Building Contract with Contractor during the five (5) Business Day Period commencing on (i) the date of Developer's delivery of the Base Building GMP Notice to City, if the Base Building GMP is less than or equal to the Base Building GMP Pro Forma Amount, or (ii) the date of City's delivery of a Base Building GMP Approval Notice to Developer pursuant to **Section 5.C.(2)** above, if the Base Building GMP is greater than the Base Building GMP Pro Forma Amount;

(b) Developer shall consult with City regarding the terms of the Base Building Contract and exercise commercially reasonable efforts to incorporate therein such commercially reasonable comments as City may request on a reasonably timely basis; and

(c) Developer shall construct or cause Contractor to construct the Base Building Improvements in accordance with the Base Building Contract and the terms and conditions of this Agreement.

(4) Subject to the terms, conditions and limitations provided herein, Developer shall have the sole right to control the construction of the Base Building Improvements pursuant to the Base Building Contract.

(5) In the event that City shall deliver or be deemed to deliver a Base Building GMP Disapproval Notice and the Parties, in the exercise of their sole discretion, do not agree to the extension of time for the delivery of a Base Building GMP Approval Notice following further discussions concerning the Base Building GMP, this Agreement shall automatically terminate.

D. **Space Improvements Design Development.**

(1) Developer and Conceptual Space Planner have entered into the Conceptual Space Planner's Agreement.

(2) Conceptual Space Planner provided City with various draft space layouts for the Space Improvements.

(3) Developer and City have approved a space layout for the Space Improvements as the Approved Space Layout.

E. **Space Plans.**

(1) Developer and Space Planner shall enter into the Space Planner's Agreement no later than August 31, 2010. Developer agrees that it shall consult with City regarding the terms of the Space Planner's Agreement and exercise commercially reasonable efforts to incorporate therein such commercially reasonable comments as City may request on a reasonably timely basis.

(2) Developer shall deliver or cause Space Planner to deliver the 30% Space Plan Construction Documents to City by a date no later than the later of (a) September 8, 2010 and (b) fifty (50) days following City's delivery of the Space Layout Approval Notice to Developer.

(3) Within five (5) Business Days following Space Planner's delivery of the 30% Space Plan Construction Documents to City, City shall furnish to Developer and Space Planner in writing such comments as City may have with respect to the 30% Space Plan Construction Documents.

(4) Developer shall deliver or cause Space Planner to deliver the 60% Space Plan Construction Documents to City no later than the later of (a) November 3, 2010 and (b) forty-eight (48) days following City's delivery of its comments on the 30% Space Plan Construction Documents to Developer.

(5) Within five (5) Business Days following Space Planner's delivery of the 60% Space Plan Construction Documents to City, City shall furnish to Developer and Space Planner in writing such comments as City may have with respect to the 60% Space Plan Construction Documents.

(6) Developer shall deliver or cause Space Planner to deliver the 90% Space Plan Construction Documents to City no later than the later of (a) January 11, 2011 and (b) sixty-two (62) days following City's delivery of its comments on the 60% Space Plan Construction Documents to Developer.

(7) Within five (5) Business Days following Space Planner's delivery of the 90% Space Plan Construction Documents to City, City shall furnish to Developer and Space Planner in writing such comments as City may have with respect to the 90% Space Plan Construction Documents.

(8) If the City delivers comments with respect to the 90% Space Plan Construction Documents, Developer shall deliver or cause Space Planner to deliver Revised 90% Space Plan Construction Documents to City no later than five (5) Business Days following City's delivery of its comments on the 90% Space Plan Construction Documents to Developer.

(9) City shall deliver a Space Plans Approval Notice or Space Plans Disapproval Notice to Developer no later than (x) if City comments on

the 90% Space Plan Construction Documents, three (3) Business Days after Space Planner's delivery of the Revised 90% Space Plan Construction Documents to City or (y) if City does not comment on the 90% Space Plan Construction Documents ten (10) Business Days after Space Planner's delivery of the 90% Space Plan Construction Documents to City.

(10) If City delivers a Space Plans Disapproval Notice to Developer, Developer shall deliver or cause Space Planner to deliver Revised Space Plans to City no later than three (3) Business Days following City's delivery of its comments on the 90% Space Plan Construction Documents to Developer.

(11) The process described in **Section 5.E.(8)** and **Section 5.E.(9)** above shall continue until City delivers a Space Plans Approval Notice to City, whereupon such Revised Space Plans shall become the Approved Space Plans for all intents and purposes hereunder.

(12) Notwithstanding anything contained herein to the contrary, City may not provide comments on (w) the 30% Space Plan Construction Documents to the extent that such comments are inconsistent with the Approved Space Layout in any material respect, (x) the 60% Space Plan Construction Documents to the extent that such comments are inconsistent with the Approved Space Layout or the 30% Space Plan Construction Documents in any material respect, (y) the 90% Space Plan Construction Documents to the extent that such comments are inconsistent with the Approved Space Layout, the 30% Space Plan Construction Documents or the 60% Space Plan Construction Documents in any material respect or (z) the Completed Space Plans to the extent that such comments are inconsistent with the Approved Space Layout, the 30% Space Plan Construction Documents, the 60% Space Plan Construction Documents or the 90% Space Plan Construction Documents in any material respect.

F. **Space Improvements Contract.**

(1) Provided neither Party has made the Space Improvements Assumption Election, Developer shall (A) deliver or cause Contractor to deliver the Space Improvements GMP Notice to Developer by a date no later than the Space Improvements GMP Delivery Date and (B) deliver the Space Improvement GMP Notice to City no later than one (1) Business Day following Contractor's delivery of the Space Improvements GMP to Developer.

(2) Within five (5) Business Days following Developer's delivery of the Space Improvements GMP Notice to City, City shall furnish to Developer a Space Improvements GMP Approval Notice or a Space Improvements GMP Disapproval Notice.

(3) If City delivers a Space Improvement GMP Disapproval Notice to Developer, Developer shall (a) deliver or cause Contractor to deliver the Revised Space Improvements GMP to Developer no later than ten (10) Business Days after City's delivery of the Space Improvements Disapproval Notice to Developer and (b) deliver the Revised Space Improvements GMP to City no later than one (1) Business Day after the date described in clause (a).

(4) Within five (5) Business Days following Developer's delivery of a Revised Space Improvements GMP to City, City shall furnish to Developer a Space Improvements GMP Approval Notice or a Space Improvements GMP Disapproval Notice.

(5) The process described above in **Section 5.F.(3)** and **Section 5.F.(4)** above shall continue until City issues a Space Improvements GMP Approval Notice.

(6) In the event that City delivers a Space Improvements GMP Approval Notice to Developer:

(a) Developer shall enter into the Space Improvements Contract with Contractor no later than five (5) Business Days after the delivery by City to Developer of the Space Improvements GMP Approval Notice;

(b) Developer shall consult with City regarding the terms of the Space Improvements Contract and exercise commercially reasonable efforts to incorporate therein such commercially reasonable comments as City may request on a reasonably timely basis; and

(c) Developer shall construct or cause Contractor to construct the Space Improvements in accordance with the Space Improvements Contract and the terms and conditions of this Agreement.

(7) Subject to the terms, conditions and limitations provided herein, Developer shall have the sole right to control the construction of the Space Improvements pursuant to such Space Improvements Contract.

G. **Space Improvements Assumption Election.**

(1) In the event that any of the Space Improvements Approval Conditions is not satisfied by the applicable Required Approval Date and such Space Improvements Approval Condition remains unsatisfied for ten (10) Business Days following the delivery of written notice by either Party to the other, each Party shall have the right to make the Space Improvements Assumption Election by delivery of the Space Improvements Assumption

Notice; provided, however, that Developer's right to make such Space Improvements Assumption Election shall be contingent upon Developer's timely performance of its obligations under **Section 4.E.** above.

(2) In the event that either City or Developer shall make the Space Improvements Assumption Election:

(a) Developer shall promptly assign to City all of Developer's right, title and interest in the Conceptual Space Planner's Agreement, the Space Planner's Agreement and the related Construction Documents, such assignment to be made without representation or warranty;

(b) City shall assume all of Developer's obligations under the Conceptual Space Planner's Agreement and the Space Planner's Agreement, and Developer shall be released from all liabilities with respect to the Conceptual Space Plan Agreement and the Space Planner's Agreement;

(c) Developer shall have no liability with respect to the construction of the Space Improvements, provided that Developer, at no cost or expense to Developer, shall reasonably cooperate with City in connection with the resolution of issues relating to the compatibility of the Base Building Improvements and the Space Improvements; and

(d) In such event, the Space Improvements GMP Component shall be expressly excluded from the calculation of the Purchase Price.

H. **Subcontracts.**

(1) Contractor shall obtain sealed bids from three (3) Approved Subcontractors with respect to each Subcontract other than an Exempt Subcontract.

(2) Developer shall not permit Contractor to award any Subcontract other than an Exempt Subcontract to any Subcontractor other than an Approved Subcontractor.

(3) Unless (A) Developer shall reasonably determine that the Lowest Qualified Bidder with respect to a Subcontract may not be capable of completing its Work in accordance with the requirements of the Approved Base Building Plans or Approved Space Plans, as applicable, on a timely basis or (B) Developer shall obtain City's consent to the award of a Subcontract to a Subcontractor other than the Lowest Qualified Bidder, Developer shall not

permit Contractor to award a Subcontract, other than an Exempt Subcontract, to any Subcontractor other than the Lowest Qualified Bidder.

(4) Unless otherwise agreed in writing by City and Developer, each acting in the exercise of its sole discretion, each Major Subcontract entered into by Contractor shall require that the Subcontractor post a completion bond.

I. **Construction Process and Schedule.**

(1) Developer shall achieve Substantial Completion of the Base Building Improvements and, unless City or Developer shall make the Space Improvements Assumption Election, the Space Improvements no later than the Outside Completion Date. Developer shall notify City of the Commencement of Construction within five (5) Business Days following the occurrence thereof.

(2) Developer shall furnish a Project Schedule to City at the time of the execution of the Base Building Contract and, unless City or Developer shall exercise the Space Improvements Assumption Election, the Space Improvements Contract.

(3) City and Developer shall endeavor to meet regularly, but not less frequently than a bi-weekly basis, to discuss the progress of the construction of the Base Building Improvements and, unless City or Developer shall make the Space Improvements Assumption Election, the Space Improvements and any matters affecting the completion thereof in accordance with the terms and conditions of the Base Building Contract and/or the Space Improvements Contract, as applicable and the Project Schedule.

(4) Developer shall provide the Building Facilities Services during the course of the construction of the Base Building Improvements and, unless City or Developer shall exercise the Space Improvements Assumption Election, the Space Improvements. Such Building Facilities Services shall be provided at no charge to City, provided that nothing contained herein shall be deemed to restrict Developer from including the actual out-of-pocket expenses anticipated to be incurred in connection with the supply of such Building Facilities Services in the Base Building GMP and Space Improvements GMP.

(5) Developer shall exercise commercially reasonable efforts to identify any Delay Events of which Developer shall have actual knowledge in the Monthly Project Schedule Updates and otherwise keep City informed of the occurrence of any Delay Events and the anticipated consequences thereof. Without limiting the generality of the foregoing, upon City's request from time to time, but not more frequently than on a monthly basis, Developer shall advise City with respect to whether Developer has actual knowledge of the occurrence of any such Delay Event, provided that, except as otherwise

expressly provided in **Section 5.I.(6)** below, Developer's failure to notify City of the occurrence of any Delay Event shall not affect the rights and remedies of the parties hereunder as the result of the occurrence of any such Delay Event.

(6) Notwithstanding anything to the contrary contained herein, any claim by a Party of the right to an extension of time for the performance of any obligation hereunder by reason of a Delay Event shall be limited to the actual number of days of delay in such Party's performance reasonably attributable to the occurrence of such Delay Event. In addition, the actual number of days of delay in performance that a Party may claim as reasonably attributable to a Delay Event shall be reduced by the number of days, if any, that such Delay Event's duration could reasonably have been reduced if such Party had advised the other Party of the existence of such Delay Event in writing promptly after discovery of the such Delay Event by such Party or, in the case of City, City's Inspecting Consultant.

J. **Changes to Construction Documents.**

(1) City and Developer acknowledge and agree that:

(a) Developer shall be permitted to authorize Architect and Space Planner, as applicable, to make such Legally Required Changes to the Construction Documents as may be required in connection with the issuance of permits for the construction of the Base Building Improvements and/or the Space Improvements, as applicable, without City's consent;

(b) Except as otherwise expressly provided herein, Developer shall be permitted to authorize Developer Change Orders and Legal Change Orders without City's consent, however, in the event that Developer shall elect to proceed with a Developer Change Order or Legal Change Order and, in the case of a Developer Change Order, regardless of whether City's consent to such Developer Change Order is required hereunder, Developer shall furnish the related Change Order Documentation to City promptly following Developer's receipt of the same from Contractor; however;

(c) In the event that City shall desire to proceed with a City Change Order, it shall furnish a Proposed Change Order Notice to Developer;

(d) In the event that City shall deliver a Proposed Change Order Notice to Developer, Developer shall instruct Contractor to prepare the relevant Change

Order Documentation and promptly furnish the same to City and Developer;

(e) In the event that City shall desire to proceed with a City Change Order following its receipt of the Change Order Documentation, City shall deliver a Change Order Confirmation Notice to Developer within three (3) Business Days of its receipt of the applicable Change Order Documentation; however, no City Change Order shall be authorized without Developer's prior written consent, which shall not be unreasonably withheld, conditioned or delayed;

(f) In the event that Developer shall desire to proceed with a Developer Change Order which shall result in a material change in the design of the Base Building Improvements and/or Space Improvements, as applicable, Developer shall furnish a Proposed Change Order Notice to City;

(g) In the event that Developer shall deliver a Proposed Change Order Notice to City pursuant to **Section 5.J.(1)(f)** above, Developer shall instruct Contractor to prepare the relevant Change Order Documentation and promptly furnish the same to City and Developer;

(h) In the event that Developer shall desire to proceed with a Developer Change Order which shall result in a material change in the design of the Base Building Improvements and/or Space Improvements, as applicable, following its receipt of the Change Order Documentation, Developer shall deliver a Change Order Confirmation Notice to City within three (3) Business Days of its receipt of the applicable Change Order Documentation; however, no Developer Change Order which shall result in a material change in the design of the Base Building Improvements and/or Space Improvements, as applicable, shall be authorized without City's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

(2) The Applicable GMP Component shall be increased or decreased by the amount of the Contractor's fixed price cost addition or cost savings submitted to City and Developer as part of the Change Order Documentation in connection with any Change Order in accordance with the terms of **Section 5.J.(1)(e)** above, provided that in no event shall the increase in the Applicable GMP Component resulting from any Developer Change Order exceed the Maximum Developer Change Order Amount,

(3) All extensions of the time of construction resulting from any Developer Change Orders shall constitute Developer Delay; and

(4) All extensions of the time of construction resulting from any City Change Orders shall constitute City Delay, but only to the extent of the change in the contract time resulting from such change submitted to City and Developer as part of the Change Order Documentation in accordance with the terms of **Section 5.J.(1)(e)** above;

(5) In the event that any Developer Change Order shall result in an increase of the Applicable GMP Amount by ten percent (10%) or more, Developer shall furnish to City, upon City's request, such documentation as City may reasonably request in order to confirm that Developer has sufficient resources to pay the amount of such increase in the Applicable GMP Amount;

(6) Notwithstanding anything to the contrary contained herein, any increases or decreases to the Purchase Price resulting from increases or decreases in the Applicable GMP Component pursuant to this **Section 5.J.** shall be in addition to, and shall not be limited by or deemed to be duplicative of, increases or decreases to the Purchase Price, as applicable, provided for elsewhere in this Agreement.

K. **Inspections and Approvals.**

(1) City shall cause Inspecting Consultant to inspect the construction of the Base Building Improvements and Space Improvements, as applicable, on a monthly basis (or at such other reasonable interval as may be determined by City), for the purpose of confirming that the Base Building Improvements and Space Improvements are being constructed in accordance with the Approved Base Building Plans and/or the Approved Space Plans, as applicable. Such inspections shall be coordinated with and performed upon reasonable advance notice to Developer.

(2) Within five (5) Business Days after each inspection of the construction of the Base Building Improvements and/or the Space Improvements, as applicable, City shall furnish to Developer any comments that City may have with respect to the compliance of the construction of the Base Building Improvements and/or the Space Improvements with the Approved Base Building Plans and/or the Approved Space Plans, as applicable; however, except as otherwise expressly provided herein, failure of City to furnish such comments shall not be deemed to be a waiver of any rights or remedies City may have in the event that the construction of the Base Building Improvements and/or the Space Improvements does not conform to the requirements of the Approved Base Building Plans and/or Approved Space Plans, as applicable.

(3) No inspection, consent, approval or disapproval given by City to Developer pursuant to this Agreement shall be deemed to constitute a Governmental Approval or a waiver by City of any provision of Applicable Law. Without limiting the generality of the foregoing, neither the delivery of the Base Building Plans Approval Notice or Space Plans Approval Notice (nor the City's approval of the Approved Base Building Plans or the Approved Space Plans) shall be deemed to be: (a) an assumption of any obligation or liability on the part of City with respect to the design of the Base Building Improvements or the Space Improvements, as applicable, or (b) a representation or warranty (whether express or implied) as to the design or constructability or fitness of the Base Building Improvements or the Space Improvements, as applicable, or (c) whether such Construction Documents otherwise comply with any applicable building, zoning, land use, life safety requirements or any other Applicable Law; however, nothing contained herein shall be deemed to limit the obligations of the City Building Department in connection with the issuance of Governmental Approvals for which Developer shall make application in accordance with the requirements of Applicable Law.

(4) The City's Representative and the Inspecting Consultant shall be the only Persons authorized to communicate with Developer on behalf of City, and Developer shall have the right to conclusively rely on the validity of all approvals and consents given in writing by the City's Representative.

L. **Punch List Items.**

(1) Developer shall, in good faith, endeavor to provide City with one (1) week's advance notice of the date of Substantial Completion of the Base Building Improvements and, unless City or Developer shall make the Space Improvements Assumption Election, the Space Improvements.

(2) Not less than fifteen (15) days prior to Closing, Developer shall cause Contractor to inspect the Base Building Improvements and, unless City or Developer shall make the Space Improvements Assumption Election, the Space Improvements for purposes of preparing the Punch List. City's Authorized Representative and Developer's Authorized Representative shall confirm their approval of the Punch List in writing. Developer shall cause the Punch List Items to be completed by Contractor within thirty (30) days after the approval of such Punch List or, to the extent that such Punch List Item cannot reasonably be completed within thirty (30) days after the approval of such Punch List, within such a commercially reasonable period of time as may be reasonably agreed upon by the Parties.

(3) Notwithstanding anything to the contrary contained herein, Developer shall not be responsible for the repair of damage to the Base Building Improvements or the Space Improvements or any property of City, its agents or representatives caused by City, its agents or representatives.

M. **Disputes.** If a dispute arises between City and Developer with respect to whether the construction of the Base Building Improvements and/or the Space Improvements, as applicable, is in compliance with the Approved Base Building Plans and/or Approved Space Plans, as applicable, such dispute shall be resolved shall be resolved in accordance with the dispute resolution provisions of **Section 20** of this Agreement.

N. **Construction Warranties.**

(1) Developer shall assign, to the extent assignable, all Warranties. In the event that any Warranty is not assignable, whether by operation of law or the terms of the agreement pursuant to which such Warranty is provided, Developer shall be obligated to enforce the terms of such Warranty for the benefit of City for the full term of such Warranty.

(2) Except as otherwise expressly provided herein, in the event that City notifies Developer of the existence of any Construction Defect in the Base Building Improvements or, unless City or Developer shall exercise the Space Improvements Assumption Election, the Space Improvements, as applicable, during the Developer's Warranty Period, Developer shall exercise commercially reasonable efforts to cause Contractor to (a) perform and (b) cause each Subcontractor to perform its respective Warranty Obligations with respect to such Base Building Improvements and/or Space Improvements, as applicable.

(3) Provided that Developer shall have assigned any and all Warranties to City in accordance with the provisions of **Section 5.N.(1)**, Developer shall have no obligation to exercise commercially reasonable efforts to cause Contractor to perform, or cause any Subcontractor to perform, its Warranty Obligations with respect to the Base Building Improvements and/or Space Improvements, as applicable, if City shall (a) exercise its rights under **Section 7.A.(3)(a)** to complete the construction of the Base Building Improvements and/or the Space Improvements or (b) fail to provide Developer with written notice of any Construction Defect therein prior to the date that is the earlier of (i) the expiration of the Developer's Warranty Period and (ii) to the extent that City's failure to promptly notify Developer of the existence of any Construction Defect shall aggravate such condition, within fifteen (15) days following the date that such Construction Defect is initially discovered by City or Inspecting Consultant.

(4) Except as expressly provided in this **Section 5.N.**, Developer shall have no obligation with respect to the correction of construction defects after the Closing.

O. **Security for Performance of Construction Obligations.** In order to secure the performance of the Developer's obligations with respect to the construction of the Base Building Improvements and, unless City or Developer shall make the Space Improvements Assumption Election, the Space Improvements, as well as the payment of any sums due from Developer to

City in the event of a breach of such obligations by Developer, Developer shall deliver the Mortgage Documents to City no later than the date immediately preceding the date of the advance of the first Monthly Progress Payment hereunder.

6. **Conditions Precedent to Closing**.

A. **Conditions Precedent to Obligations of City.** Notwithstanding anything to the contrary contained herein, City shall have no obligation to proceed to Closing unless the following conditions precedent and contingencies have been satisfied or waived in writing by City on or before the Closing Date:

(1) All instruments described in **Section 7.B.(1)** to be delivered by Developer to City have been delivered by Developer to City or, if applicable, Escrow Agent;

(2) No Post-GMP Developer Default shall have occurred and remain continuing;

(3) All representations and warranties made by Developer in **Section 10** hereof, as modified by the Update (as hereinafter defined), shall be true and correct in all material respects as if made on and as of the Closing Date;

(4) Substantial Completion of the Base Building Improvements and, unless City or Developer shall make the Space Improvements Assumption Election, the Space Improvements shall have been achieved;

(5) No Environmental Condition shall have arisen between the Effective Date and the Closing Date;

(6) Developer shall have discharged any Unpermitted Exception Developer is obligated (or has otherwise agreed) to discharge under this Agreement; and

(7) The Substantial Completion of the Infrastructure Improvements shall have occurred.

B. **Conditions Precedent to Obligations of Developer.** Notwithstanding anything to the contrary contained herein, Developer shall have no obligation proceed to Closing unless the following conditions precedent and contingencies have been satisfied or waived in writing by Developer on or before the Closing Date:

(1) All funds and instruments described in **Section 7.B.(4)** to be delivered by City to Developer have been delivered by City to Developer or, if applicable, Escrow Agent;

(2) No Post-GMP City Default shall have occurred and remain continuing; and

(3) All representations and warranties made by City in **Section 10** hereof shall be true and correct in all material respects as if made on and as of the Closing Date.

C. **Failure of Condition Precedent.** Notwithstanding anything to the contrary contained herein, in the event that any condition precedent to a Party's obligation to close on the purchase of the Property described in this **Section 6** shall not have occurred on or before the Scheduled Closing Date, such Party shall not incur any liability under this Agreement by reason of its failure to close hereunder until such time as all of such conditions precedent have been satisfied.

7. **Closing**.

A. **Closing Date.**

(1) Subject to the provisions of **Section 6, Section 14** and **Section 15** hereof, the Closing shall take place at 10:00 AM on the Scheduled Closing Date, TIME BEING OF THE ESSENCE, at the offices of Escrow Agent at 200 South Biscayne Blvd., Suite 3100, Miami, Florida 33131, provided that at the request of either party, Closing may be consummated pursuant to escrow instructions consistent with the terms of this Agreement and otherwise reasonably acceptable to the parties.

(2) Notwithstanding anything to the contrary contained herein, in the event that (a) neither City nor Developer shall make the Space Improvements Assumption Election, (b) each of the conditions precedent to City's obligation to purchase the Property set forth in **Section 6.A.** of this Agreement shall have been satisfied, and (c) the number of days of Net City Delay shall be sixty (60) or more, Developer shall have the right to require City to close the purchase of the Property on any Business Day that is at least fifteen (15) days after the date on which Substantial Completion of the Space Improvements would have been reasonably expected to occur had there not been sixty (60) or more days of Net City Delay, provided that in no event shall Developer be permitted to require City to close on the purchase of the Property prior to the Scheduled Closing Date.

(3) Notwithstanding anything contained herein to the contrary, in the event that the conditions set forth **in Section 6.A.** of this Agreement have not been satisfied prior to the Outside Closing Date, then City, at City's option (exercisable in the sole and absolute discretion of City), shall have the right to:

(a) waive the applicable condition precedent set forth in **Section 6.A.** and proceed to Closing, whereupon the Purchase Price shall be reduced to the Adjusted Purchase Price;

(b) pursuant to the written agreement of the Parties, extend any time limitations and the Closing specified herein until the completion of or fulfillment of the conditions precedent set forth herein; or

(c) pursue any and all remedies set forth in **Section 15** of this Agreement.

(4) In the event that Developer shall exercise its rights under Section **7.A.(2)**:

(a) Subject to Developer's satisfaction of the Disbursement Conditions and Procedures, City shall continue to advance Monthly Progress Payments to Developer for purposes of causing Contractor to complete the Space Improvements in accordance with the requirements of the Space Improvements Contract;

(b) Subject to City's continued payment of the Monthly Progress Payments required in connection with the completion of the Space Improvements, Developer shall continue constructing or causing Contractor to construct the Space Improvements in accordance with the terms and conditions of the Space Improvements Contract;

(c) In the event that a Party shall default in the payment or performance of its obligations under this **Section 7.A.(4)**, the other non-defaulting Party shall be entitled to sue the defaulting Party for any and all actual out-of-pocket damages and Enforcement Costs incurred by the non-defaulting Party by reason of the defaulting Party's breach.

(d) The obligations of Developer with respect to the construction of the Space Improvements and City's obligations with respect to the payment of Hard Costs and Soft Costs incurred by Developer in connection therewith shall survive the Closing; and

(5) In the event that City shall exercise its rights under **Section 7.A.(3)(a)**:

(a) Developer shall promptly assign to City all of Developer's right, title and interest in the Construction Documents, such assignment to be made without representation or warranty;

(b) Except as otherwise expressly provided in **Section 7.A.(5)(c)**, City shall assume all obligations under the Construction Documents; and

(c) Except for the obligation to pay for Hard Costs and Soft Costs incurred by Developer prior to the Closing Date for which payment shall not be provided in the City Estimated Completion Costs, Developer shall have no further liability with respect to the construction of the Base Building Improvements or the Space Improvements,.

B. **Deliveries.**

(1) On the Closing Date, Developer shall deliver to City originals of the following documents:

(a) the Deed;

(b) four (4) originals of the Bill of Sale;

(c) four (4) original counterparts of the Assignment of Contracts;

(d) four (4) original counterparts of the "Assignment of Intangibles and Warranties";

(e) four (4) original counterparts of the "Assignment of Development Rights";

(f) four (4) originals of Section 1445 Affidavit;

(g) four (4) originals of the Owner's Affidavit;

(h) four (4) originals of the Update, provided that if any of the Closing Date Representations shall no longer be true and correct due to a change in the facts or circumstances which do not otherwise constitute a default of Developer pursuant to the express terms of this Agreement, and Developer is therefore unable to deliver the Update with respect to such Closing Date Representation, the failure of Developer to deliver the Update with respect to such Closing Date Representation shall not constitute a default, or the failure to satisfy a condition precedent, by Developer under this Agreement; provided, however, Developer shall provide City with a statement in writing of the specific change or changes that prevent Developer from delivering the Update with respect to such Closing Date Representation and shall deliver the

Update with respect to all other Closing Date Representations;

(i) four (4) original counterparts of the Option Agreement; and

(j) such other instruments and documents as may be reasonably required by the Title Company in order to transfer title to the Property to City.

(2) Subject to the provisions of **Section 7.A.(2**) and **Section 7.A.(3)(a)**, on the Closing Date, Developer shall also deliver to City full possession of the Property to City, including, without limitation, all keys, owner's manuals, access codes and similar items then in Developer's possession.

(3) Developer shall deliver, or cause to be delivered, to City two (2) sets of the as-built plans for the Property, together with any keys, owner's manuals, access codes or similar items not delivered to City at Closing, as soon as reasonably practicable following the Closing, but in no event later than sixty (60) days following Closing.

(4) On the Closing Date, City shall deliver to Developer:

(a) the balance of the Purchase Price, plus such additional sums as shall be necessary to pay any expenses payable by City hereunder;

(b) four (4) original counterparts of the Assignment of Contracts duly executed by City;

(c) four (4) original counterparts of the Assignment of Intangibles and Warranties duly executed by City;

(d) four (4) original counterparts of the Assignment of Development Rights duly executed by City;

(e) four (4) original counterparts of the Option Agreement duly executed by City; and

(f) such other instruments and documents as may be reasonably required by the Title Company in order to transfer title to the Property to City.

8. **Prorations; Cooperation Following Closing**.

A. **Prorations.**

(1) It is the intent of the parties that, except as otherwise expressly provided herein, such items as are customarily apportioned between sellers and purchasers of real properties of a type similar to the Property, including but not limited to real estate taxes and regular and special assessments with respect to the Property:

(a) shall be borne by Developer to the extent that the same are attributable to the period of time prior to the Effective Date;

(b) shall be included in the Soft Cost Component to the extent that the same are attributable to the period of time between the Effective Date and the Closing Date; and

(c) shall be borne by City to the extent that the same are attributable to the period of time from and after the Closing.

There shall not be any proration of expenses of the Property between the parties at Closing except to the extent necessary to give full force and effect to the provisions of this **Section 8.A**.

(2) Notwithstanding anything to the contrary contained herein, Excluded Real Estate Taxes shall not be included in the Soft Cost Component.

B. **Cooperation Following Closing.** If any of the items described in **Section 8.A.** hereof cannot be apportioned at the time of Closing because of the unavailability of information as to the amounts which are to be apportioned or otherwise, or are incorrectly apportioned at the Closing or subsequent thereto, such items shall be apportioned or reapportioned, as the case may be, as soon as reasonably practicable after the Closing or the date such error is discovered, as applicable. Notwithstanding anything to the contrary contained herein, neither Party shall have the right to request apportionment or reapportionment of any such item at any time following the one (1) year anniversary of the Closing Date.

C. **Survival.** The provisions of this Section 8 shall survive the Closing for a period of one (1) year.

9. **Costs**.

A. **Construction Costs.** Subject to City's compliance of its obligations with respect to the delivery of the Deposit and the advance of the Monthly Progress Payments, Developer

shall be responsible for all costs incurred in connection with the design, permitting and construction of the Base Building Improvements and the Space Improvements.

B. **Mortgage Costs.** The Mortgage Costs shall be paid out of the first Monthly Progress Payment.

C. **Closing Costs**. The Closing Costs shall be paid by Developer out of the Purchase Price proceeds at the time of Closing.

D. **Other Costs.** The City Attorneys' Fees, the City's Consultants' Fees and the Developer Attorneys' Fees shall be paid out of the Soft Cost Budget.

E. **Survival.** The provisions of this Section 9 shall survive the Closing or an earlier termination of this Agreement.

10. **Developer's Representations and Warranties**.

A. **Representations and Warranties of Developer.** Developer hereby represents and warrants to City that as of, except as otherwise expressly provided herein, the date hereof:

(1) Developer is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware and duly qualified to conduct business activities in the State of Florida. Developer has the requisite right, power and authority to sell, convey and transfer the Property to City, as provided herein, and to enter into and carry out the terms of this Agreement and the execution and delivery hereof and of all other instruments referred to herein. The performance by Developer of Developer's obligations hereunder will not violate or constitute an event of default under the terms and provisions of any material agreement, document or instrument to which Developer is a party or by which Developer is bound. All proceedings required to be taken by or on behalf of Developer to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken. No further consent of any person or entity is required in connection with the execution and delivery of, or performance by Developer of its obligations under this Agreement, including, without limitation, the consent or approval of any bankruptcy or other court having jurisdiction over Developer or the Property.

(2) This Agreement is a valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

(3) Subject to the provisions of **Section 7.A.(2)**, as of the Closing Date, the Base Building Improvements and, unless City or Developer shall make the Space Improvements Assumption Election, the Space Improvements shall have been constructed in substantial conformity with the Approved Base Building Plans and/or the Approved Space Plans (as applicable).

(4) As of the Closing Date, there shall be no leases, contracts, agreements, operating leases, rental agreements, licenses or similar instruments creating a possessory interest in the Property.

(5) As of the date of this Agreement, there are no actions, suits, arbitrations, claims or proceedings, at law or in equity, pending or, to Developer's knowledge, threatened against Developer which, if adversely determined, could have a material adverse effect upon Developer, the Property or City's rights under this Agreement.

(6) As of the date of this Agreement, no written notices of violation of governmental regulations relating to the Property or Developer have been received by Developer which violation remains uncured as of the date hereof.

(7) Developer is not a person or entity with whom United States persons or entities are restricted from doing business under the OFAC Regulations.

(8) Developer is not and is not acting on behalf of an "employee benefit plan" within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, a "plan" within the meaning of Section 4975 of the Code or an entity deemed to hold "plan assets" within the meaning of 29 C.F.R. § 2510.3 101 of any such employee benefit plan or plans.

(9) As of the date of this Agreement, Developer has not received any written notice of any material violation of environmental, planning, zoning, land use or building regulation from any governmental authority with respect to the Property which violation remains uncured as of the date hereof.

(10) Developer has not sold, leased, transferred, used or encumbered the Development Rights attributable to the Property, and has neither entered into, nor is bound by any agreements that would affect Developer's ability to transfer the Development Rights pursuant to this Agreement.

(11) Developer has not entered into any other contract for the sale of the Property or granted to any third party any option, right of first offer, right of first refusal or other preferential right to purchase the Property.

(12) Developer has not entered into any service contracts or maintenance agreements that will be binding upon City following the Closing, except for the Contracts.

(13) Developer is not a debtor in any state or federal insolvency, bankruptcy, receivership proceeding and has not made any general assignment for the benefit of creditors.

(14) Developer has not received written notice from any Governmental Authority of any material violation at the Property of laws relating to Hazardous Materials which violation remains uncured in any material respect.

(15) As of the Effective Date, Developer shall own the fee simple title to the Land.

B. **GENERAL DISCLAIMER.** EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE SALE OF THE PROPERTY HEREUNDER IS AND WILL BE MADE ON AN "AS IS", "WHERE IS" AND "WITH ALL FAULTS" BASIS, WITHOUT REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING ANY REPRESENTATION OR WARRANTY FROM DEVELOPER CONCERNING THE PHYSICAL CONDITION OF THE PROPERTY (INCLUDING THE CONDITION OF THE SOIL OR THE IMPROVEMENTS), THE ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING THE PRESENCE OR ABSENCE OF HAZARDOUS SUBSTANCES ON OR AFFECTING THE PROPERTY), THE COMPLIANCE OF THE PROPERTY WITH APPLICABLE LAWS AND REGULATIONS (INCLUDING ZONING AND BUILDING CODES OR THE STATUS OF DEVELOPMENT OR USE RIGHTS RESPECTING THE PROPERTY), OR ANY OTHER REPRESENTATION OR WARRANTY RESPECTING ANY CHARGES, LIENS OR ENCUMBRANCES, RIGHTS OR CLAIMS ON, AFFECTING OR PERTAINING TO THE PROPERTY OR ANY PART THEREOF. CITY ACKNOWLEDGES THAT, DURING THE FEASIBILITY PERIOD, CITY WILL EXAMINE, REVIEW AND INSPECT ALL MATTERS WHICH IN CITY'S JUDGMENT BEAR UPON THE PROPERTY AND ITS VALUE AND SUITABILITY FOR CITY'S PURPOSES. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, CITY WILL ACQUIRE THE PROPERTY SOLELY ON THE BASIS OF ITS OWN PHYSICAL AND FINANCIAL EXAMINATIONS, REVIEWS AND INSPECTIONS AND THE TITLE INSURANCE PROTECTION AFFORDED BY THE OWNER'S POLICY. THE PROVISIONS OF THIS **SECTION 10.B.** SHALL SURVIVE THE CLOSING.

C. **DISCLAIMER OF CONSTRUCTION WARRANTIES.** WITHOUT LIMITING THE GENERALITY OF THE PROVISIONS OF **SECTION 10.B.**, CITY EXPRESSLY ACKNOWLEDGES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, DEVELOPER MAKES NO REPRESENTATION OR WARRANTY, WHETHER EXPRESS, IMPLIED OR OTHERWISE, CONCERNING THE CONSTRUCTION OF THE BASE BUILDING IMPROVEMENTS OR THE SPACE IMPROVEMENTS OR ANY FURNITURE, FIXTURES, EQUIPMENT OR OTHER PERSONAL PROPERTY DELIVERED IN CONNECTION THEREWITH. CITY HEREBY ACKNOWLEDGES AND AGREES THAT FROM AND AFTER THE CLOSING IT SHALL LOOK SOLELY TO CONTRACTOR AND ANY THIRD PARTY SUBCONTRACTORS AND SUPPLIERS IN CONNECTION WITH ANY CLAIMS RELATING TO

CONSTRUCTION DEFECTS (OR ANY DEFECT IN ANY SUCH FURNITURE, FIXTURES OR EQUIPMENT.

D. **Developer's Knowledge.** References to the "knowledge", "best knowledge" and/or "actual knowledge" of Developer or words of similar import shall refer only to the current actual (as opposed to implied or constructive) knowledge of Ana Codina-Barlick at the time of this Agreement, and shall not be construed, by imputation or otherwise, to refer to the knowledge of Developer or any parent, subsidiary or affiliate of Developer or to any other officer, agent, manager, representative or employee of Developer or to impose upon Ana Codina-Barlick any duty to investigate the matter to which such actual knowledge, or the absence thereof, pertains. Notwithstanding anything to the contrary contained in this Agreement, Ana Codina-Barlick shall have no personal liability hereunder.

E. **City's Knowledge.**

(1) References to the "knowledge", "best knowledge" and/or "actual knowledge" of City or words of similar import shall refer only to the current actual (as opposed to implied or constructive) knowledge of each Person who is now or may be in the future designated as the City's Representative, and shall not be construed, by imputation or otherwise, to refer to the knowledge of City or any parent, subsidiary or affiliate of Developer or any other officer, agent, manager, representative or employee of City or to impose upon any Person designated as the City's Representative any duty to investigate the matter to which such actual knowledge, or the absence thereof, pertains. Notwithstanding anything to the contrary contained in this Agreement, no Person designated as the City's Representative shall have any personal liability hereunder.

(2) Notwithstanding anything to the contrary contained herein, in the event that (i) any of the representations or warranties of Developer contained in this Agreement that survive the Closing shall be false or inaccurate in any material respect, or (ii) Developer shall be in material breach or default of any of its obligations under this Agreement that survive the Closing, and City nonetheless proceeds to Closing hereunder, then Developer shall have no liability or obligation respecting such false or inaccurate representations or warranties or other breach or default (and any cause of action resulting therefrom shall terminate upon the Closing), provided City shall have had actual knowledge of the falsity or inaccuracy of any such representation or warranty or the existence of any other breach or default under this Agreement. Nothing contained in this **Section 12.C.(2)** shall be deemed to be a waiver on the part of City of any rights or remedies City may have against Architect, Contractor, Conceptual Space Planner, Space Planner or any other Person that is not a Developer Related Party.

F. **Survival.** Except for the representation of Seller contained in **Section 10.A.(15)**, which City and Developer hereby agree shall not survive the Closing, the representations and warranties of Developer contained in this **Section 10** shall survive the Closing for a period of one

(1) year. Unless City shall institute an action on the breach of a representation or warranty hereunder within such one (1) year period, such action shall be forever barred, the parties hereby acknowledging and agreeing that it is their intent that the foregoing limitation be given the same force and effect as if any applicable statute of limitations were to require the institution of an action within such one (1) year period.

11. **City's Representations and Warranties**.

A. **Representations and Warranties.** City hereby represents and warrants to Developer that the following representations and warranties are true and correct as of the date hereof and shall remain true and correct as of the Closing Date.

(1) City is a municipal corporation existing under the laws of the State of Florida and is duly qualified to conduct business activities in the State of Florida. City has the requisite power and authority to enter into and carry out the terms of this Agreement and the execution, performance and delivery hereof and of all other agreements and instruments referred to herein to be executed, performed or delivered by City and the performance by City of City's obligations hereunder will not violate or constitute an event of default under the terms and provisions of any material agreement, document or instrument to which City is a party or by which City is bound. All proceedings required to be taken by or on behalf of City to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken. Other than as set forth herein, no further consent of any person or entity is required in connection with the execution and delivery of, or performance by City of its obligations under this Agreement.

(2) City is not a person or entity with whom United States persons or entities are restricted from doing business under the OFAC Regulations.

(3) This Agreement is a valid and binding obligation of City, enforceable against City in accordance with its terms.

B. **Survival.** The representations and warranties of City contained in this Section 11 shall survive the Closing.

12. **Liability and Indemnity**.

A. **Insurance.**

(1) At all times until the Closing of the sale of the Property is consummated, Developer shall maintain the following insurance with respect to the Property to the extent commercially available at commercially reasonable rates:

(a) until such time as Substantial Completion of the Base Building Improvements is achieved, comprehensive all risk insurance on the Base Building Improvements written on a so-called builder's risk completed value form and on a non-reporting basis (a) in an amount equal to Full Replacement Cost and (b) providing for a deductible which shall not exceed five percent (5%) without City's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed;

(b) upon achievement of the Substantial Completion of the Base Building Improvements, comprehensive all risk insurance on the Base Building Improvements (i) in an amount equal to Full Replacement Cost and (ii) providing for a deductible which shall not exceed five percent (5%) without City's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed;

(c) unless City or Developer shall make the Space Improvements Assumption Election and until such time as Substantial Completion of the Space Improvements is achieved, comprehensive all risk insurance on the Space Improvements written on a so-called builder's risk completed value form and on a non-reporting basis (i) in an amount equal to the Full Replacement Cost and (ii) providing for a deductible which shall not exceed five percent (5%) without City's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed;

(d) unless City or Developer shall make the Space Improvements Assumption Election and upon Substantial Completion of the Space Improvements, comprehensive all risk insurance on the Space Improvements (i) in an amount equal to Full Replacement Cost and (ii) providing for a deductible which shall not exceed five percent (5%) without City's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed;

(e) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the "occurrence" form with a combined single limit (including "umbrella" coverage in place) of not less than $5,000,000 to cover at least the following hazards: (1) premises and operations; (2) products

and completed operations on an "if any" basis; and (3) independent contractors.

(2) Upon City's request from time to time, Developer shall furnish City with evidence that Developer is maintaining the insurance required hereinabove.

(3) The Architect's Agreement and the Space Planner's Agreement shall provide that Architect and Space Planner shall name City as an additional insured under the errors and omissions policies maintained by Architect and Space Planner.

B. **Assumption of Risk.** Developer hereby acknowledges and agrees that during the construction of the Improvements neither City nor any City Related Parties will be liable to Developer for, and Developer expressly assumes the risk of and waives any and all claims it may have against City or any City Related Parties with respect to, (i) any and all damage to property or injury to persons in, upon or about the Property (except that resulting from the negligence or willful act or omission of City or any of City Related Parties or City's breach of this Agreement), (ii) any such damage caused by persons in, upon or about the Property (except that resulting from the negligence or willful act or omission of City or any of City Related Parties or City's breach of this Agreement), or (iii) any injury or damage to persons or property resulting from any casualty on the Property.

C. **Limitation of Liability.**

(1) Except as otherwise expressly provided herein:

(a) if the Closing shall have occurred, the aggregate liability of Developer, arising pursuant to or in connection with the representations, warranties, indemnifications, covenants or other obligations (whether express or implied) of Developer under this Agreement (or any document or certificate executed or delivered in connection herewith) shall not exceed the Maximum Liability Amount; however, nothing contained herein shall be deemed to limit the City's recovery of any insurance proceeds under Section 12.A. of this Agreement, or otherwise affect or impair any rights of City under any payment and performance bond furnished to City in connection with the construction of the Base Building Improvements and/or the Space Improvements, as applicable; and

(b) no Developer Related Parties shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement, or any amendment or amendments to any of the

foregoing made at any time or times, heretofore or hereafter, and City and its successors and assigns and, without limitation, all other persons and entities, shall look solely to Developer and Developer's assets for the payment of any claim or for any performance, and City, on behalf of itself and its successors and assigns, hereby waives any and all such personal liability; provided, however, that nothing contained herein shall impair any rights that City may have against Contractor or any Surety pursuant to any payment and performance bond furnished to City in connection with the construction of the Base Building Improvements and/or the Space Improvements, as applicable.

(2) Nothing contained in **Section 12.C.(1)** herein shall be deemed to:

(a) prohibit City from pursuing claims for disgorgement of sums, not to exceed in the aggregate the Maximum Liability Amount, distributed to Developer Related Parties out of the Purchase Price to the extent that Developer shall not retain from the net proceeds from the sale of the Property an amount sufficient to satisfy Developer's liabilities on account of any breaches of representations or warranties of Developer contained in **Section 10.A.** hereof (not to exceed the Maximum Liability Amount) until such time as the survival period with respect to such representations and warranties set forth in **Section 10.F.** hereof shall have expired; or

(b) constitute a waiver on the part of City with respect to any rights or remedies that City may have against Contractor, Architect, Conceptual Space Planner, Space Planner or any other Person that is not a Developer Related Party, including, without limitation, any surety under any payment and performance bond.

(3) Notwithstanding anything to the contrary contained herein, in the event that the conveyance of the Property from Developer to City shall be set aside as a fraudulent conveyance or otherwise rescinded or negated, City shall be permitted to pursue any and all remedies available at law or in equity against Developer, any Developer Related Parties or any creditors thereof, without regard to the Maximum Liability Amount.

13. **Risk of Loss; Condemnation**.

A. **Risk of Loss.**

(1) In the event that any of the Improvements shall be damaged by reason of any Force Majeure Event, Developer shall deliver written notice of such Force Majeure Event to City within ten (10) Business Days after the occurrence thereof; however, in no event shall Developer or City have the right to terminate this Agreement as the result of any such Force Majeure Event.

(2) In the event of the occurrence of a Force Majeure Event, any insurance proceeds received by Developer in connection with such Force Majeure Event (less the amount of all collection costs incurred by Developer in obtaining such proceeds) shall be applied, or made available by Developer for application, to the cost of construction of the Improvements, and Developer shall retain any portion of such insurance proceeds not required for such purposes, provided that City is given a credit against the Purchase Price.

B. **Condemnation.**

(1) In the event that Developer shall receive written notice from any of any Condemning Authority of a Taking, Developer shall deliver written notice of such Taking to City within ten (10) Business Days after Developer's receipt of written notice thereof as aforesaid; however, in no event shall Developer have the right to terminate this Agreement by reason of any such Taking.

(2) In the event of any Taking, any condemnation awards received by Developer (less the amount of all collection costs incurred by Developer in obtaining such awards) shall be applied, or made available by Developer for application, to the cost of construction of the Improvements, and Developer shall assign and turn over or credit to City at the time of Closing any remaining balance.

14. **Default by City**.

A. In the event that City shall default in the payment or performance of any of its obligations to be performed hereunder prior to the execution of the Base Building Contract and such default shall remain uncured for more than thirty (30) days following Developer's delivery of written notice thereof to City, Developer shall have, as its sole remedy, the right to terminate this Agreement. In such event, the Deposit, or such portion thereof as may then be held by Escrow Agent, shall be paid to Developer as liquidated damages and the Parties shall be released from all further obligations under this Agreement and the Mortgage Documents except for such obligations as this Agreement expressly provides shall survive such termination.

B. Provided that no Post-GMP Developer Default shall have occurred and remain continuing, in the event of the occurrence of a Post-GMP City Default, Developer shall have, as

its sole remedy, the right to institute an action against City for specific performance of City's obligation's hereunder, provided that any such action must be instituted within one hundred eighty (180) days of the occurrence of such Post-GMP City Default. Except as otherwise expressly provided herein, Developer waives the right to recover monetary damages from City in the event of a Post-GMP City Default.

C. The parties acknowledge that because the Property is being developed for a unique use as the City Hall Facilities, it shall be difficult or impossible to ascertain the damages sustained by Developer by reason of a Post-GMP City Default. Accordingly, City and Developer hereby acknowledge and agree that the remedy of specific performance is the remedy most likely to ensure that Developer is adequately protected in the event of a Post-GMP City Default. Notwithstanding the foregoing, in the event that a Post-GMP City Default shall occur and Developer shall institute an action against City for specific performance in accordance with the terms and conditions of **Section 14.B.**, but a court of competent jurisdiction shall determine that Developer is not entitled to pursue such action for specific performance or such remedy shall not provide a commercially reasonable basis for the preservation of the benefit of Developer's bargain with City pursuant to this Agreement, Developer shall have the right to terminate this Agreement. In the event of any such termination, the following provisions shall apply:

(1) Any portion of the Deposit remaining on deposit with Escrow Agent not required for the payment of Pre-GMP Soft Costs shall be refunded to City;

(2) Developer shall pay the City Default Mortgage Payoff Amount within thirty (30) days following the final determination of the Developer Losses; and

(3) City shall accept such City Default Mortgage Payoff Amount in full satisfaction of the obligations of Developer under the Mortgage Documents and, upon Developer's payment thereof to City, the Parties shall be released from all further obligations hereunder except for such obligations as this Agreement expressly provides shall survive the termination of this Agreement.

15. **Default by Developer**.

A. In the event that Developer shall default in the payment or performance of any of its obligations to be performed hereunder prior to the execution of the Base Building Contract and such default shall remain uncured for more than thirty (30) days following City's delivery of written notice thereof to Developer, City shall have, as its sole remedy, the right to terminate this Agreement. In such event, the Deposit, or such portion thereof as may then be held by Escrow Agent, shall be returned to City and the parties shall be released from all further obligations hereunder except for such obligations as this Agreement expressly provides shall survive such termination.

B. Provided that no Post-GMP City Default shall have occurred and remain continuing, in the event of the occurrence of a Post-GMP Developer Default, City shall have the

right, at its option, to either (1) institute an action against Developer for specific performance of Developer's obligation's hereunder, provided that any such action must be instituted within one hundred eighty (180) days of the occurrence of such Post-GMP Developer Default or (2) terminate this Agreement, in which case the provisions of **Section 15.C.** and/or **Section 15.D.**, as applicable, shall govern.

C. In the event that City shall exercise its right to terminate this Agreement pursuant to **Section 15.B.**, any portion of the Deposit remaining on deposit with Escrow Agent shall be paid to City and applied against the obligations of Developer to City under the Mortgage Documents and Developer shall pay the Developer Default Mortgage Payoff Amount to City within thirty (30) days following the termination of this Agreement. Upon Developer's payment of the Developer Default Mortgage Payoff Amount to City, the Parties and Guarantor shall be released from any and all further obligations under this Agreement and the Mortgage Documents except for such obligations as this Agreement expressly provides shall survive such termination.

D. In the event that City shall exercise its right to terminate this Agreement pursuant to **Section 15.C.** and Developer shall default in its obligation to make payment of the Developer Default Mortgage Payoff Amount to City within thirty (30) days following the termination of this Agreement, City shall have the right to foreclose the lien of the Mortgage. In the event that City shall exercise its right to foreclose the Mortgage and the Property shall be sold at foreclosure, Developer and Guarantor shall remain liable to City for the payment of the Applicable Deficiency Amount.

16. **Brokerage Fees**. Developer represents and warrants to City that no broker or finder has been engaged by Developer in connection with the transaction contemplated by this Agreement, or to Developer's knowledge is in any way connected with such transaction. City represents and warrants to Developer that no broker or finder has been engaged by City in connection with the transaction contemplated by this Agreement, or to City 's knowledge is in any way connected with such transaction. If any such claims for brokers' or finders' fees or commissions are asserted in connection with the negotiation, execution or consummation of this Agreement, then City shall indemnify, save harmless and defend Developer from and against such claims if they shall be based upon any statement, representation or agreement made by City, and Developer shall indemnify, save harmless and defend City if such claims shall be based upon any statement, representation or agreement made by Developer.

17. **Waiver of Performance**. Either party may waive the satisfaction or performance of any conditions or agreements in this Agreement which have been inserted for its own and exclusive benefit, so long as the waiver is signed (unless the Agreement provides for a non-written waiver) and specifies the waived condition or agreement and is delivered to the other party hereto and the Escrow Agent.

18. **Notices**. All notices under this Agreement shall be in writing and shall be effective upon receipt whether delivered by personal delivery or recognized overnight delivery service, telecopy, or sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed to the respective parties as follows:

If to Developer, to:

c/o Codina Partners, LLC
135 San Lorenzo Avenue
Suite 750
Coral Gables, Florida 33146
Attn: Mr. Armando Codina
Fax Number: (305) 529-1301

with a copy to:

Codina Downtown Doral, LLC
c/o Codina Partners, LLC
135 San Lorenzo Avenue
Suite 750
Coral Gables, Florida 33146
Attn: Mr. K. Lawrence Gragg
Fax Number: (305) 529-1301

with a copy to:

J.P. Morgan Investment Management, Inc.
P.O. Box 5005
New York, NY 10163-5005

with a copy to:

c/o J.P. Morgan Investment Management Inc.
245 Park Avenue
New York, NY 10167
Attn: Joseph B. Dobronyi, Jr.
Fax Number: (212) 648-2265

with a copy to:

Stroock & Stroock & Lavan LLP
200 South Biscayne Boulevard, Suite 3100
Miami, Florida 33131
Attn: Manuel A. Fernandez, Esq.
Fax Number: (305) 789-9302

If to City, to:

City of Doral, Florida
Office of City Manager
8300 N.W. 53rd Street
Suite 100
Doral, Florida 33166
Attn: Yvonne Soler-McKinley
Fax Number: (305) 593-6769

with a copy to:

Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130
Attn: Jimmy Morales, Esq.
Fax Number (305) 789-3395

Either party may notify the other party of its change of address by notifying the other party in writing of the new address. Any such notice or communication shall be deemed to have been delivered either at the time of personal delivery actually received by the addressee or an authorized representative of the addressee at the address provided above whether by certified or registered U.S. mail or any nationally recognized overnight service or if by telecopier, upon electronic confirmation of good receipt by the receiving telecopier.

19. **Section Headings**. The section headings of this Agreement are for the purposes of reference only and shall not be used for limiting or interpreting the meaning of any section.

20. **Dispute Resolution**.

A. If a dispute arises with respect to the construction of the Improvements, whether or not a default is claimed, City and the Developer shall attempt to negotiate through City Related Parties and Developer's Representatives to settle the construction dispute directly or through a mediator for a period of up to twenty (20) days prior to initiating arbitration.

B. If the construction dispute has not been resolved within twenty (20) days under **Section 20.A.**, then the construction dispute shall be decided by arbitration in Miami, Florida in accordance with the Construction Industry Rules of the American Arbitration Association then prevailing. No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Agreement except by written consent containing a specific reference to this Agreement and signed by City and Developer, and any other person sought to be joined. Consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any construction dispute not described therein or with any person not named therein. This agreement to arbitrate shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

C. Notice of demand for arbitration shall be filed in writing with the other party to this Agreement in accordance with the rules of the American Arbitration Association. Within ten (10) days after the arbitration demand, an arbitrator shall be selected by agreement of the parties, or if not, then pursuant to AAA rules chosen by the AAA from the large, Complex Construction Case Panel. Such arbitrator shall not be or have been affiliated in any way with either party, whether as an officer, director, member, partner, employee, supplier, contractor or attorney of or for either party, or otherwise having represented, consulted for or been retained by either party, at any time within ten (10) years prior to the date of this Agreement. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based upon such claim, dispute or other matter in question would be barred by the applicable statutes of limitation.

D. The arbitrator(s) shall have the authority to order or limit discovery or the introduction of evidence as may be deemed efficient and appropriate to provide for a fair hearing procedure. including to modify the applicable time limits for good cause shown. The arbitrator(s) shall hold the hearing as soon as reasonably practicable based on the nature and the sensitivity of the issues involved, and in any event within forty-five (45) days after appointment, and shall have the legal power and authority to issue injunctions or other temporary or permanent orders in the interests of justice. The decision shall be rendered within five (5) Business Days after the conclusion of the hearing.

E. Each party shall continue to perform its duties and obligations herein during the pendency of any dispute or arbitration, until final resolution.

F. All issues, such as, but not limited to, arbitrability, prerequisites to arbitration, compliance with contractual time limitations, applicability of indemnity clauses, clauses limiting damages and statutes of limitation shall be for the arbitrator(s) whose decision thereon shall be final and binding. There shall be no interlocutory appeal of an order compelling arbitration. The award rendered by the arbitrator shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

G. Notwithstanding anything contained in this Section 20 or elsewhere in this Agreement to the contrary, nothing contained in this Agreement shall preclude or limit City's right or ability to (i) exercise any and all remedies which may be available to City under the Mortgage Documents, including without limitation, the right to foreclose on the Property, (ii) seek such provisional or ancillary remedies from a court of competent jurisdiction, including, without limitation, injunctive relief, the issuance of a writ of possession or the appointment of a receiver, (iii) pursue rights against Developer in any action against City by a third party in any State, Federal or international court of tribunal (including any action in any specialty court such as a bankruptcy court or patent court).

21. **Counterparts**. This Agreement may be executed in several counterparts and all such executed counterparts shall constitute one agreement, binding on all of the parties hereto, notwithstanding that all of the parties hereto are not signatories to the original or to the same counterpart. This Agreement shall not be binding unless and until all parties hereto have executed this Agreement.

22. **Governing Law**. The validity, construction and operational effect of this Agreement shall be governed by the laws of the State of Florida.

23. **Attorneys' Fees and Costs**. In any action by one party hereto against the other, the prevailing party in such action shall be awarded, in addition to any other relief, its reasonable costs and expenses, and reasonable attorneys' fees.

24. **Prior Agreements**. This Agreement supersedes any and all oral or written agreements between the parties hereto regarding the Property which are prior in time to this Agreement. Neither City nor Developer shall be bound by any prior understanding, agreement, promise, representation or stipulation, express or implied, not specified herein.

25. **Further Assurances**. City and Developer agree to execute all documents and instruments reasonably required in order to consummate the purchase and sale herein contemplated.

26. **Successors and Assigns**. This Agreement shall be binding upon and shall inure to the benefit of permitted successors and assigns of the parties hereto.

27. **Severability**. If any portion of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

28. **Performance Due on Non-Business Day**. If the time period for the performance of any obligation or exercise of any right of a party hereunder expires on any day that is not a Business Day, the time for such performance or exercise shall be extended until the next Business Day.

29. **IRS Form 1099-S Designation**. In order to comply with information reporting requirements of Section 6045(e) of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder, the Parties agree (i) to execute the Designation Agreement at the time of Closing; (ii) to provide the Escrow Agent with the information necessary to complete Form 1099-S; (iii) that the Escrow Agent shall not be liable for the actions taken under this section, or for the consequences of those actions, except as they may be the result of gross negligence or willful misconduct on the part of the Escrow Agent; and (iv) that the Escrow Agent shall be indemnified by the parties for any costs or expenses incurred as a result of the actions taken under this section, except as they may be the result of gross negligence or willful misconduct on the part of the Escrow Agent. The Escrow Agent shall provide all parties to this transaction with copies of the IRS Forms 1099-S filed with the IRS and with any other documents used to complete IRS Form 1099-S.

30. **Discharge of Developer's Obligations**. Except as otherwise expressly provided in this Agreement, City's acceptance of the Deed shall be deemed a discharge of all of the obligations of Developer hereunder and all of Developer's representations, warranties, covenants and agreements in this Agreement shall merge in the documents and agreements executed at the Closing and shall not survive the Closing, except and to the extent that, pursuant to the express provisions of this Agreement, any of such representations, warranties, covenants or agreements are to survive the Closing.

31. **No Recordation**. Neither this Agreement nor any memorandum thereof shall be recorded and any attempted recordation hereof shall be void and shall constitute a default hereunder.

32. **WAIVER OF TRIAL BY JURY**. DEVELOPER AND CITY HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER ARISING IN TORT OR CONTRACT) BROUGHT BY EITHER AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

33. **Amendments**. This Agreement may be amended only by written agreement signed by both of the parties hereto.

34. **Waiver of Sovereign or Governmental Immunity**. To the extent City may be entitled, in any jurisdiction, to claim for itself or its revenues, assets or properties, immunity from service of process, from suit, from the application of specific law, from the jurisdiction of any court or from any order or injunction or the enforcement of the same against its property in any such court, from attachment in aid of execution of a judgment or from any other legal process, City hereby knowingly, voluntarily, intentionally and irrevocably agrees not to claim and waives such immunity with respect to any claims made by Developer against City arising out of this Agreement or the transactions contemplated hereby. The provisions of this **Section 34** shall survive the Closing or an earlier termination of this Agreement.

35. **Disclosure**.

A. Section 404.056(6), Florida Statutes, requires the following notice to be provided with respect to the contract for sale and purchase of any building:

> RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

B. In accordance with the requirement of Section 553.996 of the Florida Statutes, the following notice is given to City:

> ENERGY: City may have the energy efficiency of the building being purchased determined.

C. If applicable, pursuant to Section 161.57(2) of the Florida Statutes, City waives the right to obtain from Developer an affidavit with respect to, or a survey meeting the requirements of Chapter 472 of the Florida Statues delineating, the location of the coastal construction control line on the Property.

36. **Right of Negotiation.** Notwithstanding anything to the contrary contained herein, in the event of the termination of this Agreement by City pursuant to **Section 15.A.**, upon City's request, Developer shall negotiate in good faith with City for the sale of the Land to City for an amount equal to the Land FMV. In connection with any such sale, Developer shall have the right to require that (x) the use of the Land be restricted to the construction of the City Hall Facilities, the design of which shall be subject to Developer's approval not to be unreasonably withheld, and (y) if City does not commence the construction of such City Hall Facilities within one (1) year after the acquisition of the Property from Developer and diligently pursue the construction of such City Hall Facilities to completion, Developer or its designee shall have the right to repurchase the Property for the same amount City paid to Developer for the Land. In the event of the consummation of any sale of the Property pursuant to such negotiations, at Developer's option, the aforesaid restrictions on the City's use of the Land and the Developer's right of repurchase shall be placed of record as equitable servitudes and covenants running with the title to the Land.

37. **Prohibition Against Contingent Fees**. Developer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Developer, to solicit or secure this Contract, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for Developer, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement unless approved by the City Manager of the City of Doral.

38. **Nondiscrimination**. During the term of this Agreement, Developer shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and agrees to abide by all Federal and State laws regarding nondiscrimination.

39. **Independent Contractor**. Developer and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of City with respect to all of the acts and services performed by Developer pursuant to the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between City and Developer.

40. **Public Records**. Developer acknowledges that all Books and Records delivered by Developer to City pursuant to this Agreement shall become matters of public record. City Manager or City Manager's designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Books and Records of Developer.

41. **Compliance with Laws**. Developer shall comply with all Applicable Laws in connection with the performance of its obligations hereunder.

IN WITNESS WHEREOF, Developer and City have executed this Agreement as of the date first above written.

CITY:

CITY OF DORAL, FLORIDA, a municipal corporation existing under the laws of the State of Florida

By:_____
Name:_____
Title:_____

DEVELOPER:

CM DORAL CH DEVELOPMENT LLC, a Delaware limited liability company

By:_____
Name:_____
Title:_____

Exhibit A

Glossary of Defined Terms

"**30% Space Plan Construction Documents**" shall mean plans and specifications for the construction of the Space Improvements that are prepared in substantial accordance with the Approved Space Layout and are approximately thirty percent (30%) complete.

"**50% Base Building Construction Documents**" shall mean plans and specifications for the construction of the Base Building Improvements that are prepared in substantial accordance with the Approved Building Schematics and are approximately fifty percent (50%) complete.

"60% Space Plan Construction Documents" shall mean plans and specifications for the construction of the Space Improvements that (i) are prepared in substantial accordance with the Approved Space Layout, (ii) take into consideration any comments received from City in respect of the 30% Space Plan Construction Documents and (iii) are approximately sixty percent (60%) complete.

"**90% Base Building Construction Documents**" shall mean plans and specifications for the construction of the Base Building Improvements that (i) are prepared in substantial accordance with the Approved Schematics, (ii) take into consideration any comments received from City in respect of the 50% Base Building Construction Documents and (iii) are approximately ninety percent (90%) complete.

"**90% Space Plan Construction Documents**" shall mean plans and specifications for the construction of the Space Improvements that (i) are prepared in substantial accordance with the Approved Space Layout (ii) take into consideration any comments received from City in respect of the 60% Space Plan Construction Documents and (iii) are approximately ninety percent (90%) complete.

"**Actual Completion Costs**" shall mean the actual costs and/or expenses incurred by City or Developer in connection with the Final Completion of the Base Building Improvements and/or the Space Improvements following Developer's exercise of its rights under **Section 7.A.(2)** to accelerate the Closing or City's exercise of its rights under **Section 7.A.(3)(a)** to complete the construction of such Improvements.

"**Additional City Expenses**" shall mean the actual out-of-pocket expenses incurred by City in connection with the leasing, operation and management of the Existing City Hall Facilities as the proximate result of the Closing not occurring on or before the Scheduled Closing Date.

"**Additional Developer Expenses**" shall mean, if applicable, (i) if not paid from the Developer Contingency, the actual out-of-pocket Hard Costs and Soft Costs incurred by Developer with respect to the Property and/or the construction of the Improvements as the proximate result of the Closing not occurring on or before the Scheduled Closing Date, and (ii) if paid from the Developer Contingency, one half of the actual out-of-pocket Hard Costs and Soft Costs incurred by Developer with respect to the Property and/or the construction of the Improvements as the proximate result of the Closing not occurring on or before the Scheduled Closing Date, provided that in no event shall the "**Additional Developer Expenses**" be deemed to include the Excluded Developer Expenses.

"**Adjusted Purchase Price**" shall mean the amount by which the Purchase Price shall exceed the sum of (i) the Applicable Purchase Price Reduction Amount, (ii) the City's Estimated Completion Costs and (iii) ten percent (10%) of the City's Estimated Completion Costs.

"**Applicable Deficiency Amount**" shall mean, (i) if City, its nominee or designee, is the Successful Bidder, the amount, if any, by which (a) the sum of (1) the aggregate sum of the Hard Costs and Soft Costs advanced out of the Deposit and pursuant to the Monthly Progress Payments as of the date of the Foreclosure Sale, (2) the aggregate amount of such additional Hard Costs and Soft Costs as City and Developer shall reasonably estimate shall be incurred by City in connection with the Final Completion of the Base Building Improvements and, unless City or Developer shall exercise the Space Improvements Assumption Election, the Space Improvements following the Foreclosure Sale and (3) any portion of the Deposit which has not been previously expended by Developer and which has not been refunded to City shall exceed (b) the Estimated Purchase Price Amount, and (ii) if an entity other than City, its nominee or designee, is the Successful Bidder, the amount by which (x) the Developer Default Mortgage Payoff Amount, as of the date of the Foreclosure Sale, shall exceed (y) the gross proceeds realized by City in connection with such Foreclosure Sale. Any dispute regarding the amount of the "**Applicable Deficiency Amount**", as determined pursuant to clause (i) of the preceding definition, of the preceding sentence shall be resolved in accordance with the dispute resolution provisions of **Section 20** of this Agreement.

"Applicable Estimated Completion Cost Amount" shall mean the aggregate amount of the actual Hard Costs that City and Developer shall reasonably estimate shall be incurred by City or Developer in connection with the Final Completion of the Base Building Improvements or the Space Improvements, as applicable. Any dispute regarding the amount of the "**Applicable Estimated Completion Amount**" shall be resolved in accordance with the dispute resolution provisions of **Section 20** of this Agreement.

"**Applicable GMP Amount**" shall mean the amount of the Base Building GMP or the Space Improvements GMP, as applicable.

"**Applicable GMP Component**" shall mean the Base Building GMP Component or the Space Improvements GMP Component, as applicable.

"**Applicable Law**" shall mean any and all laws, statutes, rules, regulations, codes, orders, ordinances, judgments, writs, injunctions and decrees of any Governmental Authority.

"Applicable Purchase Price Reduction Amount" shall mean the sum of the following:

(i) for each day that the Closing Date shall be delayed beyond the Scheduled Closing Date as the proximate cause of events that constitute Developer Delay, but in no event more than three hundred sixty (360) days, an amount equal to the Additional City Expenses (except to the extent previously paid by Developer or deducted from the amount of any Monthly Progress Payments);

(ii) in addition to any amounts under (i), for each day in excess of sixty (60) days that the Closing Date shall be delayed beyond the Scheduled Closing Date as the proximate cause of

events that constitute Developer Delay, but in no event more than three hundred (300) days, an additional amount equal to one-half of the Additional City Expenses;

(iii) in addition to any amounts under (i) and (ii), for each day in excess of one hundred eighty (180) days that the Closing Date shall be delayed beyond the Scheduled Closing Date as the proximate cause of events that constitute Developer Delay, but in no event more than one hundred eighty (180) days, an additional amount equal to $1,666.67; and

(iv) in addition to any amounts under (i), (ii) and (iii), for each day in excess of two hundred seventy (270) days that the Closing Date shall be delayed beyond the Scheduled Closing Date as the proximate cause of events that constitute Developer Delay, but in no event more than ninety (90) days, an additional amount equal to $1,666.67.

It is the intent of the Parties that items (i) through (iv) above are intended to be cumulative. For purposes of clarification, and by way of example, in the event that the Closing Date shall be delayed beyond the Scheduled Closing Date by three hundred sixty (360) days as the proximate result of events that result in three hundred twenty (320) days of Developer Delay, thirty (30) days of City Delay and ten (10) days of Unavoidable Delay, then the Applicable Purchase Price Reduction Amount would be computed as follows: (i) the Additional City Expenses for each of the two hundred ninety (290) days of Net Developer Delay, plus (ii) one-half of the Additional City Expenses for two hundred thirty (230) of the two hundred ninety (290) days of Net Developer Delay, plus (iii) $183,333.37 (i.e., $1,667.67 multiplied by one hundred ten (110) of the two hundred ninety (290) days of Net Developer Delay), plus (iv) $33,333.40 (i.e., $1,667.67 multiplied by twenty (20) of the two hundred ninety (290) days of Net Developer Delay). The Applicable Purchase Price Reduction Amount constitutes the Parties' reasonable estimate of the liquidated damages that would accrue to City in the event that the Closing Date were to be delayed beyond the Scheduled Closing Date as the proximate result of events that produce a Net Developer Delay and such amount is not intended to constitute a penalty. In the event that any of the items included in the calculation of the "**Applicable Purchase Price Reduction Amount**" shall render the provisions of the Agreement regarding the reduction of the Purchase Price by such amount unenforceable, the "**Applicable Purchase Price Reduction Amount**" shall be the actual amount of damages incurred by City in the event that the Closing Date were to be delayed beyond the Scheduled Closing Date as the proximate result of events that produce a Net Developer Delay.

"Applicable Remaining Budgeted Amount" shall mean the Remaining Base Building Budgeted Amount or the Remaining Space Improvements Budgeted Amount, as applicable.

"Applicable Shortfall Amount" shall mean the amount, if any, by which the Applicable Estimated Completion Cost Amount shall exceed the Applicable Remaining Budgeted Amount. Any dispute regarding the amount of the "**Applicable Shortfall Amount**" shall be resolved in accordance with the dispute resolution provisions of **Section 20** of this Agreement.

"**Application for Payment**" shall mean an application for payment on AIA Form G702/G703 prepared by Contractor and signed by Architect or Space Planner, as applicable, which shall be accompanied by the materials Contractor is required to submit pursuant to the Base Building Contract or the Space Improvements Contract, as applicable.

"Approved Base Building Plans" shall mean plans and specifications for the construction of the Base Building Improvements that (i) are prepared in substantial accordance with the Approved Building Schematics, (ii) reflect the changes required by the 90% Base Building Construction Documents approved by the City in accordance with the provisions of **Section 5.B.** hereof and, (iii) reflect any other items required to cause such documents to be final and complete in all material respects, including changes required from the City Planning Department or any other Governmental Authority in connection with the issuance of building permits for the construction of the Base Building Improvements.

"**Approved Building Schematics**" shall mean the design specifications and schematics for the Base Building Improvements prepared by Architect based on the Base Building Conceptual Design Plan and approved by City and Developer on June 17, 2010.

"Approved Space Layout" shall mean the final space layout for the Space Improvements approved by City in accordance with the provisions of **Section 5.D.** hereof.

"Approved Space Plans" shall mean plans and specifications for the construction of the Space Improvements that (i) are prepared in substantial accordance with the Approved Space Layout, (ii) reflect the changes required by the 90% Space Plan Construction Documents approved by the City in accordance with the provisions of **Section 5.E.** hereof and, (iii) any other items required to cause such documents to be final and complete in all material respects, including changes required by the City Planning Department or any other Governmental Authority in connection with the issuance of building permits for the construction of the Space Improvements.

"**Approved Subcontractor**" shall mean each subcontractor listed on **Exhibit C** attached hereto and by this reference made a part hereof and any other subcontractor designated by Developer which City shall approve as a Approved Subcontractor, such approval not to be unreasonably withheld, conditioned or delayed.

"**Appurtenances**" shall mean all of Developer's right, title and interest in any and all rights, privileges, easements and rights of way appurtenant to the Land, including, without limitation, all mineral, oil and gas and other subsurface rights, air rights, and water rights, if any.

"**Architect**" shall mean Hunton Brady Architects, P.A.

"**Architect's Agreement**" shall mean an agreement between Developer and Architect pursuant to which Developer shall retain Architect to design the Base Building Improvements in accordance with the terms and conditions of this Agreement.

"**Assignment of Contracts**" shall mean an assignment and assumption of the Contracts duly executed by Developer conveying to City all of Developer's interest and rights in any Contracts which will remain in effect after the Closing in substantially the same form as attached hereto as **Exhibit D** and by this reference made a part hereof.

"**Assignment of Development Rights**" shall mean an assignment of Development Rights duly executed by Developer conveying to City all of Developer's right, title and interest in the Development Rights in substantially the same form as **Exhibit E** attached hereto and by this reference made a part hereof.

"**Assignment of Intangibles and Warranties**" shall mean an assignment of intangible property and warranties duly executed by Developer conveying to City all of Developer's interest and rights in the Intangible Property in substantially the same form as **Exhibit F** attached hereto and by this reference made a part hereof.

"**Base Building Conceptual Design Plan**" shall mean the conceptual design plan for the Base Building Improvements prepared by the Architect and approved by City and Developer on May 24, 2010.

"**Base Building Contract**" shall mean a guaranteed maximum price construction contract to be entered into by Developer with Contractor for the construction of the Base Building Improvements.

"**Base Building Contract Date**" shall mean the date on which the Base Building Contract is fully executed.

"**Base Building GMP**" shall mean the guaranteed maximum price which the Contractor is prepared to incorporate in the Base Building Contract as the guaranteed maximum price for the construction of the Base Building Improvements in accordance with the Approved Base Building Plans and the terms and conditions of the Base Building Contract.

"**Base Building GMP Approval Notice**" shall mean a written notice from City to Developer confirming City's approval of the Base Building GMP.

"**Base Building GMP Component**" shall mean the Base Building GMP, as adjusted to account for any increases or decreases in the amount paid to Contractor pursuant to the Base Building Contract on account of Change Orders and the Base Building GMP Savings Amount, provided that in no event shall the aggregate amount of the increase in the Base Building GMP Component and the Space Improvements GMP Component resulting from Developer Change Orders exceed the Maximum Developer Change Order Amount.

"**Base Building GMP Delivery Date**" shall mean a date no later than thirty-seven (37) days following Architect's delivery of the 90% Base Building Construction Documents to City.

"**Base Building GMP Disapproval Notice**" shall mean a written notice from City to Developer expressing City's disapproval of the Base Building GMP.

"**Base Building GMP Hard Costs**" shall mean such Hard Costs as shall be incurred by Developer in connection with the construction of the Base Building Improvements.

"**Base Building GMP Notice**" shall mean a written notice from Developer to City setting forth the Base Building GMP.

"**Base Building GMP Pro Forma Amount**" shall mean the sum of (i) $11,800,000 and (ii) the amount, if any, by which the Generator Costs exceed $400,000.

"**Base Building GMP Savings Amount**" shall mean the amount of savings that Contractor shall be required to credit against the Base Building GMP pursuant to the Base Building Contract.

"**Base Building Improvements**" shall mean the following components of the City Hall Facilities, as specified in, and to be built in accordance with, the Approved Base Building Plans:

(i) the shell building;

(ii) parking structure;

(iii) certain common areas, including the building lobby and restrooms.

"**Base Building Improvements Budget**" shall mean the budget of the Hard Costs to be incurred in connection with the construction of the Base Building Improvements to be established as of the Base Building Contract Date, as such budget may be modified by Developer from time to time.

"**Base Building Improvements Project Schedule**" shall mean the project schedule for the construction of the Base Building Improvements to be established as of the Base Building Contract Date, as such project schedule may be modified by Developer from time to time.

"**Base Building Plans Approval Notice**" shall mean a written notice from City to Developer confirming City's approval of the 90% Base Building Construction Documents or Revised 90% Base Building Construction Documents, as applicable.

"**Base Building Plans Disapproval Notice**" shall mean a written notice from City to Developer expressing City's disapproval of the 90% Base Building Construction Documents or Revised 90% Base Building Construction Documents, as applicable, and identifying the reasons for such disapproval in reasonable detail.

"**Bill of Sale**" shall mean a bill of sale duly executed by Developer conveying to City all of the Personal Property in substantially the same form as attached hereto as **Exhibit H** and by this reference made a part hereof.

"**Books and Records**" shall mean any and all records, books, documents, maps, data, deliverables, papers and financial information concerning the Property and the construction of the Base Building Improvements and, unless City or Developer shall make the Space Improvements Assumption Election, the Space Improvements in Developer's possession or control, excluding Developer's internal analysis, memoranda and reports and any other data or information which Developer reasonably regards as confidential and/or proprietary information.

"**Budget**" shall mean, collectively, the Soft Cost Budget, the Base Building Budget and the Space Improvements Budget.

"**Budget Line Item**" shall mean each line item or category of expenditure set forth in the Budget.

"**Building Facilities Services**" shall mean such parking, utility services and lavatory facilities as may be reasonably required by architects, contractors and subcontractors engaged in the design and construction of the Improvements.

"**Business Day**" shall mean any day other than a Saturday, Sunday, or any other day on which banking institutions in the State of Florida are authorized or obligated by Applicable Law to close.

"**Certificate of Completion**" shall mean a certificate of completion issued by the City Planning Department.

"**Change Order Documentation**" shall mean (i) final proposed plans and specifications, (ii) the fixed price cost addition or savings and (iii) the change in the contract time resulting from any proposed Developer Change Order, Legal Change Order or City Change Order.

"**Change Order Confirmation Notice**" shall mean a written notice from a Party to the other Party confirming the first Party's desire to proceed with a City Change Order.

"**Change Orders**" shall mean City Change Orders, Developer Change Orders and Legal Change Orders.

"**City Attorneys' Fees**" shall mean the legal fees and out-of-pocket disbursements, exclusive of City Enforcement Costs, incurred by City Counsel in connection with the transactions contemplated by this Agreement, including but not limited to any such legal fees and out-of-pocket disbursements incurred by City Counsel in connection with the negotiation of this Agreement and the Closing.

"**City Building Department**" shall mean the City of Doral Building Department.

"**City Change Order**" shall mean any change order that City shall request Developer submit to Contractor with respect to the Base Building Improvements and/or the Space Improvements.

"**City Change Order Approval Notice**" shall mean a written notice from Developer to City confirming Developer's approval of a City Change Order with respect to which City shall have delivered a Change Order Notice to Developer.

"**City Consultants' Fees**" shall mean the fees and expenses of the Inspecting Consultant and any other consultants engaged by City in connection with its due diligence reviews with respect to the Property and the assessment and review of matters the design, development and construction of the Base Building Improvements and/or the Space Improvements, as applicable.

"**City Council**" shall mean the City of Doral City Council.

"**City Counsel**" shall mean **Stearns** Weaver Miller Weissler Alhadeff & Sitterson, P.A.

"**City Default Mortgage Payoff Amount**" shall mean, as of the applicable date of determination thereof, the amount, if any, by which (a) the sum of the amounts advanced to Developer from the Deposit and as Monthly Progress Payments shall exceed (b) the Developer Losses.

"City Delay" shall mean, as applicable, the actual number of days of delay incurred by Developer in the design and/or construction of the Base Building Improvements and/or the Space Improvements as the proximate cause of any one or more of the following causes:

(i) the breach by City of any of its obligations under this Agreement with respect to the funding of Monthly Progress Payments;

(ii) the breach by City of any of its obligations under this Agreement other than those with respect to the funding of Monthly Progress Payments, provided Developer shall provide City with written notice thereof within a reasonable time following Developer's determination that such a breach may have occurred;

(iii) changes in or additions to the Approved Base Building Plans or the Approved Space Plans requested by City, provided that Developer shall have notified City of the potential time delay as a result of the requested change or addition; and further provided, such changes are evidenced by a written change order;

(iv) the postponement of the construction of any Base Building Improvements or Space Improvements at the request of City "for convenience" to which Developer, in the exercise of its sole discretion, may consent;

(v) failure of City to notify Developer of any failure of the construction of the Base Building Improvements and/or the Space Improvements to comply with the Approved Base Building Plans and/or the Approved Space Plans within five (5) Business Days following City's determination that such a failure of the Improvements to comply with the Construction Documents may have occurred;

(vi) delays by City in the submission of information or the granting of authorizations or approvals, other than Governmental Approvals, within the time limits set forth in this Agreement;

(vii) City's submission of disputes to the dispute resolution mechanism provided for in **Section 20** of this Agreement to the extent that Developer shall prevail in any such dispute; or

(vii) Governmental Approval Delays.

"**City Enforcement Costs**" shall mean the Enforcement Costs incurred by City in connection with its enforcement of Developer's obligations hereunder.

"**City Expenses**" shall mean the aggregate amount of the City Attorneys' Fees and the City Consultant's Fees.

"**City Hall Facilities**" shall mean an office building, a parking garage and ancillary facilities adequate to serve as the civic headquarters for City.

"**City Related Parties**" shall mean, collectively, City's employees, agents and other representatives, including without limitation, attorneys, accountants, contractors, consultants, engineers and financial advisors.

"**City Representative**" shall mean an individual reasonably acceptable to Developer who City shall designate from time to time by written notice to Developer as its sole representative in

connection with any and all matters related to this Agreement. City hereby designates Yvonne Soler-McKinley as the initial "**City Representative**" hereunder.

"**Close-Out Items**" shall mean the close-out items set forth on **Exhibit I** attached hereto and by this reference made a part hereof.

"**Closing**" shall mean the closing of the purchase and sale of the Property in accordance with the terms and conditions of this Agreement.

"**Closing Costs**" shall mean any and all closing costs reasonably incurred by City and/or Developer in connection with the Closing, including but not limited to, documentary stamp tax and surtax, recordation charges, title insurance examination costs and title insurance premiums, provided that in no event shall the Closing Costs include the attorneys' fees and disbursements for City Counsel or Developer Counsel.

"**Closing Date**" shall mean the date on which Closing shall actually occur.

"**Closing Date Representations**" shall mean all of the representations and warranties of Developer contained in **Section 10** of this Agreement which it is expressly provided herein are made as of the date of this Agreement.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended.

"**Collateral Assignment**" shall mean a collateral assignment of permits, plans and construction documents to be given by Developer to City as security for the payment and performance of Developer's obligations hereunder in substantially the same form as **Exhibit J** attached hereto and by this reference made a part hereof.

"**Commencement of Construction**" shall mean Developer's issuance of a "notice to proceed" to Contractor pursuant to the Base Building Contract.

"**Condemning Authority**" shall mean any Governmental Authority or quasi-governmental authority having the power of eminent domain.

"**Conceptual Space Planner**" shall mean DEGW.

"**Conceptual Space Planner's Agreement**" shall mean the agreement between Developer and Conceptual Space Planner with respect to the payment and performance of the services this Agreement contemplates shall be performed by Conceptual Space Planner.

"**Construction Defect**" shall mean a material failure of the Base Building Improvements or the Space Improvements, as applicable, to satisfy the applicable Required Condition.

"**Construction Documents**" shall mean, as applicable, collectively, the 30% Space Plan Construction Documents, 50% Base Building Construction Documents, 60% Space Plan Construction Documents, 90% Base Building Construction Documents, Revised 90% Base Building Construction Documents, 90% Space Plan Construction Documents, Revised 90% Space Plan Construction Documents, Approved Base Building Plans, Approved Building

Schematics, Approved Space Plans, Base Building Conceptual Design Plan, Design Development Plans, Revised Design Development Plans, Revised Space Plans, the Architect's Agreement, the Conceptual Space Planner's Agreement, the Space Planner's Agreement, the Base Building Contract and the Space Improvements Contract.

"**Contractor**" shall mean Flagler Construction Corporation.

"**Contracts**" shall mean (i) service contracts and maintenance agreements entered into in connection with the construction of the Base Building Improvements and, if applicable, the Space Improvements with City's consent, such consent not to be unreasonably withheld, conditioned or delayed, and (ii) service contracts and maintenance agreements entered into by Developer in the ordinary course of business that are terminable upon thirty (30) days' notice.

"Cost Overrun" shall mean the amount by which the Remaining Budgeted Amount attributable to any line item of Hard Costs or Soft Costs, exclusive of Closing Costs, the City Expenses or Mortgage Costs, shall exceed the total amount expended, or reasonably anticipated to be required to be expended, in connection with such line item as reasonably documented by Developer from time to time. Any dispute regarding the amount of any "Cost Overrun" shall be resolved in accordance with the dispute resolution provisions of Section 20 of this Agreement.

"**Deed**" shall mean a special warranty deed conveying title to the Property from Developer to City duly executed by Developer and properly witnessed and acknowledged for recordation and otherwise in substantially the same form as attached hereto as **Exhibit K** and by this reference made a part hereof.

"**Delay Event**" shall mean any event that constitutes City Delay, Developer Delay or Unavoidable Delay, as applicable.

"**Deposit**" shall mean a deposit of immediately available funds in an amount equal to the amount of the Pre-GMP Soft Cost Budget to be deposited by City in the Escrow Account and held by Escrow Agent in accordance with the provisions of this Agreement.

"**Design Development Plans**" shall mean those certain design development stage building plans for the Base Building Improvements prepared by the Architect, bearing Job number C-10020.00, dated June 14, 2010.

"**Designation Agreement**" shall mean an IRS Form 1099-S Designation Agreement in the form attached hereto as **Exhibit L** and by this reference made a part hereof pursuant to which the Parties shall designate the Escrow Agent as the party who shall be responsible for reporting the contemplated sale of the Property to the Internal Revenue Service (the "IRS") on IRS Form 1099-S.

"**Developer Adjustments**" shall mean, if applicable, the sum of the Additional Developer Expenses and the Reduced Return Amount.

"**Developer Affiliate**" shall mean CM Doral Development Company LLC.

"**Developer Affiliate's Proposal**" shall mean the Development Proposal submitted by Developer Affiliate to City dated February 3, 2010.

"Developer Attorneys' Fees" shall mean the legal fees and out-of-pocket disbursements, exclusive of Developer Enforcement Costs, incurred by Developer Counsel in connection with the transactions contemplated by this Agreement, including but not limited to any such legal fees and out-of-pocket disbursements incurred by Developer Counsel in connection with the negotiation of this Agreement and the Closing.

"**Developer Change Orders**" shall mean change orders submitted by Developer to Contractor with respect to the Base Building Improvements and/or the Space Improvements in connection with required field changes in the Approved Base Building Plans and/or the Approved Space Plans, including any changes required by virtue of inconsistencies between the Approved Base Building Plans and the Approved Space Plans.

"**Developer Counsel**" shall mean Stroock & Stroock & Lavan LLP.

"**Developer Contingency**" shall mean a line item in the Soft Cost Budget in an amount equal to the Developer Contingency Amount to be utilized for the payment of Hard Cost and Soft Cost contingencies.

"**Developer Contingency Amount**" shall mean (i) $830,803, assuming that neither City nor Developer shall exercise the Space Improvements Assumption Election, and (ii) $706,183, if City or Developer shall make the Space Improvements Assumption Election.

"**Developer Contingency Component**" shall mean a sum to be paid by City to Developer at Closing as part of the Purchase Price equal to fifty percent (50%) of the Unexpended Contingency, if any.

"**Developer Default Mortgage Payoff Amount**" shall mean, as of the applicable date of determination thereof, the sum of (i) any sums advanced to Developer out of the Deposit, (ii) the aggregate amount of the Monthly Progress Payments advanced by City to Developer, (iii) the Liquidated Damages Amount and (iv) the Enforcement Costs incurred by City in connection with the enforcement of its rights and remedies under this Agreement.

"Developer Delay" shall mean, as applicable, the actual number of days of delay incurred by Developer in the design and/or construction of the Base Building Improvements and/or the Space Improvements as the proximate cause of any one or more of the following causes:

(i) the breach by Developer of its obligations under this Agreement;

(ii) the failure of Developer to provide on a timely basis such authorizations and approvals as Developer is required to provide in accordance with the terms and conditions of this Agreement, except to the to the extent such failure shall be caused by the acts or omissions of City;

(iii) the failure of the Base Building Improvements to comply with Applicable Laws;

(iv) Developer's submission of disputes to the dispute resolution mechanism provided for in **Section 20** of this Agreement to the extent that City shall prevail in any such dispute; or

(iv) unless City or Developer shall make the Space Improvements Assumption Election, (a) the failure of the Space Improvements to comply with the requirements of Applicable Law and/or (b) material inconsistencies between the Approved Base Building Plans and the Approved Space Plans.

"**Developer Enforcement Costs**" shall mean the Enforcement Costs incurred by Developer in connection with its enforcement of City's obligations hereunder.

"**Developer Losses**" shall mean, without duplication, the amount of Losses sustained by Developer by reason of any Post-GMP City Default. For purposes hereof, the Developer Losses shall include the amount by which (i) the sum of (a) the total amount of the Development Costs incurred or accrued by Developer, prior to the termination of this Agreement in accordance with the provisions of **Section 14.C.**, in connection with the design, development and construction of the Base Building Improvements and the Space Improvements (calculated without regard to whether such Development Costs have been reimbursed to Developer out of the Deposit or the Monthly Progress Payments) and (b) the Estimated Office Improvements Completion Costs shall exceed (ii) the Office Improvements FMV. Any dispute with respect to the determination of the Developer Losses shall be resolved in accordance with the dispute resolution provisions of **Section 20** of this Agreement.

"**Developer Related Parties**" shall mean, collectively, Developer's agents, advisors, representatives, affiliates, employees, directors, partners, members, City, investors, servants, shareholders, trustees and any other persons acting on Developer's behalf, provided that, except for purposes of **Section 4.A.(3)(h)** hereof, the term "Developer Related Parties" shall not be deemed to include Architect, Conceptual Space Planner, Space Planner, Contractor, any subcontractor, laborer, materialman or any employee of any of the foregoing.

"**Developer Warranty Period**" shall mean, with respect to each Warranty, the one (1) year period commencing upon the Substantial Completion of the Base Building Improvements or the Space Improvements, as applicable, provided that in the event that Contractor or any Subcontractor shall be required to perform any Warranty Obligations with respect to the Base Building Improvements or the Space Improvements, as applicable, during the Developer's Warranty Period, the Developer's Warranty Period shall be extended by the lesser of (i) one (1) year and (ii) the length of time by which the applicable Contractor and/or Subcontractor's Warranties are extended.

"**Development Costs**" shall mean any and all costs incurred by Developer in connection with the design, development and construction of the Improvements, including without limitation the Development Management Fee.

"**Development Management Fee**" shall mean a development management fee in the amount of five percent (5%) of the Development Costs which is provided for in the Soft Cost Budget, provided that the Development Costs included in the base for purposes of calculating such

Development Management Fee shall not include the development management fee itself (i.e., there shall be no "fee earned on the amount of the fee").

"**Development Management Fee Holdback**" shall mean twenty percent (20%) of any portion of the Development Management Fee as such portion becomes due and payable. For purposes of clarification, the entire Developer Management Fee provided for in the Budget and any portion of the Development Management Fee payable out of the Unexpended Developer Contingency shall be included in the Soft Cost Component; however, no more than eighty percent (80%) of the Development Management Fee for any period shall be paid out of the Deposit (as Pre-GMP Soft Costs) or the Monthly Progress Payments.

"**Development Proposals**" shall mean proposals for the build-to-suit construction and sale to City of the City Hall Facilities solicited by City pursuant to the RFP.

"**Development Manager**" shall mean Codina Management, LLC.

"**Development Rights"** shall mean all of the rights of Developer to develop up to sixty thousand (60,000) square feet of improvements on the Land, together with a parking garage containing not less than 251 parking spaces.

"**Disbursement Conditions and Procedures**" shall mean the terms, conditions and procedures set forth in **Exhibit M** attached hereto and by this reference made a part hereof.

"**Enforcement Costs**" shall mean the reasonable attorneys' fees (including the reasonable fees of paralegals) and other out-of-pocket expenses incurred by a Party in connection with its enforcement of the obligations of another Party hereunder regardless of whether legal proceedings are instituted and, if such proceedings are instituted, at the pre-trial, trial and all appellate levels.

"**Environmental Condition**" shall mean the occurrence of a violation of Applicable Law in any material respect resulting from the contamination of the Property with Hazardous Materials first introduced to the Property between the Effective Date and the Closing Date.

"**Escrow Account**" shall mean an interest bearing account established by Escrow Agent with a financial institution reasonably satisfactory to City and Developer.

"**Escrow Agent**" shall mean Stroock & Stroock & Lavan LLP.

"**Escrow Agreement**" shall mean an Escrow Agreement to be entered into by and among City, Developer and Escrow Agent concurrently with the execution of this Agreement in substantially the same form as **Exhibit N** attached hereto and by this reference made a part hereof.

"**Estimated Completion Costs**" shall mean the aggregate amount of the actual Hard Costs and Soft Costs that City and Developer shall reasonably estimate shall be incurred by City or Developer in connection with the Final Completion of the Base Building Improvements and/or the Space Improvements, as applicable. In the event that Developer shall exercise its rights under **Section 7.A.(2)** to accelerate the Closing, City shall exercise its rights under **Section 7.A.(3)(a)** to complete the construction of the Base Building Improvements and/or the Space

Improvements, as applicable, or City shall claim that a Shortfall exists, any dispute regarding the amount of the "**Estimated Completion Costs**" shall be resolved in accordance with the dispute resolution provisions of **Section 20** of this Agreement.

"**Estimated Office Improvements Completion Costs**" shall mean the aggregate amount of the reasonable costs City and Developer shall reasonably estimate shall be incurred by Developer in connection with the completion of the Base Building Improvements and/or Space Improvements completed as of the date of any termination of this Agreement pursuant to **Section 14.C** hereof and any Required Office Modifications. Any dispute regarding the amount of the "**Estimated Office Improvements Completion Costs**" shall be resolved in accordance with the dispute resolution provisions of **Section 20** of this Agreement.

"**Estimated Purchase Price Amount**" shall mean, as of the Closing Date or date of any Foreclosure Sale, the amount of the Purchase Price that Developer would have been entitled to receive if the Closing had occurred as of such Closing Date or date of a Foreclosure Sale and all of the conditions precedent to the obligation of City to purchase the Property had been satisfied, as reasonably determined by City and Developer. Any dispute regarding the amount of the "Estimated Purchase Price Amount" shall be resolved in accordance with the dispute resolution provisions of Section 20 of this Agreement.

"**Excluded Developer Expenses**" shall mean, collectively:

(i) any special, punitive or consequential damages;

(ii) Developer's general corporate overhead, general administrative expenses, including but not limited to wages, salaries, benefits or other compensation paid to employees of Developer, and travel expenses;

(iii) any taxes on Developer's income;

(iv) any principal, interest or other expenses incurred by Developer in connection with any indebtedness of Developer; and

(vi) any additional development fees or management fees paid by Developer to any affiliate of Developer as the result of the applicable Delay Event.

"**Excluded Real Estate Taxes**" shall mean that portion of any real estate tax assessment for any period subsequent to December 31, 2010 based on the value of the Existing Improvements.

"**Exempt Subcontract**" shall mean any Subcontract that has a total subcontract price of $50,000 or less or which City and Developer shall each, in the exercise of its sole discretion, agree in writing shall be exempt from any one or more of the requirements of **Section 5.H.** hereof.

"**Existing City Hall Facilities**" shall mean the facilities located in the Trenton Building in Downtown Doral which are currently being utilized by City at its city hall.

"**Existing Improvements**" shall mean the office building and any other ancillary improvements currently situate on the Land.

"**Fair Market Value Determination Procedure**" shall mean the procedure for determining the Land FMV or the Office Improvements FMV, as applicable, set forth in **Exhibit O** attached hereto and by this reference made a part hereof.

"**Feasibility Period**" shall mean the period commencing on or about July 1, 2010 and ending at 5:00 PM on August 11, 2010, during which City has had the right to conduct the Investigations.

"**Final Completion**" shall mean:

(i) the Substantial Completion of the Base Building Improvements and/or the Space Improvements, as applicable, has occurred and all Punch List Items have been completed;

(ii) all construction equipment, materials and debris related to the Base Building Improvements and/or the Space Improvements, as applicable, have been removed from the Property;

(iii) Developer has delivered to City the Close-Out Items for the Base Building Improvements and/or the Space Improvements, as applicable.

"**Force Majeure Event**" shall mean catastrophic events that shall delay the completion of the construction of the Base Building Improvements and/or the Space Improvements by Developer such as (by way of example), the following:

(i) acts of declared or undeclared war by a foreign enemy;

(ii) acts of sabotage or terrorism;

(iii) civil disturbances, revolts, insurrections or riots; and

(iv) earthquake, flood, fire, hurricane or other casualty.

"**Foreclosure Sale**" shall mean any sale of the Property pursuant to a foreclosure of the Mortgage Documents.

"**Full Replacement Cost**" shall mean an amount equal to 100% of the full replacement cost (exclusive of costs of excavations, foundations, underground utilities and footings) of the Base Building Improvements or Space Improvements, as applicable.

"**Generator**" shall mean the back-up generator intended to provide electricity to the City Hall Facilities in the event of a power outage.

"**Generator Costs**" shall mean the purchase price of the Generator, the cost of installing the same into the Base Building Improvements, and any sales tax or other expenses related thereto.

"**Governmental Appeal**" shall mean any appeal by Developer to City, other Governmental Authority or any third party agreed upon by City and Developer of any denial of a Governmental Approval by the City Building Department.

"**Governmental Approval**" shall mean any approval Developer is required to obtain from any Governmental Authority in order to satisfy the requirements of Applicable Law.

"**Governmental Approval Delays**" shall mean:

(i) the failure of City to approve or reject Construction Documents required as a condition to the issuance of building permits for the construction of the Base Building Improvements and/or the Space Improvements, as applicable, within thirty (30) days of the initial submission thereof by Developer to City;

(ii) the failure of City to approve or reject modifications of Construction Documents requested by City or requested by Developer following the issuance of building permits for the construction of the Base Building Improvements and/or Space Improvements, as applicable, within four (4) Business Days of the submission thereof by Developer to City;

(iii) the failure of City to approve or reject work required to inspected by City in connection with the construction of the Base Building Improvements and/or Space Improvements, as applicable, within five (5) days of Developer's request for such inspection or three (3) Business Days following any request by Developer for re-inspection of any work rejected by City; or

(iv) any delay resulting from the City Building Department's denial of Governmental Approvals which are successfully appealed by Developer pursuant to a Governmental Appeal.

"**Governmental Authority**" shall mean the United States, the State of Florida, Miami-Dade County or City or any agency, department, commission, bureau or instrumentality of any of the foregoing having jurisdiction over the Property.

"**Guarantor**" shall mean Armando Codina and Miscellaneous Income Corp., a Delaware corporation.

"**Guaranty**" shall mean a Guaranty of Completion duly executed by Guarantor guaranteeing the lien free completion of the Base Building Improvements and, unless City or Developer shall make (or be deemed to make) the Space Improvements Assumption Election, the Space Improvements in substantially the same form as **Exhibit P** attached hereto and by this reference made a part hereof.

"**Hard Costs**" shall mean (i) with respect to the Base Building Improvements, Development Costs included within the Base Building GMP Component and (ii) with respect to the Space Improvements, Development Costs included within the Space Improvements GMP Component.

"**Hazardous Materials**" shall mean (i) any toxic substance or hazardous waste, hazardous substance or related hazardous material; (ii) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain

dielectric fluid containing levels of polychlorinated biphenyls in excess of presently existing federal, state or local safety guidelines, whichever are more stringent; and (iii) any substance, material or chemical which is defined as or included in the definition of "hazardous substances", "toxic substances", "hazardous materials", "hazardous wastes" or words of similar import under any federal, state or local statute, law, code, or ordinance or under the regulations adopted or guidelines promulgated pursuant thereto, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9061 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901, et seq.; and the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251, et seq.; provided, however, that the term "Hazardous Material" shall not include (x) motor oil and gasoline contained in or discharged from vehicles not used primarily for the transport of motor oil or gasoline, (y) mold or (z) materials which are stored or used in the ordinary course of operating the Property.

"**Improvements**" shall mean the Base Building Improvements and, unless City or Developer shall make the Space Improvements Assumption Election, the Space Improvements.

"**Infrastructure Improvements**" shall mean, collectively, (i) the Park and (ii) such on and off site improvements, including roadways and utilities, required to be completed as a condition to the use and occupancy of the City Hall Facilities.

"**Inspecting Consultant**" shall mean an architectural, engineering or other consulting firm reasonably acceptable to Developer who City shall designate from time to time by written notice to Developer as responsible for, on behalf of City, (i) participating in the process of the development of the Approved Base Building Plans and Approved Space Plans as provided in **Section 5** of this Agreement and (ii) inspecting, on not less than a monthly basis, the construction of the Base Building Improvements and, unless City or Developer shall make the Space Improvements Assumption Election, the Space Improvements in accordance with this Agreement. City hereby designates Pascual, Perez, Kiliddjian & Associates as the initial "**Inspecting Consultant**" hereunder.

"**Intangible Property**" shall mean all of the right, title and interest of Developer, if any and to the extent assignable, in utility contracts and deposits, surveys, plans and specifications, the Development Rights and any other rights relating to the ownership, use and operation of all or any part of the Land and Improvements.

"**Investigations**" shall mean such investigations concerning the Property, including the suitability of the Land for the location of the City Hall Facilities, as City shall elect to perform during the Feasibility Period.

"**IRS**" shall mean the Internal Revenue Service.

"**Land**" shall mean that certain parcel of land descried on **Exhibit Q** attached hereto and by this reference made a part hereof.

"**Land Component**" shall mean the sum of $1,312,500.00 to be paid by City to Developer at the time of Closing as part of the Purchase Price.

"**Land FMV**" shall mean the Fair Market Value of the Land as determined in accordance with the Fair Market Value Determination procedures.

"**Latent Defect**" shall mean any Construction Defect that City could not have reasonably discovered in the exercise of reasonable due diligence.

"**Legal Change Orders**" shall mean change orders submitted by Developer to Contractor with respect to the Base Building Improvements and/or the Space Improvements in connection with Legally Required Changes required after the execution of the Base Building GMP or the Space Improvements GMP, as applicable.

"**Legally Required Changes**" shall mean changes to the Approved Base Building Plans and/or the Approved Space Plans, as applicable, required as a result of the change in Applicable Law subsequent to the approval of the Contract Documents, but prior to the issuance of any applicable building permits with respect to the Base Building Improvements and/or Space Plan Improvements, as applicable.

"**Line Item Availability**" shall mean, with respect to any line item of Hard Costs or Soft Costs, exclusive of the Closing Costs, the City Expenses and the Mortgage Costs, the amount of such line item as provided in the then applicable Budget less any sums previously advanced by City out of the Deposit or as Monthly Progress Payments with respect to such line item.

"**Liquidated Damages Amount**" shall mean $1,500,000.

"**Losses**" shall mean any and all losses, damages, costs, fees, expenses, claims, suits, judgments, awards, liabilities (including but not limited to strict liabilities), obligations, debts, diminutions in value, foreseeable and unforeseeable consequential damages, litigation costs, attorneys' fees of whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings, actions, claims, suits, judgments or awards and any and all other Enforcement Costs.

"**Lowest Qualified Bidder**" shall mean the Approved Subcontractor submitting the lowest bid with respect to any Subcontract.

"**Major Subcontract**" shall mean each Subcontract in excess of $300,000.00.

"**Master Development Agreement**" shall mean that certain Master Development Agreement by and between the City and Developer, dated as of August 22, 2006.

"**Maximum Aggregate Advance Amount**" shall mean the sum of (i) the Soft Costs provided for in the Soft Cost Budget, exclusive of the Closing Costs, the City Expenses and the Mortgage Costs, (ii) the Base Building GMP and (iii) unless City or Developer shall exercise the Space Improvements Assumption Election, the Space Improvements GMP.

"**Maximum Developer Change Order Amount**" shall mean the lesser of (i) the aggregate amount of all Developer's Change Orders and (ii) the amount, as of the Closing Date, of the Unexpended Contingency, if any, available for application to the payment of Developer Change Orders.

"**Maximum Liability Amount**" shall mean an amount equal to two and one-half percent (2.50%) of the Purchase Price**.**

"Maximum Monthly Progress Payment Amount" shall mean, as of any Monthly Payment Date, the lesser of (i) the Monthly Progress Payment Request Amount, exclusive of any portion thereof to be applied to the payment of Closing Costs, the City Expenses or Mortgage Costs, and (ii) the sum of (A) the Line Item Availability, if any, (B) any Savings Reallocation and (C) any Unexpended Developer Contingency Reallocation, as reduced by (1) the amount of the Retainage, which shall be held back by City until the conditions applicable to the release of the same under the Base Building Contract, the Space Improvements Contract or applicable subcontract, as the case may be, have been satisfied, (2) the applicable Development Management Fee Holdback, and (3) at City's option, the amount of any Additional City Expenses.

"Maximum Profit Component Amount" shall mean (a) $1,950,000, in the event that neither City nor Developer shall make the Space Improvements Assumption Election, and (b) in the event that City or Developer shall make the Space Improvements Assumption Election, the amount by which (i) $1,950,000 shall exceed (ii) the Space Improvements Profit Reduction Amount.

"Minimum Profit Component Amount" shall mean (a) $1,850,000, provided that neither City nor Developer shall make the Space Improvements Assumption Election, and (b) in the event that City or Developer shall make the Space Improvements Assumption Election, the amount by which (i) $1,850,000 shall exceed (ii) the Space Improvements Profit Reduction Amount.

"**Monetary Encumbrance**" shall mean any mortgage or deed of trust, lien, or other encumbrance filed against the Property, including but not limited to any contractors' or subcontractors' liens filed against the Property in connection with the construction of the Base Building Improvements and/or the Space Improvements, as applicable, which may be satisfied by the payment of a liquidated amount.

"**Monthly Payment Date**" shall mean the date of each calendar month commencing following the Base Building Contract Date that is the later of (i) the fifteenth day of such calendar month and (ii) seven (7) Business Days following Developer's delivery of the Monthly Progress Payment Request for the preceding calendar month.

"**Monthly Progress Payment**" shall mean amounts paid by City to Developer pursuant to Monthly Progress Payment Requests.

"**Monthly Progress Payment Request**" shall mean each request prepared by Developer for each calendar month during the term of this Agreement and prior to the Closing, which shall include, without limitation, (i) a detail of all Development Costs incurred to date and any Reallocations, (ii) a list of all invoices and amounts to be paid under the such progress payment request, (iii) an Application for Payment, (iv) copies of all invoices to be paid under the such progress payment request as prepared and submitted by Architect and other vendors, (v) lien waivers from Contractor and all subcontractors, which lien waivers may be (x) conditioned upon the payment of a specified sum of money to be paid from the proceeds of the current progress payment

request, provided that unconditional lien waivers shall be furnished with respect to any work that was to be paid for out of the Monthly Progress Payment for the preceding month and/or (z) partial lien waivers to the extent such waivers are intended to cover only a part of the work to be performed by Contractor and/or such subcontractors, (vi) a summary spreadsheet of all lien waivers received through the date of such request, (vii) the Monthly Project Schedule Update and (viii) Developer's certification that the information contained in the such progress payment request is true, complete and correct, to Developer's knowledge.

"**Monthly Progress Payment Request Amount**" shall mean the amount of the Monthly Progress Payment requested by Developer pursuant to a Monthly Progress Payment Request.

"**Monthly Project Schedule Update**" shall mean an update of the Project Schedule with respect to the construction of the Base Building Improvements and, unless City or Developer shall exercise the Space Improvements Assumption Election, the Space Improvements to be furnished by Developer to City on a monthly basis.

"**Mortgage**" shall mean a mortgage and security agreement to be given by Developer to City as security for the payment and performance of Developer's obligations hereunder in substantially the same form as **Exhibit R** attached hereto and by this reference made a part hereof.

"**Mortgage Costs**" shall mean any and all documentary stamp tax, intangible tax, recording charges, title insurance premiums and other out-of-pocket expenses incurred by City or Developer in connection with the execution, delivery and/or recordation of the Mortgage Documents, as applicable, and the issuance of title insurance insuring the lien of the Mortgage.

"**Mortgage Default**" shall mean the occurrence of any event that is defined as an "Event of Default" under the Mortgage Note, the Mortgage or any other Mortgage Document.

"**Mortgage Documents**" shall mean the Mortgage, the Mortgage Note, the Guaranty, the Collateral Assignment and such other ancillary agreements as City may reasonably require in order to secure the payment and performance of Developer's obligations hereunder, each in form and substance reasonably acceptable to City, Developer and Guarantor.

"**Mortgage Note**" shall mean a promissory note evidencing the amount of the Deposit and the Monthly Progress Payments disbursed by City to Developer in substantially the same form as **Exhibit S** attached hereto and by this reference made a part hereof.

"**Net City Delay**" shall mean, if applicable, the number of days by which the days of City Delay shall exceed the days of Developer Delay.

"**Net Developer Delay**" shall mean, if applicable, the number of days by which the days of Developer Delay shall exceed the days of City Delay.

"**Objections**" shall mean City's objections with respect to the results of the Investigations.

"**Occupancy Permit**" shall mean a temporary certificate of occupancy, occupancy permit, or the equivalent of either of the foregoing.

"**OFAC**" shall mean the Office of Foreign Asset Control of the Department of the Treasury.

"**OFAC Regulations**" shall mean the regulations of OFAC (including those named on OFAC's Specially Designated Nationals and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism).

"**Office Improvements**" shall mean the City Hall Facilities as modified by any Required Office Modifications.

"**Office Improvements FMV**" shall mean the Fair Market Value of the Office Improvements as determined in accordance with the Fair Market Value Determination Procedures, provided that if there shall be any bona-fide arm's length sale of the Land and the Office Improvements by Developer to a third party that is not affiliated with Developer prior to the conclusion of such Fair Market Value Determination Procedures, the "**Office Improvements FMV**" shall be conclusively established as the amount by which (a) the gross sale proceeds from the sale of the Land and such Office Improvements shall exceed (b) the sum of the Land Component and the closing costs incurred by Developer in connection with such sale of the Office Improvements.

"**Option Agreement**" shall mean an agreement in substantially the same form as set forth in **Exhibit T** attached hereto and by this reference made a part hereof pursuant to which Optionee shall grant City the option to purchase an approximately 1.2 acre triangularly shaped parcel of land located to the east of the Park Site.

"**Optionee**" shall mean Doral A6 Phase LLC, a Delaware limited liability company.

"**Outside Closing Date**" shall mean the first Business Day immediately following the expiration of the fifteen (15) day period commencing on the date immediately following the Outside Completion Date.

"**Outside Commencement Date**" shall mean March 31, 2011, provided that such date shall be extended by one (1) day for each day of City Delay and each day of Unavoidable Delay which results in a delay of the Commencement of Construction. For purposes of clarification, in the event that any day of City Delay coincides with a day of Unavoidable Delay, then the Outside Commencement Date shall only be extended by one (1) day for each such day, rather than one (1) day for City Delay and an additional day for Unavoidable Delay.

"**Outside Completion Date**" shall mean the first Business Day immediately following the expiration of the three hundred sixty-five (365) day period commencing on the date immediately following the Scheduled Completion Date, provided that the Outside Completion Date shall be extended by one (1) day for each day of City Delay and each day of Unavoidable Delay that occurs after the Commencement of Construction. For purposes of clarification, in the event that any day of City Delay coincides with a day of Unavoidable Delay, then the Outside Completion Date shall only be extended by one (1) day for each such day, rather than one (1) day for City Delay and an additional day for Unavoidable Delay.

"**Owner's Affidavit**" shall mean a gap, possession and mechanic's lien affidavit to be delivered by Developer to City at Closing in substantially the same form as set forth in **Exhibit U** attached hereto and by this reference made a part hereof.

"**Park**" shall mean the park to be developed on the Park Site in accordance with the requirements of the Master Development Agreement.

"**Park Site**" shall mean that certain approximately three acre parcel of land located South of the Land to be developed as a park site pursuant to the Master Development Agreement.

"**Parties**" shall mean, collectively, City and Developer.

"**Permitted Exceptions**" shall mean, collectively, (i) any state of facts that an accurate survey of the Property may show, (ii) those matters specifically set forth on **Exhibit V** attached hereto and by this reference made a part hereof, (c) all Applicable Laws, (d) all presently existing and future liens of real estate taxes or assessments and water rates, water meter charges, water frontage charges and sewer taxes, rents and charges, if any, provided that such items are not yet due and payable and are apportioned as provided in this Agreement, (e) normal and customary easements, covenants, conditions and restrictions required by any Governmental Authority or utility company in connection with the construction and operation of the City Hall Facilities or the furnishing of utility service thereto, (f) other normal and customary easements, covenants, conditions and restrictions with respect to which City shall grant its prior written approval, such approval not to be unreasonably withheld, conditioned or delayed and (f) any other matter or thing affecting title to the Property that City shall have agreed or be deemed to have agreed to waive as an Unpermitted Exception.

"**Person**" shall mean any individual, corporation, partnership, limited partnership, limited liability company, trust, Governmental Authority or other entity.

"**Personal Property**" shall mean all furniture, fixtures and equipment to be installed and provided by Developer as part of the construction of the Base Building Improvements and, unless City or Developer shall make the Space Improvements Assumption Election, the Space Improvements.

"**Post-GMP City Default**" shall mean (a) a default in any material respect by City in the payment or performance of any obligation of City that occurs following City's delivery of a Base Building GMP Approval Notice and the execution of the Base Building Contract which default remains uncured for thirty (30) days or more following Developer's written notice thereof to City or (b) the failure of the Closing to take place on or before the Scheduled Closing Date, or any other date to which the Closing Date may be extended, as the result of a default in any material respect by City in the payment or performance of any obligation that is a condition precedent to Developer's obligation to close on the sale of the Property to City.

"Post-GMP Developer Default" shall mean the occurrence of any one or more of the following the Base Building Contract Date: (a) any default by Developer in the payment of Development Costs which Developer is required to pay out of its own funds during the continuance of a Shortfall which default remains uncured for thirty (30) days following City's delivery of written notice of the existence of such Shortfall to Developer, provided that if Developer shall dispute

the existence of such Shortfall in accordance with the dispute resolution provisions of **Section 20** hereof, Developer's failure to make payment of any disputed sums shall not constitute a "**Post-GMP Developer Default**" unless such failure continues for fifteen (15) days following the final determination of the existence of a Shortfall pursuant to such dispute resolution provisions, (b) the intentional creation of any Unpermitted Exception by Developer, (c) the occurrence of any Mortgage Default, (d) the failure of Developer to cause the Substantial Completion of the Base Building Improvements and, unless City or Developer shall make the Space Improvements Assumption Election, the Space Improvements on or before the Outside Completion Date, or (e) provided that all conditions precedent to the obligation of City to purchase the Property set forth in **Section 6.A.** of this Agreement have been satisfied, the failure of the Closing to take place on or before the Outside Closing Date as the result of a default in any material respect by Developer in the payment or performance of any obligation that is a condition precedent to City's obligation to close on the purchase of the Property from Developer.

"Pre-GMP Developer Default" shall mean (a) the representation of Developer contained in **Section 10.A.(15)** hereof shall be untrue as of the Effective Date or (b) any material default by Developer in the payment or performance of its obligations hereunder which shall occur prior to the Base Building Contract Date and shall remain uncured for fifteen (15) or more days following City's delivery of written notice thereof to Developer.

"**Pre-GMP Soft Cost Budget**" shall mean the Pre-GMP Soft Cost Budget attached hereto as **Exhibit W** and by this reference made a part hereof.

"**Pre-GMP Soft Costs**" shall mean such Soft Costs as may be incurred by Developer in connection with the design, development and construction of the of the Improvements prior to the execution of the Base Building Contract.

"**Profit Component**" shall mean an amount to be paid by City to Developer at Closing as part of the Purchase Price equal to the sum of (a) ten percent (10%) of (i) the Base Building GMP Component, (ii) the Land Component and (iii) the Soft Cost Component and (b) the Space Improvements Profit Component, provided that in no event shall the Profit Component be less than the Minimum Profit Component Amount or greater than the Maximum Profit Component Amount.

"**Progress Payment Amount"** shall mean the amount of the Monthly Progress Payment Request for each month until the Closing occurs.

"**Project Schedule"** shall mean, collectively, the Base Building Improvements Project Schedule and the Space Improvements Project Schedule.

"**Property**" shall mean, collectively, the Land, the Improvements, the Personal Property, the Appurtenances, the Intangible Property and the Contracts.

"**Proposed Change Order Notice**" shall mean a written notice from a Party to the other Party confirming the first Party's interest in proceeding with a City Change Order.

"**Punch List**" shall mean a list prepared by Architect of the items of work required to be completed in order to achieve Final Completion of the Base Building Improvements or Space Improvements, as applicable.

"**Punch List Items**" shall mean the items described in the Punch List.

"**Punch List Items Escrow Account**" shall mean an interest bearing account to be established by Escrow Agent with a financial institution reasonably satisfactory to City and Developer and held by Escrow Agent in accordance with the provisions of the Punch List Escrow Agreement.

"**Punch List Items Escrow Agreement**" shall mean an escrow agreement to be entered into by and among City, Developer and Escrow Agent in form reasonably acceptable to such parties for purposes of insuring that Developer causes Contractor to perform all of its obligations in connection with the completion of the Punch List Items.

"**Punch List Items Escrow Amount**" shall mean an amount equal to one hundred fifty percent (150%) of the estimated cost to complete the Punch List Items required to be completed pursuant to the Punch List Items Escrow Agreement.

"**Purchase Price**" shall mean the sum of the Purchase Price Components.

"**Purchase Price Components**" shall mean, collectively, (a) the Land Component, (b) the Base Building GMP Component, (c) the Soft Cost Component, (d) unless City or Developer shall make the Space Improvements Assumption Election, the Space Improvements GMP Component, (e) the Developer Contingency Component and (f) the Profit Component.

"Reallocation" shall mean any Savings Reallocation or Unexpended Developer Contingency Reallocation.

"Reduced Return Amount" shall mean, if applicable, with respect to each dollar of the Land Component, the Developer Contingency Savings Amount and the Profit Component, an amount equal to the product of (i) .10 and (ii) a fraction, the numerator of which shall be the number of days between the Scheduled Closing Date and the date on which each such dollar of the Land Component, the Developer Contingency Component and the Profit Component is actually received by Developer and the denominator of which shall be 365.

"**Remaining Base Building Budgeted Amount**" shall mean, as of any Monthly Payment Date, the amount, if any, by which the sum of (a) the then estimated amount of the Base Building GMP Component and the Unexpended Contingency, if any, available for the payment of Base Building GMP Hard Costs shall exceed (b) the aggregate amount advanced to Developer out of the Deposit and as Monthly Progress Payments for the payment of Base Building GMP Hard Costs as of such Monthly Payment Date.

"**Remaining Space Improvements Budgeted Amount**" shall mean, as of any Monthly Payment Date, the amount, if any, by which the sum of (a) the then estimated amount of the Space Improvements GMP Component and the Unexpended Contingency, if any, available for the payment of Space Improvements GMP Hard Costs shall exceed (b) the aggregate amount

advanced to Developer out of the Deposit and as Monthly Progress Payments for the payment of Space Improvement GMP Hard Costs as of such Monthly Payment Date.

"**Remaining Budgeted Amount**" shall mean the Remaining Base Building Improvements Budgeted Amount or the Remaining Space Improvements Budgeted Amount, as applicable.

"**Required Approval Date**" shall mean:

(i) with respect to the Space Layout Approval Notice, the date five (5) Business Days following Developer's delivery of a second Revised Space Layout to City pursuant to **Section 5.D.(6)**;

(ii) with respect to the Space Plans Approval Notice, the date five (5) Business Days following Developer's delivery of a second set of Revised Space Plans to City pursuant to **Section 5.E.(9)**; and

(iii) with respect to the Space Improvements GMP Approval Notice, if applicable, the date five (5) Business Days following Developer's delivery of the Revised Space Improvements GMP to City pursuant to **Section 5.F.(4)**.

"**Required Condition**" shall mean:

(i) with respect to the Base Building Improvements, a condition that substantially conforms to the requirements of the Approved Base Building Plans and the Base Building Contract; and

(ii) with respect to the Space Improvements, a condition that substantially conforms to the requirements of the Approved Base Building Plans, the Approved Space Plans and the Space Improvements Contract.

"**Required Office Modifications**" shall mean such modifications to the City Hall Facilities as may be required such that the same may be marketed for sale as a class A suburban office building with a conceptual design, base building improvements, space improvements and tenant finishes comparable to the office building being constructed by an affiliate of Developer at 8333 N.W. **[52nd Street]**, Doral, Florida.

"**Retainage**" shall mean the retainage to be held back from the Monthly Progress Payments pursuant to the Disbursement Conditions and Procedures.

"Revised 90% Base Building Construction Documents" shall mean revised 90% Base Building Construction Documents that take into account any comments received from City pursuant to comments on the 90% Base Building Construction Documents or a Base Building Plans Disapproval Notice.

"Revised 90% Space Plan Construction Documents" shall mean the revised 90% Space Plans that take into consideration any comments received from the City in comments on the 90% Space Plan Construction Documents or a Space Plan Disapproval Notice.

"Revised Space Improvements GMP" shall mean the revised Space Improvements GMP which takes into consideration any value engineering resulting from comments received from the City in a Space Improvements GMP Disapproval Notice.

"Revised Space Improvements GMP Notice" shall mean the written notice from Developer to City setting forth the Revised Space Improvements GMP.

"**RFP**" shall mean that certain request for proposal ("**RFP #2009-26**") issued by City pursuant to which City requested the Proposals.

"Savings" shall mean the amount by which the Remaining Budgeted Amount attributable to any line item of Hard Costs or Soft Costs shall exceed the total amount expended, and reasonably anticipated to be expended by Developer in connection with such line item, exclusive of Closing Costs, the City Expenses and any Mortgage Costs, as reasonably documented by Developer from time to time. Any dispute regarding the amount of "Savings" shall be resolved in accordance with the dispute resolution provisions of Section 20 of this Agreement.

"Savings Reallocation" shall mean the amount of any Savings which Developer shall elect to allocate to the payment of a Cost Overrun in any Hard Cost or Soft Cost line item.

"**Scheduled Closing Date**" shall mean the first Business Day immediately following the expiration of the fifteen (15) day period commencing on the date immediately following the Scheduled Completion Date.

"**Scheduled Completion Date**" shall mean the date that is the later of (i) June 30, 2012 and (ii) the date that is four hundred fifty-five (455) days after the earlier of (a) the Commencement of Construction and (b) the Outside Commencement Date.

"**Section 1445 Affidavit**" shall mean an affidavit from Developer which satisfies the requirements of Section 1445 of the Internal Revenue Code, as amended, in substantially the same form as **Exhibit X** attached hereto and by this reference made a part hereof.

"Shortfall" shall mean that the Applicable Estimated Completion Cost Amount shall exceed the Applicable Remaining Budgeted Amount. Any dispute with respect to whether a "**Shortfall**" shall exist shall be resolved in accordance with the dispute resolution provisions of **Section 20** of this Agreement.

"**Soft Cost Budget**" shall mean the Soft Cost Budget attached hereto as **Exhibit Y** and by this reference made a part hereof.

"**Soft Cost Component**" shall mean the actual amount of out-of-pocket expenses incurred and/or accrued as of the Closing Date on account of the Soft Costs described in the Soft Cost Budget, including but not limited to, the Closing Costs estimated to be paid on the Closing Date and any additional Soft Costs anticipated to be incurred after the Closing Date in connection with the Final Completion of the Base Building Improvements and, unless City or Developer shall make the Space Improvements Assumption Election, the Space Improvements, provided that in no event shall the "**Soft Cost Component**", exclusive of the Closing Costs, the City Expenses and the Mortgage Costs, exceed the amount provided therefor in the Soft Cost Budget, except to the

extent of any increases in Soft Costs resulting from City Change Orders and Legally Required Changes.

"**Soft Costs**" shall mean all Development Costs other than the Hard Costs. For purposes of clarification, the "**Soft Costs**" shall include the City Attorneys' Fees, the City Consultant's Fees, the Closing Costs, the Developer Attorneys' Fees and the Mortgage Costs; however, the City Expenses shall only be included in the Soft Costs to the extent of the actual amount provided therefor in the Soft Cost Budget.

"**Space Improvements**" shall mean all improvements to be built in accordance with the Approved Space Plans.

"**Space Improvements Approval Conditions**" shall mean the delivery of the Space Layout Approval Notice, Space Plans Approval Notice and the Space Improvements GMP Approval Notice, if required, by City to Developer.

"**Space Improvements Assumption Election"** shall mean the election by City or Developer to require that City undertake the planning, permitting, development and construction of the Space Improvements.

"**Space Improvements Assumption Notice"** shall mean a written notice from one of the Parties to the other confirming its exercise of the Space Improvements Assumption Election.

"**Space Improvements Budget**" shall mean the budget of the Hard Costs to be incurred in connection with the construction of the Space Improvements as of the time of the execution of the Space Improvements Contract, as such budget may be modified by Developer from time to time.

"**Space Improvements Contract**" shall mean a construction contract to be entered into by Developer with Contractor for the construction of the Space Improvements unless City or Developer shall make the Space Improvements Assumption Election.

"**Space Improvements Escrow Account**" shall mean an interest bearing account to be established by Escrow Agent with a financial institution reasonably satisfactory to City and Developer and held by Escrow Agent in accordance with the provisions of the Space Improvements Escrow Agreement.

"**Space Improvements Escrow Agreement**" shall mean an escrow agreement to be entered into by and among City, Developer and Escrow Agent in form reasonably acceptable to such Parties for purposes of insuring that Developer causes Contractor to perform all of its obligations in connection with the construction of the Space Improvements in the event of the acceleration of the time for Closing pursuant to **Section 7.A.(2)**.

"**Space Improvements Escrow Amount**" shall mean, in the event of Developer's exercise of its rights under **Section 7.A.(2)** hereof, an amount equal to the estimated cost of completion of the Space Improvements as of the Closing Date.

"**Space Improvements GMP**" shall mean the guaranteed maximum price which the Contractor is prepared to incorporate in the Space Improvements Contract as the guaranteed maximum price for the construction of the Space Improvements in accordance with the Approved Space Plans and the terms and conditions of the Space Improvements Contract.

"**Space Improvements GMP Approval Notice**" shall mean a written notice from City to Developer confirming City's approval of the Space Improvements GMP or Revised Space Improvements GMP, as applicable.

"**Space Improvements GMP Component**" shall mean the Space Improvements GMP, as adjusted to account for any increases or decreases in the amount paid to Contractor pursuant to the Space Improvements Contract on account of Change Orders and the Space Improvements GMP Savings Amount, provided that in no event shall the aggregate amount of the increase in the Base Building GMP Component and the Space Improvements GMP Component resulting from Developer Change Orders exceed the Maximum Developer Change Order Amount.

"**Space Improvements GMP Delivery Date**" shall mean the later of (1) April 29, 2011 and (2) sixty (60) days following City's delivery of a Space Plans Approval Notice to Developer.

"**Space Improvements GMP Disapproval Notice**" shall mean a written notice from the City to Developer indicating City's disapproval of the Space Improvements GMP and identifying in reasonable detail any issues and items with respect to which City shall seek that Developer, Architect and Contractor conduct further value engineering.

"**Space Improvements GMP Hard Costs**" shall mean such Hard Costs as shall be incurred by Developer in connection with the construction of the Space Improvements.

"**Space Improvements GMP Notice**" shall mean a written notice from the Developer to City setting forth the Space Improvements GMP.

"**Space Improvements GMP Savings Amount**" shall mean the amount of savings that Contractor shall be required to credit against the Space Improvements GMP pursuant to the Space Improvements Contract.

"Space Improvements Profit Component" shall mean an amount equal to ten percent (10%) of the Space Improvements GMP Component, provided that the "**Space Improvements Profit Component**" shall be reduced by the Space Improvements Profit Reduction Amount if City or Developer shall make the Space Improvements Assumption Election.

"Space Improvements Profit Reduction Amount" shall mean an amount equal to five percent (5%) of the estimated total Hard Costs to be incurred by City in connection with the construction of the Space Improvements, based on the Construction Documents as of the date of the Space Improvements Assumption Election, as reasonably determined by City and Developer. Any dispute regarding the amount of the "**Space Improvements Profit Reduction Amount**" shall be resolved in accordance with the dispute resolution provisions of **Section 20** of this Agreement.

"**Space Improvements Project Schedule**" shall mean the project schedule for the construction of the Space Improvements to be established as of the time of the execution of the Space

Improvements Contract, as such project schedule may be modified by Developer from time to time.

"Space Planner" shall mean the Architect or such other architect as may be selected by Developer and approved by City to act as the architect for the Space Improvements, such approval not to be unreasonably withheld, conditioned or delayed.

"Space Planner's Agreement" shall mean an agreement between Developer and Space Planner pursuant to which Developer shall retain Space Planner to design the Space Improvements in accordance with the terms and conditions of this Agreement.

"**Space Plans Approval Notice**" shall mean a written notice from City to Developer confirming City's approval of the 90% Space Plan Construction Documents or Revised 90% Space Plan Construction Documents, as applicable.

"**Space Plans Disapproval Notice**" shall mean a written notice from City to Developer indicating City's disapproval of the 90% Space Plan Construction Documents or Revised 90% Space Plan Construction Documents, as applicable and identifying the reasons for such disapproval in reasonable detail.

"**Subcontract**" shall mean any subcontract to be entered into by Contractor pursuant to the Base Building Contract or the Space Improvements Contract, as applicable.

"**Substantial Completion**" shall mean that:

(i) with respect to the Base Building Improvements, (a) the Base Building Improvements have been substantially completed in accordance with the Approved Base Building Plans in such a manner that will permit construction of the Space Improvements; (b) a Certificate of Completion shall have been issued for the Base Building Improvements by City; (c) Developer shall have delivered to City a certificate of substantial completion with respect to the Base Building Improvements prepared by the Architect in the form of AIA Form G704, including the Punch-List; (d) the cost of completion of the Punch List Items shall not exceed two and one half percent (2.50%) of the Base Building GMP, exclusive of any unused contingency; and (e) Developer shall have furnished to City such affidavits and final waivers of lien from the Contractor and all subcontractors, materialmen and suppliers as may be reasonably required by the Title Company, subject to the completion of the Punch List Items, in connection with the issuance of the Title Policy.

(ii) with respect to the Space Improvements, (a) the Space Improvements have been substantially completed in accordance with the Approved Space Plans; (b) such Occupancy Permits as may be required in order to permit City to occupy the Base Building Improvements, provided that such Occupancy Permits shall not be deemed required for purposes of achieving Substantial Completion of the Space Improvements to the extent that the failure to obtain the same is the result of City Delay; (c) Developer shall have delivered to City a certificate of substantial completion with respect to the Space Improvements prepared by the Space Planner in the form of AIA Form G704, including the Punch-List; (d) the cost of completion of the Punch List Items shall not exceed two and one-half percent (2.50%) of the Space Improvements GMP, exclusive of any unused contingency; and (e) Developer shall have furnished to City such

affidavits and final waivers of lien from the Contractor and all subcontractors, materialmen and suppliers as may be reasonably required by the Title Company, subject to the completion of the Punch List Items, in connection with the issuance of the Title Policy.

(iii) with respect to the Infrastructure Improvements, (a) the substantial completion of such Infrastructure Improvements; (b) the payment of the costs of the construction of such Infrastructure Improvements; and (c) if applicable, the issuance of a final or temporary certificate of completion with respect to such Infrastructure Improvements by City.

"**Survey**" shall mean a survey of the Property prepared by Surveyor and certified by Surveyor as having been prepared in accordance with the minimum technical requirements for land surveys promulgated pursuant to the Florida Administrative Code.

"**Surveyor**" shall mean Ludovici & Orange Consulting Engineers, Inc.

"**Taking**" shall mean any proposed taking of the Property, or any portion thereof by a Condemning Authority.

"**Title Commitment**" shall mean a commitment for an owner's fee title insurance policy in the standard form issued by the Title Company in the State of Florida insuring City's interest in the Property in an amount equal to the Purchase Price.

"**Title Company**" shall mean Chicago Title Insurance Company or another nationally recognized title insurance company.

"**Title Objection Notice**" shall mean a written notice from City to Developer identifying one or more Unpermitted Exceptions, subject to which City is unwilling to accept title to the Property.

"**Title Policy**" shall mean the owner's policy of title insurance to be issued by the Title Company pursuant to the Title Commitment.

"**Title Response Notice**" shall mean a written notice from Developer to City pursuant to which Developer shall elect whether to eliminate any one or more Unpermitted Exceptions (excluding Monetary Encumbrances, which Developer shall be required to remove pursuant to this Agreement) to which City shall make timely objection in accordance with the provisions of **Section 4.B.**, or arrange for normal and customary affirmative title insurance or special endorsements generally accepted by institutional investors in commercial real estate, without special premium to City and in form and substance reasonably acceptable to City in all material respects, insuring against enforcement of such Unpermitted Exceptions against, or collection of the same out of, the Property.

"**Unavoidable Delay**" shall mean, as applicable, the actual number of days of delay incurred by Developer in the design or construction of the Base Building Improvements and/or the Space Improvements by reason of any one or more (i) Force Majeure Events, (ii) governmental preemption in the case of a national emergency; (iii) any changes in Applicable Law adopted after the date of the approval of the Approved Base Building Plans or Approved Space Plans; or (iv) any condemnation with respect to the Property or any portion thereof. For purposes of clarification, the term "Unavoidable Delay" shall not include (a) economic hardship, (b)

insufficiency of funds, (c) changes in market conditions, or (d) late delivery or failure delivery of materials, equipment or supplies or the unavailability of subcontractors, sub-subcontractors, materialmen or suppliers, except to the extent that such late delivery or failure delivery of materials, equipment or supplies or the unavailability of subcontractors, sub-subcontractors, materialmen or suppliers shall occur as the proximate result of one or more of the events described in clauses (i) through (iv) of this definition of the term "**Unavoidable Delay**". Further, in no event shall the term "Unavoidable Delay" include any delays resulting from or otherwise relating to the eviction of any existing tenants with respect to the Land or the demolition of any building or buildings existing on the Land.

"**Unexpended Developer Contingency**" shall mean such portion, if any, of the Developer Contingency not required for the payment of Hard Costs or Soft Costs.

"Unexpended Developer Contingency Reallocation" shall mean any portion of the Unexpended Developer Contingency which Developer shall elect to allocate to the payment of a Cost Overrun in any Hard Cost or Soft Cost line item.

"Unpermitted Exceptions" shall mean exceptions(s) to title or survey matters other than the Permitted Exceptions.

"**Update**" shall mean an update certificate duly executed by Developer certifying that all of the Closing Date Representations remain true and correct in all material respects as of the Closing Date.

"**Warranty" or "Warranties"** shall mean each of the warranties provided to Developer by Contractor or any Subcontractor in connection with the construction of the Base Building Improvements and/or the Space Improvements, as applicable.

"**Warranty Obligations**" shall mean, with respect to Contractor and each Subcontractor, the obligation of Contractor or such Subcontractor pursuant to any Warranties given by Contractor or such Subcontractor with respect to the construction of the Base Building Improvements and/or the Space Improvements, as applicable.

Exhibit B

INTENTIONALLY DELETED

Exhibit C

Approved Subcontractors

[TO BE APPROVED BY CITY MANAGER WITHIN THIRTY (30) DAYS AFTER EXECUTION OF THE AGREEMENT]

Exhibit D

Form of Assignment of Contracts

ASSIGNMENT AND ASSUMPTION OF CONTRACTS

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACTS (this "Assignment") is executed as of the ____ day of _____, 201__, by and between **CM DORAL CH DEVELOPMENT LLC**, a Delaware limited liability company, having an address c/o Codina Partners, LLC, 135 San Lorenzo Avenue, Suite 750, Coral Gables, Florida 33146 ("Assignor") and **CITY OF DORAL, FLORIDA**, a municipal corporation existing under the laws of the State of Florida ("Assignee").

WHEREAS, Assignee is this day purchasing from Assignor and Assignor is conveying to Assignee the Property. (Capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in that certain Agreement of Purchase of Sale, dated as of **[_____]**, 2010, by and between Assignor and Assignee (the "Purchase Agreement"));

WHEREAS, in connection with its ownership and development of the Property, Assignor has entered into those certain service contracts in effect on the date hereof, as more particularly listed and described on Exhibit A annexed hereto and made a part hereof (collectively, the "Contracts"); and

WHEREAS, Assignor desires to transfer and assign to Assignee, and Assignee desires to assume as herein provided, all of Assignor's right, title and interest in and to the Contracts.

NOW, THEREFORE, in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignor hereby transfers and assigns to Assignee all right, title and interest of Assignor in and to the Contracts.

2. This Assignment shall constitute a direction and full authority to any person or entity that is a party to any of the Contracts to perform its obligations under the Contracts for the benefit of Assignee without further proof to any such party of the assignment to Assignee of the Contracts.

3. Assignee hereby affirmatively and unconditionally assumes all of the obligations and liabilities of Assignor under the Contracts arising from and after the date hereof.

4. Except as otherwise expressly set forth in the Purchase Agreement, this Assignment is made without warranty, representation, or guaranty by, or recourse against Assignor of any kind whatsoever.

5. Assignor shall be liable for and Assignor hereby indemnifies and holds harmless Assignee from and against any and all actual out-of-pocket losses, damages, liabilities, costs, expenses (including reasonable attorneys' fees and disbursements) and charges Assignee may incur or suffer as a result of the failure of Assignor to perform any obligations under the Contracts that shall have accrued prior to the date hereof, provided that to the extent that such losses,

damages, liabilities, costs or charges shall arise from any facts or circumstances as shall constitute a breach of the representations and warranties of Assignor contained in the Purchase Agreement, Assignor's liability shall be subject to the restrictions set forth in **Section 10.F.** and **Section 12.C.(1)** of the Purchase Agreement with respect to the Maximum Liability Amount, and the time for institution of any claim based on the breach of a representation or warranty of Assignor.

6. Assignee shall be liable for and Assignee hereby indemnifies and holds harmless Assignor from and against all actual out-of-pocket losses, damages, liabilities, costs, expenses (including reasonable attorneys' fees and disbursements) and charges Assignor or any Developer Related Party may incur or suffer as a result of the failure of Assignee to perform any obligations under the Contracts that shall accrue from and after the date hereof.

7. This Assignment may be executed in any number of counterparts, each of which may be executed by any one or more of the parties hereto, but all of which shall constitute one and the same instrument, and shall be binding and effective when all parties hereto have executed and delivered at least one counterpart.

8. The terms and provisions of this Assignment shall be binding upon and inure to the benefit of the respective parties hereto, and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed as of the day and year first written above.

ASSIGNOR:

CM DORAL CH DEVELOPMENT LLC, a Delaware limited liability company

By:_____
Name:_____
Title:_____

ASSIGNEE:

CITY OF DORAL, FLORIDA, a municipal corporation existing under the laws of the State of Florida

By:_____
Name:_____
Title:_____

EXHIBIT A

(Contracts)

Exhibit E

Form of Assignment of Development Rights

PREPARED BY AND RETURN TO:
Manuel A. Fernandez, Esq.
Stroock & Stroock & Lavan LLP
200 South Biscayne Boulevard, Suite 3100
Miami, Florida 33131

ASSIGNMENT OF DEVELOPMENT RIGHTS
(Doral City Hall Facilities)

This ASSIGNMENT OF DEVELOPMENT RIGHTS (the "Assignment") made and entered into as of this _____ day of _____, 201__, by and between **CM DORAL CH DEVELOPMENT LLC**, a Delaware limited liability company, ("Assignor"), having an address c/o Codina Partners, LLC, 135 San Lorenzo Avenue, Suite 750, Coral Gables, Florida 33146 and **CITY OF DORAL, FLORIDA**, a municipal corporation existing under the laws of the State of Florida ("Assignee").

WITNESSETH:

WHEREAS, CM Doral Development Company, LLC, a Delaware limited liability company ("CMDDC"), and Assignee are party to that certain Master Development Agreement dated as of August 22, 2006 and recorded October 3, 2006, in Official Records Book 24968, at Page 2689 of the Public Records of Miami-Dade County, Florida (the "Master Development Agreement");

WHEREAS, pursuant to that certain Agreement of Purchase of Sale dated as of [_____], 2010 between Assignor and Assignee, Assignee is this day purchasing from Assignor and Assignor is conveying to Assignee that certain parcel of land more particularly described on **Exhibit A** attached hereto and by this reference made a part hereof, together with all improvements located thereon (the "Property"), to be used as a municipal office building, a parking garage containing not less than 251 parking spaces, and ancillary facilities, all in connection with the civic headquarters for City (the "City Hall Facilities");

WHEREAS, Assignor has previously received an assignment of the Development Rights (as defined below) from CMDDC; and

WHEREAS, the parties desire to allocate to Assignee certain development rights set forth in the Master Development Agreement and to memorialize certain development covenants, obligations and restrictions with respect to the Property.

NOW, THEREFORE, in consideration of the premises and the conveyance of the Property from Assignor to Assignee, the parties hereby agree as follows:

1. **Incorporation of Recitals**. The foregoing recitals are true and correct and are hereby incorporated by reference.

2. **Assignment of Development Rights**. Assignor hereby assigns and allocates to Assignee the right to develop on the Property up to 60,000 "square feet of municipal/civic space for use by the City of Doral, along with all appropriate related and associated ancillary uses", as such phrase is used in Section 5(a) of the Master Development Agreement, together with such further development rights, entitlements and privileges as necessary and appropriate under the Master Development Agreement to accommodate the development of the Property for the City Hall Facilities (collectively, the "Development Rights"). Assignor covenants not to assign or allocate to any other party any development rights or interests under the Master Development Agreement that would preclude Assignee from receiving the benefit of the Development Rights.

3. **Agreement to Not Develop**. Assignee hereby (i) acknowledges that, with respect to the Property, it has not received, and is not entitled to, any development rights or interests under the Master Development Agreement other than the Development Rights, and (ii) agrees that for so long as the Master Development Agreement remains in effect, Assignee shall not develop any improvements on the Property except as permitted pursuant to the Development Rights.

4. **Notices**. All notices under this Assignment shall be in writing and shall be effective upon receipt whether delivered by personal delivery or recognized overnight delivery service, telecopy, or sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed to the respective parties as follows:

If to Assignor, to:

c/o Codina Partners, LLC
135 San Lorenzo Avenue
Suite 750
Coral Gables, Florida 33146
Attn: Mr. Armando Codina
Fax Number: (305) 529-1301

with a copy to:

Developer Downtown Doral, LLC
c/o Codina Partners, LLC
135 San Lorenzo Avenue
Suite 750
Coral Gables, Florida 33146
Attn: Mr. K. Lawrence Gragg
Fax Number: (305) 529-1301

with a copy to:

J.P. Morgan Investment Management, Inc.
P.O. Box 5005
New York, NY 10163-5005

with a copy to:

c/o J.P. Morgan Investment Management Inc.
245 Park Avenue
New York, NY 10167
Attn: Joseph B. Dobronyi, Jr.
Fax Number: (212) 648-2265

with a copy to:

Stroock & Stroock & Lavan LLP
200 South Biscayne Boulevard, Suite 3100
Miami, Florida 33131
Attn: Manuel A. Fernandez, Esq.
Fax Number: (305) 789-9302

If to City, to:

City of Doral, Florida
Office of City Manager
8300 N.W. 53rd Street
Suite 100
Doral, Florida 33166
Attn: Yvonne Soler-McKinley
Fax Number: (305) 593-6769

with a copy to:

Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130
Attn: Jimmy Morales, Esq.
Fax Number: (305) 789-3395

Either party may notify the other party of its change of address by notifying the other party in writing of the new address. Any such notice or communication shall be deemed to have been delivered either at the time of personal delivery actually received by the addressee or an authorized representative of the addressee at the address provided above whether by certified or registered U.S. mail or any nationally recognized overnight service or if by telecopier, upon electronic confirmation of good receipt by the receiving telecopier.

6. **General Matters**.

A. This Assignment shall be construed in accordance with the laws of the State of Florida and may not be amended other than by written agreement executed by bother parties hereto, their successors or assigns.

B. The provisions of this Assignment shall constitute restrictive covenants and personal servitudes encumbering the Property and shall run with the title to the Property. This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

C. In any action by one party hereto against the other, the prevailing party in such action shall be awarded, in addition to any other relief, its reasonable costs and expenses, and reasonable attorneys' fees.

D. Each party shall have all remedies available at law or in equity, including the right of specific performance and/or injunctive relief, to enforce its respective rights under this Assignment.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed as of the day and year first written above.

SIGNED AND SEALED IN THE PRESENCE OF:

ASSIGNOR:

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

The foregoing instrument was acknowledged before me this _____ day of _____, 201_ by _____, as _____ of _____, a Delaware limited liability company, on behalf of said limited liability company. S/he is personally known to me or produced _____ as identification.

_____
NOTARY PUBLIC, State of FLORIDA
Print Name:
Commission No.

My Commission Expires:

[Signatures continue on following page]

[Assignee's Signature to Assignment of Development Rights]

SIGNED AND SEALED IN THE PRESENCE OF:

ASSIGNEE:

CITY OF DORAL, FLORIDA, a municipal corporation existing under the laws of the State of Florida

Print Name: _____

By: _____
Name: _____
Title: _____

Print Name: _____

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

The foregoing instrument was acknowledged before me this _____ day of City of Doral, Florida, 201_ by _____, as _____ of City of Doral, Florida, on behalf of said municipal corporation S/he is personally known to me or produced _____ as identification.

_____
NOTARY PUBLIC, State of FLORIDA
Print Name:
Commission No.

My Commission Expires:

EXHIBIT "A"

Legal Description

Exhibit F

Form of Assignment of Intangibles

ASSIGNMENT AND ASSUMPTION OF INTANGIBLES AND WARRANTIES

THIS ASSIGNMENT AND ASSUMPTION OF INTANGIBLES AND WARRANTIES (this "Assignment") is executed as of the ____ day of _____, 201__, by and between **CM DORAL CH DEVELOPMENT LLC**, a Delaware limited liability company, having an address c/o Codina Partners, LLC, 135 San Lorenzo Avenue, Suite 750, Coral Gables, Florida 33146 ("Assignor") and **CITY OF DORAL, FLORIDA**, a municipal corporation existing under the laws of the State of Florida ("Assignee").

WHEREAS, Assignee is this day purchasing from Assignor and Assignor is conveying to Assignee the Property. (Capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in that certain Agreement of Purchase of Sale, dated as of **[_____]**, 2010, by and between Assignor and Assignee (the "Purchase Agreement"));

WHEREAS, in connection with its ownership and development of the Property, Assignor has received (i) certain Intangible Property and (ii) certain Warranties; and

WHEREAS, Assignor desires to transfer and assign to Assignee, and Assignee desires to assume as herein provided, all of Assignor's right, title and interest in and to the Intangible Property and the Warranties.

NOW, THEREFORE, in consideration of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignor hereby transfers and assigns to Assignee all right, title and interest of Assignor in and to the Intangible Property and the Warranties, if any, and to the extent assignable.

2. This Assignment shall constitute a direction and full authority to any person or entity that is a party to, or otherwise bound by, any obligations related to the Intangible Property and/or Warranties, as applicable, to perform its obligations with respect to the Intangible Property and the Warranties for the benefit of Assignee, and to recognize Assignee as the owner of the Intangible Property and/or Warranties, as applicable, without further proof to any such party of the assignment to Assignee of the Intangible Property and/or the Warranties, as applicable.

3. Assignee hereby affirmatively and unconditionally assumes all of the obligations and liabilities of Assignor with respect to the Intangible Property and the Warranties arising from and after the date hereof.

4. Except as otherwise expressly set forth in the Purchase Agreement, this Assignment is made without warranty, representation, or guaranty by, or recourse against Assignor of any kind whatsoever.

5. Assignor shall be liable for and Assignor hereby indemnifies and holds harmless Assignee from and against any and all actual out-of-pocket losses, damages,

liabilities, costs, expenses (including reasonable attorneys' fees and disbursements) and charges Assignee or any City Related Party may incur or suffer as a result of the failure of Assignor to perform any obligations with respect to the Intangible Property and/or the Warranties, as applicable, that shall have accrued prior to the date hereof, provided that to the extent that such losses, damages, liabilities, costs or charges shall arise from any facts or circumstances as shall constitute a breach of the representations and warranties of Assignor contained in the Purchase Agreement, Assignor's liability shall be subject to the restrictions set forth in **Section 10.F.** and **Section 12.C.(1)** with respect to the Maximum Liability Amount, and the time for institution of any claim based on the breach of a representation or warranty of Assignor.

6. Assignee shall be liable for and Assignee hereby indemnifies and holds harmless Assignor from and against any and all actual out-of-pocket losses, damages, liabilities, costs, expenses (including reasonable attorneys' fees and disbursements) and charges Assignor or any Developer Related Party may incur or suffer as a result of the failure of Assignee to perform any obligations with respect to the Intangible Property and/or the Warranties, as applicable, that shall accrue from and after the date hereof.

7. This Assignment may be executed in any number of counterparts, each of which may be executed by any one or more of the parties hereto, but all of which shall constitute one and the same instrument, and shall be binding and effective when all parties hereto have executed and delivered at least one counterpart.

8. The terms and provisions of this Assignment shall be binding upon and inure to the benefit of the respective parties hereto, and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed as of the day and year first written above.

ASSIGNOR:

CM DORAL CH DEVELOPMENT LLC, a Delaware limited liability company

By:_____
Name:_____
Title:_____

ASSIGNEE:

CITY OF DORAL, FLORIDA, a municipal corporation existing under the laws of the State of Florida

By:_____
Name:_____
Title:_____

Exhibit G

INTENTIONALLY DELETED

Exhibit H

Form of Bill of Sale

ASSIGNMENT AND BILL OF SALE

This Assignment and Bill of Sale (this "Assignment") is made as of the ___ day of _____, 201_ by **CM DORAL CH DEVELOPMENT LLC**, a Delaware limited liability company, having an address c/o Codina Partners, LLC, 135 San Lorenzo Avenue, Suite 750, Coral Gables, Florida 33146 ("Assignor") for the benefit of **CITY OF DORAL, FLORIDA**, a municipal corporation existing under the laws of the State of Florida ("Assignee") pursuant to the terms and conditions of that certain Agreement of Purchase of Sale, dated as of **[_____]**, 2010, by and between Assignor and Assignee (the "Purchase Agreement").

WHEREAS, Assignor desires to sell, convey, assign, transfer, set over and deliver to Assignee, and Assignee desires to acquire from Assignor, all of Assignor's right, title and interest, if any, in and to any of Developer's personal property located on, attached or appurtenant to, and used in connection with the Property (as defined in the Purchase Agreement) (hereinafter, the "Personal Property").

NOW, THEREFORE, in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignor hereby sells, conveys, assigns, transfers, sets over and delivers to Assignee, its successors and assigns, all of Assignor's right, title and interest, if any, in and to the Personal Property.

2. This Assignment is made without warranty, representation or guaranty by or recourse against Assignor, except that Assignor hereby warrants title to the Personal Property against the lawful claims of all persons claiming, by, through or under Assignor and none other.

3. The terms and provisions of this Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, Assignor has executed this Bill of Sale as of the date first set forth above.

ASSIGNOR:

CM DORAL CH DEVELOPMENT LLC, a Delaware limited liability company

By:_____
Name:_____
Title:_____

Exhibit I

Close-Out Items

CLOSE-OUT ITEMS

Capitalized terms used but not defined in this **Exhibit I** shall have the meanings ascribed to such terms forth in that certain Agreement of Purchase of Sale, dated as of **[_____]**, 2010, by and between **CM DORAL CH DEVELOPMENT LLC**, a Delaware limited liability company, having an address c/o Codina Partners, LLC, 135 San Lorenzo Avenue, Suite 750, Coral Gables, Florida 33146 ("Developer") and **CITY OF DORAL, FLORIDA**, a municipal corporation existing under the laws of the State of Florida ("City").

- Developer's affidavit of payment of debts and claims (e.g. AIA G706).
- Operating and maintenance manuals including approved submittals, manufacturers product information, maintenance recommendations and requirements.
- Comprehensive listing of all warranties issued to Developer by any subcontractor, along with all warranty certificates issued in connection therewith.
- Inventory of all personal property installed by Developer at the Property.
- Two (2) sets of the as-built plans for the Property as provided to Developer by the Architect.
- Final building measurements, certified by the Architect, including gross square footage and rentable square footages and using industry typical measurement standards and measurement categories (e.g. BOMA).
- An "as-built" survey of the Land and the Improvements, prepared by a licensed surveyor, complying with the ALTA and ACSM Minimum Standard Detail Requirements for Land Title Surveys, and accompanied by a surveyor's certificate in form reasonably acceptable to City.

Exhibit J

Form of Collateral Assignment

Exhibit K

Form of Deed

This Instrument Prepared by
and after recording return to:
Manuel A. Fernandez, Esq.
Stroock & Stroock & Lavan LLP
Wachovia Financial Tower
200 South Biscayne Boulevard, Suite 3100
Miami, Florida 33131

Folio No. _____

(Space Above this Line for Recorder's Use)

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, made as of this _____ day of _____, 201_, by and between **CM DORAL CH DEVELOPMENT LLC**, a Delaware limited liability company, having an address c/o Codina Partners, LLC, 135 San Lorenzo Avenue, Suite 750, Coral Gables, Florida 33146 ("Grantor") and **CITY OF DORAL, FLORIDA**, a municipal corporation existing under the laws of the State of Florida (the "Grantee").

WITNESSETH:

THAT the Grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS ($10.00) and other good and valuable consideration, to it in hand paid by the Grantee, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey and confirm, to the Grantee, its successors and assigns forever, the real property, and rights and interests as set forth below in the real property, located and situate in the County of Miami-Dade and State of Florida, more particularly described as follows (such real property being herein called the "Property"):

See legal description in Exhibit "A" attached hereto and by this reference made a part hereof.

THIS CONVEYANCE IS MADE SUBJECT TO:

Those matters set forth in Exhibit "B" attached hereto and made a part hereof by this reference (the "Permitted Encumbrances").

TO HAVE AND TO HOLD the Property in fee simple forever, together with all and singular the rights and appurtenances thereto in any wise belonging, unto Grantee, its successors and assigns, and, subject to the Permitted Encumbrances, Grantor hereby agrees to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee, its successors and assigns, against the claims of every person whomsoever lawfully claiming by, through or under Grantor but not otherwise.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed on the day and year first above written on its behalf by its duly authorized officer.

SIGNED AND SEALED IN THE PRESENCE OF:

GRANTOR

CM DORAL CH DEVELOPMENT LLC,
a Delaware limited liability company

_____

Print Name: _____

By:_____
Name:_____
Title:_____

_____

Print Name: _____

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

The foregoing instrument was acknowledged before me this _____ day of _____, 201_ by _____, as _____ of **CM DORAL CH DEVELOPMENT LLC**, a Delaware limited liability company, on behalf of said limited liability company. S/he is personally known to me or produced _____ as identification.

_____
NOTARY PUBLIC, State of FLORIDA
Print Name:
Commission No.

My Commission Expires:

Exhibit A to Special Warranty Deed

(Land)

Exhibit B to Special Warranty Deed

Permitted Exceptions

All recording references are to instruments recorded in the Public Records of Miami-Dade County, Florida.

Exhibit L

Form of Designation Agreement

INFORMATION FOR REAL ESTATE 1099-S REPORT FILING
(as required by the Internal Revenue Service)

Section 6045(e) of the Internal Revenue Code, as amended by the Tax Reform Act of 1986, requires the reporting of certain information on every real estate transaction. From the information you provide below, a Form 1099-S will be produced, and a copy of it will be furnished to the IRS and to you no later than February 1st of the next year. If you fail to furnish adequate information (in particular, a taxpayer ID number) then you may be subject to civil or criminal penalties imposed by law.

TRANSACTION INFORMATION

Closing Date: _____ ___, 201__

Developer's Name and Address: **CM DORAL CH DEVELOPMENT LLC**
c/o Codina Partners, LLC
135 San Lorenzo Avenue, Suite 750
Coral Gables, Florida 33146

Taxpayer ID #: _____

Gross Proceeds: $_____

Property: _____

Closing Agent: _____

* * * * *

Under penalties of perjury, I certify that the above information is true and correct and I understand that it will appear on a Form 1099-S that will be sent to me and to the Internal Revenue Service.

Dated as of: _____, 201_

[ADD SIGNATURE BLOCK]

Exhibit M

Disbursement Conditions and Procedures

DISBURSEMENT CONDITIONS AND PROCEDURES

These Disbursement Conditions and Procedures have been adopted by **CITY OF DORAL, FLORIDA**, a municipal corporation existing under the laws of the State of Florida ("City") and **CM DORAL CH DEVELOPMENT LLC**, a Delaware limited liability company ("Developer") in accordance with the Agreement of Purchase and Sale (the "Purchase Agreement") between City and Developer of even date herewith. Terms not otherwise defined herein shall have the meanings given them in the Purchase Agreement.

(1) Conditions as to all Monthly Progress Payments. As a condition precedent to City's obligation to make any Monthly Progress Payment, Developer shall be required to satisfy the following conditions:

(a) Developer shall have submitted a Monthly Progress Payment Request in accordance with the requirements of the Purchase Agreement.

(b) The Mortgage Documents shall have been executed and delivered to City and, as applicable, recorded in the Public Records of Miami-Dade County, Florida;

(c) The Title Company shall have issued a commitment to issue a mortgagee's policy of title insurance (the "Mortgagee Title Policy"), which commitment shall be "marked up" such that the Title Company shall be irrevocably committed to issue the Mortgagee Title Policy which shall (i) reflect fee simple ownership of the Land being vested in the Developer, subject only to Permitted Exceptions and (ii) insure the Mortgage, subject only to Permitted Exceptions;

(d) A Notice of Commencement signed by Developer shall have been recorded in the Public Records of Miami-Dade County, Florida subsequent to the recording of the Mortgage, and Developer shall have posted a certified copy of the recorded Notice of Commencement on the Land in accordance with the requirements of Florida Statutes Chapter 713;

(e) Developer shall have obtained such policies of insurance as are required by the terms of the Purchase Agreement;

(f) As of the date of the applicable Monthly Progress Payment Request, the warranties under Sections 10(A)(1),(5),(6),(7),(8),(9),(10),(11),(12),(13), and (14) shall be true and correct in all material respects;

(g) City shall have received evidence satisfactory to City that (i) all materials installed and work and labor performed in connection with the construction of the Base Building Improvements have been paid for in full, except to the extent (A) that any payment for such materials, labor or work is to be made out of the requested disbursement, (B) applicable Retainage (as hereinafter defined) pursuant to the Base Building Contract, Space Improvements Contract or applicable subcontract and (C) of any other amounts required or permitted to be held back from disbursement pursuant to the Base Building Contract, Space Improvements Contract or applicable subcontract or (D) any nonpayment shall result from any failure of the City to make payment of

Monthly Progress Payments it is required to advance pursuant to the terms of the Purchase Agreement; and (ii) there exist no mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property arising out of the construction of the Base Building Improvements and/or the Space Improvements, as applicable, which have not either been transferred to other security in accordance with the requirements of the Florida Construction Lien Law or, in the alternative, insured over to the reasonable satisfaction of City by the Title Company;

(h) No Unpermitted Exceptions shall exist;

(i) No Applicable Shortfall Amount shall exist;

(j) No Post GMP Developer Default shall exist;

(k) Unless otherwise agreed in writing by City and Developer, each acting in the exercise of its sole discretion, Developer shall have obtained (a) performance bond with respect to each Major Subcontract, in amount, form and content reasonably acceptable to City and (b) payment bond with respect to each Major Subcontract, in amount, form and content reasonably acceptable to City; and

(l) Developer and Contractor shall have complied with any applicable requirements set forth in the Florida Construction Lien Law, including, without limitation, any requirements pursuant to Florida Statutes, Section 713.347 thereof.

Any waiver of these conditions precedent must be in writing, specify the condition and be signed by the City's Representative.

(2) Conditions as to Monthly Progress Payments in connection with the construction of the Base Building Improvements. As a condition precedent to City's obligation to make any Monthly Progress Payment in connection with the construction of the Base Building Improvements, Developer shall be required to satisfy the following conditions (in addition to the conditions set forth in Section 1 above):

(a) Developer shall have obtained a building permit with respect to the applicable portion of the Base Building Improvements;

(b) City shall have received a fully executed copy of the Base Building Contract in accordance with the requirements of the Purchase Agreement;

(c) City shall have received the Base Building Budget; and

(d) City shall have received the Base Building Improvements Project Schedule from Developer.

Any waiver of these conditions precedent must be in writing, specify the condition and be signed by the City's Representative.

(3) Conditions as to Monthly Progress Payments in connection with the construction of the Space Improvements. Provided that neither City nor Developer shall have made the Space Improvements Assumption Election, Developer shall be required to satisfy the following conditions (in addition to the conditions set forth in Section 1 above) as a condition precedent to City's obligation to make any Monthly Progress Payment in connection with the construction of the Space Improvements:

(a) Developer shall have obtained a building permit with respect to the applicable portion of the Space Improvements;

(b) City shall have received a fully executed copy of the Space Improvements Contract in accordance with the requirements of the Purchase Agreement;

(c) City shall have received the Space Improvements Budget; and

(d) City shall have received the Space Improvements Project Schedule from Developer.

Any waiver of these conditions precedent must be in writing, specify the condition and be signed by the City's Representative.

(4) Conditions Precedent to the Final Monthly Progress Payment with Respect to Base Building Improvements. As a condition precedent to City's obligation to make the final Monthly Progress Payment (including any Retainage) with respect to the construction of the Base Building Improvements, Developer shall be required to satisfy the following conditions (in addition to the conditions set forth in Sections 1 and 2 above):

(a) Developer's affidavit of payment of debts and claims (e.g., AIA G706) with respect to the Base Building Improvements;

(b) Contractor's Final Affidavit and final waivers of lien from Contractor and all Subcontractors, materialmen and suppliers with mechanic's lien rights with respect to the Base Building Improvements;

(c) a certificate from the Architect certifying that the Base Building Improvements have been completed in substantial conformity with the Approved Base Building Plans; and

(d) such Occupancy Permits as may be required in order to permit City to occupy the Base Building Improvements.

5. Conditions Precedent to the Final Monthly Progress Payment with Respect to Space Improvements. Provided that neither City nor Developer shall have made the Space Improvements Assumption Election, Developer shall be required to satisfy the following conditions (in addition to the conditions set forth in Sections 1 and 3 above) as a condition precedent to City's obligation to make the final Monthly Progress Payment (including any Retainage) with respect to the construction of the Space Improvements:

(a) Developer's affidavit of payment of debts and claims (e.g., AIA G706) with respect to the Space Improvements;

(b) Contractor's Final Affidavit and final waivers of lien from Contractor and all Subcontractors, materialmen and suppliers with mechanic's lien rights with respect to the Space Improvements;

(c) a certificate from the Architect certifying that the Space Improvements have been completed in substantial conformity with the Approved Space Plans; and

(d) such Occupancy Permits as may be required in order to permit City to occupy the Space Improvements.

6. Additional Terms Regarding Monthly Progress Payments. In addition to any terms, conditions or requirements set forth in these Disbursement Conditions and Procedures, Monthly Progress Payments shall be disbursed by City subject to the following terms and conditions:

(a) In no event shall City be obligated to make disbursement of any Monthly Progress Payment to the extent that (i) any Shortfall shall exist, (ii) such Monthly Progress Payment, exclusive of any City's Expenses and Mortgage Costs to be paid out of such Monthly Progress Payment, shall exceed the Maximum Monthly Progress Payment Amount, (iii) the advance of such Monthly Progress Payment shall result in a Shortfall or cause the aggregate amount of the advances to Developer out of the Deposit and the Monthly Progress Payments, exclusive of any portion thereof applied to the payment of Closing Costs, the City's Expenses and Mortgage Costs, to exceed the Maximum Aggregate Advance Amount or (iv) except as expressly provided in Section 6(c) hereof, the amount disbursed with respect to any line item of Hard Costs shall exceed the amount required in order to pay for all work that is in place and has been completed in accordance with the requirements of the Base Building Contract, the Space Improvements Contract and/or the applicable subcontract. In the event of any dispute between City and Developer as to whether a Shortfall may exist, such dispute shall be resolved in accordance with the dispute resolution provisions of **Section 20** of the Purchase Agreement.

(b) City shall not be required to make a Monthly Progress Payment with respect to any portion of the Developer's Contingency unless such Developer's Contingency is being utilized for any existing Budget Line Item or for any Hard Cost or Soft Cost otherwise approved by City in its reasonable discretion.

(c) If and to the extent that Monthly Progress Payments are disbursed to pay for materials stored off-site, (i) such materials shall be stored either in a bonded warehouse, or if in a supplier's warehouse, the supplier shall supply evidence of proper insurance reasonably acceptable to City, (ii) Developer shall provide City with evidence of insurance in transit reasonably acceptable to City, and (iii) City further reserves the right to have its Inspecting Consultant verify the quantity and location of said off-site materials.

(d) Monthly Progress Payments shall be utilized by Developer solely for the payment of the items set forth in the applicable Monthly Progress Payment Request, and may not be utilized for any other purpose or project.

(e) Until such time as fifty percent (50%) of the work to be done pursuant to the Base Building Contract, in the case of advances for the payment of Base Building GMP Hard Costs, or the Space Improvements Contract, in the case of advances for the payment of Space Improvements GMP Hard Costs, has been completed, there shall be a contract retainage holdback ("Retainage") from each Monthly Progress Payment equal to ten percent (10%) of the Hard Costs pursuant to the Base Building Contract or the Space Improvements Contract, as applicable.

(f) At such time as fifty percent (50%) of the work to be done pursuant to the Base Building Contract, in the case of advances for the payment of Base Building GMP Hard Costs, or the Space Improvements Contract, in the case of advances for the payment of Space Improvements GMP Hard Costs, has been completed, the Retainage holdback from each Monthly Progress Payment shall be reduced to five percent (5%) of the Hard Costs pursuant to the Base Building Contract or the Space Improvements Contract, as applicable, and any Retainage in excess of five percent (5%) of such Hard Costs shall be released to Developer.

(g) Notwithstanding anything to the contrary contained herein:

(i) There shall not be any Retainage holdback for amounts included within the amounts included in the Base Building GMP or the Space Improvements GMP for "general conditions";

(ii) There shall not be any Retainage on (A) subcontracts for site improvement work, (B) fill material, including the transport, spreading and compaction of same, if any, (C) site clearing and demucking, if any, (D) other materials and/or labor for which the Contractor is required to make payment of deposits or payment in full to parties at the time that the relevant portion of the work pursuant to the Base Building Contract, the Space Improvements Contract or applicable subcontract is performed, including any general conditions costs. or (E) such other subcontracts (on which retainage is typically not held back from subcontractors) as may be approved by City at the time of the execution of the Base Building Contract or Space Improvements Contract, as applicable, such approval not to be unreasonably, withheld, conditioned or delayed;

(iii) One hundred percent (100%) of the Retainage held with respect to the work being performed by any subcontractor shall be released once such subcontractor has performed all of the work required to be performed by such subcontractor pursuant to its subcontract and furnished final lien waivers with respect to such work;

(iv) Any Retainage with respect to the those portions of the work related to the conveyance of utilities (e.g., the water, sewer and force main utilities and any lift

stations) shall be released upon the substantial completion of such portions of the work in accordance with the Contract Documents in order to enable the Contractor to release the corresponding Retainage to the subcontractors performing such Work after the relevant governmental authority's inspection and approval of same;

(v) Upon Substantial Completion of the Base Building Improvements or the Space Improvements, as applicable, the entire Retainage shall be reduced to an amount equal to one hundred fifty percent (150%) of the estimated cost of completion of the Punch List Items as reasonably determined by the Parties, which sum shall be held until such time as Final Completion is achieved.

Exhibit N

Form of Escrow Agreement

[TO BE NEGOTIATED BY CITY AND DEVELOPER PRIOR TO (AND AS A CONDITION OF) THE EXECUTION OF THE AGREEMENT]

Exhibit O

Fair Market Value Determination Procedures

[TO BE NEGOTIATED BY CITY AND DEVELOPER PRIOR TO (AND AS A CONDITION OF) THE EXECUTION OF THE AGREEMENT]

Exhibit P

Form of Guaranty

[TO BE NEGOTIATED BY CITY AND DEVELOPER PRIOR TO (AND AS A CONDITION OF) THE EXECUTION OF THE AGREEMENT]

Exhibit Q

Legal Description of Land

LEGAL DESCRIPTION

A portion of Tract 20 of "KOGER EXECUTIVE CENTER", according to a Plat thereof as recorded in Plat Book 91 at page 38 of the Public Records of Dade County, Florida, and being more particularly described as follows:

COMMENCE at the Southwest corner of said Tract 20; thence North 89º37’21" East along the South line of said Tract 20 for 148.77 feet; thence North 00º22’39" West for 5.00 feet to the Point of Beginning; thence continue North 00º22’39" West for 301.01 feet to a point on the South right-of-way of N.W. 54th Street; thence North 89º39’22" East along said South right-of-way of N.W. 54th Street for 262.55 feet to a point of curvature thence 38.71 feet along the arc of the curve to the right having a radius of 25.00 feet a central angle of 88°42'21" to a point of tangency; thence South 01°38'17"East for 250.92 feet to a point of curvature; thence 39.82 feet along the arc of the curve to the right having a radius of 25.00 feet a central angle of 91°15'38" to a point of tangency; thence South 89°37'21"West for 268.05 feet to the Point of Beginning.

Exhibit R

Form of Mortgage

[TO BE NEGOTIATED BY CITY AND DEVELOPER PRIOR TO (AND AS A CONDITION OF) THE EXECUTION OF THE AGREEMENT]

Exhibit S

Form of Mortgage Note

[TO BE NEGOTIATED BY CITY AND DEVELOPER PRIOR TO (AND AS A CONDITION OF) THE EXECUTION OF THE AGREEMENT]

Exhibit T

Form of Option Agreement

[TO BE NEGOTIATED BY CITY AND DEVELOPER PRIOR TO (AND AS A CONDITION OF) THE EXECUTION OF THE AGREEMENT]

Exhibit U

Form of Owner's Affidavit

OWNER'S AFFIDAVIT

STATE OF _____)
) ss:
COUNTY OF _____)

_____ ("Affiant") hereby deposes and says that:

1. Affiant is the _____ of **CM DORAL CH DEVELOPMENT LLC**, a Delaware limited liability company, having an address c/o Codina Partners, LLC, 135 San Lorenzo Avenue, Suite 750, Coral Gables, Florida 33146 (the "Company").

2. Affiant possesses personal knowledge of the statements contained herein and all requisite power and authority necessary to make this affidavit on behalf of the Company, which is being delivered to **CHICAGO TITLE INSURANCE COMPANY** (the "Title Insurer") in order to induce the Title Insurer, through its agent, [_____], to issue an owner's title insurance policy in connection with the transfer of the real property more particularly described on **Exhibit A** attached hereto and by this reference made a part hereof (the "Property") from the Company to **CITY OF DORAL, FLORIDA**, a municipal corporation existing under the laws of the State of Florida ("Purchaser").

3. **[Except as reflected in that certain Final Contractor's Affidavit executed by _____ on behalf of Developer Construction Corporation, dba Flagler Construction Corporation, dated _____, 201_ and attached hereto as Exhibit B]**, all labor, materials or services (if any) for which a lien could be claimed against the Property pursuant to the Florida Construction Lien Law were either furnished, completed and in place not less than ninety (90) days prior to the date of this affidavit or all charges for any such labor, materials or services whenever furnished have been paid in full or provisions have been made therefore, and the Company has not received notice from any materialmen, laborer or subcontractor pursuant to the provisions of Florida Statutes §7l3.06, other than those described on **Exhibit C** attached hereto and made a part hereof.

4. There are no parties in possession of the Property or with a claim of possession to the Property.

5. Except with respect to the rights of materialmen, laborers and subcontractors described in Paragraph 3 of this Affidavit, the Company has not executed any instrument or taken any action (and shall not execute any instrument or take any action) that could adversely affect the interest to be insured by the Title Insurer, and there are no matters pending against the Company, that could result in a change in the status of title to the Property between [_____], the effective date of the title insurance commitment issued by the Title Insurer (CTIC Commitment No. 3154108), and the date hereof.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

6. Affiant is executing this Affidavit solely in Affiant's capacity as the _____ of the Company, and no resort shall be had to any of Affiant's personal assets on account of any of the statements contained herein. Parties relying on the statements contained herein shall look solely to the Company in the event of any inaccuracy or misstatement contained herein.

FURTHER AFFIANT SAYETH NOT.

_____

Sworn to and subscribed before me this _____ day of _____ 201_, by [_____], as [_____] of **[CM DORAL CH DEVELOPMENT LLC]**, a Delaware limited liability company, on behalf of such limited liability company. S/he is personally known to me or produced _____ as identification.

[NOTARIAL SEAL]

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

EXHIBIT A

(LEGAL DESCRIPTION OF PROPERTY)

EXHIBIT B

(FINAL CONTRACTOR'S AFFIDAVIT)

EXHIBIT C

(NOTICES FROM SUBCONTRACTORS)

Exhibit V

Permitted Exceptions

1. Taxes and assessments for the year of Closing and subsequent years, which are not yet due and payable.

2. Unity of Title recorded in Official Records Book 9382, Page 577.

3. Easement(s) in favor of Florida Power and Light Company set forth in instrument(s) recorded in Official Records Book 9762, Page 615.

4. Unity of Title recorded in Official Records Book 9841, Page 1918.

5. Easement(s) in favor of Florida Power and Light Company set forth in instrument(s) recorded in Official Records Book 11740, Page 1242.

6. Restrictions, covenants, conditions, easements, dedications and other matters as contained on the Plat of KOGER EXECUTIVE CENTER, recorded in Plat Book 91, Page 38, of the Public Records of Miami-Dade County, Florida.

7. Master Development Agreement by and between CM Doral Development Company, LLC, a Delaware limited liability company, and the City of Doral, Florida, recorded October 3, 2006, in Official Records Book 24968, at Page 2689.

8. Notice of Establishment of the Downtown Doral Community Development District, recorded July 16, 2008, in Official Records Book 26482, at Page 1879.

9. Terms, restrictions, covenants, conditions, easements, dedications and other matters, which include provisions for an assessment, as contained in the Declaration of Restrictive Covenants, recorded August 13, 2008, in Official Records Book 26524, at Page 1700.

10. Ordinance No. 09-38 for the creation of the Downtown Doral Multipurpose Maintenance and Street Lighting Special Taxing District, recorded June 25, 2009, in Official Records Book 26916, Page 945.

11. Resolution No. R-606-09 adopting preliminary assessment roll for the special taxing district known as Downtown Doral Multipurpose Maintenance and Street Lighting Special Taxing District, recorded June 15, 2009, in Official Records Book 26916, Page 1011.

12. Easement granted to Florida Power and Light Company recorded in Official Records Book 27181, Page 3830.

Exhibit W

Pre-GMP Soft Cost Budget

Exhibit X

Form of Section 1445 Affidavit

CERTIFICATION OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by **CM DORAL CH DEVELOPMENT LLC**, a Delaware limited liability company (the "Company"), the undersigned hereby certifies the following on behalf of the Company that:

1. The Company is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations) and **CITY OF DORAL, FLORIDA**, a municipal corporation existing under the laws of the State of Florida (the "Purchaser") is not required pursuant to Section 1445 of the Code to withhold ten percent (10%) of the amount realized by the Company upon the transfer of certain real property, located in the County of Miami-Dade, State of Florida, to Purchaser, by the Company, pursuant to the terms and conditions of that certain Agreement of Purchase and Sale by and between the Company and the Purchaser, dated as of_____, 201__.

2. The Company is not a "disregarded entity" for U.S. federal income tax purposes.

3. The U.S. Federal Identification Number of the Company is [_____].

4. The address of the Company is: c/o Codina Partners, LLC, 135 San Lorenzo Avenue, Suite 750, Coral Gables, Florida 33146.

5. The Company understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

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Under penalties of perjury the undersigned declares that the undersigned has examined this certification and to the best of his knowledge and belief it is true, correct and complete, and the undersigned further declares that he has authority to sign this document on behalf of the Company.

Dated: _____ ____, 201__

CM DORAL CH DEVELOPMENT LLC, a Delaware limited liability company

By:_____
Name:_____

STATE OF _____)
) *SS*:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 201__ by _____, as _____ of **CM DORAL CH DEVELOPMENT LLC**, a Delaware limited liability company, on behalf of said limited liability company. S/he is personally known to me or produced _____ as identification.

_____
NOTARY PUBLIC, State of FLORIDA
Print Name:
Commission No.

My Commission Expires:

Exhibit Y

Soft Cost Budget