



**City Commission Meeting
SUPPLEMENTAL MATERIAL 1**

City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive
January 14, 2015

Mayor Philip Levine
Vice-Mayor Joy Malakoff
Commissioner Michael Grieco
Commissioner Micky Steinberg
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Commissioner Jonah Wolfson

City Manager Jimmy L. Morales
City Attorney Raul J. Aguila
City Clerk Rafael E. Granada

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ATTENTION ALL LOBBYISTS

Chapter 2, Article VII, Division 3 of the City Code of Miami Beach entitled "Lobbyists" requires the registration of all lobbyists with the City Clerk prior to engaging in any lobbying activity with the City Commission, any City Board or Committee, or any personnel as defined in the subject Code sections. Copies of the City Code sections on lobbyists laws are available in the Office of the City Clerk. Questions regarding the provisions of the Ordinance should be directed to the Office of the City Attorney.

SUPPLEMENTAL AGENDA

R2 - Competitive Bid Reports

- R2A Request Approval To Issue An Invitation To Negotiate (ITN) For The Leasing Of City-Owned Buildings And Rooftops For The Placement Of Telecommunications Equipment.
(Information Technology/Procurement)
(Memorandum)

R7 - Resolutions

R7E A Resolution Approving A Settlement In The Amount Of \$2,760,000.00, In Substantial Form As Proposed In Attached Exhibit 1; For Payment Of The Fee In Lieu Of Parking Required Under Section 130-131, Of The City Code, Which Fee Is Paid Due To A Parking Deficiency Associated With The Development Of The New Project On The Property Owned By Centurian Collins Avenue, LLC, A Delaware Limited Liability Company (Hereinafter "Centurian"), Located At 2360 Collins Avenue, Miami Beach, Florida, Which Project Is Commonly Known As The "Aloft" (The "Project") Under Building Permit Number: BREV131038418-422; And Further Authorizing The City Manager To Take Such Action And Execute Any And All Necessary Documents To Complete The Settlement.

(Office of the City Attorney)

(Memorandum & Resolution)

Condensed Title:

REQUEST APPROVAL TO ISSUE AN INVITATION TO NEGOTIATE (ITN) FOR THE LEASING OF CITY-OWNED BUILDINGS AND ROOFTOPS FOR THE PLACEMENT OF TELECOMMUNICATIONS EQUIPMENT.

Key Intended Outcome Supported:

NA

Supporting Data (Surveys, Environmental Scan, etc.): N/A

Item Summary/Recommendation:

The City Commission directed the Administration to release a competitive solicitation for the leasing of City-owned buildings, rooftops and other assets as a means of improving telecommunications coverage City-wide, while generating revenue for the City. To that end, the Administration is seeking approval to issue the attached Invitation to Negotiate (ITN) to seek proposals from qualified parties interested in submitting proposals to the City to lease City-owned buildings and rooftops for the installation and operation of telecommunications antennas and related equipment.

The purpose of this ITN is provide the opportunity for cellular service companies to lease authorized City-owned properties to extend cellular carrier service within the City, as well as provide a means of revenue to the City for the use of said properties.

While the Administration concurs that the leasing of rooftops and other assets will help improve telecommunications coverage City-wide and generate revenue for the City, there are some concerns that the expertise needed to effectively market, negotiate terms and maximize revenue is currently not possessed by internal staffing resources. The concern is not uncommon among governmental agencies; and, some of those agencies have opted to solicit the services of a contractor with these competencies to market, negotiate and manage leases for the installation and maintenance of telecommunications antennas and associated equipment on behalf of the public agency. The referenced approach has been used successfully by the City of Miami to maximize revenue and protect the city's interest given that, similar to Miami Beach, internal staffing resources do not possess the necessary competencies in this area.

RECOMMENDATION

As directed by the City Commission, the Administration recommends that the Mayor and Commission authorize the issuance of the ITN 2015-060-LR for Leasing Of City-Owned Buildings And Rooftops For The Placement Of Telecommunications Equipment.

Advisory Board Recommendation:

N/A

Source of Funds: NA

Financial Impact Summary: NA

City Clerk's Office Legislative Tracking:

Alex Denis, Director Ext # 6641

Sign-Offs:

Department Director	Assistant City Manager	City Manager
AD <u>MS</u>	KGB <u>[Signature]</u>	JLM <u>[Signature]</u>

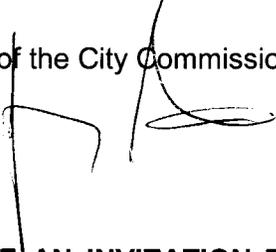
T:\AGENDA\2015\January\PROCUREMENT\ITN 2015-060-LR Issuance for Rooftop Leases - Summary.doc

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

To: Mayor Philip Levine and Members of the City Commission

From: Jimmy L. Morales, City Manager 

Date: January 14, 2015

Subject: **REQUEST APPROVAL TO ISSUE AN INVITATION TO NEGOTIATE (ITN) FOR THE LEASING OF CITY-OWNED BUILDINGS AND ROOFTOPS FOR THE PLACEMENT OF TELECOMMUNICATIONS EQUIPMENT.**

KEY INTENDED OUTCOME

NA

BACKGROUND

The City Commission directed the Administration to release a competitive solicitation for the leasing of City-owned buildings, rooftops and other assets as a means of improving telecommunications coverage City-wide, while generating revenue for the City. To that end, the Administration is seeking approval to issue the attached Invitation to Negotiate (ITN) to seek proposals from qualified parties interested in submitting proposals to the City to lease City-owned buildings and rooftops for the installation and operation of telecommunications antennas and related equipment.

SCOPE OF SERVICES & PURPOSE

The purpose of this ITN is provide the opportunity for cellular service companies to lease authorized City-owned properties to extend cellular carrier service within the City, as well as provide a means of revenue to the City for the use of said properties.

OTHER ITN REQUIREMENTS

- **MINIMUM QUALIFICATIONS.** Please reference, Appendix C, ITN 2015-060-LR for Leasing Of City-Owned Buildings And Rooftops For The Placement Of Telecommunications Equipment.
- **SUBMITTAL REQUIREMENTS.** Please Reference 0300, ITN 2015-060-LR for Leasing Of City-Owned Buildings And Rooftops For The Placement Of Telecommunications Equipment.
- **CRITERIA FOR EVALUATION.** Please Reference 0400, ITN 2015-060-LR for Leasing Of City-Owned Buildings And Rooftops For The Placement Of Telecommunications Equipment.

While the Administration concurs that the leasing of rooftops and other assets will help improve telecommunications coverage City-wide and generate revenue for the City, there are some concerns that the expertise needed to effectively market, negotiate terms and maximize revenue is currently not possessed by internal staffing resources. The concern is not uncommon among governmental agencies; and, some of those agencies have opted to solicit the services of a contractor with these competencies to market, negotiate and manage leases for the installation and maintenance of telecommunications antennas and associated equipment on behalf of the public agency. The referenced approach has been used successfully by the City of Miami to maximize revenue and protect the city's interest given that, similar to Miami Beach, internal staffing resources do not possess the necessary competencies in this area.

RECOMMENDATION

As directed by the City Commission, the Administration recommends that the Mayor and Commission authorize the issuance of the ITN 2015-060-LR for Leasing Of City-Owned Buildings And Rooftops For The Placement Of Telecommunications Equipment.

INVITATION TO NEGOTIATION (ITN)

LEASE OF CITY-OWNED BUILDINGS AND ROOFTOPS FOR THE PLACEMENT OF
TELECOMMUNICATIONS EQUIPMENT

2015-060-LR

ITN ISSUANCE DATE: JANUARY 16, 2015

PROPOSALS DUE: FEBRUARY 12, 2015 @ 3:00 PM

ISSUED BY: Lourdes Rodriguez, CPPB



MIAMIBEACH

Lourdes Rodriguez, Senior Procurement Specialist

DEPARTMENT OF PROCUREMENT MANAGEMENT

1700 Convention Center Drive, Miami Beach, FL 33139

305.673.7000 x 6652 | www.miamibeachfl.gov

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SECTION 0200
INSTRUCTIONS TO RESPONDENTS & GENERAL CONDITIONS

1. GENERAL. This Request for Proposals (ITN) is issued by the City of Miami Beach, Florida (the "City"), as the means for prospective Proposers to submit their qualifications, proposed scopes of work and cost proposals (the "proposal") to the City for the City's consideration as an option in achieving the required scope of services and requirements as noted herein. All documents released in connection with this solicitation, including all appendixes and addenda, whether included herein or released under separate cover, comprise the solicitation, and are complementary to one another and together establish the complete terms, conditions and obligations of the Proposers and, subsequently, the successful Proposer(s) (the "contractor[s]") if this ITN results in an award.

The City utilizes **PublicPurchase** (www.publicpurchase.com) for automatic notification of competitive solicitation opportunities and document fulfillment, including the issuance of any addendum to this ITN. Any prospective Proposer who has received this ITN by any means other than through **PublicPurchase** must register immediately with **PublicPurchase** to assure it receives any addendum issued to this ITN. **Failure to receive an addendum may result in disqualification of proposal submitted.**

2. PURPOSE.

The City of Miami Beach (the "City") is requesting proposals from qualified parties interested in submitting proposals to the City to lease City-owned buildings and rooftops for the installation and operation of telecommunications antennas and related equipment. The purpose of this ITN is provide the opportunity for cellular service companies to lease authorized City-owned properties to extend cellular carrier service within the City, as well as provide a means of revenue to the City for the use of said properties. The list of authorized properties is included in Appendix D.

Interested parties are invited to submit a proposal in accordance with Section 0300 of this ITN.

3. SOLICITATION TIMETABLE. The tentative schedule for this solicitation is as follows:

ITN Issued	January 17, 2015
Pre-Proposal Meeting	TBD
Deadline for Receipt of Questions	TBD
Responses Due	TBD
Evaluation Committee Review	TBD
Proposer Presentations	TBD
Tentative Commission Approval Authorizing Negotiations	TBD
Contract Negotiations	Following Commission Approval

4. PROCUREMENT CONTACT. Any questions or clarifications concerning this solicitation shall be submitted to the Procurement Contact noted below:

Procurement Contact: **Lourdes Rodriguez** Telephone: **305 673-7000 #6652** Email: **LourdesRodriguez@miamibeachfl.gov**

Additionally, the City Clerk is to be copied on all communications via e-mail at: **RafaelGranado@miamibeachfl.gov** or via facsimile: 786-394-4188.

The Bid title/number shall be referenced on all correspondence. All questions or requests for clarification must be received no later than ten (10) calendar days prior to the date proposals are due as scheduled in Section 0200-3. All responses to questions/clarifications will be sent to all prospective Proposers in the form of an addendum.

5. PRE-PROPOSAL MEETING OR SITE VISIT(S). Only if deemed necessary by the City, a pre-proposal meeting or site visit(s) may be scheduled.

A Pre-PROPOSAL conference will be held as scheduled in Solicitation Timeline above at the following address:

**City of Miami Beach
 City Hall - 4th Floor
 City Manager's Large Conference Room
 1700 Convention Center Drive
 Miami Beach, Florida 33139**

Attendance (in person or via telephone) is encouraged and recommended as a source of information, but is not mandatory. Proposers interested in participating in the Pre-Proposal Submission Meeting via telephone must follow these steps:

- (1) Dial the TELEPHONE NUMBER: 1- 888-270-9936 (Toll-free North America)
- (2) Enter the MEETING NUMBER: 1142644

Proposers who are interested in participating via telephone should send an e-mail to the contact person listed in this ITN expressing their intent to participate via telephone.

6. PRE-PROPOSAL INTERPRETATIONS. Oral information or responses to questions received by prospective Proposers are not binding on the City and will be without legal effect, including any information received at pre-submittal meeting or site visit(s). Only questions answered by written addenda will be binding and may supersede terms noted in this solicitation. Addendum will be released through *PublicPurchase*.

7. CONE OF SILENCE. Pursuant to Section 2-486 of the City Code, all procurement solicitations once advertised and until an award recommendation has been forwarded to the City Commission by the City Manager are under the “**Cone of Silence.**” The Cone of Silence ordinance is available at <http://library.municode.com/index.aspx?clientId=13097&stateID=9&statename=Florida>. Any communication or inquiry in reference to this solicitation with any City employee or City official is strictly prohibited with the of exception communications with the Procurement Director, or his/her administrative staff responsible for administering the procurement process for this solicitation providing said communication is limited to matters of process or procedure regarding the solicitation. Communications regarding this solicitation are to be submitted in writing to the Procurement Contact named herein with a copy to the City Clerk at rafaelgranado@miamibeachfl.gov.

8. SPECIAL NOTICES. You are hereby advised that this solicitation is subject to the following ordinances/resolutions, which may be found on the City Of Miami Beach website: <http://web.miamibeachfl.gov/procurement/scroll.aspx?id=23510>

- CONE OF SILENCE..... CITY CODE SECTION 2-486
- PROTEST PROCEDURES..... CITY CODE SECTION 2-371
- DEBARMENT PROCEEDINGS..... CITY CODE SECTIONS 2-397 THROUGH 2-485.3
- LOBBYIST REGISTRATION AND DISCLOSURE OF FEES..... CITY CODE SECTIONS 2-481 THROUGH 2-406
- CAMPAIGN CONTRIBUTIONS BY VENDORS..... CITY CODE SECTION 2-487
- CAMPAIGN CONTRIBUTIONS BY LOBBYISTS ON PROCUREMENT ISSUES..... CITY CODE SECTION 2-488
- REQUIREMENT FOR CITY CONTRACTORS TO PROVIDE EQUAL BENEFITS FOR DOMESTIC PARTNERS..... CITY CODE SECTION 2-373
- LIVING WAGE REQUIREMENT..... CITY CODE SECTIONS 2-407 THROUGH 2-410

- PREFERENCE FOR FLORIDA SMALL BUSINESSES OWNED AND CONTROLLED BY VETERANS AND TO STATE-CERTIFIED SERVICE-DISABLED VETERAN BUSINESS ENTERPRISES..... CITY CODE SECTION 2-374
- FALSE CLAIMS ORDINANCE..... CITY CODE SECTION 70-300
- ACCEPTANCE OF GIFTS, FAVORS & SERVICES..... CITY CODE SECTION 2-449

9. POSTPONEMENT OF DUE DATE FOR RECEIPT OF PROPOSALS. The City reserves the right to postpone the deadline for submittal of proposals and will make a reasonable effort to give at least three (3) calendar days written notice of any such postponement to all prospective Proposers through *PublicPurchase*.

10. PROTESTS. Protests concerning the specifications, requirements, and/or terms; or protests after the proposal due date in accordance with City Code Section 2-371, which establishes procedures for protested proposals and proposed awards. Protests not submitted in a timely manner pursuant to the requirements of City Code Section 2-371 shall be barred.

11. VETERAN BUSINESS ENTERPRISES PREFERENCE. Pursuant to City of Miami Beach Ordinance No. 2011-3748, the City shall give a five (5) point preference to a responsive and responsible Proposer which is a small business concern owned and controlled by a veteran(s) or which is a service-disabled veteran business enterprise.

12. DETERMINATION OF AWARD. The final ranking results of Step 1 & 2 outlined in Section 0400, Evaluation of Proposals, will be considered by the City Manager who may recommend to the City Commission the Proposer(s) s/he deems to be in the best interest of the City or may recommend rejection of all proposals. The City Manager's recommendation need not be consistent with the scoring results identified herein and takes into consideration Miami Beach City Code Section 2-369, including the following considerations:

- (1) The ability, capacity and skill of the Proposer to perform the contract.
- (2) Whether the Proposer can perform the contract within the time specified, without delay or interference.
- (3) The character, integrity, reputation, judgment, experience and efficiency of the Proposer.
- (4) The quality of performance of previous contracts.
- (5) The previous and existing compliance by the Proposer with laws and ordinances relating to the contract.

The City Commission shall consider the City Manager's recommendation and may approve such recommendation. The City Commission may also, at its option, reject the City Manager's recommendation and select another Proposal or Proposals which it deems to be in the best interest of the City, or it may also reject all Proposals. Upon approval of selection by the City Commission, negotiations between the City and the selected Proposer(s) will take place to arrive at a mutually acceptable Agreement.

13. ACCEPTANCE OR REJECTION OF PROPOSALS. The City reserves the right to reject any or all proposals prior to award. Reasonable efforts will be made to either award the Contract or reject all proposals within one-hundred twenty (120) calendar days after proposals opening date. A Proposer may not withdraw its proposals unilaterally before the expiration of one hundred and twenty (120) calendar days from the date of proposals opening.

14. PROPOSER'S RESPONSIBILITY. Before submitting a Proposal, each Proposer shall be solely responsible for making any and all investigations, evaluations, and examinations, as it deems necessary, to ascertain all conditions and requirements affecting the full performance of the contract. Ignorance of such conditions and requirements, and/or failure to make such evaluations, investigations, and examinations, will not relieve the Proposer from any obligation to comply with every detail and with all provisions and requirements of the contract, and will not be accepted as a basis for any subsequent claim whatsoever for any monetary consideration on the part of the Proposer.

15. COSTS INCURRED BY PROPOSERS. All expenses involved with the preparation and submission of Proposals, or any work performed in connection therewith, shall be the sole responsibility (and shall be at the sole cost and expense) of the Proposer, and shall not be reimbursed by the City.

16. RELATIONSHIP TO THE CITY. It is the intent of the City, and Proposers hereby acknowledge and agree, that the successful Proposer is considered to be an independent contractor, and that neither the Proposer, nor the Proposer's employees, agents, and/or contractors, shall, under any circumstances, be considered employees or agents of the City.

17. TAXES. The City of Miami Beach is exempt from all Federal Excise and State taxes.

18. MISTAKES. Proposers are expected to examine the terms, conditions, specifications, delivery schedules, proposed pricing, and all instructions pertaining to the goods and services relative to this ITN. Failure to do so will be at the Proposer's risk and may result in the Proposal being non-responsive.

19. PAYMENT. Payment will be made by the City after the goods or services have been received, inspected, and found to comply with contract, specifications, free of damage or defect, and are properly invoiced. Invoices must be consistent with Purchase Order format.

20. PATENTS & ROYALTIES. Proposer shall indemnify and save harmless the City of Miami Beach, Florida, and its officers, employees, contractors, and/or agents, from liability of any nature or kind, including cost and expenses for, or on account of, any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by the City of Miami Beach, Florida. If the Proposer uses any design, device or materials covered by letters, patent, or copyright, it is mutually understood and agreed, without exception, that the proposal prices shall include all royalties or cost arising from the use of such design, device, or materials in any way involved in the work.

21. MANNER OF PERFORMANCE. Proposer agrees to perform its duties and obligations in a professional manner and in accordance with all applicable Local, State, County, and Federal laws, rules, regulations and codes. Lack of knowledge or ignorance by the Proposer with/of applicable laws will in no way be a cause for relief from responsibility. Proposer agrees that the services provided shall be provided by employees that are educated, trained, experienced, certified, and licensed in all areas encompassed within their designated duties. Proposer agrees to furnish to the City any and all documentation, certification, authorization, license, permit, or registration currently required by applicable laws, rules, and regulations. Proposer further certifies that it and its employees will keep all licenses, permits, registrations, authorizations, or certifications required by applicable laws or regulations in full force and effect during the term of this contract. Failure of Proposer to comply with this paragraph shall constitute a material breach of this contract.

Where contractor is required to enter or go on to City of Miami Beach property to deliver materials or perform work or services as a result of any contract resulting from this solicitation, the contractor will assume the full duty, obligation and expense of obtaining all necessary licenses, permits, and insurance, and assure all work complies with all applicable laws. The contractor shall be liable for any damages or loss to the City occasioned by negligence of the Proposer, or its officers, employees, contractors, and/or agents, for failure to comply with applicable laws.

22. SPECIAL CONDITIONS. Any and all Special Conditions that may vary from these General Terms and Conditions shall have precedence.

23. ANTI-DISCRIMINATION. The Proposer certifies that he/she is in compliance with the non-discrimination clause

contained in Section 202, Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin.

24. DEMONSTRATION OF COMPETENCY.

- A. Pre-award inspection of the Proposer's facility may be made prior to the award of contract.
- B. Proposals will only be considered from firms which are regularly engaged in the business of providing the goods and/or services as described in this solicitation.
- C. Proposers must be able to demonstrate a good record of performance for a reasonable period of time, and have sufficient financial capacity, equipment, and organization to ensure that they can satisfactorily perform the services if awarded a contract under the terms and conditions of this solicitation.
- D. The terms "equipment and organization", as used herein shall, be construed to mean a fully equipped and well established company in line with the best business practices in the industry, and as determined by the City of Miami Beach.
- E. The City may consider any evidence available regarding the financial, technical, and other qualifications and abilities of a Proposer, including past performance (experience), in making an award that is in the best interest of the City.
- F. The City may require Proposer s to show proof that they have been designated as authorized representatives of a manufacturer or supplier, which is the actual source of supply. In these instances, the City may also require material information from the source of supply regarding the quality, packaging, and characteristics of the products to be supply to the City.

25 ASSIGNMENT. The successful Proposer shall not assign, transfer, convey, sublet or otherwise dispose of the contract, including any or all of its right, title or interest therein, or his/her or its power to execute such contract, to any person, company or corporation, without the prior written consent of the City.

26. LAWS, PERMITS AND REGULATIONS. The Proposer shall obtain and pay for all licenses, permits, and inspection fees required to complete the work and shall comply with all applicable laws.

27. OPTIONAL CONTRACT USAGE. When the successful Proposer (s) is in agreement, other units of government or non-profit agencies may participate in purchases pursuant to the award of this contract at the option of the unit of government or non-profit agency.

28. VOLUME OF WORK TO BE RECEIVED BY CONTRACTOR. It is the intent of the City to purchase the goods and services specifically listed in this solicitation from the contractor. However, the City reserves the right to purchase any goods or services awarded from state or other governmental contract, or on an as-needed basis through the City's spot market purchase provisions.

29. DISPUTES. In the event of a conflict between the documents, the order of priority of the documents shall be as follows:

- A. Any contract or agreement resulting from the award of this solicitation; then
- B. Addendum issued for this solicitation, with the latest Addendum taking precedence; then
- C. The solicitation; then
- D. The Proposer's proposal in response to the solicitation.

30. INDEMNIFICATION. The contractor shall indemnify and hold harmless the City and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the City or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the agreement by the contractor or its employees, agents, servants, partners, principals or subcontractors. The contractor shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. The contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City or its officers, employees, agents and instrumentalities as herein provided. The above indemnification provisions shall survive the expiration or termination of this Agreement.

31. CONTRACT EXTENSION. The City reserves the right to require the Contractor to extend contract past the stated termination date for a period of up to 120 days in the event that a subsequent contract has not yet been awarded.

32. FLORIDA PUBLIC RECORDS LAW. Proposers are hereby notified that all Bid including, without limitation, any and all information and documentation submitted therewith, are exempt from public records requirements under Section 119.07(1), Florida Statutes, and s. 24(a), Art. 1 of the State Constitution until such time as the City provides notice of an intended decision or until thirty (30) days after opening of the proposals, whichever is earlier. Additionally, Contractor agrees to be in full compliance with Florida Statute 119.0701 including, but not limited to, agreement to (a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the services; (b) provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law; (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; (d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

33. MODIFICATION/WITHDRAWALS OF PROPOSALS. A Proposer may submit a modified Proposal to replace all or any portion of a previously submitted Proposal up until the Proposal due date and time. Modifications received after the Proposal due date and time will not be considered. Proposals shall be irrevocable until contract award unless withdrawn in writing prior to the Proposal due date, or after expiration of **120** calendar days from the opening of Proposals without a contract award. Letters of withdrawal received after the Proposal due date and before said expiration date, and letters of withdrawal received after contract award will not be considered.

34. EXCEPTIONS TO ITN. Proposers must clearly indicate any exceptions they wish to take to any of the terms in this ITN, and outline what, if any, alternative is being offered. All exceptions and alternatives shall be included and clearly delineated, in writing, in the Proposal. The City, at its sole and absolute discretion, may accept or reject any or all exceptions and alternatives. In cases in which exceptions and alternatives are rejected, the City shall require the Proposer to comply with the particular term and/or condition of the ITN to which Proposer took exception to (as said term and/or condition was originally set forth on the ITN).

35. ACCEPTANCE OF GIFTS, FAVORS, SERVICES. Proposers shall not offer any gratuities, favors, or anything of monetary value to any official, employee, or agent of the City, for the purpose of influencing consideration of this Proposal. Pursuant to Sec. 2-449 of the City Code, no officer or employee of the City shall accept any gift, favor or service that might reasonably tend improperly to influence him in the discharge of his official duties.

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SECTION 0300 PROPOSAL SUBMITTAL INSTRUCTIONS AND FORMAT

1. SEALED RESPONSES. One original Proposal (preferably in 3-ring binder) must be submitted in an opaque, sealed envelope or container on or before the due date established for the receipt of proposals. Additionally, ten (10) bound copies and one (1) electronic format (CD or USB format) are to be submitted and delivered to the City of Miami Beach, Procurement Department, 1700 Convention Center Drive, 3rd Floor, Miami Beach, Florida 33139. The following information should be clearly marked on the face of the envelope or container in which the proposal is submitted: solicitation number, solicitation title, Proposer name, Proposer return address. Proposals received electronically, either through email or facsimile, are not acceptable and will be rejected.

2. LATE BIDS. Bid Proposals are to be received on or before the due date established herein for the receipt of Bids. **Any Bid received after the deadline established for receipt of proposals will be considered late and not be accepted or will be returned to Proposer unopened.** The City does not accept responsibility for any delays, natural or otherwise.

3. PROPOSAL FORMAT. In order to maintain comparability, facilitate the review process and assist the Evaluation Committee in review of proposals, it is strongly recommended that proposals be organized and tabbed in accordance with the sections and manner specified below. Hard copy submittal should be tabbed as enumerated below and contain a table of contents with page references. Electronic copies should also be tabbed and contain a table of contents with page references. Proposals that do not include the required information will be deemed non-responsive and will not be considered.

TAB 1 Cover Letter & Minimum Qualifications Requirements

1.1 Cover Letter and Table of Contents. The cover letter must indicate Proposer and Proposer Primary Contact for the purposes of this solicitation.

1.2 Proposal Certification, Questionnaire & Requirements Affidavit (Appendix A). Attach Appendix A fully completed and executed.

1.3 Minimum Qualifications Requirements. Submit verifiable information documenting compliance with the minimum qualifications requirements established in Appendix C, Minimum Requirements and Specifications.

TAB 2 Experience & Qualifications

2.1 Qualifications of Proposing Firm. Submit detailed information regarding the firm's history and relevant experience and proven track record of providing the scope of services similar as identified in this solicitation, including experience in providing similar scope of services to public sector agencies. For each project that the Proposer submits as evidence of similar experience, the following is required: project description, agency name, agency contact, contact telephone & email, and year(s) and term of engagement.

2.2 Qualifications of Proposer Team. Provide an organizational chart of all personnel and Contractors to be used for this project if awarded, the role that each team member will play in providing the services detailed herein and each team members' qualifications. A resume of each individual, including education, experience, and any other pertinent information, shall be included for each Proposal team member to be assigned to this contract.

2.3 Financial Capacity. Each Proposer shall arrange for Dun & Bradstreet to submit a Supplier Qualification Report (SQR) directly to the Procurement Contact named herein. No proposal will be considered without receipt, by the City, of the SQR directly from Dun & Bradstreet. The cost of the preparation of the SQR shall be the responsibility of the Proposer. The Proposer shall request the SQR report from D&B at:

<https://supplierportal.dnb.com/webapp/wcs/stores/servlet/SupplierPortal?storeId=11696>

Proposers are responsible for the accuracy of the information contained in its SQR. It is highly recommended that each Proposer review the information contained in its SQR for accuracy prior to submittal to the City and as early as possible in the solicitation process. For assistance with any portion of the SQR submittal process,

contact Dun & Bradstreet at 800-424-2495.

TAB 3 Approach and Methodology

Submit detailed information on how Proposer plans to accomplish the required scope of services, including detailed information, as applicable, which addresses, but need not be limited to: implementation/installation plan and details, breadth and range of proposed system, square footage to be used, plan for installation of any conduits, electricity, etc.; scope of easement area(s) and leasehold areas; marketing and risk mitigation options.

TAB 4 Cost Proposal

Submit completed revenue Proposal Form (Appendix E).

Note: After proposal submittal, the City reserves the right to require additional information from Proposers (or Proposer team members or sub-Contractors) to determine: qualifications (including, but not limited to, litigation history, regulatory action, or additional references); and financial capability (including, but not limited to, annual reviewed/audited financial statements with the auditors notes for each of their last two complete fiscal years).

SECTION 0400
PROPOSAL EVALUATION

1. Evaluation Committee. An Evaluation Committee, appointed by the City Manager, shall meet to evaluate each Proposal in accordance with the requirements set forth in the solicitation. If further information is desired, Proposers may be requested to make additional written submissions of a clarifying nature or oral presentations to the Evaluation Committee. The evaluation of proposals will proceed in a two-step process as noted below. It is important to note that the Evaluation Committee will score the qualitative portions of the proposals only. The Evaluation Committee does not make an award recommendation to the City Manager. The results of Step 1 & Step 2 Evaluations will be forwarded to the City Manager who will utilize the results to make a recommendation to the City Commission.

2. Step 1 Evaluation. The first step will consist of the qualitative criteria listed below to be considered by the Evaluation Committee. The second step will consist of quantitative criteria established below to be added to the Evaluation Committee results by the Department of Procurement Management. An Evaluation Committee, appointed by the City Manager, shall meet to evaluate each Proposal in accordance with the qualifications criteria established below for Step 1, Qualitative Criteria. In doing so, the Evaluation Committee may:

- review and score all proposals received, with or without conducting interview sessions; or
- review all proposals received and short-list one or more Proposers to be further considered during subsequent

Step 1 - Qualitative Criteria	Maximum Points
Proposer Experience and Qualifications, including Financial Capability	40
Approach and Methodology	40
TOTAL AVAILABLE STEP 1 POINTS	

3. Step 2 Evaluation. Following the results of Step 1 Evaluation of qualitative criteria, the Proposers may receive additional quantitative criteria points to be added by the Department of Procurement Management to those points earned in Step 1, as follows.

Step 2 - Quantitative Criteria	
Revenue Proposal	20
Veterans Preference	5
TOTAL AVAILABLE STEP 2 POINTS	

4. Revenue Proposal Evaluation. The revenue proposal points shall be awarded by site and shall be developed in accordance with the following formula:

Sample Objective Formula for Revenue				
Vendor	Vendor Revenue Proposal	Example Maximum Allowable Points (Points noted are for illustrative purposes only. Actual points are noted above.)	Formula for Calculating Points (lowest revenue / revenue of proposal being evaluated X maximum allowable points = awarded points) Round to	Total Points Awarded For Each Site
Vendor A	\$200.00	20	$\$200 / \$200 \times 20 = 20$	20
Vendor B	\$150.00	20	$\$150 / \$200 \times 20 = 13$	15
Vendor C	\$100.00	20	$\$100 / \$200 \times 20 = 10$	10

5. Determination of Final Ranking. At the conclusion of the Evaluation Committee Step 1 scoring, Step 2 Points will be added to each evaluation committee member's scores by the Department of Procurement Management. Step 1 and 2 scores will be converted to rankings in accordance with the example below:

		Site 1 Facility Folio 02-3202-004-0400		Site 2 Facility Folio 02-3202-004-0820	
		Proposer A	Proposer B	Proposer A	Proposer B
Committee Member 1	Step 1 Points	82	76	80	82
	Step 2 Points	22	15	12	20
	Total	104	91	92	102
	Rank	1	2	2	1
Committee Member 2	Step 1 Points	79	85	72	79
	Step 2 Points	22	15	12	20
	Total	101	100	84	99
	Rank	1	2	2	1
Committee Member 2	Step 1 Points	80	74	66	80
	Step 2 Points	22	15	12	20
	Total	102	89	78	100
	Rank	1	2	2	1
Low Aggregate Score for Each Site		3	7	6	3
Final Ranking for the Each Site		1	2	2	1

* Final Ranking for each site is presented to the City Manager for further due diligence and recommendation to the City Commission. Final Ranking does not constitute an award recommendation until such time as the City Manager has made his recommendation to the City Commission, which may be different than final ranking results.

APPENDIX A



MIAMI BEACH

Proposal Certification, Questionnaire & Requirements Affidavit

LEASE OF CITY-OWNED BUILDINGS AND ROOFTOPS FOR THE PLACEMENT OF TELECOMMUNICATIONS EQUIPMENT

DEPARTMENT OF PROCUREMENT MANAGEMENT
1700 Convention Center Drive
Miami Beach, Florida 33139

Solicitation No: 2015-060-LR	Solicitation Title: LEASE OF CITY-OWNED BUILDINGS AND ROOFTOPS FOR THE PLACEMENT OF TELECOMMUNICATIONS EQUIPMENT	
Procurement Contact: Lourdes Rodriguez	Tel: 305 673-7000 #6652	Email: LourdesRodriguez@miamibeachfl.gov

PROPOSAL CERTIFICATION, QUESTIONNAIRE & REQUIREMENTS AFFIDAVIT

Purpose: The purpose of this Proposal Certification, Questionnaire and Requirements Affidavit Form is to inform prospective Proposers of certain solicitation and contractual requirements, and to collect necessary information from Proposers in order that certain portions of responsiveness, responsibility and other determining factors and compliance with requirements may be evaluated. **This Proposal Certification, Questionnaire and Requirements Affidavit Form is a REQUIRED FORM that must be submitted fully completed and executed.**

1. General Proposer Information.

FIRM NAME:		
No of Years in Business:	No of Years in Business Locally:	No of Employees:
OTHER NAME(S) PROPOSER HAS OPERATED UNDER IN THE LAST 10 YEARS:		
FIRM PRIMARY ADDRESS (HEADQUARTERS):		
CITY:		
STATE:	ZIP CODE:	
TELEPHONE NO.:		
TOLL FREE NO.:		
FAX NO.:		
FIRM LOCAL ADDRESS:		
CITY:		
STATE:	ZIP CODE:	
PRIMARY ACCOUNT REPRESENTATIVE FOR THIS ENGAGEMENT:		
ACCOUNT REP TELEPHONE NO.:		
ACCOUNT REP TOLL FREE NO.:		
ACCOUNT REP EMAIL:		
FEDERAL TAX IDENTIFICATION NO.:		

The City reserves the right to seek additional information from Proposer or other source(s), including but not limited to: any firm or principal information, applicable licensure, resumes of relevant individuals, client information, financial information, or any information the City deems necessary to evaluate the capacity of the Proposer to perform in accordance with contract requirements.

1. **Veteran Owned Business.** Is Proposer claiming a veteran owned business status?
 YES NO

SUBMITTAL REQUIREMENT: Proposers claiming veteran owned business status shall submit a documentation proving that firm is certified as a veteran-owned business or a service-disabled veteran owned business by the State of Florida or United States federal government, as required pursuant to ordinance 2011-3748.

2. **Conflict Of Interest.** All Proposers must disclose, in their Proposal, the name(s) of any officer, director, agent, or immediate family member (spouse, parent, sibling, and child) who is also an employee of the City of Miami Beach. Further, all Proposers must disclose the name of any City employee who owns, either directly or indirectly, an interest of ten (10%) percent or more in the Proposer entity or any of its affiliates.

SUBMITTAL REQUIREMENT: Proposers must disclose the name(s) of any officer, director, agent, or immediate family member (spouse, parent, sibling, and child) who is also an employee of the City of Miami Beach. Proposers must also disclose the name of any City employee who owns, either directly or indirectly, an interest of ten (10%) percent or more in the Proposer entity or any of its affiliates

3. **References & Past Performance.** Proposer shall submit at least three (3) references for whom the Proposer has completed work similar in size and nature as the work referenced in solicitation.

SUBMITTAL REQUIREMENT: For each reference submitted, the following information is required: 1) Firm Name, 2) Contact Individual Name & Title, 3) Address, 4) Telephone, 5) Contact's Email and 6) Narrative on Scope of Services Provided.

4. **Suspension, Debarment or Contract Cancellation.** Has Proposer ever been debarred, suspended or other legal violation, or had a contract cancelled due to non-performance by any public sector agency?
 YES NO

SUBMITTAL REQUIREMENT: If answer to above is "YES," Proposer shall submit a statement detailing the reasons that led to action(s).

5. **Vendor Campaign Contributions.** Proposers are expected to be or become familiar with, the City's Campaign Finance Reform laws, as codified in Sections 2-487 through 2-490 of the City Code. Proposers shall be solely responsible for ensuring that all applicable provisions of the City's Campaign Finance Reform laws are complied with, and shall be subject to any and all sanctions, as prescribed therein, including disqualification of their Proposals, in the event of such non-compliance.

SUBMITTAL REQUIREMENT: Submit the names of all individuals or entities (including your sub-Contractors) with a controlling financial interest as defined in solicitation. For each individual or entity with a controlling financial interest indicate whether or not each individual or entity has contributed to the campaign either directly or indirectly, of a candidate who has been elected to the office of Mayor or City Commissioner for the City of Miami Beach.

6. **Code of Business Ethics.** Pursuant to City Resolution No.2000-23879, each person or entity that seeks to do business with the City shall adopt a Code of Business Ethics ("Code") and submit that Code to the Department of Procurement Management with its proposal/response or within five (5) days upon receipt of request. The Code shall, at a minimum, require the Proposer, to comply with all applicable governmental rules and regulations including, among others, the conflict of interest, lobbying and ethics provision of the City of Miami Beach and Miami Dade County.

SUBMITTAL REQUIREMENT: Proposer shall submit firm's Code of Business Ethics. In lieu of submitting Code of Business Ethics, Proposer may submit a statement indicating that it will adopt, as required in the ordinance, the City of Miami Beach Code of Ethics, available at www.miamibeachfl.gov/procurement/.

7. **Public Entity Crimes.** Section 287.133(2)(a), Florida Statutes, as currently enacted or as amended from time to time, states that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a proposal, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit proposals, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or Contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

SUBMITTAL REQUIREMENT: No additional submittal is required. By virtue of executing this affidavit document, Proposer agrees

with the requirements of Section 287.133, Florida Statutes, and certifies it has not been placed on convicted vendor list.

8. **Acknowledgement of Addendum.** After issuance of solicitation, the City may release one or more addendum to the solicitation which may provide additional information to Proposers or alter solicitation requirements. The City will strive to reach every Proposer having received solicitation through the City's e-procurement system, PublicPurchase.com. However, Proposers are solely responsible for assuring they have received any and all addendum issued pursuant to solicitation. This Acknowledgement of Addendum section certifies that the Proposer has received all addendum released by the City pursuant to this solicitation. Failure to obtain and acknowledge receipt of all addendum may result in proposal disqualification.

Initial to Confirm Receipt		Initial to Confirm Receipt		Initial to Confirm Receipt	
	Addendum 1		Addendum 6		Addendum 11
	Addendum 2		Addendum 7		Addendum 12
	Addendum 3		Addendum 8		Addendum 13
	Addendum 4		Addendum 9		Addendum 14
	Addendum 5		Addendum 10		Addendum 15

If additional confirmation of addendum is required, submit under separate cover.

DISCLOSURE AND DISCLAIMER SECTION

The solicitation referenced herein is being furnished to the recipient by the City of Miami Beach (the "City") for the recipient's convenience. Any action taken by the City in response to Proposals made pursuant to this solicitation, or in making any award, or in failing or refusing to make any award pursuant to such Proposals, or in cancelling awards, or in withdrawing or cancelling this solicitation, either before or after issuance of an award, shall be without any liability or obligation on the part of the City.

In its sole discretion, the City may withdraw the solicitation either before or after receiving proposals, may accept or reject proposals, and may accept proposals which deviate from the solicitation, as it deems appropriate and in its best interest. In its sole discretion, the City may determine the qualifications and acceptability of any party or parties submitting Proposals in response to this solicitation.

Following submission of a Bid or Proposal, the applicant agrees to deliver such further details, information and assurances, including financial and disclosure data, relating to the Proposal and the applicant including, without limitation, the applicant's affiliates, officers, directors, shareholders, partners and employees, as requested by the City in its discretion.

The information contained herein is provided solely for the convenience of prospective Proposers. It is the responsibility of the recipient to assure itself that information contained herein is accurate and complete. The City does not provide any assurances as to the accuracy of any information in this solicitation.

Any reliance on these contents, or on any permitted communications with City officials, shall be at the recipient's own risk. Proposers should rely exclusively on their own investigations, interpretations, and analyses. The solicitation is being provided by the City without any warranty or representation, express or implied, as to its content, its accuracy, or its completeness. No warranty or representation is made by the City or its agents that any Proposal conforming to these requirements will be selected for consideration, negotiation, or approval.

The City shall have no obligation or liability with respect to this solicitation, the selection and the award process, or whether any award will be made. Any recipient of this solicitation who responds hereto fully acknowledges all the provisions of this Disclosure and Disclaimer, is totally relying on this Disclosure and Disclaimer, and agrees to be bound by the terms hereof. Any Proposals submitted to the City pursuant to this solicitation are submitted at the sole risk and responsibility of the party submitting such Proposal.

This solicitation is made subject to correction of errors, omissions, or withdrawal from the market without notice. Information is for guidance only, and does not constitute all or any part of an agreement.

The City and all Proposers will be bound only as, if and when a Proposal (or Proposals), as same may be modified, and the applicable definitive agreements pertaining thereto, are approved and executed by the parties, and then only pursuant to the terms of the definitive agreements executed among the parties. Any response to this solicitation may be accepted or rejected by the City for any reason, or for no reason, without any resultant liability to the City.

The City is governed by the Government-in-the-Sunshine Law, and all Proposals and supporting documents shall be subject to disclosure as required by such law. All Proposals shall be submitted in sealed proposal form and shall remain confidential to the extent permitted by Florida Statutes, until the date and time selected for opening the responses. At that time, all documents received by the City shall become public records.

Proposers are expected to make all disclosures and declarations as requested in this solicitation. By submission of a Proposal, the Proposer acknowledges and agrees that the City has the right to make any inquiry or investigation it deems appropriate to substantiate or supplement information contained in the Proposal, and authorizes the release to the City of any and all information sought in such inquiry or investigation. Each Proposer certifies that the information contained in the Proposal is true, accurate and complete, to the best of its knowledge, information, and belief.

Notwithstanding the foregoing or anything contained in the solicitation, all Proposers agree that in the event of a final unappealable judgment by a court of competent jurisdiction which imposes on the City any liability arising out of this solicitation, or any response thereto, or any action or inaction by the City with respect thereto, such liability shall be limited to \$10,000.00 as agreed-upon and liquidated damages. The previous sentence, however, shall not be construed to circumvent any of the other provisions of this Disclosure and Disclaimer which imposes no liability on the City.

In the event of any differences in language between this Disclosure and Disclaimer and the balance of the solicitation, it is understood that the provisions of this Disclosure and Disclaimer shall always govern. The solicitation and any disputes arising from the solicitation shall be governed by and construed in accordance with the laws of the State of Florida.

PROPOSER CERTIFICATION

I hereby certify that: I, as an authorized agent of the Proposer, am submitting the following information as my firm's proposal; Proposer agrees to complete and unconditional acceptance of the terms and conditions of this document, inclusive of this solicitation, all attachments, exhibits and appendices and the contents of any Addenda released hereto, and the Disclosure and Disclaimer Statement; Proposer agrees to be bound to any and all specifications, terms and conditions contained in the solicitation, and any released Addenda and understand that the following are requirements of this solicitation and failure to comply will result in disqualification of proposal submitted; Proposer has not divulged, discussed, or compared the proposal with other Proposers and has not colluded with any other Proposer or party to any other proposal; Proposer acknowledges that all information contained herein is part of the public domain as defined by the State of Florida Sunshine and Public Records Laws; all responses, data and information contained in this proposal, inclusive of the Proposal Certification, Questionnaire and Requirements Affidavit are true and accurate.

Name of Proposer's Authorized Representative:	Title of Proposer's Authorized Representative:
Signature of Proposer's Authorized Representative:	Date:

State of _____)
)
 County of _____)
 of _____, a corporation, and that the instrument was signed in behalf of the said corporation by authority of its board of directors and acknowledged said instrument to be its voluntary act and deed. Before me:

 Notary Public for the State of Florida
 My Commission Expires: _____

APPENDIX B



MIAMI BEACH

“No Bid” Form

LEASE OF CITY-OWNED BUILDINGS AND ROOFTOPS FOR THE PLACEMENT OF TELECOMMUNICATIONS EQUIPMENT

DEPARTMENT OF PROCUREMENT MANAGEMENT
1700 Convention Center Drive
Miami Beach, Florida 33139

Note: It is important for those vendors who have received notification of this solicitation but have decided not to respond, to complete and submit the attached “Statement of No Bid.” The “Statement of No Bid” provides the City with information on how to improve the solicitation process. Failure to submit a “Statement of No Bid” may result in not being notified of future solicitations by the City.

Statement of No Bid

WE HAVE ELECTED NOT TO SUBMIT A PROPOSAL AT THIS TIME FOR REASON(S) CHECKED AND/OR INDICATED BELOW:

- Workload does not allow us to proposal
- Insufficient time to respond
- Specifications unclear or too restrictive
- Unable to meet specifications
- Unable to meet service requirements
- Unable to meet insurance requirements
- Do not offer this product/service
- OTHER. (Please specify)

We do do not want to be retained on your mailing list for future proposals of this type product and/or service.

Signature: _____

Title: _____

Legal Company Name: _____

Note: Failure to respond, either by submitting a proposal or this completed form, may result in your company being removed from our vendors list.

PLEASE RETURN TO:
CITY OF MIAMI BEACH
PROCUREMENT DEPARTMENT
ATTN: Lourdes Rodriguez
ITN #2015-060-LR
1700 Convention Center Drive
MIAMI BEACH, FL 33139

APPENDIX C



MIAMI BEACH

Minimum Requirements & Specifications

LEASE OF CITY-OWNED BUILDINGS AND ROOFTOPS FOR THE PLACEMENT OF TELECOMMUNICATIONS EQUIPMENT

DEPARTMENT OF PROCUREMENT MANAGEMENT
1700 Convention Center Drive
Miami Beach, Florida 33139

C1. MINIMUM REQUIREMENTS. The Minimum Eligibility Requirements for this solicitation are listed below. Proposer shall submit detailed verifiable information affirmatively documenting compliance with each minimum requirement. Proposers that fail to comply with minimum requirements will be deemed non-responsive and will not be considered.

1. Proposer shall demonstrate that it is routinely engaged in providing the services outlined in this ITN.

C2. SCOPE OF WORK REQUIRED.

The City of Miami Beach owns a number of facilities that may be viable to support telecom facilities that will enhance cellular and other communication services available to local residents, businesses, and visitors. These sites could also generate ongoing lease revenues to augment the City's General Fund.

Through this ITN, the City is soliciting proposals from a qualified individual or firm with demonstrated expertise in leasing and managing telecom sites on public property. Following is a summary of the services and arrangements desired by the City.

- **Site Selection.** The Contractor will review the listing of authorized sites (Appendix X) and select one or more sites for which to submit a proposal.
- **Marketing.** The Contractor may market agreed upon City properties to prospective wireless telecom tenants for use as a telecommunications transmitting and receiving location and the installation, operation, and maintenance of telecommunications equipment and systems, including, but not limited to, towers, poles, transmitters, receivers, antenna support masts, cabling, wiring, and accessories (collectively, "Telecom Equipment"). The Contractor may or may not have exclusive right, depending on proposal submitted, to market the properties under lease to prospective telecom lessees for installation, operation and maintenance of such Telecom Equipment. The Contractor may, at its own expense, engage Contractors, independent contractors, brokers or others to assist in marketing the Property.
- **Lease Agreement.** The sample lease agreement that the City intends to use for any resulting agreement is attached. Proposer should review lease agreement carefully prior to submittal of Proposal. The City does not anticipate allowing any changes to the said lease agreement.

Installations. The Contractors shall seek the City's approval for any installation plans and specifications to address issues related to space requirements, telecom equipment location, roof top configuration, building aesthetics, and other structural or engineering requirements. Any work done that will disrupt building residents must be completed during regular business hours and coordinated with City staff upon reasonable notice. Installation of all equipment must be performed such that existing roof warranties are not voided. Contractor is responsible for any damage resulting from the installation, including but not limited to any damage relating water infiltration.

Legal Compliance. The Contractor shall comply with all zoning ordinances, building codes and all other applicable laws, including (but not limited to) Federal Communications Commission, Federal Aviation Administration and other relevant regulatory agency laws regarding telecom equipment installation, operation, maintenance, repair and/or replacement.

Lease Revenues. The City will collect monthly rental payments.

Exclusivity. The City will not consider proposals that require the exclusive use of any City facility by the Proposer. The successful Proposer shall only have lease rights to the section of the City facility under contract.

APPENDIX D



MIAMI BEACH

Listing of Facilities

LEASE OF CITY-OWNED BUILDINGS AND ROOFTOPS FOR THE PLACEMENT OF TELECOMMUNICATIONS EQUIPMENT

DEPARTMENT OF PROCUREMENT MANAGEMENT
1700 Convention Center Drive
Miami Beach, Florida 33139

Listing of Facilities

FOLIO NUMBER	ADDRESS	DESCRIPTION	LOT SIZE (SQ FT)	BUILDING (SQ FT)
02-3202-004-0400	7505 Collins Ave	Library - North Beach	10,500	5,254
02-3202-004-0820	8140 Collins Ave	Log Cabin (land only)	8,750	
02-3202-004-0830	8140 Collins Ave	Log Cabin (land only)	8,750	
02-3202-004-0840	8128 Collins Ave	Log Cabin (land & building)	17,500	4,454
02-3202-004-0860	8108 Collins Ave	Log Cabin (land & building)	17,500	1,820
02-3203-000-0040	200 Fairway Dr	Normandy Shores Golf Course		
02-3211-001-0760	6860 Indian Creek Dr	Fire Station #4		
02-3211-002-1070	500 71 Street	Byron Carlyle Theatre		
02-3222-001-0550	400 W 42 Street	42nd Street parking garage		
02-3226-001-00405	340 23rd Street			
02-3226-001-0391	2200 Liberty Ave	Miami City Ballet (land & building)		
02-3226-001-0400	340 23rd Street			
02-3226-001-0460	224 23rd Street	224 23rd Street		
02-3226-001-0470	211 22nd Street	Library (land only) - 211 22nd Street - Collins Park		
02-3226-001-0480	227 22nd Street	Library (land & building) - 227 22nd Street - Collins Park		
02-3226-001-0490	245 22nd Street	Library (land only) - 245 22nd Street - Collins Park		
02-3227-000-0090	1700 Convention Center Dr	City Hall		13,711
02-3227-000-0090	555 17th Street	555 17th Street		10,003
02-3227-000-0100	2300 Pinetree Dr	Bayshore Golf Course Par 3 Golf Courses		
02-3233-085-0010		Sunset Harbour Garage (air)		
02-3234-002-0100	1040 Lincoln Rd	Colony Theatre		
02-3234-007-0460	1755 Meridian Ave			4,536
02-3234-008-0520	1301 Collins Ave	13th Street Garage (P-17A)		
02-3234-019-1090	1550 Collins Ave	Anchor Garage & shops (land & building)		
02-3234-206-0001	1701 Meridian Ave		17,550	7,066
02-3234-226-0001	500 17 Street			
02-4203-004-0721	270 7th Street	7th Street parking garage (land & building)		
02-4203-009-0370	1130 Washington Ave	Miami Beach Police Department and Historic City Hall		
02-4203-009-4330	1051 Jefferson Ave	Fire Station #1		
02-4203-009-9250	400 Alton Rd	400 Alton Rd (150 ft. Easement)		
02-4204-000-0010	140 Mc Arthur Causeway	Terminal Isle (PW-1)		

APPENDIX E



MIAMI BEACH

Revenue Proposal Form

LEASE OF CITY-OWNED BUILDINGS AND ROOFTOPS FOR THE PLACEMENT OF TELECOMMUNICATIONS EQUIPMENT

DEPARTMENT OF PROCUREMENT MANAGEMENT
1700 Convention Center Drive
Miami Beach, Florida 33139

APPENDIX A REVENUE PROPOSAL FORM

Failure to submit REVENUE PROPOSAL FORM in its entirety and fully executed by the deadline established for the receipt of proposals will result in proposal being deemed non-responsive and being rejected.

Proposer affirms that the amounts stated below represent the entire revenue of the items in full accordance with the requirements of this ITN, inclusive of its terms, conditions, specifications and other requirements stated herein, and that no claim will be made to reduce monthly revenue on account of any increase in wage scales, material prices, delivery delays, taxes, insurance, cost indexes or any other factor unless provision is allowed herein and has been exercised by the City Manager in advance. **REVENUE PROPOSAL FORM** shall be completed mechanically or, if manually, in ink. **REVENUE PROPOSAL FORM** completed in pencil shall be deemed non-responsive. All corrections on the **REVENUE PROPOSAL FORM** shall be initiated.

Item	City-Owned Facility	Address	Monthly Revenue Proposed	Quantity	Yearly Revenue *
1	02-3202-004-0400	7505 Collins	\$	12	\$
2	02-3202-004-0820	8140 Collins	\$	12	\$
3	02-3202-004-0830	8140 Collins	\$	12	\$
4	02-3202-004-0840	8128 Collins	\$	12	\$
5	02-3202-004-0860	8108 Collins	\$	12	\$
6	02-3203-000-0040	200 Fairway	\$	12	\$
7	02-3211-001-0760	6860 Indian Creek	\$	12	\$
8	02-3211-002-1070	500 71 Street	\$	12	\$
9	02-3222-001-0550	400 W 42 Street	\$	12	\$
10	02-3226-001-00405	340 23rd Street	\$	12	\$
11	02-3226-001-0391	2200 Liberty	\$	12	\$
12	02-3226-001-0400	340 23rd Street	\$	12	\$
13	02-3226-001-0460	224 23rd Street	\$	12	\$
14	02-3226-001-0470	211 22nd Street	\$	12	\$
15	02-3226-001-0480	227 22nd Street	\$	12	\$
16	02-3226-001-0490	245 22nd Street	\$	12	\$
17	02-3227-000-0090	1700 Convention Center	\$	12	\$
18	02-3227-000-0090	555 17th Street	\$	12	\$
19	02-3227-000-0100	2300 Pinetree	\$	12	\$
20	02-3233-085-0010	Sunset Harbor Garage	\$	12	\$
21	02-3234-002-0100	1040 Lincoln	\$	12	\$
22	02-3234-007-0460	1755 Meridian	\$	12	\$
23	02-3234-008-0520	1301 Collins	\$	12	\$
24	02-3234-019-1090	1550 Collins	\$	12	\$
25	02-3234-206-0001	1701 Meridian	\$	12	\$
26	02-3234-226-0001	500 17 Street	\$	12	\$
27	02-4203-004-0721	270 7th Street	\$	12	\$
28	02-4203-009-0370	1130 Washington	\$	12	\$
29	02-4203-009-4330	1051 Jefferson	\$	12	\$
30	02-4203-009-9250	400 Alton	\$	12	\$
31	02-4204-000-0010	140 Mc Arthur Causeway	\$	12	\$
TOTAL ANNUAL REVENUE TO THE CITY*					\$

* The Yearly Revenue to the City Per Site shall be the amount utilized to allocate points pursuant to Step 2 Evaluation Process outlined in Section 0400.

Bidder's Affirmation
Company:
Authorized Representative:
Authorized Representative's Signature:

APPENDIX F

Sample Lease Agreement

LEASE OF CITY-OWNED BUILDINGS AND ROOFTOPS FOR THE PLACEMENT OF TELECOMMUNICATIONS EQUIPMENT

DEPARTMENT OF PROCUREMENT MANAGEMENT
1700 Convention Center Drive
Miami Beach, Florida 33139



MIAMI BEACH

SAMPLE LEASE AGREEMENT

This document sets forth the Lease Agreement terms and minimum levels of insurance that the contractor is required to agree to and maintain throughout the term of the contract and any renewal periods.

ROOFTOP LEASE AGREEMENT

This **ROOFTOP LEASE AGREEMENT** (the “**Agreement**”) is dated as of this ___ day of _____, 2014, by and between the City of Miami Beach, Florida, a Florida municipal corporation (“**Lessor**”), and _____, authorized to do business in the State of Florida.

WHEREAS, Lessor owns or leases certain parking garage, including the land, buildings, and other structures located thereon, that may be used for the installation, location, operation, maintenance, repair, upgrade, and removal of wireless communications equipment (the “**Lessor’s Property**”), as such Lessor’s Property is more particularly described in **Exhibit “A”** attached hereto; and

WHEREAS, Tenant wishes to use and occupy certain portions of the Lessor’s Property for the installation, location, operation, maintenance, repair, upgrade, and removal of wireless communication services equipment; and

WHEREAS, the parties wish to enter into an agreement in which Lessor will grant to Tenant a non-exclusive right to lease the Lessor’s Property for wireless communications services as defined at section 104-3, of the City of Miami Beach’s Code of Ordinances with the right to install, locate, operate, and maintain antennas on Lessor’s Property, within the Tenant’s footprint for its Equipment.

NOW, THEREFORE, this Agreement is entered into between the Lessor and Tenant, in and for the consideration of ten dollars (\$10.00), and the rents and mutual covenants contained in this Agreement, the receipt and legal sufficiency of which is acknowledged by both parties.

1. **Recitals.** The above “Whereas” clauses are incorporated herein and made a material part of this Agreement.

2. **Definitions.** The following terms as used in this Agreement are defined as follows:

“**Approvals**” means all certificates, permits, licenses and other approvals that are required by law for Tenant’s intended use of the Leased Premises.

“**Building**” means the building known as the parking garage located on the Property, all of which is owned or controlled by Lessor, and portions of which are leased by Lessor to Tenant pursuant to this Agreement.

“**Commencement Date**” means _____.

“**Equipment**” means wireless communications facilities, as defined at Section 104-3 of the City of Miami Beach Code of Ordinances and Section 337.401(3) of the Florida Statutes, including antennas, equipment, generators, transmission lines, transmitters cables, structures, equipment shelters or cabinets, meter boards, utilities and related improvements as more fully set out in Exhibit A, attached hereto.

“**Hazardous Material**” means any substance which is (i) designated, defined, classified or regulated as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law, as currently in effect or as hereafter amended or enacted, (ii) a petroleum hydrocarbon, including crude oil or any fraction thereof and all petroleum products, (iii) PCBs, (iv) lead, (v) asbestos, (vi) flammable explosives, (vii) infectious materials, (viii) radioactive materials; radon gas, 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 federal, state or local safety guidelines, whichever are more stringent; (c) any substance, gas, material or chemical which is or may hereafter be defined as or included in the definition of "hazardous substances," "hazardous materials," "hazardous wastes," "pollutants or contaminants," "solid wastes," or words of similar import under any applicable governmental laws, rules, and regulations to be known as “Environmental Laws.” Environmental Laws” includes, but is not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9061 et seq.; the Toxic Substances Control Act, 15 U.S.C. Sections 2601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. 5101, 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.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; and Florida Statutes, Chapters 376 and 403; and (d) any other chemical, material, gas, or substance, the exposure to or release of which is regulated by any governmental or quasi-governmental entity having jurisdiction over the operations thereon, as said laws have been supplemented or amended to date, the regulations promulgated pursuant to said laws and any other federal, state or local law, statute, rule, regulation or ordinance which regulates or proscribes the use, storage, disposal, presence, clean-up, transportation or release or threatened release into the environment of Hazardous Material.

“**Lease Term**” means a period of 365 days following the Commencement Date of this Agreement.

“**Leased Premises**” means that portion of the rooftop of the Building located on the Property, as defined in Exhibit B. The Leased Premises shall include non-exclusive access to the Building’s existing telephone distribution systems and facilities as well as vertical and horizontal risers and conduits in the Building for the limited purposes of installing electrical power for the Equipment and connecting the Equipment to fiber optic cable at the Building’s demarcation point.

“**Property**” means a parcel of property as is more particularly described or depicted in Exhibit “A” to the Agreement.

“**Permitted Uses**” means the installation, location, operation, maintenance, repair, and removal of Equipment by Tenant.

3. “**Rent**” means an amount equal to _____ to be paid by Tenant to Lessor on or before the first day of each month during the Term of this Agreement.

4. **Leased Premises; Survey.** Lessor leases to Tenant the Leased Premises as described in Exhibit B, which exhibit is attached and incorporated by reference into this Agreement. Lessor covenants that it has good and sufficient title and interest to the Leased Premises and Property, and has full authority to enter into and execute this Agreement. Tenant shall be entitled to use the Leased Premises for the purpose of constructing, maintaining, and operating, at its sole expense, Equipment. Within six months of installation, Tenant shall provide Lessor with a copy of an “as-built” survey of the Leased Premises, and upon Lessor’s receipt of such “as-built” survey, it shall be deemed to be incorporated into this Agreement even if not physically affixed hereto. Tenant acknowledges and agrees that it is accepting possession of the Premises in as-is condition and that, except as otherwise expressly hereinafter set forth, Lessor has no obligation to furnish, render, or supply any money, work, labor, material, fixture, or equipment with respect to the Premises.

5. **Lease.** Effective as of the Commencement Date, Lessor leases the Leased Premises to Tenant for the Lease Term, unless this Agreement is terminated pursuant to the provisions set forth herein. Tenant shall pay to Lessor the Rent as defined in this Agreement, provided however, annually, there shall be a 3 percent escalation of rent provision as set forth in paragraph 6 of this Agreement. Tenant is also to pay all applicable sales tax, throughout the Lease Term. Tenant shall pay any assessments, charges, fees, or licenses directly attributable to its use of the Premises, including any increase in real property taxes chargeable to Lessor and any use and occupancy taxes. Location for Payments. All rents or other payments due hereunder shall be paid to the City of Miami Beach at the following address: City of Miami Beach, Finance Department, c/o Revenue Supervisor, 1700 Convention Center Drive, Miami Beach, Florida 33139.
6. **Reserved.**
7. **Rent Past Due.** If any payment due from Tenant shall be overdue more than five (5) calendar days, a late charge of five (5%) percent of the delinquent sum may be charged by Lessor. If any payment due from Tenant shall remain overdue for more than fifteen (15) calendar days, an additional late charge in an amount equal to the lesser of the highest rate permitted by law or one and one-half (1 1/2%) percent per month eighteen (18%) percent per annum) of the delinquent amount may be charged by Lessor, such charge to be computed for the entire period for which the amount is overdue and which shall be in addition to and not in lieu of the five (5%) percent late charge or any other remedy available to Lessor. Tenant shall pay Lessor interest on unpaid annual payments at the rate 1% per month until the payment is made.
8. **Security Deposit.** Lessor acknowledges receipt of a security deposit in the amount of \$24,000, and shall not constitute a license or lease fee, to be held by Lessor, without any liability for interest thereon, as security for the performance by Tenant of all its obligations under this Lease. Lessor shall be entitled to commingle the security deposit with Lessor's other funds. If Tenant defaults in any of its obligations under this Lease, Lessor may at its option, but without prejudice to any other rights which Lessor may have, apply all or part of the security deposit to compensate Lessor for any loss, damage, or expense sustained by Lessor as a result of such default. If all or any part of the security deposit is so applied, Tenant shall restore the security deposit to its original amount on demand of Lessor. Subject to the provisions of this section, within thirty (30) calendar days following termination of this Lease, if Tenant is not then in default, the security deposit will be returned by Lessor to Tenant. The security deposit shall be refundable, without interest, to Tenant upon termination of this Agreement, provided the Lessor suffers no damages, set-offs, or lost rent.
9. **Reconfiguration/Expansion of Premises.** Any attempt by the Tenant to expand the scope of the Leased Premises must be requested in writing to the Lessor,; shall be subject to the prior written approval of Lessor, which approval if given at all shall be at Lessor's sole option and discretion; and if so approved; and an addendum to this Agreement will be entered into and executed by the parties, reflecting any new terms and leasehold payments by Tenant. The terms shall be negotiated at that time and any expansion shall be contingent upon the successful negotiation of those terms. However, any such action by Tenant will ensure that the Lessor's Building, its roof structure and membrane, walls and foundation are not damaged by the scope of work. Tenant shall be solely responsible for repairing the Building due to any damage resulting from Tenant's actions.
10. **Permitted Uses; Non-Exclusivity.** During the Term of this Agreement, Lessor grants to Tenant the non-exclusive right to use the Leased Premises for the Permitted Uses. Lessor may lease other areas of the rooftop, outside of the Tenant's footprint for its Equipment.
11. **Assignment, Sublease, and Licensing** Tenant shall not sublease, assign or license all or a portion of its interest in this Agreement without prior notice and approval by Lessor, which approval shall not be unreasonably delayed or denied. Tenant shall provide all relevant financial information relating to the proposed sub-lessee, licensee, or assignee and all insurance in compliance with this Agreement. Upon approval of an assignment of this entire Agreement by the Lessor, Tenant shall be relieved from any further liability or obligation under this Agreement. Notwithstanding the foregoing, the transfer of the rights and obligations of Tenant to a parent, subsidiary, or other affiliate of Tenant or to any successor in interest or entity acquiring 51% percent or more of Tenant's stock or assets (collectively "Exempted Transfers") shall not be deemed an assignment for the purposes of this Agreement and therefore shall not require the consent of the City, provided that Tenant reasonably demonstrates to the City's lawfully empowered designee the following criteria (collectively the "Exempted Transfer Criteria"): (i) such transferee will have a financial strength after the proposed transfer at least equal to that of Tenant immediately prior to the transfer; (ii) any such transferee assumes all of Tenant's obligations hereunder; and (iii) the experience and technical qualifications of the proposed transferee, either alone or together with Tenant's management team in the provision of telecommunications or similar services, evidences an ability to operate the Equipment/Leased Premises. Tenant shall give at least 30 calendar days' prior written notice (the "Exempted Transfer Notice") to the City of any such proposed Exempted Transfer and shall set forth with specificity in such Exempted Transfer Notice the reasons why Tenant believes the Exempted Transfer Criteria have been satisfied. The City Commission shall have a period of 30 calendar days (the "Exempted Transfer Evaluation Period") from the date that Tenant gives the City its Exempted Transfer Notice to object in writing to the adequacy of the evidence contained therein. Notwithstanding the foregoing, the Exempted Transfer Evaluation Period shall not be

deemed to have commenced until the City has received from Tenant any and all additional information the City may reasonably require in connection with its evaluation of the Exempted Transfer Criteria as set forth in the Exempted Transfer Notice, so long as the City give Tenant notice in writing of the additional information the City requires with 15 calendar days after the City's receipt of the original Exempted Transfer Notice. If the City Commission fails to act upon Tenant's Exempted Transfer Notice within the Exempted Transfer Evaluation Period (as the same may be extended in accordance with the foregoing provisions), such failure shall be deemed an affirmation by the City that Tenant has in fact established compliance with the Exempted Transfer Criteria to the City's satisfaction.

Crown Castle has the further right to pledge or encumber its interest in this Agreement. Upon request to Lessor from any leasehold mortgagee, Lessor agrees to give the holder of such leasehold mortgage written notice of any default by Crown Castle and an opportunity to cure any such default within fifteen (15) calendar days after such notice with respect to monetary defaults and within a commercially reasonable period of time after such notice with respect to any non-monetary default.

12. **Access.** Lessor grants Tenant and all of its respective employees, agents, guests and contractors the non-exclusive right of ingress and egress to the Leased Premises, including access over, upon, through and across the common areas, elevators, stairways, and driveways of the Building and the Property seven (7) days a week, twenty-four (24) hours a day, for the installation, maintenance and operation of the Equipment. However, Tenant shall coordinate access with the Lessor with at least 24 hours prior notice, to ensure security and access to the Property.

13. **Lessor's Right of Entry.** The Lessor, or its authorized agent or agents, shall have the right to enter upon the Leased Premises at all reasonable times for the purpose of inspecting same, preventing waste, making such repairs as the Lessor may consider necessary and for the purpose of preventing fire, theft or vandalism. However, the Lessor agrees that whenever possible, the Lessor shall provide reasonable notice, in writing, to Tenant, unless the need to enter the Leased Premises is an emergency, as deemed by the Lessor at its sole discretion, which if not immediately addressed could cause property damage, loss of life or limb, or other injury to persons. Nothing herein shall imply any duty on the part of the Lessor to do any work that under any provisions of this Agreement the Tenant may be required to perform, and the performance thereof by the Lessor shall not constitute a waiver of the Tenant's default.

If the Tenant shall not be personally present to permit entry onto the Leased Premises at any time, for any reason, and any entry thereon shall be necessary or permissible, the Lessor, or its agents, may enter the Leased Premises, including, without limitation, forcibly entering the Leased Premises, without rendering the Lessor or such agents liable therefore.

14. **Installation and Maintenance.**

- (A) Exhibit B includes detailed engineering plans and specifications of the planned installation ("Tenant's Plans") for Lessor's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall apply for all required permits and zoning approvals, as may be required by the City of Miami Beach, and comply with the condition of said zoning approvals or permits. Said zoning approvals and permits are required and may not be waived. In the event Lessor does not provide to Tenant a written request for modifications to Tenant's Plans within thirty (30) business days of its receipt of Tenant's Plans, then Tenant's Plans shall be deemed approved by Lessor. Any equipment proposed to be installed outside of the enclosure on the Leased Premises subsequent to the date of execution of this lease shall also be subject to Design Review or Historic Preservation approval by the appropriate City staff or board(s), whichever has jurisdiction and are not subject to the 30 business day notice delineated herein. Notwithstanding anything to the contrary contained herein, Tenant, its agents and assigns must provide reasonable written notice to the City, as provided under Subsection (F) prior to repairing, maintaining, installing or replacing of any rooftop equipment located on the Leased Premises. However, Tenant shall, provide at least reasonable oral notice to Owner, prior to conducting emergency repairs
- (B) Tenant shall manage all engineering services, including intermodulation studies and all site engineering and construction necessary to install, operate and maintain Equipment on the Leased Premises. The parties acknowledge that in order to connect areas of the Leased Premises that are needed to make the Equipment operational, Tenant shall have the right to install conduit, sleeves and cables connecting such locations and Equipment, all as more fully described in Exhibit B.
- (C) Tenant or its agents shall install, construct and maintain their Equipment on the Leased Premises at no cost to the Lessor.
- (D) Tenant shall, at its expense, keep and maintain the Equipment located on the Leased Premises in good, safe, and clean order during the Term of the Agreement. Tenant's alterations to the Leased Premises are to be performed in a workmanlike manner. In compliance with Section 712.10, Florida Statutes, Tenant covenants that no mechanics', laborers' or materialmen's liens are to be recorded against the Property. Tenant shall promptly pay for all materials

supplied and work done in respect of the Premises by, through, or under Tenant so as to ensure that no lien is recorded against any portion of the Leased Premises, Property, or against Lessor's or Tenant's interest therein. If a lien is so recorded, Tenant shall discharge it promptly by payment or bonding. If any such lien against the Leased Premises, Property or Lessor's interest therein is recorded and not discharged by Tenant as above required within 15 calendar days following written notice to Tenant, Lessor shall have the right to remove such lien by bonding or payment and the cost thereof shall be paid immediately from Tenant to Lessor. Lessor and Tenant expressly agree and acknowledge that no interest of Lessor in the Leased Premises, or Property shall be subject to any lien for improvements made by Tenant in or for the Premises, and Lessor shall not be liable for any lien for any improvements made by Tenant, such liability being expressly prohibited by the terms of this Agreement. In accordance with applicable laws of the State of Florida, Lessor has filed in the public records of Dade County, Florida, a public notice containing a true and correct copy of this paragraph, and Tenant hereby agrees to inform all contractors and material suppliers performing work in or for or supplying materials to the Premises of the existence of said notice. A breach of this provision may expose Tenant to liability for damages for, among other claims, slander of title. In the event that Lessor prevails against Tenant on any claim for equitable relief or damages, Tenant shall be liable to Lessor for its reasonable attorney's fees and costs. Tenant shall require all subtenants, agents, assigns, contractors, and subcontractors to be placed on notice of this covenant and to affirm that they are prohibited from recording liens against Lessor's Property.

- (E) All installations and operations in connection with this Agreement shall comply with all federal, state, and local laws, codes and regulations. Lessor assumes no responsibility for the licensing, operation or maintenance of the Equipment.
- (F) Lessor shall be responsible for the structural maintenance of the Building ("**Building Work**"). As the Tenant's facilities are installed upon the roof of the Building, there may come a time that repairs are needed for the roof, or roof replacement may be required. Tenant shall be responsible for all costs associated with temporary or permanent relocation of its facilities during the period the roof is being repaired or replaced. The Building and Property are adjacent to the ocean, and in an area exposed to the elements and potential hurricane and tropical storm events. As such, the parties agree and recognize that roof work to the Building may be required, and provided this Agreement is not terminated pursuant to provision 31(C), Tenant shall be solely responsible for the temporary relocation of its Equipment during the repair or replacement. The Lessor shall not be responsible for the Tenant's loss of signal, transmission, or services due to the need to replace or repair the roof. Tenant acknowledges that a material inducement in entering into this Agreement is Tenant's acceptance of this condition. Tenant agrees to reasonably cooperate with Lessor to facilitate any Building Work, provided however, to the extent practicable, the Building Work should minimize the effects to Tenant's Equipment, and include suggestions as to the most cost effective measures to minimize disruption to Tenant's Equipment. Lessor agrees to provide at least 90 calendar days' notice to Tenant of its intention to perform Building Work; except in the case of emergency Building Work in which case Lessor shall give as much notice as possible under the circumstances.
- (G) Lessor shall be solely responsible for ensuring that the Building is operated in compliance with all applicable federal, state, and local laws, codes and regulations (the "**Building Regulations**"). Tenant may give Lessor written notice of its failure to comply with said Building Regulations. In the event Lessor fails to correct said violation(s) of the Building Regulations within thirty (30) calendar days upon receipt of said notice, Tenant shall be entitled, but not obligated, to cause such work to be done as is necessary to make the Leased Premises (and the Equipment located thereon) comply with such Building Regulations, and deduct the cost of such work from future monthly rentals otherwise due and payable by Tenant as set forth under this Agreement.
- (H) Tenant, and its employees, agents or invitees, shall take reasonable measures not to damage any portion of the Building. Tenant shall be responsible for any damage to the Building or Property caused during installation or repair of the Equipment onto the Leased Premises. Tenant shall have no duty to reimburse Lessor for any expense associated with the normal wear and tear on the roof, or any other expense not reasonably related to Tenant's use and occupancy of the Leased Premises.
- (I) Tenant shall use only licensed contractors and subcontractors approved in writing by Lessor to complete the construction and installation of Tenant's Work, which approval shall not be unreasonably withheld or delayed.

15. **Personal Property/Removal/ Restoration.** All improvements, Equipment or other property attached to or otherwise brought onto the Leased Premises shall, at all times, remain the personal property of Tenant and, at Tenant's option, may be removed by Tenant at any time during the Term, provided, however, the Equipment shall be removed within thirty (30) calendar days after the termination or expiration of this Agreement. Lessor Waives any and all rights it may have, including any rights it may have in its capacity as Lessor under this Agreement to assert any liens, encumbrances or adverse claims, statutory or otherwise, related to or in connection with the Equipment or an portion thereof. Tenant, in its sole discretion may remove the Equipment or any portion of the Equipment at any time during the Lease Term of the Agreement, provided

reasonable notice is provided to the Lessor, and provided a payment and performance bond is provided to the Lessor, to secure the repairs to the Building or Property, if applicable. Tenant will be responsible for the replacement of any trees, shrubs or other vegetation damaged during the removal process. Tenant will not be required to remove from the Premises or the Property any foundation or underground utilities.

16. **Utilities.** Lessor shall not be responsible for any expense associated with the installation, maintenance or operation of any Equipment installed on the Leased Premises by Tenant. With respect to the use of electric utilities, Tenant shall directly contract with the local electric utility company servicing the Building and have such utility company install, at the sole cost and expense of Tenant, separate metering devices to measure the usage attributable to Tenant and Tenant shall pay the electric utility company directly for such usage.

17. **Indemnification.** Tenant shall indemnify, defend and hold harmless Lessor, its officials agents, employees, and volunteers from and against any and all liability, suits, actions, damages, costs, losses and expenses, including reasonable attorney's fees, demands and claims for personal injury, bodily injury, sickness, diseases or death or damage or destruction of tangible property or loss of use resulting therefrom, arising out of any errors, omissions, misconduct or negligent acts of Tenant, its officials, agents, employees or subcontractors in the performance of the services of Tenant under this Agreement.

18. **Waiver of Claims and Rights of Subrogation.** The parties hereby waive any and all rights of action for negligence against the other on account of damage to the Property or to the Leased Premises resulting from any fire or other casualty of the kind covered by property insurance policies with extended coverage, regardless of whether or not, or in what amount, such insurance is carried by the parties. All policies of property insurance carried by either party for the Equipment, Property or the Leased Premises shall include a clause or endorsement denying to the insurer rights by way of subrogation against the other party to the extent rights have been waived by the insured before the occurrence of injury or loss.

19. **Taxes and Assessments.** Lessor shall pay all real estate taxes on the Property. Tenant agrees to reimburse Lessor for any documented increase in personal property taxes levied against the Leased Premises that are directly attributable to Tenant's Equipment. Lessor agrees to provide Tenant any documentation evidencing the increase and how such increase is attributable to the Permitted Uses. Tenant reserves the right to challenge any such assessment, and Lessor agrees to cooperate with Tenant in connection with any such challenge. Tenant shall pay all personal, intangible, sales or use taxes associated with the installed Equipment on Lessor's property.

20. **Insurance.**

(A) Within ten (10) calendar days after the date hereof, Tenant shall provide to Lessor certificates of insurance evidencing that Tenant has the required comprehensive general liability insurance required of Tenant under the Agreement. In addition, Tenant shall provide to Lessor certificates of insurance evidencing that Tenant's general contractor has in effect (and shall maintain at all times during the course of the work hereunder) workers' compensation insurance to cover full liability under workers' compensation laws of the State of Florida with employers' liability coverage; comprehensive general liability insurance for the hazards of operations, independent contractors, products and completed operations (for two (2) years after the date of acceptance of the work by Lessor and Tenant); and contractual liability specifically covering the indemnification provision in the construction contract, such comprehensive general liability to include broad form property damage and afford coverage for explosion, collapse and underground hazards, and "personal injury" liability insurance and an endorsement providing that the insurance afforded under the contractor's policy is primary insurance as respects Lessor and Tenant and that any other insurance maintained by Lessor or Tenant is excess and non-contributing with the insurance required hereunder, provided that such insurance may be written through primary or umbrella insurance policies with a minimum policy limit of \$1,000,000.00. Lessor and Tenant are to be included as an additional insured for insurance coverages required of the general contractor. (B) Tenant's Insurance. Tenant shall, throughout the Lease Term (and any other period when Tenant is in possession of the Premises), maintain at its sole cost the following insurance:

(1) All risks property insurance, containing a waiver of subrogation rights which Tenant's insurers may have against Lessor and against those for whom Lessor is in law responsible including, without limitation, its directors, officers, agents, and employees, and (except with respect to Tenant's chattels) incorporating a standard Florida mortgagee endorsement (without contribution). Such insurance shall insure property of every kind owned by Tenant in an amount not less than the full replacement cost thereof (new), with such cost to be adjusted no less than annually. Such policy shall include, as additional insureds, Lessor and its affiliates and any mortgagee of Lessor, the City, and any mortgagee of the Lessor in connection with a mortgage on the Facility.

(2) Comprehensive general liability insurance. Such policy shall contain inclusive limits per occurrence of not less than \$1,000,000; provide for severability of interests; and include as additional insureds Lessor and its affiliates and any mortgagee of Lessor, and any mortgagee of Lessor in connection with a mortgage on the Facility.

(3) Worker's compensation and employer's liability insurance in compliance with applicable legal requirements.

(4) Any other form of insurance which Tenant or Lessor, acting reasonably, requires from time to time in form, in amounts, and for risks against which a prudent tenant would insure, but in any event not less than that carried by comparable wireless communications facilities in Florida.

(5) All policies referred to above shall: (i) be taken out with insurers licensed to do business in Florida and reasonably acceptable to Lessor; (ii) be in a form reasonably satisfactory to Lessor; (iii) be non-contributing with, and shall apply only as primary and not as excess to any other insurance available to Lessor or any mortgagee of Lessor; (iv) contain an undertaking by the insurers to notify Lessor by certified mail not less than thirty (30) calendar days prior to any material change, cancellation, or termination, and (v) with respect to subsection (A), contain replacement cost, demolition cost, and increased cost of construction endorsements. Certificates of insurance on Lessor's standard form or, if required by a mortgagee, copies of such insurance policies certified by an authorized officer of Tenant's insurer as being complete and current, shall be delivered to Lessor promptly upon request. If Tenant fails to take out or to keep in force any insurance referred to in this section, or should any such insurance not be approved by either Lessor or any mortgagee, and Tenant does not commence and continue to diligently cure such default within two (2) business days after written notice by Lessor to Tenant specifying the nature of such default, then Lessor has the right, without assuming any obligation in connection therewith, to effect such insurance at the sole cost of Tenant and all outlays by Lessor shall be paid by Tenant to Lessor as additional rent without prejudice to any other rights or remedies of Lessor under this Agreement. Tenant shall not keep or use in the Premises any article which may be prohibited by any fire or casualty insurance policy in force from time to time covering the Premises.

(B) The Tenant shall furnish the Certificates of Insurance to the Lessor prior to commencing any operations under this Contract, which certificates shall clearly indicate that the Tenant has obtained insurance, in the type, amount and classifications, in strict compliance with this Section.

21. **Hazardous Material.**

(A) Tenant's Obligation and Indemnity. Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any Hazardous Material on or from the Leased Premises in any manner prohibited by law.

(B) If Tenant or its employees, agents, or contractors shall ever violate the provisions of subsection (A), above, then Tenant shall clean up, remove, and dispose of the Hazardous Material causing the violation, in compliance with all applicable governmental standards, laws, rules, and regulations and repair any damage to the Leasehold Premises or Property within such period of time as may be reasonable under the circumstances after written notice by Lessor, provided that such work shall commence not later than thirty (30) calendar days from such notice and be diligently and continuously carried to completion by Tenant or Tenant's designated contractors. Tenant shall notify Lessor of its method, time, and procedure for any clean up or removal of Hazardous Materials under this provision; and Lessor shall have the right to require reasonable changes in such method, time, or procedure or to require the same to be done after normal business hours if reasonably required for the protection of other tenants or occupants of the Building or Property.

(C) Tenant agrees to defend, indemnify, and hold harmless Lessor, against any and all claims, costs, expenses, damages, judgments, penalties, costs, liability, losses, and the like (including any and all sums paid for settlement of claims, attorneys' fees, and Contractors' and experts' fees), which Lessor may hereafter be liable for, suffer, incur, or pay arising under any applicable environmental laws, rules, and regulations and resulting from or arising out of any breach of the covenants contained in this section 24, or out of any act, activity, or violation of any applicable environmental laws, rules, and regulations on the part of Tenant, its agents, employees, or assigns. Tenant's liability under this section 24 shall survive the expiration or any termination of this Agreement.

(D) Lessor's Obligation. Lessor shall not (either with or without negligence) cause or permit the escape, disposal or release of any Hazardous Material on or from the Property or the Leased Premises in any manner prohibited by law.

22. Interference with Tenant's Business. Tenant shall have the non-exclusive right to construct, install and operate Equipment that emit radio frequencies on the Property. Lessor agrees that it will not permit the construction, installation or operation on the Property of any equipment or device that directly interferes with Tenant's use of the Property.

23. Default.

(A) Notice of Default; Cure Period. In the event that there is a default by Lessor or Tenant (the "**Defaulting Party**") with respect to any of the provisions of this Agreement or Lessor's or Tenant's obligations under this Agreement, the other party (the "**Non-Defaulting Party**") shall give the Defaulting Party written notice of such default. After receipt of such written notice, the Defaulting Party shall have thirty (30) calendar days in which to cure any monetary default and sixty (60) calendar days in which to cure any non-monetary default. The Defaulting Party shall have such extended periods as may be required beyond the sixty (60) calendar day cure period to cure any non-monetary default if the nature of the cure is such that it reasonably requires more than sixty (60) calendar days to cure, and Defaulting Party commences the cure within the sixty (60) calendar day period and thereafter continuously and diligently pursues the cure to completion. The Non-Defaulting Party may not maintain any action or effect any remedies for default against the Defaulting Party unless and until the Defaulting Party has failed to cure the same within the time periods provided in this Section.

(B) Consequences of Tenant's Default. In the event that Tenant is in default beyond the applicable periods set forth above, Lessor may, at its option, upon written notice: (i) terminate this Agreement provided that Lessor has been materially and substantially harmed by such default; (ii) take any actions that are consistent with Lessor's rights; or (iii) sue for injunctive relief, sue for specific performance, or sue for damages. In no event shall Tenant be liable to Lessor for consequential, indirect, speculative or punitive damages in connection with or arising out of any default.

(C) Consequences of Lessor's Default. In the event that Lessor is in default beyond the applicable periods set forth above, Tenant may, at its option, upon written notice: (i) terminate this Agreement, vacate the Leased Premises and be relieved from all further obligations contained herein; (ii) perform the obligation(s) of Lessor specified in such notice, in which case any expenditures made by Tenant in so doing shall be deemed paid for the account of Lessor and Lessor agrees to reimburse Tenant for said expenditures upon demand; (iii) take any actions that are consistent with Tenant's rights; or (iv) sue for injunctive relief, sue for specific performance, sue for damages, or set-off from Rent any amount expended by Tenant as a result of such default. In no event shall Lessor be liable to Tenant for consequential, indirect, speculative or punitive damages in connection with or arising out of any default.

24. Termination; Effect of Termination.

(A) Either party may terminate this Agreement for convenience (without cause) upon ninety (90) calendar days prior written notice by either party.

(B) Effect of Termination. Upon termination by either party, this Agreement shall become null and void and neither party shall have any further rights or duties hereunder, except that: (i) any monies owed by either party to the other up to the date of termination shall be paid within thirty (30) calendar days of the termination date; and (ii) any provision hereof which, by its nature, is intended to survive the termination of this Agreement shall so survive.

(C) Either party may terminate this Agreement prior to the expiration of the initial Lease Term (a) on account of a material breach of this Agreement by the other party, which has not been cured within thirty (30) calendar days from the date of receipt of written notice of such breach from the party seeking termination; (b) on account of any condemnation of the Leased Premises by any governmental authority; (c) on account of any substantial damage, destruction or other casualty that renders the Leased Premises temporarily or permanently unsuitable for Tenant's use; and, or (d) transfer of ownership of the Leased Premises to third person.

(D) Termination shall be effective (a) as of the end of the notice period in the case of any uncured material breach; (b) as of the date of transfer of title in the case of any such condemnation; and (c) as of the date of occurrence in the case of any such substantial damage, destruction or other casualty.

(E) Tenant may terminate this Agreement prior to the expiration of the initial Lease Term upon not less than sixty (60) day's prior written notice to the Lessor in the event that (a) Tenant is unable to use the Leased Premises in the manner anticipated by Tenant at the time the Agreement was executed; (b) Tenant is unable to obtain any certificate, license, permit, authority or approval from any governmental authority necessary for installing, removing, replacing, maintaining and, or operating the Equipment and, or using the Leased Premises in the manner anticipated by Tenant at the time the Agreement and non-exclusive license was executed; and, or (c) any such certificate, license, permit, authority or approval previously issued or given is canceled, expires, lapses or is otherwise withdrawn or terminated by such governmental authority.

(F) Lessor shall have no liability to the Tenant for future profits or losses in the event of termination under this subsection 24.

(G) The rights and remedies of Lessor provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. All rights and remedies shall be cumulative and non-exclusive of each other. No delay or omission by Lessor in exercising a right or remedy shall exhaust or impair the same or constitute a waiver of, or acquiescence to a default.

25. **Casualty and Condemnation.**

(A) In case of damage to the Building by fire or other casualty, Lessor shall, at its expense, cause the damage to be repaired to a condition as nearly as practicable to that existing prior to the damage with reasonable speed and diligence. If the Leased Premises is not useable for any reason, rent under this Agreement shall be abated from the date of the occurrence of such damage or destruction until the Leased Premises can again be used for Tenant's intended purposes. In the event the damage is so extensive that Lessor decides, in its reasonable discretion, not to repair or rebuild the Building, this Agreement shall be terminated as of the date of such casualty, and the Rent (taking into account any abatement as aforesaid) shall be adjusted to the termination date and Tenant shall thereupon promptly vacate the Leased Premises.

(B) If at any time during the Term of this Agreement all or substantially all of the Leased Premises, or the Building and Equipment located on the Leased Premises, shall be taken in the exercise of the power of eminent domain by any governmental or other authority, or by deed in lieu of condemnation, then either party may terminate this Agreement by providing written notice to Lessor within thirty (30) calendar days of such condemnation or eminent domain action, which termination shall be effective as of the date of the vesting of title in such taking and any prepaid rent shall be apportioned as of said date and reimbursed to Tenant. Lessor and Tenant shall each be entitled to pursue their own separate award with respect to such taking. In the event of any taking of less than all or substantially all of the Leased Premises, this Agreement shall continue and each, Lessor and Tenant, shall be entitled to pursue their own separate awards with respect to such taking.

26. **Surrender of the Property.** Upon the expiration or early termination of this Agreement, Tenant shall, within thirty (30) calendar days, remove its Equipment and restore the Leased Premises to its original condition, reasonable wear and tear excepted. City and Tenant agree and acknowledge that all of the Equipment is and shall remain the personal property of the Tenant. Subject to Tenant's performance of its obligations hereunder, Tenant shall have the right to

remove the same, whether or not said items are considered fixtures and attachments to real property under applicable law.

27. **Quiet Enjoyment, Title, and Authority.**

(A) Lessor covenants and warrants that: (i) it has the authority to execute this Agreement and has the power to grant the rights hereunder; (ii) it has title to the Leased Premises free and clear of any liens, mortgages, restrictions or other encumbrances that will interfere with the Permitted Uses of the Leased Premises; (iii) its execution and performance of this Agreement will not violate any laws, ordinances, covenants, or the provisions of any mortgage, license or other lease binding on Lessor; and (iv) Tenant shall have the quiet enjoyment for the purposes as defined in this agreement of the Leased Premises, and Tenant shall not be disturbed as to those uses as long as Tenant is not in default beyond any applicable grace or cure period.

(B) To the Lessor's knowledge, the Building is properly permitted, and is in compliance with all applicable laws, including all zoning, occupational and permitting laws and requirements. All such property, including improvements, related heating, electrical, plumbing and other building equipment: (i) have been and will be maintained by Lessor in accordance with normal industry practice; (ii) are and shall remain in working order adequate for normal operations; (iii) are and will remain in good operating condition and repair (subject to normal wear and tear); and (iv) are and will remain suitable for the purposes for which they are presently used.

(C) Lessor covenants and agrees that Lessor shall, at all times during the Term of this Agreement, maintain in good, sound, and substantial repair and condition, the Building upon which the Leased Premises is situated.

28. **Sale of the Property.** If Lessor sells all or part of the Property, of which the Leased Premises is a part then such sale shall be under and subject to this Agreement. During the Term of this Agreement, any sale or transfer of the property, by operation of law or otherwise, will be subject to the Agreement and Tenant's rights thereunder. Any sale or transfer of real property which is now or may in the future be subdivided or otherwise separate from the Property and over which Tenant has the right of access or utility connections to the Premises will be subject to such rights. Lessor will notify Tenant of any sale or transfer, and will cause the transferee to execute any document(s) (in form acceptable to Tenant) reasonably required by Tenant to memorialize Tenant's rights under the Agreement, and to ensure proper notice and payment of rent to such transferee. Each party agrees upon written request of the other to promptly execute such truthful estoppels, non-disturbance and/or attornment Agreements as may be necessary in the event of any sale or transfer of the Property.

29. **Successors and Assigns.** The terms of this Agreement shall constitute a covenant running with the Property for the benefit of Tenant and its successors and assigns and shall extend to and bind the heirs, personal representatives, successors and assigns of the parties hereto and upon each person having any interest therein derived through any owner thereof. Any sale, mortgage, lease or other conveyance of the Property shall be under and subject to this Agreement and Tenant's rights hereunder.

30. **Mortgages.** In the event that the Leased Premises is encumbered by a mortgage, Lessor shall obtain and furnish to Tenant a non-disturbance agreement for each such mortgage, in recordable form.

31. **Title Insurance.** Tenant, at Tenant's option, may obtain title insurance on the Leased Premises and Easement. Lessor shall cooperate with Tenant's efforts to obtain title insurance by executing documents or obtaining requested documentation as required by the title insurance company.

32. **Lessor's Waiver.** Lessor hereby waives and releases any and all liens, whether statutory or under common law, with respect to any of City's personal property now or hereafter located on the Leased Premises.

33. **Sovereign Immunity, Maximum Liability, Waiver of Certain Damages and Attorney's Fees.** The

(A) Lessor does not waive sovereign immunity under 768.28, Florida Statutes, for any claim for breach of contract or for an award of prejudgment interest; provided, however, that in any action arising out of or to enforce this contract, the prevailing party shall be entitled to its reasonable attorney's fees and costs. Section 768.28, Florida Statutes provides that the Lessor shall not be liable to pay a claim or a judgment by any one person which exceeds the sum of \$200,000 or any claim or judgment or portions thereof, which when totaled with all other claims or judgment arising out of the same incident or occurrence, exceeds the sum of \$300,000.

(B) In any proceeding against Lessor its maximum liability to Tenant shall not exceed its annual payment to Tenant for the year in which the liability arose. Lessor shall not be liable to Tenant for damages, penalties or expenses in excess of its annual payment to the Tenant for the year in which the liability arose.

(C) Nothing contained herein shall be construed or interpreted as denying to either party any remedy or defense available to such party under the laws of the State of Florida or federal law. Tenant and Lessor each waives any claims that each may have against the other with respect to consequential, incidental, punitive or special damages, however caused, based on any theory of liability.

34. **Recording.** Tenant shall have the right to record a memorandum of lease with the appropriate recording officer. Lessor shall execute and deliver such a memorandum, for no additional consideration, promptly upon Tenant's request.

35. **Entire Agreement; Governing Law; Time.** This Agreement and the Exhibits and Riders, if any, attached hereto are incorporated herein and set forth the entire agreement between Lessor and Tenant concerning the Premises and there are no other agreements or understandings between them. This Agreement and its Exhibits and Riders may not be modified except by agreement in writing executed by Lessor and Tenant. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. In the event of any conflict, the terms of this Agreement will govern over the provisions of any documents referenced hereto.

36. **No Partnership.** The parties hereby acknowledge that it is not their intention under this Agreement to create between themselves a partnership, joint venture, tenancy in common, joint tenancy, co ownership, or agency relationship. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Agreement, whether based on the calculation of rental or otherwise, shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy in common, joint tenancy, co ownership or agency relationship of any kind or nature whatsoever between the parties hereto. The provisions of this section shall survive expiration of the Term.

37. **Interpretation.** Any defined term in this Agreement shall be equally applicable to both the singular and the plural form of the term defined. The word "or" is not exclusive and shall mean "and/or" unless indicated otherwise and the word "including" is not limiting and shall mean "including, without limitation." References to a Section or Exhibit mean a Section or Exhibit contained in or attached to this Agreement unless specifically stated otherwise. The caption headings and numbering in this Agreement are for convenience and reference only and do not define, modify, or describe the scope or intent of any of the terms of this Agreement. This Agreement shall be interpreted and enforced in accordance with its provisions and without the aid of any custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provisions in question.

38. **Notices and Contracting Representatives.** All notices hereunder shall be in writing and shall be given by (i) established national courier service which maintains delivery records; (ii) hand delivery; or (iii) certified or registered mail, postage prepaid, return receipt requested. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide reasonable means for accomplishing delivery. The notices shall be sent to Lessor at Lessor's Notice Address and to Tenant at Tenant's Notice Address. Any such notice or other instruments shall be deemed to have been given and received on the day upon which personal delivery is made or, if mailed, then forty eight (48) hours following the date of mailing. Either party may give notice to the other of any change of address and after the giving of such notice, the address therein specified is deemed to be the address of such party for the giving of notices. If postal service is interrupted or substantially delayed, all notices or other instruments shall be delivered in person or by overnight express mail courier. For the purposes of this Agreement, the contracting representatives are as follows and notice shall be provided to the persons listed below:

Lessee/Licensee/Tenant

Lessor/Landlord

City of Miami Beach
Jimmy L. Morales
City Manager
1700 Convention Center Drive
Fourth Floor
Miami Beach, Florida 33139

With a copy to:

Raul J. Aguila,
City Attorney
City of Miami Beach

1700 Convention Center Drive
Fourth Floor
Miami Beach, Florida 33139

39. **Record Retention.** Tenant shall comply with the State of Florida public record retention requirements and shall maintain a copy of all documents reflecting services rendered to the Lessor for three (3) years after the termination of this Agreement, and final payment has been made and all other pending matters are closed. Further, Tenant shall provide access to the Lessor, or any of Lessor's duly authorized representatives to any books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions.

40. **Applicable Law, Jurisdiction, Venue.** This Agreement shall be construed in accordance with the laws of Miami-Dade County, and the State of Florida, regardless of conflict of law principles. Venue shall be in Miami-Dade County.

41. **Trial By Jury.** LESSOR AND TENANT EACH HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY ISSUE OR CONTROVERSY ARISING UNDER THIS AGREEMENT.

42. **Partial Invalidity.** Should any section or any part of any section of this Agreement be rendered void, invalid or unenforceable by any court of law, for any reason, such a determination shall not render void, invalid or unenforceable any other section or part of any section of this Agreement.

43. **IRS Form W-9.** Lessor agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant. In the event the Property is transferred, the succeeding Lessor shall have a duty at the time of such transfer to provide Tenant with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in Rent to the new Lessor. Lessor's failure to provide the IRS Form W-9 within thirty (30) calendar days after Tenant's request shall be considered a default and Tenant may take any reasonable action necessary to comply with IRS regulations including withholding applicable taxes from Rent payments.

IN WITNESS WHEREOF, Lessor and Tenant having read the foregoing and intending to be legally bound hereby, have executed this Agreement as of the day and year this Agreement is fully executed.

LESSOR: CITY OF MIAMI BEACH

Witness

By: _____
Print Name: Jimmy L. Morales
Print Title (if any): City Manager
Date: _____

TENANT:

Witness

By: _____
Print Name: _____
Print Title (if any): _____
Date: _____

[Add notary or attestation, as required by state law]

**EXHIBIT "A" TO
LEASE AGREEMENT**

DESCRIPTION OF THE LESSOR'S PROPERTY

**EXHIBIT "B" TO
LEASE AGREEMENT**

DESCRIPTION OF THE LESSEE'S LEASEHOLD
[Attached is a site plan reflecting the leasehold area].

Condensed Title:

A Resolution to approve a settlement agreement in the amount of \$2,760,000, for payment of the fee in lieu of parking for the project located 2360 Collins Avenue, more commonly known as the "Aloft" project.

Key Intended Outcome Supported:

Increase satisfaction with neighborhood character. Increase satisfaction with development and growth management across the City.

Supporting Data (Surveys, Environmental Scan, etc 48% of residential respondents and 55% of businesses rate the effort put forth by the City to regulate development is "about the right amount."

Item Summary/Recommendation:

RESOLUTION
 The property located at 2360 Collins Avenue, Miami Beach, Florida (the "Property") is currently owned by Centurian Collins Avenue, LLC, a Delaware limited liability company (hereinafter "Centurian"). The property is subject to development approvals under building permit BREV131038418-422; and which project is commonly known as the "Aloft" (Project). As part of obtaining development approvals Centurian, which proposed a new development, was required to pay a fee in lieu of parking pursuant to 130-131, et. Seq., City Code of Ordinances, for any mandatory parking spaces that were not being provided as part of the Project. Rather than paying the amount calculated by the Planning Department directly to the City the funds were placed in escrow, held by the escrow agent, Greenberg Traurig.

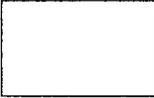
The attached settlement, which releases the escrowed funds will resolve all issues and ensure compliance with the decision of the Planning Department and requirements of section 130-131, of the Code. The Administration recommends that the City Commission approve the settlement and release of escrowed funds.

RECOMMENDATION
 The Administration recommends that the City Commission approve the attached settlement agreement.

Advisory Board Recommendation:

N/A

Financial Information:

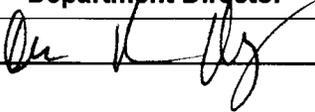
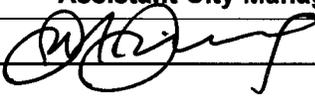
Source of Funds:		Amount	Account
<div style="border: 1px solid black; width: 40px; height: 40px; display: flex; align-items: center; justify-content: center;">  </div> OBPI	1		
	2		
	3		
	Total		

Financial Impact Summary: N/A

City Clerk's Office Legislative Tracking:

Thomas Mooney

Sign-Offs:

Department Director	Assistant City Manager	City Manager
		

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MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: January 14, 2015

SUBJECT: **A RESOLUTION APPROVING A SETTLEMENT IN THE AMOUNT OF \$2,760,000.00, IN SUBSTANTIAL FORM AS PROPOSED IN ATTACHED EXHIBIT 1; FOR PAYMENT OF THE FEE IN LIEU OF PARKING REQUIRED UNDER SECTION 130-131, OF THE CITY CODE, WHICH FEE IS PAID DUE TO A PARKING DEFICIENCY ASSOCIATED WITH THE DEVELOPMENT OF THE NEW PROJECT ON THE PROPERTY OWNED BY CENTURIAN COLLINS AVENUE, LLC, A DELAWARE LIMITED LIABILITY COMPANY (HEREINAFTER "CENTURIAN"), LOCATED AT 2360 COLLINS AVENUE, MIAMI BEACH, FLORIDA, WHICH PROJECT IS COMMONLY KNOWN AS THE "ALOFT" (THE "PROJECT") UNDER BUILDING PERMIT NUMBER: BREV131038418-422; AND FURTHER AUTHORIZING THE CITY MANAGER TO TAKE SUCH ACTION AND EXECUTE ANY AND ALL NECESSARY DOCUMENTS TO COMPLETE THE SETTLEMENT.**

ADMINISTRATION RECOMMENDATION

The Administration recommends approval of the attached settlement agreement.

HISTORY / BACKGROUND

The property located at 2360 Collins Avenue, Miami Beach, Florida (the "Property") is currently owned by Centurian Collins Avenue, LLC, a Delaware limited liability company (hereinafter "Centurian"). The property is subject to development approvals under building permit BREV131038418-422; and which project is commonly known as the "Aloft" (Project). As part of obtaining development approvals Centurian, which proposed a new development, was required to pay a fee in lieu of parking pursuant to 130-131, et. Seq., City Code of Ordinances, for any mandatory parking spaces that were not being provided as part of the Project. Rather than paying the amount calculated by the Planning Department directly to the City the funds were placed in escrow, held by the escrow agent, Greenberg Traurig.

The attached settlement, which releases the escrowed funds will resolve all issues and ensure compliance with the decision of the Planning Department and requirements of section 130-131, of the Code. The Administration recommends that the City Commission approve the settlement and release of escrowed funds.

FISCAL IMPACT

Not Applicable

CONCLUSION

The Administration recommends approval of the attached settlement agreement.

JLM/JMJ/TRM/MCS

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RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING A SETTLEMENT IN THE AMOUNT OF \$2,760,000.00, IN SUBSTANTIAL FORM AS PROPOSED IN ATTACHED EXHIBIT 1; FOR PAYMENT OF THE FEE IN LIEU OF PARKING REQUIRED UNDER SECTION 130-131, OF THE CITY CODE, WHICH FEE IS PAID DUE TO A PARKING DEFICIENCY ASSOCIATED WITH THE DEVELOPMENT OF THE NEW PROJECT ON THE PROPERTY OWNED BY CENTURIAN COLLINS AVENUE, LLC, A DELAWARE LIMITED LIABILITY COMPANY (HEREINAFTER "CENTURIAN"), LOCATED AT 2360 COLLINS AVENUE, MIAMI BEACH, FLORIDA, WHICH PROJECT IS COMMONLY KNOWN AS THE "ALOFT" (THE "PROJECT") UNDER BUILDING PERMIT NUMBER: BREV131038418-422; AND FURTHER AUTHORIZING THE CITY MANAGER TO TAKE SUCH ACTION AND EXECUTE ANY AND ALL NECESSARY DOCUMENTS TO COMPLETE THE SETTLEMENT.

WHEREAS, the property located at 2360 Collins Avenue, Miami Beach, Florida (the "Property") is currently owned by Centurian Collins Avenue, LLC, a Delaware limited liability company (hereinafter "Centurian"); and

WHEREAS, the property is subject to development approvals under building permit BREV131038418-422; and which project is commonly known as the "Aloft" (Project); and

WHEREAS, as part of obtaining development approvals Centurian, which proposed a new development, was required to pay a fee in lieu of parking pursuant to 130-131, et. Seq., City Code of Ordinances, for any mandatory parking spaces that were not being provided as part of the Project; and

WHEREAS, rather than paying the amount calculated by the Planning Department directly to the City the funds were placed in escrow, held by the escrow agent, Greenberg Traurig; and

WHEREAS, the attached settlement, which releases the escrowed funds will resolve all issues and ensure compliance with the decision of the planning department and requirements of section 130-131, of the Code; and

WHEREAS, the Administration recommends that the City Commission approve the settlement and release of escrowed funds.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission approve a settlement in the amount of \$2,760,000.00, in substantial form as proposed in attached Exhibit 1; for payment of the Fee In Lieu of Parking required under section 130-131, of the City Code, which fee is paid due to a parking deficiency associated with the development of the new project on the property owned by Centurian Collins Avenue, LLC, a Delaware Limited Liability Company (hereinafter "Centurian"), located at 2360 Collins Avenue, Miami Beach, Florida, commonly known as the "Aloft" (the "Project") under building permit number: BREV131038418-422; and further authorizing the City Manager to take such action and execute any and all necessary documents to complete the settlement.

PASSED and ADOPTED this _____ day of _____, 2015.

ATTEST:

Philip Levine, Mayor

Rafael E. Granado, City Clerk

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**



City Attorney



1/7/15

Date

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE BETWEEN
CENTURIAN COLLINS AVENUE, LLC, THE CITY OF MIAMI BEACH, FLORIDA,
AND GREENBERG TRAUIG, P.A. (AS ESCROW AGENT)**

This Settlement Agreement and Mutual Release (“Agreement”) is made and entered into this ____ day of _____, 2015 (“Effective Date”), by and between CENTURIAN COLLINS AVENUE, LLC, a Delaware limited liability company (hereinafter “Centurian”), the CITY OF MIAMI BEACH, FLORIDA, a Florida Municipal Corporation (hereinafter, the “City”), and Greenberg Traurig, P.A., a Florida corporation (as Escrow Agent) (“GT”). Centurian, the City and GT may also be referred to individually as a “Party,” and collectively as the “Parties.”

RECITALS

WHEREAS, Centurian, the City and GT are parties to that certain Escrow Agreement dated as of December 10, 2013 (the “Escrow Agreement”), a copy of which is attached hereto as Exhibit “A” and incorporated herein;

WHEREAS, the Parties entered into the Escrow Agreement in connection with the payment of Fee in Lieu of Parking as required under section 130-131, et. Seq., City Code of Ordinances required to obtain a building permit for the expansion of the property located 2360 Collins Avenue, Miami Beach Florida, commonly known as the Aloft (the “Project”) under building permit number: BREV131038;

WHEREAS, the Parties desire to settle all claims, disputes, past, present, or future regarding the Fee in Lieu of Parking and all required parking under BREV131038 associated with the Project, regardless of responsibility; and

WHEREAS, the Parties believe it would be in their best interests and the best interests of the citizens of the City to agree to the provisions of this Agreement.

NOW THEREFORE, in consideration for the exchange of promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. **Recitals**: The above Recitals are true and correct and are incorporated herein.
2. **Settlement**: The Parties hereby settle and compromise all claims of any kind or nature (including any claims for attorney’s fees and costs), relating to, arising out of and/or in connection with the payment of Fee in Lieu of Parking and all required parking under BREV131038 for the Project, except as set forth herein.

3. Settlement Terms: In consideration for the releases executed herein, the Parties agree as follows:

(a) As of the Effective Date, the principal amount of the Escrowed Money (as defined in the Escrow Agreement) is Two Million Seven Hundred and Sixty Thousand Dollars (\$2,760,000.00). The Parties agree that GT shall disburse the Escrowed Money to the City within ten (10) days following City Commission approval and execution of this Agreement, including all interest accrued thereon through the Effective Date. Upon the City's receipt of payment, the Escrowed Money shall be non-refundable to Centurion.

(b) The Parties acknowledge that this Settlement Agreement for Escrowed Money fully satisfies any and all the parking requirements for the Project under BREV131038.

(c) The City will seek to place this item on the agenda for the City Commission meeting following the approval of the Agreement in form and correctness by the City Attorney.

4. Releases: In further consideration of the execution of this Agreement, the Parties for themselves and their respective parent companies, subsidiaries, divisions, affiliates, unit owners, insurers, officers, directors, agents, employees, subcontractors, representatives, successors and assigns (the "City Releasers" or "Centurian Releasers" as the case may be), hereby execute, subject to the conditions and exclusions set forth in this Agreement, the following Releases:

(a) Centurian Releasers' Release of City Releasers: Upon payment of the Escrowed Money to the City, the Centurian Releasers hereby remise, release, acquit, satisfy and forever discharge the City Releasers, which throughout this Agreement includes, but is not limited to, its affiliates, Commissioners, insurers, sureties, directors, officers, employees, agents and attorneys, together with its heirs, executors, administrators, associates, representatives, successors and assigns, of and from any and all manner of past, present and future claims, actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, obligations, damages, judgments, costs, expenses, causes of action, executions, claims, liabilities, and demands whatsoever, in law or in equity, whether for compensatory, punitive, or other damages (collectively referred to in this Paragraph as the "Claims"), which the Centurian Releasers have held or now hold, ever had, now have, or which the Centurian Releasers, hereinafter can, shall or may have against the City

Releasors, for any and all Claims, whether known or unknown, arising from, pertaining to and/or in any way relating to the payment of Fee in Lieu of Parking for the Project.

(b) City Releasors' Release of Centurian Releasors and GT: The City Releasors hereby remise, release, acquit, satisfy and forever discharge the Centurian Releasors and GT, which throughout this Agreement includes, but is not limited to, its affiliates, insurers, sureties, directors, officers, employees, agents and attorneys, together with its heirs, executors, administrators, associates, representatives, successors and assigns, of and from any and all manner of past, present and future claims, actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, obligations, damages, judgments, costs, expenses, causes of action, executions, claims and liabilities, and demands whatsoever, in law or in equity, whether for compensatory, punitive, or other damages (collectively referred to in this Paragraph as the "Claims"), which the City Releasors have held or now hold, ever had, now have, or which the City Releasors, hereinafter can, shall or may have against the Centurian Releasors and GT, for any and all Claims, whether known or unknown, arising from, pertaining to and/or in any way relating to the payment of Fee in Lieu of Parking for the Project under BREV 131038 and/or the Escrow Agreement.

5. Binding Effect: Subject to City Commission approval and execution by the Parties, this Agreement shall be binding upon the Parties and their respective successors and assigns. However, execution and notarization by all Parties shall be a condition precedent to the effectiveness of this Agreement as binding against any Party. If the City Commission does not issue the approval, the Agreement shall be null and void and of no force and effect.

6. No Admission of Liability: It is understood and agreed that the claims which are the subject of this Agreement are disputed claims and that the execution of this Agreement by the Parties, and the exclusions set forth in this Agreement, are not intended to, and shall not in any way, constitute or be deemed an express or implied admission or acceptance of any negligence, misconduct, responsibility or liability by the Parties or an admission against interest by the Parties, and that the Parties expressly and specifically deny all such claims. Such consideration is being given to reduce the expense, uncertainties and hazards of litigation and to mitigate damages to each of the Parties. There shall not be any implication by any trier of fact or law of any admission or acceptance of liability or admission against interest by the Parties and it shall not be used against the City Releasors or the Centurian Releasors in any attempt to prove any future liability claims.

7. Attorney's Fees: If any legal action, proceeding, or hearing is brought by the City Releasors, the Centurian Releasors or GT to resolve a dispute regarding enforcement of the terms of this Agreement, then the prevailing party as between the City Releasors, the Centurian

Releasors and GT shall be entitled to recover reasonable attorney's fees and court costs incurred. The Parties shall bear their own fees and costs relating to the negotiation and execution of this Agreement to date.

8. Miscellaneous: The Parties further agree as follows:

(a) The Parties acknowledge and agree that this Agreement is fully and adequately supported by consideration and is fair and reasonable. The Parties further acknowledge and agree that: (i) each Party has had the opportunity to consult with, and has in fact consulted with, such professionals, experts and legal counsel of its choice as such Party may have desired with respect to all matters settled and resolved herein; (ii) each Party has participated fully in the negotiation and preparation of this Agreement; (iii) each Party has carefully reviewed this Agreement and is entering into same freely; and (iv) this Agreement is entered into in good faith and was not obtained by fraud, misrepresentation, or deceit. Accordingly, this Agreement shall not be more strictly construed against any Party.

(b) The Parties hereto understand and agree that this Agreement will not be binding on the Parties to this Agreement until such time as the City Commission of the City of Miami Beach has approved same, and the Agreement is fully executed by the Parties to the Agreement. City Commission approval is a material condition precedent to the execution and enforceability of this Agreement, without which the City does not agree to, and is not subject to, the terms and conditions contained herein.

(c) Each of the signatories hereto represents that he or she has authority to execute this Agreement and to bind the Party on whose behalf he or she has signed.

(d) This Agreement is being consummated in the State of Florida, and the performance by the Parties hereto is in the State of Florida. This Agreement shall be construed and governed in accordance with the laws of the State of Florida and the sole and exclusive venue for any lawsuit relating to this Agreement is Miami-Dade County, Florida. The Parties expressly agree to waive trial by jury in any action to enforce this Agreement.

(e) In construing this Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular, the use of any gender shall

be held to include every other and all genders, and captions and paragraph headings shall be disregarded.

(f) Any exhibits attached to this Agreement are incorporated in, and made a part of, this Agreement.

(g) Time is of the essence in the performance of this Agreement.

9. Entire Agreement: This Agreement, together with any documents referenced herein, constitutes the full and entire agreement and understanding between the Parties as related to the Project, and there are no agreements, representations or warranties except as specifically set forth herein. This Agreement replaces any prior or contemporaneous written or oral representation or understanding about the terms of this Agreement. All prior discussions, negotiations, letters, demands and writings of any kind are fully merged into this Agreement and are to be construed to be of no further force or effect, it being the intention of the Parties that this Agreement shall serve as the sole and entire expression of their agreement and understanding. This Agreement shall be binding on, and shall inure to the benefit of, the respective successors and assigns, if any, of each Party.

10. Modification; No Waiver: This Agreement may only be modified in writing signed by the Parties. No waiver or modification of the Agreement or of any covenant, condition or limitation contained herein, shall be valid unless in writing and signed by all Parties to the Agreement, or their authorized counsel. If the City or Centurian excuses or condones any breach or default by the other Party of any obligation under this Agreement, this shall not be a waiver of such obligation with respect to any continuing obligation or subsequent breach or default and no such waiver shall be implied.

11. Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together represent one instrument binding on the Parties, notwithstanding that all of the Parties are not signatories to the same counterpart. The Parties further agree that this Agreement may be signed and submitted via facsimile or electronic mail.

12. Severability: If any provision of this Agreement is held or rendered illegal or unenforceable, it shall be considered separate and severable from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and bind the Parties as though the illegal or unenforceable provision had never been included in the Agreement.

13. Captions; References: The captions of this Agreement are for the purpose of convenience of reference only and in no way define, limit or describe the scope or intent of the

Agreement or in any way affect the terms and conditions of this Agreement. All references in the Agreement to the terms “herein,” “hereunder,” “hereof” and words of similar import shall refer to this Agreement, as distinguished from the Paragraph, Section and/or Subsection within which such term is located.

14. Third Parties: Nothing express or implied in this Agreement is intended or should be construed to confer upon or give any person or entity, other than the City, Centurian and GT, any rights or remedies under, or by reason of, this Agreement.

IN WITNESS WHEREOF, the Parties have set their hands and seals on the day and date first written above:

[Remainder of page intentionally left blank.]

**CENTURIAN COLLINS AVENUE,
LLC, a Delaware limited liability company**

Print Name: _____

By: _____
Jason Halpern, Manager

Print Name: _____

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Jason Halpern, Manager of Centurian Collins Avenue, LLC, who is personally known to me or who has produced _____ (type of identification).

Name: _____
(Print Name) _____

Notary Public – State of Florida
My Commission Expires: _____

GREENBERG TRAUIG, PA

Print Name: _____

By: _____

Name: _____

Title: Shareholder

Print Name: _____

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, _____ of Greenberg Traurig, P.A., a Florida corporation, who is personally known to me or who has produced _____ (type of identification).

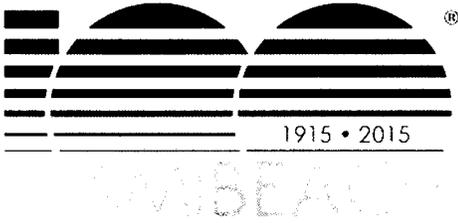
Name: _____

(Print Name) _____

Notary Public – State of Florida

My Commission Expires: _____

Exhibit "A"



OFFICE OF THE CITY MANAGER

MEMORANDUM

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy Morales, City Manager

DATE: January 14, 2015

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING A SETTLEMENT IN THE AMOUNT OF \$2,760,000.00, IN SUBSTANTIAL FORM AS PROPOSED IN ATTACHED EXHIBIT 1; FOR PAYMENT OF THE FEE IN LIEU OF PARKING REQUIRED UNDER SECTION 130-131, OF THE CITY CODE, WHICH FEE IS PAID DUE TO A PARKING DEFICIENCY ASSOCIATED WITH THE DEVELOPMENT OF THE NEW PROJECT ON THE PROPERTY OWNED BY CENTURIAN COLLINS AVENUE, LLC, A DELAWARE LIMITED LIABILITY COMPANY (HEREINAFTER "CENTURIAN"), LOCATED AT 2360 COLLINS AVENUE, MIAMI BEACH, FLORIDA, WHICH PROJECT IS COMMONLY KNOWN AS THE "ALOFT" (THE "PROJECT") UNDER BUILDING PERMIT NUMBER: BREV131038418-422; AND FURTHER AUTHORIZING THE CITY MANAGER TO TAKE SUCH ACTION AND EXECUTE ANY AND ALL NECESSARY DOCUMENTS TO COMPLETE THE SETTLEMENT.

The property located at 2360 Collins Avenue, Miami Beach, Florida (the "Property") is currently owned by Centurian Collins Avenue, LLC, a Delaware limited liability company (hereinafter "Centurian"). The property is subject to development approvals under building permit BREV131038418-422; and which project is commonly known as the "Aloft" (Project). As part of obtaining development approvals Centurian, which proposed a new development, was required to pay a fee in lieu of parking pursuant to 130-131, et. Seq., City Code of Ordinances, for any mandatory parking spaces that were not being provided as part of the Project. Rather than paying the amount calculated by the Planning Department directly to the City the funds were placed in escrow, held by the escrow agent, Greenberg Traurig.

The attached settlement, which releases the escrowed funds will resolve all issues and ensure compliance with the decision of the planning department and requirements of section 130-131, of the Code. The Administration recommends that the City Commission approve the settlement and release of escrowed funds.

Recommendation: Approval of the attached settlement agreement.

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Agreement") is made and entered into as of the ___ day of December, 2013 by and between Centurian Collins Avenue, LLC, a Delaware limited liability Company ("CCA"), the City of Miami Beach (the "City") and Greenberg Traurig P.A., ("Escrow Agent").

RECITALS

A. CCA is the owner of that certain property located in the City and legally described on **Exhibit "A"** attached hereto (the "Property").

B. CCA has obtained approval from the City to expand the existing 2360 Collins Avenue, Miami Beach on the Property, commonly known as the Aloft, with a new 8-story hotel building on the south side of the Property (the "Project").

C. The Project received: (i) a Certificate of Appropriateness from the City's Historic Preservation Board ("HPB"), as evidenced by that certain HPB Order No. 1840 issued by the HPB on March 3, 2004 and Modified on September 11, 2012 and September 10, 2013 (the "HPB Approval"); and (ii) variances from the City's Board of Adjustment ("BOA"), as evidenced by that certain BOA Order No. 3009 issued by the BOA on May 7, 2004 and Modified on December 7, 2012 (collectively, the "Approvals"). The Approvals are attached hereto as **Composite Exhibit "B."**

D. The parking requirement for the new hotel room component of the Project under the City's Land Development Regulations (the "Regulations") is One hundred eighty-four (184) parking spaces, of which zero (0) spaces will be provided on the Property.

E. CCA must provide the One hundred eighty-four (184) required parking spaces within 1,200 feet of the Property in accordance with the Regulations or pay a parking impact fee in the amount of Two million seven hundred & sixty thousand dollars (\$2,760,000.00), calculated at fifteen thousand dollars (\$15,000.00) per parking space (the "Parking Impact Fee").

F. CCA is considering a suitable off-site location for such parking.

G. In order to assure the City that the Parking Impact Fee will be paid in the event that CCA does not otherwise provide the required parking at an off-site location, CCA has agreed to place in escrow with Escrow Agent the sum of Two million seven hundred & sixty thousand dollars (\$2,760,000.00), to be disbursed in accordance with the terms and provisions of this Agreement.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

TH

1. The City and Owner agree that the foregoing recitals are true and correct and are incorporated herein as if repeated at length.

2. Simultaneously with its execution of this Agreement, CCA has deposited with Escrow Agent the sum of Two million seven hundred & sixty thousand dollars (\$2,760,000.00) (the "Escrowed Money"). The Escrow Agent hereby acknowledges receipt of the Escrowed Money and agrees to hold the same in trust and disburse the Escrowed Money in accordance with the terms of this Agreement. Escrow Agent shall be obligated to invest the Escrowed Money in an interest-bearing account so long as CCA provides Escrow Agent with a fully executed and completed IRS Form W-9 signed by CCA and reflecting CCA's taxpayer identification number thereon. All interest that accrues on the Escrowed Money shall be the property of and disbursed to CCA. Escrow Agent shall not be liable for any failure, insolvency or suspension of the depository institution.

3. Escrow Agent shall hold the Escrowed Money and disburse same as follows:

(a) In the event that CCA has supplied the one hundred & eighty-four (184) parking spaces within 1,200 feet in accordance with the Regulations, on or before the issuance of a Certificate of Occupancy for the Project, then Escrow Agent shall, upon joint written notice from the City and CCA, return the Escrowed Money to CCA, including any interest.

(b) In the event that CCA has supplied some portion of the one hundred & eighty-four (184) parking spaces within 1,200 feet in accordance with the Regulations, on or before the issuance of a Certificate of Occupancy for the Project, then Escrow Agent shall, upon joint written notice from the City and CCA, return a portion of the Escrowed Money to CCA calculated at fifteen thousand dollars (\$15,000.00) per parking space being provided, including any interest. After the Certificate of Occupancy is issued, if CCA wishes to change the location of the required spaces that have been provided, it may do so at another permitted facility to the extent allowed for off-site parking in the City Code.

(c) In the event that 3(a) and 3(b) does not occur on or before the issuance of a Certificate of Occupancy for the Project, Escrow Agent shall, upon written notice from either the City or CCA, disburse the Escrowed Money to the City for payment of the Parking Impact Fee for the Project. The Escrow Agent shall disburse any accrued interest to CCA.

(d) In the event that 3(b) does occur on or before the issuance of a Certificate of Occupancy for the Project, Escrow Agent shall, upon written notice from either the City or CCA, disburse, a portion of the Escrowed Money calculated at fifteen thousand dollars (\$15,000.00) per parking space not being provided to the City for payment of the Parking Impact Fee for the Project. The Escrow Agent shall disburse any accrued interest to CCA.

(e) Escrow Agent shall give written notice to all parties to this Agreement of its release of the Escrowed Money.

4. All notices and/or written statements given or made pursuant hereto, or for the purposes of invoking or enforcing any of the provisions hereof, shall be in writing (by a party or by such party's attorney), and shall be sent by (i) personal delivery, (ii) delivery by a recognized

overnight courier, (iii) United States mail, postage prepaid, registered or certified mail, or (iv) facsimile, with proof of transmission, addressed as follows, or (v) Registered email transmission:

If to CCA:

Mr. Jason Halpern
Chief Financial Officer
Centurian Collins Avenue LLC.
JNH Development
Unit C706
184 Kent Avenue
Brooklyn, New York 11249
Telephone: (212) 687-3444

With Copy to:

Greenberg Traurig, P.A.
333 S.E. 2nd Avenue
Miami, Florida 33131
Attention: Alfredo Gonzalez, Esq.
Telephone: (305) 579-0588
Facsimile: (305) 961-5588

If to City:

Planning Director
City of Miami Beach
1700 Convention Center Drive
Planning Department, 2nd Floor
Miami Beach, FL 33139
Telephone: (305) 673-7000, Ext. 6150
Fax: (305) 673-7559

With Copy to:

City Attorney
City of Miami Beach
Office of the City Attorney
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139
Attention: Gary M. Held, Esq.
Telephone: (305) 673-7000, Ext. 6532
Facsimile: (305) 673-7002

If to Escrow Agent:

Greenberg Traurig, P.A.
333 S.E. 2nd Avenue
Miami, Florida 33131
Attention: Alfredo Gonzalez, Esq.
Telephone: (305) 579-0588
Facsimile: (305) 961-5588

Personal delivery or overnight courier shall be effective upon receipt or as of the date of first attempted delivery, and notice by mail shall be effective upon receipt as evidenced by a return receipt, and notice by facsimile shall be effective upon transmission. Any of the foregoing addressees may, at any time by giving ten (10) days prior written notice to the other addressees,

designate any other address in substitution of the foregoing address. The Escrow Agent shall receive copies of all notices.

5. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all constituting only one agreement. Executed counterparts received by facsimile or electronically shall have the same validity as original counterparts.

6. The following provisions shall apply to the Escrow Agent and its duties and obligations under this Agreement:

(a) The Escrow Agent shall have no duties or obligations hereunder except those specifically set forth herein and such duties and obligations shall be determined solely by the express provisions of this Agreement. The Escrow Agent shall not be liable for any action taken or omitted by it in good faith unless a court of competent jurisdiction determines that the Escrow Agent's gross negligence or willful misconduct was the primary cause of the loss to a party hereto. The Escrow Agent shall not incur any liability for following the instructions set forth in this Agreement or written instructions given by a party hereto in accordance with this Agreement. The Escrow Agent shall be entitled to assume that all notices and other documents provided to it are authentic and that all persons and entities executing such notices or documents have been duly authorized to do so.

(b) In the event the Escrow Agent shall be uncertain as to its duties or rights under this Agreement or shall receive any instruction, claim or demand that, in the opinion of the Escrow Agent, is in conflict with the provisions of this Agreement (any of the foregoing, an "Escrow Agent Dispute"), the Escrow Agent shall be entitled to refrain from taking any action with respect to such Escrow Agent Dispute until it shall be directed otherwise by a final and non-appealable order of a court of competent jurisdiction or by an instrument signed by CCA and the City. In the event of any Escrow Agent Dispute, the Escrow Agent shall be entitled to petition a court of competent jurisdiction in the County of Miami-Dade, Florida to resolve such Escrow Agent Dispute, CCA and the City each consents to the jurisdiction of any such court with respect to any such Escrow Agent Dispute.

(c) The Escrow Agent shall be entitled to employ such legal counsel and other experts as the Escrow Agent may deem necessary to advise the Escrow Agent in connection with the Escrow Agent's duties hereunder, may rely upon the advice of such counsel, and may pay such counsel reasonable compensation therefore which shall be paid by CCA. The Escrow Agent shall be reimbursed by CCA for all reasonable fees and expenses incurred by the Escrow Agent in connection with the performance of its duties and obligations under this Agreement and reasonable courier fees incurred by the Escrow Agent in connection with any deliveries required to be made by the Escrow Agent in connection with the performance of its duties and obligations under this Agreement.

(d) The Escrow Agent shall not be deemed to have knowledge of any matter or thing unless and until the Escrow Agent has actually received written notice of such matter or thing and shall not be charged with any constructive notice whatsoever.

JA

(e) In the event instructions from the parties hereto would require the Escrow Agent to expend any monies or to incur any cost, the Escrow Agent shall be entitled to refrain from taking any action until it receives payment for such costs if such costs exceed \$500.

(f) In the event the Escrow Agent is joined as a party to a lawsuit by virtue of the fact that it is holding the Escrowed Money, the Escrow Agent shall, at its option, either: (a) tender the Escrowed Money to the registry of the appropriate court; or (b) disburse the Escrowed Money in accordance with the court's ultimate disposition of the case. In the event the Escrow Agent tenders the Escrowed Money to the registry of the appropriate court and files an action of interpleader naming CCA and the City and any affected third parties of whom the Escrow Agent has received actual notice, the Escrow Agent shall be released and relieved from any and all further obligation hereunder or in connection herewith.

7. CCA shall indemnify, defend and hold harmless the Escrow Agent and its directors, officers, employees and agents from any loss, liability or expense incurred by the Escrow Agent (including the fees and expenses of in-house or outside counsel) arising out of or in connection with (a) Escrow Agent's execution and performance of this Agreement, except to the extent that such loss, liability or expense is due to the gross negligence or willful misconduct of the Escrow Agent, or (b) Escrow Agent's following of any instructions or other directions from CCA or the City, except to the extent that its following any such instruction or direction is expressly forbidden by the terms hereof. The provisions of this paragraph shall survive the termination of this Agreement.

8. This Agreement does not alter or amend any obligations of CCA arising from the Approvals, which remain in full force and effect.

9. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida without regard to principles of conflict of laws.

10. This Agreement constitutes the entire agreement of the parties hereto regarding the subject matter hereof. There are no agreements or understandings, oral or written, between the parties hereto regarding the subject matter hereof that are not merged herein or superseded hereby.

11. No waiver of any right under this Agreement shall be valid unless it is contained in a writing signed by the party to be charged therewith.

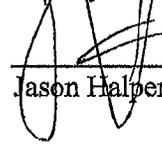
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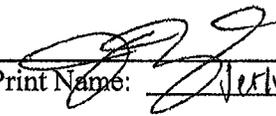
SA

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

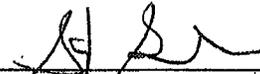

Print Name: Laura Garcia

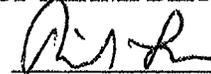
Centurian Collins Avenue, LLC, a Delaware limited liability company

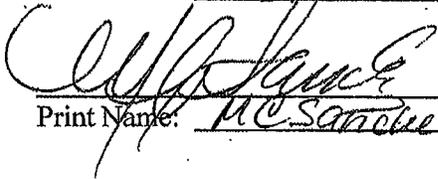
By: 
Jason Halpern, Manager


Print Name: Jeryn Jimenez

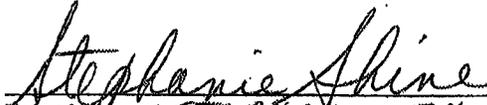
CITY OF MIAMI BEACH

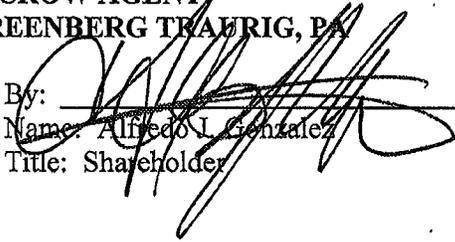

Print Name: STEVEN GREEN

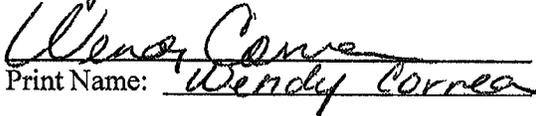
By: 
Name: Richard Lomber
Title: Actus Planning Director

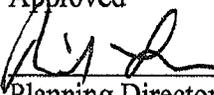

Print Name: M.C. Sanchez

ESCROW AGENT:
GREENBERG TRAUBIG, PA

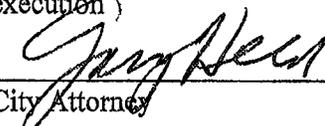

Print Name: STEPHANIE SHINE

By: 
Name: Alfredo I. Gonzalez
Title: Shareholder


Print Name: Wendy Correa

Approved

Planning Director 12-9-2013
Date

Approved as to form and language and for execution

for 
City Attorney

Dated: Dec. 10, 2013



Exhibit A

JA

Exhibit B

AT

Exhibit "A"
Legal Description

That portion of Block Three (3) lying South and adjacent to Lake Pancoast and Collins Canal, between Liberty and Collins Avenues, Miami Beach, Florida, more particularly described as follows:

Form a concrete monument situated at the northwest corner of Block 2 as said Block 2 is shown on a plat entitled "AMENDED MAP OF THE OCEAN FRONT PROPERTY OF THE MIAMI BEACH IMPROVEMENT COMPANY", recorded in Plat Book 5 at Page 7 of the Public Records of Miami-Dade County, Florida, run Northerly along the East line of Palm Avenue (now Liberty Avenue) as said avenue is shown on said plat a distance of 370 feet to the Point of Beginning of said tract of land herein described:

From said point of beginning continue Northerly along the East line of said Palm Avenue (now Liberty Avenue) a distance of 123.28 feet to a point, with point being the point of curvature of a circular curve, thence continue along the arc of said circular curve deflecting to the left and having for its elements a central angle of $01^{\circ}58'23''$ and a radius of 494 feet a distance of 17.01 feet to the point, said point being the intersection of the East line of Palm Avenue (now Liberty Avenue) and the north face of the Southerly bulkhead of Collins Canal, thence meander along the face of a concrete bulkhead in a Northeasterly direction along Collins Canal and in a Southeasterly direction along the lake (now Lake Pancoast) as said bulkhead is shown upon a Sketch entitled "Sketch to accompany metes and bounds description of a portion of Block 3" of the Amended Map of the Ocean Front Property of THE MIAMI BEACH IMPROVEMENT COMPANY, dated July 1, 1993, a distance of 484.9 feet, plus or minus to a point, said point being the intersection of said bulkhead on the Lake (now Lake Pancoast) as shown in said sketch, with a line parallel to and 217 feet distant South of the South line of Hotel Place (now 24th Street) as said Hotel Place (now 24th Street) is shown on the above mentioned record Plat, thence run in an Easterly direction along a line parallel to and 217 feet distance South of the South line of Hotel Place (now 24th Street) a distance of 6.18 feet to a point, said point being the intersection of the last mentioned course with the West line of Collins Avenue as Collins Avenue is shown on said record plat; thence run in a Southerly direction deflecting to the right 90 along the Westerly line of Collins Avenue, as Collins Avenue is shown on said record plat a distance of 88 feet to a point, thence run in a Westerly direction along a line deflecting 90 to the right from the West line of Collins Avenue, said line also being parallel to and 310 feet distance north from the North line Atlantic Avenue (now 23rd Street) as Atlantic Avenue is shown on above mentioned record plat, a distance of 285 feet to the point of beginning of the tract of land herein described.

TOGETHER WITH THE FOLLOWING DESCRIBED PROPERTY:

From a concrete monument situated at the northwest corner of Block 2 as said Block 2 is shown on a plat entitled AMENDED MAP OF THE OCEAN FRONT PROPERTY OF THE MIAMI BEACH IMPROVEMENT COMPANY recorded in Plat Book 5, Page 7 of the Public Records of Miami-Dade County, Florida, run Northeasterly along the East line of Palm Avenue (now Liberty Avenue) as said Avenue is shown on above mentioned record plat a distance of 493.28 feet to a point, said point being the Point of Curvature (P.C.) of a circular curve; thence continue along the arc of a circular curve deflecting to the left and having for its elements a central angle of $01^{\circ}58'23''$ and a radius of 494 feet a distance of 17.01 feet to the point, said point being the intersection of the East line of Palm Avenue (now Liberty Avenue) and the Northerly face of the concrete bulkhead situated on the Southerly shore of Collins Canal; thence meander the Northerly face of said concrete bulkhead in a Northeasterly direction along Collins Canal and in a Southeasterly direction along Lake Pancoast as said concrete bulkhead is shown on a sketch entitled "Sketch to Accompany Metes and Bounds Description of Lagoon at South End of Lake Pancoast, Miami Beach, Florida" prepared by Zurwalle-Whitaker, Inc. Engineers, dated November 4, 1940 and revised January 2, and January 24, 1941, a distance of 204.6 feet to the Point of Beginning of the area herein described.

From said Point of Beginning run in a Southeasterly direction along a line passing through said Point of Beginning and a point where the Southerly line of Hotel Place (now 24th Street) intersects the concrete bulkhead on the Easterly Shore of Lake Pancoast, a distance of 80.0 feet to a point; thence run in a Southwesterly direction along a line passing through the last mentioned point and a point on the outside face of the concrete bulkhead situated on the Southerly Shore of said Lagoon, said last-mentioned point being 33.0 feet Westerly from the Westerly line of Collins Avenue, and marked by a cut in the face of said bulkhead, a distance of 215 feet, plus or minus; thence meander in a Westerly and Northwesterly direction along the concrete bulkhead of said Lagoon a distance of 254.1 feet, plus or minus, to the Point of Beginning of the area herein described.

Exhibit B-1

GA

HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida

CERTIFICATION

THIS IS TO CERTIFY THAT THE ATTACHED DOCUMENT
IS A TRUE AND ACCURATE COPY OF THE ORIGINAL ON
FILE IN THE OFFICE OF THE PLANNING DEPARTMENT.

CITY OF MIAMI BEACH

Ken Fields 3/26/04
(Signature of Planning Director or Designee)

Personally Known or Produced ID: 3/26/04

Notary Public, State of Florida at Large
Printed Name: *CHRISTOPHER A. JAMES*

My Commission Expires: (Seal)
This document contains 6 pages.

MEETING DATE: March 9, 2004

FILE NO: 1840

PROPERTY: 2360 Collins Avenue – The Creek Hotel

LEGAL: Block 3 of the amended plat of the ocean front property of the Miami Beach Improvement Company's subdivision, according to the Plat Thereof, as Recorded in Plat Book 5, Page 7, of the Public Records of Miami-Dade County, Florida.

IN RE: The Application for a Certificate of Appropriateness for the partial demolition, partial reconstruction, alteration, renovation and rehabilitation of an existing motel complex, as well as the construction of an eight (8) story residential structure.

ORDER

The applicant, Ken Fields, filed an application with the City of Miami Beach Planning Department for a Certificate of Appropriateness.

The City of Miami Beach Historic Preservation Board makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

- A. The subject structure is located within the Collins Waterfront Local Historic District and is designated contributing in the Miami Beach Historic Properties Database.
- B. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted is consistent with the Certificate of Appropriateness Criteria in Section 118-564(a)(1) of the Miami Beach Code, is not consistent with Certificate of Appropriateness Criteria a, b, c, and d in Section 118-564(a)(2) of the Miami Beach Code, is not consistent with Certificate of Appropriateness Criteria b, d, j, and m in Section 118-564(a)(3) of the Miami Beach Code, and is not consistent with Certificate of Appropriateness Criteria for Demolition 6, 8 and 9 in Section 118-564(f)(4).
- C. The project would be consistent with the criteria and requirements of section 118-564 if the following conditions are met:

2004
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1. Revised elevation, detailed site plan, and floor plan drawings, shall be submitted to and approved by staff; at a minimum, such drawings shall incorporate the following:
 - a. The proposed roof top canopies shall be eliminated at each level.
 - b. Additional details of the louver system shall be provided, including a section detailing the method of attachment to the building, color, and method of operation, subject to the review and approval of staff. The louver locations shall also be shown on the floor plans.
 - c. The east elevation of the existing northernmost building shall be restored to its original configuration, in a manner to be reviewed and approved by staff.
 - d. Each elevation shall contain a corresponding elevation section mark on the site plan which accurately denotes the angle at which the elevation was drawn.
 - e. Enclosed living areas placed above the existing lobby roof shall be subject to the review and approval of staff.
 - f. Building sections shall be provided through the main axis' of the tower structure and existing buildings.
 - g. The renovation and restoration of the existing structures shall obtain a building permit concurrent with the new construction. A Temporary Certificate of Occupancy (TCO) shall not be issued for the newly constructed residential portion of the project prior to the completion of the renovated and reconstructed retail portions.

2. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding site plan, shall be submitted to and approved by staff. The species type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of staff. At a minimum, such plan shall incorporate the following:
 - a. All exterior walkways and driveways shall consist of decorative pavers, set in sand or other equally semi-pervious material, subject to the review and approval of staff.
 - b. All landscape areas abutting driveways and parking areas shall be defined by decorative bollards.

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- c. A fully automatic irrigation system with 100% coverage and an automatic rain sensor in order to render the system inoperative in the event of rain. Right-of-way areas shall also be incorporated as part of the irrigation system.
 - d. The landscape plan shall satisfy all requirements as specified in Chapter 33 of the Miami-Dade County Code. A landscape table shall be provided on final landscape plans addressing all minimum quantity and native requirements, subject to the review and approval of staff.
 - e. Backflow preventors and utility boxes shall not be permitted within any required yard. The location of backflow preventor, siamese pipes or FPL boxes, if any, and how they are screened with landscape material from the right-of-way, shall be indicated on the plans and shall be subject to the review and approval of staff.
 - f. The site landscaping along Liberty Avenue shall be carefully coordinated with the Oceanfront Neighborhood Streetscape Improvement Project. Refer to the City of Miami Beach Capital Improvements Office for further information.
 - g. The paving pattern and paving material on Liberty Avenue shall be subject to the review and approval of staff and shall be integrated into the design of any landscaping features.
3. All building signage shall be consistent in type, composed of flush mounted, non-plastic, individual letters and shall require a separate permit.
 4. The final exterior surface color scheme, including color samples, shall be subject to the review and approval of staff and shall require a separate permit.
 5. A traffic mitigation plan, which addresses all roadway Level of Service (LOS) deficiencies relative to the concurrency requirements of the City Code, if required, shall be submitted prior to the issuance of a Building Permit and the final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
 6. Manufacturers drawings and Dade County product approval numbers for all new windows, doors and glass shall be required, prior to the issuance of a building permit.
 7. All roof-top fixtures, air-conditioning units and mechanical devices shall be clearly noted on a revised roof plan and shall be screened from view, in a manner to be approved by staff.
 8. Revised drawings, with corresponding color photographs that are separate from the construction documents, drawn to scale and clearly documenting the existing

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conditions of the subject building, shall be submitted. Such drawings and photographs shall include all four elevations and interior floor plans of the building, as well as a site plan.

9. An historic analysis of the existing structure, inclusive of a photographic and written description of the history and evolution of the original building on site, shall be submitted to and approved by staff, prior to the issuance of a Building Permit; such historic analysis shall be displayed prominently within the public area of the structure, in a location to be determined by staff.
10. All new and altered elements, spaces and areas shall meet the requirements of the Florida Accessibility Code (FAC).
11. The project shall comply with any landscaping or other sidewalk/street improvement standards as may be prescribed by a relevant Urban Design Master Plan approved prior to the completion of the project and the issuance of a Certificate of Occupancy.
12. The applicant may be required to submit a separate analysis for water and sewer requirements, at the discretion of the Public Works Director, or designee. Based on a preliminary review of the proposed project, the following may be required by the Public Works Department:
 - a. Remove/replace sidewalks, curbs and gutters on all street frontages, if applicable.
 - b. Mill/resurface asphalt in rear alley along property, if applicable.
 - c. Provide underground utility service connections and on-site transformer location, if necessary.
 - d. Provide back-flow prevention devices on all water services.
 - e. Provide on-site, self-contained storm water drainage for the proposed development.
 - f. Meet water/sewer concurrency requirements including a hydraulic water model analysis and gravity sewer system capacity analysis as determined by the Department and the required upgrades to water and sewer mains servicing this project.
 - g. Payment of City utility impact fees for water meters/services.
 - h. Provide flood barrier ramps to underground parking or minimum slab elevation to be at highest adjacent crown road elevation plus 8".

- i. Right-of-way permit must be obtained from Public Works.
 - j. All right-of-way encroachments must be removed.
 - k. All planting/landscaping in the public right-of-way must be approved by the Public Works and Parks Departments.
13. A drawn plan and written procedure for the proposed demolition shall be prepared and submitted by a Professional Structural Engineer, registered in the State of Florida, which fully ensures the protection of the public safety, as well as the protection of the existing structure on the subject site and all existing structures adjacent to the subject site during the course of demolition.
 14. The Certificate of Appropriateness for Demolition shall only remain in effect for the period of time that there is an active Certificate of Appropriateness for the associated new construction on the subject property.
 15. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
 16. The Final Order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including the staff recommendations which were amended by the Board, that the Certificate of Appropriateness is GRANTED for the above-referenced project subject to those certain conditions specified in paragraph C of the Findings of Fact (Condition Nos. 1-16, inclusive) hereof, to which the applicant has agreed.

No building permit may be issued unless and until all conditions of approval as set forth herein have been met. The issuance of a Certificate of Appropriateness does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including zoning approval. If adequate handicapped access is not provided, this approval does not mean that such handicapped access is not required or that the Board supports an applicant's effort to seek waivers relating to handicapped accessibility requirements.

When requesting a building permit, three (3) sets of plans approved by the Board, modified in accordance with the above conditions, as well as annotated floor plans which clearly delineate the Floor Area Ratio (FAR) calculations for the project, shall be submitted to the Planning Department. If all of the above-specified conditions are satisfactorily addressed, the plans will be reviewed for building permit approval. Two (2) sets will be returned to you for submission for a building permit

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Page 6 of 6
HPB File No. 1840.
Meeting Date: March 9, 2004

and one (1) set will be retained for the Historic Preservation Board's file.

If the Full Building Permit is not issued within eighteen (18) months of the meeting date at which this Certificate of Appropriateness was granted and construction does not commence and continue in accordance with the requirements of the applicable Building Code, the Certificate of Appropriateness will expire and become null and void, unless the applicant, prior to expiration of such period, makes application to the Board for an extension of time; the granting of any such extension of time shall be at the discretion of the Board. At the hearing on any such application, the Board may deny or approve the request and modify the above conditions or impose additional conditions. Failure to comply with this Order shall subject the Certificate of Appropriateness to Section 118-564, City Code, for revocation or modification of the Certificate of Appropriateness.

Dated this 25 day of MARCH, 2004.

HISTORIC PRESERVATION BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: Thomas R. Mooney
THOMAS R. MOONEY, AICP
DESIGN AND PRESERVATION MANAGER
FOR THE CHAIR

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

The foregoing instrument was acknowledged before me this 25th day of MARCH 2004 by Thomas R. Mooney, Design and Preservation Manager, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the Corporation. He is personally known to me.

 Charles A. Tart
My Commission D0233174
Expires July 17, 2007

Charles A. Tart
NOTARY PUBLIC CHARLES A. TART
Miami-Dade County, Florida
My commission expires: _____

Approved As To Form:
Legal Department: [Signature] (3-22-04)

Filed with the Clerk of the Historic Preservation Board on 3/25/04 (ent)

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Exhibit B-2

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 HARVEY RUVIN, CLERK OF COURT
 MIAMI-DADE COUNTY, FLORIDA

HISTORIC PRESERVATION BOARD
 City of Miami Beach, Florida

MEETING DATE: September 11, 2012

FILE NO: 1840

PROPERTY: 2360 Collins Avenue

LEGAL: Block 3 of the Amended Plat of the Ocean Front Property of the Miami Beach Improvement Company's Subdivision, according to the Plat Thereof, as Recorded in Plat Book 5, Page 7, of the Public Records of Miami-Dade County, Florida.

IN RE: The Application for a Certificate of Appropriateness for the partial demolition, partial reconstruction, alteration, renovation and rehabilitation of an existing motel complex, as well as the construction of an eight (8) story residential structure. Specifically, the applicant is requesting substantial design and massing modifications to the previously approved project, including the elimination of all on-site parking, along with a change of use from multifamily to hotel.

CERTIFICATION
 THIS IS TO CERTIFY THAT THE ATTACHED DOCUMENT IS A TRUE AND ACCURATE COPY OF THE ORIGINAL ON FILE IN THE OFFICE OF THE PLANNING DEPARTMENT.
 CITY OF MIAMI BEACH
 (Signature of Planning Director or Designee) *[Signature]* (Date) 10-11-2012
 Personally known to me or Produced ID:
[Signature]
 Notary Public, State of Florida at Large
 Printed Name: *Teresa Maria*
 My Commission Expires: (Seal) 12-2-13
 This document contains 10 pages.



ORDER

The applicant, Centurian Collins Avenue, LLC, filed an application with the City of Miami Beach Planning Department for a Certificate of Appropriateness.

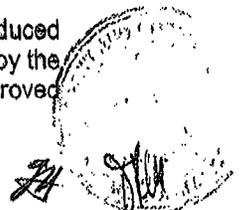
The City of Miami Beach Historic Preservation Board makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

- A. The subject structure is classified as 'Contributing' in the Miami Beach Historic Properties Database and is located within the Collins Waterfront Historic District.
- B. Based on the plans and documents submitted with the application, testimony and

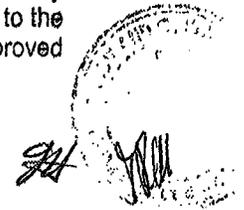


Information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted is not consistent with the Certificate of Appropriateness Criteria 'a' in Section 118-564(a)(1) of the Miami Beach Code, is not consistent with Certificate of Appropriateness Criteria 'a', & 'b' in Section 118-564(a)(2) of the Miami Beach Code, is not consistent with Certificate of Appropriateness Criteria 'b' & 'e' in Section 118-564(a)(3) of the Miami Beach Code, and is consistent with Certificate of Appropriateness Criteria for Demolition in Section 118-564(f)(4) of the Miami Beach Code.

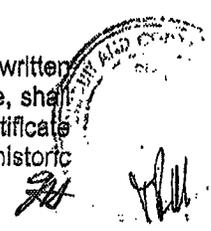
- C. The project would be consistent with the criteria and requirements of section 118-564 if the following conditions are met:
1. Revised elevations, site plan and floor plan drawings shall be submitted to and approved by staff; at a minimum, such drawings shall incorporate the following:
 - a. The original lobby shall be fully restored to the greatest extent possible, including restoration of original materials and finishes, including the original lobby desk configuration.
 - b. The accessible ramp at the main entrance to the historic lobby shall not be permitted as proposed, and shall be redesigned in order to require little or no demolition of original architectural features.
 - c. The exterior of the original lobby shall be fully renovated and restored, including the use of matching materials and finishes where possible.
 - d. The demolition of the existing original front entrance steps and curvilinear planter shall not be permitted; they shall be retained and restored.
 - e. The demolition of the northeast corner hotel rooms on the first and second floors, shall not be permitted. Any demolition in this area shall not exceed the demolition initially reviewed and approved by the Board.
 - f. The original pylon at the front entrance shall be fully restored.
 - g. The original building signage, 'Motel Ankara' shall be restored in its original location on the north stairwell pylon.
 - h. The design for the standard guest room elevations shall be further refined and simplified in a manner to be reviewed and approved by staff.
 - i. Balconies shall be provided on levels 5 through 8 on the northeast and northwest elevations of the north wing of the new construction, as shown in submitted elevation drawings.
 - j. The proposed monument sign for the Liberty Avenue entrance shall be reduced in size not to exceed sixty (60) square feet, subject to review and approval by the Zoning Board of Adjustment, and sited in a manner to be reviewed and approved by staff.



- k. Compliance with Section 130-132 of the City Code, as it pertains to the removal of required parking, as proposed by the applicant, shall be determined by the Planning Director.
 - l. An identification marker of the proposed new structure or new addition to an existing structure, including the name of the design architect and year of construction, shall be required. The design, dimensions, material and location of such marker shall be consistent with the prototype B (oval), adopted for approval by the Board and shall be submitted to and approved by staff, prior to the issuance of a Building Permit. Such marker shall be two (2) square feet in size, consist of a stainless steel, brushed aluminum or similar finish and utilize an arlal font with routed out or engraved black letters.
 - m. All roof-top fixtures, air-conditioning units and mechanical devices shall be clearly noted on a revised roof plan and shall be architecturally screened from view.
 - n. Prior to the issuance of a Certificate of Occupancy, the project Architect shall verify, in writing, that the subject project has been constructed in accordance with the plans approved by the Planning Department for Building Permit.
2. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding site plan, shall be submitted to and approved by staff. The species type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of staff. At a minimum, such plan shall incorporate the following:
- a. The proposed 'green screen' landscape structures along Collins Avenue, which would block views from Collins Avenue to the restored building, shall not be permitted. Only low ground cover and canopy trees shall be permitted, in a manner to be reviewed and approved by staff.
 - b. The Liberty Avenue Street end, from 23rd Street to the Collins Canal shall be designed, permitted and built by the applicant, in a manner to be reviewed and approved by staff. One half (50%) of all costs associated with the design, permitting and construction of the street from 23rd Street to the Collins Canal and the street end, including but not limited to landscaping, hardscaping, drainage, irrigation and lighting, shall be the responsibility of the applicant. Should the costs to the applicant exceed \$250,000, the applicant shall return to the Board for a modification of this condition. Such streetscape shall be coordinated with the City's Capital Improvement Project for Lake Pancoast neighborhood along the north side of the canal.
 - c. Only low ground cover and canopy trees shall be permitted within the Liberty Avenue right-of-way and street end and along the Collins Canal adjacent to the new Liberty Avenue hotel entrance, in a manner to be reviewed and approved by staff.

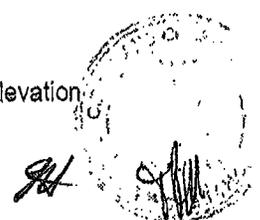
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- d. Any security fencing or gates shall not be located within the front yard facing Collins Avenue and shall be setback behind the face of the historic building, subject to the review and approval of staff.
 - e. A fully automatic irrigation system with 100% coverage and an automatic rain sensor in order to render the system inoperative in the event of rain. Right-of-way areas shall also be incorporated as part of the irrigation system.
 - f. The utilization of root barriers and/or structural soil, as applicable, shall be clearly delineated on the revised landscape plan.
 - g. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all backflow preventers and all other related devices and fixtures; such fixtures and devices shall not be permitted within any required yard or any area fronting a street or sidewalk. The location of backflow preventers, siamese pipes or other related devices and fixtures, if any, and how they are screened with landscape material from the right-of-way, shall be clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff.
 - h. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all applicable FPL transformers or vault rooms; such transformers and vault rooms, and all other related devices and fixtures, shall not be permitted within any required yard or any area fronting a street or sidewalk. The location of any exterior transformers, and how they are screened with landscape material from the right-of-way, shall be clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff.
 - i. Prior to the issuance of a Certificate of Occupancy, the Landscape Architect for the project architect shall verify, in writing, that the project is consistent with the site and landscape plans approved by the Planning Department for Building Permit.
3. All building signage shall be consistent in type, composed of flush mounted, non-plastic, individual letters and shall require a separate permit. Any illuminated letters shall be composed of reverse channel letters only.
 4. The final exterior surface color scheme, including color samples, shall be subject to the review and approval of staff and shall require a separate permit.
 5. Revised drawings, with corresponding color photographs, that are separate from the construction documents, drawn to scale and clearly documenting the existing conditions of the subject building, shall be submitted. Such drawings and photographs shall include all four elevations and interior floor plans of the building, as well as a site plan.
 6. An historic analysis of the existing site, inclusive of a photographic and written description of the history and evolution of the original and existing building on site, shall be submitted to and approved by staff and installed, prior to the issuance of a Certificate of Occupancy (C.O.) or Temporary Certificate of Occupancy (T.C.O.); such historic



analysis shall be displayed prominently within the public areas of EACH retail structure, in a location to be determined by staff.

7. All new and altered elements, spaces and areas shall meet the requirements of the Florida Accessibility Code (FAC).
8. The project shall comply with any landscaping or other sidewalk/street improvement standards as may be prescribed by a relevant Urban Design Master Plan approved prior to the completion of the project and the issuance of a Certificate of Occupancy.
9. The applicant may be required to submit a separate analysis for water and sewer requirements, at the discretion of the Public Works Director, or designee. Based on a preliminary review of the proposed project, the following may be required by the Public Works Department:
 - a. A traffic and neighborhood impact study shall be conducted as a means to measure a proposed development's impact on transportation and neighborhoods. The study shall address all roadway Level of Service (LOS) deficiencies relative to the concurrency requirements of the City Code, and if required, shall be submitted prior to the issuance of a Building Permit. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code. The developer shall refer to the most recent City of Miami Beach's Traffic and Neighborhood Impact Methodology as issued by the Public Works Department.
 - b. Remove/replace sidewalks, curbs and gutters on all street frontages, if applicable. Unless otherwise specified, the standard color for city sidewalks is red, and the standard curb and gutter color is gray.
 - c. Mill/resurface asphalt in rear alley along property, if applicable.
 - d. Provide underground utility service connections and on-site transformer location, if necessary.
 - e. Provide back-flow prevention devices on all water services.
 - f. Provide on-site, self-contained storm water drainage for the proposed development.
 - g. Meet water/sewer concurrency requirements including a hydraulic water model analysis and gravity sewer system capacity analysis as determined by the Department and the required upgrades to water and sewer mains servicing this project.
 - h. Payment of City utility impact fees for water meters/services.
 - i. Provide flood barrier ramps to underground parking or minimum slab elevation to be at highest adjacent crown road elevation plus 8".



- J. Right-of-way permit must be obtained from Public Works.
 - k. All right-of-way encroachments must be removed.
 - l. All planting/landscaping in the public right-of-way must be approved by the Public Works and Parks Departments.
10. A drawn plan and written procedure for the proposed demolition shall be prepared and submitted by a Professional Structural Engineer, registered in the State of Florida, which fully ensures the protection of the public safety, as well as the protection of all existing structures adjacent to the subject site during the course of demolition.
11. The Certificate of Appropriateness for Demolition shall only remain in effect for the period of time that there is an active Certificate of Appropriateness for the associated new construction on the subject property.
12. The Applicant agrees to the following operational conditions for any and all permitted hotel and accessory uses and shall bind itself, lessees, permittees, concessionaires, renters, guests, users, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or limitations.
- a. RESTAURANT CONDITIONS
 - i. No accessory restaurant outdoor operations shall operate between 2AM and 6AM.
 - b. ROOFTOP CONDITIONS
 - i. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced. Owner agrees to include the rules and regulations set forth in these conditions in any contract or assignment.
 - ii. All food served on the rooftop or on exterior public areas of the hotel shall be prepared in the hotel kitchen. Alcohol service to the rooftop shall cease at 11PM, seven (7) days a week. The hotel rules and practices shall require that the rooftop spa be closed from 11PM to 8AM.
 - iii. Owner agrees to install sound attenuating design elements throughout the property in order to minimize any spillover of sound to adjacent properties, in a manner consistent with the limits and requirements of the City Code. Rooftop lighting fixtures shall be designed to deflect light from spilling over to adjacent and nearby properties.
 - iv. All roof-top fixtures, air-conditioning units and mechanical devices shall be screened from view. In addition, Owner agrees to install an exhaust system for the kitchen that will substantially reduce all grease and smoke that would otherwise escape to the surrounding area. Finally, Owner

agrees to install the fan in connection with the kitchen exhaust system within the interior of the building in order to reduce noise levels at the exhaust outlet.

- v. All stair towers, elevators, and mechanical equipment shall be appropriately designed, screened and detailed in a manner consistent with the building's design, subject to the review and approval of staff.

c. NOISE CONDITIONS

- i. The Historic Preservation Board (HPB) or the Planning Director shall retain the right to call the owners and/or operators back before the HPB, at the expense of the owners and/or operators, to impose and/or modify the hours of operation, and the placement or use on the property of exterior speakers, fixed or portable, or amend or impose other conditions, should there be a valid violation (as determined by Code Compliance) about loud, excessive, unnecessary, or unusual noise or other conditions of this approval. An adverse adjudication of a violation against the owner or operator is not necessary for the board to have jurisdiction over the matter under this condition. This condition vests jurisdiction independent of any other condition hereof.
- ii. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as amended, shall be deemed a violation of this approval and subject the approval to modification in accordance with the procedures for modification of prior approvals as provided for in the Code, and subject the applicant to the review provided for in the first sentence of this subparagraph.
- iii. No outdoor bar counters shall be permitted on the premises except one (1) located on the rooftop facility, and one (1) adjacent to the ground floor restaurant.
- iv. No speakers, except as may be required for fire or building code/Life Safety Code purposes and those associated with the distributed sound system for the pool deck for ambient music, shall be affixed to or otherwise located on the exterior of the premises.
- v. In addition to rooftop facilities, use of any pool or spa and pool or spa deck, courtyards and open air portions of the public areas of the hotel premises, as well as all terraces, private decks, and balconies associated with hotel units, shall be for the exclusive use of registered hotel guests and their invitees except for the one (1) located adjacent to the ground floor restaurant.
- vi. The hotel rules and practices shall prohibit registered guests, visitors, invitees and others using the hotel facilities or otherwise on the premises from operating audio amplification equipment, inclusive of loudspeakers, radio receivers, television sets, musical instruments, or other machines or

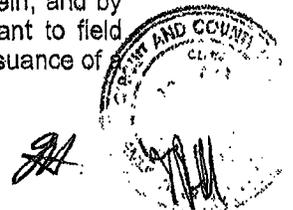


devices for the producing or reproducing of sound, that produces noise that is plainly audible at any apartment unit in the adjacent and nearby properties.

- vii. Notwithstanding the occupancy and seat counts shown on the plans submitted, calculations for required parking and concurrency for the project shall be determined by the Planning Department prior to approval of a building permit. Such parking and traffic calculations shall be based upon both the number of hotel rooms, and, additionally, the intensity of the proposed accessory restaurant as measured by the number of seats in dining areas, and by the square footage of the liquor service areas not included in the areas for which seats are calculated as provided for in this subparagraph.

d. OPERATIONAL CONDITIONS

- i. All trash containers shall utilize rubber wheels, or the path for the trash containers shall consist of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.
 - ii. Adequate trash room space, air conditioned and noise baffled, shall be provided, in a manner to be approved by the Planning and Public Works Departments. Doors shall remain closed and secured when not in active use.
 - iii. Garbage dumpster covers shall be closed at all times except when in active use and garbage pickups and service deliveries shall not take place between 7PM and 8AM.
 - iv. Permanent outdoor cooking anywhere on the premises is prohibited. Kitchen and other cooking odors will be contained within the premises. All kitchens and other venting shall be chased to the roof and venting systems shall be employed as necessary to minimize or dissipate smoke, fumes and odors.
 - v. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
13. At the time of completion of the project, only a **Final** Certificate of Occupancy (CO) or **Final** Certificate of Completion (CC) may be applied for; the staging and scheduling of the construction on site shall take this into account. All work on site must be completed in accordance with the plans approved herein, as well as by the Building, Fire, Planning, CIP and Public Works Departments, inclusive of all conditions imposed herein, and by other Development Review Boards, and any modifications required pursuant to field inspections, prior to the issuance of a CO or CC. This shall not prohibit the issuance of Partial or Temporary CO, or a Partial or Temporary CC.



14. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
15. The Final Order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
16. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
17. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including the staff recommendations, which were amended by the Board, that the Certificate of Appropriateness is GRANTED for the above-referenced project subject to those certain conditions specified in paragraph C of the Findings of Fact (Condition Nos. 1-17, inclusive) hereof, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans approved by the Historic Preservation Board, as determined by staff, "2360 Collins Avenue HPB Progress Package – Revisions to original HPB Submission", as prepared by ADD Inc., dated September 11, 2012.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order. No building permit may be issued unless and until all conditions of approval that must be satisfied prior to permit issuance, as set forth in this Order, have been met.

The issuance of a Certificate of Appropriateness does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval. If adequate handicapped access is not provided on the Board-approved plans, this approval does not mean that such handicapped access is not required. When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.

If the Full Building Permit for the project is not issued within eighteen (18) months of the meeting date at which the original Certificate of Appropriateness was granted, the Certificate of Appropriateness will expire and become null and void. If the Full Building Permit for the project should expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), the Certificate of Appropriateness will expire and become null and void.

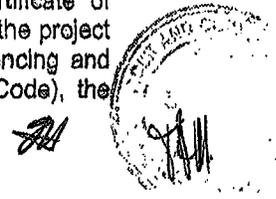


Exhibit B-3

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 HARVEY RUVIN, CLERK OF COURT
 MIAMI-DADE COUNTY, FLORIDA

HISTORIC PRESERVATION BOARD
 City of Miami Beach, Florida

MEETING DATE: September 10, 2013

FILE NO: 1840

PROPERTY: 2360 Collins Avenue

LEGAL: Block 3 of the Amended Plat of the Ocean Front Property of the Miami Beach Improvement Company's Subdivision, according to the Plat Thereof, as Recorded in Plat Book 5, Page 7, of the Public Records of Miami-Dade County, Florida.

IN RE: The Application for modifications to a previously issued Certificate of Appropriateness for the partial demolition, partial reconstruction, alteration, renovation and rehabilitation of an existing motel complex, as well as the construction of an eight (8) story residential structure. Specifically, the applicant is requesting more extensive demolition than previously approved.

CERTIFICATION

THIS IS TO CERTIFY THAT THE ATTACHED DOCUMENT IS A TRUE AND ACCURATE COPY OF THE ORIGINAL ON FILE IN THE OFFICE OF THE PLANNING DEPARTMENT, CITY OF MIAMI BEACH

William Carr Sant'Antonio 9/25/13
 (Signature of Planning Director or Designee) (Date)

Personally known to me or Produced ID:
James A. Martin
 Notary Public, State of Florida at Large
 Printed Name: *JAMES A. MARTIN*
 My Commission Expires: (Seal) *12-9-13*

This document contains 4 pages.

9/25/13
 TETRAPOD
 MY COMMISSION # 00320148
 EXPIRES: September 2, 2013
 Bonded Through Notary Services



SUPPLEMENTAL ORDER

The applicant, Centurian Collins Avenue, LLC., filed an application with the City of Miami Beach Planning Department for a Certificate of Appropriateness.

The City of Miami Beach Historic Preservation Board makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

- A. The subject structure is classified as 'Contributing' in the Miami Beach Historic Properties Database and is located within the Collins Waterfront Historic District.
- B. The subject Certificate of Appropriateness was originally approved by the Historic Preservation Board on March 9, 2004. Modifications to the original approval were approved on March 13, 2007 and September 11, 2012.

WJH

C. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted is consistent with the Certificate of Appropriateness Criteria in Section 118-564(a)(1) of the Miami Beach Code, is consistent with Certificate of Appropriateness Criteria in Section 118-564(a)(2) of the Miami Beach Code, is not consistent with Certificate of Appropriateness Criteria 'b' in Section 118-564(a)(3) of the Miami Beach Code, and is consistent with Certificate of Appropriateness Criteria for Demolition in Section 118-564(f)(4) of the Miami Beach Code.

D. The project would be consistent with the criteria and requirements of section 118-564 if the following conditions are met;

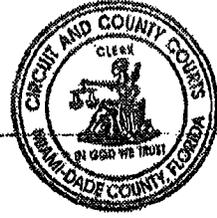
1. Revised elevation, site plan and floor plan drawings shall be submitted; at a minimum, such drawings shall incorporate the following:
 - a. The applicant shall submit a complete structural report for the shoring, bracing, and stabilization of the building during the removal and replacement of the second floor slab, for review by Planning staff and the approval of the Building Department, prior to the issuance of an expanded demolition permit.
 - b. A drawn plan and written procedure for the proposed demolition shall be prepared and submitted by a Professional Structural Engineer, registered in the State of Florida, which fully ensures the protection of the public safety, as well as the protection of all existing structures adjacent to the subject site during the course of demolition, for review by Planning staff and approval by the Building Department, prior to the issuance of an expanded demolition permit.
 - c. Prior to the issuance of a Certificate of Occupancy, the project Architect shall verify, in writing, that the subject project has been constructed in accordance with the plans approved by the Planning Department for Building Permit.
2. At the time of completion of the project, only a **Final Certificate of Occupancy (CO)** or **Final Certificate of Completion (CC)** may be applied for; the staging and scheduling of the construction on site shall take this into account. All work on site must be completed in accordance with the plans approved herein, as well as by the Building, Fire, Planning, CIP and Public Works Departments, inclusive of all conditions imposed herein, and by other Development Review Boards, and any modifications required pursuant to field inspections, prior to the issuance of a CO or CC. This shall not prohibit the issuance of a Partial or Temporary CO, or a Partial or Temporary CC.



The Supplemental Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.

The Supplemental Final Order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.

Handwritten signature/initials



Page 3 of 4
HPB File No. 1840
Meeting Date: September 10, 2013

5. The previous Final Orders dated March 9, 2004, March 13, 2007 and September 11, 2012 shall remain in full force and effect.
6. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
7. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including the staff recommendations, which were amended by the Board, that the Certificate of Appropriateness is GRANTED for the above-referenced project subject to those certain conditions specified in paragraph C of the Findings of Fact (Condition Nos. 1-7 inclusive) hereof, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans approved by the Historic Preservation Board, as determined by staff, entitled "2380 Collins Avenue – Revision to original HPB Order", as prepared by ADD Inc., dated 10 September 2013.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Final Order. No building permit may be issued unless and until all conditions of approval that must be satisfied prior to permit issuance, as set forth in this Final Order, have been met.

The issuance of this Certificate of Appropriateness does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval. If adequate handicapped access is not provided on the Board-approved plans, this approval does not mean that such handicapped access is not required. When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.

If the Full Building Permit for the project is not issued within eighteen (18) months of the meeting date at which the original Certificate of Appropriateness was granted, this Certificate of Appropriateness will expire and become null and void. If the Full Building Permit for the project should expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), this Certificate of Appropriateness will expire and become null and void.

In accordance with Section 118-561 of the City Code, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code. Failure to comply with this Order shall subject this Certificate of Appropriateness to Section 118-564, City Code, for revocation or modification of the Certificate of Appropriateness.

[Handwritten signature]

Page 4 of 4
HPB File No. 1840
Meeting Date: September 10, 2013

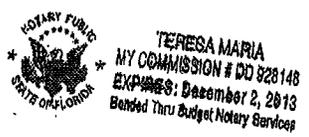
Dated this 20th day of September, 2013

HISTORIC PRESERVATION BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: [Signature]
THOMAS R. MOONEY, AICP
DESIGN AND PRESERVATION MANAGER
FOR THE CHAIR

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

The foregoing instrument was acknowledged before me this 20th day of September 2013 by Thomas R. Mooney, Design and Preservation Manager, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



[Signature]
NOTARY PUBLIC
Miami-Dade County, Florida
My commission expires: 12-2-13

Approved As To Form:
Legal Department: [Signature] (9-19-2013)

Filed with the Clerk of the Historic Preservation Board on 9-20-13 (WSR)

F:\PLAN\HPB\13HPB\Sep13\1840-SEP2013.FO.docx

STATE OF FLORIDA, COUNTY OF DADE
HEREBY CERTIFY that this is a true copy of the
original filed in this office on 9-20-13 day of
 , A.D. 2013
WITNESS my hand and Official Seal, 2013/09/28
HARVEY RUVIN, CLERK, of Circuit and County Courts
in Southwest D.C.



[Handwritten initials]

Exhibit B-4

2/4

**BEFORE THE
BOARD OF ADJUSTMENT
OF THE CITY OF MIAMI BEACH, FLORIDA**

IN RE: The application of
KEN FIELDS a/k/a THE ANKARA
(formerly The Creek Hotel)
2360 COLLINS AVENUE
BLOCK 3 OF AMENDED PLAT OF
OCEANFRONT PROPERTY OF THE
MIAMI BEACH IMPROVEMENT CO. SUBDIVISION
PLAT BOOK 8-7; MIAMI-DADE COUNTY, FLORIDA
(complete legal description on file in the City of Miami Beach Planning Department)

Recording Office Use Only



CFN 2004R0705694
DR BR 22576 Pgs 2188 - 2141F (4pg)
RECORDED 08/16/2004 14:30:57
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

MEETING DATE: MAY 7, 2004
FILE NO. 3008

ORDER

The applicant, Ken Fields, filed an application with the Planning Department for variances in order to permit the conversion of an existing hotel to condominium units & townhouses with a new restaurant including a new eight (8) story building addition to the existing historic structure, as follows:

1. A variance to exceed the maximum permitted number of seven (7) stories by one (1) story in order to allow construction of an eight (8) story condominium.
2. A variance to waive 5' - 0" of the minimum required 10' - 0" south side yard pedestal setback in order to allow construction of an eight (8) story condominium 5' - 0" from the south property line.
3. A variance to waive 5' - 6" of the minimum required 10' - 0" north side yard pedestal setback in order to retain portions of an existing historic hotel including a new four story addition and a one story roof top addition 4' - 6" from the north property line.
4. A variance to waive 10' - 0" of the minimum required 20' - 0" sum of the side yards setback in order to allow construction of an eight (8) story condominium, retention of portions of an existing historic hotel including a new four story addition and a one story roof top addition with a 10' - 0" sum of the side yards setback.
5. A variance to waive 14' - 0" of the minimum required 20' - 0" front yard pedestal setback in order to permit the construction of an eight (8) story condominium 8' - 0" from the west property line facing Liberty Avenue.

JA

Board of Adjustment Order: File No. 3009
Ken Fields a/k/a The Ankara
2360 Collins Avenue

6. A variance to waive 39' - 0" of the minimum required 45' - 0" front yard tower setback in order to permit the construction of an eight (8) story condominium 6' - 0" from the west property line facing Liberty Avenue.
7. A variance to waive 7' - 6" of the minimum required 12' - 6" south side yard tower setback in order to allow construction of an eight (8) story condominium 5' - 0" from the south property line.
8. A variance to waive 7' - 6" of the minimum required 20' - 0" front yard at-grade parking setback in order to permit a one-way drop-off circular drive 12' - 7" from the front property line facing Liberty Avenue.
9. A variance to exceed the maximum allowable projection into a required front yard of 20' - 0" for an outdoor patio / deck by 15' - 0" in order to permit the projection with no setback from the front property line facing Collins Avenue.
10. A variance to exceed the maximum allowable projection into a required side yard of 10' - 0" for balconies by 7' - 6" in order to permit the projections with no setback from the north side property line.
11. A variance to exceed the maximum permitted number of two (2) tandem parking spaces by one (1) parking space in order to permit three tandem parking spaces.
12. A variance to waive to waive 22' of the minimum required 22' interior driveway width for 90 (ninety) degree parking to allow the placement of 26 automobiles on mechanical lift stations.

Notice of the request for variances was given as required by law and mailed to owners of property within a distance of 375 feet of the exterior limits of the property on which application was made.

THE BOARD FINDS that the property in question is located in the CD-3 Zoning District.

AT THE HEARING, Variance Request No. 12 was withdrawn.

THE BOARD FURTHER FINDS, based upon evidence, testimony, information and documentation presented to the Board, and portions of the staff report and recommendations, as applicable, which are incorporated herein by this reference, that with regard to the requested variances when conditioned as provided for in this Order:

GA

Board of Adjustment Order: File No. 3009
Ken Fields a/k/a The Ankara
2360 Collins Avenue

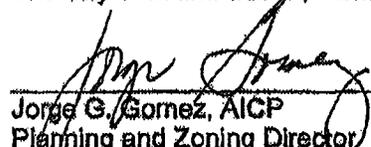
- 4. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.

Note: Variance Request No. 12 was WITHDRAWN at the hearing.

PROVIDED, the applicant shall build in accordance with the plans submitted as part of this file and as approved by the Board of Adjustment with any applicable modifications. The applicant shall have a building permit for the work contemplated herein issued by the Building Department on or before May 7, 2006 (within one year of the date of this hearing), otherwise this Order shall become null and void, unless the issuance of such permit is stayed by an appeal of this Order to a court of competent jurisdiction. This Order does not constitute a building permit, but upon presentation of a recorded copy of this Order to the Planning Department, a permit shall be processed and approved (subject to compliance with the conditions hereof) in accordance with and pursuant to the ordinances of the City of Miami Beach.

Board of Adjustment of
The City of Miami Beach, Florida

By:



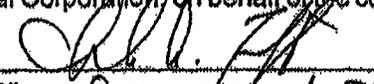
Jorge G. Gomez, AICP
Planning and Zoning Director
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 15TH day of JUNE, 2004, by Jorge Gomez, Planning and Zoning Director of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

 Charles A. Telford
My Commission DD238174
Expires July 17, 2007

[NOTARIAL SEAL]
My Commission Expires:



Notary:
Print Name: CHARLES A. TELFORD
Notary Public, State of Florida

Approved As To Form:
Legal Department (DOT 6/15/2004)

Filed with the Clerk of the Board of Adjustment on 6/16/04 

Exhibit B-5

[Handwritten mark]



CFN 2013R0115446
OR Bk 28486 Pgs 0167 - 1711 (6pgs)
RECORDED 02/12/2013 11:55:22
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

DOCUMENT COVER PAGE

For those documents not providing the required space on the first page, this cover page must be attached.

It must describe the document in sufficient detail to prohibit its transference to another document.

An additional recording fee for this page must be remitted.

(Space above this line reserved for recording office use)

Document Title: ORDER
(Mortgage, Deed, Construction Lien, Etc.)

Executing Party: _____

Legal Description: _____
(If Applicable)

As more fully described in above described document.

Return Document To / Prepared By: _____

F.S. 695.26 Requirements for recording instruments affecting real property—
(Relevant excerpts of statute)

(1) No instrument by which the title to real property or any interest therein is conveyed, assigned, encumbered, or otherwise disposed of shall be recorded by the clerk of the circuit court unless:

(e) A 3-inch by 3-inch space at the top right-hand corner on the first page and a 1-inch by 3-inch space at the top right-hand corner on each subsequent page are reserved for use by the clerk of the court.



JH

**BEFORE THE
BOARD OF ADJUSTMENT
OF THE CITY OF MIAMI BEACH, FLORIDA**

IN RE: The application of
Centurian Collins Avenue, LLC
2360 Collins Avenue
Miami Beach, Florida

Meeting Date: December 7, 2012
File No. 3009

ORDER

The applicant, Centurian Collins Avenue, LLC, filed an application with the Planning Department requesting a modification to the approved site plans. The modification requires new variances and the modification of previously granted modifications in order to permit the renovation of the existing structures and the construction of an addition, as follows:

1. A modification to delete all references to a completion date in the following Orders and Modification Orders:

Order dated May 7, 2004:

3. The applicant shall obtain a building permit within one (1) year of the date of this hearing and complete the project within two (2) years of the date of the hearing. If the building permit is not obtained or construction is not completed within the specified time limits, the applicant shall, prior to expiration of such period, apply to the Board for an extension of time. At the hearing on such application, the Board may deny or approve the request and modify the above conditions or impose additional conditions. Failure to comply with this order shall subject the variance to Section 118-356, City Code, for revocation or modification of the variance.

Extension of Time Order dated March 4, 2005:

3. The applicant shall obtain a building permit within ~~one (1) year~~ two (2) years of the date of this hearing and complete the project within ~~two (2) years~~ four (4) years of the date of the hearing. If the building permit is not obtained or construction is not completed within the specified time limits, the applicant shall, prior to expiration of such period, apply to the Board for an extension of time. At the hearing on such application, the Board may deny or approve the request and modify the above conditions or impose additional conditions. Failure to comply with this Order shall subject the variance to Section 118-356, City Code, for revocation or modification of the variance. Therefore, a building permit must be obtained by May 7, 2006 and the project shall be completed by May 7, 2008.



Modification Order dated April 4, 2008:

3. ~~The applicant shall complete the project by October 2, 2011.~~

Modification of Modification Order dated April 2, 2007:

1. ~~A variance to exceed by 12 the number of hotel units allowed to be between 300-335 square feet (30 hotel units or 15% of all hotel units) in order to provide 42 hotel units (22%) between 300-335 square feet within the existing hotel area.~~
2. A modification to a previously approved variance to waive the required minimum hotel unit size: 15% of the hotel units shall be between 300-335 s.f. and 85% of units shall be 335 s.f. of larger, in order to:
 - retain 6 hotel units within the historic structure at less than 300 s.f., the smallest at 285 s.f., (21%) and 14 hotel units between 300 and 335 s.f. (48%) and 9 units at +335 s.f. (31%)
 - and to build 3 new units above the historic structure at less than 300 s.f., the smallest at 285 s.f., (5%) and 19 hotel units between 300 and 335 s.f. (32%) and 38 units at +335 s.f. (63%)

New variances:

3. A variance to relocate a permissible building ID sign from Collins Avenue to the north façade of the building, located on a rooftop architectural element.
4. A variance to relocate a permissible building ID sign from Liberty Avenue to the south façade of the building, facing private property, and located on a rooftop architectural element.
5. A variance to exceed by 45 s.f. the size of a monument sign of 15 s.f. in order to build a monument sign of 60 s.f.
6. A variance to waive all of the minimum required front yard setback of 10'-0" in order to build a monument sign up to the front property line, facing Liberty Avenue.
7. A variance to provide an architectural fin projecting up to the west property line, facing Liberty Avenue.

Notice of the request for variance was given as required by law and mailed to owners of property within a distance of 375 feet of the exterior limits of the property on which application was made.

THE BOARD FINDS that the property in question is located in the CD-3 Zoning District.

THE BOARD FURTHER FINDS, based upon evidence, testimony, information and documentation presented to the Board, and portions of the staff reports and recommendations, as applicable, which are incorporated herein by this reference, that with



regard to the requested variances when conditioned as provided for in this Order:

That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;

That the special conditions and circumstances do not result from the action of the applicant;

That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;

That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;

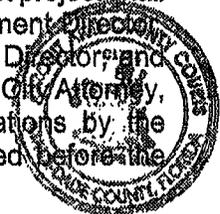
That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and

That the granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan.

IT IS THEREFORE ORDERED, by the Board, that the modification and new variances be APPROVED as requested and set forth above; with the following conditions to which the applicant has agreed:

1. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans, even if the modifications do not affect variances approved by the Board.
2. The applicant shall comply with all conditions imposed by the Public Works Department.
3. All improvements in the public right-of-way associated with the subject project shall be subject to the final review and approval of the Planning Department Director, Public Works Director, and the Parks and Recreation Department Director, and shall require an agreement, subject to the review and approval of the City Attorney, providing for the assumption of maintenance and liability obligations by the Applicant, and its successors and assigns, executed and recorded before the issuance of a building permit.



SA

4. If the full building permit issued for the project should expire, the Planning Director shall determine whether the variances issued shall require review and action by the Board of Adjustment.
5. The Board of Adjustment shall retain jurisdiction of this file. The Planning Department or the Board of Adjustment may require a progress report within 12 months or sooner, as determined by the Planning Department or the Board of Adjustment.
6. The applicant shall complete the project on or before January 31, 2016.
7. The conditions in this Order are binding on the applicant, the property's owners and all successors in interest and assigns.
8. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
9. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code, except to the extent of the variance granted herein.
10. This Order shall be recorded, at the expense of the applicant, in the Public Records of Miami-Dade County; the original or a certified copy shall be provided to the Planning Department prior to the issuance of a Building Permit.

PROVIDED, the applicant shall build substantially in accordance with the plans approved by the Board of Adjustment, as determined by staff, entitled "Aloft", as prepared by ADD, Inc., dated December 7, 2012, modified in accordance with the conditions set forth in this Order and staff review and approval.

The applicant shall have a full building permit for the work contemplated herein issued by the Building Department on or before June 7, 2014 (within eighteen months of the date of this hearing) as per the above conditions. If the full building permit is not obtained within the specified time limits, the applicant shall apply to the Board for an extension of time prior to expiration of such period; otherwise, this Order will expire, and become null and void, unless the issuance of such permit is stayed by an appeal of this Order to a court of competent jurisdiction.

This Order does not constitute a building permit, but upon presentation of a request for a permit of this Order to the Planning Department, a permit shall be processed and approved (subject to compliance with the conditions hereof) in accordance with and pursuant to the ordinances of the City of Miami Beach.



Board of Adjustment of

JA

Board of Adjustment Order: Meeting of December 7, 2012
File No. 3009: Centurian Collins Avenue, LLC
2360 Collins Avenue, Miami Beach
Page 5 of 5

The City of Miami Beach, Florida

By: *Richard G. Lorber*
Richard G. Lorber, AICP, LEED AP
Acting Planning Director
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 25th day of January, 2013, by Richard G. Lorber, Acting Planning Director of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



TERESA MARIA
MY COMMISSION # DD 928148
EXPIRES: December 2, 2013
Bonded Thru Budget Notary Services

Teresa Maria

Notary:
Print Name: Teresa Maria
Notary Public, State of Florida

[NOTARIAL SEAL]
My Commission Expires:
12-2-13

Approved As To Form:
Legal Department (*Filed 1-10-13*)

Filed with the Clerk of the Board of Adjustment on 01/25/13 *AS*

F:\PLAN\zba\FINALORD\3009 - Order - 2360 Collins Av - 12-12.doc

STATE OF FLORIDA, COUNTY OF DADE
I HEREBY CERTIFY that this is a true copy of the
original filed in this office on FEB 12 2013 day of
WITNESS my hand and Official Seal.
HARVEY RUVIN, CLERK of Circuit and County Courts
Harvey Ruvin D.C.



JA

ESCROW AGREEMENT

ACKNOWLEDGEMENT

REGARDING DISBURSEMENT OF ESCROW FUNDS

CENTURIAN COLLINS PROPERTY OWNER, LLC
c/o Madden Real Estate Ventures, LLC
10 Gracie Square
Maisonette 1205
New York, New York 10028

December 18, 2013

Greenberg Traurig, P.A.
333 S.E. 2nd Avenue
Miami, Florida 33131
Attention: Alfredo J. Gonzalez, Esq.

Re: Escrow Agreement (the "Parking Impact Fee Escrow Agreement") dated as of the date hereof by and between Centurian Collins Property Owner, LLC ("Mortgage Borrower") (as successor-in-interest to Centurian Collins Avenue, LLC), the City of Miami Beach and Greenberg Traurig P.A. ("Escrow Agent") concerning real property located at 2360 Collins Avenue, Miami Beach, Florida (the "Property")

Ladies and Gentlemen:

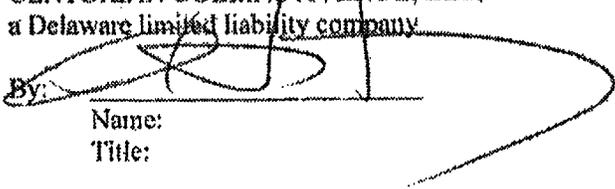
This letter shall constitute notice to Escrow Agent from Mortgage Borrower that (i) Starwood Property Mortgage, L.L.C. ("Lender") has made a mortgage loan to Mortgage Borrower and a mezzanine loan to Centurian Collins Mezz Co, LLC, ("Mezz Borrower") and (ii) Mortgage Borrower has entered into an agreement with Lender which requires that all amounts payable to Mortgage Borrower (the "Escrow Disbursements") be sent to Lender, to secure certain of Mortgage Borrower's obligations to Lender. The undersigned hereby irrevocably instructs and authorizes Escrow Agent to disregard any and all previous notices sent to Escrow Agent in connection with the Escrow Disbursements and hereafter to deliver all Escrow Disbursements payable to Mortgage Borrower to Lender as per the written instructions of Lender.

The instructions set forth herein are irrevocable and are not subject to rescission or modification in any manner, except that Lender, or any successor lender so identified by Lender, may by written notice to Escrow Agent rescind or modify the instructions contained herein.

[Signature on the following page]

Sincerely,

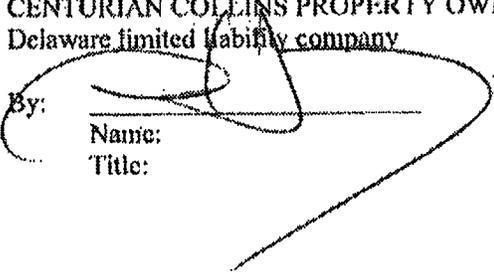
CENTURIAN COLLINS AVENUE, LLC,
a Delaware limited liability company

By: 

Name:

Title:

CENTURIAN COLLINS PROPERTY OWNER, LLC. a
Delaware limited liability company

By: 

Name:

Title:

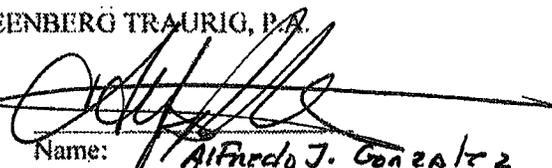
Acknowledged and agreed to by:

GREENBERG TRAURIG, P.A.

By:

Name:

Title:


Alfredo J. Gonzalez
Asesora Agent

