



# MIAMI BEACH

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OFFICE OF THE CITY ATTORNEY

NO. LTC # **350-2009**

CITY CLERK'S OFFICE  
LETTER TO COMMISSION

TO: Mayor Matti Herrera Bower and  
Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager  
Jose Smith, City Attorney

DATE: December 15, 2009

SUBJECT: **The Flamingo Baywalk Settlement Agreement**

MCZ/Centrum Flamingo II, LLC, MCZ/Centrum Flamingo III, LLC, and  
Morton Towers Apartments, L.P., a Delaware Limited Partnership v. City of  
Miami Beach, No. 08-22410-CIV-ALTONAGA/BROWN (U.S. Dist. Ct., S.  
Dist. of Fla.).

This Memorandum is to advise you that the proposed Settlement Agreement between the City and the owners of the Flamingo South Beach apartment complex ("Flamingo") to implement the settlement of the subject litigation over the baywalk on the Flamingo property has been substantially negotiated and is almost ready for execution. We are scheduled to file it with the U.S. District Court on Wednesday, December 16, 2009. Copies of the Term Sheet (Exhibit "1") and the Settlement Agreement (Exhibit "2") are attached for your information.

**Background**

This case involved challenges by the owners of the Flamingo South Beach apartment and condominium project at Bay Road between 14th Street and theoretical 16th Terrace against the enforcement of conditions requiring a public baywalk imposed by the City's Design Review Board and the Dade County Shoreline Review Committee in 1997 and 1998. Flamingo filed a Complaint in July, 2008, and after the Court denied the City's Motion to Dismiss in March, 2009, it set the case for trial in September, 2009, requiring expedited discovery and pretrial preparations.

Following weeks of informal discussions concerning a possible settlement, the parties met in mid-August and generally agreed to settlement conditions, which were incorporated into a Term Sheet (Exhibit "1"), formally signed by representatives of the parties on August 18, 2009. The Court was advised shortly thereafter through a telephone conference call. The Term Sheet contemplated a formal Settlement Agreement (Exhibit "2"), which has been negotiated over the past few months, and is now almost ready to be executed and filed with the Court.

**The Settlement Timetable**

The Settlement contemplates that two years from the U.S. District Court's entry of the Stipulated Final Judgment for Dismissal, Flamingo will open a baywalk to the public on the western edge of the Flamingo property. The parties have agreed to specific benchmarks to occur over this two-year period, including:

- (a) within 45 days of the dismissal, submitting a concept plan to the city;
- (b) within 60 days of the City's approval of the concept plan, submitting any

required applications for variances or board level design review approval (if necessary);  
(c) within 120 days of either concept plan approval, or variance or board level design review decisions, submittal of an application for building permit;  
(d) within 24 months of the Dismissal, completing construction on the baywalk, requesting inspections and obtaining certificates of completion upon inspection that the baywalk is in compliance with applicable codes, and opening the baywalk to the public.

### **The Settlement Agreement**

The following summarizes the substantive provisions of the Settlement Agreement, in numbered paragraphs corresponding to the respective paragraphs of the Agreement.

- 2.a. Center Tower c.o. City will issue a final c.o. for the Center Tower.
- 2.b. Permit fee disputes. The parties will both release their claims for permit fee over- and underpayments.
- 2.c. Drainage on Bay Road. The City will make reasonable efforts over the next five years to resolve drainage issues on Bay Road in the vicinity of the Flamingo property.
- 2.d. Storage in Central Tower. Flamingo may convert central storage space to individual tenant storage in the Center Tower.
- 2.e & f. Releases and Stipulated Final Judgment. The parties agree to exchange releases and submit a joint stipulated judgment for dismissal to the U.S. District Court. Attached as Exhibits B and C to the Settlement Agreement.
- 2.g. Press release and nondisparagement agreement. The City and Flamingo previously agreed to and disseminated a joint press release; this provision acknowledges the intent was that the parties make best efforts to cooperate with each other, and for managerial employees (for the City meaning the City Manager, Assistant City Managers, and Department Directors) and attorneys, not to make public disparaging remarks about each other to third parties.
- 3.a. Baywalk opening. Commitment by the owners to construct and open the baywalk, including connections to the north and south, 24 months from entry of the final judgment, providing for benchmarks in Exhibit E to the Settlement Agreement.
- 3.b. Recordable easement. Flamingo will grant an easement confirming the public rights of access, in the form attached as Exhibit F to the Settlement Agreement.
- 3.c. Policing the baywalk. City has agreed to police the baywalk "in a manner consistent with other sections of the Baywalk owned by the City, or on which the City has obtained rights of access through easement, covenant or otherwise," and are open to the general public. Failure to adequately police may justify a temporary closure of the baywalk; unresolved disputes over meeting this standard are submitted to a neutral arbitrator.
- 3.d. Baywalk hours. The baywalk will be open to the public from sunrise to

sunset.

- 3.e. Locking gates. The baywalk may be locked from sunset to sunrise, but gates shall not be opened later than sunrise, or closed before sunset.
- 3.f. Baywalk uses. Baywalk users may jog, walk or hike, with “periodic and reasonable respites.” Prohibited uses include loitering and consuming alcohol, destination activities including but not limited to fishing, picnicking, and camping. No chairs, tents, or other temporary or permanent furniture. No unleashed dogs. No motorized vehicles, skateboards, scooters and bicycles (except by policing authorities, maintenance and/or emergency personnel).
- 3.g. Liability. The City will defend and indemnify the Owner from liability concerning incidents on the baywalk during the daylight hours, except for Owner’s and related persons’ gross negligence or willful acts, as more specifically set forth in the agreement, and does not waive sovereign immunity as to third parties.
- 3.h. Maintenance/Repair. City will provide sanitation services over the baywalk and seawall cap; Owner will provide maintenance and repair, and clean the baywalk after any evening private events.
- 3.i. Related site improvements. Owner will be installing a fence to separate the remainder of its property from the baywalk, and install certain privacy features. The City will review and approve such improvements, and waive the City’s regulatory fees for related permits.
- 3.j. No northern walkway. The Shoreline Review Committee required a substitute walkway from Bay Road to the bay along the northern property line; this walkway will not be provided for public access.
- 3.k. Baywalk Connection to Lincoln Road. The City agreed to achieve, within ten years of the entry of the Final Judgment, a connection between the Flamingo baywalk and Lincoln Road, either through an overwater connection or indirectly through existing public rights of way. Failure to achieve this connection may justify a temporary closure of the baywalk; unresolved disputes over meeting this standard are submitted to a neutral arbitrator.
- 3.l. Baywalk between 5<sup>th</sup> St. and Lincoln Road. The City agreed to make reasonable effective efforts within ten years of the Final Judgment, to progress the Public Baywalk Master Plan between 5<sup>th</sup> Street and Lincoln Road, evidenced by the expenditure of \$250,000 by either the City or any property owner, for any segment or connection, or in furtherance of obtaining non-City permits. Failure to achieve this may justify a temporary closure of the baywalk; unresolved disputes over meeting this standard are submitted to a neutral arbitrator.
- 3.m. Arbitration. Confirms that arbitration will be used to resolve disputes over policing and the City’s obligations concerning the baywalk connection to Lincoln Road and Public Baywalk Master Plan improvements.

- 3.n. Agreement is binding on Owner's subsidiaries, related entities, successors and assigns.
- 3.o. Limited bases for temporary closure of baywalk. After compliance with the initial paragraphs above (2a, b, e and f), the only closure of the baywalk are for temporary closure based on needed repairs, or based on noncompliance with the City's obligations concerning policing, the baywalk connection to Lincoln Road and Public Baywalk Master Plan improvements.
4. City's discretion in permits. Except for the c.o. for the Center Tower, which City has agreed to issue because Flamingo has satisfied all requirements except for the timing of the baywalk opening, which is delayed for two years through this settlement, the City staff and boards retain their independent discretion in their regulatory review of all Flamingo's permit applications. Unreasonable denial of any permit related to baywalk improvements, however, may be a basis for an enlargement of time for Flamingo to perform.
5. Not a permit; City will not change applicable baywalk regulations affecting Flamingo. The Settlement Agreement itself is not an authorization to proceed with any work. The City agrees not to amend its Code to impose new obligations on the Flamingo with respect to matters covered in the Settlement Agreement.
6. Force majeure. As to the City or Flamingo, a force majeure event, as defined in the Agreement, shall be a basis for an enlargement of time to perform, equal to the time of the force majeure event, but will not completely excuse performance. Reasonable notice shall be provided.
- 7-16. Standard provisions.
17. Enforcement. The parties agreed to the following procedure in the event of a dispute: (a) Written 30-day notice of alleged breaches of the Settlement Agreement; (b) A 60-day cure period; (c) If the dispute is unresolved, the parties attempt mediation; (d) If still unresolved, if the dispute involves the City's obligation to police the baywalk, or City's ten-year baywalk obligations, then the parties will engage in binding arbitration, followed by enforcement by the U.S. District Court. If the dispute involves any other aspect of the Settlement Agreement, and is not resolved by mediation, enforcement will then be sought in the U.S. District Court (without the intervening arbitration process).
- 18-20. Standard provisions.

Please contact either the City Manager or the City Attorney if you have any questions or comments on this matter.

JMG/JS/JCC/GMH

Exhibit "1"

## Term Sheet

### 1) General Settlement Conditions

- a) A final Certificate of Occupancy (C.O.) for the Center Tower shall be issued by the City of Miami Beach ("City") within 30 days of the entry of the stipulated final judgment and order of dismissal in this cause. AIMCO shall submit a copy of the stipulated final judgment as part of its C.O. package to obtain the final C.O. (the final C.O. fee shall be waived).
- b) The parties will release all claimed permitting fees, including Flamingo's claim against the City for \$250,000 representing overpayment of TCO fees.
- c) City will make reasonable efforts to resolve the drainage problems on Bay Road on the north end of the property. Reasonable efforts is defined as meeting a 5-year level of service for Class C roadway, as implemented through the Basis of Design Report, West Avenue – Bay Road, Final Report, February 23, 2007 (p. 28).
- d) AIMCO will submit an application to convert the 3<sup>rd</sup> floor storage space to individual tenant storage, which shall be subject to the review and approval of City staff. Owner will satisfy all code and regulatory requirements. Such approvals and permits shall not be unreasonably withheld.
- e) The parties will execute general releases of all claims, including counterclaims.
- f) The parties will submit a stipulated judgment (neither party prevailing or admitting liability) and order of dismissal with prejudice of all claims and counterclaims with each party to bear its own attorneys' fees and costs (including spoliation fees and costs). The Court will retain jurisdiction to enforce the settlement.
- g) The only press release on this matter will be a joint press release.

### 2) Public Access Conditions

- a) The Flamingo baywalk, including connections to the north and south, will be open to public access, as set forth herein, no later than twenty-four (24) months after the entry of the stipulated judgment and order of dismissal. After entry of the judgment, AIMCO and/or its successors and assigns ("Owner" or "AIMCO"), at its expense, will promptly begin its design, permitting, and construction of any modifications necessary for allowing public access to the Flamingo baywalk, according to an agreed timetable with benchmarks.

- b) AIMCO will continue to own the property on which the baywalk is located, but will grant an easement or covenant, in a form acceptable to the City Attorney, allowing public access to the relevant area (to be mutually agreed upon and more specifically described in the settlement agreement). The easement or covenant with an effective date of two years from the date of the final judgment shall be executed and recorded immediately after the Stipulated Judgment is approved by the Court.
- c) The City will police the baywalk in a manner consistent with other sections of the baywalk. AIMCO agrees to submit legitimate complaints about any alleged City's noncompliance with this requirement to the City Manager for his review and appropriate action. If the parties are still unable to resolve disputes regarding the policing of the baywalk, the parties agree that an independent mutually agreed upon arbitrator will resolve such disputes. If the independent arbitrator concludes that the City has breached its duty to police, Owner shall be temporarily relieved of the obligation to provide public access to the baywalk until the City's failure to police is remedied to the satisfaction of the arbitrator. The City's adoption of security measures consistent with that used in or on other sections of the baywalk shall be accepted as satisfaction of this paragraph.
- d) The Flamingo baywalk will be open to the public from sunrise to sunset. Upon completion of a continuous baywalk from 5<sup>th</sup> Street to Lincoln Road (including the alternate route discussed in paragraph 2k, the City Commission may adopt uniform rules and regulations concerning hours of operation, affecting the Flamingo baywalk not materially inconsistent with the provisions herein. AIMCO shall post signs, subject to City staff review and approval not to be unreasonably withheld, displaying actual hours of opening and closing, and use restrictions.
- e) AIMCO will install locking gates on either end of the Flamingo baywalk. The gates are subject to the review and approval of City staff, not to be unreasonably withheld. AIMCO shall neither open the gates later than sunrise, nor close the gates before sunset. Upon completion of a continuous baywalk from 5<sup>th</sup> Street to Lincoln Road, (including the alternate route discussed in paragraph 2k, the City Commission may adopt uniform rules and regulations concerning the opening and closing of gates affecting the Flamingo baywalk not materially inconsistent with the provisions herein.
- f) Permitted uses of the Flamingo baywalk granted by the easement or covenant shall be for jogging, walking or hiking along the bay. Periodic and reasonable respites by baywalk users to enjoy the view or rest shall be allowed. The easement or covenant shall restrict the public from destination activities such as loitering, fishing, picnicking, camping and consuming alcohol. No chairs, tents, or other temporary or permanent furniture may be used by the public or Flamingo residents on the baywalk during its daytime operating hours. No

unleashed dogs may be brought onto the baywalk. The use of motorized vehicles, skateboards, scooters and bicycles (except by policing authorities and maintenance personnel) shall be prohibited. Upon completion of a continuous baywalk from 5<sup>th</sup> Street to Lincoln Road, (including the alternate route discussed in paragraph 2k, the City Commission may adopt uniform rules and regulations concerning permitted uses of the baywalk affecting the Flamingo baywalk not materially inconsistent with the provisions herein.

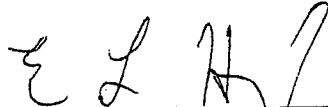
- g) City will assume all liability issues on the Flamingo baywalk, except for any liability arising from the gross negligence or willful acts of the Owner, and except for activities that occur from sunset to sunrise.
- h) City will have no maintenance or repair responsibility over the seawall or baywalk. The City will provide sanitation services including the cleaning and removal of rubbish from the baywalk and seawall cap, according to the City's normal cleaning schedule for similar facilities. The Owner will be responsible to clean the baywalk after any private evening events on the baywalk.
- i) Changes to landscaping, design, fencing, walls, gates, pool areas, etc., to provide for mitigating the loss of privacy and security resulting from allowing public access to the Flamingo baywalk shall be subject to review and approval of City staff in their regulatory capacity, which shall not unreasonably be withheld. City agrees to waive all regulatory approval and permit fees associated with the work that needs to be accomplished in this paragraph so that the baywalk may be opened to the public.
- j) No northern walkway access on the Flamingo property will be provided from Bay Road to the baywalk.
- k) Within the next ten years, the City must achieve a connection to Lincoln Road either as shown on the City of Miami Beach's "Public Baywalk Master Plan" or indirectly through Lincoln Terrace. However, if the access is provided indirectly through Lincoln Terrace, then the entire route from Lincoln Terrace to Lincoln Road shall be streetscaped and adequately lighted in accordance with the adopted streetscape plan for this West Avenue – Bay Road area, as may be amended from time to time.
- l) The City will exercise reasonable effective efforts, in addition to establishing the connection to Lincoln Road described above, to progress its Public Baywalk Master Plan within the next ten years. This provision shall be satisfied by efforts of the City and/or any property owner to obtain non-City permits for, or efforts in furtherance of constructing, any baywalk improvement (including but not limited to any segment or connection) from 5<sup>th</sup> Street to Lincoln Road, individually or collectively exceeding \$250,000 in costs or expenses.



- m) If either of the prior two conditions are not met by the end of the tenth year after entry of the final judgment in this cause, then AIMCO may request arbitration by an independent mutually agreed upon arbitrator, to determine appropriate solutions, including temporary closure of public access to the Flamingo baywalk until the unmet condition is satisfied.
- n) This Agreement is binding on AIMCO's subsidiaries, related entities, successors and assigns.
- o) No breach of these terms shall result in the closure or reverter of the public access to the baywalk provided for herein, except for the temporary closure as provided in paragraph 2m or a temporary closure due to inadequate policing determined by an independent mutually agreed upon arbitrator as described in 2c.
- p) Standard provisions shall be made a part of the settlement agreement.

Date: August 18, 2009

Approved on behalf of Plaintiffs by:



Eric L. Hilty  
Senior Vice President and Assistant General  
Counsel  
Authorized Agent for Plaintiffs

Recommended to the City Commission for its  
independent consideration by:

\_\_\_\_\_  
Jose Smith, City Attorney

8-18-7

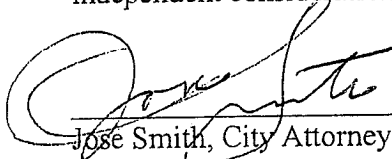
- m) If either of the prior two conditions are not met by the end of the tenth year after entry of the final judgment in this cause, then AIMCO may request arbitration by an independent mutually agreed upon arbitrator, to determine appropriate solutions, including temporary closure of public access to the Flamingo baywalk until the unmet condition is satisfied.
- n) This Agreement is binding on AIMCO's subsidiaries, related entities, successors and assigns.
- o) No breach of these terms shall result in the closure or reverter of the public access to the baywalk provided for herein, except for the temporary closure as provided in paragraph 2m or a temporary closure due to inadequate policing determined by an independent mutually agreed upon arbitrator as described in 2c.
- p) Standard provisions shall be made a part of the settlement agreement.

Date: August 18, 2009

Approved on behalf of Plaintiffs by:

\_\_\_\_\_  
[INSERT NAME & TITLE]  
Authorized Agent for Plaintiffs

Recommended to the City Commission for its independent consideration by:

  
\_\_\_\_\_  
Jose Smith, City Attorney

8-18-7

Exhibit "2"

12-14-09 Final (6 pm)

**SETTLEMENT AGREEMENT**

MCZ/Centrum Flamingo II, LLC, a Delaware limited liability corporation ("Flamingo II"), MCZ/Centrum Flamingo III, LLC, a Delaware limited liability corporation ("Flamingo III"), and Morton Towers Apartments, L.P., a Delaware Limited Partnership ("Morton"), and their respective successors and assigns, collectively referred to herein as "Flamingo/Morton" or "Owner," and the City of Miami Beach, a Florida municipal corporation, and its successors and assigns ("City"), stipulate and agree as follows:

**RECITALS**

**WHEREAS**, Flamingo II and Flamingo III own real property located within the City of Miami Beach, located west of Bay Road between 14<sup>th</sup> Street on the south and the theoretical extension of 16<sup>th</sup> Terrace on the north ("Flamingo Property"), more particularly described on Exhibit A attached hereto, with Flamingo II owning the North Tower on the Flamingo Property and Flamingo III owning the Center Tower and all common areas on the Flamingo Property;

**WHEREAS**, Morton is the sole member of both Flamingo II and Flamingo III;

**WHEREAS**, disputes, claims and counterclaims have arisen between Flamingo/Morton and the City concerning multiple matters, including but not limited to whether the City's 1997 Design Review Board approval of the redevelopment of the Flamingo Property required a publicly accessible baywalk along its Biscayne Bay shoreline; whether the City is obligated to issue a final certificate of occupancy for the Center Tower of the Flamingo Property; whether the City owes Flamingo/Morton \$250,000 representing overpayment of Temporary Certificate of Occupancy (TCO) fees; and whether additional building permit fees are owed to the City by Flamingo/Morton, including without limitation the disputes, claims and counterclaims asserted in that certain litigation styled MCZ/Centrum Flamingo II, LLC, et al. v. City of Miami Beach, United States District Court, Southern District of Florida, Case No. 08-22419-Civ-Altonaga/Brown ("Flamingo Litigation");

**WHEREAS**, Flamingo/Morton and the City desire to resolve and settle all pending disputes, claims and counterclaims between them, including without limitation all claims and counterclaims that were or could have been asserted in the Flamingo Litigation, as set forth herein;

**WHEREAS**, the parties believe it would be in their best interests and the interests of their respective citizens and residents to agree to the provisions of this Settlement Agreement;

**NOW, THEREFORE**, in consideration of the mutual agreements, undertakings and representations contained in this Settlement Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Flamingo/Morton and the City agree as follows:

1. The foregoing recitals are true, accurate and correct and are incorporated herein by this reference.

2. General Settlement Conditions

a. A final Certificate of Occupancy (C.O.) for the Center Tower on the Flamingo Property (under Master Building Permit No. B0001111) shall be issued by the City within thirty (30) days of the entry of the stipulated final judgment and order of dismissal described in paragraph 2f below. Flamingo/Morton shall submit a copy of the stipulated final judgment as part of its C.O. package to obtain the final C.O. The final C.O. fee shall be waived by the City.

b. The parties release all claims against each other for permit fees, including but not limited to the City's counterclaims seeking building permit fees in excess of \$1.2 million against Flamingo/Morton in the Flamingo Litigation and Flamingo/Morton's claim against the City for \$250,000 representing alleged overpayment of TCO fees.

c. The City will make reasonable efforts to resolve the drainage problems on Bay Road on the north end of the Flamingo Property. Reasonable efforts for purposes of this paragraph 2c are defined as meeting a 5-year level of service for Class C roadway, as implemented through the Basis of Design Report, West Avenue - Bay Road, Final Report, dated February 23, 2007 (p. 28). The City will plan the drainage improvements within fifteen (15) months of the entry of the stipulated final judgment and order of dismissal described in paragraph 2f below; it will design and construct the improvements within twenty-four (24) months after planning is completed; and it will test, evaluate and fix any problems identified by testing and evaluation within twenty-one (21) months after the completion of construction; provided, however, that notwithstanding these benchmarks and timetables, the City agrees that it will meet its obligations under this paragraph 2c as soon as reasonably possible.

d. Flamingo/Morton will submit an application to convert the 3rd floor storage space in the Center Tower to individual tenant storage, which shall be subject to the review and approval of City staff. Flamingo/Morton will satisfy all code and regulatory requirements for such conversion. City approvals and permits for such conversion shall not be unreasonably withheld.

e. Simultaneous with the execution of this Settlement Agreement, the parties shall execute and deliver to each other general releases of all claims and counterclaims that were or could have been alleged against each other, in the form attached hereto as Exhibit B.

f. Immediately following the execution of this Settlement Agreement, the parties will submit, in the form attached hereto as Composite Exhibit C, a stipulated final judgment approving and adopting this Settlement Agreement (neither party prevailing or admitting liability) and order of dismissal with prejudice of all claims and counterclaims in the Flamingo Litigation with each party to bear its own attorneys' fees and costs (including discovery-related fees and costs) and with the Court retaining jurisdiction to enforce this Settlement Agreement and the stipulated judgment.

g. The only press release concerning the Flamingo Litigation and/or its settlement shall be a joint press release, which has already been approved and issued by the parties and is attached hereto as Exhibit D. The parties acknowledge that their intent in agreeing to a joint press release includes, at a minimum, making best efforts to cooperate with each other going forward, informing the public of such cooperative relationship, and not having any managerial employee (defined for the City as the City Manager, Assistant City Managers and Department Directors) of the parties or any counsel of record for the parties in the Flamingo Litigation make public disparaging remarks about each other to third parties.

### 3. Public Access Conditions

a. The Flamingo baywalk (described in Exhibit F, provided for below), including connections to the north (across the Property's northern boundary to connect to the Mae Capri baywalk), and south (across the Property's southern boundary to connect to the baywalk in the 14<sup>th</sup> Street street end), will be open to public access, as set forth herein, no later than twenty-four (24) months after the entry of the stipulated judgment and order of dismissal described in paragraph 2f above. After entry of the judgment, Owner, at its expense, will promptly begin its design, permitting, and construction of any modifications necessary for allowing public access to the Flamingo baywalk, according to the timetable with benchmarks agreed upon by the parties, attached hereto as Exhibit E and incorporated herein by reference.

b. Owner will continue to own the property on which the Flamingo baywalk is located, but will grant a recordable easement in the form attached hereto as Exhibit F, allowing public access under the terms and conditions of this Settlement Agreement to the area of the Flamingo Property legally described in the easement. The easement shall bear an effective date of two years from the date of entry of the stipulated judgment described in paragraph 2f above and shall be executed and recorded in the public records of Miami-Dade County immediately after entry of the stipulated judgment.

c. The City will police the Flamingo baywalk in a manner consistent with other sections of baywalks owned by the City, or on which the City has obtained rights of access through easement, covenant or otherwise, and which are open to the general public (hereinafter "publicly accessible baywalks in the City"). Owner agrees to submit legitimate complaints about any alleged City noncompliance with this requirement to the City Manager, in writing, for his or her review and appropriate action.

If the parties are still unable to resolve disputes regarding the policing of the Flamingo baywalk, the parties agree that an independent mutually agreed upon neutral arbitrator will resolve such disputes under American Arbitration Association rules, as provided in paragraph 17 of this Agreement. If the independent arbitrator concludes that the City has breached its duty to police the Flamingo baywalk, Owner shall be temporarily relieved of the obligation to provide public access to the Flamingo baywalk until the City's failure to police is remedied to the satisfaction of the arbitrator. The City's adoption of, and reasonable good faith efforts to enforce, security measures consistent with that used in or on other sections of publicly accessible baywalks in the City shall be accepted as satisfaction of the City's obligations under this paragraph 3c. Any noncompliance by Owner and/or its officers, employees, contractors, residents or authorized guests with any rules, regulations, ordinances or statutes applicable to the Flamingo baywalk (and not materially inconsistent with the provisions of this Settlement Agreement) shall not be a basis for any legitimate complaint about alleged City noncompliance with, or for temporary closure of the Flamingo baywalk pursuant to, this paragraph 3c.

d. The Flamingo baywalk will be open to the public from sunrise to sunset. Upon completion of a continuous publicly accessible baywalk from 5th Street to Lincoln Road (including the alternate route discussed in paragraph 3k below) (hereinafter, "the City baywalk"), the City Commission may adopt uniform rules and regulations concerning hours of operation of the City baywalk, affecting the Flamingo baywalk, but not materially inconsistent with the provisions herein. In the event of any conflict between an existing City ordinance, rule and/or regulation concerning hours of operation for publicly accessible baywalks in the City and this paragraph 3d, the hours of operation prescribed in this paragraph 3d shall prevail as to the Flamingo baywalk. Owner shall post signs at all access points to the Flamingo baywalk, subject to City staff review and approval (not to be unreasonably withheld), displaying actual hours of opening and closing, and summarizing the use restrictions described in paragraph 3f below.

e. Owner will install locking gates on either end of the Flamingo baywalk. The gates are subject to the review and approval of City staff, not to be unreasonably withheld. Owner shall neither open the gates later than sunrise, nor close the gates before sunset. Upon completion of the City baywalk, the City Commission may adopt uniform rules and regulations concerning the opening and closing of gates on the City baywalk, affecting the Flamingo baywalk, but not materially inconsistent with the provisions herein. In the event of any conflict between an existing City ordinance, rule and/or regulation concerning the opening and closing of gates for publicly accessible baywalks in the City and this paragraph 3e, the provisions of this paragraph 3e shall prevail as to the Flamingo baywalk.

f. Permitted public uses of the Flamingo baywalk granted by the easement described in paragraph 3b above shall be for jogging, walking, or hiking along the bay. Periodic and reasonable respites by members of the public using the Flamingo baywalk to enjoy the view or to rest shall be allowed. The easement described in paragraph 3b above shall prohibit members of the public from loitering and consuming

alcohol on the Flamingo baywalk and from using the Flamingo baywalk for destination activities including but not limited to fishing, picnicking, and camping. No chairs, tents, or other temporary or permanent furniture may be used, whether by the public or Flamingo residents, on the Flamingo baywalk during its daytime operating hours as described in paragraph 3d above. No unleashed dogs may be brought onto the Flamingo baywalk. The use of motorized vehicles, skateboards, scooters and bicycles (except by policing authorities, maintenance and/or emergency personnel) shall be prohibited. Upon completion of the City baywalk the City Commission may adopt uniform rules and regulations concerning permitted uses of the City baywalk, affecting the Flamingo baywalk, but not materially inconsistent with the provisions herein. In the event of any conflict between an existing City ordinance, rule and/or regulation concerning permitted uses of publicly accessible baywalks in the City and this paragraph 3f, the provisions of this paragraph 3f shall prevail as to the Flamingo baywalk.

g. The City will assume and defend all liability of Owner, as set forth in this paragraph 3g, within the Easement Area described in the Declaration of Restrictions and Easement Agreement attached hereto as Exhibit F (“Easement Agreement”), except for any liability arising from the gross negligence or willful acts of the Owner, its officers and employees, and except for activities that occur from sunset to sunrise (while the Flamingo baywalk is closed to the public in accordance with paragraph 3d above). Nothing contained in this paragraph 3g or elsewhere in this Settlement Agreement is in any way intended to be a waiver of the limitations on the City’s liability to third parties as set forth in Section 768.28, Florida Statutes; however, the limitations under said statutory provision shall not apply to the City’s contractual obligations to defend Owner and to cover, pay and/or reimburse any and all costs, expenses, liabilities, claims, actions, causes of action, losses, demands and damages, including, without limitation, reasonable attorneys’ fees (including the cost of in-house counsel) and disbursements at the trial level and all levels of appeal, relating to death of or injury to persons, or loss of or damage to property, incurred by Owner and occurring within the Easement Area described in the Easement Agreement, resulting from, arising out of, or incurred in connection with, use of the Easement Area by Easement Beneficiaries described in the Easement Agreement.

h. The City will have no maintenance or repair responsibility over the Flamingo seawall or Flamingo baywalk. The City will provide sanitation services, including the cleaning and removal of rubbish from the Flamingo baywalk and seawall cap, according to the City's normal cleaning schedule for similar publicly accessible facilities. The Owner will be responsible for cleaning the Flamingo baywalk after any private evening events on the Flamingo baywalk.

i. Changes to landscaping, design, fencing, walls, gates, pool areas, etc., to provide for mitigating the loss of privacy and security resulting from allowing public access to the Flamingo baywalk shall be subject to review and approval of City staff in their regulatory capacity, and/or by City boards in their regulatory capacity if their approval is required by law, which approval shall not unreasonably be withheld. The City agrees to waive all City fees for regulatory review and permitting processes



associated with the work that needs to be accomplished in this paragraph 3i so that the Flamingo baywalk may be opened to the public.

j. No publicly accessible northern walkway access on the Flamingo Property will be provided from Bay Road to the Flamingo baywalk.

k. Within the ten (10) year period following entry of the stipulated judgment and order of dismissal described in paragraph 2f above, the City must achieve a publicly accessible connection from the Flamingo Property to Lincoln Road, either as shown on the City of Miami Beach's "Public Baywalk Master Plan" and as described in the LTC 088-2009, both of which are attached as Composite Exhibit G, or indirectly through Lincoln Terrace. However, if the public access is provided indirectly through Lincoln Terrace, then the entire route from Lincoln Terrace to Lincoln Road shall be streetscaped and adequately lighted in accordance with the adopted streetscape plan for the West Avenue - Bay Road area, "West Avenue – Bay Road, Basis of Design Report, City of Miami Beach, Final Report," February 23, 2007, prepared by Glatting Jackson Kercher Anglin Lopez Rinehart, Inc., as may be amended from time to time. The failure of the City to obtain public access rights to any property or properties shall not constitute a force majeure event (pursuant to paragraph 6 below) excusing the City's performance of its obligations under this paragraph 3k.

l. In addition to establishing the publicly accessible connection to Lincoln Road described in paragraph 3k above, the City will exercise reasonable effective efforts to progress its Public Baywalk Master Plan within the ten (10) year period following entry of the stipulated judgment and order of dismissal described in paragraph 2f above. The City will be deemed to have satisfied the requirements of this paragraph 3l by efforts of the City and/or any property owner to obtain non-City permits for, or efforts in furtherance of, constructing any publicly accessible baywalk improvement (including but not limited to any segment or connection) from 5th Street to Lincoln Road, individually or collectively exceeding \$250,000 in costs or expenses. The failure of the City to obtain public access rights to any property or properties shall not constitute a force majeure event (pursuant to paragraph 6 below) excusing the City's performance of its obligations under this paragraph 3l.

m. If either of the two conditions set forth in paragraphs 3k and 3l above are not met by the end of the tenth year after entry of the stipulated judgment described in paragraph 2f above, then Owner may request arbitration by an independent mutually agreed upon neutral arbitrator, under American Arbitration Association rules as provided in paragraph 17 of this Agreement, to determine appropriate solutions, including temporary closure of public access to the Flamingo baywalk until the unmet condition is satisfied.

n. This Agreement is binding on Owner's subsidiaries, related entities, successors and assigns.

o. After the parties have complied with the obligations in paragraphs 2a, 2b, 2e and 2f above and the Flamingo baywalk is open to the public as provided for in this Settlement Agreement, and subject to the provisions in paragraph 6 below, the only bases for closures of the Flamingo baywalk shall be the temporary closure as provided in paragraphs 3c and/or 3m above.

4. The parties acknowledge that any requests for approval necessitated by this Agreement, whether by the City or its boards or staff, acting in its/their governmental capacity, are subject to the independent discretion of the City and/or such boards and staff, which are not agreeing in advance to any particular outcome on such applications for approval, except that the parties have agreed the City will issue the final Certificate of Occupancy for the Center Tower on the Flamingo Property as provided in paragraph 2a above. The parties further acknowledge that should the City or its boards or staff, in the exercise of their discretion, unreasonably deny any approval sought by Owner under paragraphs 3a (including Exhibit E), 3d, 3e and/or 3i above, such unreasonable denial constitutes a basis for an enlargement of time for Owner to perform any obligations under this Agreement for which such approval was needed, and that disagreements under this provision shall be resolved as provided in paragraph 17 of this Agreement. The parties acknowledge and agree that while this Agreement provides for enlargements of time to perform obligations under this Agreement based upon unreasonable denials of approvals sought by Owner under this Agreement, nothing in this Agreement is intended to supplant, limit, modify or otherwise affect (i) the remedies available to Owner, independent of this Agreement, to seek administrative and/or judicial review of any action or inaction by the City in regard to land use approvals sought by Owner pursuant to this Agreement or otherwise, or (ii) the time frames applicable to such remedies, and this Agreement is without prejudice to all such remedies (hereinafter referred to as "Extra-Agreement Land Use Remedies").

5. This Settlement Agreement is not and shall not be construed as a development permit, development approval, development order or authorization to commence development, nor shall it relieve the Owner of any obligations to obtain necessary permits and any other development approvals that may be required under applicable law and under and pursuant to the terms of this Agreement. The parties hereto recognize and agree that the failure of this Agreement to address a particular permit, permitting condition, term or restriction shall not relieve the Owner of the need to comply with any applicable law governing permitting requirements, conditions, terms or restrictions notwithstanding any such omission. The parties recognize and agree that this paragraph 5 is not intended and shall not be construed to allow the City to adopt permitting or other development approval requirements, conditions, terms or restrictions materially inconsistent with the provisions of this Agreement, or to apply any permitting or other development approval requirements, conditions, terms or restrictions in a manner that would be materially inconsistent with the provisions of this Agreement.

6. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, riot, civil commotion, fire or other casualty, and other causes beyond the reasonable control of

the party obligated to perform, excluding the financial inability of such party to perform, shall excuse the performance by such party for a period of time equal to any such period of prevention, delay or stoppage; provided, however, that any failure or delay in performance by Owner caused by the City's unreasonable denial of any approval sought by Owner under paragraphs 3a (including Exhibit E), 3d, 3e and/or 3i above shall be governed by paragraph 4 above, and any disagreements under this provision shall be resolved as provided in paragraph 17 of this Agreement. Any party seeking to invoke this paragraph shall provide written notice to the other party as soon as reasonably practicable under the circumstances.

7. This Settlement Agreement shall be construed and governed in accordance with the laws of the State of Florida.

8. All exhibits attached to this Settlement Agreement are incorporated in and made a part of this Agreement.

9. Actions taken by any of the parties hereto pursuant to or in furtherance of the provisions hereof shall not be admissible in any proceeding in the Flamingo Litigation in the event the transactions contemplated hereunder are not performed or consummated, except as necessary to enforce the terms of this Settlement Agreement.

10. Each party shall bear its own costs and attorneys' fees incurred through the date of execution of this Settlement Agreement.

11. The parties agree they will take any and all actions consistent with the intent and purpose of this Settlement Agreement and requirements of applicable law, and execute, acknowledge, subscribe and deliver any and all further documents and instruments as may be reasonably necessary to effectuate the purposes of this Settlement Agreement.

12. The parties agree that the easement or covenant to be executed and recorded pursuant to paragraph 3b of this Settlement Agreement shall run with the land.

13. Each party acknowledges that this Settlement Agreement is a compromise resolution of disputed claims and agrees that it shall never be treated or used as an admission or evidence of liability or wrongdoing against either party for any purpose whatsoever; provided, however, that this Agreement may be admissible in any action or proceeding to enforce its terms. Each party denies any liability to the other and any wrongdoing and acknowledges that this settlement is based solely upon their desire to avoid costs of litigation.

14. The parties represent and warrant that they have executed this Settlement Agreement freely and voluntarily after having had an opportunity to consult with their respective attorneys concerning their rights and obligations hereunder.

15. This Settlement Agreement shall be deemed drafted by all parties and there shall be no presumption against any party relating to the drafting of the Settlement Agreement and the language used herein.

16. Notices. Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

If to the City at: City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attn: City Manager

With a copy to: City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attn: City Attorney

If to the Owner: MCZ/Centrum Flamingo III, LLC  
c/o AIMCO  
4582 South Ulster Street Parkway  
Denver, Colorado 80237  
Attn.: Office of General Counsel

With a copy to: Flamingo South Beach Apts.  
1504 Bay Road  
Miami Beach, Florida 33139  
Attn.: Community Manager

Notices personally delivered or sent by overnight courier shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given three (3) days after deposit in the U.S. Mail.

17. No action to enforce this Agreement through arbitration or through the Court in the Flamingo Litigation, as set forth in this paragraph 17, shall be pursued by any party to this Settlement Agreement absent 30 days prior written notice of the alleged breach, followed by an opportunity to cure, which shall be no less than 60 days in length. If the alleged breach is not cured to the satisfaction of the complaining party, the parties shall attempt in good faith to mediate the dispute. As to paragraphs 3c and 3m of this Agreement, when and if mediation fails, the sole remedy for such a dispute shall be binding arbitration. The dispute shall be administered in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association ("AAA") and Florida substantive law shall apply. The parties shall attempt to designate one

neutral arbitrator from the AAA or elsewhere. If they are unable to do so within 30 days after written demand therefor, then the AAA shall designate a neutral arbitrator. No arbitration hearing may proceed without a representative of all parties present. In the event the AAA's expedited procedures are used, notice by telephone must be supplemented immediately by facsimile or electronic mail. No dispute shall be resolved on documents alone except by agreement between the parties. The arbitration shall be final and binding, and enforceable with the Court in the Flamingo Litigation. The arbitrator shall provide a written explanation of the basis of any award. The arbitrator shall award reasonable attorneys' fees (including those of in-house counsel) and costs to the substantially prevailing party and charge the cost of arbitration to the party which is not the substantially prevailing party. For all other provisions of this Agreement, when and if mediation fails, enforcement shall be with the Court in the Flamingo Litigation, unless City and Owner agree in writing to utilize arbitration. The provisions of this paragraph 17 apply only to actions to enforce this Agreement; they do not apply to Extra-Agreement Land Use Remedies as defined in paragraph 4 above.

18. The parties signing this Settlement Agreement represent and warrant that they have full and complete legal and binding authority to enter into this Settlement Agreement.

19. This Settlement Agreement is binding on the parties hereto and the parties agree to execute any and all documents necessary consistent with applicable law and the City's independent regulatory review authority recognized elsewhere in this Agreement, to ratify, confirm, and perform the terms and provisions of this Settlement Agreement. The terms of this Settlement Agreement shall be binding on and inure to the benefit of the parties, their legal representatives, members, constituents, successors, assigns, subsidiaries and affiliates, and shall supersede all prior discussions, negotiations and agreements among the parties concerning settlement. This Settlement Agreement represents the entire agreement of the parties and shall not be modified except by a writing signed by all parties. No third party beneficiaries are intended to be created by this Settlement Agreement.

20. This Settlement Agreement may be signed in counterparts, and the signature counterparts of the parties or their authorized representative shall be treated the same as if this Agreement had been signed by all parties or their authorized representatives. A facsimile signature shall be deemed the equivalent of an original signature of a party or its authorized representative.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2009.

[SIGNATURE PAGES FOLLOW]

ATTEST:

CITY OF MIAMI BEACH,  
a Florida municipal corporation

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

(SEAL)

APPROVED AS TO FORM AND  
LANGUAGE AND FOR EXECUTION:

\_\_\_\_\_  
City Attorney

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

I HEREBY CERTIFY that on this date, before me, an officer duly authorized in this State and County to take acknowledgments, personally appeared Mattie Herrera Bower, well known to me to be the Mayor of the City of Miami Beach, a Florida municipal corporation, party to the foregoing Settlement Agreement, and that she acknowledged executing the same freely and voluntarily in the presence of the City Clerk under authority duly vested in her by the City of Miami Beach and that the seal affixed is the true seal of the City of Miami Beach.

WITNESS my hand and official seal in the County and State last aforementioned this \_\_\_\_ day of \_\_\_\_\_, 2009.

Commission No. \_\_\_\_\_

\_\_\_\_\_  
(Signature)

My Commission Expires:  
\_\_\_\_\_, 20\_\_

\_\_\_\_\_  
(Print name)

Notary Public  
State of Florida









Exhibit "A"

**(NORTH TOWER)**

A portion of Lot 7 Block 43 of "ALTON BEACH BAYFRONT SUBDIVISION", according to the plat thereof, as recorded in Plat Book 4, at Page 125, of the public records of Miami Dade County, Florida, and being more particularly described as follows:

Commence at the centerline intersection of Bay Road and 15th Street as shown on the aforementioned Plat of "ALTON BEACH BAYFRONT SUBDIVISION", thence run North along of the centerline of Bay Road a distance of 25.82 feet to a point; thence run West a distance of 205.40 feet to the most Southeasterly corner of the 15 story North Tower Building No. 1508 Bay Road, the Point of Beginning of the parcel of land hereinafter described; thence run North  $09^{\circ}29'16''$  West along the East face of the said North Tower building and along the expansion joint between the said North Tower building and the existing 32 story Center Tower Building No. 1504 Bay Road, for a distance of 66.80 feet to a point; thence run South  $80^{\circ}45'24''$  West along the North face of the said North Tower building for a distance of 146.16 feet to a point; thence run North  $09^{\circ}14'36''$  West along the East side of the concrete deck for a distance of 28.21 feet to a point; thence run South  $80^{\circ}53'57''$  West along the North side of the concrete deck for a distance of 78.71 feet to a point of the intersection with the covered walkway; thence run North  $30^{\circ}12'05''$  West along the East face of the covered walkway for a distance of 180.54 feet to a point of intersection with Northeasterly prolongation of the Northwesterly face of the said North Tower building; thence run South  $59^{\circ}50'43''$  West along the prolongation of and the Northwesterly face of the said North Tower building for a distance of 76.19 feet to a point; thence run South  $30^{\circ}02'59''$  East along the most Southwesterly face of the said North Tower building for a distance of 170.44 feet to a point; thence run North  $59^{\circ}55'49''$  East along the face of the said North Tower building for a distance of 1.04 feet to a point of intersection with the glass façade at the Westerly entrance to the said North Tower building and a circular curve concave to the West having a radius of 55.43 feet; thence Southwesterly along said curve to the right whose chord bears South  $03^{\circ}37'41''$  West, through a central angle of  $67^{\circ}51'34''$  for an arc distance of 65.65 feet to a point; thence run North  $52^{\circ}56'12''$  West along the face of the said North Tower building for a distance of 1.19 feet to a point; thence run South  $38^{\circ}47'00''$  West along the most West face of the said North Tower building for a distance of 187.13 feet to a point; thence run South  $51^{\circ}08'05''$  East along the Southwesterly face of the said North Tower building for a distance of 66.40 feet to a point; thence run North  $38^{\circ}53'30''$  East along the Southeasterly face of the said North Tower building for a distance of 41.76 feet to a point; thence run South  $51^{\circ}07'16''$  East for a distance of 10.10 feet to a point of intersection with the Southeasterly face of the covered walkway; thence run North  $38^{\circ}47'05''$  East along the said covered walkway for a distance of 137.43 feet to a point; thence run North  $50^{\circ}43'03''$  West along the north face of the overhead walkway for a distance of 8.38 feet to a point of intersection with the Southeasterly face of the said North Tower building; thence run North  $39^{\circ}16'57''$  East along the

(North Tower)

Southeasterly face of the said North Tower building for a distance of 12.92 feet to a point; thence run South  $50^{\circ}57'27''$  East along the face of the said North Tower building for a distance of 17.13 feet to a point on the covered entrance to the said North Tower building and a point of the intersection with a circular curve concave to the Southwest having a radius of 89.54 feet; thence Northeasterly along said curve to the right whose chord bears North  $59^{\circ}40'05''$  East through a central angle of  $42^{\circ}46'20''$ , for an arc distance of 66.84 feet to a point; thence run North  $08^{\circ}44'48''$  West along the face of the said North Tower building for a distance of 17.22 feet to a point with the Southerly face of the North Tower building; thence run North  $81^{\circ}24'37''$  East along the Southerly face of the said North Tower building for a distance of 11.61 feet to a point; thence run South  $09^{\circ}06'51''$  East for a distance of 8.61 feet to a point of intersection with the South face of the covered walkway; thence run North  $80^{\circ}49'11''$  East along the South face of the covered walkway for a distance of 166.52 feet to a point; thence run North  $21^{\circ}36'04''$  East along the concrete wall for a distance of 11.99 feet to a point of intersection with the Southerly face of the said North Tower building; thence run North  $80^{\circ}48'27''$  East along the Southerly face of the said North Tower building for a distance of 7.91 feet to a Point of Beginning; containing 53,212 square feet more or less.

(North Tower)

**(CENTER TOWER)**

Lots 6 and 7, in Block 43, of ALTON BEACH BAYFRONT SUBDIVISION, according to the plat thereof, as recorded in Plat Book 4, at Page 125, of the Public Records of Miami-Dade County, Florida;

**LESS** a portion of Lot 7 Block 43 of "ALTON BEACH BAYFRONT SUBDIVISION", according to the plat thereof, as recorded in Plat Book 4, at Page 125, of the public records of Miami Dade County, Florida, and being more particularly described as follows:

Commence at the centerline intersection of Bay Road and 15<sup>th</sup> Street as shown on the aforementioned Plat of "ALTON BEACH BAYFRONT SUBDIVISION", thence run South along the centerline of Bay Road a distance of 509.91 feet to a point; thence run West for a distance of 101.36 feet to the most Southeasterly corner of the 15 story South Tower Building No. 1500 Bay Road, the Point of Beginning of the parcel of land hereinafter described; thence run North 34°54'40" West along the Easterly line of the building for a distance of 32.65 feet to a point; thence run North 55°05'20" East along the Southeasterly line of the concrete walk for a distance of 4.20 feet to a point of intersection with the concrete steps; thence run South 34°54'40" East along the Southwesterly line of the concrete steps for a distance of 4.10 feet to a point; thence run North 55°05'20" East along the Southeasterly face of concrete steps for a distance of 5.00 feet to a point; thence run North 34°54'40" West along the Northeasterly face of concrete deck for a distance of 17.30 feet to a point of intersection with the Southeasterly face of the concrete ramp; thence run North 55°05'20" East along the said Southeasterly face of the ramp for a distance of 5.00 feet to a point; thence run North 34°54'40" West along the Northeasterly face of concrete ramp for a distance of 42.00 feet to a point; thence run South 55°05'20" West along the said Northwesterly face of the ramp for a distance of 5.00 feet to a point; thence run North 34°54'40" West along the Northeasterly face of concrete deck for a distance of 18.70 feet to a point of intersection with the concrete steps; thence run North 55°05'20" East along the Southeasterly face of said concrete steps for a distance of 2.00 feet to a point; thence run North 34°54'40" West along the Northeasterly face of said concrete steps for a distance of 4.00 feet to a point; thence run South 55°05'20" West along the Northwesterly face of said concrete steps for a distance of 2.00 feet to a point; thence run North 34°54'40" West along the Northeasterly face of the concrete deck for a distance of 69.70 feet to a point; thence run North 33°58'16" East along the Southeasterly face of the concrete deck for a distance of 40.00 feet to a point; thence run North 56°01'44" West along the Northeasterly face of concrete deck for a distance of 23.67 feet to a point of intersection with the Southeasterly face of the said South Tower building; thence run North 33°58'16" East for a distance of 115.75 feet to a point; thence run North 56°12'07" West for a distance of 1.78 feet to a point; thence run North 34°02'48" East for a distance of 28.55 feet to a point; thence run South 55°57'12" East for a distance of 2.10 feet to a point; thence run North 33°52'28"

(Center Tower)

East for a distance of 39.36 feet to a point (the said last 5 calls being coincidental with the said Southeasterly face of the South Tower building); thence run North  $56^{\circ}07'32''$  West along the Northeasterly face of the said South Tower building and along the expansion joint between the said South Tower building and the existing 32 story Center Tower Building No. 1504 Bay Road, for a distance of 66.79 feet to a point; thence run South  $34^{\circ}04'48''$  West along the Northwesterly face of the said South Tower building for a distance of 4.50 feet to a point; thence run North  $56^{\circ}07'07''$  West for a distance of 10.28 feet to a point of intersection with the Northwesterly line of a covered walkway; thence run South  $33^{\circ}52'52''$  West along the said Northwesterly face of the covered walkway for a distance of 174.45 feet to a point; thence run South  $56^{\circ}13'16''$  East for a distance of 8.30 feet to a point of intersection with the Northwesterly face of the said South Tower building; thence run South  $33^{\circ}46'44''$  West along the Northwesterly face of the said South Tower building for a distance of 12.60 feet to a point; thence run North  $55^{\circ}48'08''$  West along the face of the said South Tower building for a distance of 17.14 feet to a point on the covered entrance to the said South Tower building and a point of intersection with a circular curve concave to the Northwest having a radius of 90.68 feet; thence Southwesterly along said curve to the right whose chord bears South  $55^{\circ}01'46''$  West through a central angle of  $42^{\circ}09'03''$ , for an arc distance of 66.71 feet to a point; thence run South  $13^{\circ}01'11''$  East along the face of the said South Tower building for a distance of 17.16 feet to a point of intersection with the Northwesterly face of the said South Tower building; thence run South  $76^{\circ}14'50''$  West along the Northwesterly face of the said South Tower building for a distance of 12.70 feet to a point; thence run North  $13^{\circ}45'10''$  West for a distance of 8.50 feet to a point of intersection with the Northwesterly line of a covered walkway; thence run South  $76^{\circ}14'50''$  West along the said Northwesterly face of covered walkway for a distance of 179.03 feet to a point of intersection with Northwesterly prolongation of the Southwesterly face of the said South Tower building; thence run South  $13^{\circ}57'21''$  East along the prolongation and the Southwesterly face of the said South Tower building for a distance of 77.50 feet to a point; thence run North  $75^{\circ}59'57''$  East along the most Southeasterly face of the said South Tower building for a distance of 186.75 feet to a point; thence run North  $13^{\circ}29'55''$  West along the face of the said South Tower building for a distance of 0.63 feet to a point of intersection with the glass façade at the Southwesterly entrance to the said South Tower building and a circular curve concave to the Southwest having a radius of 54.36 feet; thence Southeasterly along said curve to the right whose chord bears South  $69^{\circ}13'49''$  East, through a central angle of  $68^{\circ}49'15''$  for an arc distance of 65.29 feet to a point; thence run South  $53^{\circ}48'48''$  West along the face of the said South Tower building for a distance of 0.54 feet to a point of intersection with the Southwesterly face of the said South Tower building; thence run South  $35^{\circ}02'12''$  East for a distance of 128.48 feet to a point; thence run North  $55^{\circ}05'25''$  East for a distance of 1.70 feet to a point; thence run South  $35^{\circ}05'17''$  East for a distance of 36.96 feet to a point (the said last 3 calls being coincidental with the most Southeasterly face of the said South Tower building); thence run North  $55^{\circ}03'20''$

(Center Tower)

East along the Southeasterly face of the said South Tower building for a distance of 64.33 feet to the Point of Beginning; AND

**LESS** a portion of Lot 7 Block 43 of "ALTON BEACH BAYFRONT SUBDIVISION", according to the plat thereof, as recorded in Plat Book 4, at Page 125, of the public records of Miami Dade County, Florida, and being more particularly described as follows:

Commence at the centerline intersection of Bay Road and 15th Street as shown on the aforementioned Plat of "ALTON BEACH BAYFRONT SUBDIVISION", thence run North along of the centerline of Bay Road a distance of 25.82 feet to a point; thence run West a distance of 205.40 feet to the most Southeasterly corner of the 15 story North Tower Building No. 1508 Bay Road, the Point of Beginning of the parcel of land hereinafter described; thence run North  $09^{\circ}29'16''$  West along the East face of the said North Tower building and along the expansion joint between the said North Tower building and the existing 32 story Center Tower Building No. 1504 Bay Road, for a distance of 66.80 feet to a point; thence run South  $80^{\circ}45'24''$  West along the North face of the said North Tower building for a distance of 146.16 feet to a point; thence run North  $09^{\circ}14'36''$  West along the East side of the concrete deck for a distance of 28.21 feet to a point; thence run South  $80^{\circ}53'57''$  West along the North side of the concrete deck for a distance of 78.71 feet to a point of the intersection with the covered walkway; thence run North  $30^{\circ}12'05''$  West along the East face of the covered walkway for a distance of 180.54 feet to a point of intersection with Northeasterly prolongation of the Northwesterly face of the said North Tower building; thence run South  $59^{\circ}50'43''$  West along the prolongation of and the Northwesterly face of the said North Tower building for a distance of 76.19 feet to a point; thence run South  $30^{\circ}02'59''$  East along the most Southwesterly face of the said North Tower building for a distance of 170.44 feet to a point; thence run North  $59^{\circ}55'49''$  East along the face of the said North Tower building for a distance of 1.04 feet to a point of intersection with the glass façade at the Westerly entrance to the said North Tower building and a circular curve concave to the West having a radius of 55.43 feet; thence Southwesterly along said curve to the right whose chord bears South  $03^{\circ}37'41''$  West, through a central angle of  $67^{\circ}51'34''$  for an arc distance of 65.65 feet to a point; thence run North  $52^{\circ}56'12''$  West along the face of the said North Tower building for a distance of 1.19 feet to a point; thence run South  $38^{\circ}47'00''$  West along the most West face of the said North Tower building for a distance of 187.13 feet to a point; thence run South  $51^{\circ}08'05''$  East along the Southwesterly face of the said North Tower building for a distance of 66.40 feet to a point; thence run North  $38^{\circ}53'30''$  East along the Southeasterly face of the said North Tower building for a distance of 41.76 feet to a point; thence run South  $51^{\circ}07'16''$  East for a distance of 10.10 feet to a point of intersection with the Southeasterly face of the covered walkway; thence run North  $38^{\circ}47'05''$  East along the said covered walkway for a distance of 137.43 feet to a point; thence run North  $50^{\circ}43'03''$  West along the north face of the overhead walkway for a distance of 8.38 feet to a point of intersection with the Southeasterly face of the

(Center Tower)



said North Tower building; thence run North 39°16'57" East along the Southeasterly face of the said North Tower building for a distance of 12.92 feet to a point; thence run South 50°57'27" East along the face of the said North Tower building for a distance of 17.13 feet to a point on the covered entrance to the said North Tower building and a point of the intersection with a circular curve concave to the Southwest having a radius of 89.54 feet; thence Northeasterly along said curve to the right whose chord bears North 59°40'05" East through a central angle of 42°46'20", for an arc distance of 66.84 feet to a point; thence run North 08°44'48" West along the face of the said North Tower building for a distance of 17.22 feet to a point with the Southerly face of the North Tower building; thence run North 81°24'37" East along the Southerly face of the said North Tower building for a distance of 11.61 feet to a point; thence run South 09°06'51" East for a distance of 8.61 feet to a point of intersection with the South face of the covered walkway; thence run North 80°49'11" East along the South face of the covered walkway for a distance of 166.52 feet to a point; thence run North 21°36'04" East along the concrete wall for a distance of 11.99 feet to a point of intersection with the Southerly face of the said North Tower building; thence run North 80°48'27" East along the Southerly face of the said North Tower building for a distance of 7.91 feet to a Point of Beginning; AND

**LESS** a parcel of land located in Lots 6 and 7 of Block 43, of ALTON BEACH BAYFRONT SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 4, at Page 125, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Commence at the Northeast corner of said Lot 6, Block 43, thence run South 0°00'01" East along the East line of Lot 6 and then along the East line of Lot 7 for a distance of 266.03 feet to a point, thence run South 89°56'48" West for a distance of 355.00 feet to the Point of Beginning of the parcel of land described herein; continue South 89°56'48" West for a distance 12.17 feet to a point, thence run North 0°03'03" West for a distance of 2.14 feet to a point, thence run South 89°56'44" West for a distance of 16.50 feet to a point, thence run North 0°03'12" West for a distance of 1.83 feet to a point, thence run South 89°56'48" West for a distance of 1.00 feet to a point, thence run South 0°03'12" East for a distance of 1.83 feet to a point, thence run South 89°56'48" West for a distance of 19.42 feet to a point, thence run North 0°03'12" West for a distance of 1.83 feet to a point, thence run South 89°56'48" West for a distance of 7.63 feet to a point on a non-tangent circular curve concave northwesterly having a radius of 31.71 feet, a central angle of 26°06'18", and running along the arc of said curve to the right for a distance of 14.45 feet, subtended by a chord of 14.32 feet at a bearing of South 23°36'00" West, thence run South 40°58'17" West for a distance of 4.97 feet to a point, thence run South 53°30'32" West for a distance of 2.50 feet to a point, thence run North 28°52'25" West for a distance of 17.86 feet to a point, thence run North 0°03'12" West for a distance of 8.44 feet to a point, thence run South 89°56'47" West for a distance of 19.83 feet to a point, thence run North 03°55'23" East for a distance of 1.95 feet to a point, thence run

(Center Tower)

North 85°10'33" West for a distance of 0.51 feet to a point, thence run North 8°32'46" East for a distance of 3.11 feet to a point on a non tangent circular curve concave Southeasterly having a radius of 45.19 feet, a central angle of 8°42'12", and running along the arc of said curve to the right for a distance of 6.86 feet, subtended by a chord of 6.86 feet at a bearing of North 16°23'37" East to a point of curve being non-tangent with the last described curve, concave Northwesterly having a radius of 1.75 feet, a central angle of 127°29'11", and running along the arc of said curve to the left for a distance of 3.89 feet, subtended by a chord of 3.13 feet at a bearing of North 25°19'31" East, to a point of curve being non-tangent with the last described curve, concave Southeasterly having a radius of 82.56 feet, a central angle of 4°56'21", and running along the arc of said curve to the right for a distance of 7.12 feet, subtended by a chord of 7.12 feet at a bearing of North 35°48'59" East to a point of curve being non-tangent with the last described curve, concave Southeasterly having a radius of 20.61 feet, a central angle of 28°13'46", and running along the arc of said curve to the right for a distance of 10.15 feet, subtended by a chord of 10.05 feet at a bearing of North 56°50'41" East, thence run South 16°37'50" East for a distance of 0.67 feet to a point, thence run North 75°02'36" East for a distance of 1.00 feet, to a point on a non-tangent circular curve concave Easterly having a radius of 133.26 feet, a central angle of 5°59'42", and running along the arc of said curve to the right for a distance of 13.94 feet, subtended by a chord of 13.94 feet at a bearing of North 13°43'15" West to a point of curve being non tangent with the last described curve, concave easterly having a radius of 130.62 feet, a central angle of 43°25'56", and running along the arc of said curve to the right for a distance of 99.01 feet, subtended by a chord of 96.66 feet at a bearing of North 11°15'42" East, thence run North 89°56'48" East for a distance of 6.71 feet to a point, thence run South 0°02'24" East for a distance of 52.15 feet to a point, thence run North 89°58'49" East for a distance of 52.64 feet, to a point on a non-tangent circular curve concave Northeasterly having a radius of 1.75 feet, a central angle of 122°47'32", and running along the arc of said curve to the left for a distance of 3.75 feet, subtended by a chord of 3.07 feet at a bearing of South 23°12'10" East, thence run South 0°03'11" East for a distance of 77.92 feet to a point, thence run North 89°56'50" East for a distance of 2.83 feet to a point, thence run South 0°03'12" East for a distance of 10.48 feet, to the Point of Beginning; said parcel containing 8,522.60 square feet more or less, lying between elevations 72.71 feet to 84.42 feet USCE (MLW) Datum and lying in and being in the City of Miami Beach, Florida; AND

**LESS** a parcel of land located in Lots 6 and 7 of Block 43, of ALTON BEACH BAYFRONT SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 4, at Page 125, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Commence at the Northeast corner of said Lot 6, Block 43, thence run South 0°00'01" East along the East line of Lot 6 and then along the East line of Lot 7 for a distance of 266.03 feet to a point, thence run South 89°56'48" West for a

(Center Tower)

distance of 355.00 feet to the Point of Beginning of the parcel of land described herein; continue South 89°56'48" West for a distance of 12.17 feet to a point, thence run North 0°03'03" West for a distance of 2.14 feet to a point, thence run South 89°56'44" West for a distance of 16.50 feet to a point, thence run North 0°03'12" West for a distance of 1.83 feet to a point, thence run South 89°56'48" West for a distance of 1.00 feet to a point, thence run South 0°03'12" East for a distance of 1.83 feet to a point, thence run South 89°56'53" West for a distance of 17.42 feet to a point, thence run North 0°03'12" West for a distance of 1.83 feet to a point, thence run South 89°56'49" West for a distance of 9.63 feet to a point on a non-tangent circular curve concave Northwesterly having a radius of 31.71 feet, a central angle of 26°06'18", and running along the arc of said curve to the right for a distance of 14.45 feet, subtended by a chord of 14.32 feet at a bearing of South 23°36'00" W, thence run South 40°58'17" West for a distance of 4.97 feet to a point, thence run South 53°30'32" West for a distance of 2.50 feet to a point, thence run North 28°52'25" West for a distance of 11.81 feet to a point on a non-tangent circular curve concave Northwesterly having a radius of 26.03 feet, a central angle of 14°11'08", and running along the arc of said curve to the left for a distance of 6.45 feet, subtended by a chord of 6.43 feet at a bearing of North 57°59'08" E, thence run North 28°55'35" West for a distance of 11.81 feet to a point, thence run South 89°56'48" West for a distance of 22.50 feet to a point, thence run North 3°55'23" East for a distance of 1.95 feet to a point, thence run North 85°10'33" West for a distance of 0.51 feet to a point, thence run North 8°32'46" East for a distance of 3.11 feet to a point on a non-tangent circular curve concave Southeasterly having a radius of 45.19 feet, a central angle of 8°42'11", and running along the arc of said curve to the right for a distance of 6.86 feet, subtended by a chord of 6.86 feet at a bearing of North 16°23'37" East, to a curve being non-tangent with the last described curve, concave Northwesterly having a radius of 1.75 feet, a central angle of 127°29'11", and running along the arc of said curve to the right for a distance of 3.89 feet, subtended by a chord of 3.13 feet at a bearing of North 25°19'31" East, to a curve being non-tangent with the last described curve concave Southeasterly having a radius of 82.56 feet, a central angle of 4°56'21", and running along the arc of said curve to the right for a distance of 7.12 feet, subtended by a chord of 7.12 feet at a bearing of North 35°48'59" East, to a curve being non-tangent with the last described curve, concave Southeasterly having a radius of 20.61 feet, a central angle of 28°13'46", and running along the arc of said curve to the right for a distance of 10.16 feet, subtended by a chord of 10.05 feet at a bearing of North 56°50'41" East, thence run South 16°37'50" East for a distance of 0.67 feet to a point, thence run North 75°02'36" East for a distance of 1.00 feet to a curve non-tangent curve, concave Northeasterly having a radius of 133.26 feet, a central angle of 5°59'42", and running along the arc of said curve to the right for a distance of 13.94 feet, subtended by a chord of 13.94 feet at a bearing of North 13°43'15" West, to a curve being non-tangent with the last described curve, concave Easterly having a radius of 130.62 feet, a central angle of 43°25'56", and running along the arc of said curve to the right for a distance of 99.01 feet, subtended by a chord of 96.66 feet at a bearing of North 11°15'42" East, thence

(Center Tower)

run North 89°56'48" East for a distance of 6.71 feet to a point, thence run South 0°02'24" East for a distance of 52.15 feet to a point, thence run North 89°56'48" East for a distance of 27.01 feet to a point, thence run South 0°03'45" East for a distance of 1.83 feet to a point, thence run North 89°56'48" East for a distance of 1.00 feet to a point, thence run North 0°02'39" West for a distance of 1.83 feet to a point, thence run North 89°56'48" East for a distance of 12.07 feet to a point, thence run North 69°07'06" East for a distance of 19.58 feet to a point, thence run South 0°03'12" East for a distance of 26.27 feet to a point, thence run South 77°42'12" West for a distance of 4.64 feet to a point, thence run South 0°03'12" East for a distance of 3.54 feet to a point, thence run South 89°56'48" West for a distance of 1.50 feet to a point, thence run South 0°03'12" East for a distance of 2.67 feet to a point, thence run North 89°56'48" East for a distance of 1.50 feet to a point, thence run South 0°03'12" East for a distance of 54.25 feet to a point, thence run North 89°56'50" East for a distance of 2.83 feet to a point, thence run South 0°03'12" East for a distance of 10.48 to the Point of Beginning; said parcel containing 8,600.92 square feet more or less, lying between elevations 84.92 feet to 96.38 feet USCE (MLW) Datum and lying in and being in the City of Miami Beach, Florida.

(Center Tower)

Exhibit "B"

## **GENERAL RELEASE AND WAIVER**

### **KNOW ALL MEN BY THESE PRESENTS:**

That for value received and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the CITY OF MIAMI BEACH, a Florida municipal corporation, does hereby, for itself and its agencies, subdivisions, departments, divisions, representatives, successors, assigns, officials, mayor, commissioners, agents and employees, their respective heirs, executors, administrators, personal representatives, insurers, reinsurers, agents, successors and assigns, and any person or entity claiming by, through or for or succeeding to the right of any of the foregoing (hereinafter referred to collectively as "Releasor"), releases, remises, acquits, satisfies, waives and forever discharges MCZ/CENTRUM FLAMINGO II, LLC, a Delaware limited liability corporation, MCZ/CENTRUM FLAMINGO III, LLC, a Delaware limited liability corporation, MORTON TOWERS APARTMENTS, L.P., a Delaware limited partnership, and APARTMENT INVESTMENT AND MANAGEMENT COMPANY, a Maryland corporation, their parents, subsidiaries, affiliates, partners, principals, managers, officers, directors, employees, stockholders, agents, attorneys, representatives, insurers, reinsurers, sureties, successors and assigns, their respective heirs, executors, administrators, personal representatives, insurers, reinsurers, agents, successors and assigns, and any person or entity acting for, by or through any of the foregoing (hereinafter referred to collectively as "Releasees") of and from any and all manner of actions, causes of action, suits, debts, costs, attorney's fees, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, loss of services, obligations, liabilities, agreements, promises, variances, disputes, trespasses, damages, repairs, injuries, losses, liens, judgments, executions, complaints, claims, counterclaims, cross-claims and all demands whatsoever, in law or in equity, whether known or unknown, direct or indirect, which Releasors ever had, now have or which may hereafter accrue for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this release, including but not limited to all claims, demands, damages, liens, counterclaims, cross-

claims, actions and causes of action on account of, in connection with or in any way arising out of or relating to, or which were or could have been asserted in, that certain cause styled MCZ/Centrum Flamingo II, LLC, et al. v. City of Miami Beach, United States District Court, Southern District of Florida, Case No. 08-22419-Civ-Altonaga/Brown (hereinafter sometimes referred to collectively as "Claims").

Releasor agrees they will forever refrain and forbear from commencing, instituting or prosecuting any lawsuit, action or other proceeding of any kind whatsoever, by way of action, defense, set-off, cross-complaint, counterclaim, third party action or otherwise, against Releasees, or any of them, based on, relating to, arising out of, or in connection with any Claims released and discharged hereunder.

Releasor hereby waives, to the fullest extent permitted by law, the benefits of any statute, law, rule, regulation or common law which may limit the scope of the covenants and releases contained herein.

Releasor intends by this General Release and Waiver to forever release, remise, acquit, waive, satisfy and forever discharge Releasees of and from any and all Claims and rights described above, it being understood that all Claims or rights which the Releasor or any person who claims by, through or under the Releasor, or any of them, may have against the Releasees shall be forever released, remised, acquitted, waived, satisfied and forever discharged, and such persons shall be forever barred from bringing or asserting the same in their own name or names, jointly or with or through any other person, natural, corporate or otherwise.

Releasor acknowledges that it is its intention that, upon execution hereof, this General Release and Waiver shall be effective as a full accord and satisfaction and settlement of, and as a bar to, each and every Claim released hereunder, whether known or unknown.

Releasor represents and warrants that no claim which it has or might have had against Releasees has been assigned or transferred to any other person or entity, and agrees to indemnify Releasees and hold Releasees harmless from

any and all liability or expense resulting from the assignment or transfer of any such claims.

Releasor acknowledges and agrees that this release is given for the compromise of doubtful and disputed claims, and shall not be construed as an admission against interest or admission of liability on the part of the Releasees as to any claim, counterclaim, demand, controversy, dispute, defense, action, cause of action, or thing mentioned herein and compromised and settled hereby, and that Releasees deny liability therefor and intend merely to avoid the costs of litigation.

Releasor confirms that it is competent and acknowledges that the terms of this General Release and Waiver are contractual and not a mere recital. Furthermore, the Releasor acknowledges that the Releasor has not been influenced in any manner in making this General Release and Waiver by any representations or statements made by or on behalf of the Releasees, that the Releasor has received the advice of counsel in connection with the effect of the execution and delivery of this General Release and Waiver, that the Releasor has carefully read and fully understands the contents of this General Release and Waiver, and that the Releasor has duly authorized the execution of this General Release and Waiver freely and voluntarily, intending and agreeing to be fully bound by the terms hereof.

This General Release and Waiver shall remain in full force and effect and survive any future dealings among the parties hereto, unless this General Release and Waiver shall hereafter be modified by an instrument in writing and signed by the Releasor and by duly authorized representative(s) of the Releasees.

IN WITNESS WHEREOF, the CITY OF MIAMI BEACH has caused this General Release and Waiver to be executed in its name and its seal to be affixed, by its proper and duly authorized representative, this \_\_\_\_ day \_\_\_\_\_, 2009.



ATTEST:

**CITY OF MIAMI BEACH, FLORIDA**, a  
municipal corporation of the State of  
Florida

By: \_\_\_\_\_  
Robert Parcher, City Clerk

By: \_\_\_\_\_  
Matti Herrera Bower, Mayor

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

STATE OF FLORIDA            )  
  )  
COUNTY OF MIAMI-DADE    )

SS:

I HEREBY CERTIFY that on this date, before me, an officer duly authorized in this State and County to take acknowledgments, personally appeared Matti Herrera Bower, well known to me to be the Mayor of the City of Miami Beach, a Florida municipal corporation, named in the foregoing General Release and Waiver, and that she acknowledged executing the same freely and voluntarily in the presence of the City Clerk under authority duly vested in her by the City of Miami Beach and that the seal affixed is the true seal of the City of Miami Beach.

WITNESS my hand and official seal in the County and State last  
aforementioned this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
(Signature)

Commission No. \_\_\_\_\_

\_\_\_\_\_  
(Print name)

My Commission Expires:  
\_\_\_\_\_, 200\_\_

Notary Public  
State of Florida

## GENERAL RELEASE AND WAIVER

**KNOW ALL MEN BY THESE PRESENTS** that, the undersigned, including the undersigned's legal representatives, successors and assigns (hereafter, collectively the "Releasers"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby fully release, remise, acquit, satisfy and forever discharge the **CITY OF MIAMI BEACH**, a Florida municipal corporation, its agencies, subdivisions, departments, divisions, representatives, successors, assigns, officials, mayor, commissioners, attorneys, agents and employees, their respective heirs, executors, administrators, personal representatives, insurers, reinsurers, agents, successors and assigns, and any person or entity acting for, by or through any of the foregoing (all of the foregoing collectively, the "Releasees") of and from any and all manner of actions, causes of action, suits, debts, costs, attorney's fees, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, loss of services, obligations, liabilities, agreements, promises, variances, disputes, trespasses, damages, repairs, injuries, losses, liens, judgments, executions, complaints, claims, counterclaims, cross-claims and all demands whatsoever, in law or in equity, whether known or unknown, direct or indirect, which Releasers ever had, now have or which may hereafter accrue for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this release, including but not limited to all claims, demands, damages, liens, counterclaims, cross-claims, actions and causes of action on account of, in connection with or in any way arising out of or relating to, or which were or could have been asserted in, that certain cause styled MCZ/Centrum Flamingo II, LLC, et al. v. City of Miami Beach, United States District Court, Southern District of Florida, Case No. 08-22419-Civ-Altonaga/Brown (hereinafter sometimes referred to collectively as "Claims").

Releasers agree they will forever refrain and forbear from commencing, instituting or prosecuting any lawsuit, action or other proceeding of any kind whatsoever, by way of action, defense, set-off, cross-complaint, counterclaim, third party action or otherwise, against Releasees, or any of them, based on,

relating to, arising out of, or in connection with any Claims released and discharged hereunder.

Releasors hereby waive, to the fullest extent permitted by law, the benefits of any statute, law, rule, regulation or common law which may limit the scope of the covenants and releases contained herein.

Releasors intend by this General Release and Waiver to forever release, remise, acquit, waive, satisfy and forever discharge Releasees of and from any and all Claims and rights described above, it being understood that all Claims or rights which the Releasors or any person who claims by, through or under the Releasors, or any of them, may have against the Releasees shall be forever released, remised, acquitted, waived, satisfied and forever discharged, and such persons shall be forever barred from bringing or asserting the same in their own name or names, jointly or with or through any other person, natural, corporate or otherwise.

Releasors acknowledge that it is their intention that, upon execution hereof, this General Release and Waiver shall be effective as a full accord and satisfaction and settlement of, and as a bar to, each and every Claim released hereunder, whether known or unknown.

Releasors represent and warrant that no claim which they have or might have had against Releasees has been assigned or transferred to any other person or entity, and agree to indemnify Releasees and hold Releasees harmless from any and all liability or expense resulting from the assignment or transfer of any such claims.

Releasors acknowledge and agree that this release is given for the compromise of doubtful and disputed claims, and shall not be construed as an admission against interest or admission of liability on the part of the Releasees as to any claim, counterclaim, demand, controversy, dispute, defense, action, cause of action, or thing mentioned herein and compromised and settled hereby, and that Releasees deny liability therefor and intend merely to avoid the costs of litigation.

Releasors confirm that they are competent and acknowledge that the terms of this General Release and Waiver are contractual and not a mere recital. Furthermore, the Releasors acknowledge that they have not been influenced in any manner in making this General Release and Waiver by any representations or statements made by or on behalf of the Releasees, that the Releasors have received the advice of counsel in connection with the effect of the execution and delivery of this General Release and Waiver, that the Releasors have carefully read and fully understand the contents of this General Release and Waiver, and that the Releasors have duly authorized the execution of this General Release and Waiver freely and voluntarily, intending and agreeing to be fully bound by the terms hereof.

This General Release and Waiver shall remain in full force and effect and survive any future dealings among the parties hereto, unless this General Release and Waiver shall hereafter be modified by an instrument in writing and signed by authorized representatives of the Releasors and the Releasees.

IN WITNESS WHEREOF, the Releasors have executed this General Release and Waiver this \_\_\_\_ day \_\_\_\_\_, 2009.

MCZ/CENTRUM FLAMINGO II, L.L.C.,  
a Delaware limited liability company

By: MORTON TOWERS APARTMENTS, L.P.,  
a Delaware limited partnership,  
its member

By: AIMCO HOLDINGS, L.P.,  
a Delaware limited partnership,  
its general partner

By: AIMCO HOLDINGS QRS, INC.,  
a Delaware corporation,  
its general partner

By: \_\_\_\_\_  
Eric L. Hilty  
Senior Vice President, Assistant General  
Counsel and Assistant Secretary

STATE OF COLORADO            )  
  )  
COUNTY OF DENVER            )

SS:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of November, 2009, by Eric L. Hilty, as Senior Vice President, Assistant General Counsel and Assistant Secretary of MCZ/CENTRUM FLAMINGO II, LLC, a Delaware limited liability corporation, known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this \_\_\_\_ day of November, 2009.

\_\_\_\_\_

Notary Public, State of Colorado at Large

Commission No.:  
My Commission Expires:

MCZ/CENTRUM FLAMINGO III, L.L.C.,  
a Delaware limited liability company

By: MORTON TOWERS APARTMENTS, L.P.,  
a Delaware limited partnership,  
its member

By: AIMCO HOLDINGS, L.P.,  
a Delaware limited partnership,  
its general partner

By: AIMCO HOLDINGS QRS, INC.,  
a Delaware corporation,  
its general partner

By: \_\_\_\_\_  
Eric L. Hilty  
Senior Vice President, Assistant General Counsel  
and Assistant Secretary

STATE OF COLORADO            )  
  )  
COUNTY OF DENVER            )        SS:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of November, 2009, by Eric L. Hilty, as Senior Vice President, Assistant General Counsel and Assistant Secretary of MCZ/CENTRUM FLAMINGO III, LLC, a Delaware limited liability corporation, known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public, State of Colorado at Large

Commission No.:  
My Commission Expires:

MORTON TOWERS APARTMENTS, L.P.,  
a Delaware limited partnership

By: AIMCO HOLDINGS, L.P.,  
a Delaware limited partnership,  
its general partner

By: AIMCO HOLDINGS QRS, INC.,  
a Delaware corporation,  
its general partner

By: \_\_\_\_\_  
Eric L. Hilty  
Senior Vice President, Assistant General Counsel  
and Assistant Secretary

STATE OF COLORADO            )  
  )  
COUNTY OF DENVER            )        SS:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of November, 2009, by Eric L. Hilty, as Senior Vice President, Assistant General Counsel and Assistant Secretary of MORTON TOWERS APARTMENTS, L.P., a Delaware Limited Partnership, known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public, State of Colorado at Large

Commission No.:  
My Commission Expires:

APARTMENT INVESTMENT AND MANAGEMENT COMPANY,  
a Maryland corporation

By: \_\_\_\_\_  
Eric L. Hilty  
Senior Vice President, Assistant General Counsel  
and Assistant Secretary

STATE OF COLORADO            )  
  )        SS:  
COUNTY OF DENVER            )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of November, 2009, by Eric L. Hilty, as Senior Vice President, Assistant General Counsel and Assistant Secretary of APARTMENT INVESTMENT AND MANAGEMENT COMPANY, known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public, State of Colorado at Large

Commission No.:  
My Commission Expires:



Exhibit "C"

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-22419-CIV-ALTONAGA/BROWN

MCZ/CENTRUM FLAMINGO II, LLC,  
a Delaware limited liability corporation, et al.,

Plaintiffs/Counter-Defendants,

v.

CITY OF MIAMI BEACH, a Florida  
municipal corporation,

Defendant/Counter-Plaintiff.

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**STIPULATION AND JOINT MOTION FOR ENTRY OF FINAL JUDGMENT  
AND ORDER OF DISMISSAL WITH PREJUDICE**

Plaintiffs/Counter-Defendants, MCZ/Centrum Flamingo II, LLC, MCZ/Centrum Flamingo III, LLC, and Morton Towers Apartments, L.P. (“Plaintiffs”), and Defendant/Counter-Plaintiff City of Miami Beach (the “City”), stipulate to, and jointly move for entry of, the attached proposed Stipulated Final Judgment and Order of Dismissal With Prejudice, and in support thereof state:

1. Plaintiffs and the City have agreed to settle all claims and counterclaims in this action based upon the terms of the Settlement Agreement attached hereto as Exhibit 1 and incorporated herein by reference.
2. The Settlement Agreement is conditioned upon entry of a stipulated final judgment approving, adopting and retaining jurisdiction to enforce the Settlement Agreement, and an order of dismissal with prejudice of all claims and counterclaims in this action, with each party to bear its own costs and attorneys’ fees. In furtherance of this agreement, the parties

stipulate to, and jointly move for entry of, the proposed Stipulated Final Judgment and Order of Dismissal With Prejudice that is attached hereto as Exhibit 2.

WHEREFORE, the parties respectfully request entry of the attached Stipulated Final Judgment and Order of Dismissal With Prejudice.

Respectfully submitted,

By /s/ Ron A. Adams

Ron A. Adams, P.A.  
Florida Bar No. 318299  
Email: [radams@brighammoore.com](mailto:radams@brighammoore.com)  
Amy Brigham Boultris  
Florida Bar No. 772836  
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By /s/ Richard J. Ovelmen

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*Counsel for the Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_ day of November, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Ron A. Adams

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-22419-CIV-ALTONAGA/Brown

MCZ/CENTRUM FLAMINGO II, LLC, et al. vs. CITY OF MIAMI BEACH

ATTORNEYS FOR PLAINTIFFS/COUNTER-DEFENDANT:

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Ron A. Adams, P.A.  
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Laura N. Camp, Esq.  
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ATTORNEYS FOR DEFENDANT/COUNTER-PLAINTIFF:

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Richard J. Sharpstein, Esq.  
Ari Gerstin, Esq.  
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Jose Smith, City Attorney  
Gary Held, First Assistant City Attorney  
City of Miami Beach  
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Miami Beach, FL 33139  
(via Notices of Electronic Filing generated by CM/ECF)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-22419-CIV-ALTONAGA/BROWN

MCZ/CENTRUM FLAMINGO II, LLC,  
a Delaware limited liability corporation, et al.,

Plaintiffs/Counter-Defendants,

v.

CITY OF MIAMI BEACH, a Florida  
municipal corporation,

Defendant/Counter-Plaintiff.

---

**STIPULATED FINAL JUDGMENT AND  
ORDER OF DISMISSAL WITH PREJUDICE**

THIS CAUSE having come before the Court on the Stipulation and Joint Motion for Entry of Final Judgment and Order of Dismissal With Prejudice filed by Plaintiffs/Counter-Defendants, MCZ Centrum Flamingo II, LLC, MCZ/Centrum Flamingo III, LLC and Morton Towers Apartments, L.P. (“Plaintiffs”), and Defendant City of Miami Beach (the “City”) (“Stipulation and Joint Motion”) [D.E. \_\_\_\_], the Court having reviewed the Settlement Agreement attached as Exhibit 1 to the Stipulation and Joint Motion, having reviewed the file and being fully advised in the premises, it is hereby

**ORDERED AND ADJUDGED** as follows:

1. The Stipulation and Joint Motion [D.E. \_\_\_\_] be and the same is hereby granted.
2. The Settlement Agreement agreed to by Plaintiffs and the City, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference, is hereby approved and adopted by the Court.

3. The Court retains jurisdiction to enforce the Settlement Agreement according to its terms, which jurisdiction shall survive the dismissal of this action.

4. This action and all claims and counterclaims asserted herein are hereby dismissed with prejudice, with each party to bear its own costs and attorneys' fees.

**DONE AND ORDERED** in Chambers at Miami, Florida, this \_\_\_\_ day of November, 2009.

---

**CECILIA M. ALTONAGA**  
**UNITED STATES DISTRICT JUDGE**

cc: counsel of record

Exhibit "D"



For Immediate Release  
September 11, 2009

Contact: Cindy Duffy, Aimco  
303.793.4834 or 303.408.5214  
Or Nannette Rodriguez,  
City of Miami Beach, 305.673.7575

**City of Miami Beach and Aimco Reach  
Agreement on Public Access to Flamingo Baywalk**

MIAMI BEACH - On Wednesday, September 9, 2009, the Miami Beach City Commission approved an agreement with the owners of the Flamingo South Beach apartment community that will provide public access to the Flamingo South Beach baywalk. The Flamingo South Beach is owned by a subsidiary of Apartment Investment and Management Company (Aimco). While Aimco will continue to own the property on which the Flamingo Baywalk is located, it will legally permit public access to the area, effective approximately two years from the date the agreement is final.

"We are pleased to reach an agreement with the City that promotes enhanced public access and enjoyment of the Bay, while maintaining privacy and security for the residents at the Flamingo," said Joe Suarez, Vice President of Operations for Aimco in Florida. "Our settlement resolves a number of outstanding issues with the City, and enables us to form a productive partnership that will benefit the Flamingo and improve the experience of pedestrians to appreciate the beauty of the Bay."

"The City is excited that it is able to provide public access to the Flamingo baywalk," adds Miami Beach Mayor Matti Herrera Bower. "It is a critical link in our efforts to establish a world-class public promenade along Biscayne Bay from 5<sup>th</sup> Street to Lincoln Road. We look forward to working with Aimco in achieving this wonderful vision as a legacy to our community."

Under the agreement, Aimco will be responsible for the design, permitting and construction of any modifications necessary to allow public access to the Flamingo South Beach baywalk. The walkway will be open to the public during daylight hours, with the City providing security and cleaning services for the area to ensure safety for both residents and visitors.

As per the agreement, within the next ten years the City will establish a public connection from the Flamingo South Beach baywalk to Lincoln Road.

###

Exhibit "E"

Draft 12-14

## EXHIBIT E

### **Timetable and Benchmarks For Design, Permitting, Construction and Opening of Flamingo Baywalk Under Paragraph 3a of Settlement Agreement**

1. Within **forty-five (45) days** after entry of the stipulated final judgment and order of dismissal described in paragraph 2f of this Settlement Agreement, Owner will present to the City Planning Director a conceptual plan of anticipated modifications necessary for allowing public access to the Flamingo baywalk, including all changes to be proposed pursuant to paragraph 3i of the Settlement Agreement (“Conceptual Plan”). Upon receipt of a complete Conceptual Plan, City will review and provide written comments on Owner’s Conceptual Plan within **fifteen (15) days** after receipt thereof.
2. Within **sixty (60) days** after Owner’s receipt of City’s written comments on the Conceptual Plan, Owner will submit to the City Planning Director an application for any variance or Board level design review approval that may be required by the City Code. City anticipates it will take **fifty (50) days** after receipt of any such complete application(s) to review and consider such applications(s). In the event that the City Code does not require either a variance or Board level design review approval, the next timetable and benchmarks under paragraph 3a of the Settlement Agreement, following Owner’s receipt of City’s written comments on the Conceptual Plan, will be as provided in paragraph 3 below.
3. Within **one hundred twenty (120) days** after Owner’s receipt of City’s Conceptual Plan comments, and, if required by City Code, consideration of variance and/or Board level design review applications, Owner will submit construction drawings and an application for full building permit to City’s Building Department. Upon receipt of a complete set of plans, City anticipates it will take up to **ninety (90) days** (including time for staff comments and Owner’s responses thereto) to review and approve Owner’s application, and to issue a full building permit. The building permit may not contain any terms or conditions: (i) requiring public access to the baywalk any earlier than twenty-four (24) months after entry of the stipulated judgment and order of dismissal described in paragraph 2f of this Settlement Agreement; (ii) requiring completion of construction any earlier than necessary to allow public access to the baywalk no later than twenty-four (24) months after entry of the stipulated judgment and order of dismissal described in paragraph 2f of this Settlement Agreement; or (iii) conflicting with the provisions of this Settlement Agreement, unless agreed to in writing by Owner.
4. **No later than twenty-four (24) months after entry of the stipulated judgment and order of dismissal described in paragraph 2f of this Settlement Agreement (“24 Month Deadline”):** (i) Owner will complete construction of the improvements contemplated in the full building permit (meaning all permitted

improvements necessary for public access are completed and installed); (ii) Owner shall request inspection for a final or temporary certificate of completion, and if in compliance with permits and applicable codes a final or temporary certificate of completion shall be issued by the City; and (iii) upon receipt of a final or temporary certificate of completion, or comparable document in use at the time, issued by City, and provided that City issued the final C.O. for the Center Tower as required by paragraph 2a of this Settlement Agreement, Owner will open the Flamingo baywalk for public access in accordance with the provisions of this Settlement Agreement; provided, however, that notwithstanding any other provision in this Exhibit E or elsewhere in this Settlement Agreement, the 24 Month Deadline shall be extended by the cumulative number of days by which one or more of the timetables and benchmarks set forth in this Exhibit E are exceeded by the City, are exceeded as a result of Owner obtaining any approvals that may be required from any other governmental entity with jurisdiction, or are exceeded for other reasons not solely caused by Owner, except that the time taken by Owner to respond to City staff comments shall not be included in such extension calculation.

Exhibit "F"

This instrument prepared by (and after recording return to):

Nancy B. Lash, Esq.  
Greenberg Traurig, P.A.  
1221 Brickell Avenue  
Miami, Florida 33131

in consultation, regarding the terms of the Settlement Agreement on which it is based, with:

Ron A. Adams, P.A.  
Amy Brigham Boulris, Esq.  
Juan M. Muniz, P.A.  
Brigham Moore, LLP  
2525 Ponce de Leon Blvd.  
Suite 625  
Coral Gables, Florida 33134

(Reserved for Clerk of Court)

### DECLARATION OF RESTRICTIONS AND EASEMENT AGREEMENT

THIS DECLARATION OF RESTRICTIONS AND EASEMENT AGREEMENT ("Agreement") is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2009, by and between the CITY OF MIAMI BEACH, a municipal corporation of the State of Florida (the "City"), with an address of 1700 Convention Center Drive, Miami Beach, Florida 33139, and MCZ/CENTRUM FLAMINGO III, L.L.C., a Delaware limited liability company ("Owner"), having an address c/o AIMCO, 4582 South Ulster Street Parkway, Suite 1100, Denver, Colorado 80237.

### RECITALS:

A. Pursuant to that certain (i) stipulated judgment entered by United States District Court, Southern District of Florida (the "Court"), in that certain litigation styled *MCZ/Centrum Flamingo II, LLC, et al. v. City of Miami Beach*, Case No. 08-22419-Civ-Altonaga/Brown (the "Flamingo Litigation"), on \_\_\_\_\_, 2009 (the "Stipulated Judgment Effective Date"), and (ii) Settlement Agreement dated \_\_\_\_\_, 2009 by and between Owner and the City resolving the Flamingo Litigation (the "Settlement Agreement"). Owner has agreed to open to the public a pedestrian walkway within the property legally described or depicted in Exhibit A attached hereto (the "Easement Area"), subject to the terms, conditions, reservations and restrictions set forth herein.

B. Owner is the owner in fee simple of the Easement Area, which is a portion of the residential apartment project located west of Bay Road between 14th Street on the south and the theoretical extension of 16th Terrace on the north and commonly known as the "Flamingo South Beach" project, as legally described or depicted on Exhibit B attached hereto (the "Flamingo Property").

NOW, THEREFORE, in consideration of the premises, agreements and covenants set forth hereinafter, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owner hereby agree that the foregoing recitals are true and correct and further agree as follows:

1. Grant of Easements. Owner hereby grants to the City, for the use of the City, its agents, employees, contractors, representatives and licensees and the members of the general public (collectively, the "Easement Beneficiaries"), commencing on the Effective Date (as defined below), a permanent, non-exclusive easement through the Easement Area, subject to the terms, conditions, reservations and restrictions set forth below. The Easement Area is a segment of a publicly accessible baywalk planned by the City to extend from 5<sup>th</sup> Street to Lincoln Road (the "Baywalk"). The Easement Beneficiaries shall have access to the Easement Area solely from the portions of the Baywalk located directly north and south of, and contiguous to, the Easement Area. In no event shall the Easement Beneficiaries, by virtue of this Agreement, have access to the Easement Area by, through, across, under or over any other portion of the Flamingo Property; it being agreed that the sole points of access to the Easement Area are the locations noted in the immediately preceding sentence.

2. Easement Area. At the time this Agreement is recorded, the "Easement Area" shall temporarily refer to a meandering strip of land that is fourteen (14') feet in width within the portion of the Flamingo Property described or depicted in Exhibit A attached hereto. On the Effective Date (as defined below), the final and actual "Easement Area" shall refer to and shall be a strip of land that runs immediately adjacent and parallel to the entire westernmost boundary of the Flamingo Property, including the seawall cap, and that extends to the easternmost edge of either the pedestrian walkway actually constructed within the foregoing fourteen (14') foot strip of land or if a fence, wall or other barrier shall be installed east of the pedestrian walkway and within the foregoing fourteen (14') foot strip of land, then to the westernmost edge of such fence, wall or other barrier. The minimum pavement width of the walkway to be installed in the Easement Area shall be five (5') feet. All other portions of the Flamingo Property, including without limitation any portion of the aforementioned fourteen (14') foot strip of land lying outside of the final and actual Easement Area, shall be excluded from the Easement Area for purposes of this Agreement. Owner shall have the right to record a notice, substantially in the form attached hereto as Exhibit D, of the actual location and legal description of the Easement Area upon final determination thereof in accordance with this paragraph.

*Pending  
Negotiations*

3. Effective Date. The easements granted herein shall not become effective until the date (the "Effective Date") which is the later of (i) the second anniversary of the Stipulated Judgment Effective Date, or (ii) the date that the Easement Area is physically open to public access pursuant to the Settlement Agreement (as contemplated herein and in the Settlement Agreement), notwithstanding the earlier date(s) of execution, delivery and recordation hereof. Accordingly, Owner shall not, by virtue of this Agreement, make the Easement Area available to the Easement Beneficiaries for the purposes provided herein prior to the Effective Date.

4. Use of the Easement Area. The easements granted hereunder shall be for the sole purposes of (i) providing the members of the general public with a non-exclusive way of passage through the Easement Area solely for the permitted public uses described in paragraph 4.a.

below, and (ii) allowing ingress and egress only for police, maintenance/sanitation personnel and/or emergency personnel of the City for the purposes described in (and the City's performance of its obligations under) this Agreement, in each case subject to the terms, conditions and restrictions set forth herein.

a. Permitted Public Uses. Owner and the City acknowledge and agree that the permitted uses of the Easement Area by members of the general public during Operating Hours are as follows: jogging, walking or hiking along the bay; periodic and reasonable respites by members of the public using the Baywalk to enjoy the view or to rest.

b. Prohibited Public Uses. Owner and the City acknowledge and agree that the following uses of the Easement Area are expressly prohibited: Easement Beneficiaries loitering and consuming alcohol on the Easement Area; Easement Beneficiaries using the Easement Area for destination activities including, but not limited to, fishing, picnicking and camping; using chairs, tents, or other temporary or permanent furniture during the Operating Hours, as defined in paragraph 4.c. below; dogs not on leashes; operation of motorized vehicles, skateboards, scooters and bicycles (except by policing authorities, maintenance/sanitation personnel and/or emergency personnel as contemplated hereunder). It is understood and agreed by the parties that use of the Easement Area by the members of the general public is limited to the permitted public uses expressly stated in this Agreement and that no other use by members of the general public shall be implied or construed, irrespective of whether or not such use is expressly prohibited by the terms hereof.

c. Operating Hours. The Easement Area shall be open to the general public every day from sunrise to sunset ("Operating Hours"). Owner will install locking gates on the utmost northern and southern ends of the Easement Area, as contemplated by the Settlement Agreement. Owner shall neither open the gates later than sunrise, nor close the gates before sunset. Temporary closures of the Easement Area during Operating Hours for the purpose of maintenance and repair; or closures of the Easement Area during Operating Hours when there is a Force Majeure Event (as defined in paragraph 13 below); or temporary closures of the Easement Area during Operating Hours pursuant to paragraphs 6.a. or 6.c. of this Agreement, shall not be deemed a breach of this Agreement by Owner. Owner shall provide the City with reasonable advance notice of any scheduled maintenance and repair that will result in a temporary closure of the Easement Area during Operating Hours, and shall re-open the Easement Area immediately following the conclusion of any such maintenance or repair. Owner shall also provide the City with notice of any closure of the Easement Area during Operating Hours due to a Force Majeure Event as soon as reasonably practicable under the circumstances.

5. Maintenance of Easement Area. Except as otherwise expressly provided herein, Owner shall, at its sole cost and expense, maintain the Easement Area and abutting seawall in accordance with all applicable laws, codes, rules, orders, approvals and regulations of Miami-Dade County, the City of Miami Beach and any other governmental or quasi-governmental agency or authority with jurisdiction over the Easement Area, and shall keep the Easement Area in good condition, reasonable wear and tear excepted. Notwithstanding the foregoing, the City shall be responsible for the maintenance and repair of the Easement Area and/or abutting seawall necessitated by or required as a result of the negligence or willful misconduct of the City, its



agents, employees, contractors, vendors, operators, representatives or licensees, in its or their use of the Easement Area pursuant to the terms of this Agreement, or exercise of rights or performance of obligations hereunder.

6. City's Obligations.

a. Police. The City will police the Easement Area in a manner consistent with the other sections of baywalks owned by the City, or on which the City has obtained rights of access through easement, covenant or otherwise, and which are open to the general public (hereinafter referred to as "publicly accessible baywalks in the City"). Owner agrees to submit legitimate complaints about any alleged noncompliance by the City with this requirement to the City Manager, in writing, for his/her review and appropriate action. If the parties are still unable to resolve disputes regarding the policing of the Easement Area, the parties agree that an independent mutually agreed upon neutral arbitrator will resolve such disputes under American Arbitration Association rules, as is provided in paragraph 10 of this Agreement. If the independent arbitrator concludes that the City has breached its duty to police the Easement Area, Owner shall be temporarily relieved of the obligation to provide public access to the Easement Area until the City's failure to police is remedied to the satisfaction of the arbitrator. The City's adoption of and reasonable good faith efforts to enforce security measures consistent with that used in or on other sections of the publicly accessible baywalks in the City shall be accepted as satisfaction of the City's obligations under this paragraph 6.a. Any noncompliance by Owner and/or its officers, employees, contractors, residents or authorized guests with any rules, regulations, ordinances or statutes applicable to the baywalk within the Easement Area (and not materially inconsistent with the provisions of this Agreement or the Settlement Agreement) shall not be a basis for any legitimate complaint about alleged City noncompliance with, or for temporary closure of the Easement Area pursuant to, this paragraph 6.a.

b. Sanitation. The City will, at its expense, provide sanitation services to the Easement Area, including, without limitation, removal of rubbish from the Easement Area and cleaning the Easement Area, including the seawall cap within the Easement Area, according to the City's normal cleaning schedule for similar publicly accessible facilities. Owner will be responsible for cleaning the Easement Area after any private events that occur during non-Operating Hours.

c. Public Baywalk Master Plan. Within the time period commencing on the Stipulated Judgment Effective Date and ending on the tenth (10th) yearly anniversary thereof, the City must satisfy the following two (2) conditions in order to avoid, without limitation, the potential closure of the Easement Area from the rest of the Baywalk:

- i. The City must achieve a continuous publicly accessible connection from the Easement Area to Lincoln Road either as shown on the City of Miami Beach's "Public Baywalk Master Plan" and as described in the LTC 088-2009, both of which are attached hereto as composite Exhibit C, or indirectly through Lincoln Terrace. However, if the public access to Lincoln Road is provided indirectly through Lincoln Terrace, then the entire route from Lincoln Terrace to Lincoln Road shall be streetscaped

and adequately lighted in accordance with the adopted streetscape plan for the West Avenue - Bay Road area, "West Avenue – Bay Road, Basis of Design Report, City of Miami Beach, Final Report," February 23, 2007, prepared by Glatting Jackson Kercher Anglin Lopez Rinehart, Inc., as may be amended from time to time; and

- ii. The City must have exercised reasonable effective efforts to progress its Public Baywalk Master Plan as shown and described in composite Exhibit C attached hereto. The City will be deemed to have satisfied the requirements of this paragraph 6.c.ii if the City and/or any third party property owner (other than Owner) make efforts to obtain permits (other than City of Miami Beach permits) for the construction of, or exercise other efforts in furtherance of constructing, any publicly accessible Baywalk improvements (including but not limited to any segment or connection) from 5<sup>th</sup> Street to Lincoln Road, and the out of pocket costs or expenses of such efforts individually or collectively exceed \$250,000.

If the foregoing conditions are not met prior to the end of the ten-year time period set forth above, then Owner may request arbitration by an independent mutually agreed upon neutral arbitrator, under American Arbitration Association rules as provided in paragraph 10 below, to determine appropriate solutions, including temporary closure of public access to the Easement Area until the unmet condition(s) is/are satisfied. The failure of the City to obtain public access rights to any property or properties shall not constitute a Force Majeure Event (pursuant to paragraph 13 below) excusing the City's performance of its obligations under this paragraph 6.c.

d. Rules and Regulations. Following completion of a continuous publicly accessible Baywalk from 5<sup>th</sup> Street to Lincoln Road as described in paragraph 6.c. above, the City Commission may adopt uniform rules and regulations concerning the hours of operation, the opening and closing of gates and the permitted uses of the Baywalk (including the baywalk within the Easement Area) not materially inconsistent with the terms and provisions of this Agreement or the Settlement Agreement. In the event of any conflict between an existing City ordinance, rule and/or regulation concerning the hours of operation, the opening and closing of gates and the permitted uses of the Baywalk (including the baywalk within the Easement Area), the provisions of this Agreement and/or the Settlement Agreement shall prevail as to the baywalk within the Easement Area.

7. Signage. Owner shall post signs at all access points to the Easement Area that display the Operating Hours and summarize the use restrictions described in this Agreement as contemplated by the Settlement Agreement.

8. Reservation. Owner hereby reserves all rights of ownership in and to the Easement Area which are not inconsistent with the easement and rights granted herein, including, without limitation, the right to grant further easements on, over and/or across such area and all other uses not interfering with the uses permitted herein.

9. City's Liability. The City will assume and defend all liability of Owner, as set forth in this paragraph 9, within the Easement Area, except for any liability arising from the

gross negligence or willful acts of the Owner, its officers and employees, and except for activities that occur from sunset to sunrise (while the baywalk within the Easement Area is closed to the public in accordance with paragraph 4.c. above). Nothing contained in this paragraph 9 or elsewhere in this Agreement is in any way intended to be a waiver of the limitations on the City's liability to third parties as set forth in Section 768.28, Florida Statutes; however, the limitations under said statutory provision shall not apply to the City's contractual obligations to defend Owner and to cover, pay and/or reimburse any and all costs, expenses, liabilities, claims, actions, causes of action, losses, demands and damages, including, without limitation, reasonable attorneys' fees (including the cost of in-house counsel) and disbursements at the trial level and all levels of appeal, relating to death of or injury to persons, or loss of or damage to property, incurred by Owner and occurring within the Easement Area, resulting from, arising out of, or incurred in connection with, use of the Easement Area by Easement Beneficiaries.

10. Enforcement. No action to enforce this Agreement through arbitration or through the Court in the Flamingo Litigation, as set forth in this paragraph 10, shall be pursued by any party to this Agreement absent 30 days prior written notice of the alleged breach, followed by an opportunity to cure, which shall be no less than 60 days in length. If the alleged breach is not cured to the satisfaction of the complaining party, the parties shall attempt in good faith to mediate the dispute. As to paragraphs 6.a. and 6.c. of this Agreement, when and if mediation fails, the sole remedy for such a dispute shall be binding arbitration. The dispute shall be administered in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association ("AAA") and Florida substantive law shall apply. The parties shall attempt to designate one neutral arbitrator from the AAA or elsewhere. If they are unable to do so within 30 days after written demand therefor, then the AAA shall designate a neutral arbitrator. No arbitration hearing may proceed without a representative of all parties present. In the event the AAA's expedited procedures are used, notice by telephone must be supplemented immediately by facsimile or electronic mail. No dispute shall be resolved on documents alone except by agreement between the parties. The arbitration shall be final and binding, and enforceable with the Court in the Flamingo Litigation. The arbitrator shall provide a written explanation of the basis of any award. The arbitrator shall award reasonable attorneys' fees (including those of in-house counsel) and costs to the substantially prevailing party and charge the cost of arbitration to the party which is not the substantially prevailing party. For all other provisions of this Agreement, when and if mediation fails, enforcement shall be with the Court in the Flamingo Litigation, unless City and Owner agree in writing to utilize arbitration.

11. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Owner, and its successors and assigns, except that Owner or such successor or assignee, as the case may be, shall be released from all future obligations hereunder upon conveyance of its interest in the Easement Area; provided, however, that any such transferee of Owner or its successor or assignee, as the case may be, shall be bound by all terms and conditions of this Agreement. The easements hereby granted and the requirements herein contained are intended as, and shall be, covenants running with the land with respect to and binding on the Easement Area. This Agreement shall inure to the benefit of and be binding upon the City, and the City shall not be permitted to assign, transfer or convey all or any part of its rights and interests under this Agreement (including its rights and interests in and to the

easements granted hereunder), except to a successor municipal corporation; provided, however, that nothing herein shall be deemed a limitation on the City's right to permit the Easement Beneficiaries to use the Easement Area, subject to and in accordance with the terms of this Agreement.

12. Amendments; Termination. This Agreement may not be amended, modified or terminated except by written agreement of the City and all of the then fee owner(s) of the Easement Area, and the holders of any mortgages of record encumbering same, provided that with respect to any portion of the Easement Area for which a condominium, property owner's or master association then exists, the written agreement of such association (and its mortgagee, if any) shall be required in lieu of the fee owner(s) thereof and their mortgagees. No modification or amendment of this Agreement shall be effective unless in writing and recorded in the Public Records of Miami-Dade County, Florida.

13. Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, riot, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (each such event is referred to herein as a "Force Majeure Event"), excluding the financial inability of such party to perform, shall excuse the performance by such party for a period of time equal to any such period of prevention, delay or stoppage. Any party seeking to invoke this paragraph shall provide written notice to the other party as soon as reasonably practicable under the circumstances.

14. Miscellaneous.

a. Closures. No breach of the terms set forth in this Agreement shall result in the closure or reverter of the public access to the Easement Area provided for herein, except for temporary closure as provided in paragraphs 6.a. and 6.c. above.

b. Counterparts. This Agreement may be executed in any number of counterparts and by the separate parties hereto in separate counterparts, each of which shall be deemed an original, but all of which (when taken together) shall constitute one and the same instrument.

c. Construction. Reference to any paragraph, section, exhibit, or subpart thereof, unless otherwise provided, shall refer to this Agreement. In construing this Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular, and reference to any particular gender shall be held to include every other and all genders. Use of the term "including" shall mean "including, without limitation". Each of the parties hereto and their counsel have reviewed and revised, or requested revisions to, this Agreement, and the usual rule of construction that any ambiguities are to be resolved against the drafting party shall be inapplicable in the construction and interpretation of this Agreement and any amendments or exhibits to this Agreement.

d. Titles of Paragraphs and Sections. The titles of the several parts, paragraphs and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

e. Estoppel Certificates. Upon the prior written request of either party, the other party hereto shall furnish the requesting party an estoppel certificate reasonably satisfactory to the requesting party.

f. Notices. Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

If to the City at:	City of Miami Beach 1700 Convention Center Drive Miami Beach, Florida 33139 Attn: City Manager
With a copy to:	City of Miami Beach 1700 Convention Center Drive Miami Beach, Florida 33139 Attn: City Attorney
If to the Owner:	MCZ/Centrum Flamingo III, LLC c/o AIMCO 4582 South Ulster Street Parkway Denver, Colorado 80237 Attn.: Office of General Counsel
With a copy to:	Flamingo South Beach Apts. 1504 Bay Road Miami Beach, Florida 33139 Attn.: Community Manager

Notices personally delivered or sent by overnight courier shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given three (3) days after deposit in the U.S. Mail.

g. Governing Laws. The laws of the State of Florida shall govern the interpretation, validity, performance and enforcement of this Agreement. Venue for any action brought hereunder shall be proper exclusively in Miami-Dade County, Florida.

h. Exhibits. All of the Exhibits attached to this Agreement are incorporated in, and made a part of, this Agreement.

i. Title. This Agreement is subject to all matters of record and all conditions and reservations affecting title to the Easement Area.

j. Conflicts. In the event of any inconsistencies, ambiguities or contradictions between this Agreement and the Settlement Agreement, the provisions of the Settlement Agreement shall control and prevail.

*[The remainder of this page is intentionally left blank.]*

EXECUTED as of the date and year first above written.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

**THE CITY OF MIAMI BEACH,  
FLORIDA**, a Florida municipal corporation

\_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

Approved as to form and language  
and for execution:

\_\_\_\_\_  
City Attorney Dated \_\_\_\_\_

STATE OF FLORIDA            )  
  )  
COUNTY OF MIAMI-DADE    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009 by \_\_\_\_\_ and \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, respectively, for the City of Miami Beach, Florida, on behalf of the City.

By: \_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed, typed or stamp

My Commission Expires:

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

**MCZ/CENTRUM FLAMINGO III, L.L.C.,**  
a Delaware limited liability company

\_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
  )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009 by \_\_\_\_\_, as \_\_\_\_\_ of MCZ/CENTRUM FLAMINGO III, L.L.C., a Delaware limited liability company, on behalf of the company.

By: \_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed, typed or stamp

My Commission Expires:



**JOINDER**

PNC ARCS LLC, a Delaware limited liability company, the holder of that certain Amended and Restated Multifamily Mortgage, Assignment of Rents and Security Agreement dated as of June 30, 2009 and recorded on July 6, 2009 in Official Record Book 26928, at Page 2243 of the Public Records of Miami-Dade County, Florida, hereby joins in and consents to the recording of the foregoing Agreement, and agrees that the terms of the Agreement are and shall be binding upon the undersigned and its successors in title.

**PNC ARCS LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS  
 COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009 by \_\_\_\_\_, as \_\_\_\_\_ of PNC ARCS LLC, a Delaware limited liability company, who has produced \_\_\_\_\_ as identification and acknowledged before me that they executed same for the purposes therein expressed.

NOTARY PUBLIC:

Sign: \_\_\_\_\_  
 Print: \_\_\_\_\_  
 My Commission Expires: \_\_\_\_\_  
 State of Florida at Large (Seal)

## EXHIBIT A

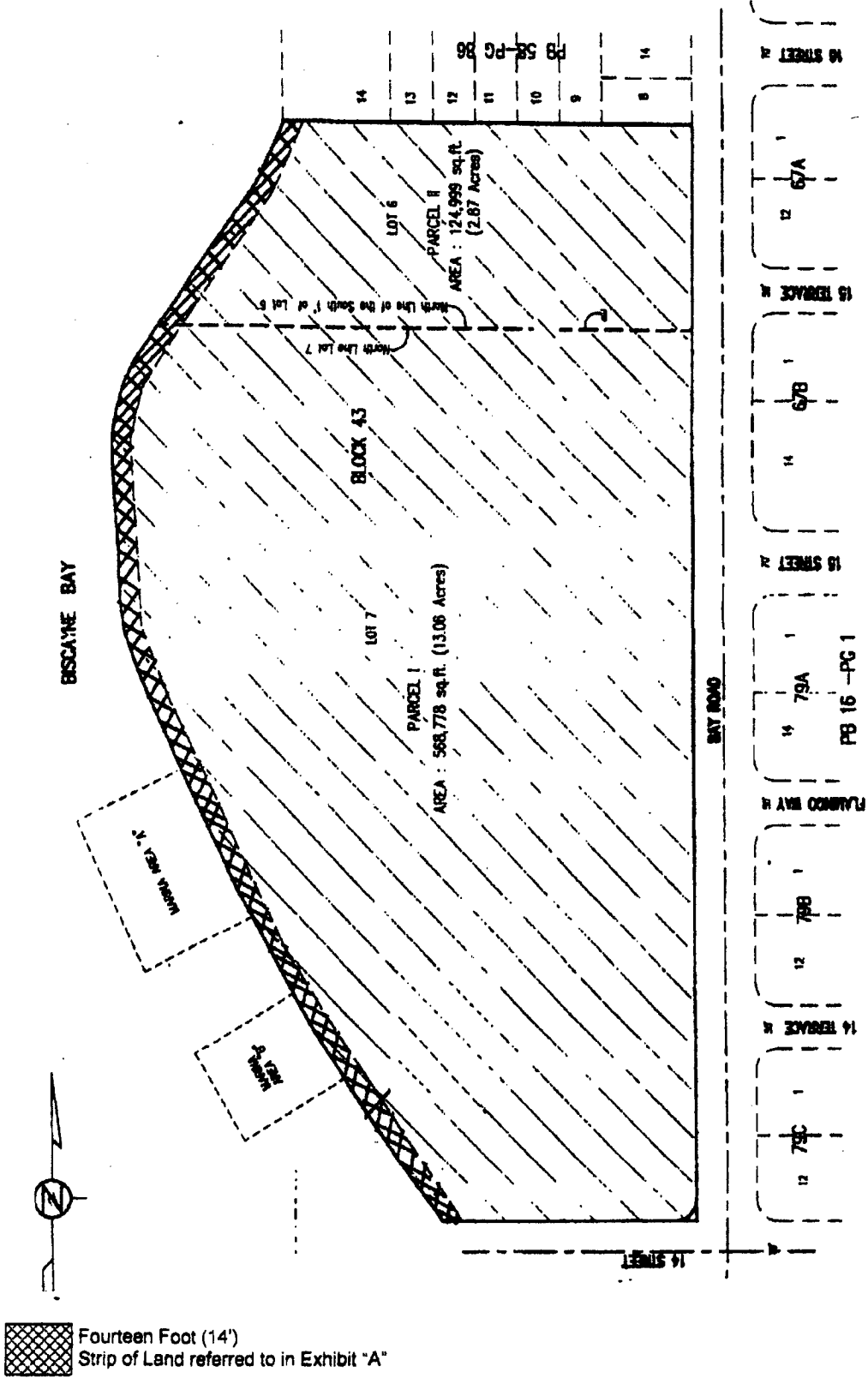
### LOCATION OF EASEMENT AREA

At the time the Agreement is recorded, the "Easement Area" shall temporarily refer to a meandering strip of land that is fourteen (14') feet in width that lies immediately adjacent and parallel to the entire westernmost boundary of the Flamingo Property, including the seawall cap. The above described fourteen (14') foot strip of land is in the general location depicted in Exhibit A-1 attached hereto. On the Effective Date, the final and actual "Easement Area" shall refer to and shall be a strip of land that runs immediately adjacent and parallel to the entire westernmost boundary of the Flamingo Property, including the seawall cap, and that extends to the easternmost edge of either the pedestrian walkway actually constructed within the foregoing fourteen (14') foot strip of land or if a fence, wall or other barrier shall be installed east of the pedestrian walkway and within the foregoing fourteen (14') foot strip of land, then to the westernmost edge of such fence, wall or other barrier. All other portions of the Flamingo Property, including without limitation any portion of the aforementioned fourteen (14') foot strip of land lying outside of the final and actual Easement Area, shall be excluded from the Easement Area for purposes of the Agreement.

EXHIBIT A-1

SKETCH OF 14 FOOT AREA

# EXHIBIT A-1



Not Drawn to Scale

EXHIBIT B

LEGAL DESCRIPTION OF FLAMINGO PROPERTY

**(FLAMINGO PROPERTY)**

Lot 6 and Lot 7, in Block 43, of ALTON BEACH BAYFRONT SUBDIVISION, according to the plat thereof as recorded in Plat Book 4, Page 125, of the Public Records of Miami-Dade County, Florida.

COMPOSITE EXHIBIT C

PUBLIC BAYWALK MASTER PLAN  
AND LTC 088-2009

**PUBLIC BAYWALK MASTER PLAN**  
 (FROM 5TH STREET TO LINCOLN ROAD)  
 CITY OF MIAMI BEACH







# PUBLIC BAYWALK MASTER PLAN

(FROM 5TH STREET TO LINCOLN ROAD)  
CITY OF MIAMI BEACH



- LEGEND
- EXISTING BAYWALK
  - PROPOSED BAYWALK
  - EXISTING SIDEWALK
  - PROPOSED SIDEWALK
  - EXISTING PUBLIC ACCESS
  - PROPOSED PUBLIC ACCESS

M/10/08



# MIAMI BEACH

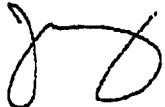
OFFICE OF THE CITY MANAGER  
NO. LTC # 088-2009

RECEIVED

2009 APR -1 AM 9:51  
CITY CLERK'S OFFICE

## LETTER TO COMMISSION

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager 

DATE: March 30, 2009

SUBJECT: Update on Public Baywalk Along West Avenue

The purpose of this LTC is to update the Mayor and City Commission on the status of public bay walks at the rear of the properties along West Avenue from 5<sup>th</sup> Street to Lincoln Road.

1. 520 - 540 West Avenue: Bentley Bay Condominium (DRB File 9802)

A baywalk has been constructed upland and is accessible, but it is not connected to the Floridian property to the north due to existing wall. According to building permit plans on file, this baywalk is publicly accessible. Discussions with project representatives are ongoing to provide the connection and confirm public accessibility.

2. 650 West Avenue: Floridian Condominium (DRB File 5517)

A bay walk has been constructed upland and is accessible, but it is not connected to the neighboring properties. According to the plans approved by the County's Shoreline Development Review Committee, this baywalk is publicly accessible. Regarding the connection to the south, such SDRC plans show an anticipated connection to the south, but see discussion about wall above. To the north, no baywalk presently exists.

3. 800 West Avenue: South Bay Club Condominium

No development order on this property was ever imposed as it pre-dates the creation of the design review process, and no bay walk exists. Staff has evaluated the feasibility of a baywalk in this location and it appears that an overwater, as opposed to upland, connection would be the most feasible option at some point in the future.

4. 900 West Avenue: Southgate Towers Apartments (Rentals)

No development order on this property was ever imposed as it pre-dates the creation of the design review process; and no bay walk exists. Owners have begun discussions with the Planning Department regarding an upland public baywalk connection through their property, as part of a larger renovation project. However, there is no timetable for such renovation project.

5. Western Terminus of Tenth Street

Construction documentation for a proposed new streetscape, seawall and landscape project, with public bay walk access, has been completed and is waiting additional funding. Such funding was part of the design review approval provided as part of the Mondrian Hotel project (in the event their overwater baywalk was not approved by the State, and an upland baywalk were not approved by the adjoining condominium properties). This funding is presently also being challenged by the Mondrian Hotel on appeal to the City Commission (expected to be heard at the April City Commission meeting).

CMB1863

6. 1000-1200 West Ave: Mondrian Hotel/Mirador Condos

Pursuant to the Final Order for DRB File 20181, an overwater public bay walk has been designed and is part of the permit plans for the Mondrian Hotel project. The proposed overwater baywalk is currently going through the County & State permit review process, which is exceedingly complicated, and subject to strict state legislative standards for approval, and there is no indication that it will receive approval for construction. Alternatively, an upland baywalk east of the seawall is provided for in the DRB Final Order, yet this is subject to the approval of the immediately abutting condominium associations to the north and south of the Mondrian Hotel.

7. 1228 West Avenue: Bay View Terrace (Condo)

As part of a recent Conditional Use approval by the Planning Board for the reconstruction of a pier and dock lost during a hurricane, the Condominium Association agreed to design their replacement pier and dock so that it can accommodate an overwater baywalk connection behind its property. No arrangements were made for private funding of this connection.

8. 1250 West Avenue: Bay Garden Manor (Condo)

No development order on this property was ever imposed as it pre-dates the creation of the design review process, and no bay walk exists. Staff has evaluated the feasibility of a baywalk at this location and it appears that an overwater, as opposed to upland, connection would be the most feasible option. There is no timetable for this to be part of any future project.

9. Monad Terrace: Single Family Homes

No development order on this property was ever imposed as it pre-dates the creation of the design review process, and no bay walk exists. While these properties are single family homes, the properties are zoned for multi-family residential. Any future aggregation of the bayfront lots for a larger new development along the water would present an opportunity for an upland public baywalk that could connect directly to the property to the immediate north (Waverly). Staff has evaluated the feasibility of a baywalk at this location absent the aggregation of the bayfront lots and it appears that an overwater, as opposed to upland, connection would be the most feasible option, with cooperation by the homeowners.

10. 1330 West Avenue: Waverly (DRB File 9024)

An upland public bay walk has been constructed, pursuant to Design Review Board and County Shoreline Development Review Committee Orders. Litigation with the condominium association regarding public access has concluded in favor of the City, and the association has completed repairs to the seawall. The baywalk is now open to the public.

11. Western Terminus of Fourteenth (14<sup>th</sup>) Street

Public Park and accessible public bay walk are completed and open.

12. 1500 Bay Road: Flamingo (DRB File 8191)

The Grand Flamingo project was approved by the Design Review Board (DRB) on November 4, 1997. Since the original approval, the subject project has become legal non-conforming in terms of overall height, FAR, parking, and with regard to the parking pedestal design. Condition 9 of the Final Order for the project states the following:

*A baywalk extension, from the south side of the property north into the future park area, shall be required.*

Although the bay walk was constructed, with direct access from the 14<sup>th</sup> Street Park, the above noted condition has not been complied with as a fence has been constructed along the north and south property lines prohibiting public access to the bay walk, as required by the DRB Final Order.

The owners of the Flamingo have sued the City on issues involving public baywalk access and the case is pending in Federal Court. The City has retained outside counsel and is actively defending the case.

13. 1445 16<sup>th</sup> Street & 1491 Lincoln Terrace: Mae Capri Condominium (DRB File 17716)  
Pursuant to the Final Design Review Board Order, an upland public bay walk has been completed and is open to the public. The public bay walk is operating independent of any north or south connections.

14. 1450 Lincoln Road: Lincoln Bay Towers Condominium  
No development order on this property was ever imposed as it pre-dates the creation of the design review process, and no bay walk exists. The existing rear pool deck extends over the seawall and projects into the bay. Consequently the only method of connection from the western street-end of Lincoln Road to the north side of the Mae Capri baywalk is to construct an overwater connection. The Public Works Department is working with an environmental consultant to determine the feasibility of and preliminarily design this option.

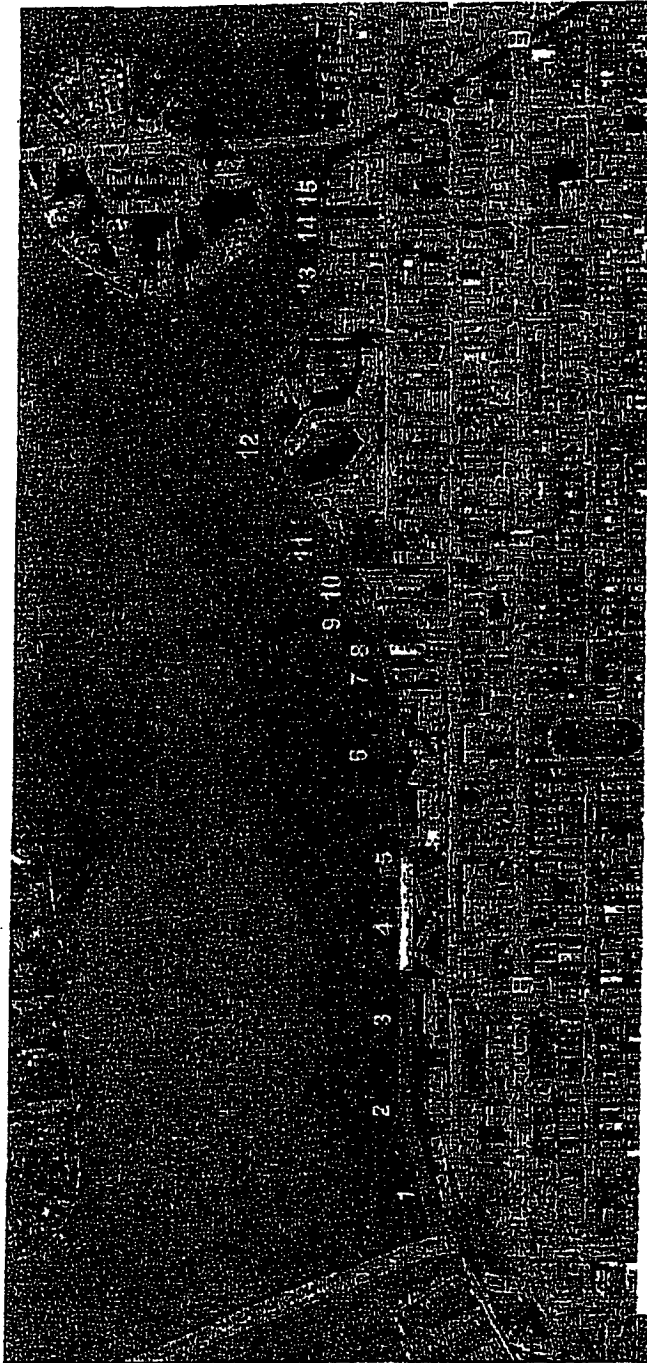
15. Lincoln Road Street End  
Permitting is complete and construction of street end is anticipated to be completed by September 2009.

16. Baywalk Master Plan  
A Notice to Proceed (NTP) was issued to Coastal Systems International on March 9<sup>th</sup>, 2009 to engage in the development of a Baywalk Master Plan that will include the above properties between 5<sup>th</sup> Street and Lincoln Road. In addition, a conceptual design for the specific connection between the Lincoln Road Street-end and the Mae Capri Condominium baywalk will be developed after ascertaining permitting feasibility from the appropriate regulatory agencies.

JMG:JGG:TRM  
F:\PLANS\ALL\CM\_RESP\Baywalk Update March 2009.ltc.doc

ATTACHMENT

C: Jose Smith, City Attorney  
Gary Held, First Assistant City Attorney  
Bob Parcher, City Clerk  
Robert Middaugh, Assistant City Manager  
Fernando Vazquez, City Engineer  
Jorge G. Gomez, Planning Director  
Thomas R. Mooney, Design and Preservation Manager  
Lisa Botero, Environmental Resource Manager



- Existing Upland Beywalk
- Potential Beywalk Overwater Solution
- Potential Beywalk Upland Solution
- Existing Public Streetends

EXHIBIT D

NOTICE REGARDING FINAL EASEMENT AREA

This instrument was prepared by  
and after recording return to:

[     ]

**NOTICE REGARDING EASEMENT AREA**

**THIS NOTICE REGARDING EASEMENT AREA** (the "Notice") is made this \_\_\_\_\_  
day of \_\_\_\_\_ 20\_\_\_\_, by \_\_\_\_\_, a \_\_\_\_\_ (the "Owner"), whose mailing  
address is \_\_\_\_\_.

**RECITALS**

WHEREAS, The City of Miami Beach, a municipal corporation of the State of Florida (the "City"), and MCZ/Centrum Flamingo III, L.L.C., a Delaware limited liability company, entered into that certain Declaration of Restrictions and Easement Agreement dated \_\_\_\_\_, 20\_\_ and recorded in Official Records Book \_\_\_, Page \_\_\_ of the Public Records of Miami-Dade County, Florida (the "Easement Agreement"). Capitalized terms not defined herein shall have the meanings ascribed thereto in the Easement Agreement.

WHEREAS, Owner is the fee owner of the Easement Area, as defined in the Easement Agreement.

WHEREAS, the actual and final location of the Easement Area has been determined pursuant to the terms and conditions of the Easement Agreement.

WHEREAS, Owner, pursuant to paragraph 2 of the Easement Agreement, desires to execute and record this Notice to provide record notice of the actual and final Easement Area.

NOW, THEREFORE, pursuant to the terms and condition of the Easement Agreement, Owner hereby provides notice of the following:

The final and actual "Easement Area." as defined in the Easement Agreement, shall permanently refer to and shall be that certain land described on Exhibit "A" attached hereto.

[THE REST OF THIS PAGE WAS INTENTIONALLY LEFT BLANK]

Signed, witnessed, executed and acknowledged on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**WITNESSES:**

**OWNER:**

\_\_\_\_\_  
Signature

Print Name: \_\_\_\_\_

\_\_\_\_\_  
Signature

Print Name: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

SS:

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_, as the \_\_\_\_\_ of \_\_\_\_\_, on behalf of \_\_\_\_\_. He (check one) [ ] is personally known to me or [ ] has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print Name

My Commission Expires:



88

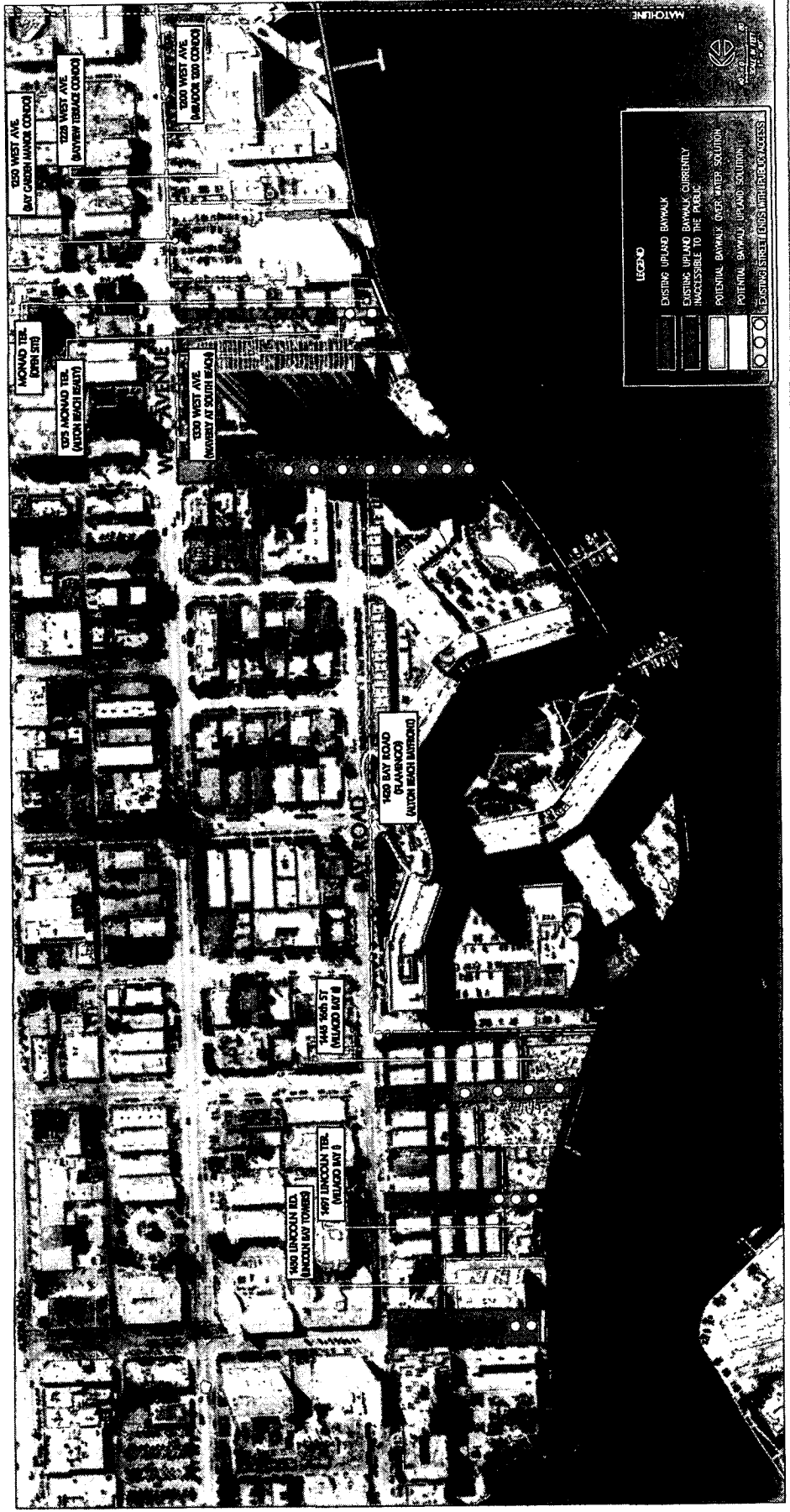
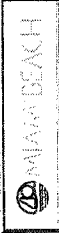
Exhibit "G"

COASTAL

SYSTEMS  
INTERNATIONAL

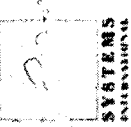
# PUBLIC BAYWALK MASTER PLAN

(FROM 5TH STREET TO LINCOLN ROAD)  
CITY OF MIAMI BEACH



AUTOLINE

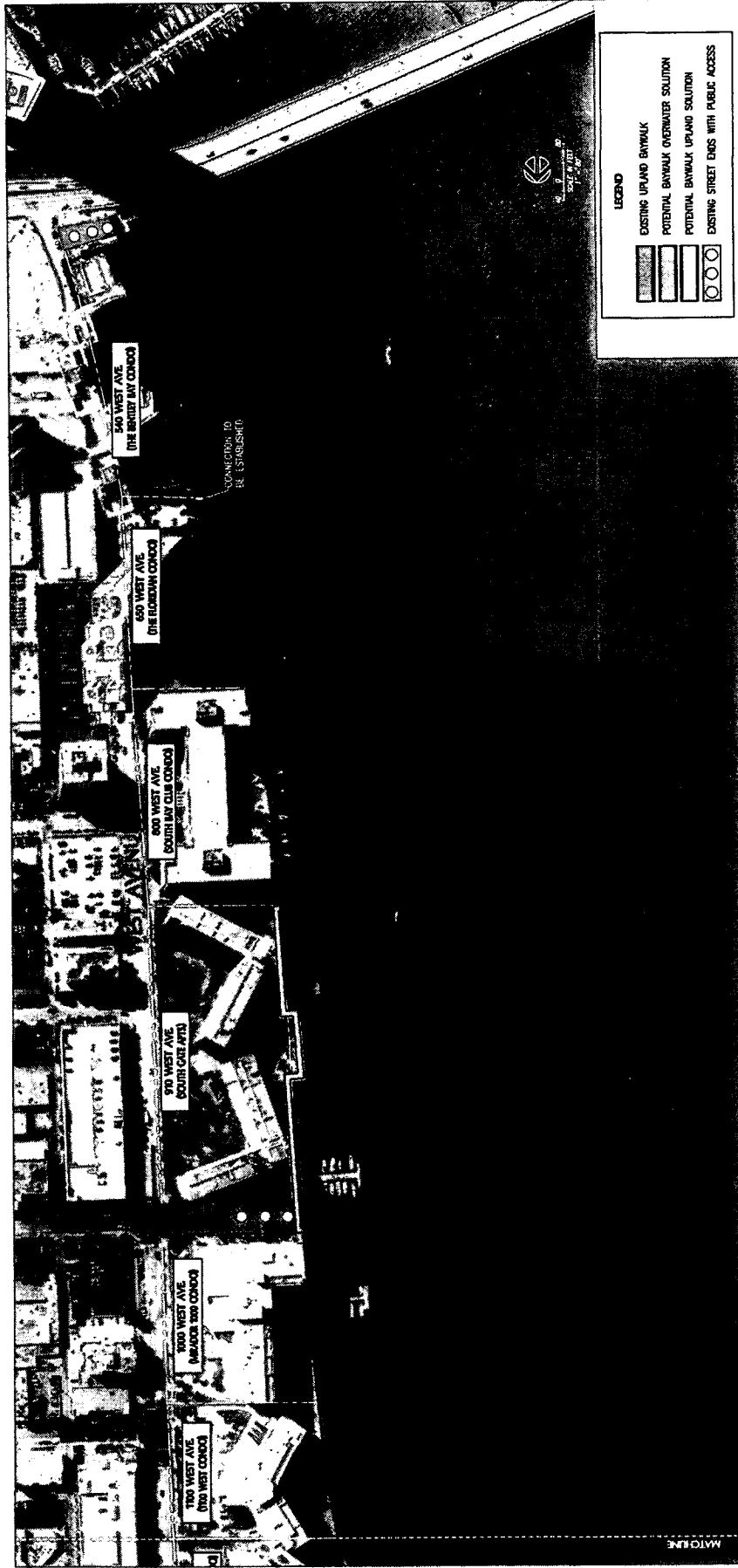
COASTAL



# PUBLIC BAYWALK MASTER PLAN

(FROM 5TH STREET TO LINCOLN ROAD)

CITY OF MIAMI BEACH



LEGEND

	EXISTING UPLAND BAYWALK
	POTENTIAL BAYWALK OVERWATER SOLUTION
	POTENTIAL BAYWALK UPLAND SOLUTION
	EXISTING STREET ENDS WITH PUBLIC ACCESS

MTO LINE

DATE: 03/20/10 BY: [unreadable]



# MIAMI BEACH

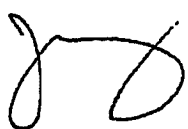
OFFICE OF THE CITY MANAGER  
NO. LTC # 088-2009

RECEIVED

2009 APR -1 AM 9:51

CITY CLERK'S OFFICE

## LETTER TO COMMISSION

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FROM: Jorge M. Gonzalez, City Manager   
DATE: March 30, 2009  
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JMG:JGG:TRM  
F:\PLANNING\ICM\_RESP\Baywalk Update March 2009.ltc.doc  
ATTACHMENT

C: Jose Smith, City Attorney  
Gary Held, First Assistant City Attorney  
Bob Parcher, City Clerk  
Robert Middaugh, Assistant City Manager  
Fernando Vazquez, City Engineer  
Jorge G. Gomez, Planning Director  
Thomas R. Mooney, Design and Preservation Manager  
Lisa Botero, Environmental Resource Manager



-  Existing Upland Baywalk
-  Potential Baywalk Overwater Solution
-  Potential Baywalk Upland Solution
-  Existing Public Streetends