

RESOLUTION No. 23-184

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING A SETTLEMENT AGREEMENT BETWEEN THE CITY OF DORAL AND DORAL COSTA CAPITAL LLC, DORAL COSTA MANAGER, LLC AND OASIS AT DORAL I MANAGER REGARDING SB102 MORATORIUM (ORDINANCE No. 2023-04); PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on March 29, 2023, Florida Governor Ron DeSantis signed SB 102, known as the Live Local Act (hereinafter the “Act”), which became effective on July 1, 2023; and

WHEREAS, on June 12, 2023, Doral Costa Capital LLC, Doral Costa Manager, LLC and Oasis at Doral I Manager (collectively, the “Developer”) submitted an application to the City of Doral (“City”) to develop real property located at 4090 NW 97 Avenue (Folio 35-3029-107-0010), 9800 NW 41 Street (Folio 35-3029-107-0020) and 9850 NW 41 Street (Folio No. 35-3029-107-0030) (collectively, the “Property”) pursuant to the Act (the “Application”); and

WHEREAS, on September 13, 2023, the City adopted Ordinance No. 2023-04, imposing a 6 month moratorium on the acceptance, processing and consideration of all applications for development orders, development permits, building permits and zoning approvals, for all proposed qualifying developments under the Act within the municipal boundaries of the City to allow time for the City to research, analyze, and consider the adoption of potential amendments to the City’s Comprehensive Plan and/or Land Development Regulations, as well as time to review, study, prepare, and adopt the administrative processes and procedures necessary to effectively implement the Act (the “Moratorium”); and

WHEREAS, the Developer has continued to assert that it has statutory, equitable, and other claims against the City as a result of the Moratorium, and has further alleged that it will continue to sustain significant damages if the City were to continue to apply the Moratorium to the Developer's Application; and

WHEREAS, in consideration for allowing the Application to proceed outside of the Moratorium, and in exchange for releasing the City from any and all claims related to the City's adoption of the Moratorium, the imposition of the Moratorium to the Application, and the City's alleged failure or delay in reviewing the Application in accordance with the Act, having arisen on or before the Effective Date of this Agreement, the Developer has proposed to amend its Application pursuant the Act ("Amended Application"), which is substantially in conformity with the conceptual plans proffered to the City, and further voluntarily agrees to limit the development of the Property in accordance with the terms and conditions as more particularly set forth in the Settlement and Release Agreement, attached hereto as Attachment "A"; and

WHEREAS, to avoid the expense, burden and delay of litigation, and without admitting or acknowledging any liability, the City and the Developer wish to affect a complete resolution and settlement of the Developer's claims against the City related to the imposition of the Moratorium to the Grandfathered Application, the City's alleged failure or delay in reviewing the Grandfathered Application in accordance with the Act, and freely and voluntarily enter into this Agreement for that purpose; and

WHEREAS, given the unique impact to the Property, this Agreement does not conflict with Ordinance No. 2023-04 with respect to the acceptance, processing and

consideration of applications for development orders, development permits, building permits and zoning approvals, received by the City pursuant to the Act; and

WHEREAS, the Mayor and City Council find that approval of the Settlement Agreement is in the best interest of the City.

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

Section 1. Recitals. The above recitals are confirmed, adopted, and incorporated herein and made part hereof by this reference.

Section 2. Approval. The Settlement Agreement between the City of Doral and Doral Costa Capital LLC, Doral Costa Manager, LLC and Oasis at Doral I Manager, attached hereto as Exhibit "A", is hereby approved.

Section 3. Authorization. The City Manager is authorized to execute the Settlement Agreement between the City of Doral and Doral Costa Capital LLC, Doral Costa Manager, LLC and Oasis at Doral I Manager, attached hereto as Exhibit "A", on behalf of the City.

Section 4. Implementation. The City Manager and the City Attorney are hereby authorized to take such further action as may be necessary to implement the purpose and the provisions of this Resolution.

Section 5. Effective Date. The Resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by Councilmember Porras who moved its adoption.

The motion was seconded by Vice Pineyro and upon being put to a vote, the vote was as follows:

| | |
|-----------------------------|-----|
| Mayor Christi Fraga | Yes |
| Vice Mayor Rafael Pineyro | Yes |
| Councilwoman Digna Cabral | Yes |
| Councilwoman Maureen Porras | Yes |
| Councilman Oscar Puig-Corve | No |

PASSED AND ADOPTED this 18 day of October, 2023.



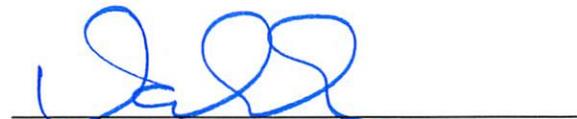
CHRISTI FRAGA, MAYOR

ATTEST:



CONNIE DIAZ, MMC
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:



VALERIE VICENTE, ESQ. for
NABORS, GIBLIN & NICKERSON, P.A.
CITY ATTORNEY

EXHIBIT “A”

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“**Agreement**”) is entered into as of this ____ day of September 2023 (the “**Effective Date**”), by and among the CITY OF DORAL (“**City**”), and DORAL COSTA CAPITAL LLC, DORAL COSTA MANAGER, LLC, and OASIS AT DORAL I MANAGER, and their heirs, successors and assigns (collectively “**Developer**”) (each, a “**Party**”, and collectively, **the “Parties**”).

WHEREAS, Developer is a Florida limited liability company which has legal or equitable interest in the parcels of real property located at 4090 NW 97 Avenue (Folio 35-3029-107-0010), 9800 NW 41 Street (Folio 35-3029-107-0020) and 9850 NW 41 Street (Folio No. 35-3029-107-0030) (collectively, the “**Property**”) (to wit: the Developer, its affiliates, or assignees own the Property); and

WHEREAS, on March 29, 2023, Florida Governor Ron DeSantis signed SB 102, known as the Live Local Act (hereinafter the “**Act**”), which became effective on July 1, 2023; and

WHEREAS, on June 12, 2023, the Developer submitted an application to develop Property pursuant to the Act (the “**Grandfathered Application**”); and

WHEREAS, on July 26, 2023, the City Council held a Special Council Meeting on the Act and agreed to move forward with imposing a 6 month moratorium on the acceptance, processing and consideration of all applications for development orders, development permits, building permits and zoning approvals, for all proposed qualifying developments under the Act within the municipal boundaries of the City to allow time for the City to research, analyze, and consider the adoption of potential amendments to the City’s Comprehensive Plan and/or Land Development Regulations, as well as time to review, study, prepare, and adopt the administrative processes and procedures necessary to effectively implement the Act (the “**Proposed Moratorium**”); and

WHEREAS, the Developer, through its legal counsel, filed a Notice of Objection with the City on August 11, 2023, contesting the City’s authority to adopt the Proposed Moratorium, stating that the Developer would be irreparably harmed by the Proposed Moratorium, and asserting that the “Moratorium should be withdrawn and, at a minimum, the Grandfathered Application should continue to be processed to mitigate any additional damages” to the Developer; and

WHEREAS, on August 23, 2023, the City held its first public hearing on Ordinance No. 2023-04, which provided for the imposition and adoption of the Proposed Moratorium, which was unanimously approved by the City Council; and

WHEREAS, in support of Ordinance No. 2023-04, the City developed and published a “Plan of Action” memorandum, detailing the various amendments to the City’s Land Development Regulations and Comprehensive Plan to be addressed during the pendency of the Proposed Moratorium; and

WHEREAS, on September 13, 2023, the City held another public hearing on Ordinance No. 2023-04, which ordinance was [unanimously approved and adopted on second reading by the City Council]; and

WHEREAS, with the adoption of Ordinance No. 2023-04, the Proposed Moratorium went into effect (the “**Moratorium**”); and

WHEREAS, the Developer has continued to assert that it has statutory, equitable, and other claims against the City as a result of the Moratorium, and has further alleged that it will continue to sustain significant damages if the City were to continue to apply the Moratorium to the Developer’s Grandfathered Application; and

WHEREAS, the Developer, having been the sole entity to file an application with the City pursuant to the Act prior to the adoption of the Moratorium, has asserted that it is uniquely impacted

by the Moratorium, and has petitioned the City to be allowed to proceed outside and unaffected by the Moratorium as a grandfathered application; and

WHEREAS, in consideration for allowing the Grandfathered Application to proceed outside of the Moratorium, and in exchange for releasing the City from any and all claims related to the City's adoption of the Moratorium, the imposition of the Moratorium to the Grandfathered Application, and the City's alleged failure or delay in reviewing the Grandfathered Application in accordance with the Act, having arisen on or before the Effective Date of this Agreement, the Applicant has proposed to amend its Grandfathered Application pursuant to the Act ("**Amended Application**"), which is substantially in conformity with the conceptual plans attached hereto as Exhibit "A", and further voluntarily agrees to limit the development of the Property in accordance with the terms and conditions stated herein, to in part, align with the City's Plan of Action; and

WHEREAS, to avoid the expense, burden and delay of litigation, and without admitting or acknowledging any liability, the Parties to this Agreement now wish to affect a complete resolution and settlement of the Developer's claims against the City related to the imposition of the Moratorium to the Grandfathered Application, the City's alleged failure or delay in reviewing the Grandfathered Application in accordance with the Act, and freely and voluntarily enter into this Agreement for that purpose; and

WHEREAS, given the unique impact to the Property, this Agreement does not conflict with Ordinance No. 2023-04 with respect to the acceptance, processing and consideration of applications for development orders, development permits, building permits and zoning approvals, received by the City pursuant to the Act.

NOW THEREFORE, in consideration of the covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. **Recitals Incorporated.** The Recitals set forth above are hereby incorporated by reference as if the same were fully set forth herein.
2. **Complete Resolution.** It is the intent of this Agreement to confirm the Grandfathered Application, as may be amended, is not subject to the Moratorium and resolve, fully and forever, any and all claims of Developer against the City related to the City's adoption of the Moratorium, the imposition of the Moratorium to the Grandfathered Application, and the City's alleged failure or delay in reviewing the Grandfathered Application in accordance with the Act, having arisen on or before the Effective Date of this Agreement, as it relates to the Property, pursuant to the terms herein. Additionally, the Parties agree to cooperate in good faith with each other and act lawfully.
3. **Existing Rights and Limitations.**
 - a. Notwithstanding any rights and limitations in effect as of the Effective Date of this Agreement, the Parties acknowledge and agree that the Property may currently be developed with certain commercial uses, as specifically delineated in the City's Comprehensive Plan and Land Development Code, to a maximum of 8 stories in height pursuant to the Property's existing Business (B) and Office and Residential (OR) land uses, and Commercial Corridor (CC) and Office-3 (O-3) zoning designations. The Parties further acknowledge and agree that the Act preempts municipalities with respect to limiting height and density associated with the development of the Property, subject to the limitations and exceptions set forth within the Act. Accordingly, in accordance with Section 166.04151(7)(a), F.S., the Property may be developed with multifamily and mixed-use residential uses.
 - b. Except as specifically provided for herein, any amendment to the Grandfathered Application for the Property must also satisfy the City's Land Development Regulations in effect as of June 12, 2023, the submittal date of the Grandfathered Application, and shall be consistent with the Comprehensive Plan also in effect as of June 12, 2023.

- c. The Parties further acknowledge and agree that for purposes of the Amended Application, as may be modified from time to time, development of the Property under the Act shall be governed by the Community Mixed Use (CMU) district standards under Chapter 68, Division 4 of the City's Land Development Regulations, in effect as of June 12, 2023.
 - d. Notwithstanding the foregoing, the City agrees that if the Developer wishes to abandon the Grandfathered Application, as may be amended from time to time, the Developer shall not be precluded from filing a new application so long as said newly filed application complies with the City's Comprehensive Plan and/or Land Development Regulations, as may be amended, in effect at the time of filing, subject to the following limitations:
 - i. If said newly application is filed within 30 months from the Effective Date of this Agreement, the application shall comply with the Developer's Obligations set forth in Section 4 herein.
4. **Developer's Obligations.** As a condition of the City allowing the Amended Application, as may be amended, to proceed outside of the Moratorium, Developer agrees that it shall limit development on the Property, for 30 months from the Effective Date, as follows:
- a. The building height shall be restricted to 8 stories provided that rooftop amenities shall be permitted above the eighth floor.
 - b. The maximum allowable density shall be in accordance with the Act.
 - c. Affordable units shall be integrated with market rate units in the same building(s).
 - d. Provide a mature landscape buffer between the development and adjacent property lines.
 - e. For the southwestern building on the Property, identified as Building 1 on Exhibit A, provide (i) a minimum west side and rear setback of 30 feet from the Property line to the podium, consisting of the parking garage, commercial uses and/or liner units, (ii) on the northwest corner of the tower portion of the Building 1, a minimum aggregate of 75 feet, inclusive of the 30-foot setback from the Property line to the podium, and (iii) on the southeast corner of the tower portion of Building 1, a minimum aggregate of 55 feet, inclusive of the 30-foot setback from the Property line to the podium.
 - f. The Developer shall comply with the procedures to be adopted by the City Council on a future date strictly as it relates to compliance with the duration, monitoring, and enforceability of the statutory affordability requirements of the Act, including but not limited to the recordation of a restrictive covenant, annual reporting, or other legally enforceable agreement or instrument.
5. **City's Obligations.**
- a. As a result of the unique circumstances related to the Grandfathered Application having been filed prior to the adoption of the Moratorium, the City agrees that the Grandfathered Application, as may be amended, will not be subject to the Moratorium. The City agrees that it shall review and process the Grandfathered Application, or any amendment thereto, expeditiously pursuant to the timeframes and manner set forth in the Act, and to apply the City's Comprehensive Plan and/or Land Development Regulations, in effect as of June 12, 2023, which are not superseded by the Act and the terms of this Agreement. Provided that the proposed development complies with the applicable floor area ratio (FAR) limits, the City shall not restrict the Grandfathered Application, as may be amended, below 8 stories.
 - b. The City shall not interfere with any outside agency's reviews of the Amended Application or any modifications thereto.
6. **No Guarantee of Approval.** Developer acknowledges that by entering into this Agreement there is no guarantee that the Amended Application or future applications for development of the Property will be approved. In the event that the Amended Application

is approved as submitted, said approval will be in full satisfaction of any rights the Developer has under the Act.

7. **Release.** Developer, for itself and its successors and assigns, hereby agrees to release, discharge and hold harmless the City, its current or former agents, servants, elected officials, employees, administrators and all other persons who might be liable, or who might be claimed to be liable, none of whom admit any liability to the undersigned but all expressly deny any liability, of and from any and all known or unknown claims in connection with the City's adoption of Ordinance No. 2023-04, the City's imposition of the Moratorium to the Grandfathered Application, the City's alleged failure or delay in reviewing the Grandfathered Application in accordance with the Act that exist through and including the Effective Date (collectively the "**Claims**")—including but not limited to, controversies, judgements, executions, complaints, grievances, liabilities, obligations, promises, agreements, damages, rights, debts, demands, actions, costs, losses, expenses, causes of action of any nature whatsoever, existing now or in the future, whether known or unknown, direct or indirect, including but not limited to claims for rescission, restitution, specific performance, accounting, in equity, violations of state statute, tort, breach of contract, breach of fiduciary duty, injunctive relief, negligence, and fraud, under any municipal, local, state or federal law, common or statutory, related to, concerning, arising, directly, out of any injury, damage, loss or expense incurred. In the avoidance of doubt, the Claims are solely related to Ordinance No. 2023-04 and no releases contained herein shall include any future ordinances, modifications, or extensions related thereto or prevent any Party from enforcing its rights under this Agreement, including any actions at law or equity, such as, but not limited to, claims related to the processing and approval of the Grandfathered Application, Amended Application, as may be amended, or any other application for development of the Property, that may arise following the Effective Date.
8. **Covenants Not to Sue.** Upon obtaining a final development order for the Property, the Developer hereby agrees that it will forever refrain and forbear from commencing, instituting or prosecuting any lawsuit, action or other proceeding of any kind whatsoever directly related to the City's imposition of the Moratorium pursuant to Ordinance No. 2023-04, which will include, but not be limited to, any administrative, quasi-judicial or quasi-administrative proceeding recognized pursuant to Florida or Federal law, by way of action, defense, set-off, cross-complaint, counterclaim or third party action, against the City, based on, relating to, arising out of, or in connection with any Claims released and discharged hereunder up through and including the Effective Date of this Agreement. This covenant not to sue is a material inducement, without which the Parties would not have entered into this Agreement.
9. **Disclaimer of Liability.** By entering into this Agreement, the Parties do not admit, and specifically deny, any violation of any local, state, or federal law, common or statutory. Neither the execution of this Agreement nor the consideration provided for herein shall constitute or be construed as an admission by any party of any fault, wrongdoing or liability, whatsoever, and the Parties acknowledge that all such liability is expressly denied.
10. **Agreement Binding on Future Landowners.** In the event the Developer sells or otherwise lawfully disposes of all or a portion of the Property to a person or entity ("Future Landowner") within 30 months from the Effective Date of this Agreement, said Future Landowner shall be subject to the terms, including timeframes, of this Agreement unless otherwise released by the City Council at a public hearing. Any legal instrument for the sale or transfer of the Property shall provide that the buyer, assignee, transferee or Future Landowner expressly assumes the obligations under this Agreement as provided herein.
11. **Miscellaneous.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter addressed herein and supersedes all prior and contemporaneous negotiations and agreements, oral or written, all of which are deemed incorporated and merged into this Agreement or abandoned. This Agreement cannot be assigned, amended, modified or terminated without the express written consent of all Parties. No waiver of any breach or failure to enforce one or more of the terms and conditions hereof shall be construed as an implied amendment or agreement to modify or

as a waiver of the right to later enforce such terms. If any provision of this Agreement is held invalid, then to the fullest extent permitted by law, such invalidity shall not affect the validity of any other provision of this Agreement. Each Party shall bear its own attorneys' fees and costs. This Agreement shall be covered by and interpreted under the laws of the State of Florida. This Agreement shall be binding on, and shall inure to the benefit of, the Parties, their heirs, successors and assigns. This Agreement may be executed in one or more counterparts, each of which shall be binding and enforceable as an original, and electronic or facsimile signatures shall be deemed valid as originals.

12. **Notice.** Any notices required or permitted to be given shall be provided in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follow:

| | |
|----------------------|---|
| If to City of Doral: | Office of the City Manager City of Doral City Hall 8401 NW 53 Terrace Doral, Florida 33166 |
| With copies to: | Office of the City Attorney City of Doral City Hall 8401 NW 53 Terrace Doral, Florida 33166 |
| If to Developer: | Doral Costa Capital, LLC 18205 Biscayne Blvd., Suite 2202 Aventura, FL 33160 Doral Costa Manager, LLC 18205 Biscayne Blvd., Suite 2202 Aventura, FL 33160 Oasis at Doral I Manager 2875 NE 191 Street, PH4 Aventura, FL 33180 |
| With copies to: | Joseph G. Goldstein, Esq. Holland & Knight 701 Brickell Avenue, Suite 3300 Miami, FL 33131 |

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CITY:

ATTEST:

CITY OF DORAL, FLORIDA
A Florida municipal corporation

City Clerk

By: _____
Print name: _____
Title: _____

WITNESSES:

This _____ day of September, 2023

Signature

Print Name

Approved as to form and legal sufficiency by
City Attorney: _____

Signature

Print Name

IN WITNESS whereof, the parties have signed this Agreement as of the day and year first above written.

WITNESSES:

DORAL COSTA CAPITAL, LLC, a Florida limited liability company

Signature

By: _____

Print Name

Name: _____

Signature

Title: _____

Print Name

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

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2023, by _____, as _____ for DORAL COSTA CAPITAL, LLC, on behalf of the the Company. He/She is personally known to me or has produced _____ as identification, and acknowledged that she did execute this instrument freely and voluntarily for the purposes stated herein.

[NOTARIAL SEAL]

Print Name: _____
Notary Public, State of Florida
Commission #: _____
Mu Commission Expires: _____

WITNESSES:

**DORAL COSTA MANAGER, LLC, a Florida
limited liability company**

Signature

By: _____

Print Name

Name:

Signature

Title:

Print Name

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

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2023, by _____, as _____ for DORAL COSTA MANAGER, LLC, on behalf of the the Company. He/She is personally known to me or has produced _____ as identification, and acknowledged that she did execute this instrument freely and voluntarily for the purposes stated herein.

[NOTARIAL SEAL]

Print Name: _____

Notary Public, State of Florida

Commission #: _____

Mu Commission Expires: _____

WITNESSES:

**OASIS AT DORAL I MANAGER, LLC, a Florida
limited liability company**

Signature

By: _____

Print Name

Name:

Signature

Title:

Print Name

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

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2023, by _____, as _____ for OASIS AT DORAL I MANAGER, LLC, on behalf of the the Company. He/She is personally known to me or has produced _____ as identification, and acknowledged that she did execute this instrument freely and voluntarily for the purposes stated herein.

[NOTARIAL SEAL]

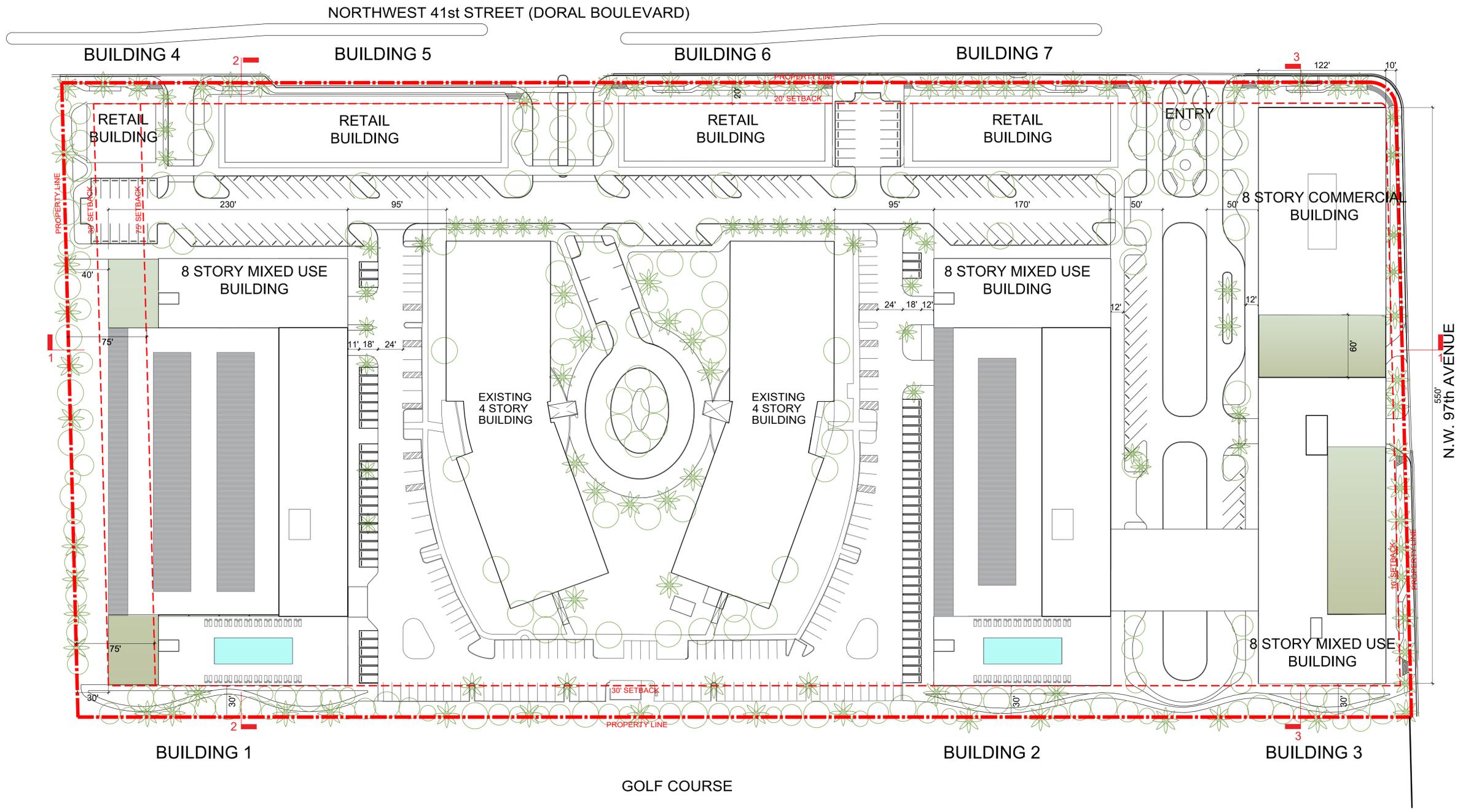
Print Name: _____

Notary Public, State of Florida

Commission #: _____

Mu Commission Expires: _____

EXHIBIT A



OWNER:
THE APOLLO COMPANIES

ARCHITECT:
ARQUITECTONICA
ARQUITECTONICA
2900 Oak Ave
Miami, Florida 33133
Tel: (305) 372-1812
www.arquitectonica.com

CIVIL ENGINEER:
LANGAN

LAND ATTORNEY:
HOLLAND & KNIGHT

LANDSCAPE:
ArquitectonicaGEO

TRAFFIC ENGINEER:
LANGAN

SEAL/SIGNATURE/DATE:

PROJECT STATUS:
OCTOBER 10, 2023

| ISSUE | DESCRIPTION | DATE |
|-------|-------------|------|
| | | |

PROJECT NUMBER:
SCALE: 1"=50'
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DRAWING NAME:
SITE PLAN - CONCEPTUAL

A-101

CONCEPTUAL PLANS FOR REFERENCE ONLY.
FINAL SITE PLAN TO BE DETERMINED AT THE TIME OF SITE PLAN APPROVAL.

