

This instrument was prepared by:

Name: Jerry B. Proctor, Esq.
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9130 S. Dadeland Blvd., Suite 1700
Miami, FL 33156

(Space Reserved for Clerk of Court)

EASEMENT AND OPERATING AGREEMENT

THIS easement and operating agreement (the "Agreement") is made as of this ____ day of _____, 2019, by TC MC Margate Apartments LLC, a Florida limited liability company ("TCMC" and/or "Parcel 1 Owner") and ALLIANCE XVI, LLC, a Florida limited liability company ("Alliance" and/or "Parcel 2 Owner"). TCMC and Alliance shall hereinafter collectively described as the "Owners").

RECITALS

WHEREAS, the Parcel 1 Owner holds fee simple title to that certain parcel of land in Broward County, Florida (the "Parcel 1 Property") legally described on Exhibit "A" attached hereto and made a part hereof as if fully set forth herein;

WHEREAS, the Parcel 2 Owner holds fee simple title to that certain parcel of land in Broward County, Florida (the "Parcel 2 Property") legally described on Exhibit "B" attached hereto and made a part hereof as if fully set forth herein;

WHEREAS, the Parcel 1 Property and Parcel 2 Property will be cumulatively described as "Property";

WHEREAS, the Owners desire to enter into this Agreement of cross easements in connection with the development and use of the Property on the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parcel 1 Owner and Parcel 2 Owner hereby agree and covenant, for themselves, their heirs, successors and assigns as follows:

The Owners hereby grant to all future Owners of any parcel within the Parcel 1 Property and the Parcel 2 Property, and to their respective tenants, customers, invitees, and licensees subject to such reasonable limitations as shall be imposed by the owner and holder thereof and reserves unto itself and its tenants invitee, and licensees (collectively, the "Beneficiaries"), the non-exclusive right to the following:

- (i) easements over and across the access roads, roadways, driveways and drive lanes from time to time existing on each parcel for ingress to and egress from other parcels and ingress and egress to and from private drives within the Parcel 1 Property and Parcel 2 Property in accordance with site plans approved by the City of Margate;
- (ii) easements over and across the sidewalks, walkways, driveways and drive lands from time to time existing on each parcel for the passage and accommodation of pedestrians;
- (iii) easements for the installation of utility facilities shown on the Site Plan approved by the City of Margate and easements for the use, operation, maintenance, repair, replacement, relocation and removal of any utility facilities existing on the date of this Agreement in the location of such lines or facilities on each such parcel, and any utility facilities reflected on the Site Plan that are hereafter installed;
- (iv) easements upon each such parcel in favor of each adjoining parcel for the installation, use, maintenance, repair, replacement and removal of common construction improvements such as footings, supports and foundations that are existing on the date of this Agreement.
- (v) easements on each such parcel for any building overhangs, other overhangs and projections encroaching upon such parcel from adjoining parcel on the date of this Agreement, such as, by way of example, marquees, canopies, lights, lighting devices) awnings, wing walls and the like, if necessary;
- (vi) appropriate reservation of rights to grant utility easements to utility companies, if necessary; and
- (vii) the right of each Owner to grant or obtain by appropriate reservation of rights to dedicate road rights-of-way and curb cuts on the property owned by such Owner.

From time to time, the Owners of one or more parcels may enter into additional agreements that supplement the easements granted herein.

1. **Property Maintenance.**

a. **Maintenance of Easement Areas.** Each of Parcel 1 Owner and Parcel 2 Owner and, if appropriate, all future owners of any parcel within Parcel 1 Property and/or Parcel 2 Property, as the case may be (each a “Future Owner”), shall maintain and keep in good repair the common areas, facilities and improvements within their respective parcels referenced herein, and shall keep the same free and clear of rubbish and obstructions of every nature and shall provide adequate drainage and lighting thereon. The rights-of-way on Parcel 1 Property and Parcel 2 Property shall be constructed and maintained in such manner as to meet at equal grades and no obstruction shall be erected or permitted within the easement areas which will in any way interfere with any rights granted by this Agreement.

b. **Failure to Maintain.** In connection with any maintenance or repair required to be performed by the Parties, and, if appropriate, any Future Owners, pursuant to Section 1(a) above, in the event the work is not performed within thirty (30) days after written notice from the requesting party (the “Requesting Party”) to the other party (the “Non-Requesting Party”), then, the Requesting Party shall be entitled to enter the Non-Requesting Party’s portion of the

Property in order to perform the work necessary to maintain or repair such portion of the Property and the Non-Requesting Party shall be responsible to reimburse the Requesting Party performing the repair work for the reasonable amount expended by said Requesting Party to perform such work. Notwithstanding the foregoing, in the event that the maintenance or repair is not capable of being performed within said thirty (30) day period and provided the Non-Requesting Party diligently attempts to perform such work, the Non-Requesting Party shall have such additional period that is reasonably required for completion of such maintenance or repair. Notwithstanding anything herein to the contrary, the Requesting Party will be entitled to immediately perform the work necessary to maintain or repair the Easement Area without prior written notice to the Non-Requesting Party in the event that the Requesting Party, in its reasonable good faith discretion, determines that the maintenance or repair is immediately necessary due to an emergency, safety concern and/or to avoid municipal code violations, fines, civil penalties, etc.

c. Failure to Reimburse. If any portion of the payment due from the Non-Requesting Party pursuant to Section 2(b) above is not paid after same is due and remains unpaid for a period of thirty (30) days after written notice to the Non-Requesting Party of such delinquent payment, then the Requesting Party shall have the right to charge the Non-Requesting Party interest at the then highest rate of interest allowed by law from the due date until paid.

2. Mechanic Liens. If any of Parcel 1 Owner or Parcel 2 Owner or, if appropriate, any Future Owner, causes or permits to be created a mechanic or materialman's lien (the "**Infringing Owner**") by work that such Infringing Owner is performing or causing or permitting to be performed, to be filed or placed against any portion of the Property owned by any other Party to this Agreement (the "**Affected Owner**"), then, the Infringing Owner shall and hereby covenants and agrees to cause such lien to be removed by bonding off or other method acceptable to the Affected Owner, in its reasonable discretion, at no cost or expense to the Affected Owner, within thirty (30) days after the Infringing Owner receives written notice from the Affected Owner of the existence of such lien. If the Infringing Owner does not remove such lien by bonding off or other method reasonably acceptable to the Affected Owner within such 30-day period, then, the Affected Owner may remove such mechanics or materialman's lien and the Infringing Owner shall promptly reimburse the Affected Owner for the cost and expense of such removal within thirty (30) days after written notice to the Infringing Owner of such delinquent payment. The Affected Owner shall have the right to charge the Infringing Owner interest at the then highest rate of interest allowed by law from the due date until paid.

3. Prohibition of Interference. Notwithstanding anything to the contrary herein, the granting of the non-exclusive perpetual easements shall not impede or materially interfere with the full and complete use, access, or operation of any owner over its parcel(s), or its designated licensees, invitees, guests, and patrons.

4. Reservation of Rights for Relocation and Utility Service.

a. Each of Parcel 1 Owner and Parcel 2 Owner and, if appropriate, all Future Owners, may reasonably relocate, at such party's expense, any of the easement areas located within the portion of the Property owned by such party to an area that is as near as possible to the original easement area, provided that any such relocation

does not deprive the other Parties to this Agreement of access to the easement area (with any temporary interruption to occur during nonbusiness hours).

b. Each of Parcel 1 Owner and Parcel 2 Owner and, if appropriate, all Future Owners, may reserve the right to grant non-exclusive easements over any portion of the Property owned by the then owner(s) to utility companies as needed.

5. **Right of Designees.** The easements set forth in this Agreement shall benefit the Owners, their successors, and their designated licensees, invitees, guests and patrons provided, however, that nothing contained herein shall be deemed to be a dedication, conveyance or grant to the public in general nor to any persons or entities except as expressly set forth herein.

6. **Severability.** If any provision of this Agreement shall be invalid or shall be determined to be void by any court of competent jurisdiction, then such provision or determination shall not affect any other provisions of this Agreement, all of which other provisions shall remain in full force and effect. It is the intention of the parties that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other which would render the provision valid, then the provisions shall have the meaning which renders it valid.

7. **Terms.** This Agreement shall become effective upon recordation and shall continue for a term of 30 years from the effective date thereafter automatically renewed for 10-year periods unless released sooner with the written consent of the then owners of the Property.

8. **Covenant Running with the Land.** The easements hereby granted and the requirements herein contained shall run with the land and shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, successors and assigns, including, any subsequent owners of all or any part of the premises described on Exhibit "A" and Exhibit "B" hereof, and all persons claiming under them. Any person or entity acquiring fee title to a portion of the Property shall be bound by this Agreement only as to the portion of the Property acquired by such person or entity.

9. **Remedies.** Enforcement of this Agreement shall be exclusively by action at law or in equity by the Beneficiaries against any parties or persons violating or attempting to violate any provision of this Agreement. The prevailing party in any action or suit pertaining to or arising out of this Agreement shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of its attorney, at trial and appeal. This enforcement provision shall be in addition to any other remedies available at law or in equity or both. Notwithstanding anything to the contrary herein, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust made in good faith for value now or hereafter encumbering the Property or any portion thereof.

10. **Governing Laws/Severability.** This Agreement shall be governed by and construed under the laws of the State of Florida. This Agreement will not be construed more strongly against either party regardless of which party is responsible for its preparation. In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed in full force and effect.

11. **Further Assurances.** This Agreement shall not be more strictly construed against any one of the parties in any claim under any provisions hereto. In constructing 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.

12. **Estoppel Certificates.** Each of Parcel 1 Owner and Parcel 2 Owner and, if appropriate, any Future Owners (the “**Responding Party**”) shall, from time to time, within twenty (20) days after receipt of written request from any other owner (the “**Requesting Party**”), execute, acknowledge and deliver to the Requesting Party or to any existing or prospective purchaser or mortgagee designated by the Requesting Party, a certificate (the “**Estoppel Certificate**”) stating, to the extent applicable:

- a. that the terms and provisions of this Agreement are unmodified and are in full force and effect or, if modified, identifying any such modifications;
- b. whether there is any existing default hereunder (or grounds therefor after giving the requisite notice hereunder) by the Requesting Party and, if so, specifying the nature and extent thereof;
- c. whether there are any sums which the Responding Party is entitled to receive or demand from the Requesting Party, and if there is any such sum, specifying the nature and amount thereof;
- d. the current address or addresses to which notices given to the Responding Party are to be mailed; and
- e. such other facts or conclusions as may be reasonably requested.

13. **Notices.** All notices, consents, approvals, demands and objections given under this Agreement (a “**Notice**”) shall be in writing and delivered by (i) personal delivery, (ii) overnight FedEx, UPS or other similar courier service or (iii) United States Postal Service as Express Mail or certified mail, postage prepaid, return receipt requested, addressed to the recipient owner at the addresses specified below, or at such other address as it may designate by providing Notice in accordance with this Section 13. Such Notices shall be deemed to have been received on (i) delivery to the recipient owner’s address, provided delivery is before 5:00 p.m. (local time for the recipient owner) on a business day, otherwise on the following

business day, or (ii) the attempted delivery if the recipient owner refuses delivery, or is no longer at such address and failed to provide Notice of its current address to the sending owner in accordance with this Section 13. For the avoidance of doubt, email correspondence shall not constitute a Notice under this Agreement.

To Alliance:

ALLIANCE XVI, LLC
2601 South Bayshore Drive, Suite 100
Coconut Grove, Florida 33133
Attn: Robert Cambo
Email: rc@alliancecos.com

With a copy to:

Greenberg, Traurig, P.A.
333 SE 2nd Avenue, 44th Floor
Miami, Florida 33131
Attn: Ricardo Fraga, Esq.
Email: Fragar@gtlaw.com

To TCMC:

TC MC Margate Apartments LLC
Attn: Nathan Vedrani
3850 Bird Road, 8th Floor
Coral Gables, FL 33146
Email: nvedrani@cfhgroup.com

14. **Miscellaneous.**

a. No modification or amendment of this Agreement shall be effective unless by a written agreement executed by the Parties, with joinder by all mortgagees, if any in writing and recorded in the Public Records of Broward County, Florida.

b. Time is of the essence. Any time periods provided for herein which ends on a Saturday, Sunday or a legal holiday will extend to 5:00 p.m. of the next business day.

c. This Agreement contains all of the terms, promises, covenants, conditions and representations made by or entered into by and between the parties hereto and supersedes all prior discussions and agreements whether written or oral.

d. The section headings that appear in this Agreement are for purposes of convenience of reference only and are not to be construed as modifying, explaining,

restricting or affecting the substance of the sections in which they appear. 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.

e. This Agreement may be executed in any number of counterparts and by different parties to this Agreement on separate counterparts, each of which, when so executed, will be deemed an original but all such counterparts will constitute one and the same agreement.

(SIGNATURE PAGE TO FOLLOW)

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

Signed, sealed and acknowledged on this ____ day of _____, _____.

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the ____ day of _____, 2019.

TC MC Margate Apartments, L.L.C

By: _____

Name: _____

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____ and _____, property owner, who (check one) [] is personally known to me or [] has produced _____ as identification.

NOTARY PUBLIC, State of Florida

My Commission Expires:

Print Name: _____

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

Signed, sealed and acknowledged on this ____ day of _____, _____.

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the ____ day of _____, 2019.

Alliance XVI, LLC

By: _____
Name: _____

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____ and _____, property owner, who (check one) ☐ is personally known to me or ☐ has produced _____ as identification.

My Commission Expires: _____
Print Name: _____

NOTARY PUBLIC, State of Florida

Exhibit "A"
Legal Description
Parcel 1

The land referred to herein below is situated in the County of Broward, State of Florida, and is described as follows:

A portion of Parcel "A", Central Park of Commerce, according to the plat thereof as recorded in Plat Book 119, Page 27, of the Public Records of Broward County, Florida, being more particularly described as follows:

Commencing at the Northwest corner of said Parcel "A"; thence North $89^{\circ}34'36''$ East, along the North line of said Parcel "A", a distance of 604.01 feet to the point of beginning, thence continue North $89^{\circ}34'36''$ East, along said North Line, a distance of 548.98 feet (548.90' per plat) to the Northeast corner of said Parcel "A" and a point on the arc of a circular curve to the left at which a radial line bears South $75^{\circ}22'31''$ East, thence along the East and South lines of said Parcel "A" the following six (6) courses: Southerly along the arc of said curve, having a radius of 1503.00 feet and a central angle of $05^{\circ}25'00''$, a distance of 142.09 feet (central angle of $6^{\circ}50'08''$ and a distance of 179.31 feet per plat) to a point of tangency; thence South $09^{\circ}12'29''$ West, a distance of 240.11 feet (South $09^{\circ}20'17''$ West, a distance of 202.91 feet per plat), thence South $00^{\circ}22'24''$ East, a distance of 300.00 feet, thence South $44^{\circ}11'54''$ West, a distance of 49.13 feet, thence South $88^{\circ}46'12''$ West, a distance of 300.00 feet, thence South $87^{\circ}20'17''$ West, a distance of 144.45 feet, thence North $00^{\circ}22'24''$ West, a distance of 720.32 feet to the point of beginning.

Said lands situate in the City of Margate, Broward County, Florida.

Exhibit "B"
Legal Description
Parcel 2

The land referred to herein below is situated in the County of Broward, State of Florida, and described as follows:

A PORTION OF PARCEL "A", CENTRAL PARK OF COMMERCE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 119, PAGE 27, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL "A"; THENCE NORTH 89°34'36" EAST, ALONG THE NORTH LINE OF SAID PARCEL "A", A DISTANCE OF 604.01 FEET; THENCE SOUTH 00°22'24" EAST, A DISTANCE OF 720.32 FEET; THENCE ALONG THE SOUTH LINE OF SAID PARCEL "A" THE FOLLOWING FOUR (4) COURSES: SOUTH 87°20'17" WEST, A DISTANCE OF 55.61 FEET; THENCE SOUTH 88°46'12" WEST, A DISTANCE OF 298.88 FEET (298.25 FEET PER PLAT); THENCE NORTH 84°21'05" WEST (NORTH 84°23'17" WEST PER PLAT), A DISTANCE OF 100.17 FEET; THENCE SOUTH 88°46'12" WEST, A DISTANCE OF 150.00 FEET; THENCE NORTH 00°22'24" WEST, ALONG THE WEST LINE OF SAID PARCEL "A", A DISTANCE OF 718.22 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN THE CITY OF MARGATE, BROWARD COUNTY, FLORIDA.