

**This Instrument Prepared by
and after recordation return to:**

Town of Davie
8800 SW 36 Street
Davie, FL 33328

SPACE ABOVE THIS LINE FOR PROCESSING DATA

AMENDED CROSSOVER AGREEMENT

THIS AMENDED CROSSOVER AGREEMENT ("**Agreement**") is made and entered into this ____ day of _____, 202_, between **WO - DAVIE MF, LLC**, a Florida limited liability company, ("**Owner**") and **THE TOWN OF DAVIE, FLORIDA**, a Florida municipal corporation ("**Town**"). Owner and Town are sometimes collectively referred to herein as the "**Parties**" and each, individually, as a "**Party**".

WITNESSETH:

WHEREAS, Owner is the fee simple owner of certain real property located within the Town of Davie, Florida, which is located south of SW 42nd Street, as more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof (the "**South Parcel**");

WHEREAS, Owner is also the fee simple owner of certain real property located within the Town of Davie, Florida, which is located north of SW 42nd Street, as more particularly described in **Exhibit "B"** attached hereto and by this reference made a part hereof (the "**North Parcel**" and, collectively, together with the South Parcel the "**Property**");

WHEREAS, Owner desires to construct an overhead pedestrian walkway ("**Crossover Structure**") extending over SW 42nd Street (the "**Right-of-Way**") connecting the Development ("**Crossover Easement Area**"), as depicted in **Exhibit "C"**, attached and incorporated in this Agreement;

WHEREAS, Owner has proposed to construct an apartment complex containing two hundred eighty-six (286) dwelling units, a parking facility and spaces, Crossover Structure, landscaping, recreational amenities and related improvements on the South Parcel, on the North Parcel and over the Right-of-Way ("**Development**" or "**Project**"); and

WHEREAS, Owner will submit a site plan for the Development, which shall include the Crossover Structure and related improvements for the Development (such site plan as approved by the Town as referred to as the "**Approved Site Plan**");

WHEREAS, after approval of the Approved Site Plan, Owner will submit building and engineering plans to the Town for the improvements located through, over, and under the Right-of-Way ("**Crossover Improvements**") including but not limited to the Crossover Structure columns, footers, drainage, sewer force main, sidewalks, pavers, streetlighting, irrigation, parking and drop off areas, and landscaping that will be constructed and installed within the Right-of-Way (the plans for the Development as approved by the Town shall as and when approved be referred to as the ("**Approved Plans**"); and

WHEREAS, Owner and the Town desire to memorialize Owner's exclusive right to install and maintain the Crossover Improvements within the Crossover Easement Area as part of the Development approval as well as to protect the public's interest in the Right-of-Way; and

WHEREAS, inasmuch as the installation by use of the Crossover Improvements by Owner, its residents, employees and agents for lawful purpose will not interfere with the rights enjoyed by the public and will not result in any direct or indirect cost to the public.

NOW, THEREFORE, in consideration of the foregoing premises and the promises and covenants contained in this Agreement, the Parties agree as follows:

1. **Recitals.** The recitals set forth above are true and correct and are incorporated into this Agreement by this reference.

2. **Grant of Easement.** The Town hereby grants to Owner, and Owner accepts from the Town, a perpetual easement to install, maintain, repair, replace and operate the Crossover Improvements through, over, and under the Crossover Easement Area and the utilization of the Crossover Improvements by Owner, its guests, tenants, invitees, contractors, employees and agents (collectively "**Crossover Easement**"), subject to the following terms and restrictions:

(a) **All work of construction, installation, maintenance, repair, replacement, restoration and clean-up related to the Crossover Improvements ("**Crossover Work**") shall be done in a good and workmanlike manner, consistent with the Approved Site Plan and Approved Plans and to the reasonable satisfaction of the Town Administrator or other Town official designated by the Town Administrator (as applicable "**Town Official**"), and other relevant Town or governmental departments providing appropriate regulatory approvals and oversight with respect to the Crossover Improvements.**

(b) **The granting of the Crossover Easement shall not in any way waive any building or construction ordinances, fees, or requirements of Town.**

(c) **Owner specifically agrees that it will use the Crossover Improvements pursuant to this Easement only for lawful purposes, including, without limitation, permitting pedestrian traffic within the Crossover Structure. All repairs, replacements and/or maintenance within the Crossover Easement Area shall be subject to the**

approval of the Town Engineer or the Town Building Official, such approval not to be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, Owner shall have sole responsibility for obtaining all regulatory approvals, and permits required to perform the Crossover Work.

(d) Owner shall be responsible for repairing any damage resulting from the Crossover Work to the improvements within the Right-of-Way, such as paved areas, crosswalks and landscaping, which are intended to remain in place following the completion of the Crossover Improvements or replacing such improvements when necessary so that the Crossover Work shall be restored or repaired to a condition equal to or better than that existing prior to commencement or installation of the Crossover Work at Owner's sole expense (except to the extent damages arise from an act or omission by Town of its agents, employees or contractors, in which case Town shall be responsible for repairing such damage). This shall include, but not be limited to, any subsurface features such as water service lines, utility access lines, utility access covers, water meter boxes, water isolation valve stems, and sanitary sewer cleanouts, that may deteriorate as a result of removing asphalt, base materials, compaction, paving operations and other similar work. Owner shall be responsible for verifying all underground utilities prior to digging in any area. Owner shall notify all necessary utility companies, not less than forty-eight (48) hours prior to commencement of digging for verification of all underground utilities, irrigation and any other obstructions and coordinate prior to installing the Crossover improvements.

(e) Any new structures associated with the Crossover Improvements installed by Owner in or over the Right-of-Way will be maintained by Owner and its successors and assigns. The Town Engineer shall approve all material repairs, replacements or maintenance within the Right-of-Way (such approval not to be unreasonably withheld, delayed or conditioned) to be performed by Owner.

(f) During mobilization and in connection with construction of the Crossover Improvements and to the extent reasonably necessary in connection with repair of the Crossover Improvements (during periods of such repair as reasonably approved by the Town), the Parties agree that SW 42nd Street will need to be closed to permit mobilization and construction of the Crossover Improvements from the commencement of such mobilization through obtaining a certificate of occupancy (or similar permit) with respect to the development, including the Crossover Improvements and during such reasonable periods of time in connection with repairs of the Crossover Improvements (as reasonably approved by the Town). In connection with such road closure, Owner agrees that within a reasonable period of time after such closure of SW 42nd Street, as requested by Owner, Owner shall promptly commence and proceed with commercially reasonable diligence to complete such portion of the Crossover Work to a condition which would enable the reopening of SW 42nd Street, which time to perform such work is expected to be [eighteen (18) months] from the time of such closure of SW 42nd Street, subject to extension due to Force Majeure Events (as hereinafter defined).

(g) Except where necessary during construction or repair, public access to the Right-of-Way sidewalks and roadway will not be materially impaired or impeded. The Town or any of its agents, shall, following not less than one (1) business day prior written notice, have the right to enter the Crossover Easement Area at any time for the purpose of inspecting the improvements. The Town shall be responsible for the restoration of the Crossover Improvements in the event such improvements are damaged by the Town or its agents, employees or contractors in the course of inspecting, repairing or gaining access to its utilities or otherwise exercising its rights hereunder.

(h) A minimum clearance of 14 feet, 6 inches from the surface of SW 42nd Street will be provided to the bottom of the Crossover Structure within the Right-of-Way. Once the exact location of the Crossover Access Improvements and the Crossover Easement Area is determined, the Parties shall enter into an amendment to this Agreement setting forth the legal description of the Easement Area.

(i) Additionally, the Town agrees to grant to Florida Power & Light Company and other utility companies utility easements within the Right-of-Way provided by Owner to the Town, which easements shall be subject to the reasonable approval of the Town, provided the use of such utility easement(s) does not impede use of the roadway located within the Right-of-Way.

(j) The Parties agree to execute and deliver such amendments to this Agreement and such further easements and other agreements as may be reasonably required by Owner in connection with the development of the Property. Without limiting the generality of the foregoing, the Town shall deliver such additional easement agreements as Owner may require for purposes of permitting Owner to install, maintain, repair and replace such improvements above, within and underneath the Right-of-Way, including, without limitation, fire lines, waterlines and electric lines as may be required in order to create building systems that will permit the consolidated operation of the improvements to be constructed on the South Parcel and the improvements to be constructed on the North Parcel.

(k) There shall be no advertising for the project or off-site promotions on the Crossover Structure unless approved by the Town.

3. Damage to Crossover Improvements. If the Crossover Improvements are damaged (by casualty, malfeasance or otherwise) in a manner that poses a material public safety issue (as determined by the Town in its reasonable discretion), and Owner fails to commence remediation or replacement of such damage in a manner reasonably satisfactory to the Town within ninety (90) days after written notice of such damage, and diligently pursue completion thereof (subject to allowable delays in commencement or pursuit (or both) of such remediation or replacement arising from Force Majeure Events, the Town, by vote of the Town Council, shall have the right to require Owner to take immediate steps to remove or remediate such imminent threat of harm at Owner's sole cost and expense, failing which Town shall have the right to

perform (or cause its employees or contractors to perform) such removal or remediation of the imminent threat and Owner shall be responsible for reimbursing Town for such out-of-pocket expenses as may be incurred by Town in connection with such removal or remediation. Town shall not be liable for any costs or liabilities associated with Owner's repair, replacement or removal of the Crossover Work pursuant to this Section 3, and all such reasonable costs shall be the responsibility of Owner.

4. Town Remedies for Default of Payment of Restoration and Maintenance Obligations. If Owner breaches any of its obligations as specified in this Agreement, then the Town shall provide Owner written notice specifying the nature of the default. Owner shall have a period of ninety (90) days following receipt of such notice in which to remedy the default, provided that if Owner shall require more than ninety (90) days for the cure of such default, the time for the cure of such default shall be extended for so long as Owner may require, provided that Owner shall commence such cure within such ninety (90) day period and thereafter be diligently and continuously prosecuting such cure to completion. Notwithstanding anything to the contrary contained herein, Owner shall exercise commercially reasonable efforts to cause conditions that pose an immediate hazard to the public to be remedied within such time periods as may be reasonably required by the Town. In the event that (a) Owner shall fail to cure any breach in the performance of its obligations hereunder within the notice and cure period provided herein or (b) Town shall determine that immediate action is required in order to remedy conditions that Town determines shall pose an immediate hazard to the public, Owner agrees that the Town shall have the right to take such action for purposes of curing Owner's breach or remedy conditions that Town determines shall pose an immediate hazard to the public, and Owner agrees to reimburse the Town for all such reasonable expenses as may be incurred by Town in connection with the foregoing within thirty (30) days of mailing of a statement to Owner at the address indicated below. If not so paid, Town shall have the right to bring suit against Owner to recover its actual (but not consequential or punitive) damages.

5. Amendments. This Agreement may not be modified, amended or released except by written instrument executed by Owner and the Town Council. Any amendment, modification or release of this Agreement shall be recorded in the Public Records of Broward County, Florida. Upon Owner's request, Town shall execute an amendment to this Agreement reflecting specific legal descriptions for the easements granted pursuant to this Agreement.

6. Approvals. Approvals of the Town required under this Agreement may be executed by such Town Official as may be designated by the Town.

7. Recordation and Effective Date. Upon execution of this Agreement by the Town and Owner, this Agreement shall be recorded in the Public Records of Broward County, Florida. All recording costs shall be borne by Owner.

8. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Without limiting the generality of the foregoing, the rights and obligations of Owner may be assigned to a property/condominium association to perform the obligations of Owner.

9. Agreement Running with the Land. Once recorded, this Agreement shall run with the land and shall bind all successors-in-interest with respect to the Property.

10. Captions, Headings and Titles. Articles and paragraph captions, headings and titles inserted throughout this Agreement are intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions of this Agreement.

11. Context. Whenever the context requires or admits, any pronoun used in this Agreement may be deemed to mean the corresponding masculine, feminine or neuter form, and the singular form of any nouns or pronouns may be deemed to mean the corresponding plural form and vice versa.

12. Notice. Any notice required under the terms of this Agreement shall be in writing and shall be sent by personal service, overnight delivery (addressee signature required), electronic mail or by registered or certified mail to the address and individual designated below. Electronic mail notice shall be deemed delivered if the sender does not receive an error or other notice of non-delivery, and if a hard copy of such notice is delivered by one of the other means provided in the preceding sentence. The notice address may be changed and shall be binding upon ten (10) days' advance written notice.

To the Town:	Davie Town Administrator 8800 SW 36 Street Davie, FL 33328 Telephone: 954-797-1030 Email: rlemack@davie-fl.gov
with a copy to:	Davie Town Attorney 8800 SW 36 Street Davie, FL 33328 Telephone: 954-797-1140 Email: aweinthal@davie-fl.gov
To Owner	WO - Davie MF, LLC 12350 NW 39 th Street, Suite 201 Coral Springs, FL 33065 Attn: Andy Burnham Telephone: 786-453-3014 Email: aburnham@whiteoakfl.com
with a copy to:	Mccarter & English, LLP 121 Alhambra Plaza, Suite 1000 Coral Gables, Florida 33134 Attn: Manuel A. Fernandez, Esq. Telephone: (786) 402-5696 Email: mfernandez@mccarter.com

13. Insurance.

(a) Owner shall not commence Crossover Work under the terms of this Agreement until certification or proof of insurance detailing terms and provisions has been received and approved in writing by the Town's Risk Manager. Proof of the required insurance coverage shall be mailed to Davie Risk Manager, 8800 SW 36th Street, Davie, FL 33328. Owner is responsible for delivering to the Town for timely review and written approval/disapproval certificates of insurance which evidence that all insurance is in full force and effect and name on a primary basis, the Town as an additional insured on all such coverage. Throughout the term of this Agreement, Town reserves the right to review, modify, reject or accept any insurance policies required by this Agreement, including limits, coverages or endorsements. Town reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally. Failure to maintain the required insurance shall be considered an event of default. The requirements, as well as Town's review or acceptance of insurance maintained by Owner, are not intended to and shall not in any way limit or qualify the liabilities and obligations assumed by Owner under this Agreement.

(b) **Throughout the term of this Agreement, Owner's contractors and all subcontractors or other agents hereunder, shall, at their sole expense, maintain in full force and effect, insurance policies providing the coverages and limits provided in Exhibit "D" attached hereto and by this reference made a part hereof.**

(c) **Should any of the required insurance policies be canceled before the expiration date, or modified or substantially modified, the issuing company shall provide thirty (30) days written notice to the Town.**

14. Sovereign Immunity. The Town of Davie, its employees, volunteers, agents, elected and appointed officials, expressly retain all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Fla. Stat. and, notwithstanding anything set forth herein to the contrary, nothing in this Agreement shall be deemed as a waiver of immunity or limits of their liability beyond any statutory limited waiver of immunity or limits of liability that may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap on the amount and liability of them for damages, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount set by the legislature for tort. Nothing in this section shall inure to the benefit of any third party for the purpose of allowing any claim against the Seller, Town of Davie, its employees, volunteers, agents, elected and appointed officials, that would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

15. Indemnification.

(a) Owner shall at all times indemnify, hold harmless and defend the Town, Town Council, the employees and other Town representatives and agents from and against any and all claims, demands, suit, damages, attorneys' fees, fines, penalties, defense costs or liabilities arising as a direct result of Owner's officers, employees, agents, or contractors' gross negligence or willful misconduct under this Agreement. Owner agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and to bear all other costs and related expenses, even if the claim(s) is/are groundless, false or fraudulent. The foregoing indemnification shall not be operative as to any claims by Owner for any causes of action Owner has or may have for breaches or defaults by the Town or its agents under this Agreement.

(b) Owner acknowledges and agrees that Town would not enter into this Agreement without this indemnification of Town by Owner. The Parties agree and acknowledge that sufficient consideration has been paid to or conferred upon Owner by Town as sufficient consideration for the indemnification provided under this Article.

16. Prior Negotiations. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings between the Parties with respect to the subject matter of this Agreement, and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this Agreement. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

17. Governing Law; Venue. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida. To that end, Owner expressly waives whatever other privilege to venue it may otherwise have.

18. Force Majeure. Any delay or failure by a party in the performance of its obligations hereunder shall be excused to the extent that such delay or failure is the result of any Force Majeure Event (as hereinafter defined). In no event shall a lack of funds alone be deemed Force Majeure. For purposes hereof, the term "Force Majeure Event" shall mean any facts or circumstances beyond the reasonable control of a party that shall prevent or delay such party from performing its obligations hereunder, including, without limitation, war, acts of God (e.g., earthquakes, hurricane, flood, tornado, fire or other casualty), acts of a public enemy; terrorism, civil or military conflicts or commotions, strikes or picketing, governmental action or inaction and any pandemic or other public health or safety crisis.

19. Severability; Captions; Gender. This Agreement shall be construed in accordance with the laws of the State of Florida. If any provision, or its application to any person or situation, is deemed invalid or unenforceable for any reason and to any extent, the remainder of this

Agreement, or the application of the remainder of the provisions, shall not be affected. Rather, this Agreement is to be enforced to the extent permitted by law. The captions, headings and title of this Agreement are solely for convenience of reference and are not to affect its interpretation. Each covenant, term, condition, obligation or other provision of this Agreement is to be construed as a separate and independent covenant of the party who is bound by or who undertakes it, and each is independent of any other provision of this Agreement, unless otherwise expressly provided. All terms and words used in this Agreement, regardless of the number or gender in which they are used, are deemed to include any other number and other gender, as the context requires.

20. No Discrimination. Owner shall not discriminate against any person in the performance of duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

21. Advice and Counsel. The Parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations and that the preparation of this Agreement has been their joint effort.

22. No Waiver. The Parties agree that each requirement, duty and obligation set forth is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any Party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

23. Assignment. The Parties agree that Owner shall be released and discharged from all liability and obligation under this Agreement first arising after the date of (i) Owner's transfer or sale of its interest in the Project and (ii) assumption by the transferee of Owner's obligations under this Agreement.

IN WITNESS WHEREOF, Owner has executed this Agreement on the day first above written.

Signed, sealed and delivered
in the presence of:

(Signature)

Print Name

(Signature)

Print Name

OWNER:

WO - DAVIE MF, LLC,
a Florida limited liability company

By: _____

Address: 12350 NW 39th Street, Suite 201
Coral Springs, FL 33065

Dated: _____

ACKNOWLEDGEMENT:

[illegible]

The foregoing instrument was acknowledged before me in their physical presence this _____ day of _____, 2025, by _____, as _____ of W-O DAVIE MF, LLC, a Florida limited liability company, who is personally known to me or produced _____ as identification.

NOTARY PUBLIC:

(SEAL)

My commission expires:

Print name:

Witnesses:

TOWN:
TOWN OF DAVIE, FLORIDA

By: _____
JUDY PAUL, MAYOR

By: _____
RICHARD J. LEMACK, TOWN
ADMINISTRATOR

Attest:

(SEAL)

Approved As To Form:

ALLAN T. WEINTHAL, TOWN ATTORNEY

**EXHIBIT A
LEGAL DESCRIPTION
SOUTH PARCEL**

ALTIS DAVIE 183-744 B PARCEL B

EXHIBIT B
LEGAL DESCRIPTION
NORTH PARCEL

ALTIS DAVIE 183-744 B PARCEL A

EXHIBIT C
CROSSOVER EASEMENT AREA

EXHIBIT D
INSURANCE REQUIREMENTS

A. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees) or the state in which the work is to be performed or of the state in which Contractor is obligated to pay compensation to employees engaged in the performance of the work. Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

B. Liability Insurance.

(1) Naming the Town of Davie, Florida as an additional insured as Town's interests may appear, on General Liability Insurance only, relative to claims which arise from Contractor's negligent acts or omissions in connection with Contractor's performance under this Agreement.

(2) Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits.

Type of Insurance	Limits of Liability
GENERAL LIABILITY:	Minimum \$1,000,000 Per Occurrence and \$2,000,000 Per Aggregate
* Policy to be written on a claims incurred basis	
XX comprehensive form	bodily injury and property damage
XX premises - operations	bodily injury and property damage
XX explosion & collapse	
___ hazard	
___ underground hazard	
XX products/completed operations hazard	bodily injury and property damage combined
XX contractual insurance	bodily injury and property damage combined
XX broad form property damage	bodily injury and property damage combined
XX independent contractors	personal injury
XX personal injury	

AUTOMOBILE LIABILITY:	Minimum \$1,000,000 Per Occurrence and Aggregate. Bodily injury (each person) bodily injury (each accident), property damage, bodily injury and property damage combined.
XX comprehensive form	

