

Prepared by and Return to:

Akerman LLP
Three Brickell City Centre
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Miami, Florida 33131
Attn: Neisen Kasdin, Esq.

Folio No. 02-3234-006-0040; 02-3234-006-0010

(Space above for County Recording Office)

HOLD HARMLESS AGREEMENT

THIS HOLD HARMLESS AGREEMENT ("Agreement") is made and entered into as of the ___ day of June 2025 ("Effective Date"), by and between 420 LINCOLN ROAD DEVELOPMENT, LLC, a Florida limited liability company, together with its heirs, successors, and assigns ("Owner"), and the CITY OF MIAMI BEACH, a Florida municipal corporation ("City").

RECITALS

A. Owner holds fee simple title to that certain real property legally described in Exhibit "A" to this Agreement (the "Property"), and wishes to redevelop the Property as a mixed-use development with ground level commercial space and residential units that retains the existing parking garage structure on the west side of the Property (the "Project").

B. In an attempt to combat the housing shortage, the City Commission has referred ordinances to the Planning Board and the proposed legislation, known as the Washington Avenue Residential Plan and herein incorporated as Exhibit "B", would amend the City's Land Development Regulations (the "Code") and Comprehensive Plan to provide certain development incentives to applicants with qualifying projects which agree to abandon any existing right and forego any future right to operate short-term rentals and/or other transient uses (the "Legislation").

C. On November 26, 2024, consistent with Code requirements, the Legislation was heard for a second time before the Planning Board, which transmitted the Legislation with a favorable recommendation to the City Commission.

D. The Legislation was scheduled for First Reading before the City Commission on February 26, 2025 and, at that time, was continued until December 2025.

E. The Project proposes to avail itself of the Legislation's development incentives.

F. Owner wishes to submit applications to the Historic Preservation Board ("HPB") and Planning Board ("PB") requesting approval of a Certificate of Appropriateness ("COA") and Conditional Use Permit ("CUP"), respectively, for the Project.

G. Owner understands that staff level review can be completed and the Project can be scheduled for hearings before the HPB and PB; however any final development order(s) issued would be conditioned on the adoption of the Legislation, or similar enabling legislation, and any final development order(s) would have no legal force until that time.

H. Owner acknowledges that the City has made no representations, warranties, or assurances with respect to the adoption of the Legislation or similar enabling legislation.

I. Owner desires to enter into this Agreement to allow Owner to proceed with the review and conditional approval of the proposed Project while the Legislation or similar enabling legislation is considered for adoption and despite the uncertainty of adoption.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and the City, intending to be legally bound, hereby agree as follows:

TERMS AND CONDITIONS

1. **Recitals.** The above Recitals are true and correct and are incorporated as if recited at length in the body of this Agreement.

2. **Acceptance of Land Use Board Applications and Conditional Approval of Development Orders.** The City agrees to accept COA and CUP applications for the Project, complete staff review of same and schedule same for public hearings. Owner acknowledges that any final development orders issued by the HPB and/or PB will be conditioned on adoption of the Legislation, or adoption of similar enabling legislation that would make the Property eligible for similar development incentives. In the event the Legislation is not adopted, or is modified prior to adoption in such a manner as to require changes to the Project, Owner agrees to modify its applications to comply with the Land Development Regulations applicable to the Project. In no event will Owner be authorized to apply for a building permit for the Project, as proposed, unless and until the City Commission adopts the Legislation, or similar enabling legislation that would make the Property eligible for similar development incentives.

3. **Indemnification and Agreement to Hold Harmless.** Owner agrees to indemnify and hold the City harmless from any claim, liability, damages, or loss resulting from Owner's decision to pursue the COA and CUP applications prior to the City Commission voting on the adoption of the Legislation or similar enabling legislation, other than as a result of the City's gross negligence or willful or intentional misconduct. Owner agrees and acknowledges that nothing herein shall be construed to compel the City Commission to adopt the Legislation or similar enabling legislation.

4. **Additional Provisions.**

a. **Covenant Running with the Land.** This Agreement constitutes a covenant running with the land and shall remain in full force and effect and be binding upon the Property during the Term. These restrictions during their lifetime shall be for the benefit of, and a limitation

upon, the Owner and all future owners of the Property, subject to the restrictions on assignments in Section 4(b), and for the benefit of the City.

b. Assignments. Notwithstanding anything to the contrary, Owner has the right to assign, transfer, and/or delegate its rights and obligations under this Agreement, in whole or in part, at any time, to (i) any affiliated entities of Owner which are under common control that acquire legal title to the Property; (ii) any lender or other entity providing financing for the Project; and/or (iii) any direct or indirect affiliate, investor, or joint-venture partner of Owner. Upon any such assignment, transfer, or delegation, and except for the Owner's obligations set forth in Section 3 which shall survive any assignment, transfer, or delegation, Owner shall be released automatically from all obligations and liabilities under this Agreement, the rights and obligations of Owner will be binding only on Owner's assignee, transferee, or delegatee, as the case may be, and the City will look only to such assignee, transferee, or delegatee for performance under this Agreement.

c. Term. This Agreement runs with the land and shall be binding on all parties and persons claiming under it for a period of thirty (30) years following the Effective Date. Notwithstanding the foregoing, this Agreement shall terminate automatically upon the effective date of the Legislation, or similar enabling legislation.

d. Modification, Amendment, Release. This Agreement may be modified, amended, or released as to the Property, or any portion thereof, by a written instrument executed by the then-owner(s) of the Property, including joinders of all mortgagees, if any, provided that the same is also approved by the City.

e. Enforcement. Enforcement shall be by action against any parties or persons violating, or attempting to violate, any term, covenant, condition, or 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 his attorney. As used herein, the term "Prevailing Party" means the party who receives substantially the relief sought upon final, non-appealable judgment, order, or other disposition of a court of competent jurisdiction. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

f. Election of Remedies. All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

g. Severability. Invalidation of any one of the terms, covenants, conditions, or provisions of this Agreement by judgment of court of competent jurisdiction shall not affect any of the other terms, covenants, conditions, or provisions of this Agreement, all of which shall remain in full force and effect.

h. Recording. This Agreement shall be recorded in the public records of Miami-Dade County, Florida at Owner's sole cost and expense.

i. Acceptance of Agreement. This Agreement does not obligate the City in any manner to make, nor does it entitle Owner to, a favorable recommendation or approval of any application, zoning, legislation, or other approval, and the City and its boards, departments and/or agencies retain their full power and authority to deny each such application, zoning, legislation, or other approval in whole or in part.

[Signature Pages Follow]

EXHIBIT "A"

LEGAL DESCRIPTION

ADDRESSES:

1601 Drexel Avenue, Miami Beach, Florida 33139
Folio No. 02-3234-006-0040

1600 Washington Avenue, Miami Beach, Florida 33139
Folio No. 02-3234-006-0010

LEGAL DESCRIPTION:

Lots 1, 5, 6, 7, 8, 9 and 10, together with the West 5.0 feet of Lots 2 and 3 and the East 54.42 feet of the West 59.42 feet of the North 20.00 feet of Lot 3, all in Block 53, PINE RIDGE SUBDIVISION, according to the Plat thereof, recorded in Plat Book 6 at Page 34 of the Public Records of Miami-Dade County, Florida.

Also Known as:

Lots 1, 5, 6, 7, 8, 9 and 10, together with the West 5.0 feet of Lots 2 and 3, together with that portion of the North 20 feet of Lot 3, which lies West of a line 102.38 feet West of and parallel with the East line of Lot 3, all in Block 53, PINE RIDGE SUBDIVISION, according to the Plat thereof, recorded in Plat Book 6 at Page 34 of the Public Records of Miami-Dade County, Florida.