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JUAN FERNANDEZ-BARQUIN
CLERK OF THE COURT & COMPTROLLER
MIAMI-DADE COUNTY, FL

RECORDING PREPARED BY:
Bercow Radell Fernandez Larkin + Tapanes, PLLC
200 S. Biscayne Blvd, Suite 300
Miami, FL 33131
Attention: Michael Larkin, Esq.

NOTICE: DEVELOPMENT AGREEMENT

NOTE TO CLERK: This Development Agreement replaces and supersedes the prior recorded Development Agreement in Official Records Book 34884, Pages 3768-3843, of the Public Records of Miami-Dade County, Florida, in its entirety. The Development Agreement is being re-recorded to (i) correct scrivener's errors in page 14, section 10 (c), "Permitting of Baywalk Project" and in page 22 Section 12 (a), "Conditions Precedent to Issuance of Certificate of Occupancy or Temporary Certificate of Occupancy for the Private Project."



Prepared and Return to:

Bercow Radell Fernandez Larkin & Tapanes
Attn: Michael Larkin
200 South Biscayne Boulevard, Suite 300
Miami, Florida 33131

(Space Reserved for Clerk)

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into as of the 4th day of August 2025, by and among the CITY OF MIAMI BEACH, a Florida municipal corporation (the "**City**"), and jointly and severally, 1250 WEST AVE OWNER LLC, a Delaware limited liability company (the "**Private Project Developer**") and WEST HOSPITALITY OWNER LLC, a Delaware limited liability company (the "**Public Project Developer**," and collectively with Private Project Developer, the "**Developer**").

Introduction

A. The properties that are the subject of this Agreement lie in Miami Beach, Miami-Dade County, Florida. This Agreement, among other things, is intended to and shall constitute a development agreement between the parties pursuant to Sections 163.3220-163.3243, Florida Statutes, the "Florida Local Government Development Agreement Act (the "**Act**)", and Chapter 2, Article XI of the City's Land Development Regulations.

B. The City is a Florida municipal corporation with powers and authority conferred under the Florida Constitution, the Municipal Home Rule Powers Act, Florida Statutes, the Miami Beach City Charter and the Miami Beach City Code of Ordinances (the "Code"). The City has all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal and governmental functions, and render municipal services, including the authority to adopt, implement and enforce



(together with any other required governmental approvals) comprehensive plans, zoning ordinances, redevelopment plans, and other police power and legislative measures necessary to assure the health, safety and general welfare of the City and its inhabitants.

C. Private Project Developer controls the Bay Garden Manor Condominium located at 1250 West Avenue and intends to own 100% of the units in such Condominium, which Condominium is more specifically described in **Exhibit "A"** attached hereto and incorporated herein by this reference (the "**Development Property**").

D. Private Project Developer seeks to redevelop the Development Property with the "**Private Project**" (as such term is defined in this Agreement).

E. Public Project Developer intends to acquire fee simple title to the property located at 1247-1255 West Avenue and 1234 13th Street, which is more specifically described in **Exhibit "B"** attached hereto and incorporated herein by this reference (the "**Hostel Site**").

F. Developer intends to provide certain public benefits to the City as follows: (i) demolish the existing improvements on the Hostel Site and thereafter improve the site as a public park to be conveyed to the City in fee simple (the "**Park Project**"); and (ii) construct missing segments of the City of Miami Beach Baywalk (the "**Baywalk**") adjacent to the properties located at 800 West Avenue, 1228 West Avenue and 1450 Lincoln Road or, alternatively provide the City with a financial contribution for future Baywalk improvements (the "**Baywalk Project**").

G. The development of the segments of the Baywalk adjacent to 800 West Avenue, 1228 West Avenue and 1450 Lincoln Road (the "**Baywalk Segments**") as part of the Baywalk Project, will require Baywalk Easements (as defined below) from upland property owners. In the event the owners (or authorized representative of the owners such as a condominium association) of the properties located at 1228 West Avenue, 1450 Lincoln Road, or 800 West Avenue decline to provide the necessary Baywalk Easements, Developer will provide the City with a financial contribution (the "**Baywalk Payment**") (as such term is defined in this Agreement) with respect to the 800 West Avenue, 1228 West Avenue, and 1450 Lincoln Road Baywalk Segments.



H. The Park Project and Baywalk Project are each a "**Public Project**" and collectively are the "**Public Projects.**"

I. Having fully considered this Agreement at two (2) duly noticed public hearings in compliance with Section 163.3225 of the Florida Statutes and having determined that the Private Project, the Public Projects, and this Agreement are in compliance with the City's Comprehensive Plan and Land Development Regulations (as may be amended by the "Legislative Approvals" more specifically defined below) as of the Effective Date; and, having further determined that it is in the City's best interest to address the issues covered by this Agreement in a comprehensive manner; the City has agreed to enter into this Agreement with Developer.

J. The City has determined that the Private Project and the benefits to be provided to the City by the Public Projects will benefit the City and the public through, without limitation, the redevelopment of the Development Property with a modern low-impact residential use, the demolition of the existing improvements on the Hostel Site, the construction of a public park on the Hostel Site, and completion of the Baywalk Project or financial contribution toward the same.

K. All capitalized terms used in this Introduction are defined in Section 3 of this Agreement or elsewhere in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1 Recitations. The foregoing recitations are true and correct and are incorporated herein by this reference.

2 Authority. This Agreement is entered into pursuant to the authority and procedures provided by the Act and Section 2.11.1 of the City's Land Development Regulations (the "**LDRs**").

3 Definitions. All capitalized terms used in this Agreement shall have the definitions set forth in this Section 3 unless such terms are defined elsewhere in the body of this Agreement.



3.1 **"Act"** shall mean the "Florida Local Government Development Agreement Act" (Sections 163.3220 - 163.3243, Florida Statutes (2024)).

3.2 **"City of Miami Beach Baywalk"** shall mean the public pedestrian pathways along the Biscayne Bay shoreline beginning at 540 West Avenue and ending at 1450 Lincoln Road, including gaps which the City seeks to have completed.

3.3 **"Baywalk Easements"** shall mean such easements or riparian rights from the fee owner(s) of the Baywalk Segments, with joinders by all applicable mortgagees and other third parties, all in form and substance reasonably acceptable to Developer, as required to acquire a title-insurable interest for the benefit of Developer and the City, under, over and on the Baywalk Segments, as necessary or desirable to (a) design, permit, and construct the Baywalk Project and (b) use, maintain and operate the Baywalk Segments and Baywalk Improvements. The Baywalk Easements shall provide that Developer shall not be required to maintain, repair, restore, operate or insure the Baywalk Segments. Instead, ongoing maintenance and repair obligations for the Baywalk Segments, once constructed, shall be the responsibility of the City.

3.4 **"Baywalk Improvements"** shall mean the specific improvements to the Baywalk Segments as contemplated by the Approved Baywalk Concept Plan.

3.5 **"Baywalk Project"** is defined in the recitals.

3.6 **"Baywalk Segments"** is defined in the recitals.

3.7 **"Building Permit"** shall mean any permit issued by the City of Miami Beach Building Department or Building Official, including any foundation, building or phase permits.

3.8 **"Business Day"** shall mean any day other than a Saturday, Sunday, any federal or state holiday and the following Jewish holidays: Passover (the first two (2) days and last two (2) days only), Shavuot (two (2) days), Rosh Hashanah (two (2) days), Yom Kippur (one (1) day), and Sukkot (the first two (2) days and last two (2) days only). If any period expires on a day which is not a Business Day or any event or condition is required by the terms of this Agreement to occur or be fulfilled on a day which is not a Business Day, such period shall expire or such event or condition shall occur or be fulfilled, as the case may be, on the next succeeding Business Day.



3.9 “**City**” shall mean the City of Miami Beach, a Florida municipal corporation, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida 33139. In the event the City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any laws, rules, regulations, ordinances, and plans (including through the exercise of the City’s building, fire, code enforcement, police department or otherwise) shall be deemed to have occurred pursuant to the City’s regulatory authority as a governmental body and shall not be attributable in any manner to the City as a party to this Agreement or in any way deemed in conflict with, or a default under, the City’s obligations hereunder.

3.10 “**Comprehensive Plan**” shall mean the comprehensive plan which the City has adopted and implemented for the redevelopment and continuing development of the City pursuant to Chapter 163 Part II, of the Florida Statutes.

3.11 “**Developer**” shall mean the entities defined in the preamble to this Agreement, and any permitted successors, assigns, or heirs thereof.

3.12 “**Development Order**” shall mean any order granting, denying, or granting with conditions, an application for a Development Permit.

3.13 “**Development Property**” shall mean the property more specifically described in **Exhibit “A”** attached hereto and incorporated herein by this reference.

3.14 “**Development Permit**” shall have the meaning set forth in Section 163.3221(5), Florida Statutes (2024).

3.15 “**Effective Date**” shall mean the date when the City records the executed Agreement in the Public Records of Miami-Dade County, as provided in Section 163.3239, Florida Statutes (2024).

3.16 “**Estimated Hostel Site Sale Price**” shall mean \$20,000,000.00.

3.17 “**Execution Date**” shall mean the date on which the last of the required parties executes this Agreement.

3.18 “**Land Development Regulations (LDRs)**” shall have the meaning set forth in Section 163.3221(8), Florida Statutes (2024) and shall also include, without limitation, the definition of “land development regulations” in Section 1.2.1 of the City’s Resiliency Code.



3.19 "**Laws**" shall mean all laws, rules, regulations, ordinances, plans, resolutions, comprehensive plans and land development regulations, specifically including the City's Comprehensive Plan and the LDRs.

3.20 "**Park Project**" is defined in the recitals.

3.21 "**Park Improvements**" shall mean the specific improvements to the Hostel Site as contemplated by the Approved Park Concept Plan.

3.22 "**Private Project**" shall mean the demolition of the existing improvements on the Development Property and construction on the Development Property of a new high-rise residential building containing a maximum height of 330 feet a maximum square footage of 481,316 square feet of floor area, maximum number of residential condominium units of 125 units, and a maximum of 4,000 square feet of commercial unit(s), a tower front setback no less than 150 feet, and a tower rear setback of no less than 63 feet, and subterranean parking, except for loading spaces, valet circulation, and a maximum of ten (10) visitor parking spaces (collectively, the "**Restricted Private Project Elements**"), it being understood that Private Project Developer may in its sole discretion seek approvals for development parameters more restrictive than the Maximum Private Project Elements), however the Developer may not seek variances from these Restricted Private Project Elements. The limitations specified as Restricted Private Project Elements are subject to City Commission approval of LDR amendments requested by the Developer. The following uses shall not be allowed in the Private Project: (1) entertainment establishments (indoor/outdoor), (2) adult entertainments or bookstores, (3) tobacco/vape/medical marijuana or paraphernalia stores, (4) accessory outdoor bar counters, (5) hostels, hotels, and apartment hotels, (6) neighborhood impact establishments, (7) bars, (8) establishments providing exterior alcohol service or interior alcohol service after 12 a.m., (9) liquor stores, (10) dance halls, (11) any use selling gasoline, (12) storage and/or parking of commercial vehicles, (13) pawnshops, (14), secondhand dealers of precious metals, (15) check-cashing stores, (16) convenience stores or grocery stores, (17) occult science establishments, (18) souvenir/t-shirt shops, (19) tattoo studios, fortune tellers, psychics, palm readers, and body piercing shops, (20) sale of insurance salvage stock, fire sale stock, merchandise damaged by or held out to be damaged by fire; (21) bankruptcy/going-out-of-business/liquidation or any similar sale, (22) coin box entertainment, (23) casino gambling or games of chance establishments, (24) medical facilities (including veterinary medicine), (25) the sale of firearms, (26) places of worship or related stores, (27) political offices, (28) consular, legation or any other offices of foreign



governments, (29) tire sales, (30) pet shops, (31) major appliance sales stores, and (33) pharmacies.

3.23 **“Private Project Baywalk”** shall mean that portion of the City of Miami Beach Baywalk that is within the Developer’s Property and which shall be constructed by the Private Project Developer having a minimum width of fifteen (15) feet.

3.24 **“Private Project Developer”** shall mean the entity defined in the preamble to this Agreement, and any permitted successors, assigns, or heirs thereof.

3.25 **“Public Projects”** are defined in the recitals.

3.26 **“Public Project Developer”** shall mean the entity defined in the preamble to this Agreement, and any permitted successors, assigns, or heirs thereof.

3.27 **“Restricted Private Project Elements”** has the meaning assigned such term in the definition of Private Project.

3.28 **“Temporary Sales Center Amendments”** shall mean the amendments to the City’s Comprehensive Plan and Land Development regulations necessary to authorize use of the Hostel Site as a temporary sales center.

4 **Approvals Required for Projects.**

a) Developer and the City acknowledge and agree that development of the Private Project will require the following approvals (collectively, the **“Private Project Approvals”**):

- i. Amendments to the City’s Comprehensive Plan and to the City’s Resiliency Code as contemplated by the City’s Planning Board (**“PB”**) File Nos. are PB24-0698 and PB24-0703 (collectively the **“Legislative Approvals”**);
- ii. the City’s Design Review Board (**“DRB”**) approval;
- iii. Miami-Dade County Shoreline Review approval, as necessary; and



- iv. Confirmation from the Miami-Dade Aviation Department and the Federal Aviation Administration that there are no aviation-related issues.
- b) Developer and the City acknowledge and agree that the Baywalk Project may require independent review and approval by and permits from the United States Army Corps of Engineers ("**ACOE**"), and/or the Florida Department of Environmental Protection ("**FDEP**"), and/or the Miami-Dade County Regulatory and Economic Resources Department Division of Environmental Resource Management ("**DERM**") (collectively, the "**Baywalk Project Approvals**"). Developer shall be responsible for obtaining the Baywalk Project Approvals from the ACOE, FDEP, and/or DERM, as applicable, at its sole cost and expense, with respect to the Baywalk Segments, as defined this Agreement. The City shall execute all documents necessary for such permitting, provide technical assistance, and generally cooperate with respect to such permitting, including by considering in good faith and approving modifications to the Concept Plan that are necessary to obtain the Baywalk Project Approvals from the ACOE, FDEP, and/or DERM
- c) Developer and the City acknowledge and agree that the Park Project will require DRB approval for the design of the improvements.
- d) Developer acknowledges that nothing contained in this Agreement will obligate the City to cause the approvals by the DRB or limit the DRB's quasi-judicial authority to impose conditions or take any action on such applications, except as otherwise provided by the City Code. Without limiting the generality of the foregoing, all considerations of and actions by the City shall be undertaken in accordance with established requirements of state statutes, if applicable, and the City Code, in the exercise of the City's jurisdiction under its police power. The City hereby reserves all of its rights to exercise its police powers with respect to the aforementioned actions, and nothing in this Agreement shall be construed to prohibit the City from duly acting under its police power to approve, approve with conditions, or reject any public hearing application dealing with the Hostel Site, the Baywalk Segments, or the Development Property.

5 Hostel Site Demolition Following Legislative Approvals. If (i) Developer obtains the Legislative Approvals, and the time period(s) for all appeals with respect to



the Legislative Approvals has expired with no appeals or other third-party challenge having been filed (or, in the event an appeal or third-party challenge is filed, the same has been resolved by judgment, settlement or otherwise in a final non-appealable manner or does not impede Developer's ability to complete any work or take any action, including closing on financing for the Project) on terms and conditions acceptable to Developer in its sole discretion) (collectively, the "**Legislative Approval Conditions**"), (ii) Developer waives the Legislative Approval Conditions in its sole discretion, (iii) Developer has a firm commitment from a lender for financing of the Project, or (iv) Developer closes on financing for the Project, then Developer will comply with the following:

- a) Within ninety (90) days of the adoption of the Legislative Approvals by the City Commission, but no later than September 19, 2025, the Developer shall close on the acquisition of the Hostel Site and at the time of closing shall execute and record a Declaration of Restrictive Covenants, substantially in the form of **Exhibit "C"** attached hereto, against title to the Hostel Site, providing that, for a term of thirty (30) years following the recording of the Declaration of Restrictive Covenants, and renewing automatically for ten (10) year extensions, unless the City agrees to release the Restrictive Covenant, (i) prohibiting transient uses of any kind, (ii) prohibiting any alcoholic beverage establishments, and (iii) providing that no residential units shall be leased or rented for a period of less than six (6) months and one (1) day. Notwithstanding the foregoing, the closing deadline herein shall be extended by fifteen (15) days in the event that the seller of the Hostel Site exercises the right to extend closing by providing written notice to Developer no later than 10:00 a.m. on the scheduled closing date and Developer promptly provides such written notice from the seller to the City.
- b) Within fourteen (14) days of the Developer Closing on the Hostel Site, the Developer shall certify in writing to the City that all individuals residing at the Hostel Site have been relocated, including relocation of any unhoused individuals that may be residing at the Hostel Site. Any unhoused individuals residing at the Hostel Site at the time of the closing shall be compassionately relocated by the Developer or the Developer's designee to a facility authorized by applicable law to provide temporary housing and services to such individuals located outside of the City.



- c) Within thirty (30) days of the Developer closing on the Hostel Site, the Developer shall file a demolition permit application with the City to demolish all existing buildings and improvements at the Hostel Site.
- d) Within thirty (30) days from the issuance of a demolition permit for the Hostel Site, the developer shall commence demolition of all existing buildings and improvements at the Hostel Site.
- e) Within thirty (30) days of the completion of the demolition, the Developer shall bring the Hostel Site into compliance with all applicable provisions of the Miami Beach Resiliency Code and the Code governing the maintenance of vacant lots after demolition, including without limitation Section 7.5.1.6 of the Resiliency Code and Section 14-501 of the Code.
- f) If the recorded sale of the Hostel Site reflects a sale price of less than the Estimated Hostel Site Sale Price, then the Developer shall contribute the difference between the recorded sale price and the Estimated Hostel Site Sale Price to the City within sixty (60) days of the date the deed for the Hostel Site is recorded in the public records. Developer shall record the deed reflecting the Developer as the owner of the Hostel Site within five (5) Business Days of the closing date.

If the Developer cannot successfully consummate closing on Hostel Site for any reason, prior to terminating the purchase and sale agreement with the seller of the Hostel Site, the Developer shall make a good faith effort to secure the right from the seller of the Hostel Site to assign the purchase and sale agreement to the City at the same purchase price offered to the Developer, less any deposits forfeited or paid by the Developer to the seller. For the avoidance of doubt, the Developer's right to purchase the Hostel Site is unassignable and only the seller of the Hostel Site, at its sole discretion, may allow assignment of the purchase right. If the Developer does not successfully consummate the closing of the acquisition of the Hostel Site in breach of its obligations under this Agreement, then this Agreement shall terminate.

6 Public Projects Conditioned on Private Project Approvals / Termination. If Developer: (a) obtains all Private Project Approvals for not less than the Restricted Private Project Elements without the imposition of terms, conditions or obligations that could have a material adverse effect on the Private Project (as defined below), and the time period for all appeal periods with respect to each Private Project Approval has expired with no appeals having been filed (or, in the event an appeal is filed, the same has been



resolved (by judgment, settlement or otherwise in a final non-appealable manner) on terms and conditions acceptable to Developer in its sole discretion) (collectively, the "**Private Project Conditions**"); or (b) waives the Private Project Conditions in its sole discretion, then Public Project Developer will proceed with each Public Project subject to the terms of this Agreement. If any of the Private Project Conditions are not satisfied (or not waived by Developer in its sole discretion), then this Agreement shall terminate.

For avoidance of doubt if Developer is unable to obtain the Private Project Approvals, is able to obtain the Private Project Approvals but the Private Project Approvals contain terms, conditions or obligations that could have a material adverse effect on the Private Project (as defined below) or that could materially increase Developer's budgeted costs for the development and construction of the Private Project, then Developer may, in its sole discretion, elect to (i) diligently prepare a revised application for the Private Project, so long as same still conforms to the terms of this Agreement; (ii) exercise any rights of appeal; (iii) revise the scope of the Private Project to conform to the conditions or comments imposed or sought to be imposed by the DRB; or (iv) abandon its applications for the Private Project and terminate this Agreement.

7 Material Adverse Effect on Project Explained. Developer agrees that the DRB's imposition of conditions requiring architectural changes to the Private Project would not alone constitute a "material adverse effect on the Private Project". Terms, conditions, or obligations imposed by the DRB that would have a "material adverse effect on the Private Project" shall be limited to those mandating or resulting in any reduction in height, any more than de minimis reduction in floor area or more than de minimis increase in setbacks.

8 Florida Live Local Act and Preemptions. Upon the Effective Date of this Agreement, the Developer voluntarily covenants and agrees that Developer shall not avail itself of the Florida Live Local Act ("Live Local Act"), codified under Section 166.04151, Fla. Stat (2025), any amendment thereto, or any other state statute that preempts local land development regulations concerning maximum permitted height, maximum permitted floor area ratio, or maximum permitted density.

9 Public Project Requirements. Each Public Project shall be undertaken as follows:

- a) Developer shall select and engage one or more Florida licensed design professionals, as necessary, and general contractor(s) (each, a "**Public Project Contractor**") and enter into appropriate contract(s) for the Public Projects



(each, a "**Public Project Construction Contract**"). Except as expressly set forth in this Agreement, Developer shall be solely responsible for the design, permitting and construction of each Public Project, at Developer's sole cost and expense. Each Public Project Construction Contract shall, among other things: (i) require that the City be named as an additional or named insured on all insurance coverages required by such Public Project Construction Contract and under which Developer is an additional or named insured with coverage amounts acceptable to the City; (ii) require that the City be named a co-obligee under any payment and performance bonds (if any) required by such Public Project Construction Contract; and (iii) subject to rights of lenders, be assignable to the City, at the City's option, in the event of a default by Developer under such Public Project Construction Contract or this Agreement that remains uncured after the expiration of all applicable cure and grace periods.

- b) For the avoidance of doubt, Developer acknowledges and understands that the City may not waive land use board application fees and costs related to the development of the Public Projects, applicable Building Department fees, Mobility Fees, or Art in Public Places fees.
- c) Developer and the City shall mutually agree to project oversight and administration responsibilities for the Public Projects, it being understood and agreed that Developer (or a consultant engaged by Developer) will have primary responsibility for the oversight and administration of the Public Projects, and the City may, at its option in its sole discretion, assign staff members (or a consultant engaged by the City) to participate in the oversight and administration of the Public Projects.

10 Implementation of Baywalk Project.

- a) *Concept Plan Approval.* Within sixty (60) days after the Private Project Approval has become final and the appeals period has run (subject to Developer's acceptance or waiver of the Private Project Conditions in Developer's sole discretion), Developer shall submit to the City a concept plan for the Baywalk Project for the City to approve (the "**Concept Plan**"). The Concept Plan shall include, at a minimum, the materials and specifications set forth in **Exhibit "D"** and shall be in substantial conformance with the concept drawings included in such Exhibit. In its proprietary capacity, the City shall review and either confirm, approve, or disapprove the Concept Plan within forty-five (45) days after receipt



of the same. If the City fails to confirm, approve, or disapprove such concept plan within such forty-five (45) day period, then such concept plan shall be deemed confirmed/approved by the City. However, if the City timely disapproves such concept plan, it shall give the specific and detailed reasons for such rejection, in which event, Developer shall within sixty (60) days after such disapproval, submit proposed modifications to such concept plan, and then re-submit the concept plan to the City pursuant to the foregoing process until such concept plan has been or is deemed to have been confirmed/approved by the City (once confirmed/approved or deemed confirmed/approved by the City, such concept plan, the "**Approved Baywalk Concept Plan**").

- b) *Final Construction Documents and Proprietary Review.* Within three (3) months of approval of the Baywalk Concept Plan Developer shall prepare construction documents, including the preparation of design and permit plans, and the preparation of materials necessary for any development permits required by the City, County, and State, it being understood and agreed that Developer's design professionals shall be responsible for preparing the construction documents in consultation with the City. Developer shall submit such construction documents to the City for the City to confirm, in its proprietary capacity, that such construction documents conform in all material respects with the Approved Baywalk Concept Plan. The City shall review and either confirm/approve or disapprove such final construction documents within forty-five (45) days after receipt of the same, but for avoidance of doubt, the City may disapprove the final construction documents only if they do not conform in all material respects to the Approved Baywalk Concept Plan or applicable law. If the City fails to confirm/approve or disapprove such final construction documents within such forty-five (45) day period, then such final construction documents shall be deemed confirmed/approved by the City. However, if the City timely disapproves such final construction documents, it shall give the specific and detailed reasons for such rejection, in which event, Developer shall, within sixty (60) days after such disapproval, submit proposed modifications to such final construction documents so that they conform in all material respects to the Approved Baywalk Concept Plan and then re-submit them to the City pursuant to the foregoing process until such construction documents have been or are deemed to have been confirmed/approved by the City, and such construction documents, once confirmed/approved or deemed approved by



the City, shall be the deemed the final construction documents and be submitted for permitting of the Baywalk Improvements.

- c) *Permitting of Baywalk Project.* The Developer shall be solely responsible for obtaining all necessary permits for the Baywalk Project based on the Approved Baywalk Concept Plan (the "**Baywalk Permits**") and shall make commercially reasonable best efforts to obtain such permits within eighteen (18) months from the date the construction documents are approved (or deemed approved) by the City. The Developer shall be responsible, at its sole cost and expense, for obtaining for the benefit of the City, all necessary easements, joinders, and consents (in such form(s) as is/are approved by the City), from the owners of 800 West Avenue, 1228 West Avenue, and 1450 Lincoln Road within twelve (12) months from the Effective Date of this Agreement, provided however, to the extent any such owner of any such upland parcel is the Developer, then the Developer shall deliver such joinders or consents to the City upon request for same. The Developer shall be responsible for all permit fees associated with the Baywalk Project. The City shall reasonably cooperate with the Developer in the process of obtaining the necessary joinders and consents from the affected property owners, including, subject to the City's reasonable discretion, executing documents or instruments in a form acceptable to the City Attorney that, to the maximum extent permitted by law, allow Developer to enforce existing easements, agreements, joinders, consents, or other documents to which the City and upland property owners are parties thereto. The City shall not be required to make any payments or incur any expenditures of any kind or nature in connection with such cooperation, and the Developer shall be solely responsible for all costs and expenses arising from same.
- d) *Construction of Baywalk Project.* After the Developer obtains a Baywalk Permit in respect of each Baywalk Segment, the Developer shall then be responsible, at Developer's sole cost and expense, to complete or cause to be completed the construction of such Baywalk Segment, it being understood and agreed that the Developer shall proceed with all deliberate speed with respect to each Baywalk Segment as soon as the Baywalk Easement and Baywalk Permit in respect of such Baywalk Segment have been obtained.. The Developer shall complete or cause to be completed the construction of each Baywalk Segment within eighteen (18) months after the Developer obtains the Baywalk Permit in respect of each such Baywalk Segment, in compliance with all applicable laws, including the City's Art in Public Places requirements. Upon written request by



the Developer, the City Manager may, at its sole discretion, issue extensions of the deadline to construct each Baywalk Segment in six (6) month increments provided that Developer is diligently pursuing construction of each permitted Baywalk Segment and there are circumstances outside of Developer's control impacting construction of the Baywalk Segments. Within sixty (60) days from the date of substantial completion of each Baywalk Segment, the Developer shall transfer any and all rights the Developer holds with respect to the improvements in an instrument reasonably acceptable to the City, constituting each such Baywalk Segment to the City and shall deliver all of the items specified in **Exhibit "E"**.

- e) *Payment in Lieu of Missing Baywalk Segment.* Developer shall secure the Baywalk Easements and Baywalk Permits, within the time periods described herein. If Developer is unable to obtain a Baywalk Easement for any of the Baywalk Project Properties within twelve (12) months of the Effective Date (the "**Baywalk Easement Deadline**") or the Developer is unable to obtain the Baywalk Permits within thirty (30) months from the Effective Date (the "**Baywalk Permit Deadline**"), then the Developer shall either: (i) pay the City on the earlier of the Baywalk Easement Deadline or the Baywalk Permit Deadline, as applicable, the Baywalk Payment in the amounts set forth below in respect of any Baywalk Segment for which a Baywalk Easement or a Baywalk Permit is not obtained by the Baywalk Easement Deadline or the Baywalk Permit or (ii) at Developer's option, but only if (A) Developer has secured all Baywalk Easements but has been unable to obtain Baywalk Permits for any Baywalk Segment by the Baywalk Permit Deadline notwithstanding its diligent, good faith efforts and (B) Developer has entered into all necessary contracts including reasonable estimated contingency for the design and construction of a Baywalk Segment for which Developer has been unable to obtain a Baywalk Permit with design professionals and contractors reasonably acceptable to the City in its sole discretion, and such contracts are in a form reasonably acceptable to the City, then in lieu of the payments described in subparagraph (i), the Developer may assign to the City such contract(s) only for the Baywalk Segment(s) for which Developer has been unable to obtain a Baywalk Permit by the Baywalk Permit deadline notwithstanding its diligent good faith efforts and pay the City the funds to necessary cover all amounts remaining to be paid (including for permit fees and costs relating to those agreements), plus a 15 percent (15%) contingency payment (with such assignment and payment to the City to be made within thirty (30) days from the Baywalk Permit Deadline, as applicable).



The amounts due under subparagraph (i) are:(x) \$18,000,000 in respect of the 800 West Avenue Baywalk Segment, (y) \$5,000,000 in respect of the 1228 West Avenue Baywalk Segment and/or (z) \$2,000,000 in respect of the 1450 Lincoln Road Baywalk Segment to fund the future improvement of that Baywalk Segment and any Segment in respect of which a payment is made shall be removed from the Baywalk Project scope. The Developer shall thereafter have no further responsibility for that segment(s) of the Baywalk Project. Upon written request by the Developer, the City Manager may, at its sole discretion, extend the Baywalk Permit Deadline in six (6) month increments provided that Developer has submitted applications for the Baywalk Permits and diligently pursued approval of the Baywalk Permits

11 Implementation of Park Project / Transfer of Hostel Site to City.

- a) *Environmental Assessment of Park.* Developer shall procure a Level II Environmental Assessment within thirty (30) days of the Effective Date and shall provide said Assessment to the City within ten (10) days of receiving it. Developer shall be responsible for the cost of the Assessment. The Developer shall also be solely responsible for the cost of any remediation required for the development of the Hostel Site as a park. For the avoidance of doubt, this requirement shall apply whether or not the City has decided to proceed with the development of a park by the Developer.
- b) *Development of Park.* The City shall decide, by written notice delivered to Developer within twenty-four (24) months of the Effective Date, whether the City would like the Developer to build a park or to make a payment in lieu thereof as set forth in Section 11(g) (with failure to timely provide such written notice being deemed an election by the City to accept the Park Project). If the City elects not to proceed with the development of a park by the Developer, then Developer shall transfer the Hostel Site to the City following the expiration of such twenty-four (24) month period in accordance with Section 11(j)(i) (i). In addition, if the City elects not to proceed with the park, Developer shall record or cause to be recorded a Declaration of Use setting forth the permitted uses for the Hostel Site, substantially in the form attached hereto as **Exhibit "F"**, prior to conveying the Hostel Site to the City and the City shall take title to the Hostel Site subject to said Declaration of Use. If the City elects to proceed with the park, Developer shall design and construct a park on the Hostel Site at



Developer's sole cost and expense at a cost not to exceed \$2,000,000.00. The Park Project shall be governed as follows.

- c) *Concept Plan Approval.* If the City elects to proceed with the Park, within one hundred twenty (120) days from the date the City so elects, but not sooner than the date upon which the Private Project Approval has become final and the appeals period has run (subject to Developer's acceptance or waiver of the Private Project Conditions in Developer's sole discretion), Developer shall present a concept plan to the City Manager or designee for the creation of the park (the "**Park Concept Plan**") for the City's review. The City Manager shall review and either confirm, approve or disapprove the Park Concept Plan within forty-five (45) days after receipt of the same. If the City Manager fails to confirm, approve or disapprove the Park Concept Plan within such forty-five (45) day period, the plan shall be deemed confirmed/approved by the City. However, if the City Manager timely disapproves of the Park Concept Plan, he/she shall give the specific and detailed reasons for such rejection, in which event, Developer shall, within sixty (60) days after such disapproval, submit proposed modifications to such concept plan, and then re-submit the concept plan to the City pursuant to the foregoing process until such concept plan has been or is deemed to have been confirmed/approved by the City (once confirmed/approved or deemed confirmed/approved by the City, such concept plan, the "**Approved Park Concept Plan**").
- d) *Schematic Plans / Hearing Approval.* Developer, at Developer's sole cost and expense shall be responsible for preparation and processing of all necessary materials for the City's DRB review and approval of schematic design plans implementing the Park Concept Plan. Developer shall prepare and submit the DRB application within one hundred twenty (120) days of the City's approval of the Park Concept Plan. The City shall timely execute all necessary application materials upon the written request by Developer. In the event the DRB requires changes to the proposed design, Developer will be responsible for preparing all necessary modifications.
- e) *Final Construction Documents and Proprietary Review.* Within six (6) months of the DRB approval of schematic design plans, Developer shall prepare and submit to the City Manager the final construction documents, including the preparation of design and permit plans, and the preparation of materials necessary for any development permits required by the City, County, and State,



it being understood and agreed that Developer's design professionals shall be responsible for preparing the construction documents in consultation with the City. Developer shall submit such final construction documents to the City Manager for the sole and limited purpose of verifying that the final construction documents conform in all material respects with the applicable approved Park Plans. The City shall review and either confirm/approve or disapprove such final construction documents within forty-five (45) days after receipt of the same, but for avoidance of doubt, the City may disapprove the final construction documents only if they do not conform in all material respects to the applicable approved schematic design plans. If the City fails to confirm/approve or disapprove such final construction documents within such forty-five (45) day period, then such final construction documents shall be deemed confirmed/approved by the City. However, if the City timely disapproves such final construction documents, it shall give the specific and detailed reasons for such rejection, in which event, Developer shall, within sixty (60) days after such disapproval, submit proposed modifications to such final construction documents so that they conform in all material respects to the Approved Park Concept Plan and DRB approval and then re-submit them to the City pursuant to the foregoing process until such final construction documents have been or are deemed to have been confirmed/approved by the City, and such final construction documents, once confirmed/approved or deemed approved by the City, shall be the documents submitted for building permit for the Park Project.

- f) *Processing of Construction Permit and Final Construction.* Within thirty (30) days of the City's proprietary approval of the final construction documents for the Park, Developer shall, at its sole cost and expense, submit the building permit plans to the City. Developer shall diligently pursue the issuance of a building permit for the improvements, and shall secure a building permit within twelve (12) months of submission of the building permit application. Developer shall complete the Park Project within twelve (12) months from the Temporary Sales Center Use End Date (as defined below in Section 11(j)). If the City chooses for the Developer to proceed with the Park Project, the Developer shall make commercially reasonable best efforts to complete the Park Project, within the time periods described herein.
- g) *Payment in Lieu of Park Project.* If the City or the DRB requires modifications to the Concept Plan or imposes conditions that require modifications to the



Concept Plan that will cause the estimated cost of the Park Project, as reasonably determined by the Developer, to exceed \$2,000,000.00, the Developer may elect to forego completion of the Park Improvements and convey the Hostel Site to the City in accordance with Section 11(j)(i) and the Developer shall pay the City \$2,000,000.00 to fund the Park Project, less any reasonable costs expended by the Developer in furtherance of the Park Project, up to a maximum of \$300,000.00. If the City elects not to proceed with the Park Project following the twenty-four (24) month period in subsection (b), the Developer shall pay the City \$2,000,000.00 within thirty (30) days of conveyance of the Hostel Site to the City in accordance with Section 11(j)(i). In either case, after the Hostel Site is conveyed to the City and the payment is made, the Developer shall have no further responsibility for the Park Project.

- h) *Temporary Sales Center.* Within ninety (90) days of the Effective Date, the Developer shall initiate, prepare, and submit the Temporary Sales Center Amendments to authorize temporary use of the Hostel Site as a sales center for the Private Project during the time period between acquisition of the Hostel until Developer transfers the Hostel Site to the City. However, nothing herein guarantees that the proposed amendments will be authorized by the City Commission, acting in its legislative capacity. All improvements made to the Hostel Site by the Developer in connection with development of the temporary sales center shall be excluded from the cost estimates for development of the Park Project and shall be conveyed to the City upon transfer of the Hostel Site to the City. The City may, at its sole discretion, request that the Developer remove all or part of the improvements made to the Hostel Site in connection with the temporary sales center following the Temporary Sales Center Use End Date (as defined below in Section 11(j)). Upon such a request, Developer shall remove the improvements made to the Hostel Site in connection with temporary sales center within ninety (90) days. To the extent reasonably practicable, the City shall expedite processing of the Temporary Sales Center Amendments, development approvals for the temporary sales center, and temporary sales center permits.
- i) *Public Access to Hostel Site and Temporary Sales Center.* During the time period that the Hostel Site is used as a temporary sales center, the Developer shall allow reasonable access to the Hostel Site to the general public for passive enjoyment between the hours of 11:00 AM and sunset. The Developer may restrict this public access for maintenance, or improvements, or repairs to the



temporary sales center or the Hostel Site, or for private events. In addition, the Developer shall permit reasonable use of the temporary sales center structure for up to four (4) hours once per month by a registered neighborhood association comprised of members living in the West Avenue neighborhood, provided that an authorized representative of the neighborhood association makes a written request for such use at least two (2) weeks prior to the proposed meeting date, and the proposed meeting date does not conflict with the Developer's planned period of restricted access.

j) *Transfer of Hostel Site:*

- i. If the City elects not to proceed with the park, following the twenty-four (24) month decision period in Section 11(b), or the Developer elects Payment in Lieu of the Park Project as provided in Section 11(g), the Developer may remain in possession of the Hostel Site for up to (30) months following expiration of the twenty-four (24) month to allow for development and temporary use of the Hostel Site as a sales center for the Private Project for up to fifty-four (54) months from the Effective Date, subject to the approval of the Temporary Sales Center Amendments. Not later than the earlier of (A) the date of expiration of the thirty (30) month period or (b) ninety (90) days after the Temporary Sales Center is no longer operating as such (the earlier of such dates, the "Temporary Sales Center Use End Date"), the Developer shall convey the Hostel Site to the City within sixty (60) days in accordance with subsection (j)(iii) below. During the sixty (60) day period following the Temporary Sales Center Use End Date, the Developer shall wind down operations of the temporary sales center and remove any improvements, if requested, as required by subsection (h).
- ii. If the City elects to proceed with the park, the Developer shall commence construction of the Park Improvements within one-hundred twenty (120) days of the Temporary Sales Center Use End Date, and shall complete the Park Project within twelve (12) months from the Temporary Sales Center Use End Date. Upon completion of the Park Improvements, Developer shall provide notice of such completion (the "Park Completion Notice") to the City. The parties will thereafter set a mutually agreed upon date for the closing of



the conveyance of the Hostel Site to the City (the closing of the conveyance of the Hostel Site to the City, whether or not the City elects to proceed with the Park, the "**Closing**"), but no earlier than sixty (60) days following the date of the Park Completion Notice. The City shall have the right to inspect the Park Improvements for compliance with the Approved Park Concept Plan.

- iii. At the Closing, Public Project Developer shall deliver to the City the following: (i) a Special Warranty Deed (the "**Deed**") conveying to the City fee title to the Hostel Site free and clear of all liens and encumbrances other those reasonably acceptable to the City at the City's sole discretion; (ii) customary title affidavit reasonably required by the title company; (iii) a "marked-up" title commitment issued by the title insurer specified by the City committing to issue an owner's policy to the City with an effective date as of the date and time of recording the Deed in the Public Records of Miami-Dade County, Florida, with an insured amount equal to the estimated market value of the Hostel Site as of the Closing; and (iv) such other instruments as may be necessary to complete the conveyance of the Hostel Site together with any improvements thereon. At Closing, the Public Project Developer shall also deliver to the City all of the items specified in **Exhibit "G"**.
- iv. The City shall be responsible at its sole cost and expense for the operations, maintenance, repair, replacement, restoration of the Hostel Site from and after the Closing, and all obligations and liabilities of Developer with respect to the Hostel Site as of the Closing date shall terminate at the Closing except for (A) the warranties in the Deed, (B) any environmental conditions existing at the Hostel Site, and (C) Developer's indemnification obligations pursuant to this Agreement.

12 Conditions Precedent to Issuance of Certificate of Occupancy or Temporary Certificate of Occupancy for the Private Project. The Developer acknowledges that construction of the Baywalk Project or payment in lieu of said Project, conveyance of the Hostel Site, and completion of Park Improvements or payment in lieu of said Improvements, are additional and essential considerations of the City's processing of the approvals required for the Private Project. Except as otherwise provided in this Agreement,



the Developer shall not apply for, and the City shall not issue, any temporary certificate of occupancy, final certificate of occupancy, and/or certificate of completion for the Project (in whole or in part) until the following has occurred:

(a) Unless a bond or letter of credit is provided as set forth below in this clause (a), Developer shall have completed construction of the Baywalk Project, substantially in accordance with the Approved Baywalk Concept Plan and Baywalk Permits (as evidenced by the issuance of one or more temporary certificates of occupancy, final certificates of occupancy, or certificates of completion that individually or collectively encompass the Baywalk Project). Alternatively, Developer shall have made the payment(s) in lieu as set forth in subparagraph (i) in section 10(e) or assigned the design professional and construction contracts and made the necessary payments in accordance with the provisions set forth in subparagraph (ii) in Section 10(e). If the Baywalk Segments are not substantially completed at the time of application for TCO for the Private Project, the City Manager shall authorize issuance of a TCO for the Private Project (but not a final certificate of occupancy) under this Agreement if, and only if, (v) there exists no uncured Event of Default, (w) the Developer has obtained the Baywalk Easements and the Baywalk Permits (x) the Developer has commenced construction and achieved twenty-five percent (25%) completion of the construction of the Baywalk Segments, defined as payment of twenty-five percent (25%) of the contracted construction cost of each Baywalk Segment (y) the Developer is diligently pursuing construction of the Baywalk Segments, and (z) all other requirements of this Section have been satisfied, provided that the Developer posts a letter of credit or bond in an amount equal to the Baywalk Segment Construction Cost (as hereinafter defined) for the Baywalk Segment(s) remaining to be completed, which letter of credit or bond: (A) is unconditional, irrevocable, and payable to the City on site at an office of the issuing financial institution in a single draw equal to the then remaining Baywalk Segment construction Cost, (B) is in form and content reasonably acceptable to the Developer and the City, and (C) shall contain an "evergreen" provision which provides that the letter of credit or bond is automatically renewed on an annual basis (unless the issuer delivers sixty (60) days prior written notice of cancellation to the City) until the outstanding Baywalk Segment(s) shall have been completed (as evidenced by the issuance of one or more temporary certificates of occupancy, final certificates of occupancy, or certificates of completion) and accepted by the City, and which City shall have the right to present for payment in accordance with its terms in the event of Baywalk Segment Construction Default (as hereinafter defined). For the purpose of this subsection, Baywalk Segment Construction Cost shall mean an amount equal to one hundred percent (100%) of the sum of (A) the then remaining cost to complete the construction of the applicable



Baywalk Segment then remaining to be completed based on the applicable Baywalk Segment Construction Contract, defined as the cost to construct the remaining Baywalk Segment(s) as initially set forth in the construction contract, less any amounts paid towards construction of the applicable Baywalk Segment plus the amount of any change orders submitted by the contractor, whether or not yet approved and (B) the then remaining amount of payments due to any design professional for construction administration. Baywalk Segment Construction Default shall mean any of (I) the failure of the Developer to complete construction of any Baywalk Segment in accordance with this Agreement, which default remains uncured after the expiration of all applicable grace, notice and cure periods and/or (II) if the City Manager authorizes the issuance of a TCO pursuant to the provisions of this Section 12 prior to completion of the Baywalk Project, the failure of Developer to obtain a certificate of completion of any Baywalk Segment within twelve (12) months from the date the City Manager authorized issuance of the TCO without notice or cure period, except that the City Manager may authorize six (6) month extensions if the Developer is making commercially reasonable efforts to progress the Baywalk Project and/or (III) institution of any foreclosure proceedings by any lender (including without limitation any mezzanine lender) of Developer or any of its members with respect to the Baywalk Project.

The Developer shall have the right to reduce the amount of the letter of credit or bond to reflect the then remaining cost to substantially complete the applicable Baywalk Segments(s) on a quarter calendar basis by delivering to the City Manager documentation supporting such a reduction (including at a minimum a completion certificate by the applicable Public Project Contractor, certifying the percentage completion of the Baywalk Segment(s) based on the schedule of values within the applicable Baywalk Segment contract(s). The City shall cooperate with Developer in reducing the amount of the letter of credit or bond (including, without limitation, promptly providing an original instruction letter, duly signed by the City Manager or designee, authorizing the applicable financial institution to reduce the amount of the letter of credit or bond and otherwise complying with any requirements of the issuer of the letter of credit or bond in order to reduce the amount of same. The City shall return the letter of credit or bond together with an original instruction lender duly signed by the City Manager or designee, authorizing the applicable financial institution to cancel the letter of credit and otherwise comply with the requirements of the issuer of the letter of credit or bond to cancel same.

Following any Baywalk Segment Construction Default by the Developer under this Agreement that is not cured by the Developer or any lender within any applicable notice



and cure period, the City shall have the right, but not the obligation, to draw all funds under the letter of credit or bond. The right to draw funds under the letter of credit shall be the City's sole and exclusive remedy with respect to a Baywalk Segment Construction default by the Developer that is not cured by the Developer or any lender within any applicable notice and cure period under this Agreement, if applicable. Upon drawing of funds by the City under the letter of credit or bond, then all conditions precedent to the issuance of a TCO, CO, or Certificate of Completion for the Private Project (whether in whole or in part) whether or not construction of the applicable Baywalk Segment(s) has been completed or accepted by the City, in which case the City's issuance of a TCO, CO, or Certificate of Completion for the Private Project shall only be subject to the regulatory authority that may be required by any agencies having jurisdiction over the Private Project (or such part thereof for which a TCO, CO, or Certificate of Completion is sought). If the City draws funds under the letter of credit and there are any excess funds remaining after the City completes construction of the outstanding Baywalk Segment(s), the City shall return any such excess funds to the Developer promptly after the City completes such construction of the Baywalk Segment(s).

(b) The Developer shall have conveyed the Hostel Site to the City as set forth in section 11(j)(i).

(c) The Developer shall have completed construction of the Park Improvements, substantially in accordance with the Approved Park Concept Plan (as evidenced by the issuance of one or more temporary certificates of occupancy, final certificates of occupancy, or certificates of completion that individually or collectively encompass the Park Improvements). Alternatively, Developer shall have made the payment(s) in lieu as set forth in section 11(g).

(d) Upon final non-appealable approval of a Design Review Board approval for the Private Project, the Developer shall cause a Declaration of Restrictive Covenant encumbering the Development Property for a term of thirty (30) years following the recording of the Declaration of Restrictive Covenants, and renewing automatically for ten (10) year extensions, unless the City agrees to release the Restrictive Covenant, in a form acceptable to the City Attorney, to be recorded in the public records providing that the Developer shall not avail itself of the "Live Local Act," codified under Section 166.04151, Fla. Stat (2025), any amendment thereto, or any other state statute that would preempt local land development regulations concerning maximum permitted height, maximum permitted floor area ratio, or maximum



permitted density, and further prohibiting residential units within the Private Project to be rented or leased for a period of less than six (6) months and one (1) day.

13 Rental Assistance for Lessees of Development Property. Developer shall provide financial assistance to Bona Fide Lessees (as defined below) whose leases are terminated by the Developer without commercially reasonable cause (such as violation of the terms of the lease) or who reside in the existing building at the Development Property sixty (60) days prior to the termination of the existing building's condominium, to assist those Lessees in securing new residential leases as follows: (i) \$5,500 for studio apartment, (ii) \$7,500 for one-bedroom units or (ii) \$10,000 for two-bedroom units. For Bona Fide Lessees that provide proof of relocation within the City reasonably acceptable to the Developer, the Developer shall provide financial assistance as follows: (i) \$12,500 for studio apartment, (ii) \$17,500 for one-bedroom units, and (iii) \$21,000 for two-bedroom units instead of \$5,500 for studio apartment, \$7,500 for one-bedroom units or \$10,000 for two-bedroom units.

- a) "Bona Fide Lessees" shall mean leaseholders meeting the following requirements as of June 27, 2025:
 - i. Resides full time in the unit.
 - ii. Is a lessee that had, at the commencement of the lease entered into between the Bona Fide Lessee and the relevant unit owner (which may include Developer), a written lease with a minimum initial term of six (6) months, and such lease was entered into on or before June 27, 2025.
 - iii. Is not as of the date of the claim for rental assistance subject to eviction proceedings pursuant to Chapter 83 of the Florida Statutes.
- b) Developer represents that no purchase and sale agreement entered into with respect to existing condominium units within the Development Property required, or requires, termination of existing leaseholds. Developer shall not require any unit owner to deliver any existing unit vacant or otherwise terminate any existing tenant's lease except for commercially reasonable cause. Upon acquisition of existing apartment units within the Development Property, the Developer shall not terminate any lease for a tenant that had an initial term of at least six (6) months at the commencement of the lease and was entered into on or before June 27,



2025 except for commercially reasonable cause. Further, Developer shall offer any Bona Fide Lessee who requests to remain at the Development Property beyond the expiration of such tenant's lease the opportunity to remain at the Development Property on a month-to-month basis, or enter into a new lease with Developer, until such time as Developer terminates all leases at the Development Property, subject to Developer's right to decline such tenancy to such Bona Fide Lessee for commercially reasonable cause, as determined by Developer in Developer's sole discretion. Developer shall not exercise its discretion in a pretextual manner to avoid the payments required under this section to Bona Fide Lessees, and Developer's decision to decline month-to-month tenancy, or new leases, to all Bona Fide Lessees, shall serve as prima facie evidence of the Developer's intent to avoid payment in violation of this Section. If Developer enters into any new leases for units at the Development Property, Developer shall disclose to any prospective tenant its intent to redevelop the Development Property.

- c) Within thirty (30) days of execution of this Agreement, the Developer shall make commercially reasonable efforts to: (i) obtain information from all unit owners regarding lessees at the Development Property as of June 27, 2025 who qualify as Bona Fide Lessees and (ii) provide written notice, with such notice to be approved by the City Manager or designee, to all unit owners and Bona Fide Lessees of the building advising them of the rental assistance required to be provided by Developer pursuant to this Section and instructions for making a claim for rental assistance ("Rental Assistance Notice"). Copies of the Rental Assistance Notice shall also be posted at prominent locations within common areas of the Development Property. Within ninety (90) days of the execution of this Agreement, Developer shall provide a schedule reflecting the names of all Bona Fide Lessees, the unit type each such Bona Fide Lessee occupies at the Development Property, and contact information for each such Bona Fide Lessee.
- d) Developer shall provide written notice to Bona Fide Lessees prior to the termination of any leases (including month-to-month tenancies) in accordance with all applicable laws. Payments to Bona Fide Lessees shall be made within thirty (30) days of termination of the lease agreement by the Developer. Notwithstanding the foregoing, a tenant identified as a Bona Fide Lessee in accordance with the provisions of Section 13(c) that becomes the subject of eviction proceedings pursuant to the terms of such tenant's



lease or Chapter 83 of the Florida Statutes shall not be entitled to rental assistance.

- e) Prior to submission of an application for a demolition permit of the existing improvements at the Development Property, the Developer shall submit documentation reasonably acceptable to the City that demonstrates its compliance with the notice and rental assistance requirements specified in this Section 13. A Bona Fide Lessee that does not claim the rental assistance offered in this Section by the date that is twelve (12) months from the date of the termination of the condominium (the "Rental Assistance Claim Deadline") shall have been deemed to forfeit the rental assistance. Within thirty (30) days from the Rental Assistance Claim Deadline, Developer shall (i) calculate the rental assistance that would have otherwise been paid to the Bona Fide Lessees that were entitled to rental assistance but did not claim such rental assistance, assuming such Bona Fide Lessee did not intend to continue residing in the City and (ii) submit an itemized copy of such calculation together with payment of the amount so calculated to the City. Developer shall provide an affidavit to the City affirming compliance with this Section, in form and substance acceptable to the City Manager and City Attorney in their sole discretion, before a demolition permit may issue for the existing building on the Development Property.

14 Purchase of Remaining Units at Development Property. For any unit that the Developer does not own or has not contracted to purchase on the Effective Date of the Agreement, the Developer shall compensate such unit owners at a value no less than twenty percent (20%) above the fair market value. The fair market value shall be determined in accordance with Section 718.117(3)(c)(3), Florida Statutes, as same may be amended from time to time. The Developer shall provide the City with an affidavit attesting to the values paid for the remaining units at the Development Property not owned or under contract for purchase by the Developer on the Effective Date of this Agreement prior to obtaining a demolition permit for the existing improvements at the Development Property.

15 Applications for Private Project Approvals and the Baywalk Project Approvals. This Agreement contemplates that Developer will expeditiously file applications for the Private Project Approvals and the Public Project Approvals. In exchange for the public benefits provided by Developer, the City shall schedule all required public hearings as soon as reasonably practicable. The City shall designate a



point of contact within the City Administration to facilitate processing of all Private Project and Public Project Approvals. Notwithstanding the foregoing, Developer shall be solely responsible for obtaining all final, non-appealable Private Project Approvals and the Public Projects Approvals for the Private Project and the Public Projects. No extension of any time period herein shall be deemed to be an extension of any time periods contained within the Private Project Approvals or the Public Projects Approvals. The expiration of Private Project Approvals and the Public Projects Approvals shall be subject to Section 2.11.2 of the Resiliency Code.

16 Laws Governing this Agreement. For the entire Term of this Agreement, the City hereby agrees that the City's Resiliency Code (as may be amended by the Legislative Approvals) governing the development of the Development Property, as they exist as of the Execution Date of this Agreement, shall govern the development of the Property (including the Private Project and the Public Projects) during the entire Term of this Agreement. Notwithstanding the foregoing, the City may apply subsequently adopted laws or policies of general applicability to the Property (including the Private Project and the Public Projects) (particularly as they may relate to quality of life issues such as, but not limited to noise, litter, and hours of operation) as permitted or required by the Act, including, without limitation, Section 163.3233(2), Florida Statutes, as same may be amended from time to time; provided, however, that in no event shall the City apply any subsequently adopted law or policies in a manner that requires any alterations or modifications to the Private Project and the Public Projects or any amendments or modifications to the Private Project Approvals or the Public Projects Approvals.

17 Compliance with Local Regulations Regarding Development Permits. This Agreement is not and shall not be construed as a Development Permit, Development Order, approval or authorization to commence any development, fill, or other land modification. Developer and the City agree that the failure of this Agreement to address a particular permit, approval, procedure, condition, fee, term or restriction in effect on the Effective Date shall not relieve Developer of the necessity of complying with any such permit, approval, procedure, condition, fee, term or restriction, subject however to the terms and provisions of this Agreement.

18 Reservation of Rights. This Agreement shall not affect any rights that may have accrued to any party to this Agreement under any applicable law, rule or regulation and each party hereto reserves any and all of such rights.



19 Consistency with the City's Comprehensive Plan. The City has adopted and implemented the Comprehensive Plan. The City hereby finds and declares that the provisions of this Agreement dealing with the Property (including the Private Project and the Public Projects) are consistent with the City's Comprehensive Plan and Resiliency Code (as may be amended by the Legislative Approvals), subject to all applicable requirements, permits and approvals.

20 Concurrency. Developer shall be solely responsible for obtaining, at its sole cost and expense, all land use permits for the Public Projects and Private Project, including, but not limited to, all permits and approvals required pursuant to Section 163.3180, Florida Statutes (2024), with respect to concurrency requirements for roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation, and schools (the "Concurrency Requirements"). Prior to applying for the Initial Building Permit for the Private Project, Developer shall apply to the appropriate governmental authorities and obtain letters or other evidence that Developer has satisfied all applicable Concurrency Requirements with respect to the Private Project, and shall diligently and in good faith obtain such letters or other evidence that the Private Project meets all applicable Concurrency Requirements, and shall pay such impact fees or mobility fees as may then be due or applicable to meet Concurrency Requirements.

21 Effective Date; Duration; and Term.

- a) Within fourteen (14) days following approval of this Agreement at two (2) public hearings and the execution of this Agreement by all parties, the City shall record this Agreement in the Public Records of Miami-Dade County. This Agreement shall become effective only after it has been recorded in the Public Records of Miami-Dade County, Florida. Developer agrees that it shall be responsible for all recording fees related to the recording of this Agreement.
- b) The initial Term of this Agreement shall be a total of ten (10) years from the Effective Date. The Term of this Agreement shall be automatically extended by five (5) years provided (i) the Park Project is completed or the applicable payment is made, (ii) the Closing occurs, and (iii) either the Baywalk Project is completed or the applicable Baywalk Payment is made, all within the time frames set forth in this Agreement. The Term of this Agreement shall be subject to the force majeure provisions of Section 38. Any further extension of the Term of this Agreement will only



be by the mutual consent of the City and Developer subject to a public hearing pursuant to Section 163.3225, Florida Statutes. No notice of termination shall be required by either party upon the expiration of this Agreement, and after the expiration of this Agreement the parties shall have no further obligations under this Agreement, except for those obligations that expressly survive the expiration of this Agreement.

- c) The City shall review this Agreement at least once every twenty (20) months, to determine if there has been demonstrated good faith compliance with the terms of the development agreement pursuant to Section 163.3235, Florida Statutes. Any action to modify or revoke this Agreement pursuant to this Section must be undertaken following the public hearing process required by Section 163.3225, Florida Statutes, and based on substantial competent evidence that Developer is not in compliance with its obligations and responsibilities under the Agreement.

22 Permitted Development.

- a) *Permitted Development and Uses.* The Development Property is designated as "High Density Multi Family Residential" (RM-3) according to the City's adopted Comprehensive Plan Future Land Use Map. The "Residential multifamily, high intensity" (RM-3) zoning district permits multi-family residential buildings, hotels, and related accessory uses. The Development Property may be used for the purposes permitted and regulated in these land use designations and zoning districts, as further limited by the by the City's Resiliency Code and Comprehensive Plan, as amended by the Comprehensive Plan Amendment and the Legislative Approvals.
- b) *Density, Building Heights, Setbacks and Intensities.* The maximum density, heights, setbacks and intensities for any development on the Development Property shall be regulated by the City's Resiliency Code, Comprehensive Plan (as amended by the Legislative Approvals) and any applicable Federal, State or County laws, rules and regulations. Subject to the restrictions set forth in the Residential Multifamily Medium Density land use designation, following the adoption of the Legislative



Approvals, the maximum residential density for the Development Property shall be seventy-five (75) dwelling units per acre.

23 Public Facilities to Serve the Development Property. A description of the public facilities that will service the Development Property, including who shall provide such facilities, the date any new facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development of the Development Property, is set forth in **Exhibit "H"** attached hereto and incorporated herein by this reference.

24 Public Reservations and/or Dedications. A description of the reservations and/or dedications of land for public purposes that are proposed under the terms of this Agreement is set forth in **Exhibit "I"** attached hereto and incorporated herein by this reference.

25 Required Development Permits. A listing and description of all local development permits approved or needed to be approved for the development of the Private Project and the Public Projects is set forth in **Exhibit "J"** attached hereto and incorporated herein by this reference.

26 Developer's Right to Terminate. Developer shall have the option to terminate this Agreement in its sole and absolute discretion in the following events:

- a) If the Private Project Conditions (including, without limitation, the Legislative Approval Conditions) are not satisfied;
- b) If the Public Project City Approvals are not obtained; or
- c) Public Project Developer does not successfully consummate the closing of the acquisition of fee simple title to the Hostel Site free and clear of liens and encumbrances (other than liens or encumbrances that can be released through the payment of moneys not to exceed \$500,000).

27 Default. Each of the following shall be an **"Event of Default"** by Developer hereunder:

- a) If Developer shall fail to acquire title to the Hostel Site as required under Section 5 (the "Hostel Acquisition Failure") by or before September 19, 2025 (or October 4, 2025 if the seller exercises the one-time right to an extension and Developer provides notice to the City as specific in Section



5(a)). In the event of Hostel Acquisition Failure, the Developer shall have ten (10) days commencing on September 20, 2025 (or the postponed closing date, not later than October 5, 2025, if the seller exercises the one-time right to an extension and Developer provides notice to the City as specific in Section 5(a)), to cure this Event of Default. The City shall not be required to provide a Default Notice to trigger the cure period herein.

- b) If Developer shall fail to observe or perform any other term, covenant or condition of this Agreement on Developer's part to be observed or performed and Developer shall fail to cure or remedy the same within (i) thirty (30) days of Developer's receipt of written notice from the City with respect to monetary defaults, or (ii) sixty (60) days of Developer's receipt of written notice from the City with respect to non-monetary defaults (each, a "**Default Notice**"). If such non-monetary default is susceptible to cure but cannot reasonably be cured within such sixty (60) day period, then Developer shall have such additional time, not exceeding 180 days from the date of the Default Notice, to cure such failure and no Event of Default shall be deemed to exist hereunder so long as Developer commences such cure within such initial sixty (60) day period and diligently and in good faith pursues such cure to completion, and such Event of Default is cured within 180 days from the date of the Default Notice. The City Manager may extend the period permitted to cure the Event of Default in thirty (30) day increments if Developer is diligently and in good faith pursuing such cure. This notice and cure provision shall not apply to obligations set forth in Section 5.
- c) If Developer shall make an assignment for the benefit of creditors; or shall admit in writing its inability to pay its debts generally as they become due; or shall consent in writing to the appointment of a receiver or trustee or liquidator of all or substantially all of its property; or if all or substantially all of the assets of Developer are attached, seized, subjected to a writ or distress warrant, or are levied upon, and the same is not dismissed, discharged or satisfied within one hundred fifty (150) days after such attachment, seizure, subjection or levy occurs.
- d) If Developer shall commence a voluntary case under the Title 11 of the United States Code (the "**Bankruptcy Code**"); or an involuntary



proceeding is commenced against Developer under the Bankruptcy Code and the same is not dismissed or stayed within one hundred fifty (150) days after the commencement of the case; or a custodian (as defined in the Bankruptcy Code) is appointed for or takes charge of all or substantially all of the property of Developer in any proceeding under the Bankruptcy Code and such custodian is not discharged or dismissed within one hundred fifty (150) days after such appointment; or Developer consents in writing or joins in an application for the appointment of a custodian in any proceeding under the Bankruptcy Code; or Developer commences any other proceedings under any reorganization, arrangement, readjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect (an "Other Insolvency Proceeding") relating to Developer; or there is commenced against Developer any such Other Insolvency Proceeding and the same is not dismissed or stayed within one hundred fifty (150) days; or a custodian, trustee or person of similar capacity is appointed for or takes charge of all or substantially all of the property of Developer in any such Other Insolvency Proceeding and such custodian, trustee or person of similar capacity is not discharged or dismissed within one hundred fifty (150) days after such appointment; or Developer consents in writing or joins in an application for the appointment of a custodian, trustee or person of similar capacity in any such Other Insolvency Proceeding.

In the event the City shall claim any Event of Default shall have occurred under this Agreement, the City's Default Notice shall state with specificity the provisions of this Agreement under which the Event of Default is claimed, the nature and character of such Event of Default, the date by which such Event of Default must be cured pursuant to this Agreement (if applicable), and, if elected by the City, that the failure of Developer to cure such Event of Default by the date set forth in such Default Notice will result in the City having the right to terminate this Agreement.

28 Enforcement of Performance; Damages; and Termination. If an Event of Default occurs under this Agreement, and such Event of Default has not been cured within any applicable notice and cure period, the City may elect (subject to the terms, conditions and limitations set forth in this Agreement) any one or more of the following remedies:



- a) Enforce strict performance by Developer, provided, if Developer is legally unable to acquire title to the Hostel, then strict performance shall not be available as a remedy in respect of a Hostel Acquisition Failure;
- b) Terminate this Agreement, provided that the City shall have delivered a copy of the City's Default Notice to any lender providing financing with respect to the Project that has provided the City written notice of its name and address, and the City shall not terminate this Agreement if such lender is diligently prosecuting cure of any curable Event of Default, or with respect to Events of Default that are not susceptible to cure by such lender (e.g., bankruptcy with respect to the Developer) or that are not susceptible to cure without possession of or title to the applicable property, or ownership of Developer (directly or indirectly), such lender is diligently prosecuting enforcement proceedings to obtain possession or title, and after obtaining possession and title diligently proceeds to prosecute cure of those Events of Default that are susceptible to cure; or
- c) Pursue any other remedy available to the City at law or in equity, subject to the limitation on specific performance in respect of a Hostel Acquisition Failure as described in subparagraph (a), above.

The City's election of a remedy under this Agreement with respect to any one or more Events of Default shall not limit or otherwise affect the City's right to elect any of the remedies available to it under this Agreement with respect to any other Event of Default.

In the event the City elects to terminate this Agreement after the occurrence of an Event of Default that was not cured within any applicable notice and cure period, and such termination is stayed by order of any court having jurisdiction of any matter relating to this Agreement, or by any federal or state statute, then following the expiration of any such stay, the City shall have the right, at its election, to terminate this Agreement with five (5) Business Days' written notice to Developer, Developer as debtor in possession, or if a trustee has been appointed, to such trustee.

Notwithstanding anything to the contrary contained in this Agreement, in no event whatsoever shall Developer be liable to the City or any other person for any indirect, special, incidental, consequential, punitive, economic damages (including, without limitation, diminution of property value) lost profits or similar damages, whether or not



foreseeable or advised of the possibility of the same, in connection with, arising from or as a result of any Event of Default by Developer under this Agreement.

Notwithstanding anything to the contrary contained in this Agreement, in no event shall the City have the right to terminate this Agreement after Developer has conveyed the Hostel Site to the City in accordance with the terms of this Agreement, unless the Event of Default is a "Material Event of Default" (as more specifically defined below). The term "**Material Event of Default**" means (i) Developer's breach of any term or provision contained in Section 35 (Transfer and Assignment) of this Agreement and such breach is not cured within the notice and cure period set forth in subsection [22(a)] of this Agreement; and (ii) failure to comply with the indemnification obligations pursuant to Sections 37 and 38 of this Agreement and such failure is not cured within the notice and cure period set forth in subsection [22(a)] of this Agreement.

The City hereby acknowledges and agrees that, from and after the date upon which the Developer has conveyed the Hostel Site to the City in accordance with the terms of this Agreement, the City's sole and exclusive remedy for any Event of Default by Developer under this Agreement that is not a Material Event of Default shall be limited to an action for damages and/or specific performance to the extent such remedies are available and permitted to the City under this Agreement and applicable law.

29 Termination Outside of Default. In the event either party chooses to exercise its right to terminate this Agreement under any of Sections [INSERT] this Agreement (apart from the City's right to terminate under Section 25 [?] of this Agreement as a result of an Event of Default by Developer), each party shall bear its own fees, costs and expenses incurred in connection with this Agreement, the Private Project and the Public Projects, and neither party shall have or owe any further obligation or liability to the other party.

30 Strict Performance; Waiver. No failure by the City or Developer to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy available to such party by reason of the other party's default hereunder shall constitute a waiver of any such default or of such other covenant, agreement, term or condition hereunder.

31 Notices. All 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, City Hall
1700 Convention Center Drive
Miami Beach, Florida 33139
Attn: City Manager

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

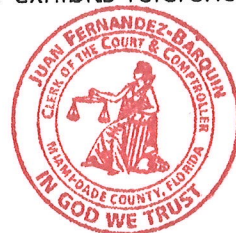
If to Developer at: 1250 WEST AVE OWNER LLC
c/o JDS Development, LLC
120 NE 27 Street, Suite 200
Miami, FL 33137
Attn. Michael Stern and Serena Rakhlin

With a copy to: Bercow Radell Fernandez & Larkin
200 S. Biscayne Boulevard
Miami, Florida 33131
Attn: Michael W. Larkin and Melissa Tapanes

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. mails. The terms of this Section shall survive the expiration or earlier termination of this Agreement.

[INTENTIONALLY OMITTED WITHOUT IMPLICATION.]

32 Governing Laws, Construction and Litigation. This Agreement shall be governed and construed in accordance with the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. Developer and the City agree that Miami-Dade County, Florida is the appropriate and exclusive state court venue, and that the U.S. District Court, Southern Division of Florida is the appropriate and exclusive federal court venue, in connection with any litigation between the parties with respect to this Agreement. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof; and accordingly, this Agreement shall not be more strictly construed against any of the parties hereto. In construing this Agreement, captions, and section and paragraph headings shall be disregarded and the use of any gender shall include every other and all genders. All of the exhibits referenced in this



Agreement are incorporated in, and made a part of, this Agreement. In the event of any litigation between the parties under this Agreement for a breach thereof, the prevailing party shall be entitled to reasonable attorney's fees and court costs at all trial and appellate levels. BY ENTERING INTO THIS AGREEMENT, THE CITY AND DEVELOPER EXPRESSLY WAIVE ANY RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT. The terms of this Section shall survive the expiration or earlier termination of this Agreement.

33 Severability. In the event any term or provision of this Agreement be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

34 Time of Essence. Time shall be of the essence for each and every provision hereof.

35 Entire Agreement. This Agreement, together with the documents referenced herein, constitutes the entire agreement and understanding among the parties with respect to the subject matter hereof, and there are no other agreements, representations or warranties other than as set forth herein. Neither party shall be bound by any agreement, condition, warranty nor representation other than as expressly stated in this Agreement. This Agreement may not be changed, altered or modified except by an instrument in writing signed by both parties hereto, subject to the requirements for the amendment of development agreements in the Act.

36 Other Agreements. This Agreement has no effect on any other agreement, the City's development orders, or declaration of restrictions otherwise encumbering the Property. Any and all agreements currently in the public records remain valid. The parties incorporate by reference each and every requirement set forth in the Act.

37 Binding Effect. The obligations imposed pursuant to this Agreement upon Developer and upon the Property shall run with and bind the Property as covenants running with the Property, and this Agreement shall be binding upon and enforceable by and against the parties hereto and their respective successors, assigns and heirs.

38 Transfer and Assignment. Developer shall not be entitled to assign or transfer this Agreement or any of the rights and obligations hereunder prior to the later of a) the date of Closing; b) completion of the Baywalk Improvements; or c) making of the



Baywalk Payment, if applicable, without the prior written consent of the City (which consent may be withheld, conditioned or delayed in the sole and absolute discretion of the City), except as hereinafter provided. Developer shall have the right at any time and from time to time to sell, transfer and convey all or any portion of the Development Property to any person or entity (a "**Subsequent Owner**") and assign and transfer this Agreement and the rights and obligations hereunder in whole or in part to any Subsequent Owner in connection with such sale, transfer or conveyance of the Property or any portion thereof without the prior consent or approval of the City, provided that a "Stern Entity" (as more specifically defined below) shall at all times (a) hold, directly or indirectly, not less than a 10% ownership interest in the Development Property, (b) serve, directly or indirectly, as a manager of the entity/entities that is/are developing the Private Project and the Public Projects, and (c) exercise, directly or indirectly, day-to-day operational control of the entity as the manager of the entity/entities that is/are developing the Private Project and the Public Projects; provided, further, that this Agreement and the rights and obligations hereunder can be assigned and transferred at any time and from time to time to any lender, lender designee or non-lender affiliated purchaser (any of the foregoing being referred to herein as a "**Foreclosure Purchaser**") who acquires the Development Property or any portion thereof through a foreclosure sale or deed-in-lieu of foreclosure without the prior consent or approval of the City. Direct and indirect owners of Developer shall also be entitled at any time and from time to time to pledge their direct and indirect ownership interests in Developer to one or more lenders, and any such lender, its designee and a non-lender affiliated purchaser (any of the foregoing being referred to herein as a "**Mezzanine Foreclosure Purchaser**") shall be permitted to acquire all or any portion of the direct and/or indirect ownership interests in Developer through foreclosure of any such pledge or acceptance of an assignment-in-lieu of foreclosure, and/or to exercise control over Developer (directly or indirectly), without the prior consent or approval of the City.

This Section 38 and the restrictions, limitations and prohibitions contained herein shall automatically terminate, extinguish and be of no further force or effect immediately upon the earlier of the following events to occur (x) the later of the date of Closing or completion of the Baywalk Improvements or making of the Baywalk Payment, if applicable, (y) the acquisition of the Development Property or any portion thereof by any Foreclosure Purchaser through a foreclosure sale or deed-in-lieu of foreclosure or (z) the acquisition of all or any portion of the direct and/or indirect ownership interests in Developer by any Mezzanine Foreclosure Purchaser through foreclosure of any such pledge or acceptance of an assignment-in-lieu of foreclosure; whereupon, Developer, any Subsequent Owner and/or any Foreclosure Purchaser and/or any Mezzanine Foreclosure



Purchaser shall have the absolute and unconditional right to sell, transfer and convey all or any portion of the Development Property to any person or entity and to assign and transfer this Agreement and the rights and obligations hereunder in whole or in part to any person or entity in connection with such sale, transfer or conveyance of the Property or any portion thereof without the prior consent or approval of the City whether or not a Stern Entity (aa) holds, directly or indirectly, any ownership interest in the Development Property, (bb) serves, directly or indirectly, as a manager of the entity/entities that is/are developing the Project and the Hostel Project, or (c) exercises, directly or indirectly, day-to-day operational control of the entity as the manager of the entity/entities that is/are developing the Project or the Hostel Project. Any assignee or transferee (including, any Subsequent Owner or Foreclosure Purchaser) shall assume all remaining obligations of Developer under this Agreement at the time of such assignment or transfer of this Agreement. For purposes of this Section 38, the term "**Stern Entity**" shall mean: (ww) Michael Stern; (xx) any spouse, child, grandchild, brother, sister, niece, nephew or first cousin of Michael Stern, or of any combination of the foregoing; (yy) any trust established for the benefit of Michael Stern, or any spouse, child, grandchild, brother, sister, niece, nephew or first cousin of Michael Stern, or of any combination of the foregoing; and/or (zz) any entity owned, directly or indirectly, one hundred percent (100%) by Michael Stern, or any spouse, child, grandchild, brother, sister, niece, nephew or first cousin of Michael Stern, or any trust established for the benefit of Michael Stern, or any spouse, child, grandchild, brother, sister, niece, nephew or first cousin of Michael Stern, or of any combination of the foregoing.

39 Force Majeure and Third-Party Challenges. All time periods and deadlines set forth in this Agreement and in any approval or permit issued in connection with the Project will be tolled due to force majeure events (including, without limitation, strikes, lockouts, acts of God, pandemics, hurricanes and severe weather, and other causes beyond the control of either party), and due to delays in obtaining permits and approvals from governmental agencies, during the pendency of any "Lawsuit" (as hereinafter defined) and any unexpired appeal period thereof. For the avoidance of doubt, (a) any tolling of time periods pursuant to Section 252.363, Florida Statutes, shall apply only to the expiration date of this Agreement, but not to any other time periods set forth herein, except for any period during which Developer is unable to complete any work or take any action due to the force majeure or other event triggering the declaration of a state of emergency and (b) with respect to any other force majeure event or Lawsuit, time periods and deadlines in this Agreement shall similarly be tolled only during such period as Developer is unable to complete any work or take any action due to such other force majeure event or Lawsuit. In the event that a third party unrelated to or unaffiliated with



the City or Developer institutes any action, suit or proceeding against the City relating to the Private Project or any Public Project, including, without limitation, any action, suit or proceeding challenging the validity or issuance of this Agreement, Private Project Approvals (including, without limitation, the Legislative Approvals), or any permit issued by the City or other agency (in each instance, including any related appeals, a "**Lawsuit**"), then Developer shall defend the City in any such Lawsuit at its sole cost and expense using legal counsel reasonably acceptable to the City. Developer shall further indemnify and hold the City harmless from and against all actual damages, losses, liabilities, fees, cost and expense (including attorneys' fees, costs and expenses) of any and every kind arising out of or relating to any such Lawsuit. This Section shall survive the expiration or any earlier termination of this Agreement.

40 Indemnification of City.

- a) To the fullest extent permitted by law, and without limiting any other indemnity obligations of Developer set forth elsewhere in this Agreement, Developer hereby agrees to defend, indemnify and hold harmless the City and its former, current and future elected officials, directors, attorneys, appointed officials, administrators, consultants, agents, and employees (collectively, "**City Indemnified Parties**") from and against all claims, damages, losses, and expenses, direct or indirect, (including but not limited to fees and charges of attorneys and other professionals and court and mediation costs) arising out of or resulting from (i) the City's adoption of any resolution or ordinance or the taking of any other action relating to this Agreement, the Private Project or the Public Projects, (ii) the City's granting of permission for any activity performed under the terms of this Agreement and (iii) the construction and/or maintenance of the Private Project or the Public Projects (including all easements) and caused, in whole or in part, by any willful, reckless, or negligent act and/or omission of Developer or any person, employee, agent, or third party acting on Developer's behalf (including any contractor, subcontractor, or any person or organization directly or indirectly employed by any of them or anyone for whose acts any of them may be liable) (collectively "**Losses**"). The foregoing indemnity provision includes, subject to the sovereign immunity monetary limitation described below, if applicable, Developer's agreement to fully indemnify the City Indemnified Parties from any Losses alleged to have been caused, in whole or in part, by the negligent acts or omissions of



the City or any person, employee, agent, or third party acting on City's behalf (including any contractor, subcontractor, or any person or organization directly or indirectly employed by any of them or anyone for whose acts any of them may be liable) (collectively "**City Agents**"), other than any willful, reckless, or grossly negligent act or omission of City or any other City Agent ("**Excluded Act**"). In the event that any City Agent is determined to be solely responsible for causing damage, loss or injury to a third party for any Excluded Act, Developer shall not be obligated to defend, indemnify or hold any City Indemnified Parties harmless. If both Developer and any City Agent are determined to be jointly liable for Losses for such a willful, reckless or grossly negligent act or omission, Developer shall pay its share of the Losses, and, in addition, shall indemnify the City Indemnified Parties to the maximum amount to which the City Indemnified Parties are liable after application of the "sovereign immunity" limitation on damages provided by Section 768.28, Florida Statutes.

- b) In any and all claims against the City or any of its consultants, agents, or employees by any employee of Developer or any employee of any person, employee, agent, or third party acting on Developer's behalf (including contractors, subcontractors, or any person or organization directly or indirectly employed by any of them or anyone for whose acts any of them may be liable), the indemnification obligation of this section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Developer or by or for any person, employee, agent, or third party acting on Developer's behalf (including contractors, subcontractors, or other persons or organizations directly or indirectly employed by any of them or anyone for whose acts any of them may be liable) under workers' or workman's compensation acts, disability benefit acts, other employee benefit acts or any other service of law.

This indemnification provision shall survive the termination of any City permit and this Agreement, however terminated.

41 Corporate Obligations. It is expressly understood that this Agreement and the obligations issued hereunder are solely corporate obligations, and that no personal liability will attach to, or is or shall be incurred by, the incorporators, stockholders, officers,



directors, managers, members, partners, trustees, beneficiaries, elected or appointed officials (including, without limitation, the Mayor and City Commissioner of the City) or employees, as such, of Developer, the City, or any successor or assign of any of them, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom; and that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any of all such rights and claims against, every such incorporators, stockholders, officers, directors, managers, members, partners, trustees, beneficiaries, elected or appointed officials (including, without limitation, the Mayor and City Commissioner of the City) or employees, as such, or under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are expressly waived and released as a condition of, and as consideration for, the execution of this Agreement.

42 No Conflict of Interest. Developer represents and warrants that no member, official or employee of the City has any direct or indirect financial interest in this Agreement nor has participated in any decision relating to this Agreement that is prohibited by law. Developer represents and warrants that no officer, agent, employee, or representative of the City has received any payment or other consideration for the making of this Agreement, directly or indirectly, from Developer.

43 No Third Party Beneficiaries. This Agreement is not intended to, and shall not be construed to give, any third party (including, without limitation, any homeowners' association, condominium association, or neighborhood association in the surrounding area, or any individual members thereof) any rights or interests whatsoever, nor is it intended that any third party shall be a third party beneficiary of any provisions hereof.

44 Limitations of Liability and Waiver of Consequential Damages.

- a) Any tort liability to which the City is exposed under this Agreement shall be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations shall be applied as if the parties had not entered into this Agreement, and City expressly does not waive any of its rights and immunities thereunder.
- b) The City will not in any event whatsoever be liable for any injury or damage to Developer (unless caused by the gross negligence or willful misconduct of the City, its agents, contractors or employees), nor for any injury or damage to the Development Property (unless caused by the



gross negligence or willful misconduct of the City, its agents, contractors or employees).

- c) The City will not be liable to Developer for any injury or damage to the Development Property caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from any part of the Development Property, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein (unless caused by the gross negligence or willful misconduct of the City, its agents, contractors or employees).
- d) Except as may be otherwise expressly provided herein, no approval to be made by the City in its proprietary capacity under this Agreement or any inspection of the Project or Park Project by the City under this Agreement, shall render the City liable for its failure to discover any defects or nonconformance with any governmental requirement.
- e) No member, official, elected representative or employee of the City shall be personally liable to Developer or any successor, assign or heir thereof in the event of any default or breach of this Agreement by the City or for any amount which may become due to Developer or successor, assign or heir thereof under this Agreement.

45 Police Power.

- a) The parties recognize and agree that certain provisions of this Agreement require the City and its boards, departments or agencies, acting in their governmental capacity, to consider governmental actions. All such considerations and actions shall be undertaken in accordance with established requirements of state statutes and municipal ordinances in the exercise of the City's jurisdiction under the police power. Nothing contained in this Agreement shall entitle Developer to compel the City to take any such actions, save and except for the execution of consents (if applicable) to the filing of applications for the Private Project Approvals, the Baywalk Project Approvals, Development Permits and/or Development Orders as more fully set forth herein and to timely process such applications.



- b) The parties further recognize and agree that these proceedings shall be conducted openly, fully, freely and fairly in full accordance with law and with both procedural and substantive due process to be accorded the applicant and any member of the public. Nothing in this Agreement shall be construed to prohibit the City from duly acting under its police power to approve, approve with conditions, or reject any public hearing application dealing with the Development Property, the Hostel Site or the Baywalk Segments

[SIGNATURE PAGES FOLLOW]



EXECUTED as of the date first above written in several counterparts, each of which shall be deemed an original, but all constituting only one agreement.

Signed, sealed and delivered in the presence of:



CITY OF MIAMI BEACH, a Florida municipal corporation

By: [Signature]

Name: Steven Meiner, Mayor

By: Sandra Perez

Print Name: Sandra Perez

Attest: [Signature] AUG 05 2025
Rafael Granado, City Clerk

Address: 1700 Convention Ct Dr., 7th Fl Miami Beach FL 33139

By: Guadalupe Ramos

Print Name: Guadalupe Ramos

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

Address: 3130 NE 190th St, Miami, FL

Nick Kallej 8/4/2025
City Attorney Date

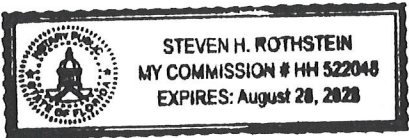
STATE OF FLORIDA)
)SS
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 5th day of AUGUST, 2025, by Steven Meiner, as Mayor of the City of Miami Beach, a municipal corporation, on behalf of the Corporation. He is personally known to me or has produced _____ as identification and who did (did not) take an oath.

[Signature]

NOTARY PUBLIC
STEVEN H. ROTHSTEIN

Typed or Printed Name of Notary
My Commission expires:
Serial No., if any: _____



West Hospitality Owner LLC, a
Delaware Limited Liability Company

Signed, sealed, delivered
in the presence of:

By: Nat

Print Name: Natalie Villadiego

Address: 200 S. Biscayne Blvd., Suite 300
Miami, Florida 33131.

By: [Signature]

Print Name: Daniella Carvajal

Address: 200 S. Biscayne Blvd
Suite 300, Miami, FL 33131

By: [Signature]

Print Name: Michael Stern
Authorized Signatory

Address: 120 NE 27th St. #200
Miami, FL 33137

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

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 4 day of August, 2025 Michael Stern, as a Authorized Signatory of West Hospitality Owner LLC, a Delaware limited liability company, on behalf of the company. He is personally known to me or has produced _____ as identification and who did/did not take an oath.

[Signature]

NOTARY PUBLIC

Typed or printed Name of Notary
My Commission expires: 12/18/26
Serial No., if any _____

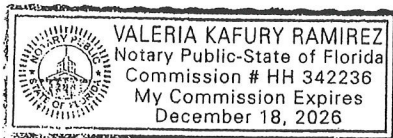


TABLE OF EXHIBITS

EXHIBIT "A" – LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY

EXHIBIT "B" – LEGAL DESCRIPTION OF HOSTEL SITE

EXHIBIT "C" – FORM OF RESTRICTIVE COVENANT

EXHIBIT "D" – BAYWALK MATERIALS AND SPECIFICATIONS – MINIMUM REQUIREMENTS

EXHIBIT "E" – BAYWALK CONVEYANCE DELIVERABLES

EXHIBIT "F" – DECLARATION OF USE FOR HOSTEL SITE

EXHIBIT "G" – PARK CLOSING DELIVERABLES

EXHIBIT "H" – DESCRIPTION OF PUBLIC FACILITIES

EXHIBIT "I" – DESCRIPTION OF PUBLIC RESERVATIONS

EXHIBIT "J" – DESCRIPTION OF REQUIRED DEVELOPMENT PERMITS FOR PROJECT



EXHIBIT "A" – LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY

Lot 3, Block 80 of the Subdivision of Block Eighty, a part of the Alton Beach Bay Front Subdivision, recorded in Plat Book 6, Page 12 of the Public Records of Miami-Dade County.



EXHIBIT "B" - LEGAL DESCRIPTION OF HOSTEL PROPERTY

1247 West Ave, Miami Beach, Florida 33139 (Folio: 02-3233-018-0110):

Lot 9, in Block 82, of BAY VIEW SUBDIVISION, according to the Plat thereof recorded in Plat Book 9, Page 110, of the Public Records of Miami-Dade County, Florida.

Folio#: 02-3233-018-0110

1255 West Ave, Miami Beach, Florida 33139 (Folio: 02-3233-018-0090):

LOT 8, LESS THE EAST 62.5 FEET, BLOCK 82, BAY VIEW SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 9, PAGE 110, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, a/k/a 1255 West Avenue, Miami Beach, Florida 33139.

1234 13th St., Miami Beach, Florida 33139 (Folio: 02-3233-018-0100):

The East 62.5 feet of Lot 8, Block 82, BAY VIEW SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 9, Page 110, of the Public Records of Miami-Dade County, Florida, a/k/a 1234 13 Street, Miami Beach, Florida 33139.



EXHIBIT "C" - FORM OF RESTRICTIVE COVENANT



Exhibit C

This instrument prepared by, and after recording return to:

Name: Michael Larkin, Esq.
Bercow Radell Fernandez Larkin & Tapanes, PLLC
Address: 200 S. Biscayne Blvd., Suite 300
Miami, FL 33131

Folio Numbers: 02-3233-018-0110,
02-3233-018-0100, 02-3233-018-0090

(Space reserved for Clerk of Court)

DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF Use ("Declaration"), is made this ____ day of _____, 202_ by West Avenue Hospitality Owner LLC, a Delaware Limited Liability Company, in favor of the City of Miami Beach ("City").

WITNESSETH:

WHEREAS, West Avenue Hospitality Owner LLC (the "Developer") holds fee simple title to the Property located at 1247 – 1255 West Avenue and 1234 13 Street in Miami Beach, Florida; legally described in Exhibit A, attached hereto and incorporated herein (the "Property"); and

WHEREAS, the Developer has entered into a Development Agreement with the City of Miami Beach, Florida (the "City"), under which the Developer has agreed to voluntarily prohibit the following uses on the Property: (i) transient uses of any kind, (ii) any alcoholic beverage establishments, and (iii) the lease or rental of any residential unit for periods of less than six (6) months and one (1) day.

NOW, THEREFORE, the Developer voluntarily covenants and agrees that the Property shall be subject to the following restrictions that are intended and shall be deemed to be covenants running with the land and binding upon the Developer of the Property, and its successors in interest and assigns, as follows:

1. The recitals and findings set forth in the preamble of this Declaration are hereby adopted by reference thereto and incorporated herein as if fully set forth in this Section.

2. The Property shall not be developed or used as (i) a transient use of any kind including, without limitation, a hotel, hostel, bed and breakfast inn, apartment hotel, suite hotel, or rooming house, or (ii) any type of alcoholic beverage establishment. In addition,



Declaration of Restrictive Covenants
1247-1255 West Avenue and 1234 13 Street
Miami Beach, Florida
Page 2 of 6

(iii) no residential unit located on the Property shall be leased or rented for a period of less than six (6) months and one (1) day.

3. This voluntary Declaration shall remain in full force and effect and shall be binding upon the Developer of the Property, and its successors in interest and assigns for an initial period of thirty (30) years from the date this instrument is recorded in the public records, and shall be automatically extended for successive periods of ten (10) years each, unless modified, amended or released prior to the expiration thereof.

4. This Declaration may be modified, amended or released as to any portion of the Property by a written instrument executed by the Developer or the then-owner(s) of the fee simple title to the land to be affected by such modification, amendment or release providing that same has been approved by the City Commission, at a public hearing, which public hearing shall be applied for by and at the expense of the Developer or the owner(s). An affirmative vote of six-sevenths of all members of the City Commission shall be required in order to release this Declaration or to modify the Declaration in such a manner as to impose a less stringent restriction. Should this instrument be so modified, amended or released, the City Manager, the City Manager's successor, or other administrative officer with jurisdiction over the matter, shall execute a written instrument in recordable form effectuating and acknowledging such modification, amendment or release.

5. It is possible that the Developer may, in the future, convert the Property to a condominium form of ownership. If so, the condominium association(s) formed may execute any instrument of amendment, modification, termination, consent or change to this Declaration that requires the written agreement of the parties hereto. Such instrument shall not require the signature or joinder of any individual condominium unit owners or their mortgagees.

6. Invalidation of any provision of this Declaration by judgment of Court shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect.

7. This Declaration shall be recorded in the Public Records of Miami-Dade County, Florida, at the cost of the Developer.

8. It is understood and agreed that any official of the City of Miami Beach has the right at any time during normal business hours of entering and investigating the use of the



Declaration of Restrictive Covenants
1247-1255 West Avenue and 1234 13 Street
Miami Beach, Florida
Page 3 of 6

Property, to determine whether the conditions of this Declaration and the requirements of the City's building, zoning and land development regulations are being complied with.

9. An action to enforce the terms and conditions of this Declaration may be brought by the City and may be, at law or in equity, against any party or person violating or attempting to violate any provision of this Declaration or provisions of the building, zoning or land development regulations, either to restrain violations or to recover damages. The prevailing party in the action shall be entitled to recover costs and reasonable attorneys' fees, at all levels of trial and appeal. This enforcement provision shall be in addition to any other remedies available under the law.

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SIGNATURE PAGES TO FOLLOW]



Declaration of Restrictive Covenants
1247-1255 West Avenue and 1234 13 Street
Miami Beach, Florida
Page 4 of 6

IN WITNESS WHEREOF, West Hospitality Owner LLC, a Delaware limited liability company, has caused these presents to be signed in its name by its proper officials.

West Avenue Hospitality Owner LLC
a Delaware Limited Liability Company

By: _____

WITNESSES:

Signature: _____

Print Name: _____

Signature: _____

Print Name: _____

Address: _____

Address: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by _____, on behalf of West Hospitality Owner LLC, by means physical presence or online notarization, sworn to (or affirmed) and subscribed before me, ____ this day of _____, 2025

Witness my signature and official seal this ____ day of _____, 2025, in the County and State aforesaid.

[NOTARIAL SEAL]

Notary
Print Name: _____
Notary Public, State of _____
My commission expires: _____



Declaration of Restrictive Covenants
1247-1255 West Avenue and 1234 13 Street
Miami Beach, Florida
Page 5 of 6

Approved:

Thomas Mooney, Planning Director

Date

APPROVED AS TO FORM
AND LANGUAGE FOR EXECUTION

Nick Kallergis, Chief Deputy City Attorney

Date:



Exhibit C

Exhibit "A"

1247 West Ave, Miami Beach, Florida 33139 (Folio: 02-3233-018-0110):

Lot 9, in Block 82, of BAY VIEW SUBDIVISION, according to the Plat thereof recorded in Plat Book 9, Page 110, of the Public Records of Miami-Dade County, Florida.

Folio#: 02-3233-018-0110

1255 West Ave, Miami Beach, Florida 33139 (Folio: 02-3233-018-0090):

LOT 8, LESS THE EAST 62.5 FEET, BLOCK 82, BAY VIEW SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 9, PAGE 110, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, a/k/a 1255 West Avenue, Miami Beach, Florida 33139.

1234 13th St., Miami Beach, Florida 33139 (Folio: 02-3233-018-0100):

The East 62.5 feet of Lot 8, Block 82, BAY VIEW SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 9, Page 110, of the Public Records of Miami-Dade County, Florida, a/k/a 1234 13 Street, Miami Beach, Florida 33139.



EXHIBIT "D" – BAYWALK MATERIALS AND SPECIFICATIONS – MINIMUM REQUIREMENTS

The Developer shall obtain all necessary permits, design and construct 15 foot-wide over water Baywalk structures west of 800 and 1228 West Avenue and 1450 Lincoln Road. The conceptual drawings depict an approximate layout and typical section of the over water Baywalk segments. The conceptual typical section is similar to the 12.5' wide concrete/wood deck typical section of the South Pointe Park Pier Project, and the Baywalk segment currently under construction west of Mondrian Hotel/Mirador Condominiums (1000-1200 West Avenue), with the exception that the width of the proposed decks shall be 15' instead of 12.5' or 10.0' respectively. Also, the elevation of the over water Baywalk deck shall be a minimum of 5.7' NAVD, matching minimum seawall height requirements, but in no case less than 5.1' NAVD (subject to the City Manager's approval). The elevation of the new Baywalk segment behind the Mondrian/Mirador property is below the top elevation of the minimum seawall elevation, and is constructed at 5.5' NAVD. New segments of the Baywalk shall be designed and constructed to provide proper transition at all public connection points, in compliance with ADA requirements, as needed.

Baywalk segments shall include upland improvements at street end connections to provide ADA compliant access to/from the street end, where applicable, including but not limited to ramps, walkways, railings and lighting.

Pedestrian lighting shall be provided for the limits of this project. The illumination design parameters will be in accordance with IENSA-RP-8-14 with a minimum of 0.6 foot-candles and a uniformity ratio (avg/min) of 4:1 foot-candles. Each circuit shall have a minimum of 2" PVC conduit for the electric wires required to power the proposed lighting, and each fixture shall include individual, in-line fuses. All connections/connectors/terminations shall comply with City of Miami Beach Public Works lighting standards.

To maximize walking space within the Baywalk, the Developer shall install the pedestrian lighting as close as possible to the edge of the deck for the Baywalk deck, in line with or as part of the proposed guardrails.



The proposed Baywalk segments shall be designed and constructed to allow for repair/replacement of adjacent seawall/cap structures, including, where necessary, the provision of removable Baywalk structures.

The City has standardized the design components of the proposed Baywalk segments, to include, at a minimum, the following components:

1. 15' wide.
2. Concrete walkways with 5' minimum width of grating along the centerline, to provide sunlight transmittance in furtherance of seagrass growth.
3. Top of walkway at 5.7' NAVD, but no less than 5.1' NAVD (min.).
4. Guardrails/Handrails along all open sides.
5. Lighting to be installed along length.
6. ADA ramps at all public entry points, as required.
7. Concrete Pylons and Beams for support.
8. Security gates at all public entry points.
9. Secure access to each upland property with associated transitions. Access control to be interconnected with the property's existing security and access control system as needed.

More specifically, each proposed segment will comply with access/easement agreements, DRB orders or Planning Board Orders, as may have been amended or adjusted. Each upland property presents unique challenges and will require the following considerations:

800 West Avenue (South Bay Club):

- Transitions from overwater Baywalk to adjoining, landside Baywalk segments shall occur within the limits of the South Bay Club property.
- Finger docks (9) and amenities must be relocated/reconstructed west of the proposed baywalk.
- Secure access from Baywalk to upland property and relocated finger docks must be provided.
- Access control to be tied into building's existing access control system.
- Parking spaces at north end of property, adjacent to proposed Baywalk, must be preserved.



1228 West Avenue (Bayview Terrace)

- Proposed Baywalk shall transition to 10' width and connect to existing over water Baywalk west of Mondrian/Mirador property.
- Transition of proposed overwater Baywalk to new development at 1250 West Avenue shall be designed to allow unimpeded access/use, including vertical and horizontal transitions.
- Dock and amenities shall be relocated/reconstructed to replicate existing number of boat slips.
- Final configuration of boat slips must match existing/permitted number of slips
- Secure access from Baywalk to upland property and relocated dock must be provided.
- Access control to be tied into building's existing access control system.

1450 Lincoln Road (Lincoln Bay Towers)

- Comply with terms of existing Access and Easement Agreement.
- Commence north end of Baywalk at the north side of Lincoln Road right-of-way.
- Maintain, to the greatest extent possible, 20' clearance between proposed Baywalk and the upland property's pool deck.
- South end of proposed Baywalk shall transition to overland Baywalk segment within the limits of the Lincoln Bay Tower property.
- Provide connection to overland Baywalk segment west of Capri, in compliance with Access and Easement Agreement.
- Provide transition/connection at south end of property, preserving parking spaces.
- This property will not require access from Baywalk to upland property.
- Provide removable segments of Baywalk to allow for seawall maintenance and/or replacement.
- Both transitions, at Lincoln Road and the south end of the Lincoln Bay Towers property, shall be ADA compliant.
- Transition at Lincoln Road will require ADA ramp, railings and walkways from seawall cap to adjacent cul-de-sac sidewalk.
- Existing easement/access agreement will have to be amended to reflect proposed layout.



EXHIBIT "E" – BAYWALK CONVEYANCE DELIVERABLES

Developer Deliverables at Substantial Completion and Final Completion of the Baywalk Projects.

I. Deliverables at Substantial Completion:

- (a) A temporary certificate of occupancy ("TCO") or temporary certificate of completion ("TCC") has been duly issued by the applicable governmental authority having jurisdiction and a copy thereof delivered to the City;
- (b) Developer has applied to FDEP, DERM, USACE and City of Miami Beach Building Department, or other authority having jurisdiction, for a final inspection to close out the Permits and Approvals and evidence thereof delivered to the City, which evidence shall be in form and substance reasonably acceptable to the City;
- (c) All installation instructions, operations and maintenance manuals or instructions for equipment furnished by Developer, catalogs, product data sheets for all materials furnished by Developer and similar information provided), in compliance with all applicable Requirements, and without damage to the Work or to the Baywalk Project, as reasonably determined by the City; and
- (d) The most recent updated set of "as-built" drawings reflecting the progress of the Work through Substantial Completion (in native file format, such as autoCAD, as same may be modified by shop drawing or other submittal) have been delivered to the City.

- #### II. Substantial Completion Punch List. When Developer believes it has achieved Substantial Completion, Developer shall have prepared a preliminary punch list for review and approval by the City and the Architect/Engineer of Record, request an inspection by the City and the Architect/Engineer of Record and deliver to the City evidence supporting its assessment of Substantial Completion, including any specific documents or information requested by the City in advance to assist in its evaluation thereof. Following the inspection, Developer shall provide the City with the list of all remaining items of Work to



be completed or corrected for Final Completion, which list incorporates items and comments identified or provided by the City and Architect/Engineer of Record ("Substantial Completion Punch List"); provided, however, that failure to include any items on the Substantial Completion Punch List does not alter the responsibility of the Developer to complete all Work in accordance with the Contract Documents.

III. Final Completion. As conditions of Final Completion, Developer shall deliver or cause to be delivered to the City, as applicable:

- (a) Substantial Completion of the Baywalk Project shall have occurred in accordance herewith;
- (b) Written notice from the Contractor that the Work is ready for final inspection and acceptance;
- (c) A final certificate of occupancy ("CO") or final certificate of completion ("CC"), as applicable, for the Work duly issued by the governmental authority having jurisdiction thereof;
- (d) Evidence of the closure of all Permits and Approvals, as reasonably approved by the City Manager;
- (e) The Architect/Engineer of Record shall have delivered a certificate of final completion (the "Certificate of Final Completion"), in form and substance reasonably acceptable to the City, stating that on the basis of its observations and inspections, the referenced Work for the Baywalk Project has been fully performed, all Substantial Completion Punch List items have been fully corrected and all such Work has been finally completed in accordance with the Contract Documents;
- (f) A final contractor's payment affidavit from the Contractor;
- (g) Final lien waivers from all subcontractors in accordance with Chapter 713, Florida Statutes;
- (h) Consent of surety to final payment (if applicable);
- (i) Copies of all agreements, Permits and Approvals, and all insurance policies or certificates, if any, pertaining to the completed Work, not previously provided;
- (j) Copies of the final "as-built" drawings reflecting final completion of the Work in accordance with the approved Plans and Specifications. (In native



file format, such as autoCAD, as modified by shop drawings or other submittals); and

- (k) All manufacturers,' suppliers' and subcontractors' warranties and guarantees (collectively, the "Warranties") duly assigned to the City and all maintenance and operating instructions, if any, pertaining to the completed Work.

IV. Final Recorded Access and Easement Agreements: Developer shall provide final executed and recorded copies of all relevant Access, Maintenance and Easement Agreements, with all relevant exhibits.



EXHIBIT "F" – DECLARATION OF USE FOR HOSTEL SITE



Exhibit F

This instrument prepared by, and after recording return to:

Name: Michael Larkin, Esq.
Bercow Radell Fernandez Larkin & Tapanes, PLLC
Address: 200 S. Biscayne Blvd., Suite 300
Miami, FL 33131

Folio Numbers: 02-3233-018-0110,
02-3233-018-0100, 02-3233-018-0090

(Space reserved for Clerk of Court)

DECLARATION OF USE

THIS DECLARATION OF USE ("Declaration"), is made this ____ day of _____, 2025 by West Hospitality Owner LLC, a Delaware Limited Liability Company (the "Owner") in order to limit future use of the property located at 1247-1255 West Avenue and 1234 13 Street, legal described in **Exhibit "A"**, attached hereto and incorporated herein (the "Property").

WITNESSETH:

WHEREAS, Owner holds fee-simple title to the Property.

WHEREAS, Owner has entered into a Development Agreement with the City of Miami Beach, Florida (the "City"), under which it must convey the Property to the City; and

WHEREAS, in order to ensure harmony and compatibility of future uses of the Property by the City, Owner and the City have agreed to limit the future uses of the Property as set forth herein.

NOW, THEREFORE, the Owner voluntarily covenants and agrees that the Property shall be subject to the following restrictions that are intended and shall be deemed to be covenants running with the land and binding upon the Owner of the Property, their successors in interest and assigns, as follows:

1. The recitals and findings set forth in the preamble of this Declaration are hereby adopted by reference thereto and incorporated herein as if fully set forth in this Section.

2. The Property shall not be developed or used as a waste processing facility, water or sewer processing facility, service yard, utility yard, natural gas facility, debris storage site, storage yard, or service station.



Declaration of Restrictive Covenants
1247-1255 West Avenue and 1234 13 Street
Miami Beach, Florida
Page 2 of 5

3. This voluntary Declaration shall remain in full force and effect and shall be binding upon the Owners of the Property, their successors in interest and assigns for an initial period of thirty (30) years from the date this instrument is recorded in the public records, and shall be automatically extended for successive periods of ten (10) years, unless modified, amended or released prior to the expiration thereof.

4. This Declaration may be modified, amended or released as to any portion of the Property by a written instrument executed by the then Owners of the fee simple title to the land to be affected by such modification, amendment or release providing that same has been approved by West Hospitality Owner LLC or its successors or assigns. Should this instrument be so modified, amended or released, West Hospitality Owner LLC or its successors or assigns, shall execute a written instrument in recordable form effectuating such modification, amendment or release.

5. Invalidation of any provision of this Declaration by judgment of Court shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect.

6. This Declaration shall be recorded in the Public Records of Miami-Dade County, Florida, at the cost of the Owner.

7. An action to enforce the terms and conditions of this Declaration may be brought by West Hospitality Owner LLC or its successors or assigns and may be, at law or in equity, against any party or person violating or attempting to violate any provision of this Declaration or provisions of the building, zoning or land development regulations, either to restrain violations or to recover damages. The prevailing party in the action shall be entitled to recover costs and reasonable attorneys' fees, at all levels of trial and appeal. This enforcement provision shall be in addition to any other remedies available under the law.

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SIGNATURE PAGES TO FOLLOW]



Declaration of Restrictive Covenants
1247-1255 West Avenue and 1234 13 Street
Miami Beach, Florida
Page 3 of 5

IN WITNESS WHEREOF, West Hospitality Owner LLC, a Delaware limited liability company, has caused these presents to be signed in its name by its proper officials.

West Avenue Hospitality Owner LLC
a Delaware Limited Liability Company

By: _____

WITNESSES:

Signature: _____

Print Name: _____

Signature: _____

Print Name: _____

Address: _____

Address: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by _____, on behalf of West Hospitality Owner LLC, by means [] physical presence or [] online notarization, sworn to (or affirmed) and subscribed before me, ____ this day of _____, 2025

Witness my signature and official seal this ____ day of _____, 2025, in the County and State aforesaid.

[NOTARIAL SEAL]

Notary
Print Name: _____
Notary Public, State of _____
My commission expires: _____



Declaration of Restrictive Covenants
1247-1255 West Avenue and 1234 13 Street
Miami Beach, Florida
Page 4 of 5

Approved:

Thomas Mooney, Planning Director

Date

APPROVED AS TO FORM
AND LANGUAGE FOR EXECUTION

Nick Kallergis, Chief Deputy City Attorney

Date:



Exhibit F

Exhibit "A"

1247 West Ave, Miami Beach, Florida 33139 (Folio: 02-3233-018-0110):

Lot 9, in Block 82, of BAY VIEW SUBDIVISION, according to the Plat thereof recorded in Plat Book 9, Page 110, of the Public Records of Miami-Dade County, Florida.

Folio#: 02-3233-018-0110

1255 West Ave, Miami Beach, Florida 33139 (Folio: 02-3233-018-0090):

LOT 8, LESS THE EAST 62.5 FEET, BLOCK 82, BAY VIEW SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 9, PAGE 110, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, a/k/a 1255 West Avenue, Miami Beach, Florida 33139.

1234 13th St., Miami Beach, Florida 33139 (Folio: 02-3233-018-0100):

The East 62.5 feet of Lot 8, Block 82, BAY VIEW SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 9, Page 110, of the Public Records of Miami-Dade County, Florida, a/k/a 1234 13 Street, Miami Beach, Florida 33139.



EXHIBIT "G" – PARK CLOSING DELIVERABLES

Developer Deliverables at Substantial Completion and Final Completion of the Park Project.

- () Deliverables at Substantial Completion:
- (a) A temporary certificate of occupancy ("TCO") or temporary certificate of completion ("TCC") has been duly issued by the applicable governmental authority having jurisdiction and a copy thereof delivered to the City;
 - (b) Developer has applied to DERM and City of Miami Beach Building Department, or other authority having jurisdiction, for a final inspection to close out the Permits and Approvals and evidence thereof delivered to the City, which evidence shall be in form and substance reasonably acceptable to the City;
 - (c) All installation instructions, operations and maintenance manuals or instructions for equipment furnished by Developer, catalogs, product data sheets for all materials furnished by Developer and similar information provided), in compliance with all applicable Requirements, and without damage to the Work or to the Park Project, as reasonably determined by the City; and
 - (d) The most recent updated set of "as-built" drawings reflecting the progress of the Work through Substantial Completion (in native file format, such as autoCAD, as same may be modified by shop drawing or other submittal) have been delivered to the City.
- () Substantial Completion Punch List. When Developer believes it has achieved Substantial Completion, Developer shall have prepared a preliminary punch list for review and approval by the City and the Architect/Engineer of Record, request an inspection by the City and the Architect/Engineer of Record and deliver to the City evidence supporting its assessment of Substantial Completion, including any specific documents or information requested by the City in advance to assist in its evaluation thereof. Following the inspection, Developer shall provide the City with the list of all remaining items of Work to be completed or corrected for Final Completion, which list incorporates items and comments identified or provided by the City and Architect/Engineer of Record ("Substantial Completion Punch List"); provided, however, that failure to include any items on the Substantial Completion Punch List does not



alter the responsibility of the Developer to complete all Work in accordance with the Contract Documents.

0) Final Completion. As conditions of Final Completion, Developer shall deliver or cause to be delivered to the City, as applicable:

- (a) Substantial Completion of the Park Project shall have occurred in accordance herewith;
- (b) Written notice from the Contractor that the Work is ready for final inspection and acceptance;
- (c) A final certificate of occupancy ("CO") or final certificate of completion ("CC"), as applicable, for the Work duly issued by the governmental authority having jurisdiction thereof;
- (d) Evidence of the closure of all Permits and Approvals, as reasonably approved by the City Manager;
- (e) The Architect/Engineer of Record shall have delivered a certificate of final completion (the "Certificate of Final Completion"), in form and substance reasonably acceptable to the City, stating that on the basis of its observations and inspections, the referenced Work for the Park Project has been fully performed, all Substantial Completion Punch List items have been fully corrected and all such Work has been finally completed in accordance with the Contract Documents;
- (f) A final contractor's payment affidavit from the Contractor;
- (g) Final lien waivers from all subcontractors in accordance with Chapter 713, Florida Statutes;
- (h) Consent of surety to final payment (if applicable);
- (i) Copies of all agreements, Permits and Approvals, and all insurance policies or certificates, if any, pertaining to the completed Work, not previously provided;
- (j) Copies of the final "as-built" drawings reflecting final completion of the Work in accordance with the approved Plans and Specifications (in native file format, such as autoCAD, as modified by shop drawings or other submittals); and
- (k) All manufacturers,' suppliers' and subcontractors' warranties and



guarantees (collectively, the "Warranties") duly assigned to the City and all maintenance and operating instructions, if any, pertaining to the completed Work.



EXHIBIT "H" – DESCRIPTION OF PUBLIC FACILITIES

The proposed development will be serviced by those roadway transportation facilities currently in existence as provided by state, county, and local roadways. The proposed development will also be serviced by public transportation facilities currently in existence, as provided by Miami- Dade County, the City of Miami Beach, and such other governmental entities as may presently operate public transportation services within the City of Miami Beach. Sanitary sewer, solid waste, drainage, and potable water services for the proposed development shall be those services currently in existence and owned or operated by Miami-Dade County, the Miami-Dade County Water and Sewer Department, the City of Miami Beach, and State of Florida. The proposed development shall be serviced by those existing educational facilities owned or operated by the Miami-Dade Public Schools District, if applicable. The proposed development shall be serviced by those existing parks and recreational facilities owned or operated by the United States Government within Miami Dade County, by the State of Florida, by Miami-Dade County, and by the City of Miami Beach. The proposed development shall be serviced by those existing health systems and facilities operated by the United States Government within Miami-Dade County, by the State of Florida, by Miami-Dade County, and by the City of Miami Beach.

The proposed development will also be serviced by any and all public facilities, as such are defined in Section 163.3221(12) of the Act, that are described in the Comprehensive Plan, specifically including those facilities described in the Infrastructure Element and the Capital Improvements Element therein, a copy of which is available for public inspection in the offices of the City Clerk of the City of Miami Beach. Notwithstanding the foregoing, the Project may be required to provide for some of its own services, including solid waste removal and stormwater drainage.



EXHIBIT "I"- DESCRIPTION OF PUBLIC RESERVATIONS

All easements referenced in the Agreement.



EXHIBIT "J" – DESCRIPTION OF REQUIRED DEVELOPMENT PERMITS FOR PROJECT

The following constitutes a generalized list of local permits anticipated as necessary to be approved by the terms of this Development Agreement:

- 1) Design Review Board, Historic Preservation Board, Planning Board, and/or Board of Adjustment approvals, pursuant to Chapter 2 of the City's Resiliency Code.
- 2) Miami-Dade Shoreline Review Approval
- 3) Miami-Dade County DERM Permits
- 4) United States Army Corps of Engineer Permits
- 5) Utility Permits
- 6) Demolition Permits
- 7) Building Permits
- 8) Environmental Permits
- 9) Hazardous Materials Removal Permit, if removal of hazardous materials is found necessary.
- 10) Public Works Permit, Paving and Drainage
- 11) Public Works Permit, Water and Sewer
- 12) Public Works Revocable Permits
- 13) Certificates of Use and/or Occupancy
- 14) Any variances or waivers that may be required pursuant to the City of Miami Beach Resiliency Code
- 15) All other local governmental approvals as may be applicable to the subject property from time to time pursuant to the terms of this Development Agreement.



STATE OF FLORIDA, COUNTY OF MIAMI-DADE
I hereby certify that the foregoing is a
true and correct copy of the original on
file in this office 817 AD, 20 25
JUAN FERNANDEZ-BARQUIN, Clerk of the
Court and Comptroller, Miami-Dade County
Deputy Clerk



Lawrence Padilla #326642