

1247, 1250, 1255 WEST AVENUE  
TERM SHEET FOR DEVELOPMENT AGREEMENT

This term sheet (this “**Term Sheet**”) sets out the key terms which are proposed for an agreement between the City of Miami Beach, a Florida municipal corporation (the “**City**”) and, on the other hand, and ***West Hospitality Owner LLC*** (“**Sponsor**”) in connection with a public-private collaboration to construct a public park located at 1247-1255 West Avenue, housing, and the missing segments of the Bay Walk. Promptly following the approval of this Term Sheet by the Mayor and City Commission, the parties will negotiate in good faith and enter into an Development Agreement (the “**Development Agreement**”) containing the key terms set forth in this Term Sheet together with other terms and conditions customarily included in such agreements entered into by the City of Miami Beach and developers, subject to good faith negotiations between the parties.

Recitals.

- a) The Sponsor is the contract purchaser of the property located at 1247-1255 West Avenue (the “**Park Site**”).
- b) The Sponsor is an affiliate of 1250 West Ave Owner LLC (collectively, “**Sponsor Affiliates**”).
- c) Sponsor Affiliates control the Bay Garden Manor Condominium located at 1250 West Avenue and intend to own 100% of the Condominium (the “**Development Property**”).
- d) The Sponsor Affiliates wish to make certain improvements to the Development Property as more specifically defined below (the “**Private Project**”).
- e) The Sponsor and the City desire to collaborate as follows: (i) to develop and construct a park on the Park Site as more specifically defined below (the “**Public Park Project**”); (ii) to construct missing segments of the Baywalk adjacent to 800 West Avenue, 1228 West Avenue, and 1450 Lincoln Road (such project, the “**Public Baywalk Project**” and such segments, the “**Baywalk Segments**”); (iii) to develop and construct apartments on a to-be-determined site within the City of Miami Beach (such project, the “**Public Apartments Project**,” and such site, the “**Apartment Site**,” the Public Park Project, the Public Baywalk Project and the Public Housing Project, collectively, the “**Public Projects**,” and each, a “**Public Project**”).

2) The Public Projects. The main elements of the Public Projects and public benefits are proposed as follows:

- a) Acquisition of and demolition of the existing non-conforming improvements on the Park Site at Sponsor's sole cost and expense estimated to be approximately \$12,500,000.00;
- b) Design and construction of a new park (the "**Park**") at Sponsor's sole cost and expense estimated to be approximately \$2,000,000.00 ;
- c) Acquire, at Sponsor's sole cost cost and expense, easements or riparian rights from the fee owner(s) of the properties located at 800 West Avenue and 1228 West Avenue, with joinders by all applicable mortgagees and other third parties as required to acquire a title-insurable interest, and finalize such easements and rights under, over and on the Baywalk Segments, as necessary or desirable to design and construct the Public Baywalk Project (such easements and rights, the "**Baywalk Easements**"), and design construct, at Sponsor's sole cost and expense, the Baywalk Segments, with aggregate costs with respect to the Baywalk Easements and hard and soft costs of the Public Baywalk Project estimated at \$5,000,000.00;
- d) Identification within the City of Miami Beach of the Apartment Site, acquisition by a Sponsor affiliate of the Apartment Site, demolition and/or renovation of existing improvements thereon and/or construction thereon of apartments ("**Public Apartments**"), and design and construction of such apartments, each with aggregate square footage of not less than 800 square feet, at Sponsor's sole cost expense, with aggregate costs for such acquisition, and hard and soft costs of such design and construction, not to exceed \$9,000,000.00;
- e) The design of the Park shall be consistent with the applicable Concept Plan (as defined in Section 3a below), subject to the issuance of necessary City approvals not to be unreasonably withheld as provided below;
- f) The design of the Baywalk Segments shall be consistent with the applicable Concept Plan, subject to obtaining the Baywalk Easements and issuance of the necessary City approvals not to be unreasonably withheld as provided below;
- g) The design and unit specifications of the and building in which they are to be located shall be consistent with the Concept Plan (as defined in Section 3a below), and such other minimum requirements as determined by the City Commission, subject to obtaining the issuance of the necessary City approvals as provided below;

- h) Conveyance of the Park Site and the Park (collectively, the "**Park Parcel**") and the Apartment Site and improvements thereon to the City in accordance with Section [7];

3) **Implementation of Public Projects.** The City and Sponsor will collaborate as follows:

- a) Within sixty (60) days after satisfaction of the Private Project Conditions, or waiver of the Private Project Conditions in Sponsor's and Sponsor Affiliates' sole discretion, Sponsor shall submit to the City a concept plan for each Public Project for the City to approve, provided that the City shall not require a scope, design or specifications such that the aggregate hard and soft costs for the development and construction of the (i) Public Park Project exceeds \$2,000,000.00, (ii) the Public Baywalk Project exceeds \$5,000,000.00 (for avoidance of doubt, including the costs of the Baywalk Easements) or (iii) Public Apartment Project exceeds \$9,000,000.00 (for avoidance of doubt, including the purchase price and other costs of acquisition of the Apartment Site). The City shall review and either confirm, approve or disapprove the applicable concept plan within thirty (30) days after receipt of the same. If the City fails to confirm, approve or disapprove such concept plan within such thirty (30) 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, Sponsor shall, at its election, either (x) submit the City's disapproval to an expedited arbitration process to be set forth in the Agreement or (y) 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 with respect to an applicable Public Project, the "**Concept Plan**" with respect to such Public Project);
- b) Sponsor shall submit each applicable Concept Plan to the Design Review Board ("**DRB**") or Historic Preservation Board ("**HPB**"), as applicable, for approvals (collectively, with respect to the applicable Public Project, the "**Public Project Approval**"), and shall prepare and process the necessary DRB or HPB for such Public Project. The Sponsor will be responsible for the preparation and submission of all necessary materials for the DRB or HPB review of each Public Project at its sole cost and expense. Each applicable Concept Plan shall be revised to conform to its applicable Public Project Approval (as so revised, with respect to the applicable Public Project, the "**Approved Concept Plan**");

- c) Promptly following issuance of a Public Project Approval, and the expiration of all appeal periods to such issuance with no appeals to such issuance having been filed (or, in the event an appeal is filed, the same has been resolved (by judgement, settlement or otherwise in a final non-appealable manner) on terms and conditions acceptable to Sponsor in its sole absolute discretion), Sponsor shall prepare design development documents based on the applicable Approved Concept Plan, it being understood and agreed that the Sponsor's design professionals shall be responsible for preparing the design development documents. Sponsor shall submit such design development documents to the City for the City to confirm that such design development documents conform in all material respects with the applicable Approved Concept Plan. The City shall review and either confirm/approve or disapprove such design development documents within thirty (30) days after receipt of the same, but for avoidance of doubt, the City may disapprove the design development documents only if they do not conform in all material respects to the applicable Approved Concept Plan. If the City fails to confirm/approve or disapprove such design development documents within such ten (30) day period, then such design development documents shall be deemed confirmed/approved by the City. However, if the City timely disapproves such design development documents, it shall give the specific and detailed reasons for such rejection, in which event, Sponsor shall, at its election, either (x) submit the City's disapproval to an expedited arbitration process to determine whether the design development documents conform to the applicable Approved Concept Plan or (y) within sixty (60) days after such disapproval, submit proposed modifications to such design development documents so that they conform in all material respects to the applicable Approved Concept Plan and then re-submit them to the City pursuant to the foregoing process until such design development documents have been or are deemed to have been confirmed/approved by the City (such design development documents, once confirmed/approved or deemed approved by the City, with respect to the applicable Public Project, the "**Design Development Documents**");
- d) Sponsor shall thereafter prepare 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 the Sponsor's design professionals shall be responsible for preparing the construction documents in consultation with the City. Sponsor shall submit such final construction documents to the City for the City to confirm that such final construction documents conform in all material respects with the applicable Design Development Documents. The City shall review and either confirm/approve or disapprove such final construction documents within thirty (30) 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 Design Development Documents. If the City fails to confirm/approve or disapprove such final construction documents within such thirty (30) 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, Sponsor shall, at its election, either (x) submit the City's disapproval to an expedited arbitration process or (y) 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 applicable Design Development Documents 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.

- e) Sponsor shall select and engage a licensed general contractor and enter into a construction contract(s) for the development of the Public Projects.
  - f) The City shall waive all land use board application fees and cost related to the development of the Public Projects. For the avoidance of doubt, Sponsor acknowledges and understands that the City may not waive applicable Building Departments fees, Mobility Fees, or Art in Public Places fees. To the extent any additional fees related to the development of the Public Project may be levied, and the City may waive such fees under applicable law, the City shall waive such additional fees; and
  - g) Sponsor and the City shall mutually agree to project oversight and administration responsibilities for the Public Projects, it being understood and agreed that the Sponsor (or a consultant engaged by Sponsor) will have primary responsibility for the oversight and administration of the Public Projects, and the City may assign staff members (or a consultant engaged by the City) to participate in the oversight and administration of the Public Projects; and
  - h) Sponsor shall obtain environmental assessments of the Park Site and of the Apartment Site to determine whether hazardous substances exist thereon in violation of applicable environmental laws, and if any such hazardous substances exist, Sponsor shall remediate same prior to Closing (as such term is defined in section 7(a) below) (it being understood and agreed that the Sponsor (or a consultant engaged by Sponsor) will have primary responsibility for obtaining such environmental assessments and performing any necessary remediation).
- 4) Alternative with respect to Public Baywalk Project. In the event Sponsor is unable to obtain Baywalk Easements for one or more of the Baywalk Segments

or portions thereof, or that the costs thereof would cause the aggregate costs of the Public Baywalk Project to exceed the amount set forth in this term sheet, then upon the later of sixty (60) days after (i) satisfaction of the Private Project Conditions (as such term is defined in Section 6(b) of this Term Sheet) or (ii) the date on which Sponsor determines it is unable to obtain such Baywalk Easements (or that the costs thereof would so cause the aggregate costs to exceed the amount set forth in this Term Sheet), Developer shall owe a payment to the City calculated as follows:

Segment	Payment Amount
1228 West Avenue	\$2,500,000.00
800 West Avenue	\$1,250,000.00

[NOTE: 1450 Lincoln Road riparian rights agreements already signed]

5) Private Project. The main elements of the Private Project include:

- a) Demolition of the existing improvements on the Development Property; and
- b) The construction of a new high-rise residential building containing a minimum height of \_\_\_\_\_, a minimum square footage of \_\_\_\_\_ square feet of floor area, minimum number of residential condominium units of \_\_\_\_\_ units, and a minimum \_\_\_\_\_ square foot commercial unit(s) (collectively, the “**Minimum Private Project Elements**”) (it being understood that Sponsor and Sponsor Affiliates may in their sole discretion seek approvals for development parameters more restrictive than the Minimum Private Project Elements); and

6) Approvals Required for Private Project. It is anticipated the Private Project requires the following approvals (collectively, the “**Private Project Approvals**”):

- a) Amendments to the City’s Comprehensive Plan and to the City’s Resiliency Code as contemplated by Planning Board (“PB”) File Nos. are PB24-0698 and PB24-0703;
- b) Design Review Board (“DRB”) approval;
- c) Miami-Dade County Shoreline Review approval, as necessary;
- d) Confirmation from the Miami-Dade Aviation Department and the Federal Aviation Administration that there are no aviation-related issues;

7) Public Project Proceeds if Approvals are Obtained.

(a) The parties acknowledge and agree that each Public Project requires independent review and approval by the DRB or HPB, as applicable, and the Private Project requires independent review and approval by the DRB. Sponsor and the Sponsor Affiliates acknowledge that nothing contained in the Agreement will obligate the City to cause the approval by the DRB or HPB application or limit the DRB's or HPB's respective 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 DRB or HPB 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 Park Site, the Baywalk Segments, the Apartment Site or the Development Property.

(b) The parties acknowledge and agree that the Public Baywalk Project may required independent review and approval by 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 (the "**DERM**"). Sponsor shall be responsible for obtaining such permits from the ACOE, FDEP, or DERM, as applicable, at Sponsor's sole cost and expense. The City shall execute all documents necessary for such permitting, provide technical assistance, and generally cooperate with respect to such permitting, including by approving modifications to the Public Baywalk Project Concept Plan that are necessary to obtain the required permits from the ACOE, FDEP, and/or DERM.

(c) If Sponsor Affiliates (i) obtain all Private Project Approvals for not less than the Minimum Private Project Elements without the imposition of terms, conditions or obligations that could have a material adverse effect on the Private Project or that could materially increase Sponsor Affiliates' budgeted costs for the development and construction of the Private Project, 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 Sponsor Affiliates in their sole discretion) (collectively, the "**Private Project Conditions**") or (ii) waive the Private Project Conditions in their sole discretion, then the Sponsor will proceed with each Public Project subject to Sponsor (x) with respect to the Public Park Project, successfully consummating the closing of the acquisition of the Park Site, with respect to the Public Baywalk Project, successfully obtaining the Baywalk Easements and with respect to the Public

Apartment Project, successfully consummating the closing of the acquisition of an Apartment Site and (y) obtaining the applicable Public Project Approvals substantially as presented in the Approved Concept Plan and corresponding DRB application without the imposition of terms, conditions or obligations that could materially increase Sponsor's budgeted costs for the development and construction of such Public Project, and the time period for all appeal periods with respect to such Public 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 Sponsor in its sole discretion (the conditions set forth in the immediately preceding clauses (x) and (y), collectively, with respect to the applicable Public Project, the "**Public Project Conditions**"). If any of the Private Project Conditions are not satisfied (or not waived by Sponsor Affiliates in their discretion) or if any of the Public Project Conditions with respect to the Public Park Project or Public Apartment Project are not satisfied (or not waived by Sponsor in its sole discretion), then the Agreement shall terminate. For avoidance of doubt, if Sponsor or Sponsor Affiliates (i) are unable to obtain the Private Project Approvals, (ii) are 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 or that could materially increase Sponsor Affiliates' budgeted costs for the development and construction of the Private Project, (iii) are unable to obtain the Public Project Approvals for the Public Park Project or Public Apartment Project, (iv) are able to obtain the Public Project Approvals for the Public Park Project and Public Apartment Project but the Public Project Approvals contain terms, conditions or obligations that could materially increase Sponsor's budgeted costs for the development and construction of such Public Projects or (v) are able to obtain the Public Project Approvals for the Public Baywalk Project but the Public Project Approvals for the Public Baywalk Project contain terms, conditions or obligations that could materially increase Sponsor's budgeted costs for the development and construction of the Public Baywalk Project, then Sponsor and Sponsor Affiliates may, at their sole discretion, elect to (i) diligently prepare a revised applications for the Private Project and/or applicable Public Project, as applicable, so long as same still conforms to the terms of the Agreement; (ii) exercise any rights of appeal, in which event the City will cooperate with Sponsor (at Sponsor's sole cost and expense) in exercising such rights; (iii) revise the scope of the Private Project; (iv) revise the scope of the applicable Public Project, so long as same still conforms to the terms of the Agreement; or (v) abandon its applications for the Private Project and terminate the Agreement. The Sponsor or Sponsor Affiliates agree 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 would instead include those mandating a reduction in height, density, or floor area; the relocation of the proposed residential tower within the site; imposition of



greater setbacks, limitations on use; and/or significant design modifications that, in the opinion of the Sponsor or Sponsor Affiliates, reduce the marketability of the Private Project.

For the avoidance of doubt, if a new DRB or HPB or other land use board approval of the Private Project or any Public Project is necessary as a result of any modification to the Private Project and/or such Public Project, the Sponsor and Sponsor Affiliates shall be responsible for the preparation and submission of all necessary materials for the DRB and/or HPB or other land use board (as applicable) review of the revised Private Project and/or applicable Public Project at its sole cost and expense.

(d) The City agrees that any failure to obtain the Public Project Approvals for any aspect of any Public Project will in no event affect the Private Project Approvals or the ability of Sponsor and/or the Sponsor Affiliates to seek and obtain the any other requisite approvals and development permits for the Private Project.

8) Bay Walk Segment Completion

- a) Sponsor shall make good faith efforts to secure the Bay Walk Easements, and shall deliver such Bay Walk Easements, or the alternative payment identified in Section 4 if one or more of the Bay Walk easements cannot be obtained, prior to issuance of a master building permit for the Private Project.
- b) Sponsor shall provide notice to the City of completion of segments of the Bay Walk constructed, and for which the alternative in Section 4 has not been exercised, no earlier than sixty (60) days following Sponsor Affiliates' receipt of Temporary Certificate of Occupancy for the Private Project.

9) Closing - Park.

- a) Upon completion of the Park on the Park Site, the Sponsor shall provide notice to the City. The parties will thereafter set a mutually-agreed upon date for the closing of the conveyance of the Park to the City, but no earlier than sixty (60) days following Sponsor Affiliates' receipt of Temporary Certificate of Occupancy for the Private Project (the "**Park Closing**").
- b) At the Park Closing, Sponsor shall deliver to the City the following: (i) a Special Warranty Deed (the "**Deed**") conveying to the City fee title to the Park Parcel free and clear of all liens and encumbrances other than certain standard permitted exceptions which do not render title uninsurable or unmarketable (to be further defined in the Agreement); (ii) bill of sale conveying any personalty; (iii) customary title affidavit reasonably required by the title company; (iv) a "marked-up" title commitment issued by Fidelity

National Title Insurance Company, Chicago Title Insurance Company or First American Title Insurance Company 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 Park Parcel.

- c) City shall be responsible at its sole cost and expense for the operations, maintenance, repair, restoration of the Park Parcel from and after the Park Closing, and all obligations of the Sponsor with respect to the Park Parcel shall terminate at the Park Closing except for the warranties in the Deed.

**10) Closing – Apartment Site.**

- a) Upon completion of the Public Apartments on the Apartment Site, the Sponsor shall provide notice to the City. The parties will thereafter set a mutually-agreed upon date for the closing of the conveyance of the Apartment Site and improvements thereon to the City, but no earlier than sixty (60) days following Sponsor Affiliates' receipt of Temporary Certificate of Occupancy for the Private Project (the "**Apartment Closing**").
- b) At the Apartment Closing, Sponsor shall deliver to the City the following:
  - (i) a Special Warranty Deed (the "**Deed**") conveying to the City fee title to the Apartment Site and improvements thereof free and clear of all liens and encumbrances other than certain standard permitted exceptions which do not render title uninsurable or unmarketable (to be further defined in the Agreement); (ii) bill of sale conveying any personalty; (iii) customary title affidavit reasonably required by the title company; (iv) a "marked-up" title commitment issued by Fidelity National Title Insurance Company, Chicago Title Insurance Company or First American Title Insurance Company 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 Apartment Site and improvements thereon.
- c) City shall be responsible at its sole cost and expense for the operations, maintenance, repair, restoration of the Apartment Site and improvements thereon from and after the Apartment Closing, and all obligations of the Sponsor with respect to the Apartment Site and improvements thereon shall terminate at the Apartment Closing except for the warranties in the Deed.

**11) Cooperation** The Parties agree to mutually cooperate in good faith with respect to the redevelopment of the Park Site with the Public Park Project and

conveyance of the Park Parcel to the City, the acquisition of the Baywalk Easements and construction of the Public Baywalk Project, the acquisition of the Apartment Site and redevelopment thereon with the Public Apartment Project and conveyance of the Apartment Site and improvements thereon to the City and in connection with the other activities contemplated by the Agreement.