

Prepared by and Return to:

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(Space Reserved for Clerk)

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into by and among the CITY OF MIAMI BEACH, a Florida municipal corporation (the "**City**"), and jointly and severally, TMG 67 COMMUNITIES LLC, a Delaware limited liability company, DEAUVILLE ASSOCIATES LLC, a Florida limited liability company, (collectively, the "**Developer**").

Introduction

A. The property that is the subject of this Agreement lies 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 (the "**Resiliency Code**").

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 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. The Developer owns the property located at the 6701 Collins Avenue, Miami Beach, Florida, more specifically described in **Exhibit "A"** attached hereto and incorporated herein by this reference (the "**Developer Property**").

D. The Developer Property was previously developed with a contributing historic building known as the Deauville Hotel. The previously existing Deauville Hotel was constructed in 1956 and designed by noted Miami Beach architect Melvin Grossman, in the Post War Modern (MiMo) style, was classified as contributing in the Miami Beach Historic Properties Database and was located within the North Beach Resort Local Historic District.

E. The Deauville Hotel was an outstanding example of the Post War Modern style and was featured in the 1958-1959 issue of Florida Architecture. One of the most noticeable features of the building was its dramatic porte-cochere, comprised of sweeping intersecting parabolic curves, which created a defining entry point for this once all-inclusive resort. Stepped horizontal planes rose from the street to the second floor lobby entrance along the building's façade, providing shelter and a clear pedestrian procession from Collins Avenue. This lobby entrance was one of the three main differentiated architectural features of the building. Over time, the Deauville Hotel became a landmark for more than just its architecture; it was also the site of the Beatles' second performance in the United States for the Ed Sullivan Show on February 16, 1964. There were many other notable entertainers of the 1950s and 1960s that performed at the hotel, including but not limited to Frank Sinatra, Sammy Davis Jr., Dean Martin, Tony Bennett, Bing Crosby, and Judy Garland.

F. The Deauville Hotel was highlighted in the North Beach Master Plan, dated October 19, 2016, as one of the most notable hotels in the North Beach Resort District. The City's historic preservation ordinance prioritizes the protection and revitalization of sites and districts within the City having special historic, architectural, and archaeological value to the public. This includes the "protection of such historic sites and districts to combat urban blight, promote tourism, foster civic pride, and maintain physical evidence of the City's heritage"; the "encouragement and promotion of restoration, preservation, rehabilitation and reuse of historic sites and districts by providing technical assistance, investment incentives, and facilitating the development review process"; and the "promotion of excellence in urban design by assuring the compatibility of restored, rehabilitated or replaced structures within designated historic districts." See Section 2.13.1 of the Resiliency Code.

G. Deauville Associates, LLC also owns the property more specifically described in **Exhibit "B"** attached hereto and incorporated herein by this reference (the "**Garage Property**"), which is currently improved with a parking garage historically used in connection with the operation of the Deauville Hotel.

H. The Developer applied to amend the City's 2040 Comprehensive Plan and Resiliency Code to establish the "North Beach Oceanfront Overlay" through Planning Board File Nos. PB24-0708 and PB24-0693 and the City has approved the amendments through Ordinance Nos. [REDACTED]

I. The Developer seeks to redevelop the Developer Property with a partial reconstruction of the former Deauville Hotel with a contemporary rooftop addition above portions of the reconstructed pedestal containing long term residential units, as reflected in the detailed matrix of floor areas, including residential tower floor plates attached as **Exhibit "C"** attached hereto and incorporated herein by this reference (the "**Project**").

J. The Developer intends to provide certain public benefits for the North Beach area of the City ("**North Beach**"), including: (1) partial reconstruction of the former Deauville Hotel building including the pedestal and a reinterpretation of the original hotel tower within a certain timeframe; (2) construction and perpetual access to pathways connecting Collins Avenue to the beach walk; (3) leasing, conveying or granting easements over certain areas within the Garage Property to the City for public parking and public purposes; (4) providing funding for certain costs associated with planning future improvements to the Byron Carlyle Theater site located at 500 71 Street (the "**Byron Carlyle Site**"); (5) development of a pocket park; and (6) funding of infrastructure improvements in North Beach (the "Public Benefits").

K. Having fully considered this Agreement at two (2) duly noticed public hearings in compliance with Section 163.3225 of the Act; and, having determined that the Project and this Agreement are in compliance with the City's Comprehensive Plan and Land Development Regulations (as may be amended by the Comprehensive Plan Amendments and the Land Development Regulations Amendments (as 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 the Developer.

L. The City has determined that the Project and the Public Benefits will benefit the City and the public, through without limitation, the partial reconstruction of the Deauville Hotel, increased beach accessibility, improvements to the availability of parking and infrastructure improvements in North Beach, and the facilitation of development of an Art and Culture Center at the Byron Carlyle Site.

M. All capitalized terms used in this Introduction are defined in Paragraph 3 of 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/Authority. The foregoing recitations are true and correct and are incorporated herein by this reference. This Agreement is entered into pursuant to the authority and procedures provided by the Act and Chapter 2, Article XI, of the Resiliency Code.
2. Definitions. All capitalized terms used in this Agreement shall have the definitions set forth in this Paragraph 3 unless such terms are defined elsewhere in the body of this Agreement.
 - a) **"Act"** is defined in the recitals.
 - b) **"Accessory Uses"** shall mean uses customarily associated with hotels and multifamily residential uses, which are open to hotel guests, residents of the multi-family residential units and their guests, and/or the general public.
 - c) **"Building Permit"** shall mean any permit issued by the City of Miami Beach Building Department or Building Official, including any foundation, building or phased permits.
 - d) **"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.
 - e) **"Byron Carlyle Site"** shall mean the property located at 500 71 Street and adjacent City-owned surface parking lot.
 - f) **"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.

- g) **"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.
- h) **"Comprehensive Plan Amendments"** shall mean any amendments to the Comprehensive Plan to, among other things: (a) amend the Comprehensive Plan to establish the "North Beach Oceanfront Overlay" land use overlay category; and (b) amend the text of the Comprehensive Plan to authorize floor area bonuses for property within the North Beach Oceanfront Overlay.
- i) **"Developer"** shall mean the persons or entities named in the preamble to this Agreement, and any permitted successors, or assigns thereof; provided, however, the term "Developer" shall not mean the City.
- j) **"Developer Property"** is defined in the recitals.
- k) **"Development Order"** shall mean any order granting, denying, or granting with conditions an application for a Development Permit.
- l) **"Development Permit"** shall have the meaning set forth in Section 163.3221(5), Florida Statutes (2017).
- m) **"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 (2025), and Paragraph 13 of this Agreement.

- n) **"Execution Date"** shall mean the date the last of the required parties executes this Agreement.
- o) **"Garage Property"** shall mean the property more specifically described in **Exhibit "B"** attached hereto and incorporated herein by this reference.
- p) **"Land Development Regulations"** shall have the meaning set forth in Section 163.3221(8), Florida Statutes (2025) and shall also include, without limitation, the definition of "land development regulations" in Section 1.2.1 of the City's Resiliency Code.
- q) **"Land Development Regulations Amendments"** shall mean amendments to the Land Development Regulations to, among other things: (a) establish the "North Beach Oceanfront Overlay" within the City's Land Development Regulations; and (b) amend the text of the Land Development Regulations to authorize floor area and height bonuses, as well as establish regulations that facilitate the partial reconstruction of the Deauville Hotel on the Developer Property under the terms of the North Beach Oceanfront Overlay.
- r) **"Laws"** shall mean all laws, rules, regulations, ordinances, plans, resolutions, comprehensive plans and land development regulations, specifically including the City's Comprehensive Plan and Resiliency Code.
- s) **"Project"** shall mean the development of the Developer Property and Garage Property consistent with the zoning regulations of the City's Land Development Regulations (as may be amended by the Comprehensive Plan Amendment and Land Development Regulations Amendments) as further detailed in Section 3.
- t) **"Resiliency Code"** shall mean the City's current land development regulations.
- u) **"Overlay"** shall mean the "North Beach Oceanfront Overlay" in the Comprehensive Plan and Land Development Regulations proposed through File Nos. through Planning Board File Nos. PB24-0708 and PB24-0693 and approved through Ordinance Nos. [REDACTED].

- v) **“Triangle Pocket Park Site”** shall mean the existing landscaped swale area located at the intersection of 67th Street, Indian Creek Drive, and Harding Avenue more specifically described in in **Exhibit “D”** attached hereto and incorporated herein by this reference.

3. The Project.

- a) The Project shall be a mixed-use development consisting of hotel, residential, and accessory uses. The maximum total floor area permitted upon the Developer Property shall not exceed 899,895 square feet which shall be distributed among the hotel, residential and accessory uses substantially in the manner set forth in **Exhibit “C”**.
- b) It is prohibited to establish a casino, gambling lounge, betting house, gaming house, or other similar gambling or gaming use within the Project.
- c) The height of any multi-family residential tower on the Developer Property shall not exceed 300 feet in height (as measured from Design Flood Elevation, as defined in the Land Development Regulations), and any architectural projections will comply with the terms of the Land Development Regulations (as may be amended by the Comprehensive Plan Amendment and the Land Development Regulation Regulations Amendments).
- d) The uses permitted on the Developer Property shall be: up to 200 multi-family residential units, up to 140 hotel rooms, and accessory uses (as defined herein).
- e) The floor area of the Project shall be divided as follows:
 - i. A minimum 150,000 square foot mixed-use pedestal incorporating the partial reconstruction of the former Deauville Hotel building pedestal;
 - ii. A minimum 125,000 square feet hotel floor area;
 - iii. A maximum of 625,000 square feet of residential tower floor area; and
 - iv. Floor area associated with accessory uses.

- f) The Project shall include two pedestrian pathways to the City's Beachwalk, one elevated pathway located at the north side of the Developer Property with an estimated cost to construct of approximately \$3,879,694.00, and one located south side of the Developer Property with an estimated cost to construct of approximately \$2,531,071.00. The Developer shall prepare, for the City's approval, a Declaration of Restrictive Covenant or Access Easement providing that the Pedestrian Pathways from Collins Avenue to the Beachwalk shall be open for use by pedestrians from 6AM AM and until sunset PM, every day of the week, in perpetuity.
- g) The Project shall include on-site parking in accordance with the provisions of the Land Development Regulations (as may be amended by the Comprehensive Plan Amendment and the Land Development Regulations Amendments). Project parking may also be located on the Garage Property.

4. Development Approvals.

- a) The Developer acknowledges that development of the Project will require approval of a Certificate of Appropriateness ("COA") by the City's Historic Preservation Board ("HPB"), which will determine if the partial reconstruction of the former Deauville Hotel building including the pedestal and a reinterpretation of the original hotel tower is appropriate, and requires conditional use approval by the City's Planning Board (collectively, the "**Project Zoning Approvals**").
- b) Promptly following the Effective Date, the Developer shall diligently prepare applications requesting the Project Zoning Approvals (collectively, the "**Project Zoning Applications**"). The preparation of the Project Zoning Applications shall be at the sole cost and expense of the Developer, in accordance with all City requirements, and shall include proposed plans sufficiently developed to permit the HPB and/or Planning Board (as applicable) to act on the Project Zoning Application(s).
- c) The deadlines for obtaining a building permit under any Project Zoning Approval shall be deemed to run with Term of this Agreement.

- d) The Developer acknowledges that review of the Project Zoning Applications by the City and its Boards is quasi-judicial, and that nothing in this Agreement obligates the City to approve the Project Zoning Applications or limits the quasi-judicial authority of the City and its Boards to impose conditions or take any action on the Project Zoning Applications as provided by the City Code. If either or both of the Project Zoning Applications is or are denied by the City, or if either or both of the Project Zoning Approvals contain any terms, conditions or obligations not consistent with the terms and conditions of this Agreement or otherwise unacceptable to Developer in its sole and absolute discretion, then the Developer may elect to: (i) diligently prepare revised Project Zoning Applications requesting the Project Zoning Approvals for a revised Project that still conforms with the Project as defined in this Agreement or (ii) exercise any rights of appeal the Developer may have.
 - e) The Developer shall submit a legally sufficient application to the Planning Board for the conditional use of the Garage Property within sixty (60) days of the Effective Date.
5. Developer's Public Benefit Obligations. In exchange for the extended deadlines authorized in Section 2.11.2 of the Resiliency Code and the City's agreement to expedite processing of all Applications for Development Approvals and Development Permits, the Developer shall comply with the following requirements as public benefits to the City:
- a) *The Project.*
 - i. The Developer shall submit legally sufficient Project Zoning Applications to the City within eighteen (18) months after the Effective Date and diligently pursue the approval of the Project.
 - ii. The Developer shall prepare and submit the building permit application for the Project within eighteen (18) months after the final non-appealable approval of a COA for the Project by the City's HPB or the issuance of a conditional use permit for the Project by the City's Planning Board.

iii. The Developer shall complete and, if relevant, secure a temporary certificate of occupancy for the following elements of the Project within five (5) years of the issuance of the building permit:

1. A minimum 150,000 square foot mixed-use pedestal incorporating the partial reconstruction of the former Deauville Hotel building I; and
2. The two pedestrian pathways to the City's Beachwalk located at the north and south sides of the Developer Property.

b) *Use of Garage Property.*

- i. Within sixty (60) days of the Effective Date, the Developer shall engage a structural engineer to evaluate the structural integrity of the Garage Property. The structural engineer's report shall be provided to the City within ninety (90) days of the date the engineer is engaged. The Developer shall apply for a conditional use approval for the Garage Property within sixty (60) days of the Effective Date.
- ii. If, within thirty (30) days of the City reviewing the engineer's report, no life-safety concerns are raised, the Developer shall permit the City to utilize a minimum of one hundred and fifty (150) parking spaces within the Garage Property for public parking, immediately upon the conditional use approval being secured.
- iii. If life-safety concerns are raised in the engineer's report, the Developer shall be responsible for diligently pursuing all necessary repairs to correct the life-safety issues, which shall be completed within one hundred and eighty (180) days of the City reviewing the engineer's report. The Developer may make a written requests for an extension of the time to complete the repairs upon a showing that the Developer is diligently pursuing building permits to complete the repairs in good faith and the extension of time is reasonably necessary to obtain the required building permit(s) and complete the repairs, and an extension of time may be granted by the City Manager. on a one-time basis, in the City Manager's sole discretion. Upon the completion of any necessary repairs, the Developer shall permit the City to utilize the parking spaces immediately, upon the conditional use approval being secured.

- iv. The City shall operate the temporary public parking use, including installing all necessary equipment to serve the public parking spaces, managing methods of payment, sanitation, refuse collection, security, and any other matter reasonably necessary for the day-to-day operation of a parking garage.
- v. The Developer may, at its option, subject to the issuance of all necessary City approvals, incorporate a Project sales center into the Garage Property.
- vi. For five (5) years following the Effective Date, the Developer shall be responsible for all capital improvements to the Garage Property and the City shall be responsible for standard maintenance. After five (5) years, the Developer and the City shall share in the cost of required capital improvements on a pro rata basis, with the City responsible for thirty-four percent (34%) of costs, and the Developer responsible for sixty-six (66%) percent of costs. The Developer shall provide the 150 parking spaces to the City. The Developer may elect to establish a commercial condominium, at the Developer's sole cost and expense, to allow conveyance of the parking spaces to the City, or the Developer may lease for \$1 per year, in a form acceptable to the City, 150 parking spaces to the City. The Developer shall convey or lease the parking spaces to the City within ninety (90) days of the spaces being made available to the City pursuant to Section 5(b)(i), except that in the event the Developer elects to form a commercial condominium to convey the parking spaces to the City, the City Manager may extend this timeframe to allow for establishment of the condominium, provided that the Developer has commenced the process to form the commercial condominium and is proceeding in good faith with establishment of the commercial condominium. Upon conveyance or lease of the parking spaces, the City shall be responsible for thirty-four (34%) of assessments, operating expenses, maintenance costs, capital improvements (excluding capital improvements required within five (5) years from the Effective Date), and utilities for the garage. In the event the Developer elects to lease the parking spaces to the City, the City shall not be responsible for any portion of property taxes paid with respect to the Garage Property.

- vii. If access or utilization of any City-owned spaces will be impacted by the work on capital improvements to the Garage Property, the Developer shall provide the City with temporary spaces within the facility in a location reasonably acceptable to the City.
- c) *Capital Contributions for the Byron Carlyle Art and Cultural Center.* The Developer shall pay \$7,500,000.00 to the City for use in connection with the proposed redevelopment of the Byron Carlyle Site. \$1,000,000.00 of the payment shall be made within ninety (90) days of the Effective Date of this Agreement. The remaining \$6,500,000.00 shall be paid as follows: (i) \$2,500,000.00 shall be paid within sixty (60) days of the securing of a final non-appealable approval of a Certificate of Appropriateness for the Project by the City's HPB and (ii) the remaining \$4,000,000.00 shall be paid within sixty (60) days following the issuance of a building permit for the Project, except that the Developer shall advance \$2,000,000.00 of the remaining \$4,000,000.00 to the City within thirty (30) days of the City's approval of a construction contract that this City is entering into related to the development of the Byron Carlyle Art and Cultural Center. The City may request the advance in connection with a construction contract for the Byron Carlyle Art and Culture Center no earlier than one (1) year from the Effective Date and such request shall be in writing. The application of the Developer's contribution shall be at the City's discretion.
- d) *Biscayne Beach Elementary Infrastructure Improvements.* Within thirty (30) days of the Effective Date, the Developer shall contribute \$40,000.00 to the City for improvements to the Biscayne Beach Elementary sanitary sewer infrastructure. The application of the Developer's contribution shall be at the City's discretion.
- e) *Funding for Infrastructure Analysis and Repairs.* Within thirty (30) days of securing a final non-appealable approval of a Certificate of Appropriateness for the Project (by the City's HPB), the Developer shall contribute \$400,000.00 in funding to the City for the purpose of funding an infrastructure evaluation and analysis, and any repairs identified in the analysis. The application of the Developer's contribution shall be at the City's discretion.
- f) *Resolution of Existing Fines.* The Developer shall pay \$6,300,000.00 to the City to resolve existing fines for code violations on the Developer

Property and the Garage Property in accordance with the terms of a settlement agreement dated April 23, 2025 between the City and the Developer (and certain affiliates of the Developer).

- g) *Development of Triangle Pocket Park.* The Developer shall design and construct a pocket park at the Developer's sole cost and expense located within the Triangle Pocket Park Site. The development of the pocket park shall be governed as follows.
 - i. *Concept Plan Approval.* Within a hundred and twenty (120) days of the final non-appealable approval of a COA for the Project by the City's HPB, the Developer shall present a concept plan to the City Manager or designee for the creation of the Triangle Pocket Park the "**Triangle Pocket Park Concept Plan**" 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 Triangle Pocket Park exceeds \$250,000.00. The City Manager shall review and either confirm, approve or disapprove the Triangle Pocket Park Concept Plan within thirty (30) days after receipt of the same. If the City Manager fails to confirm, approve or disapprove the Triangle Pocket Park Concept Plan within such thirty (30) day period, the plan shall be deemed confirmed/approved by the City. However, if the City Manager timely disapproves of the Triangle Pocket Park Concept Plan, he/she shall give the specific and detailed reasons for such rejection, in which event, the Developer shall submit proposed modifications to the Triangle Pocket Park Concept Plan until the plan has been or is deemed to have been confirmed/approved by the City.
 - ii. *Schematic Plans /Hearing Approval.* The Developer, at Developer's sole cost and expense shall be responsible for preparation and processing of all necessary materials for the City's Design Review Board review and approval of schematic design plans implementing the Triangle Pocket Park Concept Plan. The Developer shall prepare and submit the Design Review Board application within a hundred and twenty (120) days of the City's approval of the Triangle Park Concept Plan. The City shall timely execute all necessary application materials upon the written request by the Developer. In the event the Design Review Board requires changes to the proposed design,

the Developer will be responsible for preparing all necessary modifications. The Developer shall not be required to modify the plan in a manner such that the aggregate hard and soft costs for the development and construction of the Triangle Pocket Park exceed \$250,000.00.

- iii. *Final Construction Documents and Proprietary Review.* Within 365 days of the Design Review Board approval of schematic design plans, the 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 the Developer's design professionals shall be responsible for preparing the construction documents in consultation with the City. The 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 Triangle Pocket Park Concept Plans. 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 approved schematic design plans. 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, Developer shall submit proposed modifications to such final construction documents so that they conform in all material respects to the applicable approved Triangle Pocket Park Plans and then re-submit them to the City within sixty (60) days of the City Manager's written disapproval 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.

- iv. *Processing of Construction Permit.* Within ninety (90) days of the City's proprietary approval of the final construction documents for the Triangle Pocket Park, the Developer shall, at its sole cost and expense, submit the building permit plans to the City. The City shall waive any permit fees associated with the submittal, unless mandated by state law. The Developer shall diligently pursue the issuance of a building permit for the improvements, including making timely revisions and resubmittals until the permit for the improvements is issued.
- v. *Construction of Triangle Pocket Park.* Within 365 days of the City's issuance of all necessary permits, the Developer shall commence construction on the Triangle Pocket Park improvements and diligently pursue the completion of the work.
- h) *Temporary Public Open Space.* A portion of the Developer Property shall be developed as temporary public open space in accordance with the conceptual site plan attached as **Exhibit E** for use by the general public during the period of time that the Project is seeking the required Development Approvals to develop the Project. Within fourteen (14) days of the Effective Date of this Agreement, the Developer shall present a draft temporary access agreement to the City Attorney for City Attorney's approval, with such approval not to be unreasonably withheld, and which shall be deemed granted if City Attorney fails to deliver notice of disapproval within 30 days of receipt of same, providing for temporary public access to the temporary public open space. Within thirty (30) days of the Effective Date of this Agreement, the Developer shall have prepared all required materials and file all necessary permit applications. Within thirty (30) days of issuance of the required permit(s), the Developer shall commence construction of the temporary public park improvements, inclusive of landscaping, lighting, and irrigation. The Developer shall diligently pursue completion of the improvements within one-hundred-twenty (120) days of issuance of the required permits. The requirement to provide temporary public park use of the Developer Property shall terminate upon issuance of any building permit in furtherance of the Project.
- i) *Center for Miami Modern Architecture and Resilience.* The Developer shall design and construct a minimum 2,000 square foot exhibition and

meeting space to be used as the Center for Miami Modern Architecture and Resilience at the Deauville Hotel (the "Center") within the mezzanine of the partially reconstructed pedestal of the Project. The Developer shall offer the Center for use by non-profit organizations or educational institutions.

- j) *Privately Owned Public Spaces.* The areas depicted on the attached **Exhibit F** shall be deemed privately owned public open spaces ("POPS") that are generally open to the public. The POPS shall include a widened sidewalk promenade along portions of the Collins Avenue frontage of the Developer Property, a beach access path on the south side of the Developer Property, an elevated beach access path on the north side of the Developer Property, and the lobby of the partially reconstructed Deauville Hotel. The hours of access for the POPS shall be as follows:
- i. *Collins Avenue Sidewalk Promenade:* 24 hours per day.
 - ii. *South Beach Access.* The beach access path on the south side of the Developer Property depicted in **Exhibit F** shall be open to the public between the hours of 6:00 AM and 9:00 PM, seven (7) days per week.
 - iii. *North Elevated Beach Access.* The beach access path on the north side of the Developer Property depicted in **Exhibit F** shall be open to the public between the hours of 6:00 AM and 9:00 PM.
 - iv. *Reconstructed Deauville Lobby.* The reconstructed lobby of the Deauville Hotel depicted in **Exhibit F** shall be open to the public between the hours of 10:00 AM and 2:00 PM.. The Owners shall be permitted to place reasonable restrictions on the number of persons accessing the reconstructed lobby at one time, or per day, to mitigate impacts on the operation of the hotel.

The Owners shall install wayfinding signage within the Developer Property notifying the public of the POPS and the hours of operation. The Owners shall be permitted to partially or fully close the POPS for maintenance, repairs, upgrades, and private events, provided that such private events do not cause the closure of the POPS for a period longer than forty-eight (48) hours.

- k) *Prohibition of Gambling or Gaming Use.* The Owners shall execute and cause to be recorded in the public records of Miami-Dade County a Declaration of Restrictive Covenants in a form acceptable to the City Attorney prohibiting development of the Developer Property, or use of the Developer Property, as a casino, gambling lounge, betting house, gaming house, or other similar gambling or gaming use. Such instrument shall provide for modification, amendment, or release only by unanimous vote of the City Commission following public hearing.
 - l) *Live Local Act and Preemptions.* Upon final non-appealable approval of a Certificate of Appropriateness for the Project by the City's HPB, the Developer shall execute and record in the Public Records of Miami-Dade County a covenant, in a form acceptable to the City Attorney, that voluntarily covenants and agrees that 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 preempts local land development regulations concerning maximum permitted height, maximum permitted floor area ratio, or maximum permitted density. For the avoidance of doubt, in the event an appeal contesting the issuance of a Certificate of Appropriateness is filed, the Developer shall not be required to execute and record the covenant until the appeal is resolved in a manner acceptable to the Developer.
- 6 Conditions Precedent to Issuance of Certificate of Occupancy or Temporary Certificate of Occupancy for the Project. The Developer acknowledges that compliance with the public benefit requirements of Section 5(a)-(j) is material consideration for the City's execution of this Agreement. 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 public benefit requirements of Section 5(a)-(j), inclusive, are satisfied or waived, in the sole and exclusive discretion of the City Manager. Furthermore, the Developer shall not apply for, and the City shall not issue any final certificate of occupancy and/or certificate of completion for the Project (in whole or in part) until the public benefit requirements of Section 5(g) are satisfied or waived, in the sole and exclusive discretion of the City Manager.

GENERAL PROVISIONS

- 7 Applications for Development Approvals and Development Permits. This Agreement contemplates that the Developer will file applications for Project Zoning Approvals and Development Permits. The City shall expedite the processing of all Development Permit and Project Zoning Approvals applications. Notwithstanding the foregoing, the Developer shall be solely responsible for obtaining all final, non-appealable Project Zoning Approvals and Development Permits for the Project. No extension of any time period herein shall be deemed to be an extension of any time periods contained within Development Permits. The expiration of the Project Zoning Approvals for the Project and the Triangle Pocket Park shall be subject to Section 2.11.2 of the Resiliency Code.
- 8 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 Comprehensive Plan Amendment and the Land Development Regulations Amendments) governing the development of the Developer Property, as they exist as of the Execution Date of this Agreement, shall govern the development of the Property (including the Project and the Park Project) 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 Project) (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 Project or the Triangle Pocket Park Project or any amendments or modifications to the Project Zoning Approvals.
- 9 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. The 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 the 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.

- 10 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.
- 11 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 Project) are consistent with the City's Comprehensive Plan and Resiliency Code (as may be amended by the Comprehensive Plan Amendment and the Land Development Regulations Amendments), subject to all applicable requirements, permits and approvals.
- 12 Concurrency. The Developer shall be solely responsible for obtaining all land use permits for the Project, including, but not limited to, all permits and approvals required pursuant to Section 163.3180, Florida Statutes (2025), 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 Project, Developer shall apply to the appropriate governmental authorities and obtain letters or other evidence that the Developer has satisfied all applicable Concurrency Requirements with respect to the Project, and shall diligently and in good faith obtain such letters or other evidence that the 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.
- 13 Effective Date; Duration; Term, and Periodic Review.
- 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. The 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 upon the Developer's compliance with the public benefit requirements of Paragraph 5(a)-(j) and shall be subject to

the force majeure provisions of Paragraph 30. Any further extension of the Term of this Agreement will only be with the mutual consent of the City and the Developer subject to a public hearing pursuant to Section 163.3225, Florida Statutes; and consent to any extension of this Agreement is within the sole discretion of each party to this Agreement. 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 Paragraph must be undertaken following the public hearing process required by Section 163.3225, Florida Statutes, and based on substantial competent evidence that the Developer is not in compliance with its obligations and responsibilities under the Agreement.

14 Permitted Development.

- a) Permitted Development and Uses. The Developer Property is designated as "Residential Multi-Family – High Intensity" (RM-3) according to the City's adopted Comprehensive Plan Future Land Use Map. The Property is zoned "RM-3 Residential Multi-Family, High Intensity" by the City's Resiliency Code. The RM-3 zoning district permits multi-family residential buildings, hotels, and related accessory uses. The 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 Land Development Regulations Amendments.
- b) Density, Building Heights, Setbacks and Intensities. The maximum density, heights, setbacks and intensities for any development on the Property shall be regulated by the City's Resiliency Code, Comprehensive Plan (as amended by the Comprehensive Plan Amendment and the Land Development Regulations Amendments) and any applicable Federal,

State or County laws, rules and regulations, except as specified in Section 3. Subject to the restrictions set forth in the RM-3 land use designation, the maximum residential density is 150 dwelling units per acre.

- 15 Public Facilities to Service the Property. A description of the public facilities that will service the 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 Property, is set forth in **Exhibit "G"** attached hereto and incorporated herein by this reference.
- 16 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 "H"** attached hereto and incorporated herein by this reference.
- 17 Required Development Permits. A listing and description of all local development permits approved or needed to be approved for the development of the Project and the Park Project is set forth in **Exhibit "I"** attached hereto and incorporated herein by this reference.
- 18 Developer's Right to Terminate. The Developer shall have the option to terminate this Agreement in its sole and absolute discretion in the following events:
 - a) If either or both of the Project Zoning Applications is or are denied by the City, or if either or both of the Project Zoning Approvals contain any terms, conditions or obligations not consistent with the terms and conditions of this Agreement or otherwise unacceptable to Developer in its sole and absolute discretion; or
 - b) In the event the Developer elects not to proceed with the Project after the Developer has met its then outstanding obligations under Paragraph 5 of this Agreement.
19. Default. Each of the following shall be an "**Event of Default**" by the Developer hereunder:
 - a) If the Developer shall fail to observe or perform any term, covenant or condition of this Agreement on the Developer's part to be observed or

performed and the Developer shall fail to cure or remedy the same within (i) thirty (30) days of the Developer's receipt of written notice from the City with respect to monetary defaults, or (ii) sixty (60) days of the 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 the Developer shall have such additional time as is necessary to cure such failure and no Event of Default shall be deemed to exist hereunder so long as the Developer commences such cure within such initial sixty (60) day period and diligently and in good faith pursues such cure to completion.

- b) If the 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 the 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 (for avoidance of doubt, in each case with respect to this clause b), other than to or for the benefit of lenders providing financing in connection with the Project).
- c) If the 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 the 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 the 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 the Developer consents in writing or joins in an application for the appointment of a custodian in any proceeding under the Bankruptcy Code; or the 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 the Developer; or there is commenced against the 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 the 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 the 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 the 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.

19 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 the Developer;
- 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.

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 the Developer, the 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 the 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 the Developer under this Agreement.

- 20 Termination Outside of Default. In the event either party chooses to exercise its right to terminate this Agreement under any of Paragraphs of this Agreement (apart from the City's right to terminate under Paragraph 19 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 Project and the Triangle Pocket Park project, and neither party shall have or owe any further obligation or liability to the other party.
- 21 Strict Performance; Waiver. No failure by the City or the 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.

22 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: TMG 67 Communities LLC
3310 Mary Street, #302
Coconut Grove, FL 33133
Attn: David Martin

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

With a copy to: Deauville Associates LLC
5101 Collins Avenue, Management Office
Miami Beach, Florida 33140
Attn: Belinda Meruelo

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 upon receipt or refusal to accept delivery. The terms of this Paragraph shall survive the expiration or earlier termination of this Agreement.

23 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. The 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 THE 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 Paragraph shall survive the expiration or earlier termination of this Agreement.

- 24 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.
- 25 Time of Essence. Time shall be of the essence for each and every provision hereof.
- 26 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.

- 27 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.
- 28 Binding Effect. The obligations imposed pursuant to this Agreement upon the 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.
- 29 Transfer and Assignment. TMG 67 Communities LLC ("TMG") recognizes that, in view of the importance of reconstructing a portion of the historic Deauville Hotel to the general welfare of the City and the general community, TMG's qualifications and identity are of particular concern to the community and to the City. Accordingly, TMG acknowledges that it is because of such qualifications and identity that the City is entering into this Agreement with TMG, and, in doing so, the City is further willing to accept and rely on TMG's obligations for faithfully performing all its responsibilities under this Agreement. TMG represents and warrants that the persons/entities having an ownership interest in the Developer Property and Garage Property, together with their percentage and character of ownership have been disclosed to the City.

The Developer shall not be entitled to assign or transfer this Agreement or any of the rights and obligations hereunder prior to the satisfaction or deemed satisfaction of the conditions set forth in Paragraph 5 of this Agreement 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. The Developer shall have the right at any time and from time to time to sell, transfer and convey all or any portion of the 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 "Terra Entity" (as hereinafter defined) shall at all times (a) hold, directly or indirectly, not less than a 10% ownership interest in the Developer Property, (b) serve, directly or indirectly, as a manager of the entity

that is developing the Project, and (c) exercise, directly or indirectly, day-to-day operational control of the entity as the manager of the entity that is developing the Project; 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 Property or any portion thereof through a foreclosure sale or deed-in-lieu of foreclosure without the prior consent or approval of the City, provided, in the event of an acquisition of only a portion of the Property by a Foreclosure Purchaser, a Terra Entity shall remain a partial owner of any portion of the Property not acquired by the Foreclosure Purchaser. 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 the 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. provided, in the event of an acquisition of only a portion of the direct and/or indirect ownership interests in the Developer by a Mezzanine Foreclosure Purchaser, a Terra Entity shall remain a partial owner of the direct and/or indirect ownership interests in the Developer not acquired by the Mezzanine Foreclosure Purchaser.

This Paragraph 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 (y) the issuance of a temporary certificate of occupancy, a final certificate of occupancy or a certificate of completion for the Project, (z) the acquisition of the Property or any portion thereof by any Foreclosure Purchaser through a foreclosure sale or deed-in-lieu of foreclosure, or (aa) the acquisition of all 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, the 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 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 Terra Entity (aa) holds, directly or indirectly, any ownership interest in the Developer Property, (bb) serves, directly or indirectly, as a manager of the entity that is developing the Project, or (c) exercises, directly or indirectly, day-to-day operational control of the entity as the manager of the entity that is developing the Project. Any assignee or transferee (including, any Subsequent Owner or Foreclosure Purchaser) shall assume all remaining obligations of the Developer under this Agreement at the time of such assignment or transfer of this Agreement. For purposes of this Paragraph, the term "**Terra Entity**" shall mean: (ww) Pedro Martin; (xx) David Martin; (yy) any trust established for the benefit of Pedro Martin or David Martin or any spouse, child, grandchild or sibling of Pedro Martin or David Martin (or of any combination of the foregoing); and/or (zz) any entity owned, directly or indirectly, one hundred percent (100%) by Pedro Martin or David Martin or any trust established for the benefit of Pedro Martin or David Martin or any spouse, child, grandchild or sibling of Pedro Martin or David Martin (or of any combination of the foregoing).

- 30 Force Majeure and Third-Party Challenges. All time periods 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 the 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, time periods in this Agreement shall similarly be tolled only during such period as the Developer is unable to complete any work or take any action due to such other force majeure event. In the event that a third party unrelated to or unaffiliated with the City or the Developer institutes any action, suit or proceeding against the City relating to the Project, including, without limitation, any action, suit or proceeding challenging the validity or issuance of this Agreement, the Comprehensive Plan Amendment and/or the Land

Development Regulations Amendments, the Project Zoning Approvals, or any Building Permit (in each instance, including any related appeals, a "**Lawsuit**"), then the Developer shall defend the City in any such Lawsuit at its sole cost and expense using legal counsel reasonably acceptable to the City. The 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 Paragraph shall survive the expiration or any earlier termination of this Agreement.

31 Indemnification of City by the Developer.

- a) To the fullest extent permitted by law, and without limiting any other indemnity obligations of the Developer set forth elsewhere in this Agreement, the 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 or the Project, (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 Project or Triangle Pocket Park Site (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.

- 32 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 the 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.

- 33 No Conflict of Interest. The 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. The 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 the Developer.
- 34 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.
- 35 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 the 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 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 the Developer for any injury or damage to the 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 any property owned or maintained by the City, 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 the 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 the Developer or successor, assign or heir thereof under this Agreement.

36 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 the 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 Project Zoning Approvals and Development Permits 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 Property.

DRAFT

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

Print Name: _____
Address: _____

By: _____

Name: _____

Print Name: _____
Address: _____

Attest: _____
City Clerk

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

The foregoing instrument was acknowledged before me this ____day of _____, 20__, by _____, as City Manager 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.

NOTARY PUBLIC

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

TMG 67 Communities, LLC, a Delaware
limited liability company

Print Name: _____
Address: _____

By: _____

Name: _____

Print Name: _____
Address: _____

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

The foregoing instrument was acknowledged before me this ____ day of _____, 202__ by _____, as a _____, of TMG 67 Communities, 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.

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

Deauville Associates, LLC, a Florida
Limited Liability Company

Print Name: _____
Address: _____

By: _____

Name: _____

Print Name: _____
Address: _____

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

The foregoing instrument was acknowledged before me this ____ day of _____,
202__ by _____, as a of Deauville Associates, LLC, a Florida 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.

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

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DRAFT

EXHIBIT "G" - 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 "H" – DESCRIPTION OF PUBLIC RESERVATIONS

[All easements referenced in the Agreement]

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EXHIBIT "I" - DESCRIPTION OF REQUIRED DEVELOPMENT PERMITS

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. Utility Permits
3. Demolition Permits
4. Building Permits
5. Environmental Permits
6. Hazardous Materials Removal Permit, if removal of hazardous materials is found necessary.
7. Public Works Permit, Paving and Drainage
8. Public Works Permit, Water and Sewer
9. Public Works Revocable Permits
10. Certificates of Use and/or Occupancy
11. Any variances or waivers that may be required pursuant to the City of Miami Beach Resiliency Code
12. 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.