

Prepared by and Return to:

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

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DEVELOPMENT AGREEMENT

Updated as of May 13, 2025

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

Introduction

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

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

ordinances, redevelopment plans, and other police power and legislative measures necessary to assure the health, safety and general welfare of the City and its inhabitants.

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

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

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

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

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G. The development of the segments of the Baywalk adjacent to 800 West Avenue, 1228 West Avenue, and 1450 Lincoln Road (the "**Baywalk Segments**") as part of the Baywalk Project, will require the agreement of upland property owners. In the event the owners of 800 West Avenue decline to provide the necessary easement (the "**Baywalk Easements**," as such term is defined in this Agreement) for the Baywalk Project, Developer will provide the City with ~~payments-a financial contribution~~ (the "**Baywalk Payment**," as such term is defined in this Agreement) with respect to the 800 West Avenue Baywalk Segment.

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

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

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

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

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

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

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

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

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

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

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

3.33.4 **“Baywalk Improvements”** shall mean the specific improvements to the Baywalk Segments as contemplated by the Approved Baywalk Concept Plan.

3.43.5 **“Baywalk Project”** is defined in the recitals.

3.53.6 **“Baywalk Segments”** is defined in the recitals.

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

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

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

be attributable in any manner to the City as a party to this Agreement or in any way deemed in conflict with, or a default under, the City's obligations hereunder.

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

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

3.113.12 "**Development Order**" shall mean any order granting, denying, or granting with conditions, an application for a Development Permit.

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

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

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

3.153.16 "**Execution Date**" shall mean the date on which the last of the required parties executes this Agreement.

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

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

3.183.19 "**Maximumimum Private Project Elements**" has the meaning assigned such term in the definition of Private Project.

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

~~3.203.21~~ **"Park Improvements"** shall mean the specific improvements to the Hostel Site as contemplated by the Approved Park Concept Plan.

3.22 **"Private Project"** shall mean the demolition of the existing improvements on the Development Property and construction on the Development Property of a new high-rise residential building containing a ~~minimum-maximum~~ height of 330 feet a ~~minimum-maximum~~ square footage of 481,315 square feet of floor area, minimum number of residential condominium units of 100 units, and a minimum 5,000 square foot commercial unit(s) (collectively, the **"Minimum-Maximum Private Project Elements"**), it being understood that Private Project Developer may in its sole discretion seek approvals for development parameters more restrictive than the Minimum Private Project Elements).

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~~3.213.23~~ **"Private Project Baywalk"** shall mean that portion of the City of Miami Beach Baywalk that is within the Developer's Property and which shall be constructed by the Private Project Developer having a minimum width of fifteen (15) feet.

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~~3.223.24~~ **"Private Project Developer"** shall mean the entity defined in the preamble to this Agreement, and any permitted successors, assigns, or heirs thereof.

~~3.233.25~~ **"Public Projects"** are defined in the recitals.

~~3.243.26~~ **"Public Project Developer"** shall mean the entity defined in the preamble to this Agreement, and any permitted successors, assigns, or heirs thereof.

4 Approvals Required for Projects.

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

- i. Amendments to the City's Comprehensive Plan and to the City's Resiliency Code as contemplated by the City's Planning Board ("**PB**") File Nos. are PB24-0698 and PB24-0703 (collectively the **"Legislative Approvals"**);
- ii. the City's Design Review Board ("**DRB**") approval;
- iii. Miami-Dade County Shoreline Review approval, as necessary;- and
- iv. Confirmation from the Miami-Dade Aviation Department and the Federal Aviation Administration that there are no aviation-related issues.

- b) Developer and the City acknowledge and agree that the Baywalk Project may require independent review and approval by and permits from the United States Army Corps of Engineers ("**ACOE**"), and/or the Florida Department of Environmental Protection ("**FDEP**"), and/or the Miami-Dade County Regulatory and Economic Resources Department Division of Environmental Resource Management ("**DERM**") (collectively, the "**Baywalk Project Approvals**"). Public Project Developer shall be responsible for obtaining the Baywalk Project Approvals from the ACOE, FDEP, and/or DERM, as applicable, at its sole cost and expense. The City shall execute all documents necessary for such permitting, provide technical assistance, and generally cooperate with respect to such permitting, including by considering in good faith approving modifications to the Concept Plan that are necessary to obtain the Baywalk Project Approvals from the ACOE, FDEP, and/or DERM
- c) Developer and the City acknowledge and agree that the Park Project will require DRB approval for the design of the improvements.
- d) Developer acknowledges that nothing contained in this Agreement will obligate the City to cause the approvals by the DRB or limit the DRB's quasi-judicial authority to impose conditions or take any action on such applications, except as otherwise provided by the City Code. -Without limiting the generality of the foregoing, all considerations of and actions by the City shall be undertaken in accordance with established requirements of state statutes, if applicable, and the City Code, in the exercise of the City's jurisdiction under its police power. -The City hereby reserves all of its rights to exercise its police powers with respect to the aforementioned actions, and nothing in this Agreement shall be construed to prohibit the City from duly acting under its police power to approve, approve with conditions, or reject any public hearing application dealing with the Hostel Site, the Baywalk Segments, or the Development Property.

5 Hostel Property Demolition Following Legislative Approvals. If Developer (i) obtains the Legislative Approvals ~~without the imposition of terms, conditions or obligations that could have a material adverse effect on the Private Project or that could materially increase Developer's budgeted costs for the development and construction of the Private Project~~, and the time period for all appeal periods with respect to the Legislative Approvals has expired with no appeals having been filed (or, in the event an appeal is filed, the same has been resolved (by judgment, settlement or otherwise in a final non-appealable manner) on terms and conditions acceptable to Developer in its sole

discretion) (collectively, the "**Legislative Approval Conditions**"). or (ii) waives the Legislative Approval Conditions in its sole discretion, then within 120 days after the Legislative Approvals becoming final, and ~~the appeals period has run~~unappealable, Developer will comply with the following:

a. Within thirty (30) days of the adoption of the Legislative Approvals by the City Commission, but no later than July 31, 2025, the Developer shall close on the acquisition of the Hostel Property and shall execute and record a Declaration of Restrictive Covenants, substantially in the form of **Exhibit "C"** attached hereto, against title to the Hostel Property, providing that, for a term of thirty (30) years following the recording of the Declaration of Restrictive Covenants, and renewing automatically for ten (10) year extensions, unless the City agrees to release the Restrictive Covenant, (i) prohibiting transient uses of any kind, (ii) prohibiting any alcoholic beverage establishments, and (iii) providing that no residential units shall be leased or rented for a period of less than six (6) months and one (1) day.

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b. Within forty-five (45) days of the adoption of the Legislative Approvals by the City Commission, but no later than August 15, 2025, the Developer shall file a demolition permit application with the City to demolish all existing buildings and improvements at the Hostel Site, and the Developer shall begin the eviction of all individuals from the Hostel Site premises including the ~~compassionate~~ relocation of the population of unhoused individuals that may be residing at the Hostel Site.

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c. Within sixty (60) days of the adoption of the Legislative Approvals by the City Commission, but no later than September 1, 2025, the Developer shall complete the eviction of all individuals from the Hostel Site premises, as well as ensure all utilities are disconnected and that all buildings are fully locked and secured.

d. Within ten (10) business days from the issuance of a demolition permit for the Hostel Site, the developer shall commence demolition of all existing buildings and improvements at the Hostel Site.

e. Within thirty (30) days of the completion of the demolition, the Developer shall bring the Hostel Site into compliance with all applicable provisions of the Miami Beach Resiliency Code and the Code governing the maintenance of vacant lots after demolition, including without limitation Section 7.5.1.6 of the Resiliency Code and Section 14-501 of the Code.

~~a) Acquire the Hostel Site;~~

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~~b) Ensure compassionate relocation of the population of unhoused individuals then residing at the Hostel Site;~~

~~e) File a demolition permit with the City seeking to demolish all improvements on the Hostel Property and, within thirty (30) days of the issuance of all necessary approvals, commence demolition of the existing improvements on the Hostel Property and diligently pursue the demolition; and~~

~~d) Within thirty (30) days of the completion of the demolition, bring the Hostel Property into compliance with Section 14-501 of the Miami Beach Code of Ordinances, governing the maintenance of vacant lots after demolition.~~

If the ~~Legislative Approval Conditions are not satisfied (or not waived by Developer in its sole discretion), or Public Project~~ Developer does not successfully consummate the closing of the acquisition of the Hostel Site in breach of its obligations under this Agreement, then this Agreement shall terminate [and the City shall have all remedies for such default specified herein].

6 Public Projects Conditioned on Private Project Approvals / Termination. If Developer: (a) obtains 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 Developer's 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 Developer in its sole discretion) (collectively, the "**Private Project Conditions**"); or (b) waives the Private Project Conditions in its sole discretion, then Public Project Developer will proceed with each Public Project subject to the terms of this Agreement. If any of the Private Project Conditions are not satisfied (or not waived by Developer in its sole discretion), then this Agreement shall terminate.

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For avoidance of doubt, if Developer is unable to obtain the Private Project Approvals, is able to obtain the Private Project Approvals but the Private Project Approvals contain terms, conditions or obligations that could have a material adverse effect on the Private Project or that could materially increase Developer's budgeted costs for the development and construction of the Private Project, then Developer may, in its sole discretion, elect to (u) diligently prepare a revised applications for the Private Project, so long as same still conforms to the terms of this Agreement; (x) exercise any rights of appeal, in which event the City will cooperate with Developer (at Developer's sole cost and expense) in exercising such rights; (y) revise the scope of the Private Project, so long

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as same still conforms to the terms of this Agreement; or (z) abandon its applications for the Private Project and terminate this Agreement.

Developer agrees that the DRB's imposition of conditions requiring architectural changes to the Private Project would not alone constitute a material adverse effect on the Private Project. Terms, conditions, or obligations imposed by the DRB that would have a material adverse effect on the Private Project 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 Developer, reduce the marketability of the Private Project.

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7 Public Project Prerequisites. Developer's obligation to proceed with the Public Projects shall be subject to the following:

- a) The Park Project is subject to Developer's successfully consummating the closing of the acquisition of the Hostel Site.
- b) With respect to both Public Projects, obtaining the necessary City approvals substantially as presented in the approved Concept Plans without the imposition of terms, conditions or obligations that ~~could materially would~~ increase Developer's budgeted costs for the development and construction of such Public Project by more than twenty percent (20%), and the time period for all appeal periods with respect to Project Approval has expired with no appeals having been filed (or, in the event an appeal is filed, the same has been resolved (by judgment, settlement or otherwise in a final non-appealable manner) on terms and conditions acceptable to Developer in its sole discretion (the "Public Project Conditions City Approvals").
- c) If the Public Project Conditions City Approvals contain terms, conditions or obligations that ~~could materially would~~ increase Developer's budgeted costs for the development and construction of one or both Public Projects by more than twenty percent (20%), then Developer may, in its sole discretion, elect to (i) diligently prepare a revised applications for the applicable Public Project, so long as same still conforms to the terms of this Agreement; (ii) exercise any rights of appeal, ~~in which event the City will cooperate with Developer (at Developer's sole cost and expense) in exercising such rights; or~~ (iii) subject to the City's prior written approval, 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 this Agreement; ~~or (v) abandon its applications for the Private Project and terminate this Agreement.~~

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

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

- a) Developer shall select and engage one or more Florida licensed design professionals, as necessary, and general contractor(s) (each, a "**Public Project Contractor**") and enter into appropriate a construction/demolition contract(s) for the Public Projects (each, a "**Public Project Construction Contract**"). Except as expressly set forth in this Agreement, Developer shall be solely responsible for the design, permitting and construction of each Public Project, at Developer's sole cost and expense. Each Public Project Construction Contract shall, among other things: (i) require that the City ~~to~~ be named as an additional or named insured on all insurance coverages required by such Public Project Construction Contract and under which Developer is an additional or named insured; with coverage amounts acceptable to the City; (ii) require that the City be named a co-obligee under any payment and performance bonds (if any) required by such Public Project Construction Contract; and (iii) be assignable to the City, at the City's option, in the event of a default by Developer under such Public Project Construction Contract or this Agreement that remains uncured after the expiration of all applicable cure and grace periods.
- b) ~~In exchange for the public benefits provided by Developer, tThe City shall waive all land use board application fees and costs related to the development of the Public Projects.~~ For the avoidance of doubt, Developer acknowledges and understands that the City may not waive land use board application fees and costs related to the development of the Public Projects, applicable Building Department fees, Mobility Fees, or Art in Public Places fees. ~~To the extent any additional fees related to the development of the Public Projects may be levied, and the City may~~

~~waive such fees under applicable law, the City shall waive such additional fees.~~

- c) Developer and the City shall mutually agree to project oversight and administration responsibilities for the Public Projects, it being understood and agreed that Developer (or a consultant engaged by Developer) will have primary responsibility for the oversight and administration of the Public Projects, and the City may, at its option in its sole discretion, assign staff members (or a consultant engaged by the City) to participate in the oversight and administration of the Public Projects.

9 Implementation of Baywalk Project.

- a) *Concept Plan Approval.* Within sixty (60) days after the Private Project Approval has become final and ~~the appeals period has run unappealable~~ (subject to Developer's acceptance or waiver of the Private Project Conditions in Developer's sole discretion), Developer shall submit to the City a concept plan for the Baywalk Project for the City to approve (the "**Concept Plan**"), provided that ~~the City shall not require a scope, design or specifications that include the relocation or harmonizing of existing boat slips and dock or such that~~ the aggregate hard and soft costs for the development and construction of the Baywalk Project exceeds \$25,000,000.00 (for avoidance of doubt, including the costs of the Baywalk Easements) ~~as determined by Developer.~~ The Concept Plan shall include, at a minimum, the materials and specifications set forth in Exhibit "D" and shall be consistent with the concept drawings included in such Exhibit. The City shall review and either confirm, approve, or disapprove the Concept Plan within ~~thirty (30)~~forty-five (45) days after receipt of the same. ~~If the City fails to confirm, approve, or disapprove such concept plan within such thirty (30)-forty-five (45) day period, then such concept plan shall be deemed confirmed/approved by the City. However, if the City timely disapproves such concept plan, it shall give the specific and detailed reasons for such rejection, in which event, Developer shall, at its election, either (i) submit the City's disapproval to the expedited arbitration process to be set forth in Section 29 of this Agreement or (ii) 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~~

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by the City (once confirmed/approved or deemed confirmed/approved by the City, such concept plan, the "**Approved Baywalk Concept Plan**").

- b) *Final Construction Documents and Proprietary Review.* ~~Promptly following~~ Within three (3) months of approval of the Baywalk Concept Plan Developer shall prepare construction documents, including the preparation of design and permit plans, and the preparation of materials necessary for any development permits required by the City, County, and State, it being understood and agreed that Developer's design professionals shall be responsible for preparing the construction documents in consultation with the City. ~~Developer shall submit such final~~ construction documents to the City for the City to confirm, in its proprietary capacity, that such ~~final~~ construction documents conform in all material respects with the Approved Baywalk Concept Plan. ~~The City shall review and either confirm/approve or disapprove such final construction documents within thirty (30) forty-five (45) days after receipt of the same, but for avoidance of doubt, the City may disapprove the final construction documents only if they do not conform in all material respects to the Approved Baywalk Concept Plan or applicable law. If the City fails to confirm/approve or disapprove such final construction documents within such thirty (30) forty-five (45) day period, then such final construction documents shall be deemed confirmed/approved by the City. However, if the City timely disapproves such final construction documents, it shall give the specific and detailed reasons for such rejection, in which event, Developer shall, at its election, either (i) submit the City's disapproval to the expedited arbitration process to be set forth in Section 29 of this Agreement or (ii) within sixty (60) days after such disapproval, submit proposed modifications to such final construction documents so that they conform in all material respects to the Approved Baywalk Concept Plan and then re-submit them to the City pursuant to the foregoing process until such 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 deemed the final construction documents and be submitted for building permit for permitting of the Baywalk Improvements.~~
- c) *Permitting of Baywalk Project.* ~~The City-Developer~~ shall be solely responsible for obtaining all necessary permits for the Baywalk Project based on the Approved Baywalk Concept Plan (the "**Baywalk Permits**")

within twelve (12) months from the date the construction documents are approved (or deemed approved) by the City. The City-Developer shall be responsible, at its sole cost and expense, for obtaining all necessary easements, joinders, and consents from the owners of 800 West Avenue, 1228 West Avenue, and 1450 Lincoln Road within six (6) months from the Effective Date of this Agreement, provided however, to the extent any such owner of any such upland parcel is the Developer, then the Developer shall deliver such joinders or consents to the City upon request for same. The Developer shall be responsible for all permit fees associated with the Baywalk Project. -The City shall reasonably cooperate with the Developer in the process of obtaining the necessary joinders and consents from the affected property owners, provided, the City shall not be required to make any payments or incur any expenditures of any kind or nature in connection with such cooperation, and the Developer shall be solely responsible for all costs and expenses arising from same.

d) *Construction of Baywalk Project.* After the City-Developer obtains the Baywalk Permits, the City shall deliver same to the Developer. The Developer shall then be responsible, at Developer's sole cost and expense, to complete or cause to be completed the construction of the Baywalk Project pursuant to the Baywalk Permits. -The Developer shall complete or cause to be completed the construction of the Baywalk Project within twenty-four (24) eighteen (18) months after the City delivers Developer obtains the Baywalk Permits to the Developer. -Within sixty (60) days from the date of substantial completion of each Baywalk Segment, the Developer shall convey the improvements constituting each such Baywalk Segment to the City and shall deliver all of the items specified in Exhibit "E".

e) *Payment in Lieu ~~for~~ of Missing Baywalk Segment.* Developer shall make good faith efforts to secure the Baywalk Easements for 800 West Avenue, 1228 West Avenue and 1450 Lincoln Road (the "Baywalk Properties Project"). If Developer is unable to obtain a Baywalk Easement for any of the Baywalk Project Properties within six (6) months of the Effective Date (the "**Baywalk Easement Deadline**") 1228 West Avenue, or the City is unable to obtain a suitable Baywalk Easement for 800 West Avenue, or the City-Developer is unable to obtain the Baywalk Permits within thirty (30) months from the Effective Date (the "Baywalk Permit Deadline"), then upon the later of: (i) forty-eight (48) months after the Effective Date of this Agreement, or (ii) the date on

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~~which Developer obtains a TCO for the Private Project, the Developer shall provide a payment to pay the City on the earlier of the Baywalk Easement Deadline or the Baywalk Permit Deadline, as applicable, (the "Baywalk Payment") in the following amounts in respect of any Baywalk Segment for which a Baywalk Easement or a Baywalk Permit is not obtained by the Baywalk Easement Deadline or the Baywalk Permit Deadline, as applicable: amount of \$1,250,000.00 (i) \$18,000,000 in respect of the 800 West Avenue per-Baywalk Segment, (ii) \$5,000,000 in respect of the 1228 West Avenue Baywalk Segment and/or (iii) \$2,000,000 in respect of the 1450 Lincoln Road Baywalk Segment that cannot be constructed to fund the future improvement of that Baywalk Segment and any that Segment in respect of which a payment is made shall be removed from the Baywalk Project scope. -The Developer shall thereafter have no further responsibility for that segment(s) of the Baywalk Project.~~

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

a) *Environmental Assessment of Park.* Developer shall procure a Level II Environmental Assessment within thirty (30) days of the Effective Date and shall provide said Assessment to the City within ten (10) days of receiving it. Developer shall be responsible for the cost of the Assessment.

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~~a) b)~~ *Development of Park.* The City shall decide, within twenty-four (24) months of the Effective Date, whether the City would like the Developer to build a park or to make a payment in lieu thereof. If the City elects not to proceed with the park, then Developer shall transfer the Hostel Site to the City within one hundred twenty (120) days from the later of (i) the date the City elects not to proceed with the park, or (ii) the date upon which the Private Project Approval has become final and the appeals period has run. If the City elects to proceed with the park, Developer shall design and construct a park on the Hostel Property at Developer's sole cost and expense at a cost not to exceed \$2,000,000.00. The Park Project shall be governed as follows.

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~~b) c)~~ *Concept Plan Approval.* If the City elects to proceed with the Park, ~~w~~within a one hundred and twenty (120) days from the date upon which the Private Project Approval has become final and ~~unappealable-the~~ appeals period has run (subject to Developer's acceptance or waiver of the Private Project Conditions in Developer's sole discretion), Developer

shall present a concept plan to the City Manager or designee for the creation of the park (the "**Park Concept Plan**") for the City's ~~review to approve~~. The City may not require a scope, design or specifications such that the aggregate hard and soft costs for the development and construction of the Park Project exceeds \$2,000,000.00. –The City Manager shall review and either confirm, approve or disapprove the Park Concept Plan within ~~thirty (30)~~forty-five (45) days after receipt of the same. If the City Manager fails to confirm, approve or disapprove the Park Concept Plan within such forty-five (45)~~thirty (30)~~ day period, the plan shall be deemed confirmed/approved by the City. However, if the City Manager timely disapproves of the Park Concept Plan, he/she shall give the specific and detailed reasons for such rejection, in which event, Developer shall, at its election, either (i) submit the City's disapproval to the expedited arbitration process to be set forth in Section 29 of this Agreement or (ii) within sixty (60) days after such disapproval, submit proposed modifications to such concept plan, and then re-submit the concept plan to the City pursuant to the foregoing process until such concept plan has been or is deemed to have been confirmed/approved by the City (once confirmed/approved or deemed confirmed/approved by the City, such concept plan, the "**Approved Park Concept Plan**").

e)d) Schematic Plans / Hearing Approval. Developer, at Developer's sole cost and expense shall be responsible for preparation and processing of all necessary materials for the City's DRB review and approval of schematic design plans implementing the Park Concept Plan. Developer shall prepare and submit the DRB application within a one hundred and twenty (120) days of the City's approval of the Park Concept Plan. The City shall timely execute all necessary application materials upon the written request by Developer. In the event the DRB requires changes to the proposed design, Developer will be responsible for preparing all necessary modifications.

e)e) Final Construction Documents and Proprietary Review. Within 365 days~~six (6) months~~ of the DRB approval of schematic design plans, Developer shall prepare and submit to the City Manager the final construction documents, including the preparation of design and permit plans, and the preparation of materials necessary for any development permits required by the City, County, and State, it being understood and agreed that Developer's design professionals shall be responsible for preparing the construction documents in consultation with the City.

Developer shall submit such final construction documents to the City Manager for the sole and limited purpose of verifying that the final construction documents conform in all material respects with the applicable approved Park Plans. The City shall review and either confirm/approve or disapprove such final construction documents within ~~thirty (30)~~ forty-five (45) days after receipt of the same, but for avoidance of doubt, the City may disapprove the final construction documents only if they do not conform in all material respects to the applicable approved schematic design plans. If the City fails to confirm/approve or disapprove such final construction documents within such ~~thirty (30)~~ forty-five (45) day period, then such final construction documents shall be deemed confirmed/approved by the City. However, if the City timely disapproves such final construction documents, it shall give the specific and detailed reasons for such rejection, in which event, Developer shall, ~~at its election, either (i) submit the City's disapproval to the expedited arbitration process to be set forth in Section 29 of this Agreement or (ii)~~ within sixty (60) days after such disapproval, submit proposed modifications to such final construction documents so that they conform in all material respects to the Approved Park Concept Plan and DRB approval and then re-submit them to the City pursuant to the foregoing process until such final construction documents have been or are deemed to have been confirmed/approved by the City, and such final construction documents, once confirmed/approved or deemed approved by the City, shall be the documents submitted for building permit for the Park Project.

~~e) Processing of Construction Permit.~~ Within ~~ninety (90)~~ thirty (30) days of the City's proprietary approval of the final construction documents for the Park, Developer shall, at its sole cost and expense, submit the building permit plans to the City. ~~In exchange for the public benefits provided by Developer, the City shall waive any permit fees associated with the submittal, unless mandated by state law.~~ 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.

~~f) Temporary Sales Center.~~ The Developer shall be permitted to utilize the Hostel Property for a temporary sales center for the Project.

g) *Transfer of Hostel Site:*

- i. ~~Upon completion~~ Within ninety (90) days of the completion of the Park Improvements, Developer shall provide notice of the Park Completion City. ~~The parties will thereafter set a mutually-agreed upon date for the closing of the conveyance of the Hostel Site to the City (the "Closing"), but no earlier than sixty (60) days following the date of the Park Completion Notice later of Private Project Developer's receipt of temporary certificate of occupancy for the Private Project.~~
- ii. At the Closing, Public Project Developer shall deliver to the City the following: (i) a Special Warranty Deed (the "**Deed**") conveying to the City fee title to the Hostel Site free and clear of all liens and encumbrances other those set forth on Schedule ___ attached hereto and by this reference made a part hereof; (ii) customary title affidavit reasonably required by the title company; (iii) a "marked-up" title commitment issued by ~~[[INSERT NAME OF THE TITLE COMPANY THAT ISSUED THE COMMITMENT]]~~ the title insurer specified by the City committing to issue an owner's policy to the City with an effective date as of the date and time of recording the Deed in the Public Records of Miami-Dade County, Florida, with an insured amount equal to the estimated market value of the Hostel Site as of the Closing. ~~At Closing, the Public Project Developer shall also deliver to the City all of the items specified in Exhibit "F".~~
- iii. The City shall be responsible at its sole cost and expense for the operations, maintenance, repair, replacement, restoration of the Hostel Site from and after the Closing, and all obligations and liabilities of Developer with respect to the Hostel Site shall terminate at the Closing except for (A) the warranties in the Deed, (B) any environmental conditions existing at the Hostel Site, and (C) Developer's indemnification obligations pursuant to this Agreement.

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11 Rental Assistance for Lessees of Development Property. Prior to the City's issuance of a permit to demolish the existing building on the Development Property, Developer shall demonstrate that it has offered financial assistance in the amount of \$7,500 for one-bedroom units or \$10,000 for two-bedroom units to all Bona Fide Lessees of the Development Property to assist those Lessees in securing new residential leases. "**Bona Fide Lessees**" shall mean leaseholders meeting the following requirements:

- a) Resides full time in the unit.

- b) Is a lessee under a written lease with a term exceeding six (6) months entered into between the Bona Fide Lessee and the relevant unit owner.
- c) Is not currently subject to eviction proceedings pursuant to Chapter 83 of the Florida Statutes.

d) Provides documentation in a form acceptable to the Developer demonstrating intent to relocate within the City of Miami Beach.

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Developer shall provide an affidavit to the City affirming compliance with this Section before a demolition permit may issue for the existing building on the Development Property.

12 Applications for Private Project Approvals and the Baywalk Project Approvals. —This Agreement contemplates that Developer will expeditiously file applications for the Private Project Approvals and the Public Project Approvals. ~~In exchange for the public benefits provided by Developer, The the~~ City shall expedite the processing of all Private Project Approvals and the Public Project Approvals applications and schedule all required public hearings as soon as reasonably practicable. The City shall designate a point of contact within the City Administration to facilitate expedited processing of all Private Project and Public Project Approvals. Notwithstanding the foregoing, Developer shall be solely responsible for obtaining all final, non-appealable Private Project Approvals and the Public Projects Approvals for the Private Project and the Public Projects. No extension of any time period herein shall be deemed to be an extension of any time periods contained within the Private Project Approvals or the Public Projects Approvals. The expiration of Private Project Approvals and the Public Projects Approvals shall be subject to Section 2.11.2 of the Resiliency Code.

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

modifications to the Private Project and the Public Projects or any amendments or modifications to the Private Project Approvals or the Public Projects Approvals.

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

15 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.

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

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

18 Effective Date; Duration; and Term.

- a) Within fourteen (14) days following approval of this Agreement at two (2) public hearings and the execution of this Agreement by all parties, the City shall record this Agreement in the Public Records of Miami-Dade

County. This Agreement shall become effective only after it has been recorded in the Public Records of Miami-Dade County, Florida. Developer agrees that it shall be responsible for all recording fees related to the recording of this Agreement.

- b) The initial Term of this Agreement shall be a total of ten (10) years from the Effective Date. The Term of this Agreement shall be automatically extended by five (5) years provided (i) the Park Project ~~are-is~~ completed or the applicable payment is made, (ii) the Closing occurs, and (iii) either the Baywalk Project is completed or the applicable Baywalk Payment is made, all within the time frames set forth in this Agreement. The Term of this Agreement shall be subject to the force majeure provisions of Section 37. Any further extension of the Term of this Agreement will only be by the mutual consent of the City and Developer subject to a public hearing pursuant to Section 163.3225, Florida Statutes. No notice of termination shall be required by either party upon the expiration of this Agreement, and after the expiration of this Agreement the parties shall have no further obligations under this Agreement, except for those obligations that expressly survive the expiration of this Agreement.
- c) The City shall review this Agreement at least once every twenty (20) months, to determine if there has been demonstrated good faith compliance with the terms of the development agreement pursuant to Section 163.3235, Florida Statutes. Any action to modify or revoke this Agreement pursuant to this Section must be undertaken following the public hearing process required by Section 163.3225, Florida Statutes, and based on substantial competent evidence that Developer is not in compliance with its obligations and responsibilities under the Agreement.

19 Permitted Development.

- a) *Permitted Development and Uses.* —The Development Property is designated as “High Density Multi Family Residential” (RM-3) according to the City’s adopted Comprehensive Plan Future Land Use Map. The “Residential multifamily, high intensity” (RM-3) zoning district permits multi-family residential buildings, hotels, and related accessory uses. The Development Property may be used for the purposes permitted and regulated in these land use designations and zoning districts, as further limited by the by the City’s Resiliency Code and Comprehensive Plan, as

amended by the Comprehensive Plan Amendment and the Legislative Approvals.

- b) *Density, Building Heights, Setbacks and Intensities.* The maximum density, heights, setbacks and intensities for any development on the Development Property shall be regulated by the City's Resiliency Code, Comprehensive Plan (as amended by the Legislative Approvals) and any applicable Federal, State or County laws, rules and regulations. Subject to the restrictions set forth in the Residential Multifamily Medium Density land use designation, following the adoption of the Legislative Approvals, the maximum residential density ~~is 150~~for the Development Property shall be seventy-five (75) dwelling units per acre.

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

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21 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.

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

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

- a) If the Private Project Conditions (including, without limitation, the Legislative Approval Conditions) are not satisfied;
- b) If the Public Project Conditions-City Approvals are not ~~satisfied~~obtained; or
- c) Public Project Developer does not successfully consummate the closing of the acquisition of fee simple title to the Hostel Site free and clear of

liens and encumbrances (other than liens or encumbrances that can be released through the payment of moneys not to exceed \$500,000); or.

~~d) Developer cannot compassionately relocate the population of unhoused individuals residing at the Hostel Site.~~

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

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

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

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

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

- a) Enforce strict performance by Developer;
- b) Terminate this Agreement; 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 Developer, Developer as debtor in possession, or if a trustee has been appointed, to such trustee.

Notwithstanding anything to the contrary contained in this Agreement, in no event whatsoever shall Developer be liable to the City or any other person for any indirect, special, incidental, consequential, punitive, economic damages (including, without limitation, diminution of property value) lost profits or similar damages, whether or not foreseeable or advised of the possibility of the same, in connection with, arising from or as a result of any Event of Default by Developer under this Agreement.

Notwithstanding anything to the contrary contained in this Agreement, in no event shall the City have the right to terminate this Agreement after Developer has conveyed the Hostel Site to the City in accordance with the terms of this Agreement, unless the Event of Default is a "Material Event of Default" (as more specifically defined below). The term "**Material Event of Default**" means (i) Developer's breach of any term or provision contained in Section ~~33-356~~ (Transfer and Assignment) of this Agreement and such breach is not cured within the notice and cure period set forth in subsection [22(a)] of this Agreement; and (ii) failure to comply with the indemnification obligations pursuant to Sections ~~34-378~~ and ~~35-389~~ of this Agreement and such failure is not cured within the notice and cure period set forth in subsection [22(a)] of this Agreement.

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

~~If the City violates, breaches or defaults on any term, covenant, condition or other provision of this Agreement (a "City Default"), then Developer shall have all rights and remedies available to it under this Agreement, at law and/or in equity (including, without limitation, an action for specific performance and injunctive relief to enforce the terms, covenants, conditions and other provisions of this Agreement) against the City as a result of or arising out of such City Default. Developer's election of a right or remedy under this Agreement, at law and/or in equity with respect to any City Default shall not limit or~~

~~otherwise affect Developer's right to elect any other right or remedy available to it under this Agreement, at law and/or in equity with respect to the same or any other City Default.~~

26 Termination Outside of Default. ~~In the event either party chooses to exercise its right to terminate this Agreement under any of Sections [INSERT] this Agreement (apart from the City's right to terminate under Section ~~23~~25 [?] of this Agreement as a result of an Event of Default by Developer), each party shall bear its own fees, costs and expenses incurred in connection with this Agreement, the Private Project and the Public Projects, and neither party shall have or owe any further obligation or liability to the other party.~~

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

28 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

With copies to: [insert]

If to Developer at: [insert]

With a copy to: [insert]

With a copy to: Bercow Radell Fernandez & Larkin
200 S. Biscayne Boulevard

Miami, Florida 33131
Attn: Michael W. Larkin

Notices personally delivered or sent by overnight courier shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given three (3) days after deposit in the U.S. mails. -The terms of this Section shall survive the expiration or earlier termination of this Agreement.

~~29 Expedited Arbitration. Any dispute, claim, or controversy arising out of or relating to Sections 9 or 10 of this Agreement shall be resolved exclusively by binding arbitration administered by the American Arbitration Association (AAA) in accordance with its Expedited Procedures then in effect. The arbitration shall be conducted by a single arbitrator selected pursuant to those procedures, and a final award shall be rendered within sixty (60) days from the date the demand for arbitration is filed, unless extended by mutual agreement of the parties. The arbitration shall take place in Miami-Dade County, Florida, and judgment on the arbitration award may be entered in any court having jurisdiction. The parties shall share the costs of arbitration, including the arbitrator's fees and AAA administrative fees, equally (50/50), unless otherwise determined by the arbitrator in the final award.~~ [INTENTIONALLY OMITTED WITHOUT IMPLICATION.]

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~~30~~ 29 Governing Laws, Construction and Litigation. -This Agreement shall be governed and construed in accordance with the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. Developer and the City agree that Miami-Dade County, Florida is the appropriate and exclusive state court venue, and that the U.S. District Court, Southern Division of Florida is the appropriate and exclusive federal court venue, in connection with any litigation between the parties with respect to this Agreement. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof; and accordingly, this Agreement shall not be more strictly construed against any of the parties hereto. In construing this Agreement, captions, and section and paragraph headings shall be disregarded and the use of any gender shall include every other and all genders. All of the exhibits referenced in this Agreement are incorporated in, and made a part of, this Agreement. In the event of any litigation between the parties under this Agreement for a breach thereof, the prevailing party shall be entitled to reasonable attorney's fees and court costs at all trial and appellate levels. BY ENTERING INTO THIS AGREEMENT, THE CITY AND DEVELOPER EXPRESSLY WAIVE ANY RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT. The terms of this Section shall survive the expiration or earlier termination of this Agreement.

3430 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.

3231 Time of Essence. -Time shall be of the essence for each and every provision hereof.

3332 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.

3433 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.

3534 Binding Effect. -The obligations imposed pursuant to this Agreement upon Developer and upon the Property shall run with and bind the Property as covenants running with the Property, and this Agreement shall be binding upon and enforceable by and against the parties hereto and their respective successors, assigns and heirs.

3635 Transfer and Assignment. —Developer shall not be entitled to assign or transfer this Agreement or any of the rights and obligations hereunder prior to the later of a) the date of Closing; b) completion of the Baywalk Improvements; or c) making of the Baywalk Payment, if applicable, without the prior written consent of the City (which consent may be withheld, conditioned or delayed in the sole and absolute discretion of the City), except as hereinafter provided. -Developer shall have the right at any time and from time to time to sell, transfer and convey all or any portion of the Development Property to any person or entity (a "**Subsequent Owner**") and assign and transfer this Agreement and the rights and obligations hereunder in whole or in part to any Subsequent Owner in connection with such sale, transfer or conveyance of the Property or any portion thereof without the prior consent or approval of the City, provided that a "Stern Entity" (as more specifically defined below) shall at all times (a) hold, directly or indirectly, not less than a 10% ownership interest in the Development Property, (b) serve,

directly or indirectly, as a manager of the entity/entities that is/are developing the Private Project and the Public Projects, and (c) exercise, directly or indirectly, day-to-day operational control of the entity as the manager of the entity/entities that is/are developing the Private Project and the Public Projects; provided, further, that this Agreement and the rights and obligations hereunder can be assigned and transferred to any lender, lender designee or non-lender affiliated purchaser (any of the foregoing being referred to herein as a "**Foreclosure Purchaser**") who acquires the Development Property or any portion thereof through a foreclosure sale or deed-in-lieu of foreclosure without the prior consent or approval of the City. -Direct and indirect owners of Developer shall also be entitled to pledge their direct and indirect ownership interests in Developer to one or more lenders, and any such lender, its designee and a non-lender affiliated purchaser (any of the foregoing being referred to herein as a "**Mezzanine Foreclosure Purchaser**") shall be permitted to acquire all or any portion of the direct and/or indirect ownership interests in Developer through foreclosure of any such pledge or acceptance of an assignment-in-lieu of foreclosure without the prior consent or approval of the City.

This Section 36 and the restrictions, limitations and prohibitions contained herein shall automatically terminate, extinguish and be of no further force or effect immediately upon the earlier of the following events to occur (x) the later of the date of Closing or completion of the Baywalk Improvements or making of the Baywalk Payment, if applicable, (y) the acquisition of the Development Property or any portion thereof by any Foreclosure Purchaser through a foreclosure sale or deed-in-lieu of foreclosure or (c) the acquisition of all or any portion of the direct and/or indirect ownership interests in Developer by any Mezzanine Foreclosure Purchaser through foreclosure of any such pledge or acceptance of an assignment-in-lieu of foreclosure; whereupon, Developer, any Subsequent Owner and/or any Foreclosure Purchaser and/or any Mezzanine Foreclosure Purchaser shall have the absolute and unconditional right to sell, transfer and convey all or any portion of the Development Property to any person or entity and to assign and transfer this Agreement and the rights and obligations hereunder in whole or in part to any person or entity in connection with such sale, transfer or conveyance of the Property or any portion thereof without the prior consent or approval of the City whether or not a Stern Entity (aa) holds, directly or indirectly, any ownership interest in the Development Property, (bb) serves, directly or indirectly, as a manager of the entity/entities that is/are developing the Project and the Hostel Project, or (c) exercises, directly or indirectly, day-to-day operational control of the entity as the manager of the entity/entities that is/are developing the Project or the Hostel Project. -Any assignee or transferee (including, any Subsequent Owner or Foreclosure Purchaser) shall assume all remaining obligations of Developer under this Agreement at the time of such assignment or transfer of this Agreement. For purposes of this Section ~~34356~~, the term "**Stern Entity**" shall mean: (ww) Michael Stern; (xx) any spouse, child, grandchild, brother, sister, niece, nephew or first

cousin of Michael Stern, or of any combination of the foregoing; (yy) any trust established for the benefit of Michael Stern, or any spouse, child, grandchild, brother, sister, niece, nephew or first cousin of Michael Stern, or of any combination of the foregoing; and/or (zz) any entity owned, directly or indirectly, one hundred percent (100%) by Michael Stern, or any spouse, child, grandchild, brother, sister, niece, nephew or first cousin of Michael Stern, or any trust established for the benefit of Michael Stern, or any spouse, child, grandchild, brother, sister, niece, nephew or first cousin of Michael Stern, or of any combination of the foregoing.

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

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38 Indemnification of City.

- a) To the fullest extent permitted by law, and without limiting any other indemnity obligations of Developer set forth elsewhere in this

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Agreement, Developer hereby agrees to defend, indemnify and hold harmless the City and its former, current and future elected officials, directors, attorneys, appointed officials, administrators, consultants, agents, and employees (collectively, "**City Indemnified Parties**") from and against all claims, damages, losses, and expenses, direct or indirect, (including but not limited to fees and charges of attorneys and other professionals and court and mediation costs) arising out of or resulting from (i) the City's adoption of any resolution or ordinance or the taking of any other action relating to this Agreement, the Development Project or the Public Projects, (ii) the City's granting of permission for any activity performed under the terms of this Agreement and (iii) the construction and/or maintenance of the Development Property or the Public Projects (including all easements) and caused, in whole or in part, by any willful, reckless, or negligent act and/or omission of Developer or any person, employee, agent, or third party acting on Developer's behalf (including any contractor, subcontractor, or any person or organization directly or indirectly employed by any of them or anyone for whose acts any of them may be liable) (collectively "**Losses**"). The foregoing indemnity provision includes, subject to the sovereign immunity monetary limitation described below, if applicable, Developer's agreement to fully indemnify the City Indemnified Parties from any Losses alleged to have been caused, in whole or in part, by the negligent acts or omissions of the City or any person, employee, agent, or third party acting on City's behalf (including any contractor, subcontractor, or any person or organization directly or indirectly employed by any of them or anyone for whose acts any of them may be liable) (collectively "**City Agents**"), other than any willful, reckless, or grossly negligent act or omission of City or any other City Agent ("**Excluded Act**"). In the event that any City Agent is determined to be solely responsible for causing damage, loss or injury to a third party for any Excluded Act, Developer shall not be obligated to defend, indemnify or hold any City Indemnified Parties harmless. If both Developer and any City Agent are determined to be jointly liable for Losses for such a willful, reckless or grossly negligent act or omission, Developer shall pay its share of the Losses, and, in addition, shall indemnify the City Indemnified Parties to the maximum amount to which the City Indemnified Parties are liable after application of the "sovereign immunity" limitation on damages provided by Section 768.28, Florida Statutes.

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

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

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39 — **Corporate Obligations.** It is expressly understood that this Agreement and the obligations issued hereunder are solely corporate obligations, and that no personal liability will attach to, or is or shall be incurred by, the incorporators, stockholders, officers, directors, managers, members, partners, trustees, beneficiaries, elected or appointed officials (including, without limitation, the Mayor and City Commissioner of the City) or employees, as such, of Developer, the City, or any successor or assign of any of them, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom; and that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any of all such rights and claims against, every such incorporators, stockholders, officers, directors, managers, members, partners, trustees, beneficiaries, elected or appointed officials (including, without limitation, the Mayor and City Commissioner of the City) or employees, as such, or under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are expressly waived and released as a condition of, and as consideration for, the execution of this Agreement.

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40 — **No Conflict of Interest.** Developer represents and warrants that no member, official or employee of the City has any direct or indirect financial interest in this Agreement nor has participated in any decision relating to this Agreement that is

prohibited by law. -Developer represents and warrants that no officer, agent, employee, or representative of the City has received any payment or other consideration for the making of this Agreement, directly or indirectly, from Developer.

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~~41~~ 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.

~~412~~ Limitations of Liability and Waiver of Consequential Damages.

- a) Any tort liability to which the City is exposed under this Agreement shall be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations shall be applied as if the parties had not entered into this Agreement, and City expressly does not waive any of its rights and immunities thereunder.
- b) The City will not in any event whatsoever be liable for any injury or damage to Developer (unless caused by the gross negligence or willful misconduct of the City, its agents, contractors or employees), nor for any injury or damage to the Development Property (unless caused by the gross negligence or willful misconduct of the City, its agents, contractors or employees), ~~caused by the use, misuse or abuse of the Development Property (unless caused by the gross negligence or willful misconduct of the City, its agents, contractors or employees).~~
- c) The City will not be liable to Developer for any injury or damage to the Development Property caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from any part of the Development Property, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein (unless caused by the gross negligence or willful misconduct of the City, its agents, contractors or employees).
- d) ~~The City will not in any event whatsoever be liable for any injury or damage to Developer (unless caused by the gross negligence or willful misconduct of the City, its agents, contractors or employees), nor for any~~

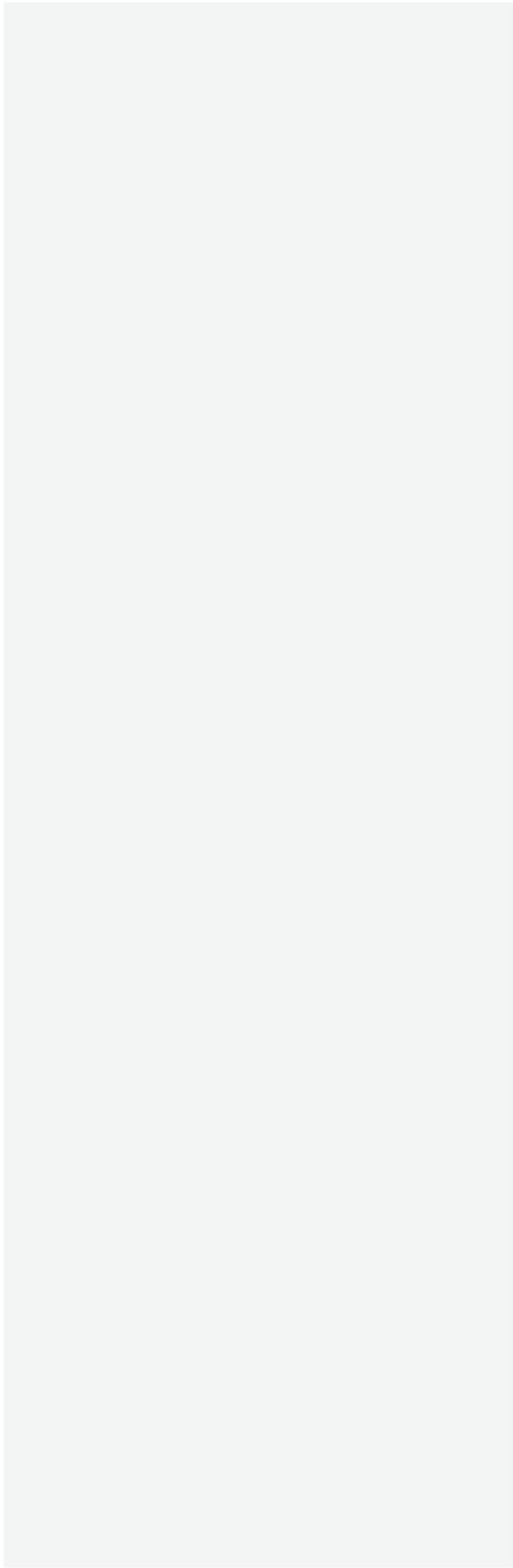
~~injury or damage to the Development Property (unless caused by the gross negligence or willful misconduct of the City, its agents, contractors or employees), caused by the use, misuse or abuse of the Development Property (unless caused by the gross negligence or willful misconduct of the City, its agents, contractors or employees).~~

- d) Except as may be otherwise expressly provided herein, no approval to be made by the City in its proprietary capacity under this Agreement or any inspection of the Project or Park Project by the City under this Agreement, shall render the City liable for its failure to discover any defects or nonconformance with any governmental requirement.
- e) No member, official, elected representative or employee of the City shall be personally liable to Developer or any successor, assign or heir thereof in the event of any default or breach of this Agreement by the City or for any amount which may become due to Developer or successor, assign or heir thereof under this Agreement.

~~423~~ Police Power.

- a) The parties recognize and agree that certain provisions of this Agreement require the City and its boards, departments or agencies, acting in their governmental capacity, to consider governmental actions. All such considerations and actions shall be undertaken in accordance with established requirements of state statutes and municipal ordinances in the exercise of the City's jurisdiction under the police power. ~~Nothing contained in this Agreement shall entitle Developer to compel the City to take any such actions, save and except for the execution of consents (if applicable) to the filing of applications for the Private Project Approvals, the Baywalk Project Approvals, Development Permits and/or Development Orders as more fully set forth herein and to timely process such applications.~~
- b) The parties further recognize and agree that these proceedings shall be conducted openly, fully, freely and fairly in full accordance with law and with both procedural and substantive due process to be accorded the applicant and any member of the public. ~~Nothing in this Agreement shall be construed to prohibit the City from duly acting under its police power to approve, approve with conditions, or reject any public hearing application dealing with the Development Property, the Hostel Site or the Baywalk Segments.~~

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: _____

By: _____

Print Name: _____

Name: _____

Attest: _____
City Clerk

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

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 202__, by _____, as Mayor of the City of Miami Beach, a municipal corporation, on behalf of the Corporation. He is personally known to me or has produced _____ as identification and who did (did not) take an oath.

NOTARY PUBLIC

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

West Hospitality Owner LLC, a Florida
Limited Liability Company

By: _____

By: _____

Print Name: _____

Address: _____

By: _____

Print Name: _____

Address: _____

STATE OF FLORIDA)

) SS:

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___ day of _____, 202__ by _____, as a _____ of _____ LLC, a _____ 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 _____

1250 West Ave Owner LLC, a Florida
Limited Liability Company

By: _____

By: _____

Print Name: _____

Address: _____

By: _____

Print Name: _____

Address: _____

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

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___ day of _____, 202__ by _____, as a _____ of _____ LLC, a _____ 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 _____

TABLE OF EXHIBITS

EXHIBIT "A" – LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY

EXHIBIT "B" – LEGAL DESCRIPTION OF HOSTEL PROPERTY

EXHIBIT "C" – FORM OF RESTRICTIVE COVENANT

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

EXHIBIT "E" – BAYWALK CONVEYANCE DELIVERABLES

EXHIBIT "F" – PARK CLOSING DELIVERABLES

EXHIBIT "CG" – DESCRIPTION OF PUBLIC FACILITIES

EXHIBIT "DH" - DESCRIPTION OF PUBLIC RESERVATIONS

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

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