

Prepared by and Return to:

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

(Space Reserved for Clerk)

---

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into 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, and Chapter 2, Article XI of the City's Land Development Regulations.

B. The City is a Florida municipal corporation with powers and authority conferred under the Florida Constitution, the Municipal Home Rule Powers Act, Florida Statutes, the Miami Beach City Charter and the Miami Beach City Code of Ordinances. The 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 or has a legal or equitable interest in 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 that was particularly important to the City's heritage and culture.

E. The Developer also owns or has a legal or equitable interest in 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.

F. 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. \_\_\_\_\_

G. The Developer seeks to redevelop the Developer Property with a partial reconstruction of the Deauville Hotel and contemporary rooftop addition above the southwest portion of the reconstructed pedestal containing long term residential units (the "**Project**").

H. The Developer intends to provide certain public benefits for the North Beach area of the City ("**North Beach**") , including: (1) making certain parking spaces and/or areas within the Garage Property available to the City for public parking and public purposes; (2) funding for additional police resources in North Beach; (3) funding for certain costs associated with planning future improvements to the Byron Carlyle Theater site located at 500 71 Street (the "**Byron Carlyle Site**"); (4) funding for infrastructure improvements to improve water quality in the Park View Canal ; and (5) development of a pocket park (collectively the "**North Beach Benefits**"). .

I. Having fully considered this Agreement at two (2) duly noticed public hearings in compliance with Section 163.3225 of the Development Agreement 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 and Land Development Regulation 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.

J. The City has determined that the Project and North Beach Benefits will benefit the City and the public, through without limitation, improvements to the availability of parking in North Beach, improvements to security and policing in North Beach, the facilitation of development of an Art and Culture Center at the Byron Carlyle Site, as well as improvements to infrastructure and water quality in North Beach.

K. 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. 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 Chapter 2, Article XI, of the City's Resiliency Code.
3. 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**" shall mean the Florida Local Government Development Agreement Act (Sections 163.3220 - 163.3243, Florida Statutes (2014)).
  - b) "**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.
  - c) "**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.

- d) **"Byron Carlyle Site"** shall mean the property located at 500 71 Street and adjacent City-owned surface parking lot.
- e) **"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.
- f) **"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.
- g) **"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.
- h) **"Developer"** shall mean the persons or entities named in the preamble to this Agreement, and any permitted successors, assigns, or heirs thereof; provided, however, the term "Developer" shall not mean the City.
- i) **"Development Order"** shall mean any order granting, denying, or granting with conditions an application for a Development Permit.

- j) **"Developer Property"** shall mean the property more specifically described in **Exhibit "A"** attached hereto and incorporated herein by this reference.
- k) **"Development Permit"** shall have the meaning set forth in Section 163.3221(5), Florida Statutes (2017).
- l) **"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 subparagraph \_\_\_\_ of this Agreement.
- m) **"Execution Date"** shall mean the date the last of the required parties executes this Agreement.
- n) **"Garage Property"** shall mean the property more specifically described in **Exhibit "B"** attached hereto and incorporated herein by this reference.
- o) **"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.
- p) **"Land Development Regulation 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; (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; and (c) amend the text of the Land Development Regulations to facilitate the establishment and operation of public parking within the Garage Property.
- q) **"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.
- r) **"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 and Land Development Regulation Amendments) and the following provisions:

- i. The maximum total floor area permitted upon the Developer Property shall not exceed 915,750 square feet;
  - ii. The height of any multi-family residential tower on the Developer Property shall not exceed 400 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 and Land Development Regulation Amendments).
  - iii. The uses permitted on the Developer Property shall have a maximum of: (i) 140 units (including multi-family residential units, single-family detached units, townhomes, condominiums, and apartments), and (ii) 280 hotel rooms; and (iii) 320,500 square feet of accessory uses.
  - iv. 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 and Land Development Regulation Amendments).
- s) **“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. \_\_\_\_\_.
- t) **“Triangle Pocket Park Site”** shall mean the existing landscaped swale area located at the intersection of 67<sup>th</sup> Street, Indian Creek Drive, and Harding Avenue more specifically described in in **Exhibit “C”** attached hereto and incorporated herein by this reference.

#### 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") and may require conditional use approval by the City's Planning Board (collectively, the "**Project Zoning Approvals**").

- b) The Developer shall 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 Developer shall commence filings for the Project Zoning Applications with the City within twelve (12) months after the Effective Date. 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; (ii) exercise any rights of appeal the Developer may have; or (iii) terminate this Agreement in accordance with Paragraph \_\_\_\_ of this Agreement.

5 **Developer's Public Benefit Obligations.** The Developer shall comply with the following requirements as public benefits to the City.

- a) **Use of Garage Property.** Within forty-five (45) days of the Effective Date, the Developer shall permit the City to utilize a minimum of 75 parking spaces within the Garage Property for public parking. The City shall operate the temporary public parking use, including managing methods of payment, sanitation, refuse collection, security, and any other matter reasonably necessary for the day-to-day operation of a parking garage. The Developer shall also permit the City to utilize 4,900 SF of ground floor commercial space to the City for use in connection with promoting arts, culture, and historic

preservation, or other public purpose for a period of two (2) years following delivery of the ground floor commercial space to the City.

- b) 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.
- c) Seed Capital for Byron Carlyle Site Development. Within thirty (90) days of the final non-appealable approval of a Certificate of Appropriateness for the Project by the City's HPB, the Developer shall pay \$1,000,000.00 to the City for use in connection with the proposed redevelopment of the Byron Carlyle Site. The application of the Developer's contribution shall be at the City's discretion.
- d) Funding for Infrastructure Analysis and Repairs. Within thirty (30) days of issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy for the Project the Developer shall contribute \$400,000.00 in funding to the North Beach Community Redevelopment Agency (the "**NOBE CRA**") 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.
- e) Funding for Community Redevelopment Agency. Within thirty (30) days of issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy for the Project the Developer shall contribute \$250,000.00 in funding to the North Beach Community Redevelopment Agency (the "**NOBE CRA**") for the purpose of procuring additional Miami Beach Police Department personnel within the North Beach Neighborhood.
- f) Tree Canopy Plan. Within thirty (30) days of the final non-appealable approval of a Certificate of Appropriateness for the Project by the City's HPB the Developer shall provide to the City a comprehensive tree canopy planting plan for the introduction of additional tree canopy in North Beach at a value of \$100,000.00
- 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 ninety (90) 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 the Triangle Pocket Park Concept Plan, he/she shall give the specific and detailed reasons for such rejection, in which event, 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 ninety (90) 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 exceeds \$250,000.
- iii. Final Construction Documents and Proprietary Review. Within one (1) year 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. 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 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 sixty (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 180 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.
- 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 in Section 5 are an additional and essential consideration for the City's consideration of the Overlay and Project Zoning Approvals. Except as otherwise provided in this Agreement, the City shall not issue final certificate of occupancy, and/or certificate of completion for the Project (in whole or in part) until all public benefit requirements in Section 5 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 process all Development Permit and Project Zoning Approvals applications in a timely fashion. 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 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 Land Development Regulations (as may be amended by the Comprehensive Plan and Land Development Regulation 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 Land Development Regulations (as may be amended by the Comprehensive Plan and Land Development Regulation 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; 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. The Developer agrees that it shall be responsible for all recording fees related to the recording of this Agreement.

- b) The Term of this Agreement shall be a total of twenty-five (25) years from the Effective Date. The Term of this Agreement may be extended only by the mutual consent of the City and the Developer subject to a public hearing pursuant to Section 163.3225, Florida Statutes; and (ii) 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.

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 Land Development Regulations. 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 Land Development Regulations and Comprehensive Plan, as amended by the Comprehensive Plan Amendment and Land Development Regulation 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 Land Development Regulations, Comprehensive Plan (as amended by the Comprehensive Plan Land Development Regulation Amendments) and any applicable Federal, State or County laws, rules and regulations. 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 Serve 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 " "** 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 " "** 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 " "** 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 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.
  - a) 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; 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 \_\_\_ 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  
3109 Grand Avenue, #349  
Coconut Grove, FL 33133

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

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 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. 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, 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 Property or any portion thereof through a foreclosure sale or deed-in-lieu of foreclosure without the prior consent or approval of the City.

- 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, 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. In the event that a third party unrelated to or unaffiliated with the City or the Developer institutes any action, suit or proceeding relating to the Project, including, without limitation, any action, suit or proceeding challenging the validity or issuance of this Agreement, the Comprehensive Plan and Land Development Regulation Amendments, the Project Zoning Approvals, or any Building Permit (in each instance, including any related appeals, a "Lawsuit"), then the Developer shall defend 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. The Developer shall indemnify, defend and hold harmless the City from and against any actual damages, losses, liabilities, fees, costs and expenses incurred by the City in any action, suit or proceeding brought against the City by any third-party as a result of any negligent act or omission of the Developer and/or its officers, directors, managers, members, employees, contractors and agents in performing under this Agreement. The Developer shall directly pay all actual costs and expenses related to any expense or cost charged, or legal defense required by the City, using legal counsel reasonably acceptable to the City, pursuant to the foregoing. The City shall reasonably cooperate and collaborate (but at no expense to the City) with the Developer in connection with any legal proceeding in which the Developer is defending the City. This Paragraph shall survive the expiration or any earlier termination of this Agreement.
- 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) 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.

- d) 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.

**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 \_\_\_\_\_, 201\_\_, 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: \_\_\_\_\_

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 \_\_\_\_\_, 201\_\_ 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 \_\_\_\_\_,  
201\_\_ 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 \_\_\_\_\_



## TABLE OF EXHIBITS

EXHIBIT "A" – LEGAL DESCRIPTION OF DEVELOPER PROPERTY

EXHIBIT "B" – LEGAL DESCRIPTION OF GARAGE PROPERTY

EXHIBIT "C" – LEGAL DESCRIPTION OF TRIANGLE POCKET PARK

EXHIBIT "D" – DESCRIPTION OF PUBLIC FACILITIES

EXHIBIT "E" - DESCRIPTION OF PUBLIC RESERVATIONS

EXHIBIT "F" – DESCRIPTION OF REQUIRED DEVELOPMENT PERMITS FOR PROJEC

DRAFT

**EXHIBIT "A" – LEGAL DESCRIPTION OF DEVELOPER PROPERTY**

DRAFT

**EXHIBIT "B" – LEGAL DESCRIPTION OF GARAGE PROPERTY**

DRAFT

**EXHIBIT "C" – LEGAL DESCRIPTION OF TRIANGLE POCKET PARK**

DRAFT

## **EXHIBIT “\_\_\_” - 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 "" – DESCRIPTION OF PUBLIC RESERVATIONS**

[All easements referenced in the Agreement]

DRAFT

## **EXHIBIT “\_\_” - 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, Planning Board, and/or Board of Adjustment approvals, pursuant to Chapter 2 of the City of Miami Beach 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.