

LUDC draft
6/12/2019

This instrument was prepared by (record and return to):

Alexander I. Tachmes, Esq
Shutts & Bowen LLP
200 S. Biscayne Boulevard, Suite 4100
Miami, Florida 33131

(Space reserved for Clerk)

Folio No. 02-3210-011-0620

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of the _____ day of _____ 2019, by and among the CITY OF MIAMI BEACH, a Florida municipal corporation (the "City"), and TSAY INTERNATIONAL, INC., a Florida corporation (the "Owner"). Hereinafter, City and Owner are collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the Owner is the owner of the property that is the subject of this Agreement, the legal description of which is attached hereto and made a part hereof as Exhibit "A" (the "Property"), and which currently has an address of 2301 Normandy Drive, Miami Beach, Florida;

WHEREAS, the Property has historically been developed and utilized for hotel use, and its current name is the "International Inn";

WHEREAS, on May 9, 2017, the City's Historic Preservation Board ("HPB") directed the City's Planning Department to prepare a Preliminary Evaluation and Recommendation Report ("Preliminary Designation Report") relative to the possible designation of the Property as an individual local historic site in accordance with Sections 118-591 through 118-593 of the Land Development Regulations of the City's Code of Ordinances (the "Code");

WHEREAS, on October 10, 2017, the HPB reviewed the Preliminary Designation Report and directed the City's Planning Department to prepare a Formal Designation Report for the Property;

WHEREAS, on September 17, 2018, the Planning Department presented the Formal Designation Report to the HPB, and the HPB has subsequently continued the matter to provide the Parties with the opportunity to discuss the terms of this Agreement;

WHEREAS, the Parties acknowledge that the designation of the Property as an individual local historic site in accordance with the Code will have significant implications on the future redevelopment of the Property;

WHEREAS, the Owner has clearly expressed its opposition to the designation of its Property as an individual local historic site without certain amendments to the City's Code, Land Development Regulations, and Comprehensive Plan first being adopted that would allow for the use of the Property as a legal conforming hotel and the ability to redevelop certain portions of the Property, as more fully provided herein;

WHEREAS, prior to proceeding further with the designation process, the City wishes to obtain from the Owner, and Owner is willing to grant, its voluntary consent to the designation of the Property as an individual local historic site, conditioned upon the terms and obligations of this Agreement first being satisfied as provided herein;

WHEREAS, this Agreement, among other things, is intended to and shall constitute a development agreement between the Parties pursuant to Sections 163.3220 through 163.3243, Florida Statutes, the "Florida Local Government Development Agreement Act" and Section 118-4 of the City's Code; and

WHEREAS, having fully considered this Agreement at two duly noticed public hearings in compliance with Section 163.3225 of the Act; having determined that this Agreement is in compliance with the City's Comprehensive Plan and Land Development Regulations 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, in compliance with all applicable laws, ordinances, plans, rules and regulations of the City, the City has agreed to enter into this Agreement with the Owner.

All capitalized terms used in the recitals are defined in Section 4 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. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference. All exhibits to this Agreement are hereby deemed a part hereof.

2. Authority and Purpose. This Agreement is entered into pursuant to the authority and procedures provided by the Act, and the Parties intend for this Agreement to be construed and implemented so as to effectuate the purpose and intent of the Act.

3. Mutual Consideration. The Parties agree that the consideration and obligations recited and provided for under this Agreement collectively constitute substantial benefits to both Parties and are, therefore, adequate consideration for this Agreement.

4. Definitions. All capitalized terms in this Agreement shall have the definitions set forth in this Section 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 (2018)).

b. “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.

c. “Development Order” means any order granting, denying, or granting with conditions an application for a Development Permit.

d. “Development Permit” shall have the meaning set forth in Section 163.3221(5), Florida Statutes (2018).

e. “Effective Date” is 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 (2018), and Section 12 of this Agreement.

f. “Execution Date” is the date the last of the required Parties executes this Agreement.

g. “Land Development Regulations” shall have the meaning set forth in Section 163.3221(8), Florida Statutes (2018) and shall also include, without limitation, the definition of “land development regulations” in Section 114-1 of the City Code.

5. Proposed Amendments. The Parties acknowledge the importance of preserving and protecting historic hotels, the use of which may no longer be permitted in certain areas of the City under the applicable provisions of the Land Development Regulations. In order to incentivize the preservation and protection of such historic hotels, certain amendments to the City’s Code, Land Development Regulations, and Comprehensive Plan are necessary. The proposed amendments, which are specifically described in Exhibit “B” attached hereto and made a part hereof, will generally allow hotel and hotel accessory uses within existing historic hotels to be considered permitted uses in the RM-1 residential multifamily, low density district in certain limited circumstances under both the Land Development Regulations and Comprehensive Plan, and also provide for certain other amendments that will enable such hotels to (i)

expand, including accessory uses, (ii) develop new structures with greater maximum building height, (iii) remove existing parking spaces, and (iv) eliminate parking requirements for new structures (collectively, the “Proposed Amendments”).

Based upon the foregoing, and concurrent with the adoption and execution of this Agreement, the Parties hereby agree that the City shall promptly initiate and diligently process the Proposed Amendments. Unless and until the Proposed Amendments are adopted and are deemed to be final, non-appealable, and not otherwise subject to challenge in any judicial, administrative or other proceedings (the “Final Amendments”), the City agrees not to proceed further with any public hearing concerning the designation of the Property as an individual local historic site. As provided in Section 7 below, however, in the event that the Proposed Amendments do not become Final Amendments on or before a date that is twelve (12) months from the Effective Date of this Agreement (the “Outside Date”), unless extended by mutual written agreement of the Parties, this Agreement shall terminate and the Parties shall have no further obligations hereunder.

6. Designation of the Property as Local Historic Site. Upon adoption of the Proposed Amendments and the Parties agreeing that the Proposed Amendments are Final Amendments, the City shall notify the Owner in writing confirming same. Upon receipt of this written confirmation from the City, the Owner hereby agrees to voluntarily consent and support the designation of the Property as an individual local historic site in accordance with the Code, subject to the reservation of rights provided in Section 7 below.

7. Reservation of Rights. The Parties acknowledge and agree as follows:

a. In the event that the Proposed Amendments do not become Final Amendments by the Outside Date, this Agreement shall terminate and the Parties shall have no further obligations hereunder. Upon termination of this Agreement, the City may choose to proceed with the designation of the Property as an individual local historic site, and the Owner hereby reserves all rights to object or otherwise contest said designation; and

b. In the event that the City modifies the language of the Proposed Amendments, and such modified language is then adopted and such amendments become Final Amendments by the Outside Date, the Owner shall have the sole and absolute discretion to either accept the Final Amendments, as modified, or terminate this Agreement and reserve all rights to object or otherwise contest the designation of the Property as an individual local historic site; and

8. Permitted Uses and Height. Upon the effectiveness of the Final Amendments, such development regulations shall govern the redevelopment of the Property throughout the term of this Agreement, so that the Parties have certainty with respect to said redevelopment. Notwithstanding subsequent amendments to the Code, Land Development Regulations, and Comprehensive Plan, the Property shall be subject to the following provisions as more fully provided in Exhibit “B”:

a. Hotels, apartments, apartment hotels, and suite hotels shall be permitted, plus all accessory uses that are customarily associated with the operation of a hotel, including but not limited to, bars, restaurants, and accessory outdoor bar counters;

b. Conditional uses shall be permitted for accessory outdoor entertainment, accessory neighborhood impact establishment, and accessory open air entertainment establishment;

c. The permitted height of any new structures in connection with the redevelopment on the Property shall be eighty (80) feet;

d. There shall be no parking requirement for hotel units and accessory uses. Further, all existing parking spaces may be removed and no fee in lieu payment shall be required for the removal of existing parking spaces in connection with the redevelopment of the Property; and

e. The Property and the uses thereon, including bars and restaurants, shall be exempt from distance separation requirements, including but not limited to, from educational facilities, places of worship, other alcoholic beverage establishments and other uses.

Nothing herein shall prohibit the applicability of subsequent amendments to the Code, Land Development Regulations, and/or Comprehensive Plan that would expand the uses and/or increase the intensity of redevelopment permitted on the Property, including amendments to the aforementioned development standards.

9. Intended Redevelopment Plan. Assuming the Owner desires to continue to operate a hotel on-site and in order to ensure the continued viability of the historic hotel structure on the Property upon designation as an individual local historic site, the Owner and/or its successors and assigns may redevelop certain portions of the Property with additional improvements and uses to complement the existing historic hotel structure. As provided above, the maximum height for such redevelopment shall be governed by this Agreement, including the Final Amendments provided herein, the Land Development Regulations, and the Comprehensive Plan. A conceptual massing study prepared by Shulman + Associates is attached hereto as Exhibit "C", which reflects an 8-story tower on the northern portion of the Property (the "Massing Study"). Owner agrees that the 2-story lobby at the southern portion of the Property will be restored at the time of the overall renovation of the Property in accordance with the preservation standards set forth by the Secretary of the Interior, and City staff conceptually supports the 8-story tower on the northern portion of the Property as reflected in the Massing Study. Notwithstanding the above, the Parties acknowledge that the Owner will be required to obtain a Certificate of Appropriateness from the HPB for the redevelopment of the Property in accordance with the City's Code and Land Development Regulations.

10. Cooperation; Expedited Permitting; and Time of Essence. The Parties agree to cooperate with each other to the fullest extent practicable pursuant to the terms and conditions of this Agreement. The Parties agree that time is of the essence for each and every provision hereof. The City shall use its best efforts to expedite the review and approval process of the Proposed Amendments and future applications regarding the redevelopment of the Property, including all applications necessary to proceed with the construction of the uses and improvements contemplated under the Intended Development Plan.

Notwithstanding the foregoing, the Parties acknowledge that this Agreement is not and shall not be construed as a Development Permit, approval or authorization to commence any development, fill, or other land modification, and the City shall not be obligated to issue any approval, including a Development Permit, to the extent that the application does not comply with this Agreement, the Land Development Regulations, the Comprehensive Plan, any applicable building codes, or any other applicable laws, rules, or regulations.

11. Police Power.

a. The Parties hereto 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, as set forth in this Agreement. 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 Owner to compel the City to provide any governmental approvals under its police power save and except to timely process future applications regarding the redevelopment of the Property.

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.

12. 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 are consistent with the City's Comprehensive Plan and Land Development Regulations (subject to all applicable requirements, permits and approvals).

13. Effective Date; Recordation.

Within fourteen (14) days following approval at two public hearings and execution by all Parties, the City shall record the Agreement in the Public Records of Miami-Dade County, upon which the Agreement will be in effect (the "Effective Date"). The Owner

shall submit a copy of the recorded Agreement to the State of Florida's land planning agency within fourteen (14) days after this Agreement is recorded. The Owner agrees that it shall be responsible for all recording fees and other related fees and costs related to the recording and delivery of this Agreement as described in this Section.

14. Events of Default; Remedies; and Litigation. In the event of any default by any Party, the non-defaulting Party shall have the right to pursue all remedies available at law and equity, including but not limited to injunctive relief and specific performance. In the event of default by the City subsequent to the designation of the Property as an individual local historic site, the Owner may elect to terminate the Agreement and the designation of the Property as such will automatically be deemed void without any further action by the City. 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 OWNER 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 13 shall survive the termination of this Agreement.

15. Waiver. No waiver of any right or obligation of either Party shall occur unless the waiver is in writing and signed by both Parties. No failure by the City or Owner 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 right to insist upon performance or of such default.

16. Notices. Any 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 Owner at: Tsay International, Inc.
2301 Normandy Drive
Miami Beach, FL 33141
Attn: Belsa Tsay

With a copy to: Alexander I. Tachmes, Esq.
Shutts & Bowen, LLP
200 S. Biscayne Blvd.
Suite 4100
Miami, Florida 33131

Notices shall be deemed given on the date of receipt or refusal to accept receipt.

17. Governing Laws. This Agreement shall be governed and construed in accordance with the laws of the State of Florida, without reference to principles of conflicts of laws. The Owner 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.

18. Construction. Both Parties to this Agreement have participated fully in the negotiation and preparation hereof; and accordingly, this Agreement shall not be more strictly construed against either 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.

19. 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 construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

20. Entire Agreement; Modification. This Agreement, together with the documents referenced herein, constitutes the entire agreement and understanding between 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.

21. Binding Effect. The obligations imposed pursuant to this Agreement upon the Owner and upon the Property shall run with and bind the Property as covenants running with the Property and shall be binding upon and enforceable by and against the Parties hereto, their personal representatives, heirs, successors, grantees and assigns for an initial term of thirty (30) years from the Effective Date, after which time it may be extended for a period of ten (10) years after approval by the City at a public hearing, unless an instrument has been recorded agreeing to release, amend, or modify this Agreement in whole, or in part, as provided herein.

22. No Third Party Beneficiaries. Nothing in this Agreement shall be deemed to create any right in any person not a party hereto, and nothing contained in this

instrument shall be construed in any respect to be an agreement in whole or in part for the benefit of any third party, other than the successors and permitted assigns of the Parties hereto.

23. 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, elected or appointed officials (including, without limitation, the Mayor and City Commissioner of the City) or employees, as such of Owner or City, and of any successor corporation or 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 incorporator, stockholder, officer, director, elected or appointed official (including, without limitation, the Mayor and City Commissioner of the City) or employee, 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.

24. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute one and the same agreement.

[SIGNATURE PAGES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as set forth below.

Signed, sealed and delivered
in the presence of:

CITY OF MIAMI BEACH,
a Florida municipal corporation

Print Name: _____

Print Name: _____

By: _____

Name:

Title:

Attest: _____

City Clerk

STATE OF FLORIDA)

) SS:

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____, as _____ 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: _____

TSAY INTERNATIONAL, INC., a Florida corporation

By: _____
Name: Belsa Tsay
Title: President

Print Name: _____

Print Name: _____

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2019 by Belsa Tsay, as President of TSAY INTERNATIONAL, INC., a Florida corporation on behalf of the company. She 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 _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Lots 15, 16, 17 and 18, in Block 40, of Miami View Section of Isle of Normandy, Part 3, according to the Plat thereof, as recorded in Plat Book 40, at Page 33, of the Public Records of Miami-Dade County, Florida.

DRAFT

EXHIBIT B

PROPOSED AMENDMENTS

DRAFT