

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 _____ 2020, 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; and

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

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"); and

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; and

WHEREAS, on June 10, 2019, the HPB reviewed the Formal Designation Report for the Property and recommended in favor of the proposed designation. This recommendation of the HPB in favor of designation does not, on its own, result in the

designation of the Property as an individual local historic site. Subsequent to the recommendation of the HPB, an application for an Ordinance amendment designating the Property as an individual local historic site must be submitted to the Planning Board for review and a recommendation to the City Commission. Once the Ordinance is transmitted to the City Commission, two separate readings will be required before the Ordinance may be adopted. The designation of the property as an individual local historic site would only become final if the City Commission adopts the Ordinance designating the Property as an individual local historic site; and

WHEREAS, the Parties acknowledge that the designation of the Property as an individual local historic site in accordance with the Code will require that the Historic Preservation Board review any future redevelopment of the Property; and

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; and

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; and

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 (2019)).

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 (2019).

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 (2019), 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 (2019) 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) provide for parking requirements for new structures and allow for off-site parking (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 (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 to and support, both in writing and in person at any required public hearings, 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/or pursue all remedies available at law and equity, including but not limited to, monetary damages; 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/or pursue all remedies available at law and equity, including but not limited to, monetary damages.

c. The Owner's willingness to enter into this Agreement is for settlement purposes only, and shall not, in connection with Owner's reservation of rights outlined in Section 7a and 7b above, be considered an admission by Owner in support of the designation of the Property.

8. Permitted Uses and Height. Upon the effectiveness of the Final Amendments, and following the designation of the Property as an individual local historic site, 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 accessory uses that are customarily associated with the operation of a hotel, but limited to retail, restaurants with or without accessory bars, and personal services;

b. **Accessory outdoor and open air entertainment consisting of ambient performances, accessory neighborhood impact establishment, and accessory outdoor bar counters shall require conditional use approval.**

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

d. Required parking for hotel units within any new addition (attached or detached) shall be 0.5 spaces per unit, and may be provided off-site within a distance not to exceed 2,500 feet of the Property with the use(s) (if the off-site parking is proposed within City limits), or within a distance not to exceed 1 mile of the Property with the use(s) (if the off-site parking is proposed outside City limits).

e. Further, all existing parking spaces, whether conforming or non-conforming, may be removed and no fee in lieu payment shall be required for such removal of existing parking spaces in connection with redevelopment on the Property, provided that at least 50% of the existing parking spaces are provided off-site, in accordance with Section 8(d); and

f. The Property and the uses thereon shall be exempt from all applicable distance separation requirements for the sale of alcoholic beverages, including from educational facilities.

The City may, however, apply subsequently adopted laws or policies to the Property (particularly as they may relate to quality of life issues such as, but not limited to, noise, litter, and hours for the sale, service, or consumption of alcoholic beverages) as permitted or required by the Act, including, without limitation, Section 163.3233(2), Florida Statutes, as may be amended from time to time, provided that such laws or policies are not inconsistent with the provisions of this Agreement or the Final Amendments. 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, in connection with the redevelopment of the Property, the Owner will be required to obtain a Certificate of Appropriateness from the HPB, and may additionally be required to obtain a Conditional Use Permit from the Planning Board, in accordance with the City's Code and Land Development Regulations (the "Project Approvals"). Owner shall be solely responsible for the preparation and submittal of complete applications requesting the Project Approvals, and for payment of all applicable application fees and costs, pursuant to the requirements in the City Code and Land Development Regulations in effect at the time of submittal. The Owner reserves the right to appeal and/or otherwise challenge the decision of the HPB and/or Planning Board in connection with the redevelopment of the Property.

Owner shall be solely responsible for satisfying all requirements and obtaining all permits and approvals associated with the redevelopment of the Property including, without limitation, all permits and approvals required pursuant to Section 163.3180, Florida Statutes, and Chapter 122 of the City Code, as may be amended from time to time, with respect to mobility fees and concurrency requirements for sanitary sewer, solid waste, drainage, potable water, recreation and open space, and public schools.

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 Parties shall use reasonable commercial efforts to expedite the submittal, review and approval process of the Proposed Amendments.

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.

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 or regulatory capacity, to consider governmental or regulatory actions, as set forth in this Agreement. However, nothing contained in this Agreement shall entitle the Owner to compel the City to provide any governmental or regulatory approvals under this Agreement.

b. Nothing in this Agreement shall be construed to prohibit the City from duly acting under its police power or within its regulatory authority to approve, approve with conditions, or reject any public hearing application dealing with the Property.

c. The exercise of the City's regulatory authority and the enforcement of any laws, rules, regulations, ordinances, and plans (including through the exercise of the City's building, planning, 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.

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 would be consistent with the City's Comprehensive Plan and Land Development Regulations (subject to all applicable requirements, permits and approvals), if the Proposed Amendments are adopted, pursuant to Section 5.

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 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 14 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. Waiver of Jury Trial. By entering into this Agreement, the Parties expressly waive any rights either party may have to a trial by jury of any civil litigation related to or arising out of this Agreement.

19. 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.

20. 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.

21. 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.

22. 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 twenty (20) years from the Effective Date, provided that the Agreement may be extended for an additional ten (10) year term subject to the approval by the City Commission at its sole discretion.

23. 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.

24. Indemnification of City. **[OWNER AND CITY CONTINUING TO NEGOTIATE.]** Owner 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 Owner and/or its officers, directors, managers, members, employees, contractors and agents in performing under this Agreement. Additionally, in the event that a third party unrelated to or unaffiliated with the City or Owner institutes any action, suit, or proceeding relating to the designation of the Property as an individual local historic site or to the adoption of the Proposed Amendments, then

the Owner shall further indemnify, defend, and hold the City harmless from and against any actual damages, losses, liabilities, fees, costs and expenses incurred by the City in any such action, suit or proceeding. The Owner 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 Owner in connection with any legal proceeding in which the Owner is defending the City. This Section shall survive the expiration or any earlier termination of this Agreement.

25. Mutual release. Subject to and contingent upon the adoption of the Proposed Amendments and the designation of the Property as an individual local historic site, the City and Owner mutually agree to release all claims either party may have relating to the designation of the Property as an individual local historic site or the adoption of the Proposed Amendments. In no event shall either party be liable to the other party (or any other person) for any indirect, special, consequential, exemplary, punitive damages, economic damages, lost profits, diminution in value, or similar damages in connection with the designation of the Property as an individual local historic site or the adoption of the Proposed Amendments.

26. 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.

27. 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)
)
COUNTY OF MIAMI-DADE)

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2020 by _____, who ☐ is personally known to me or ☐ has produced _____ as identification.

(NOTARY SEAL)

Notary Public, State of Florida
Name: _____

APPROVED AS TO FORM AND
LANGUAGE AND FOR EXECUTION

Ral Brit 6/16/20
City Attorney NK Date

TSAY INTERNATIONAL, INC., a Florida corporation

By: _____
Name: Belsa Tsay
Title: President

Print Name: _____

Print Name: _____

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2020 by Belsa Tsay, as President of TSAY INTERNATIONAL, INC., who ☐ is personally known to me or ☐ has produced _____ as identification.

(NOTARY SEAL)

Notary Public, State of Florida
Name: _____

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.

EXHIBIT B

PROPOSED AMENDMENTS

**RM-1 REGULATIONS FOR HOTEL USES AT DESIGNATED HISTORIC SITES IN NORTH
BEACH**

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, BY AMENDING CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 3, "RESIDENTIAL MULTI-FAMILY DISTRICTS," SUBDIVISION II, "RM-1 RESIDENTIAL MULTIFAMILY LOW INTENSITY," BY AMENDING SECTION 142-152, "MAIN PERMITTED AND PROHIBITED USES," SECTION 142-153, "CONDITIONAL USES," SECTION 142-154, "ACCESSORY USES," AND SECTION 142-155, "DEVELOPMENT REGULATIONS AND AREA REQUIREMENTS," TO MODIFY THE DEVELOPMENT REGULATIONS AND USE REQUIREMENTS FOR DESIGNATED HISTORIC SITES IN NORTH BEACH; BY AMENDING CHAPTER 130, ENTITLED "OFF-STREET PARKING," ARTICLE II, "DISTRICTS; REQUIREMENTS," SECTION 130-32, "OFF-STREET PARKING REQUIREMENTS FOR PARKING DISTRICT NO. 1," AND 130-36, "OFF-SITE PARKING FACILITIES," AND ARTICLE V, "FEE IN LIEU OF PARKING PROGRAM," SECTION 130-132, "FEE CALCULATION," TO AMEND THE REQUIREMENTS FOR OFF SITE PARKING FACILITIES AND THE REMOVAL OF EXISTING PARKING SPACES, WITHIN DESIGNATED HISTORIC SITES IN NORTH BEACH; AND BY AMENDING CHAPTER 6, ENTITLED "ALCOHOLIC BEVERAGES," SECTION 6-4, ENTITLED "LOCATION AND USE RESTRICTIONS," TO PROVIDE FOR AN EXEMPTION FROM DISTANCE SEPARATION REQUIREMENTS FOR DESIGNATED HISTORIC SITES IN NORTH BEACH; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the City's land development regulations permit hotel uses in the RM-1 district, under certain specified conditions; and

WHEREAS, the Mayor and City Commission desire to create flexibility for alcoholic beverage establishments that are accessory to a hotel use within historic sites in the RM-1 district in North Beach; and

WHEREAS, the proposed changes promote compatible hotel development and the preservation of contributing structures in the RM-1 district in North Beach.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA.

SECTION 1. Chapter 142, "Zoning Districts and Regulations", is hereby amended as follows:

**CHAPTER 142
ZONING DISTRICTS AND REGULATIONS**

* * *

ARTICLE II. – DISTRICT REGULATIONS

* * *

DIVISION 3. – RESIDENTIAL MULTIFAMILY DISTRICTS

* * *

SUBDIVISION II. – RM-1 RESIDENTIAL MULTIFAMILY LOW INTENSITY

* * *

Section 142-152 - Main permitted and prohibited uses.

- (a) The main permitted uses in the RM-1 residential multifamily, low density district are:
- (1) single-family detached dwelling;
 - (2) townhomes;
 - (3) apartments;
 - (4) bed and breakfast inn (pursuant to article V, division 7 of this chapter);
 - (5) properties fronting Harding Avenue or Collins Avenue, from the city line on the north, to 73rd Street on the south (pursuant to section 142-1105 of this chapter) shall be entitled to have hotels, apartment hotels, and suite hotels; and
 - (6) properties located north of Normandy Drive having a lot area greater than 30,000 square feet, which are individually designated as an historic site, shall be entitled to have hotels, apartment hotels, and suite hotels.
- (b) Alcoholic beverage establishments pursuant to the regulations set forth in chapter 6 of the City Code, are prohibited uses, unless otherwise specified. Moreover, all uses not listed as a main permitted or conditional use are also prohibited. Notwithstanding the foregoing, accessory uses that are customarily associated with the operation of a hotel are permitted as provided in section 142-154 of this chapter.

Section 142-153 – Conditional uses.

- * * *
- (d) For properties located north of Normandy Drive having a lot area greater than 30,000 square feet, which are individually designated as an historic site, additional conditional uses are as follows:
- (1) Accessory outdoor bar counters, **provided that an accessory outdoor bar counter is only permitted to be utilized during the hours of operation of the restaurant of which it is a part.**
 - (2) **Accessory outdoor and open air entertainment establishments consisting of ambient performances. For purposes of this subsection, ambient performance shall be defined as any live or recorded, amplified or nonamplified performance played or conducted at a volume that does not interfere with normal conversation. Ambient performances shall not take place between the hours of 10:00 p.m. and 10:00 a.m., unless modified by the Planning Board through the conditional use process.**
 - (3) Accessory neighborhood impact establishments.

Section 142-154 - Accessory uses.

The accessory uses in the RM-1 residential multifamily, low density district are as required in article IV, division 2 of this chapter. Additionally, properties located north of Normandy Drive having a lot area greater than 30,000 square feet, which are individually designated as an historic site are permitted to have accessory uses associated with the operation of a hotel, but limited to retail, restaurants with or without accessory bars, and personal services.

Section 142-155. - Development regulations and area requirements.

* * *

(b) The lot area, lot width, unit size and building height requirements for the RM-1 residential multifamily, low density district are as follows:

Minimum Lot Area (Square Feet)	Minimum Lot Width (Feet)	Minimum Unit Size (Square Feet)	Average Unit Size (Square Feet)	Maximum Building Height (Feet)
5,600	50	<p>New construction—550 Non-elderly and elderly low and moderate income housing—400 Workforce housing—400 Rehabilitated buildings—400 Hotel units: 15%: 300—335 85%: 335+ For contributing hotel structures, located within an individual historic site, a local historic district or a national register district, which are renovated in accordance with the Secretary of the Interior Standards and Guidelines for the Rehabilitation of Historic Structures as amended, retaining the existing room configuration and sizes of at least 200 square feet shall be permitted. Additionally, the existing room configurations for the above described hotel structures may be modified to address applicable life-safety and accessibility regulations, provided the 200 square feet minimum unit size is maintained, and provided the maximum occupancy per hotel room does not exceed 4 persons.</p>	<p>New construction—800 Non-elderly and elderly low and moderate income housing—400 Workforce housing—400 Rehabilitated buildings—550</p>	<p>Historic district—40 Flamingo Park Local Historic District—35 (except as provided in section 142-1161) Otherwise—50 For properties outside a local historic district with a ground level consisting of non-habitable parking and/or amenity uses—55 <u>For properties located north of Normandy Drive having a lot area greater than 30,000 square feet, which are individually designated as an historic site - 80</u></p>

SECTION 2. Chapter 130, entitled "Off-Street Parking," is hereby amended as follows:

**CHAPTER 130
OFF-STREET PARKING**

* * *

ARTICLE II. - DISTRICTS; REQUIREMENTS

* * *

Sec. 130-32. - Off-street parking requirements for parking district no. 1.

Except as otherwise provided in these land development regulations, when any building or structure is erected or altered in parking district no. 1, accessory off-street parking spaces shall be provided for the building, structure or additional floor area as follows:

* * *

(26) *Hotel, suites hotel, motel, or motor lodge*: One space per unit, except as follows:

Properties located within a local historic district or National Register Historic District	
New floor area for hotel rooms, associated with retaining, preserving and restoring a building or structure that is classified as "contributing" as of March 13, 2013, as defined below	.5 spaces per unit, up to a maximum of 100 units and 1 space per unit for all units in excess of 100 units
Other (e.g., new construction or substantial demolition of contributing building)	1 space per unit
Properties bounded by 62nd Street on the south, 73rd Street on the north, Indian Creek on the west and the Atlantic Ocean on the east	.5 spaces per unit, up to a maximum of 100 units and 1 space per unit for all units in excess of 100 units
Properties located south of Fifth Street and properties zoned residential and located south of 17th Street, west of Alton Court, east of Biscayne Bay and north of 6th Street	1 space per unit
<u>Properties located north of Normandy Drive having a lot area greater than 30,000 square feet, which are individually designated as an historic site</u>	<u>.5 spaces per unit</u>
Properties not listed above:	
Hotels, limited by covenant to no restaurants or pools open to the public, no outdoor bar counters, entertainment or special events, and located in a commercial zoning district within 1,000 feet of the boundary of an area that is (1) zoned CD-3 and (2) part of an historic district	.5 spaces per unit, up to a maximum of 100 units and 1 space per unit for all units in excess of 100 units, up to a maximum cap of 150 rooms total
Within 150 feet of a single-family district or RM-1 district, notwithstanding the above	1 space per unit
Other	1 space per unit

* * *

Sec. 130-36. - Off-site parking facilities.

(a) All parking spaces required in this article shall, be provided on a self-park basis or valet parking basis in accordance with section 130-251, and shall be located on the same lot with the building or use served, or offsite if one of the following conditions is met:

- (1) The parking is within a distance not to exceed 1,200 feet of the property with the use(s), if located in the architectural district or a local historic district.
- (2) The parking is within a distance not to exceed 500 feet of the property with the use(s), when the use is not located in the architectural district or a local historic district.
- (3) For properties south of Fifth Street, the parking is within a distance not to exceed 1,500 feet of the property with the use(s). For purposes of this subsection, the property with the uses(s) shall be located south of Fifth Street and the parking facility may be located north of Fifth Street.
- (4) For properties located north of Normandy Drive having a lot area greater than 30,000 square feet, which

are individually designated as an historic site, the parking is within a distance not to exceed 2,500 feet of the property with the use(s) within city limits or is within a distance not to exceed one (1) mile of the property with the use(s) outside city limits.

The foregoing distance separation shall be measured by following a straight line from the property line of the lot on which the main permitted use is located to the property line of the lot where the parking lot or garage is located.

(b) Where the required parking spaces are not located on the same lot with the building or use served and used as allowed in section 130-32, a unity of title or for nonadjacent lots, either a unity of title or a covenant in lieu of unity of title for parking unification shall be required for the purpose of insuring that the required parking is provided. Such unity of title or restrictive covenant shall be executed by owners of the properties concerned, approved as to form by the city attorney, recorded in the public records of the county as a covenant running with the land and shall be filed with the application for a building permit. Alternatively, for a change of use in an existing building, or a property located north of Normandy Drive having a lot area greater than 30,000 square feet and which is individually designated as an historic site, a lease for the purpose of insuring that the required parking for the new use is provided may be utilized, in accordance with the following:

(1) The subject lease shall be executed by the owner of the properties providing the required parking and the user of the required spaces; such lease to be approved as to form and necessary minimum requirements by the city attorney.

(2) The required parking spaces provided off site shall be for the sole use of the user of the spaces and shall not be available for underutilized parking or subleased to a third party. Subleases of any kind shall be prohibited.

(3) All required parking spaces provided on the off-site properties shall be dedicated and clearly marked for the user of the establishment 24 hours a day, seven days a week. This 24-hour dedicated use requirement shall be an explicit term in the lease agreement.

(4) The exact location of the required spaces provided off-site shall be clearly delineated on site and floor plans, prepared by a registered architect or engineer, and shall be incorporated into the lease as an exhibit.

(5) A copy of the renewal of all leases shall be provided to the city within 60 days of such renewal. In the event the terms of a lease should change, such changes shall be approved as to form and necessary minimum requirements by the city attorney.

(6) The lease shall be for at least a minimum of a calendar year.

(7) The lease shall require that the tenant and landlord notify the City of Miami Beach Planning Department of early termination of the parking leasehold

(8) A copy of all lease renewals shall be submitted to the planning department. In the event that a required lease renewal is not provided within 60 days of the expiration of the lease, the subject use shall be considered in default and a fee in lieu of parking in accordance with chapter 130, article V, herein, shall be assessed.

The aforementioned lease criteria in subsections (b)(1) through (b)(8) shall not be applicable to properties located north of Normandy Drive having a lot area greater than 30,000 square feet, which are individually designated as an historic site.

* * *

ARTICLE V. - FEE IN LIEU OF PARKING PROGRAM

* * *

Sec. 130-132. - Fee calculation.

* * *

(c) *Removal of existing parking spaces in a historic district.* Whenever an existing required parking space is removed or eliminated for any building that existed prior to October 1, 1993, which are located within the architectural district, a contributing building within a local historic district, or any individually designated historic building, a fee in lieu of providing parking shall be required if a replacement parking space is not provided pursuant to section 130-36. Such fee shall be satisfied as set forth in subsection (b), above. In no case shall the removal of parking spaces result in less than one parking space per residential unit or 50 percent of the required parking for commercial uses. This subsection shall not prohibit the removal of grade level parking spaces located within the front, side street or interior side yards of a lot, should those parking spaces be nonconforming. Notwithstanding the foregoing, an owner shall be permitted to remove parking spaces required for a building in the architectural district or a local historic district constructed after October 1, 1993, if a change in said building results in a net reduction of required parking spaces. No fee in lieu of providing parking or the replacement of parking spaces pursuant to section 130-36 shall be required to remove such spaces, unless the number of parking spaces being removed is greater than the net reduction of required parking spaces. Notwithstanding the foregoing, existing parking spaces, whether conforming or nonconforming, may be removed properties located north of Normandy Drive having a lot area greater than 30,000 square feet, which are individually designated as an historic site, and no fee in lieu payment shall be required for such removal, provided that at least 50% of the existing parking spaces are provided offsite, in accordance with section 130-36.

* * *

SECTION 3. Chapter 6, entitled "Alcoholic beverages," is hereby amended as follows:

CHAPTER 6
ALCOHOLIC BEVERAGES

* * *

ARTICLE I. – IN GENERAL

* * *

Sec. 6-4. – Location and use restrictions.

* * *

(d) Notwithstanding any other provision in this division, the sale or offering of alcoholic beverages for consumption on the premises of alcoholic beverage establishments on properties located north of Normandy Drive having a lot area greater than 30,000 square feet, which are individually designated as an historic site, shall be exempt from all applicable minimum distance separation requirements in this division.

SECTION 3. Repealer.

All ordinances or parts of ordinances and all sections and parts of sections in conflict herewith be and the same are hereby repealed.

SECTION 4. Codification.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach, Florida, as amended. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section" or other appropriate word.

SECTION 5. Severability.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court

of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 6. Effective Date.

This Ordinance shall take effect the ____ day of _____, 2020.

PASSED AND ADOPTED this ____ day of _____, 2020.

Dan Gelber, Mayor

ATTEST:

Rafael E. Granado, City Clerk

APPROVED AS TO FORM
AND LANGUAGE
AND FOR EXECUTION

City Attorney _____ Date _____

First Reading: _____, 2020

Second Reading: _____, 2020

Verified by: _____
Thomas R. Mooney, AICP
Planning Director

**RM1 COMPREHENSIVE PLAN REGULATIONS FOR HOTEL USES AT DESIGNATED
HISTORIC SITES IN NORTH BEACH**

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY OF MIAMI BEACH 2040 COMPREHENSIVE PLAN, PURSUANT TO THE EXPEDITED STATE REVIEW PROCESS OF SECTION 163.3184(3), FLORIDA STATUTES, BY AMENDING CHAPTER 1, ENTITLED “RESILIENT LAND USE AND DEVELOPMENT ELEMENT,” AT POLICY RLU 1.1.5, ENTITLED “LOW DENSITY MULTI FAMILY RESIDENTIAL (RM-1),” TO ALLOW FOR HOTELS, APARTMENT HOTELS, AND SUITE HOTELS AT DESIGNATED HISTORIC SITES IN NORTH BEACH; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the Mayor and City Commission desire to create flexibility for alcoholic beverage establishments that are accessory to a hotel use within historic sites in the RM-1 district in North Beach; and

WHEREAS, the proposed changes promote compatible hotel development and the preservation of contributing structures in the RM-1 district in North Beach; and

WHEREAS, the City of Miami Beach (the “City”) has determined that amending the future land use category for the sites described herein will ensure the sustainable redevelopment of the sites that is compatible with the built environment; and

WHEREAS, the amendment set forth below is necessary to accomplish all of the above objectives.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. That Chapter 1 of the City of Miami Beach Comprehensive Plan, entitled “Resilient Land Use and Development Element,” at Policy RLU 1.1.5, entitled “Low Density Multi Family Residential (RM-1),” shall hereby be amended as follows:

Policy RLU 1.1.5 Low Density Multi Family Residential (RM-1)

Purpose: To provide development opportunities for and to enhance the desirability and quality of existing and/or new low density multi-family residential areas.

Uses which may be permitted: Single family detached dwellings; single family attached dwellings, townhouse dwellings and multiple family dwellings, and hotels for properties fronting Harding Avenue or Collins Avenue from the City Line on the north to 73rd Street on the south.

Non-conforming buildings containing non-conforming hotel uses, located on the north side of Belle Isle, and not within a local historic district, may be reconstructed to a maximum of 50% of the floor area of the existing building, provided that the uses contained within the hotel are not expanded in any

way, including but not limited to, the number of hotel units and accessory food and beverage uses, the non-conformity of the building is lessened, and required parking for the surrounding neighborhoods with a minimum reduction of 50% of the daily trips on adjacent, two lane, arterial roadways, and improving the resiliency of the building.

Bed and breakfast inns are permitted in RM-1 only in the Flamingo Park Historic District and the West Avenue Bay Front Overlay District, both of which are described in the Land Development Regulations. Residential office and suite hotel uses are permitted in the West Avenue Bay Front Overlay District only. Hotels, apartment hotels, and suite hotels are permitted on properties located north of Normandy Drive, having a lot area greater than 30,000 square feet, which are individually designated as an historic site, as described in the Land Development Regulations.

Other uses which may be permitted are accessory uses specifically authorized in this land use category, as described in the Land Development Regulations, which are required to be subordinate to the main use; and conditional uses specifically authorized in this land use category, as described in the Land Development Regulations, which are required to go through a public hearing process as prescribed in the Land Development Regulations of the Code of the City of Miami Beach.

SECTION 2. REPEALER.

All ordinances or parts of ordinances and all sections and parts of sections in conflict herewith be and the same are hereby repealed.

SECTION 3. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach, Florida, as amended. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section" or other appropriate word.

SECTION 4. SEVERABILITY.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 5. TRANSMITTAL.

The Planning Director is hereby directed to transmit this ordinance to the appropriate state, regional and county agencies as required by applicable law.

SECTION 6. EFFECTIVE DATE.

This ordinance shall take effect 31 days after the state land planning agency notifies the City that the plan amendment package is complete pursuant to Section 163.3184(3), Florida Statutes.

PASSED AND ADOPTED this _____ day of _____, 2020.

Dan Gelber, Mayor

ATTEST:

Rafael E. Granado, City Clerk

APPROVED AS TO FORM
AND LANGUAGE
AND FOR EXECUTION

City Attorney

Date

First Reading: _____, 2020
Second Reading: _____, 2020

Verified by: _____
Thomas R. Mooney, AICP
Planning Director

EXHIBIT C

CONCEPTUAL MASSING STUDY