

# **EXHIBIT H**

This instrument was prepared by:

Name: Rafael Paz, Acting City Attorney  
Address: City of Miami Beach  
1700 Convention Center Drive, 4<sup>th</sup> Floor  
Miami Beach, Florida 33139

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**EASEMENT AGREEMENT  
(21<sup>st</sup> Street Easement)**

THIS EASEMENT AGREEMENT (the “**Agreement**”), is made this \_\_\_\_ day of May 2021, by BHI Miami Limited Corp., a Delaware limited liability company, having an address of 1521 Alton Rd. #403 Miami Beach, Florida 33139 (together with its successors and permitted assigns, the “**Owner**”), in favor of the CITY OF MIAMI BEACH, a Florida municipal corporation (together with its successors and permitted assigns, the “**City**”).

WITNESSETH:

**WHEREAS**, the Owner holds fee simple title to that certain real property more specifically described on **Exhibit “A”** attached hereto and incorporated herein by this reference (the “**Easement Area**”);

**WHEREAS**, BHI Miami Limited Corp. holds fee simple title to that certain real property more specifically described on **Exhibit “B”** attached hereto and incorporated herein by this reference (the “**Benefited Parcels**”) (the Easement Area and the Benefited Parcels are herein collectively referred to as the “**Property**”); and

**WHEREAS**, the Owner seeks to grant a perpetual non-exclusive easement in, upon, under and through the Easement Area in favor of the City for the “Easement Purposes” (as hereinafter defined).

**NOW THEREFORE**, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound hereby agree as follows:

1. Recitals. The above recitals are true and correct and by this reference are hereby incorporated into the body of this Agreement as if fully set forth herein.

2. Grant of Easement. The Owner hereby grants to the City a perpetual, non-exclusive and irrevocable easement in, upon, under and through the Easement Area for the purposes of:

(a) providing to the general public, and to the City and its invitees, agents, employees, contractors, and licensees, an unrestricted way of passage, right of ingress and egress, access to, and reasonable use of, the Easement Area, including, without limitation, for public recreational purposes, and pedestrian and vehicular access over and across the Easement Area;

(b) constructing, installing, operating, using, maintaining, repairing and replacing landscaping, sidewalks, pedestrian or bicycle paths, walkways, decks, street lighting, traffic or directional signage,

underground utilities, drainage, roadways, parks, and streetscape-related infrastructure, or any other improvements which City, in its reasonable discretion, deems necessary for the protection of the health, safety or welfare of the general public (collectively, the “**Improvements**”) within the Easement Area;

(c) authorizing the City to grant third parties providing utility services (the “**City Grantees**”) the right to use and occupy the Easement Area for the sole purpose of providing any such utilities, without any need for Owner approval of any City Grantee; and

(d) taking all other actions as may be reasonably necessary, without any need for Owner approval thereof, to develop and install Improvements within the Easement Area, or to operate the Easement Area, solely for public purposes, in the same manner as otherwise applicable to any public right of way areas of the City pursuant to the Code of Ordinances of the City of Miami Beach, Florida, as the same may be amended from time to time (the “**City Code**”), including, without limitation, the issuance by the City of temporary special event permits for cultural, recreational or other programming, sidewalk café permits, or any other actions as may be lawfully undertaken by the City on public right of way areas of the City (collectively, the “**Easement Purposes**”). The term “**utilities**” shall include, but not be limited to, water, sewer, stormwater, electrical, gas, telecommunications, telephone and cable.

3. Maintenance, Casualty, and Condemnation. City shall be responsible, at City’s sole cost and expense, for maintaining the Easement Area. In the event that any portion of the Easement Area is damaged or destroyed by fire, flood, storm, or other casualty or by the act or omission of the City, any of the City’s agents, employees, contractors, vendors, operators, representatives, licensees, or any other party retained by the City or for whom the City is legally responsible, or by the general public, City shall be solely responsible for any repair or restoration of the Easement Area, subject to an appropriation of funds by the City Commission, if any is required, in the same manner as applicable to other public right of way areas of the City. In addition, if any portion of the Easement Area is taken or condemned in any manner as a result of the exercise of the power of eminent domain by any governmental authority for any public or quasi-public use, including, without limitation, a conveyance or assignment in lieu of condemnation or taking, then this Agreement shall immediately terminate as to any portion of the Easement Area so taken, and the parties hereto shall be released automatically from all further obligations under this Agreement with respect to area taken, except for those obligations that expressly survive the termination of this Agreement. The Owner, its successors and assigns, will be entitled to receive the entire amount of any award made for any partial or complete taking of the Easement Area.

4. Construction in Easement Area.

A. If the City elects to construct and/or install any Improvements within the Easement Area, the City hereby acknowledges and agrees that: (a) all fees, costs and expenses associated with the Improvements (including, without limitation, the design, permitting, construction, installation, operation, use, maintenance, repair and replacement thereof) shall be paid in full by the City; (b) the design and construction of all Improvements shall be performed and completed by the City (i) in a good and workmanlike manner, (ii) free from liens and defects, and (iii) in full compliance with all laws, rules, regulations, ordinances, codes and other requirements of governmental and quasi-governmental authorities having jurisdiction; and (c) upon final completion of the Improvements, the City shall (i) remove all debris, equipment and materials from the Easement Area, (ii) fill, compact, grade and otherwise restore the Easement Area to substantially the same condition as existed prior to commencement of the Improvements, including harmonizing the soil levels within the Easement Area and the lands adjacent thereto, and (iii) keep and maintain the Improvements (and all parts and components thereof) in good condition, repair and working order at all times.

B. If the Owner elects to construct and/or install any infrastructure or other improvements within or above the Easement Area for Owner’s use (the “**Owner Improvements**”), the

Owner hereby acknowledges and agrees that any such Owner Improvements shall be subject to and contingent upon the prior approval of the City Manager, and further agrees that: (a) all fees, costs and expenses associated with the Owner Improvements (including, without limitation, the design, permitting, construction, installation, operation, use, maintenance, repair and replacement thereof) shall be paid in full by the Owner; (b) the design and construction of all Owner Improvements shall be performed and completed by the Owner (i) in a good and workmanlike manner, (ii) free from liens and defects, and (iii) in full compliance with all laws, rules, regulations, ordinances, codes and other requirements of governmental and quasi-governmental authorities having jurisdiction; and (c) upon final completion of the Owner Improvements, the Owner shall (i) remove all debris, equipment and materials from the Easement Area, (ii) fill, compact, grade and otherwise restore the Easement Area to substantially the same condition as existed prior to commencement of the Owner Improvements, including harmonizing the soil levels within the Easement Area and the lands adjacent thereto, and (iii) keep and maintain the Owner Improvements (and all parts and components thereof) in good condition, repair and working order at all times. Subject to the issuance of necessary Public Works permits, the Owner may temporarily close portions of the Easement Area to the public when necessary to construct improvements on the Property. The City may not charge any fees for permits issued prior to January 1, 2026.

5. Miscellaneous.

5.1 This Agreement shall be governed by, enforced and construed under the laws of the State of Florida. Venue for all actions, litigation and/or other proceedings arising out of this Agreement shall be exclusively in Miami-Dade County, Florida. BY ENTERING INTO THIS AGREEMENT, OWNER AND CITY 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. The prevailing party in any action, litigation or other proceeding that is based on any claim, controversy or other disputed matter arising under, out of or in connection with this Agreement shall recover from the non-prevailing party all fees, costs and expenses (including, without limitation, reasonable attorneys' fees and costs through all trial, appellate and post-judgment levels and proceedings) incurred by the prevailing party in such action, litigation or other proceeding. As used herein, the term "Prevailing Party" means the party who receives substantially the relief sought upon final, non-appealable judgment, order, or other disposition of a court of competent jurisdiction. The provisions of this Section shall survive the termination or expiration of this Agreement.

5.2 The parties hereby acknowledge and agree that each has had an opportunity to be represented by or consult with independent legal counsel and that any rule of construction which provides that ambiguities are to be construed against the drafter shall not apply in the interpretation or construction of this Agreement. If any term, provision or portion of this Agreement is for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction, then such term, provision or portion of this Agreement shall be given it nearest valid, legal and enforceable meaning, or construed as deleted, whichever such court may determine, and the same shall not invalidate the remaining terms, provisions and/or portions of this Agreement, which remaining terms, provisions and portions of this Agreement will remain in full force and effect.

5.3 This Agreement includes all exhibits attached hereto. This Agreement, together with all such exhibits, contains the entire agreement and understanding between the parties relating to the subject matter of this Agreement, and all prior or contemporaneous terms, covenants, conditions, representations, warranties, statements, agreements and understandings made by or on behalf of the parties, whether oral or written, are merged herein.

5.4 This Agreement may not be amended, modified or terminated except by a written instrument executed by the Owner and the City through its City Manager, or his designee, or the successor

administrative officer with jurisdiction over the matter, and which is recorded in the Public Records of Miami-Dade County, Florida. All provisions of this Agreement, including the benefits and burdens of the same, are covenants that run with the land, are not intended to be executory in nature, and shall be binding upon, and shall inure to the benefit of, the parties and their respective, heirs, legal representatives, successors and assigns. The rights and privileges of the Owner under this Agreement shall also inure to the benefit of the owners of the Benefitted Parcels and their successors and assigns.

5.5 The failure of any party to insist in any one or more instances upon strict performance of any term, covenant, condition or other provision of this Agreement will not be construed as a waiver or relinquishment of the future enforcement of such term, covenant, condition or other provision of this Agreement.

5.6 Wherever appropriate in this Agreement, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of each gender shall be deemed to comprehend either or both of the other genders. The section and paragraph headings in this Agreement are for convenience only and shall not affect the meaning, interpretation or scope of the terms or provisions set forth therein.

5.7 This Agreement may be executed in multiple counterparts, each of which individually shall be deemed an original, but when taken together shall be deemed to be one and the same Agreement.

5.8 This Agreement shall never be construed as a conveyance in any manner whatsoever of fee simple title to any portion of the Property or the Easement Area; it being intended by the parties that this Agreement conveys only an easement interest with respect to the Easement Area for the specific uses and purposes set forth herein.

5.9 All of the rights, easements and interests herein created and granted are and shall be limited to and utilized solely for the uses and purposes expressly set forth herein. Except for Owner's use of the Easement Area in the same manner as made available to the general public pursuant to the purposes authorized pursuant to Section 2(a) herein, Owner shall not otherwise use the Easement Area for any other purpose, or make any Owner Improvements to the Easement Area, without the City's consent, which consent may be withheld by the City Manager, if the City Manager determines, at his or her sole discretion, that such proposed uses or Owner Improvements would interfere in any material respect with the exercise by the public or by the City of the rights granted to the public and the City herein.

5.10 Owner shall not withhold or obstruct City's access to the Easement Area for any of the purposes authorized in Section 2 of this Agreement.

5.11 This Agreement and the rights, easements and interests herein created and granted shall only become effective upon the recordation of this Agreement in the Public Records of Miami-Dade County. This Agreement and the rights, easements and interests herein created and granted shall run with the Easement Area, and shall be binding on all persons holding title to the Easement Area.

5.12 Nothing in this Agreement shall be construed to create a joint venture, partnership, tenancy in common, or joint tenancy relationship between the Owner and the City, nor shall this Agreement render either party liable for the debts or obligations of the other party.

6. Notice. All notices, demands, requests or other communications which may be or are required to be given, served, or sent by either the Owner or the City pursuant to this Agreement shall be in writing and addressed as follows:

If to Owner:	BHI Miami Limited Corp. 1521 Alton Rd. #403 Miami, Beach, Florida 33139 Attn: Wayne Landing
With a copy to:	Bercow Radell Fernandez Larkin & Tapanes, PLLC 200 S. Biscayne Boulevard, suite 300 Miami, Florida, 33131 Attn: Michael Larkin, Esq,
If to the City:	City of Miami Beach 1700 Convention Center Drive, 4th Floor Miami Beach, Florida 33139 Attn: City Manager
With copies to:	City of Miami Beach 1700 Convention Center Drive, 4th Floor Miami Beach, Florida 33139 Attn: Public Works Director

Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent. Any notice or other communication (i) sent by certified United States mail, postage prepaid, return receipt requested will be deemed effectively given or received on the third (3rd) business day following the postmark date of such notice or other communication; (ii) sent by overnight courier or by hand will be deemed effectively given or received upon receipt or refusal, as the case may be; and (iii) sent by electronic mail will be deemed effectively given or received on the day of transmission of such notice if sent on a business day before 6:00 P.M. Eastern Standard Time, or on the following business day if sent after 6:00 P.M. Eastern Standard Time or on a non-business day. Any notice or other communication given in the manner provided above by counsel for either party will be deemed to be notice or such other communication from the party represented by such counsel.

7. City Indemnity. Solely to the extent and limits permitted by Section 768.28 of the Florida Statutes, and without waiving any rights or defenses therein, the City shall indemnify, defend and hold the Owner harmless from and against all claims, demands, causes of action, suits, losses, damages, liabilities, liens, judgments, fees, costs, expenses and other charges (including, without limitation, reasonable attorneys' fees and costs through all trial, appellate and post judgment levels and proceedings) (collectively, the "**Claims**") commenced, incurred and/or paid by or against the Owner to the extent the Claims arise from: (a) the willful misconduct or negligent use of the Easement Area by the City or any successor, assign and/or City Grantee thereof expressly approved by the City Commission; (b) the design, construction, installation, operation, use, maintenance, repair and/or replacement of, or the failure to properly design, construct, install, operate, use, maintain, repair and/or replace, any Improvements by the City or any successor, assign and/or City Grantee thereof expressly approved by the City Commission; and (c) any default, breach or violation of any term, covenant, condition or provision of this Agreement by the City or any successor, assign and/or City Grantee thereof expressly approved by the City Commission, including, without limitation, any failure by the City to maintain, repair, and restore the Easement Area in accordance with Section 3 of this Agreement. Notwithstanding anything to the contrary contained in this Agreement: (y) nothing in this Agreement shall impair, limit or prohibit any rights or remedies the Owner has against any person or entity using or occupying the Easement Area under, through or as an assignee of the City or a City Grantee; and (z) the obligation of the City to indemnify, defend and hold the Owner harmless as set

forth herein shall not apply to the extent any such Claims arise from the gross negligence or willful misconduct of the Owner or any successor, assign and/or grantee thereof. Nothing herein shall be construed to increase or otherwise waive any limits of liability or immunity afforded to the City under the laws of the State of Florida, including, without limitation, the limitations of liability and immunities set forth in Section 768.28 of the Florida Statutes.

8. Insurance. The City agrees to maintain a self-insurance fund, in compliance with Sections 768.28(16)(a) and 440.09, Florida Statutes, in the same manner as provided by the City with respect to other public right of ways of the City, to cover liability, workmen's compensation, and other claims that may arise against the City with respect to this Agreement or the use of the Easement Area. Owner shall maintain insurance sufficient to cover Owner's liability exposure with respect to the Easement Area, which insurance shall include Commercial General Liability Insurance, including Products-Completed Operations and Contractual Liability, in an amount not less than \$1,000,000 combined single limit per occurrence, and \$2,000,000 in the aggregate, for bodily injury and property damage, and Workmen's Compensation as required by law. Owner shall name the City as an additional named insured on the Certificates of Insurance for Commercial General Liability Insurance, and upon request of the City, shall provide City with a certificate of insurance evidencing the foregoing coverages.

9. Owner Indemnity. The Owner shall indemnify, defend and hold the City harmless from and against all Claims commenced, incurred and/or paid by or against the City to the extent the Claims arise from the design, construction, installation, operation, use, maintenance, repair and/or replacement of, or the failure to properly design, construct, install, operate, use, maintain, repair and/or replace, any Owner Improvements by the Owner. Notwithstanding anything to the contrary contained in this Agreement, the obligation of the Owner to indemnify, defend and hold the City harmless as set forth herein shall not apply to the extent any such Claims arise from the gross negligence or willful misconduct of the City, any successor or assign of the City, any City Grantee, and/or the general public.

10. Liability Limitation. The Owner, pursuant to and in accordance with the terms and conditions of this Agreement, makes the Easement Area available to the public free of charge for outdoor recreational purposes. Accordingly, to the maximum extent permitted by law, Owner may avail itself of the limitations of liability afforded pursuant to Section 375.251, Florida Statutes, to the fullest extent applicable to the Easement Area.

11. Ad Valorem Taxes and Assessments. The parties acknowledge that the Easement Area historically has been used and controlled by the City as a public right-of-way and, therefore, has been exempt from ad valorem taxation and assessments. As this Agreement is intended to ensure the continued use of the Easement Area solely for public purposes, the City covenants to cooperate with any efforts by the Owner to exempt the Easement Area from ad valorem taxation, by providing documentation to Owner, as may be reasonably necessary, to evidence the public uses of the Easement Area. Notwithstanding the foregoing, Owner shall be solely responsible for the payment of any ad valorem taxes or assessments, if any, with respect to the Easement Area.

12. Mortgages and Encumbrances. This Agreement is made subject to, and with the benefit of, all matters of record. To the extent the Easement Area is presently encumbered by a mortgage, Owner agrees to request that its mortgagee join in and consent to this Agreement and subordinate its mortgage lien to the easements granted herein. In addition, the Owner hereby reserves the right, for itself and its successors and assigns, to encumber all or any portion of the Easement Area, at any time and from time to time, with one or more mortgages, deeds of trust, or other financing instruments. Any mortgage hereafter encumbering or otherwise affecting any portion of the Easement Area shall at all times be subject and subordinate to the terms of this Agreement (and any modifications thereto, from

time to time), and any party foreclosing any such mortgage, or acquiring title by deed in lieu of foreclosure, shall acquire title subject to all of the terms and provisions of this Agreement (and any modifications thereto, from time to time). No breach of the provisions of this Agreement shall defeat or render invalid the lien of any mortgage made in good faith for value covering any part of the Easement Area and any improvements thereon.

13. Assignment. The City may, in its sole discretion, transfer or assign this Agreement at any time only to a successor municipal corporation, provided, however, that nothing herein shall be deemed a limitation on City's or any successor municipal corporation's right to permit its invitees, agents, employees, licensees and the public to use the Easement Area in accordance with this Agreement. The Owner's sale or transfer of the Benefited Land and Easement Area as a unified site shall act to transfer the benefits and obligations of this Agreement to the Owner's successor. All other transfers, assignments, and delegations are prohibited (and, if attempted, void) absent the other party's prior written consent, which consent such other party may condition or withhold in its sole discretion. A party completing any permitted transfer, assignment, or delegation will promptly provide the other party with a written instrument evidencing the completion of such transaction. Upon any transfer, assignment, or delegation completed in accordance with this Section, the rights and obligations of the party completing such transfer, assignment, or delegation will be binding only on such party's transferee, assignee, or delegatee, as the case may be, and the other party will look only to such transferee, assignee, or delegatee for performance under this Agreement. In the case of a transfer, assignment, or delegation to an organization of unit owners and/or parcel owners, the obligations of the Owner pertaining to such portion transferred, assigned, or delegated shall be binding only upon the organization of unit/parcel owners, and not upon the declarant or any particular unit/parcel owner, except to the extent otherwise specifically provided in the declaration governing such organization.

14. Enforcement. The rights, privileges, and remedies granted by this Agreement are enforceable exclusively by the City and the Owner. Nothing in this Agreement, whether express or implied, confers upon the general public any enforcement rights against the Owner. Notwithstanding anything to the contrary, neither party will be in breach of this Agreement, and no enforcement may be sought against a party through any means, unless such party (i) receives a written notice from the other party, detailing with specificity the ways in which such party is in breach of this Agreement, and (ii) fails to remedy such breach within fifteen (15) days from the date of such written notice, or, if the breach is susceptible to cure but cannot reasonably be cured within fifteen (15) days, then within forty-five (45) days from the date of such written notice, provided the breaching party promptly commences and diligently pursues the curing of such breach within the initial fifteen (15) day period.

15. Remedies. The parties may enforce the terms of this Agreement by injunctive relief, mandamus, and by any other remedies available at law or in equity, except for rescission, revocation or termination of this Agreement, or any other remedy which would deprive the public with the right to use the Easement Area in accordance with this Agreement. All rights, remedies, and privileges granted to any party under this Agreement are cumulative, and the exercise of any one or more such rights, remedies, or privileges will not preclude the exercising party from exercising any other rights, remedies, or privileges available to such party under this Agreement or at law or in equity.

16. Estoppel. The City will, no later than thirty (30) business days after a written request therefor by the Owner, by any of the Owner's mortgagees or lenders, or by anyone claiming by or through the Owner (including, without limitation, the Owner's successors, assigns, and transferees), and upon payment of the reasonable fees to cover the City's expenses for any third-party resources required to comply, issue a written estoppel certificate, in recordable form, to the requesting party, certifying as to any matter related to this Agreement that the requesting party may reasonably request



of the City, including, without limitation, (i) that this Agreement, or any particular paragraph or section of this Agreement specified by the requesting party, is in full force and effect and unmodified (or in what respects this Agreement is no longer in force or effect or has been modified); (ii) that all monies due and payable under this Agreement, if any, have been paid (or in what respects monies are owed); and (iii) that to the City's knowledge, the Owner is in compliance with this Agreement or with any particular paragraph or section hereof specified by the requesting party (or in what respects there is noncompliance). Such estoppel certificates will be binding on the City and its successors and assigns, and may be relied upon by the Owner, its mortgagees and lenders, and by all others claiming by or through the Owner. Notwithstanding the foregoing section or any representations in any estoppel certificates issued thereunder, City shall not be estopped as to matters to which it did not have knowledge.

[EXECUTION PAGES TO FOLLOW]



IN WITNESS WHEREOF, the Owner has caused these presents to be signed, sealed, executed and acknowledged on the \_\_\_\_ day of November 2019, in its name by its proper officials.

**BHI Miami Limited Corp,**  
a Delaware limited liability company

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Name: Wayne Landing  
Title: Director:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2021 by Wayne Landing, as Director of BHI Miami Limited Corp., 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 \_\_\_\_\_

**Exhibit “A”**

**Legal Description of the Easement Area**

A portion ...

**Exhibit “B”**

**Legal Description of the Benefited Parcels**

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