

EXHIBIT F

VACATION AND RIGHT OF WAY IMPROVEMENT AND MAINTENANCE
AGREEMENT FOR SEAGULL HOTEL SITE AT 100 21 STREET

THIS VACATION AND RIGHT OF WAY IMPROVEMENT AND MAINTENANCE AGREEMENT (this "Agreement") is made and entered into as of the _____ of _____ 2021, by and between the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida (the "City"), and BHI MIAMI LIMITED CORP., a Delaware Corporation (the "Owner").

RECITALS:

WHEREAS, the City holds a right-of-way dedication to the portion of the southern twenty-five (25) feet of 21 Street located approximately 150 feet east of Collins Avenue and running east for approximately 269.43 feet, consisting of approximately 6,736.28 square feet, and more particularly described in the attached Exhibit "A" (the "Roadway Segment"); and

WHEREAS, the Owner owns the property abutting the Roadway Segment, which is known as 100 21 Street and is identified by tax folio number 02-3226-001-0040 (the "Owner's Property"), more particularly described in the attached Exhibit "B"; and

WHEREAS, the Owner intends to redevelop the Owner's Property as a hotel development (the "Proposed Development"); and

WHEREAS, in conjunction with Proposed Development, the Owner has requested that the City vacate the Roadway Segment, and has submitted its application to the City's Public Works Department with respect thereto; and

WHEREAS, the Proposed Development shall be developed as a unified development site, and the former right of way and the Owner's Property would be joined via a covenant in lieu of unity of title following the effective date of the vacation, to permit the Owner to utilize the floor area associated with the Roadway Segment within the Proposed Development; and

WHEREAS, in accordance with Article II, Sections 82-36 through 82-40, of the City Code, (1) the City obtained an independent appraisal of the fair market value of the property proposed to be vacated; (2) the proposed vacation has been transmitted to the Finance and Economic Resiliency Committee ("FERC") for its review; (3) the City's Planning Board, after a duly noticed public hearing, recommended approval of the vacation; (4) the City's Planning Department has prepared a written planning analysis that was duly submitted to the City Commission concurrent with its consideration of the proposed vacation; and (5) the title of the Resolution approving the proposed vacation was heard by the City Commission on two separate meeting dates, with the second reading accompanied by a duly noticed public hearing; and

WHEREAS, the City Commission approved the vacation of the Roadway Segment, on first reading, on February 10, 2021, and set a second and final reading of the Vacation Resolution; and

WHEREAS, the City Commission approved the vacation of the Roadway Segment, on second reading, after a duly notice public hearing through Resolution 2021-_____ on _____ 2021 (the "Vacation Resolution"); and

WHEREAS, the vacation of the Roadway Segment shall be subject to and conditioned upon the Owner's delivery of certain public benefits to the City, as set forth in this Agreement, which include: (1) the Owner making public benefit payments totaling \$7,400,000 to the City ("Public Benefit Payment"); (2) the Owner providing the City with a perpetual easement over the Roadway Segment to ensure (i) continued public use of the Roadway Segment for City access, (ii) public pedestrian and vehicular travel, and (iii) the installation and maintenance of utilities by the City; and (3) the Owner has further agreed to the installation and perpetual maintenance of additional landscaping adjacent to the Owner's Property within the City's Beach Access and Beachwalk area depicted in Exhibit "C" to be memorialized in the instant Agreement.

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

1. Recitals. The above recitals are true and correct and incorporated herein by reference.

2. Public Benefit Payment. The Owner shall make the Public Benefit Payment contribution to the City in several payments, as follows:

- a. The Owner shall make the first payment to the City, in the amount of \$1,000,000, within thirty (30) days following Historic Preservation Board approval for the Proposed Development becoming final and non-appealable (the "First Installment"). The First Installment shall be refundable until the vacation of the Roadway Segment is effective, as set forth in Section 3.
- b. The Owner shall make the second payment, in the amount of \$4,000,000, prior to the issuance of a full building permit for the Proposed Development (the "Second Installment"). The vacation of the Roadway Segment shall be effective as of the date the Owner makes the Second Installment. Upon the Owner's payment of the Second Installment, both the First Installment and Second Installment shall be non-refundable.
- c. The Owner shall make the third payment, in the amount of \$2,400,000, prior to requesting the City's issuance of a temporary certificate of occupancy or temporary certificate of completion allowing public

occupancy (the "TCO"), or a certificate of occupancy or certificate of completion (the "CO"), whichever comes first, for the Proposed Development (the "Final Installment Payment"). This shall not preclude the issuance of a TCO allowing for the stocking and training of staff before the Owner makes the Final Installment Payment. The Final Installment shall be non-refundable.

3. Conditions Precedent to Issuance of Certificate of Occupancy. Owner acknowledges that the Public Benefit Payment is essential consideration for the City's vacation of the Roadway Segment. Accordingly, Owner agrees that the City shall not issue a TCO allowing public occupancy or CO (in whole or in part), until the Owner has made the Final Installment Payment, and that based on Owner's agreement, the City shall condition and withhold the issuance of the TCO or CO for the Proposed Development until such time as the Final Installment Payment is made.

4. Closing and Grant of Easement.

a. Within ten (10) days of the Owner making the Second Installment Payment described in Section 2(b), the parties shall schedule a closing whereby: (i) the City shall release its exclusive easement and convey its interests in the Roadway Segment to the Owner, via quit claim deed, in a form acceptable to the City in its reasonable discretion, pursuant to and subject to the terms of the Vacation Resolution; and (ii) the Owner shall simultaneously execute the perpetual Roadway Easement in favor of the City pursuant to the easement agreement substantially in the form of Exhibit "D" attached hereto and incorporated herein by this reference.

b. At the closing, Owner shall also execute and deliver the unity of title joining the Roadway Segment with the Owner's Property as part of a unified development site, in a form acceptable to the City, which unity of title shall be binding on Owner and its successors and assigns.

c. Owner acknowledges that until the Closing, no application for a Building Permit for the Proposed Development may lawfully be approved (and no Building Permit may be issued) without the City's joinder to such application while the City is the owner of the Roadway Segment. The City agrees, upon Owner's request, to join any application for a Building Permit, but a Building Permit shall not be issued until the Closing. Notwithstanding the foregoing, the City may revoke such proprietary consent if the Owner terminates this Agreement or has failed to make the first payment under Paragraph 2(a) of this Agreement, and, upon such revocation, the City may, in its governmental capacity, withhold issuance of any Building Permit for the Proposed Development which requires the City's proprietary consent for issuance.

5. Reverter Clause. The City's quit claim deed for the Roadway Segment shall contain a reverter clause, to provide for the Roadway Segment to revert back to the City in the event the Owner fails to satisfy all conditions of the Vacation Resolution and this Agreement. The reverter shall terminate upon the Owner's delivery of the Final Installment payment.

6. Installation and Maintenance of Beachwalk Improvements. Subject to necessary City approvals, the Owner shall design, fund, install, maintain and repair the following enhancements (the "Enhancements") within the public Beachwalk Area (the "City Property") adjacent to the Owner's Property as depicted on the attached Exhibit "C:"

- (a) Lighting;
- (b) Landscaping;
- (c) Irrigation for landscaping; and
- (d) Pedestrian walkways providing access to the Owner's Property.

The Enhancements shall be substantially consistent with those depicted on Exhibit "C", and shall be installed prior to the issuance of a Final Certificate of Occupancy for the Proposed Development. The Owner shall install and maintain all Enhancements in a manner consistent with the quality the Owner provides to the open areas of the Owner's Property and in accordance with the City's Routine Ground Maintenance Specifications, attached hereto and incorporated herein as Exhibit "E." All Enhancements shall be installed and maintained at Owner's sole cost and expense. In the event Owner fails to perform any maintenance or repair work as required under this Agreement, and in addition to the City's rights as contained in Section 10, the City shall notify Owner of Owner's failure to perform said maintenance or repair work. If Owner has not commenced said maintenance or repair work within two (2) days (for work necessary to maintain public safety) or seven (7) days (for all other work) following notice from the City, City has the right to remove, maintain and repair Enhancements, and charge Owner all costs associated with all such work. If the Owner shall not pay such bill within 15 days or receipt, then interest shall accrue on the unpaid amount from the time it was expended until paid at the maximum interest rate permitted by law, and the City shall be entitled to all collection costs, including attorney's fees and costs, for enforcement of the Owner's payment obligation. The Owner and City shall enter into a separate Maintenance and Installation Agreement to be recorded in the public records of Miami-Dade County incorporating the provisions of this Section 6, attached to this Vacation Agreement as Exhibit "F".

7. Monitoring of the City Property. The Owner shall include the City Property within its security monitoring plan for the Owner's Property to the extent authorized by the City and allowable under applicable law. Such authorized security monitoring plan shall require, at a minimum, 24/7 video recording of the City Property and all such video recordings shall be retained by the Owner for a period of at least thirty (30) days. As the Owner's security staff only has limited (citizen) arrest powers, and in order to enhance public safety within the City Property, the Owner's security staff shall coordinate any enforcement action pertaining to alleged criminal law violation(s) with the Miami Beach Police Department.

8. Cooperation. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against the City which arise out of the

matters relating to this Agreement, Owner shall provide the City with all pertinent information and reasonable assistance, in the defense or other disposition thereof.

9. Recording and Term. This Agreement shall be recorded in the Public Records of Miami-Dade County, Florida, at the cost of the Owner. The obligations set forth in this Agreement are intended to be covenants that will run with the title to the Roadway Segment, which shall be binding on the Owner, and its heirs, successors, assigns, personal representatives, mortgagees and lessees, and against all persons claiming by, through or under any of them. The Owner's obligations under this Agreement run with the land and are not capable of being rejected under 11 U.S.C. §365. The obligations associated with the installation of improvements in Paragraph 5 shall terminate upon the City's acceptance of the improvements through the issuance of a Certificate of Occupancy for the Proposed Development. The maintenance obligations in Paragraph 5 shall remain in full force and effect and shall be binding upon the parties, their successors in interest and assigns for an initial period of thirty (30) years from the date this instrument is recorded in the public records, and shall be automatically extended for successive periods of ten (10) years, unless modified, amended or released prior to the expiration thereof.

10. Force Majeure. The time for the installation, maintenance, and repair of the Enhancements will be tolled due to force majeure events (including, without limitation, strikes, lockouts, acts of God, pandemics, hurricanes and severe weather, and other causes beyond the control of either party) ("Force Majeure Event"). In no event shall "Force Majeure Event" include economic hardship or financial inability to perform. Any party claiming such Force Majeure Event shall deliver written notice to the other party of such Force Majeure Event within twenty-one (21) days after first becoming aware of the occurrence thereof, which notice shall describe in reasonable detail the events giving rise to the Force Majeure Event; and such Party shall diligently attempt to remove, resolve or otherwise seek to mitigate such delay and keep the other party advised with respect thereto. Time is of the essence with respect to this provision, and any failure by a party to timely deliver such notice of a Force Majeure Event shall be deemed a waiver of such party's right to delay performance as a result of such Force Majeure Event.

11. Default.

(a) If Owner breaches its obligations as specified herein (and same are not waived in writing by the City), then the City shall give Owner written notice specifying the nature of the default and Owner shall have thirty (30) days for a non-monetary default and five (5) days for a monetary default, after receipt of such notice within which to cure the specified default; provided, however, if the nature of such non-monetary default is such that the same cannot reasonably be cured within such thirty (30) day period, Owner shall not be deemed to be in default if Owner shall, within such period, commence such cure and thereafter diligently prosecute the same to completion; provided further, however, that the maximum cure period for any default hereunder shall not exceed ninety (90) days from the date of the initial written notice of default from the City to Owner. If the default is not cured within the applicable cure period, or if Owner becomes the subject of

any bankruptcy or insolvency proceeding, then the City may, on written notice to Owner, terminate this Agreement.

(b) If the City breaches its obligations as specified herein (and same are not waived in writing by Owner), then Owner shall give the City written notice specifying the nature of the default and the City shall have thirty (30) days after receipt of such notice, in the case of a non-monetary default, within which to cure the specified default; provided, however, if the nature of such default is such that the same cannot reasonably be cured within such thirty (30) day period, the City shall not be deemed to be in default if the City shall, within such period, commence such cure and thereafter diligently prosecute the same to completion; provided further, however, that the maximum cure period for any default hereunder shall not exceed ninety (90) days from the date of the initial written notice of default from Owner to the City. If the default is not cured within the applicable cure period, then Owner may, on written notice to the City, terminate this Agreement.

12. Representations and Warranties by the City. The City represents and warrants to Owner that (a) the City has all necessary power to execute and deliver this Agreement and perform all its obligations hereunder, (b) this Agreement has been duly authorized by all requisite action on the part of the City and is a valid and legally binding obligation of the City enforceable in accordance with its terms, and (c) neither the execution and delivery of this Agreement by the City nor the performance of its obligations hereunder will result in the violation of any law, rules or regulations or any other agreement to which the City is a party or is otherwise bound.

13. Representations and Warranties by Owner. Owner represents and warrants to the City that (a) Owner is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, is authorized to transact business under the laws of the State of Florida and has all necessary power to execute and deliver this Agreement and perform all its obligations hereunder, (b) this Agreement has been duly authorized by all requisite action on the part of Owner and is a valid and legally binding obligation of Owner enforceable in accordance with the terms, and (c) neither the execution and delivery of this Agreement by Owner nor the performance of its obligations hereunder will result in the violation of any provision of its articles of incorporation or any other organizational or governing document as amended to date, or will conflict with (i) any law or any order or decree of any court or governmental instrumentality having jurisdiction or (ii) any other agreement to which Owner is a party or is otherwise bound.

14. Automatic Stay. The parties agree that in the event of a bankruptcy filing by the Owner, that the enforcement of the City's rights hereunder are a proper exercise of its police or regulatory powers and therefore such enforcement of the Agreement by the City in the event of a bankruptcy filing by the Owner is not prohibited by the automatic stay provisions of 11 U.S.C. §362(a). Notwithstanding, to the extent applicable, Owner agrees for good and valuable consideration to waive the provisions of 11 U.S.C. §362(a) as it relates to the ability of the City to enforce its rights under the Agreement.

15. Successors and Assigns. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns.

16. Notice. All notices, demands, requests, consents and approvals which may, or are required to, be given by any party to any other party thereunder shall be in writing and either (a) personally delivered, (b) transmitted by fax, (c) sent by United States mail, registered or certified, postage prepaid, return receipt requested, or (d) sent by a nationally recognized overnight delivery service, freight prepaid, return receipt requested, and addressed as follows, and shall be deemed given upon receipt if delivered personally, upon the sending machine printing a confirmation of transmission, if transmitted by fax, or upon the date of delivery (or refusal to accept delivery) on a business day (or the next succeeding business day, if not delivered on a business day), as evidenced by the return receipt if sent pursuant to subsection (c) or (d) above, at the address specified below, or to such other addresses as either party may from time to time designate in writing and delivery in a like manner. Notice given by an attorney for either party shall be deemed as effective notice given by such party.

The City: City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
Attn: City Manager
Fax: (305) 673-7782

With a copy to: City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
Attn: City Attorney
Fax: (305) 673-7002
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
Attn: Roy Coley, Public Works Director
Fax: (305) 673-7028

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.

17. Insurance.

(a) City Election to Self-Insure. The City has elected to self-insure the City Property against physical damage and against liability for loss, damage or injury to

property or persons that might occur on the City Property or to the Enhancements located on the City Property.

(b) Owner's Insurance. Owner shall obtain and maintain a liability insurance policy in the covered amount of at least \$1,000,000 per incident to provide compensation for personal injuries or related claims stemming from any error, omission, negligence, or misconduct on the part of the Owner, or any of its respective officers, agents, servants, employees, contractors in the installation or maintenance of the Enhancements on the City Property.

18. Indemnification by Owner. Owner shall indemnify, hold and save the City, and its officers, agents, contractors, and employees, whole and harmless and, at City's option, defend same, from and against all claims, demands, actions, damages, loss, cost, liabilities, expenses, and judgments of any nature recovered from or asserted against City on account of this Agreement or injury or damage to person(s) or property, to the extent that any such claim, damage or injury may be incident to, arise out of, or be caused, either proximately or remotely, the Enhancements. Owner shall and will pay all costs and expenses, including reasonable attorney's fees and court costs, incurred by or imposed upon the City by virtue of any litigation brought by third parties against the City, including appeals, alleging injury or damage to person(s) or property due to the installation or maintenance of the Enhancements .

19. Partial Invalidity. In the event that any one or more of the phrases, sentences, clauses, or paragraphs contained in this Agreement shall be declared invalid by final and unappealable order, decree, or judgment of any court, this Agreement shall be construed as if such phrases, sentences, clauses, or paragraphs had not been inserted in this Agreement, it being intended by the parties that the remaining provisions of this Agreement shall remain in full force and effect notwithstanding such invalidation.

20. No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, limited liability company or other arrangement between the City and Owner other than that of owner and independent contractor. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person not a party hereto, and no such other person shall have any right or cause of action thereunder.

21. Governing Law. This Agreement and the rights of the parties hereto shall be governed and construed in accordance with the laws of the State of Florida and all claims related to this Agreement shall be brought and prosecuted in Miami-Dade County, Florida, which shall be the exclusive venue for all such matters. Before resorting to litigation, the parties agree to use commercially reasonable, good faith efforts to resolve disputes without litigation as hereinafter provided. In the event of a dispute which the parties cannot resolve directly between themselves within ten (10) days, the parties agree to submit to non-binding mediation for up to a period of thirty (30) days after either party sends written notice to the other party demanding mediation (but no longer unless the parties mutually agree) to resolve the dispute using an independent, trained mediator agreed to by both parties. If the dispute remains unresolved after such thirty (30) day

period or if the parties cannot agree upon a mediator within fifteen (15) days after the demand for mediation, either party may proceed to commence litigation. The parties shall equally split the cost of the mediator.

22. Enforcement. In the event of any dispute under this Agreement concerning the meaning or interpretation of any provision of this Agreement, the party not prevailing in such dispute shall pay any and all costs and expenses reasonably incurred by the other party in enforcing or establishing its rights thereunder, including, without limitation, court costs and reasonable attorney's fees before and at trial and through all appellate levels.

23. Entire Agreement. This Agreement constitutes the entire agreement between the City and Owner with respect to the subject matter hereof, and supersedes and replaces all prior or contemporaneous discussions, negotiations, letters, memoranda or other communications, oral or written, with respect to the subject matter hereof. This Agreement may only be subsequently modified or amended in a writing signed by both the City and Owner.

24. Amendments. No change, amendment or modification of this Agreement shall be valid or binding upon the parties hereto unless such change, amendment, or modification shall be in writing and duly executed by all parties hereto.

25. No Waiver. Any waiver by any party of a breach of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any other breach of such provision or of any breach of any other provision of this Agreement. The failure of a party to insist upon strict adherence to any term of this Agreement on one or more occasions shall neither be considered a waiver nor deprive that party of any right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be in writing and signed by the party to be charged therewith.

26. Waiver of Jury Trial. The parties to this Agreement hereby agree not to elect a trial by jury of any issue triable of right by jury, and waive any right to trial by jury fully to the extent that any such right shall now or hereafter exist with regard to this Agreement or any action or proceeding in which more than one of such parties may be involved. This waiver of right to trial by jury is given knowingly and voluntarily by the parties hereto, and is intended to encompass individually each instance and each issue as to which the right to trial by jury would otherwise accrue. The parties hereto are each hereby authorized to file a copy of this paragraph in any proceeding as conclusive evidence of this waiver.

27. Exculpation of the City. Notwithstanding anything contained in this Agreement to the contrary, upon the occurrence of any claim under this Agreement or termination caused by the City's default, the recourse of Owner against the City shall be limited to the actual damages incurred by Owner resulting from the City's material breach under this Agreement (after expiration of any applicable notice and cure period) or the City's willful misconduct or gross negligence, it being agreed that any employees or agents of the City shall never be personally liable for any such judgment and are hereby unconditionally and irrevocably released, satisfied and forever discharged of and from any and all actions, causes of action, claims, demands, losses, costs and expenses,

whether direct, contingent or consequential, liquidated or unliquidated, at law or in equity, that Owner has or may or shall have.

28. Counterparts; Facsimile. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A facsimile signature shall be deemed for all purposes to be an original.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

EXECUTED as of the date first above written in several counterparts, each of which shall be deemed an original, but all constituting only one agreement.

FOR OWNER:

BHI Miami Limited Corp.

Print Name: _____

By: _____

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

EXECUTED as of the date first above written in several counterparts, each of which shall be deemed an original, but all constituting only one agreement.

FOR CITY:

CITY OF MIAMI BEACH,
a Florida Municipal Corporation

Print Name: _____

By: _____
Name: Dan Gelber
Title: Mayor

Print Name: _____

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

The foregoing instrument was acknowledged before me this ____ day of _____
2021 by Dan Gelber, as Mayor of the City of Miami Beach, Florida, on behalf of the City.
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
