

HOLD HARMLESS AGREEMENT

WHEREAS, the undersigned, Philippe Miami, LLC ("Applicant"), is the tenant of the property legally described in Exhibit A; and located at 1 Collins Avenue, CU-1 and CU-2 (the "Property")

WHEREAS, RKR Zeus LLC ("Owner"), is the owner of the Property and consented to the Applicant's proposed Conditional Use Permit ("CUP") application to the City of Miami Beach (the "City") Planning Board ("PB");

WHEREAS, the Property is uniquely affected by a proposed ordinance to amend certain provisions of the Miami Beach City Code (the "Code"), as the proposed ordinance seeks to amend the definition of floor area to restore a floor area exemption for certain below grade areas that was in place when the Property was developed; (the "Code Amendment"); and

WHEREAS, the Applicant's CUP application seeks to establish a Neighborhood Impact Establishment at the Property (the "Project"); and

WHEREAS, the Applicant intends to file a Design Review Board ("DRB") application for certain exterior improvements to the Property; and

WHEREAS, the Code Amendment will permit the Owner to utilize surplus floor area to enclose certain areas of the Property to serve as back of house for the Project; and

WHEREAS, the Applicant has applied to the PB for approval of a CUP for the Project and intends to apply to the DRB for design review approval of exterior modifications; (the "Applications"); and

WHEREAS, the Planning Director has required the submittal of a hold harmless agreement, approved by the City Attorney's Office, in connection with allowing the Applications to proceed prior to final adoption of the Code Amendment by the City Commission; and

WHEREAS, the Applicant agrees that an approval of the Applications does not vest the Property with any additional development rights until such time as the Code Amendment is adopted by the City Commission and becomes effective.

NOW THEREFORE; in consideration of the above premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Applicant hereby agrees as follows:

1. To indemnify and hold harmless and forever release and discharge the City of Miami Beach, its officers, employees, personnel and agents from any and all liability, damages or losses arising out of, or in connection with the the approval of either or both of the Applications prior to the approval of the Code Amendment, including the costs of any suits, attorney's fees and other expenses in connection therewith, including trial and appeals therefrom, except for liability, damages and losses arising out of any City final action in contravention of law ("willful misconduct").
2. The Applicant affirmatively disclaims and waives all rights, if any, to hold the City of Miami Beach, and the City's agencies, its officers, employees, personnel and agents, to any liability, including damages, caused in the event that the Applications, if approved, cannot go forward to building permit or are delayed for any reason due to the City Commission's failure to adopt the Code Amendment.
3. The Applicant agrees to waive all rights to any additional development rights for the Property with regard to approval of the Applications by the PB and/or DRB until such time as the Code Amendment is adopted by the City Commission and becomes effective.
4. To defend the City with counsel of its own choosing, pay or settle any liabilities and claims against the City of Miami Beach, and the City's officers, employees, personnel and agents arising out of, or in connection with, approval of the Applications and any appeal therefrom; except as to any liabilities or claims arising from the City's willful misconduct.

5. The Applicant acknowledges that the acceptance of the building permit to construct in accordance with the approval of the Applications is a complete estoppel to it, its heirs, successors and assigns as to any rights, real, apparent or otherwise, that they may have to challenge the efficacy of any condition hereof.
6. No building permit, Temporary Certificate of Occupancy (TCO), Certificate of Occupancy (CO) or Business Tax Receipt (BTR) for any portion of the new construction contemplated in the Applications, as approved by the PB and DRB, shall be issued until the Code Amendment is approved by the City Commission (assuming no material changes to the Code Amendment occur during adoption, which would require modifications to the underlying Applications).
7. In the event that the Code Amendment results in changes to the physical layout of the buildout contemplated in the Applications, as approved by the PB and DRB, no TCO, CO, or BTR shall be issued until the Applicant complies with the Code Amendment.
8. The person signing below represents that he has authority to bind the Applicant, as set forth herein.

APPROVED AS TO FORM & LANGUAGE
& FOR EXECUTION

DocuSigned by:

8D8CB88CCAB8460...

City Attorney

5/19/2023

Date

DocuSigned by:


B60301DF42AF475...

City Planning Director

5/19/2023

Date

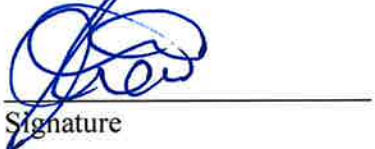
10th IN WITNESS WHEREOF, the Applicant does hereunto set its hand and seal this day of May, 2023.


 Abraham Merchant, Manager
 Philippe Miami LLC

Witnesses:

 Signature

ALEXANDER DOBEK
 Print Name


 Signature

JOHANNA CHAN
 Print Name

STATE OF NEW YORK)
) SS
 COUNTY OF NEW YORK)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 10th day of May, 2023, by Abraham Merchant, as Manager of Philippe Miami LLC, a Florida limited liability company. He/she is personally known to me or has produced _____ as identification and did not take an oath.

Notary Public-State of New York

 Print Name
 My Commission Expires: _____
RICHARD L COHN
 — NOTARY PUBLIC-STATE OF NEW YORK
 No. 02CO4876952
 Qualified in New York County
 My Commission Expires 12-14-2026