

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING THE SETTLEMENT BETWEEN THE CITY, 1500 OCEAN DRIVE CONDOMINIUM ASSOCIATION, INC., ("1500"), IL VILLAGGIO CONDOMINIUM ASSOCIATION, INC. ("IL VILLAGGIO"), OCEAN COURT, LLC, ("OCEAN COURT"), JONATHAN PLUTZIK, ("PLUTZIK"), BETSY ROSS OWNER, LLC, ALFRED BERG ("BERG"), (COLLECTIVELY, "NEIGHBORS"), AND BOOS DEVELOPMENT GROUP, INC., ("BOOS"), CVS 10346 FL, LLC ("CVS"), AND AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO TAKE THE NECESSARY AND APPROPRIATE STEPS FOR THE IMPLEMENTATION THEREOF; AND FURTHER AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE ANY DOCUMENTS AND/OR AGREEMENTS, AS REQUIRED, TO EFFECTUATE THE TERMS OF THE SETTLEMENT.**

**WHEREAS**, 1500 Ocean Drive Condominium Association, Inc., a Florida not-for-profit corporation ("1500"), Il Villaggio Condominium Association, Inc., a Florida not-for-profit corporation ("Il Villaggio"), Ocean Court, LLC, a Florida limited liability company ("Ocean Court"), Jonathan Plutzik, a natural person ("Plutzik"), Betsy Ross Owner, LLC, a Florida limited liability company, and Alfred Berg, a natural person, ("Berg"), (collectively, "Neighbors"), and Boos Development Group, Inc., a Florida corporation ("Boos"), CVS 10346 FL, LLC, a Delaware limited liability company ("CVS"), and City Of Miami Beach ("City"), a Florida municipal corporation (collectively "Respondents", and all Respondents and Neighbors collectively, have engaged in a series of appeals and challenges to development approvals; and

**WHEREAS**, 1500 manages and maintains a 114-unit condominium and controls the common elements on that certain parcel of land located in Miami-Dade County, Florida (the "1500 Property"); and

**WHEREAS**, Il Villaggio manages and maintains a 122-unit condominium and controls the common elements on that certain parcel of land located in Miami-Dade County, Florida (the "Il Villaggio Property"), and Alfred Berg is a resident of the condominium; and

**WHEREAS**, Betsy Ross Owner, LLC, Ocean Court, LLC and Plutzik are collectively owners and operators of the Betsy Ross Hotel at 1440 Ocean Drive, (the "Betsy Ross Property"); and

**WHEREAS**, Boos and CVS obtained City of Miami Beach Historic Preservation Board ("HPB") approval and Board of Adjustment ("BOA") approval of three (3) zoning variances for the development, construction and operation of a CVS store at 1475 Collins Avenue ( the "CVS Project"); and

**WHEREAS**, the Neighbors have raised concerns with the CVS Project and have filed two (2) appeals to the circuit court in and for Miami-Dade County (a petition for writ of certiorari: Case No.: 14-112 AP, appealed by Boos and CVS to the Third District Court of Appeal via Case No. 3D15-0315, and an appeal pursuant to section 163.3215, F.S. Case No.: 14-007455-CA01) challenging the issuance of the variances by the BOA (the "CVS Project Litigation"); and

**WHEREAS**, the Betsy Ross Owner, LLC received HPB and BOA approval for an expansion of the Betsy Ross Hotel and the Carlton Hotel (the "Betsy Ross Project"); and

**WHEREAS**, Boos and CVS have raised concerns about the Betsy Ross Project and have filed certain appeals regarding that project: (i) HPB File No. 7414; Petition for Rehearing (March 24, 2014 Order "Order I"); Special Master Appeal (Order 1) Case No. HPSM-14-002; Special Master Appeal (April 22, 2014 Order "Order 2") Case No. HPSM-14-001; Special Master Appeal (October 15, 2014 Order "Order 32") Case No. HPSM-14-004; Petition for Certiorari (Order No. 1) Case No. 15-067 AP; Petition for Certiorari (Order No. 3) Case No. 15- 884 AP; and Petition for Certiorari (Order No. 1 and No. 3) Consolidated in Case No. 15-067 AP; and (ii) BOA File No. 3695; and Petition for Certiorari, Case No. 14-168 AP (collectively, the "Betsy Ross Project Litigation", and together with the CVS Project Litigation, the "Disputes"); and

**WHEREAS**, the Neighbors and the Respondents desire to resolve, settle, and dispose of any and all claims, suits, appeals and defenses that have been, could have been, or could be asserted (i) by the Neighbors directly or indirectly against or otherwise with respect to the CVS Project or (ii) by the Boos and CVS directly or indirectly against or otherwise with respect to the Betsy Ross Project, as they may be revised pursuant to this Settlement Agreement, including challenges to any City-issued approvals or permits, (iv) resolve all pending appeals of the land use decisions; and (v) to permit the CVS Project and the Betsy Ross Project to move forward to completion, all on and subject to the terms and conditions set forth in the settlement agreement.

**WHEREAS**, the parties wish to avoid the expense, delay, and uncertainty of lengthy litigation and appeals, and agree it is in their respective mutual best interests to resolve their disputes; and

**WHEREAS**, on September 25, 2017, the Mayor and City Commission held a Closed Attorney-Client Session and discussed litigation strategy and settlement; and

**WHEREAS**, pursuant to that discussion and direction, the parties have entered into a tentative settlement, subject to approval by the Mayor and City Commission, which settlement agreement is attached hereto as Exhibit 1.

**NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:** that The Mayor and City Commission hereby approve the settlement between the City and 1500 Ocean Drive Condominium Association, Inc. ("1500"), Il Villaggio Condominium Association,

Inc. ("Il Villaggio"), Ocean Court, LLC, ("Ocean Court"), Jonathan Plutzik, ("Plutzik"), Betsy Ross Owner, LLC, Alfred Berg ("Berg"), (Collectively, "Neighbors"), And Boos Development Group, Inc., ("Boos"), CVS 10346 FL, LLC ("CVS"); and authorize the City Manager and City Attorney to take the necessary and appropriate steps for the implementation thereof; and further authorizing the Mayor and City Clerk to execute any documents and/or agreements, as required to effectuate the terms of the settlement.

**PASSED and ADOPTED** this \_\_\_\_\_ day of October, 2017.

**ATTEST:**

\_\_\_\_\_  
Philip Levine, Mayor

\_\_\_\_\_  
Rafael Granado, City Clerk

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

*RLC* 10-9-17  
\_\_\_\_\_  
City Attorney Date