

## **SETTLEMENT AGREEMENT**

**THIS SETTLEMENT AGREEMENT** (this “Agreement”) is made and entered into on this 3<sup>rd</sup> day of May, 2021 (the “Effective Date”) by and among OCEAN TERRACE HOLDINGS, LLC, a foreign limited liability company, 7450 OCEAN TERRACE, LLC, a Florida limited liability company, 7436 OCEAN TERRACE, LLC, a foreign limited liability company, 7420 OCEAN TERRACE INVESTMENT, LLC, a Florida limited liability company, 7410 OCEAN TERRACE LLC, a foreign limited liability company, 7400 OCEAN TERRACE, LLC, a Florida limited liability company, 7409 COLLINS AVE INVESTMENT, LLC, a Florida limited liability company, 7421 COLLINS AVE INVESTMENT, LLC, a Florida limited liability company, 7433 COLLINS AVE INVESTMENT, LLC, a Florida limited liability company, 7439 COLLINS AVE INVESTMENT LLC, a Florida limited liability company, 7441 COLLINS AVE INVESTMENT, LLC, a foreign limited liability company (collectively, “OCEAN TERRACE”), the CITY OF MIAMI BEACH, a Florida municipal corporation (the “CITY”), and THOMAS R. MOONEY, in his official capacity as Planning Director for the City of Miami Beach, Florida (the “PLANNING DIRECTOR”). OCEAN TERRACE, the CITY, and the PLANNING DIRECTOR are collectively referred to herein as the “PARTIES” and are sometimes individually referred to as a “PARTY.”

## **WITNESSETH**

**WHEREAS**, OCEAN TERRACE and the CITY are parties to that certain Development Agreement dated July 31, 2019 (the “Development Agreement”) for the construction of a mixed-use project on the property located on the city block along Ocean Terrace and Collins Avenue

between 74th Street and 75th Street in the North Beach district of Miami Beach, Florida (the “Project”);

**WHEREAS**, OCEAN TERRACE brought an action against the CITY and PLANNING DIRECTOR in the Circuit Court for the 11<sup>th</sup> Judicial Circuit in and for Miami-Dade County, Florida, Case No. 2020-17802-CA-43 (the “Litigation”);

**WHEREAS**, all PARTIES desire to settle all claims which were asserted in the Litigation or which could have been asserted in the Litigation;

**WHEREAS**, the PARTIES wish to memorialize their settlement agreement in this document; and,

**WHEREAS**, the PARTIES agree to seek the Court’s approval of this settlement and to obtain a Court order approving it and retaining jurisdiction to enforce its terms.

**WHEREFORE**, in consideration of the foregoing, and for other good and valuable consideration contained herein, the sufficiency of which is hereby acknowledged, the PARTIES hereto covenant and agree as follows:

1. **Recitals.** The above-recitals are true and correct and are incorporated into this Agreement. For convenience only, defined terms used in this Agreement shall be assigned the same meaning as they are defined in the City Code and the Development Agreement, depending on the context and unless otherwise provided herein.

2. **Parties.** The PARTIES have settled and resolved all claims which were asserted or which could have been asserted in the Litigation upon the terms and conditions set forth herein.

3. **Contribution.** OCEAN TERRACE will make a monetary contribution in the total sum of Three Million Dollars and 00/100 cents (**\$3,000,000**) to the CITY. The payment of this contribution shall occur as follows:

- a. The **first** payment in the sum of **\$1,000,000** shall occur within 10 days of the full execution of this Agreement.
- b. The **second** payment in the amount of **\$1,000,000** shall occur on or before September 1, 2021.
- c. The **third** payment in the amount of **\$1,000,000** shall be contributed towards the 72nd Street Community Complex (a/k/a the North Beach Aquatic Center) and paid at the *earlier* of: (a) the execution of the contract for the design-build of the 72nd Street Community Complex, or (b) April 1, 2022. However, in the event the CITY does not proceed with the 72nd Street Community Complex on or before January 1, 2024, the CITY will have the right/sole discretion to use the \$1 million contribution for another North Beach project, and will communicate the project and use of those funds with OCEAN TERRACE at the time that the CITY elects to use the contribution for another North Beach project.
- d. All payments will be made by wire transfer to the trust account of Shubin & Bass, P.A. in accordance with the instructions attached as **Exhibit A**.
- e. **Remedies in the Event of Non-Payment of Any Monetary Contributions Set Forth Herein.** Failure to make any of the foregoing payments shall be deemed to be a material breach of this Agreement. In such event of non-payment, the CITY shall have the right to withhold the temporary certificate of occupancy or certificate of occupancy for the Project or any part thereof – in the CITY’s sole discretion – until the overdue payment is made.

4. **Amicable Resolution of the Floor Area Dispute.** To amicably resolve the PARTIES’ dispute about the manner and method of calculating floor area in light of the unique



factual, procedural and temporal circumstances surrounding the execution of the Development Agreement (as well as its text), the CITY agrees to exercise its discretionary authority to settle the Litigation in order to avoid the cost, risk, time, and expense of litigation, to allow OCEAN TERRACE to exclude from the calculation of floor area the following building elements within the Project that is the subject of the Development Agreement: (1) voids in floors to accommodate elevator shafts; (2) voids in floors to accommodate mechanical/ventilation/trash shafts; and (3) enclosed stairwells, including enclosed stairwells within accessory garages (collectively, (1)-(3), the "Elements"). For clarity, the Project's FAR shall be calculated in accordance with the calculations contained within the Plans submitted by OCEAN TERRACE to the City's Historic Preservation Board ("HPB") on December 16, 2019. The resolution described in the immediately preceding sentence is without prejudice to OCEAN TERRACE'S ability to increase the Project's FAR pursuant to any voter approved amendment to either the definition of "floor area" or the list of exclusions from the definition of "floor area," as set forth in the City Code. Upon receipt of the Contribution referenced in paragraph 3(a) above, the CITY shall deliver to OCEAN TERRACE an estoppel letter in the form attached hereto as **Exhibit B** (the "FAR Estoppel Letter") and shall issue such additional letters in similar form as reasonably requested by OCEAN TERRACE, its affiliates and subsidiaries, joint venture partners, partners and their successors, assigns and Lenders.

**5. Waiver of Certain Force Majeure Events.** OCEAN TERRACE agrees to waive Force Majeure Events and Economic Force Majeure for any delay that has taken place up to the Effective Date of this Agreement relating solely to the novel coronavirus pandemic. In addition, OCEAN TERRACE agrees to waive Force Majeure Events and Economic Force Majeure for

Phase 1 of the Park/Streetscape Improvements relating to all *future* delays relating solely to the novel coronavirus pandemic, with the following exceptions:

- a. No waiver for any delays caused by any governmental agency (including the CITY, County, State, or federal government) being unable or unwilling to inspect work or process permits; and
- b. No waiver for any delays caused by any government-mandated stoppage or suspension of construction related activity.

**6. Schedule for the Park/Streetscape Improvements.** OCEAN TERRACE shall adhere to the following development schedule with respect to the Park/Streetscape Improvements. This schedule shall control over any prior schedule contemplated by the PARTIES:

- a. OCEAN TERRACE shall submit a legally sufficient and complete application for HPB approval of the Park/Streetscape Improvements that complies in good faith with applicable CITY codes and regulations. Such application shall be submitted within such time to reasonably enable OCEAN TERRACE to obtain HPB approval on or before September 30, 2021.
- b. OCEAN TERRACE shall complete and submit construction drawings in approvable form into the permit workflow no later than February 1, 2022, or within four months of HPB approval, whichever occurs later.
- c. OCEAN TERRACE shall obtain a Full Building Permit for the Park/Streetscape Improvements no later than September 1, 2022, or within seven months of submission of construction drawings, whichever occurs later.

- d. OCEAN TERRACE shall commence construction and begin mobilization within 60 days after obtaining a Full Building Permit for the Park/Streetscape Improvements.
- e. The CITY shall exercise good faith/diligent efforts to expedite the review of the Park/Streetscape Improvements and building permit application. In addition, the CITY shall ensure the prompt processing of plans.
- f. OCEAN TERRACE shall use good faith and diligent efforts to expeditiously address and respond to all permit comments.
- g. The failure by OCEAN TERRACE to commence construction in accordance with subparagraph 6(d) shall constitute a default under this Agreement and shall trigger the PARTIES' rights and remedies under the Development Agreement relating to developer defaults, notices, cure periods, and enforcement of performance, including but not limited to the CITY'S ability – following the expiration of all applicable cure periods – to draw funds in accordance with the provisions of paragraph 5(d) of the Development Agreement to complete the then-remaining work for the design and construction of Phase 1 of the Park/Streetscape Improvements.

7. **Settlement and Dismissal of Lawsuit.** Within 7 days of approval and full execution of this Agreement, OCEAN TERRACE shall file the Joint Stipulation for Dismissal with Prejudice, requesting the Court to enter an Agreed Final Order dismissing the Litigation with prejudice with a reservation of jurisdiction to enforce the PARTIES' Settlement Agreement stipulating that all PARTIES shall bear their own attorneys' fees and costs, attached hereto as



**Exhibit C.** Should the Court refuse to enter the Agreed Final Order (as described herein), OCEAN TERRACE shall promptly file a Notice of Voluntary Dismissal With Prejudice of the Litigation.

**8. Release by OCEAN TERRACE.** Except for performance required under this Agreement and the Development Agreement, OCEAN TERRACE, on behalf of itself and each of its members (direct and indirect), principals, affiliates, subsidiaries, directors, officers, managers, employees, attorneys, successors and assigns, hereby forever releases and discharges the CITY, including without limitation any agency or regulatory body of the CITY, and its elected officials, employees, agents and representatives, from each and every right, claim, debt, cause of action, demand, suit, liability, or right of action of any nature whatsoever (including without limitation attorneys' fees and costs), whether asserted or unasserted, known or unknown, relating to or arising from the subject matter of the Litigation or the allegations of the Litigation, and all facts or alleged evidence that were or could have been brought in those proceedings by the CITY or OCEAN TERRACE, and the interpretation of the City's Land Development Regulations to exclude the Elements from the calculation of floor area.

**9. Release by the CITY.** Except for performance required under the Development Agreement and this Agreement and in conjunction with and subject to the dismissal of the Litigation in accordance with Section 7 hereof, the CITY hereby forever releases and discharges OCEAN TERRACE from each and every right, claim, debt, cause of action, demand, suit, liability, or right of action of any nature whatsoever (including without limitation attorneys' fees and costs), whether asserted or unasserted, known or unknown, involving, relating to or arising from the subject matter of the Litigation or the allegations of the Litigation, and all facts or alleged evidence that were or could have been brought in those proceedings by the CITY or OCEAN TERRACE,

and the interpretation of the City's Land Development Regulations to exclude the Elements from the calculation of floor area for the Project.

**10. Miscellaneous.** This Agreement may be executed in one or more counterparts, or by the PARTIES in separate counterparts, each of which when so executed shall be deemed an original. This Agreement shall be governed by the laws of the State of Florida. If any provision of this Agreement is deemed invalid or unenforceable, the validity or enforceability of the other provisions of this Agreement shall not be affected. The failure of a PARTY to require performance of any provision of this Agreement shall in no manner affect the PARTY's right at a later time to enforce such provision.

**11. Entire Agreement.** This Agreement and the Development Agreement, and all documents executed by the PARTIES in connection with the Project, represents and contains the entire agreement and understanding among the PARTIES hereto with respect to all issues raised or that could have been raised regarding the subject matter of this Agreement. Each of the PARTIES acknowledges and agrees that there are no oral communications or understandings contrary, different, in addition to, or that in any way restrict those identified agreements.

**12. Notices.** All notices provided pursuant to this Agreement shall be in writing and sent to:

- a. City Manager with a copy to the City Attorney and Jeffrey S. Bass, Esq. at [jbass@shubinbass.com](mailto:jbass@shubinbass.com); and
- b. Sandor Scher at [sscher@clarocorp.com](mailto:sscher@clarocorp.com) with a copy to Joseph L. Rebak, Esq. at [joseph.rebak@akerman.com](mailto:joseph.rebak@akerman.com).

**13. Attorneys' Fees.** In any litigation arising out of or relating to this Agreement, including but not limited to any claims seeking to enforce any term of this Agreement, the prevailing PARTY in any such proceeding shall be entitled to collect from the non-prevailing



PARTY all of its reasonable attorneys' fees, paralegals' fees, costs, and expert fees, including any attorneys' fees and costs on appeal and any attorneys' fees and costs associated with proving the reasonableness of a claim for attorneys' fees.

14. **Waiver of Jury Trial.** EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY IRREVOCABLY WAIVES (TO THE EXTENT PERMITTED BY APPLICABLE LAW) ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING UNDER OR RELATING TO THIS AGREEMENT OR OTHERWISE ARISING OUT OF THE RELATIONSHIP BETWEEN THE PARTIES AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

15. **Legal Counsel.** Each PARTY represents and warrants that they have been fully represented by counsel throughout all stages of the negotiation leading up to this Agreement and all PARTIES are authorized to sign the Agreement on behalf of the entity in which they are associated.

16. **Joint Defense Agreement.** OCEAN TERRACE and the CITY shall jointly defend any challenge to this Agreement and OCEAN TERRACE shall fully indemnify and hold the CITY harmless in connection with any such challenge to the Agreement or any claims challenging any approvals (including, without limitation, any administrative approvals, building permits, or any decisions by the City's Planning Board, Historic Preservation Board, or Board of Adjustment) that may be provided by the CITY pertaining to the floor area for the Project, or otherwise challenging the applicability of any law or ordinance to this Agreement (including, without limitation, the City Charter) (in each instance as it relates solely to the Project, including any related appeals, a "Lawsuit"). OCEAN TERRACE shall further indemnify and hold the CITY harmless from and

against all actual damages, losses, liabilities, fees, costs and expenses (including reasonable attorneys' fees, costs and expenses) of any and every kind arising out of or relating to any such Lawsuit. For the avoidance of doubt, the CITY and OCEAN TERRACE shall each possess the right to retain independent counsel to separately defend the Agreement and to control the manner and method of their individual defense. The CITY agrees to reasonably cooperate with OCEAN TERRACE in connection with the defense of any such Lawsuit in order to minimize the attorneys' fees, costs and potential exposure associated with defending the Lawsuit. This paragraph shall survive the expiration or termination of this Agreement.

**17. No City Warranty or Representation.** The CITY has not made, does not make and will not make, and OCEAN TERRACE has not relied upon, any representation or warranty, express or implied, as to any requirement under any law or ordinance including, without limitation, the City Charter, City Code, and Florida Statutes, relating to this Agreement and the resolution of the disputed floor area issues or the implementation of any settlement of disputed floor area issues, through any approval provided by the CITY for the Project. OCEAN TERRACE expressly assumes all risks with respect to any of the foregoing matters. In furtherance of the foregoing, OCEAN TERRACE hereby waives any claim as to the enforceability of this Agreement.

In witness thereof, the parties have executed this Agreement as effective as of the date and year first written above.

***[Signature Pages Follow]***

**CITY OF MIAMI BEACH, a Florida municipal corporation**

By: [Signature]  
Name: DAN GELBER  
Title: Mayor  
Date: 5/4/21

**ATTEST:**

[Signature] 5/4/21  
**Rafael E. Granado, City Clerk**



**THOMAS R. MOONEY, in his official capacity as Planning Director of the City of Miami Beach, Florida**

By: [Signature]  
Name: THOMAS R. MOONEY  
Title: Planning Director for the City of Miami Beach, Florida  
Date: 5-3-2021

**7450 OCEAN TERRACE LLC, a Delaware limited liability company**

By: OCEAN TERRACE HOLDINGS, LLC, a Delaware limited liability company, its sole member

By: [Signature]  
Name: SANDOR SCHER  
Title: Manager  
Date: 4/22/2021

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

[Signature] 4-30-21  
City Attorney PAZ Date



**7436 OCEAN TERRACE LLC, a Delaware limited liability company**

By: OCEAN TERRACE HOLDINGS, LLC, a Delaware limited liability company, its sole member

By: 

Name: SANDOR SCHER

Title: Manager

Date: 4/22/2021

**7420 OCEAN TERRACE INVESTMENT, LLC, a Florida limited liability company**

By: OCEAN TERRACE HOLDINGS, LLC, a Delaware limited liability company, its sole member

By: 

Name: SANDOR SCHER

Title: Manager

Date: 4/22/2021

**7410 OCEAN TERRACE LLC, a Delaware limited liability company**

By: OCEAN TERRACE HOLDINGS, LLC, a Delaware limited liability company, its sole member

By: 

Name: SANDOR SCHER

Title: Manager

Date: 4/22/2021

**7400 OCEAN TERRACE, LLC, a Florida limited liability company**

By: OCEAN TERRACE HOLDINGS, LLC, a Delaware limited liability company, its sole member

By: 

Name: SANDOR SCHER

Title: Manager

Date: 4/22/2021

**7409 COLLINS AVE INVESTMENT, LLC, a Florida limited liability company**

By: OCEAN TERRACE HOLDINGS, LLC, a Delaware limited liability company, its sole member

By: 

Name: SANDOR SCHER

Title: Manager

Date: 4/22/2021

**7421 COLLINS AVE INVESTMENT, LLC, a Florida limited liability company**

By: OCEAN TERRACE HOLDINGS, LLC, a Delaware limited liability company, its sole member

By: 

Name: SANDOR SCHER

Title: Manager

Date: 4/22/2021

**7433 COLLINS AVE INVESTMENT, LLC, a Florida limited liability company**

By: OCEAN TERRACE HOLDINGS, LLC, a Delaware limited liability company, its sole member

By: 

Name: SANDOR SCHER

Title: Manager

Date: 4/22/2021

**7439 COLLINS AVE INVESTMENT, LLC, a Florida limited liability company**

By: OCEAN TERRACE HOLDINGS, LLC, a Delaware limited liability company, its sole member

By: 

Name: SANDOR SCHER

Title: Manager

Date: 4/22/2021

**7441 COLLINS AVE INVESTMENT, LLC, a Delaware limited liability company**

By: OCEAN TERRACE HOLDINGS, LLC, a Delaware limited liability company, its sole member

By: 

Name: SANDOR SCHER

Title: Manager

Date: 4/22/2021



**OCEAN TERRACE HOLDINGS, LLC, a Delaware limited liability company**

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

Name: SANDOR SCHER

Title: Manager

Date: 4/22/2021

# **Exhibit “A”**

The wiring instructions, as follows:

Shubin & Bass, P.A.

Regions Bank

3516 Main Highway

Coconut Grove, FL 33130

ABA#062005690

Trust Account #0209786783



# **Exhibit “B”**

## **FAR ESTOPPEL LETTER**

To Ocean Terrace Holdings LLC, its affiliates and subsidiaries, joint venture partners, partners (collectively, "OTH") and their successors, assigns and Lenders.

Reference is made to: (i) the construction of a mixed-use project on the property located on the city block along Ocean Terrace and Collins Avenue between 74th Street and 75th Street in the North Beach district of Miami Beach, Florida (the "Project"); (ii) the Development Agreement by and between OTH and the City of Miami Beach ("City"), dated July 31, 2019 (the "Development Agreement"); and (iii) the Settlement Agreement in Eleventh Judicial Circuit Court case number 2020-17802-CA-43, by and between OTH, the City, and Thomas R. Mooney, in his official capacity as Planning Director, dated April 30, 2021 (the "Settlement Agreement").

This letter constitutes confirmation by the City that by operation of the Settlement Agreement and the Development Agreement the Project's FAR was calculated in accordance with the calculations contained within the Plans submitted by OTH to the City's Historic Preservation Board ("HPB") on December 16, 2019. This letter constitutes further confirmation that by operation of the Settlement Agreement and the Development Agreement, the FAR calculations for the Project, as it may be modified, shall constitute legal conforming FAR for the Project. Consequently, such FAR may be rebuilt in the event of damage and destruction. Further, the confirmations contained within this paragraph are without prejudice to the ability to increase the Project's FAR pursuant to any voter approved amendment to either the definition of "floor area" or the list of exclusions from the definition of "floor area," as set forth in the City Code, subsequent to December 16, 2019.

# **Exhibit “C”**



IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION  
Complex Business Litigation Section

CASE NO. 20-17802 CA 43

OCEAN TERRACE HOLDINGS, LLC, a  
Foreign Limited Liability Company, et al.,

Plaintiffs,

vs.

CITY OF MIAMI BEACH, a Florida Municipal  
Corporation; and THOMAS R. MOONEY, in  
his official capacity as the Planning Director for  
the City of Miami Beach, Florida,

Defendants.

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**JOINT STIPULATION FOR DISMISSAL WITH PREJUDICE**

Plaintiffs Ocean Terrace Holdings, LLC, 7450 Ocean Terrace, LLC, 7436 Ocean Terrace, LLC, 7420 Ocean Terrace Investment, LLC, 7410 Ocean Terrace LLC, 7400 Ocean Terrace, LLC, 7409 Collins Ave Investment, LLC, 7421 Collins Ave Investment, LLC, 7433 Collins Ave Investment, LLC, 7439 Collins Ave Investment, LLC, and 7441 Collins Ave Investment, LLC (collectively, "Plaintiffs") and Defendants City of Miami Beach (the "City") and Thomas R. Mooney (the "Planning Director") (collectively, "Defendants") (all collectively, the "Parties"), by and through their respective counsel and pursuant to Rule 1.420(a)(1)(B) of the Florida Rules of Civil Procedure, hereby stipulate and agree as follows:

1. Plaintiffs no longer wish to pursue their claims under the pending Complaint filed with this Court on August 20, 2020 (the "Complaint").

2. The Parties entered into a Settlement Agreement on April \_\_\_, 2021 resolving all claims that have been brought by Plaintiffs in this lawsuit (the "Settlement Agreement"). A copy of the Settlement Agreement is attached hereto as **Exhibit 1**.

3. Plaintiffs have agreed to voluntarily dismiss, with prejudice, all claims that have been brought by Plaintiffs in this lawsuit and release Defendants from any and all claims that could have been brought or otherwise present in this lawsuit, and/or in connection with the interpretation of the City's Land Development Regulations to exclude the Building Elements (as defined in the Complaint) from the calculation of floor area, including any claims for damages, interest, attorneys' fees and costs.

4. The Parties hereby stipulate that this entire action, including all claims and potential counterclaims, shall be dismissed with prejudice, subject to the terms of the Settlement Agreement, with each party to bear its own respective costs, expenses, and attorneys' fees, and with the Court retaining jurisdiction to enforce the terms of the Settlement Agreement.

WHEREFORE, the Parties respectfully request that the Court enter an Order adopting and approving this Joint Stipulation for Dismissal with Prejudice in the form attached hereto as **Exhibit 2**.

Respectfully submitted,

**AKERMAN LLP**

Three Brickell City Centre  
98 Southeast Seventh Street, Suite 1100  
Miami, Florida 33131  
Tel: (305) 374-5600/Fax: (305) 374-5095

By: /s/ Joseph L. Rebak

JOSEPH L. REBAK, ESQ.

Fla. Bar No. 308668

[joseph.rebak@akerman.com](mailto:joseph.rebak@akerman.com)

LORAYNE PEREZ, ESQ.

Fla. Bar No. 082465

[Lorayne.perez@akerman.com](mailto:Lorayne.perez@akerman.com)

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[nancy.perez@akerman.com](mailto:nancy.perez@akerman.com)

*Attorneys for Plaintiffs*

**SHUBIN & BASS, P.A.**

46 SW 1<sup>st</sup> Street  
3<sup>rd</sup> Floor  
Miami, Florida 33130  
Tel: (305) 381-6060/Fax: (305) 381-9457

By: /s/ Jeffrey S. Bass

JEFFREY S. BASS, ESQ.

Fla. Bar No. 962279

[jbass@shubinbass.com](mailto:jbass@shubinbass.com)

DEANA D. FALCE, ESQ.

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[eservice@shubinbass.com](mailto:eservice@shubinbass.com)

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on this \_\_\_\_ day of April 2021, a true and correct copy of the foregoing was served via electronic mail to:

Jeffrey S. Bass, Esq.  
Deana D. Falce, Esq.  
**SHUBIN & BASS, P.A.**  
46 SW 1<sup>st</sup> Street  
Third Floor  
Miami, Florida 33130  
Tel.: (305) 381-6060

[jbass@shubinbass.com](mailto:jbass@shubinbass.com)  
[dfalce@shubinbass.com](mailto:dfalce@shubinbass.com)  
[evaughan@shubinbass.com](mailto:evaughan@shubinbass.com)  
[eservice@shubinbass.com](mailto:eservice@shubinbass.com)

*Counsel for Defendants*

Rafael A. Paz, Esq.  
Nicholas Kallergis, Esq.  
**CITY OF MIAMI BEACH**  
**ATTORNEY'S OFFICE**  
1700 Convention Center Drive, 4th Floor  
Miami Beach, Florida 33139  
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[sandraperez@miamibeachfl.gov](mailto:sandraperez@miamibeachfl.gov)

*Counsel for Defendants*

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Attorney

# Exhibit 1

*[Settlement Agreement to be Inserted]*



# **Exhibit 2**

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION  
Complex Business Litigation Section

CASE NO. 20-17802 CA 43

OCEAN TERRACE HOLDINGS, LLC, a  
Foreign Limited Liability Company, et al.,

Plaintiffs,

vs.

CITY OF MIAMI BEACH, a Florida Municipal  
Corporation; and THOMAS R. MOONEY, in  
his official capacity as the Planning Director for  
the City of Miami Beach, Florida,

Defendants.

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**AGREED FINAL ORDER APPROVING  
JOINT STIPULATION FOR DISMISSAL WITH PREJUDICE**

**THIS CAUSE**, having come before the Court upon agreement of the parties, and that certain Joint Stipulation for Dismissal with Prejudice (the “Stipulation”) entered into between Plaintiffs Ocean Terrace Holdings, LLC, 7450 Ocean Terrace, LLC, 7436 Ocean Terrace, LLC, 7420 Ocean Terrace Investment, LLC, 7410 Ocean Terrace LLC, 7400 Ocean Terrace, LLC, 7409 Collins Ave Investment, LLC, 7421 Collins Ave Investment, LLC, 7433 Collins Ave Investment, LLC, 7439 Collins Ave Investment, LLC, and 7441 Collins Ave Investment, LLC (collectively, “Plaintiffs”) and Defendants City of Miami Beach (the “City”) and Thomas R. Mooney (the “Planning Director”) (collectively, “Defendants”) (all collectively, the “Parties”), on April \_\_, 2021, and the Court having reviewed the Stipulation and the record, and being otherwise duly advised in the premises, it is hereby

**ORDERED AND ADJUDGED** that the Stipulation is hereby approved, ratified, and adopted by the Court. This entire action, including all claims and potential counterclaims, is hereby dismissed with prejudice, subject to the terms of the Settlement Agreement entered into by the Parties on April \_\_, 2021 ("Settlement Agreement"), with each party to bear its own respective costs, expenses and attorneys' fees, with the Court retaining jurisdiction to enforce the terms of the Settlement Agreement and the Stipulation.

**DONE AND ORDERED** in Chambers in Miami-Dade County, Florida, on this \_\_ day of \_\_\_\_\_, 2021.

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The Honorable Michael Hanzman  
Circuit Court Judge

Copies furnished to: All Counsel of Record