

HPB22-0504 6/14/2022
meeting
1501 Collins Avenue
"Exhibit A"

Holland & Knight

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June 14, 2022

VIA HAND DELIVERY

Mr. Nick Kallergis
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

RE: HPB22-0504 - 1501 Collins Avenue

Dear Mr. Kallergis:

On behalf of 1501 Collins Avenue, LLC (the "Applicant"), in connection with the above referenced application, please accept this written disclosure in satisfaction of the requirement set forth in Section 118-31 of the City of Miami Beach Land Development Regulations. The Applicant has made a commitment to enter into an agreement with 1500 Ocean Drive Condominium Association, Inc. (the "Association"). The agreement will set forth restrictions on the Applicant's property to place limits on the project's outdoor ambient sound system in order to ensure that the quality of life of the Association's residents will not be disrupted. This agreement will be recorded in the Public Records of Miami-Dade County, Florida, upon execution.

Respectfully submitted,

HOLLAND & KNIGHT LLP



Tracy Slavens

CC: Thomas Mooney, AICP
Deborah Tackett

This instrument was prepared by:

Name: Graham Penn, Esq.

Address: Bercow Radell Fernandez Larkin & Tapanes, PLLC
200 South Biscayne Boulevard, Suite 300
Miami, Florida 33131

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**SUPPLEMENTARY DECLARATION OF RESTRICTIONS FOR CONDITIONAL USE
PERMIT**

WHEREAS, the undersigned Owner holds the fee simple title to the land located at 1501 Collins Avenue, Miami Beach, Florida, described in Exhibit "A," attached hereto, and hereinafter called the "Property," and

WHEREAS, the Property is located adjacent to the 1500 Ocean Drive Condominium property as legally described in the Declaration of Condominium recorded at Official Record Book 18368, Page 1130 of the Public Records of Miami-Dade County, Florida; and

WHEREAS, the Owner has filed Miami Beach Application PB20-0416 seeking "Conditional Use Permit" approval from the City of Miami Beach's Planning Board; and

WHEREAS, the Conditional Use Permit proposes the redevelopment of the Property with a mix of office and restaurant uses (the "Proposed Use");

WHEREAS, the Owner and 1500 Ocean Drive Condominium Association, Inc. (the "Association") have negotiated a series of operational limits related to the Proposed Use to be imposed by the City through the Conditional Use Permit; and

WHEREAS, the City of Miami Beach has determined that certain limitations associated with the operation of the Proposed Use cannot be enforced by the City and should instead be included in a private agreement between the Owner and the Association; and

IN ORDER TO FULLY IMPLEMENT the agreement between the Owner and the Association, the Owner freely, voluntarily and without duress makes the following Supplementary Declaration of Restrictions covering and running with the Property:

1. Conditional Use Permit. The Owner shall comply with all of the conditions of the Conditional Use Permit recorded at Official Record Book 32597, Page 3478 of the Public Records of Miami-Dade County, Florida until such time as the Conditional Use Permit has expired, has been superseded in relevant respects, or otherwise is no longer applicable to the Property.

2. Additional Limits on Outdoor Ambient Sound System. Any outdoor speaker system installed as part of the Proposed Use shall involve the deployment of multiple small, closely spaced speakers driven at low individual volumes. The system design is intended to physically distribute

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sound uniformly within the listening area in such a manner as not to interfere with normal conversational level of patrons. Maximum long-term outdoor system levels shall be limited to 65 dBA with user access restricted to the selection of program material and manual reduction only of system levels. No increase above maximum design sound levels will be possible. All speakers and other sound equipment shall be plainly labeled, and physically unable to operate at a level higher than 65 dBA. The house sound system must limit the output of speakers on the eastern sixty-five (65) feet of the third floor to no more than 60 dBA.

Covenant Running with the Land. This Supplementary Declaration on the part of the Owner shall constitute a covenant running with the land and may be recorded, at Owner's expense, in the public records of Miami-Dade County, Florida and shall remain in full force and effect and be binding upon the undersigned Owner, and their heirs, successors and assigns until such time as the same is modified or released. These restrictions during their lifetime shall be for the benefit of, and limitation upon, all present and future owners of the real property and for the benefit of the Association. Regardless of whether this Supplementary Declaration has been formally released, the restrictions herein will no longer be effective following the determination of the City of Miami Beach that the Conditional Use Permit has expired, has been superseded in relevant respects, or otherwise is no longer applicable to the Property.

Term. This Supplementary Declaration is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years from the date this Declaration is recorded after which time it shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by the, then, owner(s) of the Property has been recorded agreeing to change the covenant in whole, or in part, provided that the Declaration has first been modified or released as noted below.

Modification, Amendment, Release. This Supplementary Declaration may be modified, amended or released as to any parcel or portion thereof, by a written instrument executed by the then owner(s) of the Property, including joinders of all mortgagees, if any, provided that the same is also approved in writing by the Association. The Association's consent to a modification, amendment or release may not be unreasonably withheld. The Association further agrees to approve the release of the Supplementary Declaration upon the written determination of the City of Miami Beach that the Conditional Use Permit has expired, has been superseded, or otherwise is no longer applicable to the Property.

Enforcement. Enforcement shall be by action against any parties or person violating, or attempting to violate, any covenants. The prevailing party in any action or suit pertaining to or arising out of this declaration shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of his attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

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Election of Remedies. All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

Severability. Invalidation of any one of these covenants, by judgment of Court, shall not affect any of the other provisions which shall remain in full force and effect.

Recording. This Supplementary Declaration shall be filed of record in the public records of Miami-Dade County, Florida at the cost of the Owner following the recording of the Conditional Use Permit. This Supplementary Declaration shall become effective immediately upon recordation. Notwithstanding the previous sentence, if any appeal is filed challenging the Conditional Use Permit, and the disposition of such appeal results in the denial of the application, in its entirety, then this Supplementary Declaration shall be null and void and of no further effect and the Association has agreed to consent to the release of the Supplementary Declaration.

Owner. The term Owner shall include the Owner, and its heirs, successors and assigns.

[Execution Pages Follow]

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ACKNOWLEDGEMENT BY LIMITED LIABILITY COMPANY

Signed, witnessed, executed and acknowledged on this ____ day of July 2021.

IN WITNESS WHEREOF Bancroft Oceans Five Holdings, LLC has caused these presents to be signed in its name by its proper officials.

Witnesses:

Signature

Print Name

Signature

Print Name

Bancroft Oceans Five Holdings, LLC

Address:

333 SW 2 Avenue, Suite 3588

Miami, FL 33131

By _____

Print Name: Richard Weisfisch

Title: Authorized Person

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

I HEREBY CERTIFY that on this day, before me, an officer duly qualified to take acknowledgements, acknowledged before me, by means of () physical presence or () online notarization, **Richard Weisfisch**, the **Manager** of **Bancroft Oceans Five Holdings, LLC**, a **Florida Limited Liability Co.** () personally known to me or () who produced identification in the form of _____ and who executed the foregoing resolution and acknowledge before me that **Richard Weisfisch** executed the same for the purposes herein expressed.

WITNESS my hand and official seal in the County and State last aforesaid, this ____ day of ____ 2021

Notary Public, State of Florida
My commission expires _____

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CONSENT BY 1500 OCEAN CONDOMINIUM ASSOCIATION, INC.

Signed, witnessed, executed and acknowledged on this ____ day of May 2021.

IN WITNESS WHEREOF 1500 Ocean Condominium Association, Inc. has caused these presents to be signed in its name by its proper officials.

Witnesses:

Signature

Print Name

Signature

Print Name

1500 Ocean Condominium Association

Address:

2890 NE 187 Street
Aventura, FL 33180

By _____

Print Name: Ines Flax

Title: President

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

I HEREBY CERTIFY that on this day, before me, an officer duly qualified to take acknowledgements, acknowledged before me, by means of () physical presence or () online notarization, **Ines Flax**, the **President** of **1500 Ocean Condominium Association, Inc.**, a **Florida Not for Profit Corporation** () personally known to me or () who produced identification in the form of _____ and who executed the foregoing resolution and acknowledge before me that **Ines Flax** executed the same for the purposes herein expressed.

WITNESS my hand and official seal in the County and State last aforesaid, this ____ day of ____ 2021

Notary Public, State of Florida
My commission expires _____

EXHIBIT "A"

1501 OCEAN STEPS CONDO, ALTON BEACH 1ST SUB PB 2-77, LOTS 18 THRU 20 & S1/2 OF LOT 17, & S1/2 OF LOT 4 & LOTS 1 THRU 3, LESS PORT DESC INOR 18368-1130, AS DESC IN DEC OR 22895-2861.

Units CU-001, CU-100, CU-201 and CU-202 as described in that certain Declaration of Condominium of 1501 Ocean Steps Condominium, recorded on December 10, 2004 in Official Records Book 22895 at Page 2861, as amended.