

100-300 BLOCKS OF LINCOLN ROAD
IMPROVEMENT AND MAINTENANCE AGREEMENT TERM SHEET

This term sheet (this "Term Sheet") sets out the key terms which have been agreed in principle between, on the one hand, the City of Miami Beach, a Florida municipal corporation (the "City") and, on the other hand, SOBE SEA, LLC, a Florida limited liability company ("Sponsor") and the Sponsor Affiliates (as defined below) in connection with a public-private collaboration to construct improvements in the 100-300 blocks of Lincoln Road. Promptly following the approval of this Term Sheet by the Mayor and City Commission, the parties will negotiate in good faith and enter into a long-form improvement and maintenance agreement (the "Improvement and Maintenance Agreement") containing the key terms set forth in this Term Sheet together with other terms and conditions customarily included in development agreements and/or maintenance agreements entered into by the City of Miami Beach and developers, subject to good faith negotiations between the parties. For the avoidance of doubt, if the Sponsor Affiliates are not parties to the Improvement and Maintenance Agreement, they shall execute guarantees in such form as is reasonably acceptable to the City.

Recitals.

- a) The Sponsor is an affiliate of each of (i) Di Lido Beach Resort Land LLC, a Florida limited liability company ("DLBR Land"), (ii) Di Lido Beach Resort LLC, a Delaware limited liability company ("DLBR"), (iii) EBJ Sagamore LLC, a Delaware limited liability company ("EBJ"), (iv) Di Lido Beach Commercial LLC, a Florida limited liability company ("DLBC"), (v) Di Lido Beach Commercial Lessor LLC, a Florida limited liability company ("DLBC Lessor"), and (vi) Sobe Sky Development LLC, a Florida limited liability company (collectively, the "Sponsor Affiliates" and each, a "Sponsor Affiliate").
- b) DLBR Land and DLBR are the fee and leasehold owners, respectively, of the portion of the condominium property primarily consisting of the improvements collectively known as "The Ritz-Carlton Hotel, South Beach" (the "Ritz"), and DLBC Lessor and DLBC are the fee and leasehold owners, respectively, of the portion of the condominium property described known as "Walgreens", all being situated within the 100 block of Lincoln Road (collectively, the "Di Lido Property"). EBJ is the owner of the property consisting of the improvements collectively known as the "Sagamore Hotel South Beach" (the "Sagamore", and together with the Di Lido Property, the "Development Property").
- c) DLBR Land granted to the City perpetual easements over and across the Southern boundary of the Di Lido Property containing the Northern half of the 100 block of Lincoln Road and the Eastern boundary of the Di Lido Property bordering the path running North and South along, and lying West

of and parallel to the erosion control line of, the Atlantic Ocean (the "Beachwalk") to provide access for the public's use and the City's maintenance thereof, all as more particularly set forth in the Grant of Perpetual Easement (Lincoln Road) recorded September 20, 1999 in Official Records Book 18788 at Page 478, of the Public Records of Miami-Dade County, Florida and the Grant of Perpetual Easement for Beachwalk recorded May 19, 1999 in Official Records Book 18613 at Page 4277 (collectively, the "Existing Easements").

- d) The Sponsor Affiliates wish to make certain improvements to the Development Property as more specifically defined below (collectively, the "Private Project").
- e) The Sponsor and the City desire to collaborate to make certain improvements to the 100 block of Lincoln Road and the portion of the Beachwalk situated at the Easternmost end thereof as more specifically defined below (the "Phase 1 Project").
- f) The Sponsor and the City also desire to collaborate to make certain improvements to the 200-300 blocks of Lincoln Road as more specifically defined below (the "Phase 2 Project").
- g) Simultaneously with the Phase 1 Project, Sponsor (and/or the applicable Sponsor Affiliate(s)) will cause to be made, at its (or their) own expense, certain improvements to the Di Lido Property involving the expansion of the Ritz arrival and loading dock areas on Lincoln Road for life safety and traffic mitigation purposes (the "Ritz Safety Improvements") consistent with Code of Ordinances of the City of Miami Beach, Florida (the "Code"). In the likely event that the Phase 1 Project and/or the Ritz Safety Improvements will affect either or both of the Existing Easements in a manner which will require modification(s) thereof, the Parties will work together to effectuate such modification(s) as and to the extent necessary or appropriate. In any case, the Existing Easements shall be modified to require DLBR Land and/or DLBR to maintain the portions of the Phase I Improvements set forth below.

2) The Phase 1 Project. The main elements of the Phase 1 Project are proposed as follows:

- a) The relocation and redesign of pedestrian paths and vehicular access from Collins Avenue to the Beachwalk;
- b) The installation of landscaping features along the pedestrian paths and within the roadway median;

- c) The installation of a “Morris Lapidus Arch” aesthetic design feature at the eastern edge of the Lincoln Road right of way.
- d) The construction of a public green amenity at the intersection of the beach access walk and Beachwalk;
- e) The replacement of water and sewer lines and improvements to the stormwater collection system within Lincoln Road east of Collins Avenue in support, in part, of the City’s resiliency efforts (the “Water and Sewer Improvements”); and
- f) Installation of an art piece subject to the approval of the Art in Public Places Committee. The parties agree to set aside a budget of 2% of “construction costs” as defined in Sections 82-537 of the City Code. [OPEN ISSUE]
- g) The design of the Phase 1 Project shall be consistent with the concept plan attached to this Term Sheet as Exhibit A (the “Phase 1 Concept Plan”), subject to the issuance of necessary City approvals and approval of the final project budget by both the City and Sponsor as provided below.

Commented [DR1]: Sponsor proposes that the Morris Lapidus Arch be deemed the AiPP contribution.

3) Implementation of Phase 1 Project. The City and Sponsor will collaborate to:

- a) Prepare and process the necessary Historic Preservation Board (“HPB”) application for the Phase 1 Project. The Sponsor will be responsible for the preparation and submission of all necessary materials for the HPB review of the Phase 1 Project at its sole cost and expense (subject to credit as part of the Phase 1 Project shared costs). Sponsor acknowledges that nothing contained in the agreement will obligate the City to cause the approval by the HPB of applications or limit its quasi-judicial authority to impose conditions or take any action on the HPB applications, except as otherwise provided by the City Code;
- b) Evaluate and refine the preliminary Phase 1 Project budget attached to this Term Sheet as Exhibit B which sets forth the estimated costs for the Phase 1 Project and which shall be subject to change pending completion and approval by both parties of the design development documents and construction documents;
- c) Commissioning by Sponsor (and peer review by the City) of a traffic study of the 100 block of Lincoln Road;
- d) Develop design development documents based on the concept plan and preliminary budget, it being understood and agreed that the Sponsor’s design professionals shall be responsible for preparing the design development documents in consultation with the City;

- e) Prepare the final construction documents, including the preparation of design and permit plans, and the preparation of materials necessary for any development permits required by the City, County, and State, it being understood and agreed that the Sponsor's design professionals shall be responsible for preparing the construction documents in consultation with the City;
- f) Prepare and approve the final budget;
- g) Select and engage a general contractor and enter into a construction contract, it being understood and agreed that the Sponsor shall engage the general contractor subject to the City's approval; and
- h) Determine project oversight and administration responsibilities for the Phase 1 Project, it being understood and agreed that the Sponsor (or a consultant engaged by Sponsor) will have primary responsibility for the oversight and administration of the Phase 1 Project.

4) Funding. The City and Sponsor will share the hard and soft costs of the Phase 1 Project as reflected in the approved final budget (the "Costs") as set forth below. The City and Sponsor agree that the total cost of the Phase 1 Project as embodied in the Phase 1 Concept Plan will not exceed \$12 million subject to annual increase¹ based on the lower of the Consumer Price Index ("CPI") or 3%. The maximum City contribution (the "City Contribution") shall be the lower of (a) fifty percent (50%) of the Costs or (b) \$4 million subject to annual increase based on the lower of CPI or 3%, of which \$1 million (as adjusted based on the foregoing escalation) shall be devoted to the Water and Sewer Improvements.

For the avoidance of doubt, if the costs to build the Water and Sewer Improvements are greater than \$1 million, the City may in its sole discretion either increase the City Contribution to fully fund the Water and Sewer Improvements or reduce the scope of the Water and Sewer Improvements as needed. The Sponsor's contribution (the "Sponsor Contribution") shall be no less than the total City Contribution, without taking into account the amount of the City Contribution devoted for Water and Sewer Improvements in excess of \$1 million.

The City and the Sponsor shall cooperate to seek funding from other agencies, including, but not limited to, the State of Florida to cover at least the difference between the Costs and the aggregate amount of the City Contribution and Sponsor Contribution. The Sponsor has agreed to hire a lobbying team, at its sole cost and expense, to support the effort to secure state participation in the

¹ Annual increases shall commence on the one year anniversary of the execution of the long form agreement and shall end on such date as the construction contract is executed by Sponsor, but not later than the date the full amount of the City Contribution is appropriated by the Mayor and City Commission.

funding of the Phase 1 Project. Any funding from other agencies shall first be employed to cover the Costs not funded by the City or Sponsor and then applied to reduce the obligations of the City and Sponsor equally (not including any amounts expended by the City in excess of \$1 million for the Water and Sewer Improvements). If the Sponsor is unsuccessful in securing funding from other agencies to cover Costs in excess of the combined City Contribution and Sponsor Contribution by or before 6:00 pm on June 3, 2024, then the City and the Sponsor shall discuss value engineering and/or modifying the scope of the Phase 1 Project to reduce the budget to an amount that does not exceed the combined City Contribution and Sponsor Contribution, provided, in no event will the allocation for Water and Sewer Improvements be eliminated or reduced. If a new HPB approval is necessary as a result of any such value engineering and/or scope modification, the Sponsor shall be responsible for the preparation and submission of all necessary materials for the HPB review of the revised Phase 1 Project at its sole cost and expense, without reducing the Sponsor Contribution or a credit as part of the Phase 1 Project shared costs.

- 5) Timeline for Funding of City Contribution. The City shall appropriate the City Contribution or otherwise secure funding from alternative sources by the date on which the fiscal year 2026-2027 budget is approved by the Mayor and City Commission (the "Funding Deadline"). If the City does not secure the requisite funds by the Funding Deadline (as the same may be extended by mutual agreement of the parties), the agreement and the Sponsor's obligations shall automatically terminate, whereupon the parties shall be released of any further liability or obligation hereunder except as otherwise provided in the agreement. The City shall pay the City Contribution in five equal installments of the amount determined by dividing the City Contribution into (5) according to the following milestones: (1) the issuance of a permit for the Phase 1 Project; (2) when the Sponsor achieves twenty-five percent (25%) completion of the Phase 1 Project; (3) when the Sponsor achieves fifty percent (50%) completion of the Phase 1 Project; (4) when the Sponsor achieves seventy-five percent (75%) completion of the Phase 1 Project; and (5) when the Phase 1 Project achieves Substantial Completion (i.e. when a temporary certificate of completion is issued). Each of the foregoing payments shall be made within forty-five (45) days from the receipt of an invoice and supporting documentation acceptable to the City in its sole discretion. The parties agree that the issuance of a certification of contractor payment applications by the Phase 1 Project architect shall be sufficient to demonstrate 25%, 50%, and 75% completion.
- 6) Private Project and HPB Approval Contingency. The main elements of the Private Project include:
 - a) A "gut" renovation of the Sagamore to:
 - i) reduce the number of hotel rooms and redesign the interiors thereof;

- ii) redesign the lobby and construct certain amenities and/or food and beverage outlets therein; and
 - iii) redesign the outside area, including the pool deck.
- b) The construction of a new 183.0' residential building containing approximately 146,000 square feet and consisting of approximately thirty (30) condominium units;
 - c) The redesign of the interiors and exteriors of the beachfront restaurant at the Ritz

The participation of the Sponsor and Sponsor Affiliates in the Phase 1 Project and Phase 2 Project is contingent upon the final approval of the HPB application for the development of the Private Project on terms acceptable to Sponsor and the Sponsor Affiliates in their sole discretion, which shall include the successful termination of any action, suit or proceeding brought by a third party challenging the validity or issuance of any HPB approvals for the Private Project. The Sponsor and Sponsor Affiliates shall have the right to terminate the Improvement and Maintenance Agreement if the Private Project HPB application is denied or HPB approvals of the Private Project contain any terms, conditions or obligations that are inconsistent with the terms and conditions contained in this Term Sheet or are otherwise unacceptable to Sponsor, in its sole and absolute discretion.

7) Portable Food and Beverage Stations. Following the execution of this Agreement, the City and Sponsor and Sponsor Affiliates shall enter into a concession agreement (the "Concession Agreement") pursuant to which Sponsor and Sponsor Affiliates shall have the right to locate up to two (2) portable food and beverage service stations operated by Sponsor and Sponsor Affiliates. The Sponsor and the City shall negotiate the terms and conditions of the Concession Agreement in good faith, including an appropriate revenue share for the City. [OPEN ISSUE]

8) Maintenance of the Phase 1 Project Improvements; Recording of Improvement and Maintenance Agreement; Term.

- a) The Sponsor and Sponsor Affiliates shall be responsible for the maintenance of the Phase 1 Project, excluding the Water and Sewer Improvements, any other underground improvements and the Lincoln Road vehicular travel lanes, which will remain the City's maintenance responsibility, provided, the cost of maintaining materials used for the vehicular travel lanes is comparable to the cost the City would incur to maintain stamped concrete or asphalt.

- b) The Sponsor and Sponsor Affiliates shall not be required to expend more than \$15,000 annually in the replacement of landscape material.
- c) An Improvement and Maintenance Agreement shall be recorded in the public records of Miami-Dade County, Florida memorializing the Sponsor and Sponsor Affiliate responsibilities, and shall continue in effect for a period of thirty (30) years after the date of such recordation, unless modified, amended or released by the City prior to the expiration thereof. [OPEN ISSUE]

8) Phase 2 Project (200-300 Blocks). The main elements of the Phase 2 Project include the following:

- a) The pedestrianization of the 200-300 Blocks of Lincoln Road to be accomplished through the removal of vehicular travel lanes, the relocation of the pedestrian access rights-of-way, alterations to the medians and incorporation of pedestrian pavement markings;
- b) The installation of landscaping features along the pedestrian path; and
- c) Subject to obtaining the necessary approvals from the City and Miami-Dade County, Florida (the "County"), the installation of two (2) new bus shelters on Washington Avenue to replace the bus stops along the 300 block of Lincoln Road.

9) Implementation of Phase 2 Project. The following shall govern the implementation of the Phase 2 Project:

- a) The Sponsor will be responsible for the following, at its sole cost and expense, in connection with the Phase 2 Project prior to the City and the Sponsor securing dedicated sources of funding to cover all of the hard costs for the Phase 2 Project:
 - i) The preparation of a traffic study of the 200/300 blocks of Lincoln Road;
 - ii) The preparation of the Phase 2 concept plans, a copy of which is attached to this Term Sheet as Exhibit C (the "Phase 2 Concept Plan");
 - iii) The preparation of a preliminary budget setting forth the City's estimated Phase 2 hard costs and the Sponsor's estimated soft costs, a copy of which is attached as Exhibit D (the "Phase 2 Budget"); and
 - iv) The retention of a lobbying team to support the effort to secure state participation in the funding of the Phase 2 Project. The lobbying for the Phase 2 Project shall occur at the same time as the lobbying for state participation in the Phase 1 Project. For the avoidance of doubt, the

Commented [DR2]: The Sponsor would like to limit the duration of its maintenance obligations to 15 years. In addition, the Sponsor wants the right to terminate the Agreement prior to its expiration if the Concession Agreement is not renewed for successive one-year terms that run through the end of the 15-year period.

lobbying team will seek funding for both the Phase 1 Project and the Phase 2 Project simultaneously over not less than a one-year period.

- b) If, within the ten (10) year period following the execution of the Improvement and Maintenance Agreement the City and the Sponsor secure dedicated sources of funding to cover all of the hard costs set forth in the Phase 2 Budget (the "Phase 2 Funding Contingency"), none of which are to come from the Sponsor itself, the Sponsor will be responsible for the following, at its sole cost and expense:
 - i) Prepare and process the necessary HPB application for the Phase 2 Project. The Sponsor will be responsible for the preparation and submission of all necessary materials for the HPB review of the Phase 2 Project. Sponsor acknowledges that nothing contained in the agreement will obligate the City to cause the approval by the HPB of applications or limit its quasi-judicial authority to impose conditions or take any action on the HPB applications, except as otherwise provided by the City Code;
 - ii) Retain and fund the cost of the work of all design professionals necessary to prepare design development documents and final construction documents based on the Phase 2 Concept Plan and Phase 2 Budget as approved by the City, including the preparation of design and permit plans, and the preparation of materials necessary for any development permits required by the City, County, and State and the fees payable to design professionals during the construction phase for customary tasks, including, by way of example, responding to requests for information (RFIs) from the general contractor/subcontractors, conducting site visits, meeting with the general contractor/subcontractors as needed, reviewing spec sheets and other submissions made by the general contractor/subcontractors for approval and certifying payment applications. The Sponsor shall negotiate its agreements with the design professionals to ensure all amounts payable for services, including those services to be rendered during the construction phase, are consistent with the Sponsor's budget.
 - iii) Subject to obtaining the necessary approvals from the City and the County, the installation of two (2) new bus shelters on Washington Avenue to replace the bus stops along the 300 block of Lincoln Road.
- c) If the Phase 2 Project Contingency is satisfied, the Parties shall enter into a separate agreement in form and substance mutually acceptable to the Parties, in each of their sole discretions, to develop the Phase 2 Project. The City shall maintain the improvements constituting the Phase 2 Project at the City's sole cost and expense.