


# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission  
FROM: Alina T. Hudak, City Manager   
DATE: June 28, 2023

**2:31 p.m. First Reading Public Hearing**

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, TO CONSIDER APPROVAL, FOLLOWING FIRST READING/PUBLIC HEARING, OF A THIRD AMENDMENT TO A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY AND TCH 500 ALTON LLC, AS AUTHORIZED UNDER SECTION 118-4 OF THE CITY CODE, AND SECTIONS 163.3220 – 163.3243, FLORIDA STATUTES, WHICH AMENDMENT MODIFIES THE BOUNDARIES OF THE UNIFIED DEVELOPMENT SITE TO INCLUDE 710 ALTON ROAD, 720 ALTON ROAD, AND 740 ALTON ROAD, REMOVES PORTIONS OF FOLIO 02-4203-001-0095 (CANOPY PARK) AND ALL OF FOLIO NUMBER 02-4203-001-0090 (CURRENTLY A PARKING LOT SERVING THE FLORIDIAN CONDOMINIUM) FROM THE SCOPE OF THE AGREEMENT, MODIFIES THE ASSIGNMENT OF DEVELOPMENT RIGHTS FOR THE IMPACTED PROPERTIES, AND OTHERWISE DELINEATES OR MODIFIES THE CONDITIONS FOR THE DEVELOPMENT OF THE PROPERTIES SUBJECT TO THE AGREEMENT LOCATED AT 500-630 ALTON ROAD AND OTHER TERMS FOR DEVELOPMENT CONTINGENT UPON SATISFACTION OF THE CONDITIONS SET FORTH IN THE DEVELOPMENT AGREEMENT; AND FURTHER, SETTING THE SECOND AND FINAL READING OF THE DEVELOPMENT AGREEMENT FOR A TIME CERTAIN.

---

### RECOMMENDATION

The Administration recommends approval upon First Reading, subject to Commission direction on outstanding items highlighted below, of the negotiated Development Agreement in order to implement the voter approved Floor Area Ratio (FAR) increase in the Alton Road Gateway Overlay to accommodate a new Miami-Dade County Community Health Center at 663 Alton Road and other proposed and agreed upon properties for development (Public Library, Canopy Park, and a mixed-use private building). The most recent draft of the Development Agreement (DA) is attached for your consideration and the specific deal points are discussed in more detail in this memorandum.

### BACKGROUND/HISTORY

#### I. New Development Agreement

On March 9, 2022, the City Commission referred Item R9 T - Discussion Regarding Miami-Dade County Community Health Center At 710 Alton Road, proposed and sponsored by Vice Mayor Ricky Arriola, to the Land Use and Sustainability Committee (LUSC) and the Planning Board.

On April 8, 2022, the LUSC discussed the proposal and continued the item to the May 13, 2022 LUSC meeting. On May 13, 2022, the LUSC discussed the proposal and moved the item to the Planning Board and the City Commission and directed the developer to continue to its community outreach efforts.

On May 25, 2022, the City Commission approved, at First Reading, Ordinances amending the Comprehensive Plan and Land Development Regulations (LDR) to expand the boundaries of the Alton Gateway Overlay (bounded by Alton Road on the east, West Avenue on the west, 5th Street on the south and 8th Street to the north), as well as FAR and height increases in the overlay. The LDR ordinance was approved, subject to voter approval of the proposed FAR increase, and Second Reading / Adoption of both ordinances was scheduled for September 14, 2022. Additionally, the City Commission adopted Resolution No. 2022-32173 approving a ballot question for a special election on August 23, 2022 to increase the maximum FAR from 2.0 to 2.6 on the entirety of the Alton Gateway Overlay.

On August 23, 2022, 62.02 percent of the City's electorate voted in favor of the ballot question that sought to increase the maximum proposed FAR from 2.0 to 2.6, which made the Ordinance eligible for City Commission adoption. In keeping with the practice of having the Development Agreement (DA) and Land Development Regulations ultimately be passed concurrently, the Ordinance became a companion to the new DA to apply to the properties located at 600 Alton Road, 630 Alton Road, 710 Alton Road, 720 Alton Road, And 740 Alton Road (the "New DA"), as well as a proposed third amendment to the DA that currently governs the properties located at 500-630 Alton Road (the "Existing DA").

On September 14, 2022, Second Reading / Adoption of the LDR and Comprehensive Plan Ordinances was opened and continued. As the replacement of the Community Health Center was the threshold issue and there was still much work to complete with Miami- Dade County (County) regarding the Community Health Center agreement between the Developer and the County, the Developer focused efforts on advancing that portion of the project. Second reading of the LDR and Comprehensive Plan ordinances are currently set for July 26, 2023.

At the February 1, 2023 City Commission Meeting, an ordinance was referred to the LUSC and Planning Board, amending the Alton Road Historic District Buffer Overlay and Pharmacy Regulations to accommodate the proposed relocation of the Miami Beach Community Health Center. On April 19, 2023, the LUSC recommended approval of the ordinance. On May 23, 2023, the Planning Board transmitted the ordinance to the City Commission with a favorable recommendation.

## **II. Existing Development Agreement**

On December 12, 2018, the Mayor and City Commission adopted Resolution No. 2018-30647, approving a Development Agreement between the City and the Developer for the development, design and construction of a mixed use residential and commercial project on the 500-700 Blocks of Alton Road, and providing for the Developer to develop, design and construct a 3.0 acre public park, which would be conveyed to the City and operated as a municipal park for the benefit of the general public.

The unified development site established pursuant to the Existing DA consists of 500 Alton Road, the former 6 Street right of way, 630 Alton Road, Folio 02-4203-001-0095 (Canopy Park), and Folio 02-4203-001-0090 (currently a parking lot serving the Floridian Condominium).

## **ANALYSIS**

In an effort to improve the overall quality of life in the City of Miami Beach, the City Administration has made strides to negotiate the best terms to ensure that the City is provided with a state-of-the-art Community Health Center, public library, additional world-class greenspace, and a mixed-use building for residents and visitors to utilize for years to come in the vicinity of 700 Alton Road. The City Administration has included provisions in the proposed DA that will ensure the completion of the Community Health Center before any development may proceed on the unified site within the Gateway Overlay.

## **PROPOSED DEVELOPMENT AGREEMENT**

Sections 163.3220 – 163.3243, Florida Statutes, and Section 118-4 of the City's Code require two public hearings for a Development Agreement. The Administration and Developer have negotiated the Development Agreement, a copy of which is attached hereto as Exhibit "A" to the Commission Memorandum accompanying this Resolution.

The Development Agreement provides, among other provisions, the following terms and conditions:

- Developer shall convey to the County that portion of the Development Site consisting of 663 Alton Road, in fee simple, by special warranty deed (the "Health Center"), on which the Developer shall design, permit and construct, at its sole cost and expense, a Community Health Center as required by a separate agreement between the Developer and the County. The Health Center, once completed, will be owned, maintained, and programmed by the County for public purposes; and
- Developer shall develop the Project in accordance with the City's Land Development Regulations and the limitations set forth in the Development Agreement with respect to the Project, including, without limitation, the following conditions:
  - any private building greater than 60 feet in height built on the Development Site would be located northeast of the existing Park site, and with a height not-to-exceed 150 or 180 feet (to be finalized) to the top of the roof (or such greater height as may be approved by the City Commission); and
  - the tower will contain up to 150 units (including multi-family residential units, single-family detached units, townhomes, condominiums, and apartments), this is an increase from the prior number of 120 units but more than offset by the reduction of 39 units at the 500 Alton project from 330 to 291.
  - a concept plan for the proposed private building is attached as Exhibit "B"
- In order to permit the Project to proceed as a unified development site, the City shall convey to the Developer the additional FAR related to the Park site by executing a new unity of title as may be required at the time of permit application for the private building
- The Park's boundaries shall be modified resulting in a net gain of 6,838 sq feet of land. The Developer shall design and construct, at the Developer's cost and expense, the improvements on this expanded Park land.
- The boundary modification resulting in the net gain of Park land shall be accomplished by through an exchange between the City and Developer of 4,062 sq feet of land from the

current Park land located along the western side of the Floridian Parking Lot (i.e., between the parking lot and West Avenue) to provide the private development site connectivity to West Avenue for 10,900 sq feet of park land from the current commercial land located on the Southeast boundary of the Park to provide for a better Park experience and better interface between the Park and commercial development on that site.

The City will not issue a building permit for the Project until the Developer conveys the new Health Center Site to the County, and all documents required by the Development Agreement have been delivered to the City.

Upon approval of the terms of the proposed agreement between the City of Miami Beach, Miami-Dade County, and the collective property owners of the land or structures and for the proposed Community Health Center and Library, mixed-use private building, as well as the Canopy Park Project (TCH 500 Alton LLC, 740 Alton RD, LLC, TCH 700 Alton, and THC 663 Alton, LLC), the developers can proceed with applying for the necessary permits and other due diligence to begin construction on the aforementioned sites in accordance with the terms of the agreement.

The New DA contemplates the inclusion of additional properties within the unified development site and, accordingly, requires the modification of the boundaries of the unified development site established in the Existing DA. In addition, a portion of Folio 02-4203- 001-0095 (Canopy Park) and all of Folio No. 02-4203-001-0090 (currently a parking lot serving the Floridian Condominium) will be removed from the scope of the Existing DA and be covered by the New DA instead. The contemplated Third Amendment to the Existing DA will address these matters, as well as modifications to the assignment of development rights for the impacted properties.

#### **PENDING ITEMS TO BE RESOLVED**

1. **Height of Private Development.** On May 13, 2022, the Land Use Committee discussed the height of the private development. The City Administration recommendation was not to exceed 150 feet and the position of the Developer at the time was that they needed a minimum of 180 feet but would like 200 feet. At First Reading of the LDR ordinance on May 25, 2022, a maximum building height of 150 was approved. The developer is now seeking a maximum building height of 180 feet.

**The Administration recommends that the height of the tower remain at the 150 feet.**

2. **The east side ground level and inclusion of 740 Alton in the unified development site.** As proposed, the current design of the proposed new private building is inadequate on the east side, fronting Alton road. Specifically, the proposal to front a major urban corridor with access ramps, restrooms and storage is contrary to good urban design.

In 2019, the Developer obtained a building permit for a medical cannabis treatment center at the 740 Alton Road property, which is currently active, and the current conditions of the site, including the existing building, are exceedingly poor and less than optimal for a major urban corridor. The Developer also has a tenant lease, with 16 years remaining, at the 740 Alton Road site, and has indicated that the existing lease prevents changing the current tenant at the 740 Alton road site. The Developer is proposing to transfer 30,000 square feet of available floor area (FAR) from the 740 Alton Road property to the proposed private development program on the abutting lots that currently consist of the surface parking for the Floridian condominium and the existing Community Health Center. This leaves only 19,000 square feet for future development of the 740 Alton Road site.

The Administration believes that the best option would be for the east side of the proposed building to be completely redesigned. Additionally, the proposed new building should be expanded within the 740 Alton road site. If the Developer cannot accommodate this, the FAR proposed to be transferred from the 740 Alton Road property should be removed from the larger project and remain within the 740 Alton Road site for future use. If the Developer is willing to demolish the existing building on the 740 Property and redesign the building proposed for the larger site in manner that incorporates the 740 Alton property, the Administration would be comfortable recommending that the 740 Alton Road site remain as part of the larger, unified site.

**The Administration recommends that this item be further refined to ensure the long-term activation of the Alton Road corridor is consistent with best planning practices. The 740 Alton Property should be EXCLUDED from the proposed DA.**

3. **Proposed surface parking for satellite retail buildings.** The Administration is supportive of the proposal to modify the previously approved 2-story retail building on the south side of the park (Alton Road and the former 6th Street) and create two separate one-story structures. The proposal allows for better engagement with the park, as well as the elimination of a vehicular curb cut on Alton Road.

However, the Developer is also proposing a surface parking lot, which bisects the park from the retail buildings on the west side. The overall development site already contains 2 large parking structures, and a separate, underutilized garage is just across the street. The proposed surface parking lot is clearly not needed to meet operational parking, and significantly compromises the overall design integrity of the park site.

**The Administration recommends that the surface parking lot proposed adjacent to the revised one-story retail buildings on the south side of the park be removed. As an alternative, the Developer may include a limited number of spaces parallel to the driveway, to accommodate drop-off / pick-up, loading, as well as parking during non-peak times.**

### **SUPPORTING SURVEY DATA**

N/A

### **FINANCIAL INFORMATION**

No financial impacts.

### **CONCLUSION**

After a series of extensive discussions and negotiation meetings with the development team of the TCH 700 Alton and the other proposed properties, the terms set forth in the proposed Development Agreement that will pave the way for the construction of a new Community Health Center and Public Library will eventually serve the greater good. However, some key issues remain unresolved and finding consensus on these is critical to the success of the proposal. The City has negotiated in good faith to obtain the best outcome for all parties. The long-term vision and redevelopment of this vicinity of Alton Road is paramount to the overall objective, as well as providing residents and visitors with access to facilities and amenities to further enhance their

quality of life. Lastly, the overall agreement will accommodate a new Miami-Dade County Community Health Center and Public Library at 663 Alton Road.

The Administration recommends the following:

1. Approval at First Reading of the negotiated Development Agreement, subject to the following modifications:
  - a. The maximum height of the proposed new residential building shall not exceed 150 feet.
  - b. The 740 Alton Road Property shall be EXCLUDED from the proposed DA and the east elevation of the proposed residential tower completely redesigned to fully activate and engage the sidewalk along Alton Road, consistent with best planning practices.
  - c. The surface parking lot proposed adjacent to the revised one-story retail buildings on the south side of the park shall be removed. As an alternative, the Developer may include a limited number of spaces parallel to the driveway, to accommodate drop-off / pick-up, loading, as well as parking during non-peak times.
  
2. Set a Second Reading / Public Hearing of July 26, 2023 for adoption of the Development Agreement.

**ATTACHMENTS:**

- Ad Copy
- Development Agreement
- Resolution
- Concept Plan

**DENISE RUBIN** *Happy* **#1 REALTOR**  
 OVER 2.5 BILLION DOLLARS IN SALES  
 Direct 305-409-0019  
 Office 305-932-9326  
 www.DeniseRubin.com

**FATHER'S Day**

**HERE ARE SOME OF DENISE RUBIN'S EXCLUSIVE LISTINGS:**

 <p><b>Mansions at Acqualina #801</b> \$7,750,000                  Beachfront! Designer Furnished Dream with Direct Ocean Views! 5* Star Amenities - 4609 sf</p>	 <p><b>4000 Island Blvd. #Watersuite 6</b> \$2,430,000                  RARELY AVAILABLE! Completely remodeled! 10 ft ceilings! Huge Terrace! 2463 sf</p>
 <p><b>5230 NW 73rd Terr</b> \$799,000                  All new contemporary masterpiece with no expense spared! 4 bd/2.5 ba home w/huge backyard</p>	 <p><b>Hamptons West - Unit 2309</b> \$630,000                  Direct Golf and Lake Views in this Spacious 1560 sq ft - 2 bd/2 ba unit! Unsurpassed Hamptons Lifestyle!</p>

International Marketing Specialist / Multi-Lingual Team

**WORK WITH THE BEST FOR THE BEST RESULTS**

**CITY OF OPA-LOCKA**  
 RFQ NO: 23-0711200  
**Professional Architectural & Engineering Services.**

Sealed Proposals for Professional Architectural and Engineering Services will be received by the City of Opa-locka Clerk's office. Submissions must be received by the City no later than **2:30 PM(EST)** on **Tuesday, July 11, 2023.** Any Response received after the time and date first mentioned above, whether by mail or otherwise, will be returned unopened. Respondents are responsible for ensuring that their Proposal is received in the Clerk's Office by the deadline. In addition, the City will accept electronic submitted proposals via [www.demandstar.com](http://www.demandstar.com) (e-bid). The address to submit sealed proposals is listed below.

CITY OF OPA-LOCKA  
 Office of the City Clerk  
 780 Fisherman Street, 4<sup>th</sup> Floor.  
 Opa-locka, Florida 33054

An original and six (6) copies for a total of seven (7) plus 1 copy of the proposal package on USB Flash Drive in PDF format shall be submitted in sealed envelopes/packages addressed to the CITY OF OPA-LOCKA Office of the City Clerk and marked **RFQ 23-0711200 for Professional Architectural & Engineering Services.** Proposers desiring information for use in preparing proposals may obtain a set of such documents by visiting the City's website at [www.opalocka.gov](http://www.opalocka.gov) or [www.demandstar.com](http://www.demandstar.com)

The City reserves the right to accept or reject all proposals and to waive any technicalities or irregularities therein. The City further reserves the right to award the contract to that proposer whose proposal best complies with the **RFQ NO: 23-0711200** requirements. Proposers may not withdraw their proposal for a period of ninety (90) days from the date set for the opening thereof.

An **OPTIONAL** pre-bid meeting for interested firms will be held ON SITE and via Teams Meeting on **Monday, June 26, 2023, at 10:30 AM (EST)**. To participate via Microsoft Teams, please use the information listed below.

Microsoft Teams meeting  
**Join on your computer, mobile app or room device**  
[Click here to join the meeting](#)  
 Meeting ID: 267 844 084 765  
 Passcode: 6pFyDG  
[Download Teams | Join on the web](#)  
[Learn More | Meeting options](#)

Joanna Flores, CMC  
 City Clerk

**CITY OF MIAMI BEACH**  
**NOTICE OF PUBLIC HEARING AND INTENT TO**  
**CONSIDER AMENDING A DEVELOPMENT AGREEMENT**

**June 28, 2023**

**NOTICE IS HEREBY** given that a First Reading/Public Hearing will be heard by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chamber, 3rd Floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, June 28, 2023, at 2:31 p.m.**, or as soon thereafter as the matter can be heard, to consider:

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, TO CONSIDER APPROVAL, FOLLOWING FIRST READING/PUBLIC HEARING, OF A THIRD AMENDMENT TO A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY AND TCH 500 ALTON LLC, AS AUTHORIZED UNDER SECTION 118-4 OF THE CITY CODE, AND SECTIONS 163.3220 - 163.3243, FLORIDA STATUTES, WHICH AMENDMENT MODIFIES THE BOUNDARIES OF THE UNIFIED DEVELOPMENT SITE TO INCLUDE 710 ALTON ROAD, 720 ALTON ROAD, AND 740 ALTON ROAD, REMOVES PORTIONS OF FOLIO 02-4203-001-0095 (CANOPY PARK) AND ALL OF FOLIO NUMBER 02-4203-001-0090 (CURRENTLY A PARKING LOT SERVING THE FLORIDIAN CONDOMINIUM), MODIFIES THE ASSIGNMENT OF DEVELOPMENT RIGHTS FOR THE IMPACTED PROPERTIES, AND OTHERWISE DELINEATES OR MODIFIES THE CONDITIONS FOR THE DEVELOPMENT OF THE PROPERTIES SUBJECT TO THE AGREEMENT LOCATED AT 500-630 ALTON ROAD AND OTHER TERMS FOR DEVELOPMENT CONTINGENT UPON SATISFACTION OF THE CONDITIONS SET FORTH IN THE DEVELOPMENT AGREEMENT; AND FURTHER, SETTING THE SECOND AND FINAL READING OF THE DEVELOPMENT AGREEMENT FOR A TIME CERTAIN. This Resolution is being heard pursuant to §166.041 F.S. Inquiries may be directed to the Office of the City Manager at 305.673.7010.

**PROPERTIES:** The Development Site consists of 500 Alton Road, the former 6 Street right of way, 630 Alton Road, Folio 02-4203-001-0095 (Canopy Park), and Folio 02-4203-001-0090 (currently a parking lot serving the Floridian Condominium)

**Tax Folio Nos.:** 02-4204-006-0010, 02-4203-001-0100, 02-4203-001-0090, and 02-4203-001-0095

**ZONING DISTRICTS:** The proposed Development Site is zoned Commercial, Medium Intensity District ("CD-2 District").

**MAXIMUM HEIGHT:** The proposed third amendment to the Development Agreement does not contemplate any changes to the maximum height of development. As currently required, any tower built on the Development Site shall be located within the northeast quadrant of the 500 Block of Alton Road, and the height of the tower shall not exceed 519 feet to the top of the roof. Architectural projections will comply with the terms of the Development Agreement and other applicable provisions of the City's Land Development Regulations.

**PERMITTED USES:** The proposed third amendment to the Development Agreement does not contemplate any changes to the permitted uses. The Development Agreement will permit (i) up to 310 units, including, but not limited to, residential units, single-family detached dwellings, townhomes, apartments, amenity guest suites, hotel or apartment hotel uses (subject to City Commission approval); and (ii) up to 15,000 square feet of retail uses. The City's Land Development Regulations provide for population densities for this zoning district of 100 units per acre.

A copy of the proposed Third Amendment to the Development Agreement is available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139.

**INTERESTED PARTIES** are invited to appear at this meeting, be represented by an agent, or express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1<sup>st</sup> Floor, City Hall, Miami Beach, Florida 33139. This item is available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1<sup>st</sup> Floor, City Hall, Miami Beach, Florida 33139. This meeting, or any item herein, may be continued, and under such circumstances, additional legal notice need not be provided. Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in an alternate format, sign language interpreter (five-day notice required), information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceedings, call 305.604.2489 and select option 6; TTY users may call via 711 (Florida Relay Service).

**MIAMI BEACH**

Rafael E. Granado, City Clerk  
 City of Miami Beach  
 305.673.7411

Ad 06282023-13

### **THIRD AMENDMENT TO DEVELOPMENT AGREEMENT**

**THIS THIRD AMENDMENT TO DEVELOPMENT AGREEMENT** is made as of this \_\_\_\_\_ day of \_\_\_\_\_ 2023 (this "Third Amendment") by and between the **CITY OF MIAMI BEACH**, a Florida municipal corporation (the "City"), and **TCH 500 ALTON, LLC**, a Delaware limited liability company ("Developer") (the City and Developer, each a "Party" and collectively, the "Parties").

#### **RECITALS**

A. City and 500 ALTON ROAD VENTURES, LLC, a Delaware limited liability company, 1220 SIXTH, LLC, a Delaware limited liability company, SOUTH BEACH HEIGHTS I, LLC, a Delaware limited liability company, and KGM EQUITIES, LLC, a Delaware limited liability company entered into that certain Development Agreement, dated as of January 9, 2019, pursuant to Sections 163.3220-163.3243, Florida Statutes (the "Florida Local Government Development Agreement Act") and Section 118-4 of the City's Code (the "Development Agreement"), which Development Agreement is recorded in Official Records Book 31323, Page 2781 in and of the Public Records of Miami-Dade County, Florida, as assigned to TCH 500 Alton, LLC, pursuant to that certain Assignment and Assumption of Development Agreement dated as of September 27, 2019 and recorded in Official Records Book 31627, Pages 1177-1182 in and of the Public Records of Miami-Dade County, Florida.

B. The Development Agreement provides, among other terms, the City's and Developer's respective responsibilities and agreement to coordinate and cooperate in the planning, scheduling and approval of the design, development and construction of a mixed use residential and commercial project (the "Project") on the Development Site (as that term is defined in the Development Agreement), and a 3.0 acre public park to be conveyed to the City (the "Park Project").

C. The Mayor and City Commission of the City subsequently approved a First Amendment to the Development Agreement, delineating the terms and conditions for Developer to develop, permit, design and construct a pedestrian bridge over and across 5th Street and West Avenue, to connect the Baywalk south of 5th Street with the Development Site (the "First Amendment"), which First Amendment was dated as of December 18, 2019.

D. On March 17, 2020, the Mayor and City Commission of the City approved a Second Amendment to the Development Agreement (the "Second Amendment"), which provided for additional limits on the Project and design changes and development acceleration of the Park Project, among other changes.



E. This Third Amendment provides for the removal of the northeastern 0.60 Acres of the "Developer Property" and "Park Property" as defined in the Development Agreement from the scope of the Agreement. Moreover, this Third Amendment includes the Parties' agreement to modify the Declaration of Restrictions in Lieu of Unity of Title recorded at Official Record Book 33144, Pages 3948-3990 of the Public Records of Miami-Dade County, Florida to include adjacent land described in Exhibit I to this Agreement (and to provide for the transfer of floor area from the Developer Property and Park Property to the Health Center Redevelopment Parcel.

F. In Resolution No. 2023-XXXXX, the Mayor and City Commission approved this Third Amendment, following two (2) duly noticed public hearings in compliance with Section 163.3225 of the "Act," having determined that it is in the City's best interest to address the issues covered by the Development Agreement, as amended, in a comprehensive manner.

**NOW, THEREFORE,** in consideration of the foregoing, the mutual covenants and conditions contained in this Third Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Third Amendment, intending to be legally bound, agree to amend the Development Agreement, as amended, as follows:

**1. Incorporation of Recitals.** The parties warrant and represent that the foregoing recitals are accurate and correct and incorporate them into this Third Amendment.

**2. Interpretation.**

- (a) Capitalized terms used but not otherwise defined in this Third Amendment shall have the same meaning given to such terms in the Development Agreement, the First Amendment, or Second Amendment thereto, unless otherwise specifically indicated or unless the context clearly indicates to the contrary.
- (b) The words "hereof", "herein" and "hereunder" and words of similar import when used in this Third Amendment shall refer to this Third Amendment as a whole and not to any particular provision of this Third Amendment. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". References herein to "days" shall mean calendar days unless otherwise expressly provided. Unless the context in which used herein otherwise clearly requires, "or" has the inclusive meaning represented by the phrase "and/or". Defined terms include in the singular number the plural and in the plural number the singular.

## PART I – SCOPE OF AGREEMENT

3. **Amendments to Exhibit A, C, and D of Development Agreement.** Exhibits A, C, and D to the Development Agreement are hereby amended as attached to reflect the reduction in size of the Overall Property, the Developer Property, as well as the boundary change to the City Park Property.

## PART II – MODIFICATION TO DECLARATION AND FLOOR AREA ASSIGNMENT

4. **Modification to Declaration.** The Parties agree to modify the Declaration of Restrictions in Lieu of Unity of Title recorded at Official Record Book 33144, Pages 3948-3990 of the Public Records of Miami-Dade County, Florida (the “**Existing Declaration**”) to expand its scope and re-assign floor area. The existing Declaration provides that the Overall Property is part of a “unified development site” for purposes of the City’s zoning regulations. The modified Declaration of Restrictions in Lieu of Unity of Title will expand the unified development site to include land to the north and will include new calculations of the maximum floor area that will apply to the expanded unified development site and re-assign floor area. The expanded unified development site is described on the attached Exhibit “E.” The modified Declaration of Restrictions in Lieu of Unity of Title shall be substantially consistent with the form attached hereto as Exhibit “F. ”

5. **Assignment of Floor Area.** As provided in the modified Declaration of Restrictions in Lieu of Unity of Title, the Parties agree to assign the floor area under the terms of the City’s Land Development Regulations among the parcels encumbered by the modified Declaration as follows:

- (a) Developer Property: 571,000 square feet of floor area.
- (b) City Park Property: 0 square feet of floor area.
- (c) Health Center Redevelopment Parcel legally described in Exhibit G: 269,551 square feet of floor area.
- (d) 740 Alton Road, legally described on Exhibit H attached hereto: 19,124 square feet of floor area.

### [OPEN ISSUES:

- 1) The Administration recommends EXCLUDING 740 Alton Property (and the corresponding FAR) from the proposed new Development Agreement that addresses the development of a multi-use tower within the 700 block of Alton Road and the related new community health center (the “New DA”). If the Developer is willing to demolish the existing building on the 740 Alton Property and redesign the building proposed for the larger site in a manner that incorporates the 740 Alton

Property, the 740 Alton Property may remain in the New DA. The Administration recommends that this item be further refined to ensure the long-term activation of the Alton Road corridor is consistent with best planning practices. If the 740 Alton Property is excluded from the New DA, the square footage allocations noted above will require modification.

2) The Administration recommends that the surface parking lot proposed adjacent to the revised one-story retail buildings on the south side of the park be removed. As an alternative, the Developer may include a limited number of spaces parallel to the driveway, to accommodate drop-off / pick-up, loading, as well as parking during non-peak times. Depending on direction from the Commission, incorporate language to address this issue.]

**6. Execution of Modification of Declaration.** The Parties' execution of the modified Declaration of Restrictions in Lieu of Unity of Title shall occur within thirty (30) working days of the transfer by Miami-Dade County to TCH 700 Alton, LLC of the Health Center Property described in Exhibit I.

**7. Ratification.** Except as modified by this Third Amendment, the Development Agreement, First Amendment, and Second Amendment shall otherwise remain unmodified and in full force and effect and the parties ratify and confirm the terms of the Development Agreement as modified by the First Amendment and the Second Amendment. City and Developer certify to each other that they have no offsets, defenses, or claims with respect to their obligations under the Development Agreement, as amended. All references in future agreements to the Development Agreement shall mean the Development Agreement, as modified by the First Amendment, the Second Amendment, and this Third Amendment.

**8. Entire Agreement.** The Development Agreement, as amended by the First Amendment, the Second Amendment, and this Third Amendment represents the entire agreement between the parties with respect to the subject matter hereof and thereof.

**9. Benefit and Binding Effect.** This Third Amendment shall be binding upon and inure to the benefit of the parties to this Third Amendment, their legal representatives, successors, and permitted assigns.

**10. Amendment.** This Third Amendment may not be changed, modified, or discharged in whole or in part except by an agreement in writing signed by both parties to this Third Amendment.

**11. Severability.** This Third Amendment shall not in any respect operate to terminate, modify, amend or affect any other of the respective rights and obligations of the parties under the Development Agreement, as otherwise amended, all of which shall continue to be in full force and effect.

**12. Conflict.** In the event of any conflict between the terms of the Development Agreement and this Third Amendment, this Third Amendment shall control. In the event of any conflict between the terms of the First Amendment and/or Second Amendment and this Third Amendment, this Third Amendment shall control.

*[Signatures commence on following page]*

**EXECUTION BY THE CITY**

IN WITNESS WHEREOF, the City and Developer intending to be legally bound have executed this First Amendment to Development Agreement as of the day and year first above written.

WITNESSES:

**CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation of the State of Florida

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Dan Gelber, Mayor

\_\_\_\_\_  
Print Name: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_ [SEAL]  
Rafael Granado, City Clerk

STATE OF FLORIDA                    )  
  )ss:  
COUNTY OF MIAMI-DADE         )

The foregoing instrument was acknowledged before me, by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by Dan Gelber, as Mayor, and Rafael Granado, as City Clerk of the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, on behalf of such municipal corporation. They are personally known to me or produced valid Florida driver's licenses as identification

My commission expires:

\_\_\_\_\_  
Notary Public, State of Florida

Print Name: \_\_\_\_\_

**EXECUTION BY DEVELOPER**

WITNESSES:

**TCH 500 Alton, LLC**, a Delaware limited liability company

\_\_\_\_\_  
Print Name:\_\_\_\_\_

By:\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Print Name:\_\_\_\_\_

ATTEST:

By:\_\_\_\_\_  
\_\_\_\_\_, Secretary

[CORPORATE SEAL]

STATE OF FLORIDA            )  
  )ss:  
COUNTY OF MIAMI-DADE    )

The foregoing instrument was acknowledged before me, by means of  physical presence or  online notarization, this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_, and \_\_\_\_\_, as Secretary, of \_\_\_\_\_, a \_\_\_\_\_, on behalf of such \_\_\_\_\_. They are personally known to me or produced valid Florida driver's licenses as identification.

My commission expires:

\_\_\_\_\_  
Notary Public, State of Florida  
Print Name:\_\_\_\_\_

**List of Third Amendment Exhibits**

EXHIBIT "A" – AMENDED LEGAL DESCRIPTION OF DEVELOPER PROPERTY

EXHIBIT "C" – AMENDED LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "D" – AMENDED LEGAL DESCRIPTION OF PARK SITE