

MIAMI BEACH

City Commission Meeting SUPPLEMENTAL MATERIAL 2

City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive
June 5, 2013

Mayor Matti Herrera Bower
Vice-Mayor Jonah Wolfson
Commissioner Jorge R. Exposito
Commissioner Michael Góngora
Commissioner Jerry Libbin
Commissioner Edward L. Tobin
Commissioner Deede Weithorn

City Manager Jimmy L. Morales
City Attorney Jose Smith
City Clerk Rafael E. Granado

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ATTENTION ALL LOBBYISTS

Chapter 2, Article VII, Division 3 of the City Code of Miami Beach entitled "Lobbyists" requires the registration of all lobbyists with the City Clerk prior to engaging in any lobbying activity with the City Commission, any City Board or Committee, or any personnel as defined in the subject Code sections. Copies of the City Code sections on lobbyists laws are available in the City Clerk's office. Questions regarding the provisions of the Ordinance should be directed to the Office of the City Attorney.

SUPPLEMENTAL AGENDA

C4 - Commission Committee Assignments

- C4A Referral To The Finance And Citywide Projects Committee - Discussion Regarding The Proposed Vacation Of The Alley Included In The Amended Plat Of The Aquarium Site Resubdivision (500 Block Of Alton Road).
(Public Works)
(Memorandum)

R7 - Resolutions

R7D A Resolution Approving A Settlement Agreement Between Seville Acquisition, LLC, And The City Of Miami Beach, Concerning The Partial Demolition Of The Boardwalk And The Construction Of A Beachwalk Behind The Marriott Edition Hotel At 29th Street And Collins Avenue, And Authorizing The Mayor And City Clerk To Execute The Settlement Agreement, And Authorizing The City Manager And City Attorney To Take Such Actions As May Be Necessary To Carry Out The Intent Hereof.

(City Attorney's Office)

(Draft Settlement Agreement)



MIAMI BEACH

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera-Bower and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: June 5, 2013

SUBJECT: REFERRAL TO THE FINANCE AND CITYWIDE PROJECTS COMMITTEE – DISCUSSION REGARDING THE PROPOSED VACATION OF THE ALLEY INCLUDED IN THE AMENDED PLAT OF THE AQUARIUM SITE RESUBDIVISION (500 BLOCK OF ALTON ROAD).

ADMINISTRATION RECOMMENDATION

Refer the item to the Finance and Citywide Projects Committee Meeting.

BACKGROUND

The developer of the Crescent Heights project that is proposed to occupy the entire 500 block of Alton Road is requesting that the alley in this block be vacated. In exchange for the vacation, the developer is proposing to make improvements to West Avenue including stormwater and streetscape improvements.

Upon receipt of this request, the City procured an appraiser to determine the value of this alley to the developer. The appraiser will deliver its value by June 5, 2013.

CONCLUSION

The Administration recommends that the Mayor and the City Commission refer the matter to the Finance and Citywide Projects Committee meeting for discussion and further direction.

JLM/MT/ETC/JJF/RWS

T:\AGENDA\2013\June 5\Referral to FCWPC of an alley vacation at the 500 block of Alton Road.docx

Agenda Item C4A
Date 6-5-13

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MIAMIBEACH

COMMISSION MEMORANDUM

TO: Mayor Mattie Herrera Bower and Members of the City Commission

FROM: Jose Smith, City Attorney

CC: Jimmy L. Morales, City Manager

DATE: June 3, 2013

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING THE SETTLEMENT AGREEMENT BETWEEN SEVILLE ACQUISITION, LLC, AND THE CITY OF MIAMI BEACH, CONCERNING THE PARTIAL DEMOLITION OF THE BOARDWALK AND THE CONSTRUCTION OF THE BEACHWALK BEHIND THE MARRIOTT EDITION HOTEL AT 29TH STREET AND COLLINS AVENUE, AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE SETTLEMENT AGREEMENT, AND AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO TAKE SUCH ACTIONS AS MAY BE NECESSARY TO CARRY OUT THE INTENT HEREOF.**

Attached please find the proposed draft Settlement Agreement to accompany the subject item in Wednesday's City Commission agenda. The Settlement Agreement provides in part:

1. For the issuance of permits now for demolition of the boardwalk so as not to delay Seville's construction of its hotel project, but delays construction of the beachwalk until December 1, 2013, to give time to pursue Florida Department of Environmental Protection (FDEP) approval of increased elevation and alternative jogger-friendly surfaces for the beachwalk (the "Elevated Site Plan").
2. Seville's contractor must certify that construction can be completed by March 31, 2014, or the parties must discuss alternatives to the design.
3. The City agrees to pay the increased costs of permitting and construction to accommodate the Elevated Site Plan.
4. If the Elevated Site Plan contains design changes that materially affect the Marriott Edition Hotel project, as defined in the agreement, and the parties do not resolve these differences, then the Seville can construct the beachwalk according to the original plan.
5. If disagreements arise from the Settlement Agreement the parties agree to use mediation, but this cannot extend the agreed timetable.

Please contact me if you need to discuss this further. An attorney-client session during the Wednesday City Commission meeting has been scheduled to discuss the matter further.

JS/GMH/s

Attachment

F:\ATTO\HELGL\LITIGATION\Seville - boardwalk\Memo to Commn re settlement agreement 6-3-13.docx

DISCLAIMER
(TO BE DELETED UPON ADOPTION
BY CITY COMMISSION)

THIS DRAFT SETTLEMENT AGREEMENT (“DRAFT”) BETWEEN THE CITY OF MIAMI BEACH (“CITY”) AND SEVILLE ACQUISITION, LLC (“SEVILLE”) HAS BEEN PREPARED FOR PURPOSES OF NEGOTIATING AND COMPLETING A GLOBAL SETTLEMENT TRANSACTION.

THE DRAFT PROVISIONS ARE INTENDED TO BE A PART OF A DISCUSSION OF OUTSTANDING ISSUES BETWEEN THE CITY AND SEVILLE. THE INDIVIDUAL PROVISIONS ARE INTENDED TO BE READ AND UNDERSTOOD AS “*IN PARI MATERIA*” WITH EACH AND EVERY OTHER PROVISION OF THE DRAFT.

NO INDIVIDUAL PROVISION IS INTENDED TO REPRESENT A PROPOSED TERM, FINDING, OR CONDITION OF AN AGREEMENT, EXCEPT IN THE CONTEXT OF EACH AND EVERY OTHER PROVISION IN THE DRAFT, AND ONLY IF INCLUDED IN A WRITTEN AGREEMENT EXECUTED BY BOTH PARTIES.

MOREOVER, THE DRAFT PROVISIONS HAVE BEEN PREPARED BY SHUBIN & BASS, P.A., AND DO NOT REPRESENT OFFICIAL OR UNOFFICIAL POSITIONS OF SEVILLE, OR THE CITY, ON ANY PARTICULAR SUBJECT UNTIL A FINAL AGREEMENT IS EXECUTED.

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SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into as of this ___ day of _____, 2013, by and between the **CITY OF MIAMI BEACH**, a Florida municipal corporation (“City”) and **SEVILLE ACQUISITION, LLC**, a Delaware limited liability company (“Seville”) (collectively, the “Parties”).

RECITALS

WHEREAS, the City is a municipal corporation organized and existing under the laws of the State of Florida with all powers granted to it by its Charter, the Florida Constitution, and general law;

WHEREAS, Seville is a Delaware limited liability company that is authorized to conduct business in Florida and is the owner of real property more particularly described in **Exhibit “A”** and approximately located at 2901 Collins Avenue in Miami Beach, Florida (the “Property”);

WHEREAS, Seville has pursued the redevelopment of the Property since 2010, beginning construction in September 2011 (the “Seville Redevelopment”);

WHEREAS, Seville obtained all of the required development approvals from the City in 2011 for the Seville Redevelopment, which development approvals specifically contemplated and conditioned approval of the Seville Redevelopment on the demolition of the existing boardwalk and the construction of a new beach walk (at Seville’s sole cost and expense) per the City’s request and pursuant to Policy 5.1 of the Recreation and Open Space Element of the City’s 2025 Comprehensive Plan;

WHEREAS, to sequence the remaining construction of the Seville Redevelopment, to minimize delays, and to complete the Seville Redevelopment pursuant to the City-approved design, Seville has requested a permit on or before June 1, 2013 for the demolition of the existing boardwalk located between the Property and the beach and the construction of a new paved beach walk (the “Beach Walk Permit”);

WHEREAS, Seville submitted its application for the Beach Walk Permit on November 7, 2012, however, in April 2013, on May 6, 2013, on May 9, 2013, and again on May 20, 2013 the City advised Seville that it had temporarily suspended all beach walk permitting while it reevaluated its beach walk policy and, as such, it could not yet issue the Beach Walk Permit to Seville;

WHEREAS, a dispute has arisen between the City and Seville with respect to the Beach Walk Permit, and as a result of that dispute, and to avoid damage and delay in construction, Seville filed that certain lawsuit styled as Seville Acquisition, LLC v. City

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of Miami Beach, Miami-Dade County Circuit Court Case No. 13-17539-CA-31 (the “Lawsuit”), seeking a writ mandating the City to immediately issue the Beach Walk Permit;

WHEREAS, both Seville and the City wish to fully, completely, and amicably settle and resolve all potential claims between them with respect to the Beach Walk Permit – with neither admitting liability or waiving a defense or claim – without incurring the needless costs and expense of litigation and/or administrative claims and proceedings;

WHEREAS, both Seville and the City represent and warrant that they have the authority necessary to enter into this Agreement and do so in accordance with all necessary procedures; and

WHEREAS, both Seville and the City prefer to avoid the uncertainties and expense of the Lawsuit and instead desire to set forth in this Agreement, without establishing precedent, the terms and conditions of the settlement of the Lawsuit, in exchange for the consideration described herein.

NOW THEREFORE, in consideration of the mutual covenants entered into between Seville and the City, and in consideration of the benefits to accrue to each, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

AGREEMENT

1. **Recitals.** The above recitals are true and correct and are incorporated herein. All Exhibits to this Agreement are hereby deemed a part hereof.
2. **Statement of Intent.** It is the intent of Seville and the City that this Agreement shall resolve all disputes regarding the issuance of the Beach Walk Permit.
3. **No Admission of Liability.** The City and Seville acknowledge that they are entering into this Agreement to promote remedial measures between the two entities which have shared an otherwise professional and productive working relationship and to avoid the cost and other consequences to the Parties of the Lawsuit, and for the other considerations herein set forth. In making this Agreement, neither the City nor Seville admit liability, negligence, or responsibility in any matter related to or arising from the Beach Walk Permit dispute at issue in the Lawsuit.
4. **Effective Date.** This Agreement shall become effective only when all of the following have occurred: (i) it is signed by the authorized agent of each Party; and (ii) it is approved by the City in accordance with applicable law and the City adopts the Resolution in the form substantially attached as **Exhibit “B”** (collectively, the “Effective Date”).

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5. **Dismissal of Lawsuit.** On the first business day after the issuance of the Beach Walk Permit pursuant to Section 6 of this Agreement, Seville shall file a Notice of Voluntary Dismissal Without Prejudice of the Lawsuit, in the form substantially attached as Exhibit “C.”

6. **Beach Walk Permit and Demolition.** On the first business day following the Effective Date, the City shall issue the Beach Walk Permit authorizing: (i) the demolition of the existing boardwalk; and (ii) the construction of the new at-grade paved beach walk, per Seville’s November 7, 2012 application, provided that construction of a new at-grade paved beach walk will not begin before December 1, 2013 (the “Construction Commencement Date”).

7. **MOT Plan.** Seville agrees to work with the City, using its reasonable efforts, to amend its means of travel plan (the “MOT Plan”), which provides an alternate route for boardwalk pedestrians to use during and after the demolition of the existing boardwalk, and before the construction of the new beach walk is complete, to be ADA compliant.

8. **Elevated Site Plan.**

A. The City shall have the right (and Seville shall reasonably cooperate with the City’s efforts at no additional cost to Seville) to work with the State of Florida Department of Environmental Protection (“DEP”) to develop alternative site plans for the proposed beach walk to be elevated approximately one (1) to two (2) feet in certain portions to allow views of the ocean so long as the elevation of the beach walk does not materially impact any other aspect of the Seville Redevelopment (the “Elevated Site Plan”). Impact on the access and egress points to and from the Property, the addition of guard rails/railings on or along the beachwalk necessitated by the elevation of the beach walk, overburdening the Property with run-off due to the grading for the Elevated Site Plan, a delay in completing the Seville Redevelopment (including if the completion date for the improvements contemplated by the Elevated Site Plan is estimated to be after March 31, 2014), and impact on the safety or security of the Property shall all be deemed to materially impact the Seville Redevelopment.

B. If the City obtains all necessary permits and approvals from DEP, the City, and any other agency with jurisdiction over the Elevated Site Plan for the construction of the Elevated Site Plan by the Construction Commencement Date, the City shall issue a permit for the construction of the Elevated Site Plan on or before the Construction Commencement Date and Seville agrees to construct the Elevated Site Plan so long as the costs

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associated with the Elevated Site Plan do not exceed the cost of the at-grade paved beach walk authorized by the Beach Walk Permit (issued pursuant to Section 6 of this Agreement) or the City has provided the funds for the additional costs.

C. If the City does not obtain all of the necessary permits and approvals from DEP, the City, and any other agency with jurisdiction over the Elevated Site Plan for the construction of the Elevated Site Plan, or has not provided the funds for the additional costs as described in Section 8(B) by the Construction Commencement Date, Seville shall have the right to commence construction of the at-grade paved beach walk authorized by the Beach Walk Permit (issued pursuant to Section 6 of this Agreement).

D. The costs associated with the construction of the Elevated Site Plan shall be mutually agreed upon by the Parties. The Parties agree to explore reasonable alternatives in order to mutually agree upon these costs. If the City funds such additional costs, such work shall be performed by Seville's general contractor or its subcontractors as per the agreed upon plan. If the Parties, acting in good faith, are unable to mutually agree upon these costs by the Construction Commencement Date Seville shall have the right to commence construction of the at-grade paved beach walk authorized by the Beach Walk Permit (issued pursuant to Section 6 of this Agreement).

E. If Seville's general contractor determines that the completion date for the improvements contemplated by the Elevated Site Plan is estimated to be after March 31, 2014, the Parties agree to explore reasonable alternatives before the Construction Commencement Date to complete such improvements by March 31, 2014 (subject to the materiality standard in Section 8(A) of this Agreement).

F. If the City and Seville agree that a final permit from DEP, the City, and any other agency with jurisdiction over the Elevated Site Plan, is imminent, a one-time extension of the Construction Commencement Date of no more than seven (7) days will not be unreasonably withheld by either Party.

9. **Beach Walk Surface.**

A. Seville shall work with the City and DEP to explore and for the City to obtain approval from DEP (to the extent reasonably possible) of an alternative surface and/or coating for the beach walk which provides a

“jogging-friendly” surface that mitigates the impact on an average jogger’s body (i.e., their joints) while jogging on the beach walk.

B. Seville shall have the right to construct the beach walk with the previously approved surface and shall be released from its obligations to explore and seek approval for the alternative surface if: (i) Seville and the City do not obtain approval for an alternative “jogging-friendly” surface by the Construction Commencement Date; and (ii) Seville’s costs to design, obtain, install and maintain the alternative surface or coating exceeds such costs for the previously approved beach walk surface and the City has not provided the funds for these additional costs.

10. **Default.**

A. The occurrence of any of the following shall constitute an event of default (“Event of Default”) under this Agreement:

(i) The City’s failure to issue the Beach Walk Permit pursuant to Section 6 of this Agreement (“Default A”);

(ii) The City’s imposition of any material condition to the Beach Walk Permit that materially frustrates the ability to develop the Property as contemplated herein, or delays or increases the costs of the Seville Redevelopment (“Default B”);

(iii) The City’s revocation of the Beach Walk Permit or any other similar action which impedes the ability to perform the work approved by the Beach Walk Permit or otherwise contemplated herein (“Default C”);

(iv) A third-party challenge regarding the issuance of the Beach Walk Permit pursuant to Section 6 of this Agreement which impedes the ability to perform the work approved by the Beach Walk Permit. For purposes of this section, a “challenge” shall be broadly construed to include any administrative, judicial, quasi-judicial, legislative, or other like petitioning activity directed at any aspect of the City’s issuance of the Beach Walk Permit (“Default D”).

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B. If and when Seville determines pursuant to the terms of this Agreement that an Event of Default has occurred, Seville possesses the following remedies:

(i) If and when Seville determines that Default A, B, or C has occurred, Seville may, at its sole and absolute discretion, terminate this Agreement. Seville shall be entitled to defend its right to the Beach Walk Permit.

(ii) If and when Seville determines that Default D has occurred: (a) Seville may, at its sole and absolute discretion, terminate its obligations pursuant to Sections 8 and 9 of this Agreement, without regard to the pendency of litigation or any expenditure of money by the City for such; (b) Seville shall be entitled to defend its right to the Beach Walk Permit; and (c) the City shall actively and individually defend the issuance of the Beach Walk Permit.

C. The remedies provided in Section 10(B) are cumulative and not exclusive of any other rights or remedies that may be available to the parties, whether provided by law, equity, statute, or otherwise.

D. In the event Seville exercises its right, pursuant to Section 10(B), to terminate its obligations under all or part of this Agreement, each Party shall bear its own costs and attorneys' fees associated with that termination, and shall be released from any liability associated therewith.

11. **Construction.** The language used in this Agreement will be deemed to be the language chosen by all of the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

12. **Expenses.** Except as otherwise specified, each of the Parties will bear its own costs and expenses (including legal fees and expenses) incurred in connection with the negotiation and consummation of this Agreement and the transactions contemplated hereby.

13. **No Third Party Beneficiaries.** Unless expressly stated herein to the contrary, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties hereto and their respective administrators, executors, other legal

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representatives, heirs, successors, officers, directors, owners, and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any Party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any Party to this Agreement.

14. **Joint Defense.** In the event that a challenge is brought to the Beach Walk Permit or this Agreement (both collectively, the “Approvals”), or a challenge is brought to any necessary and implementing action required by the Approvals, the City and Seville each agree individually to use their best efforts to actively defend any and all such challenges. For purposes of this paragraph, a challenge shall be broadly construed to include any administrative, judicial, quasi-judicial, legislative, or other action that impedes the ability to promptly perform the work approved by the Beach Walk Permit. It is expressly recognized that the duty to defend required by this paragraph shall survive Seville’s exercise of its termination rights pursuant to Section 10(B).

15. **Relationship of the Parties.** The Parties hereto acknowledge that they are separate and independent entities and nothing herein shall be deemed to create a joint venture, association, partnership, agency or employment relationship between the two. Neither party shall have the power to act in the name of, on behalf of, or incur obligations binding upon the other Party. Neither Party shall acquire an interest in the business or operations of the other by virtue of this Agreement. Furthermore, neither Party endorses or warrants the activities of the other or their business, business practices, projects, products, services, or other activities.

16. **Consideration.** The City and Seville agree that the consideration to them set forth herein constitutes adequate and ample consideration for the rights and claims they are waiving under this Agreement, and for the obligations imposed upon them by virtue of this Agreement.

17. **Release and Waiver of Claims.**

A. In exchange for the consideration described in this Agreement, Seville, its agents, representatives, officers, directors, employees, attorneys, affiliates, parents, subsidiaries, successors, and assigns, irrevocably, knowingly, and voluntarily releases, waives, and forever discharges any and all claims, demands, actions, or causes of action, of any kind whatsoever, known or unknown, foreseen or unforeseen, foreseeable or unforeseeable, and any consequences thereof, which it has or may have against the City from the beginning of the world until the Effective Date of this Agreement, in connection with the issuance of the Beach Walk Permit as alleged or that could have been alleged in the Lawsuit.

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B. In exchange for the consideration described in this Agreement, the City irrevocably, knowingly, and voluntarily releases, waives, and forever discharges any and all claims, demands, actions, or causes of action, of any kind whatsoever, known or unknown, foreseen or unforeseen, foreseeable or unforeseeable, and any consequences thereof, which it has or may have against Seville, its agents, representatives, officers, directors, employees, attorneys, affiliates, parents, subsidiaries, successors, and assigns, from the beginning of the world until the Effective Date of this Agreement, in connection with the issuance of the Beach Walk Permit as alleged or that could have been alleged in the Lawsuit.

C. The mutual releases stated in sections 17(A) and 17(B) above do **not** release the Parties from their obligations under this Agreement.

D. EACH PARTY ACKNOWLEDGES, AGREES, AND UNDERSTANDS THAT THIS RELEASE IS A FULL AND FINAL BAR TO ANY AND ALL CLAIMS IN CONNECTION WITH THE ISSUANCE OF THE BEACH WALK PERMIT THAT THEY HAD, HAVE, OR MAY IN THE FUTURE HAVE AGAINST EACH OTHER THROUGH THE EFFECTIVE DATE OF THIS AGREEMENT.

EACH PARTY HAS CONSULTED WITH AND HAS BEEN ADVISED BY AN ATTORNEY PRIOR TO SIGNING THIS AGREEMENT.

18. **Enforcement of Settlement Agreement.** None of the Parties herein are releasing their right to bring an action to enforce the terms of this Agreement. If any legal action or other proceeding is brought for the enforcement of this Agreement or because of any alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, court costs and all expenses incurred in that action or proceeding, even if not taxable as court costs (including, without limitation, such fees, costs and expenses incident to appeals), in addition to any other relief to which such party may be entitled.

19. **Conflicts and Amendment of Prior Approvals.** In the event of conflicts between the terms of this Agreement, and/or a previously imposed condition of development approval, the provisions of this Agreement shall control. With respect to the design and construction of the beach walk addressed herein, the City's staff has determined that the following approvals are consistent with the terms of this Agreement, including without limitation, Sections 7, 8, and 9 herein: (A) June 14, 2011 Historic

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Preservation Board Order, File No. 7249; (B) June 28, 2011 Planning Board Order, File No. 2013; (C) September 9, 2011 Board of Adjustment Order, File No. 3515; and (D) September 13, 2011 Historic Preservation Board Order, File No. 7249.

20. **Severability.** If any provision of this Agreement may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable and another of which would render the provision valid and enforceable, such provision shall have the meaning which renders it valid and enforceable. If any provision hereunder shall be held unenforceable by a court of competent jurisdiction, then the remaining provisions of this Agreement shall continue in full force and effect without being impaired in any way.

21. **Survival.** All covenants, agreements, representations and warranties made herein or otherwise made in writing by any party pursuant hereto shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

22. **Waivers.** The failure or delay of any Party at any time to require performance by another Party of any provision of this Agreement shall not affect the right of such Party to require performance of that provision or any other provision hereunder. Any waiver by any Party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself or a waiver of any other right or remedy under this Agreement. Notice to or demand on any Party in any circumstance shall not, of itself, constitute any other or further notice or demand in similar or other circumstances. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

23. **Complete Agreement.** This Agreement, and all the terms and provisions contained herein, including without limitation the Exhibits hereto, constitute the full and complete agreement between the Parties hereto to the Effective Date with respect to the matters expressly set forth herein, and supersede and control over any and all prior agreements, understandings, representations, correspondence and statements, whether written or oral. Any provision of this Agreement shall be read and applied in *pari materia* with all other provisions hereof.

24. **Amendments.** The provisions of this Agreement may not be amended, supplemented, waived or changed, other than by a writing signed by both Parties, making specific reference to this Agreement.

25. **Captions.** The section headings and captions of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or

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intent of this Agreement or any part thereof, or in any way affect this Agreement or construe any article, section, subsection, paragraph or provision hereof.

26. **Holidays.** It is hereby agreed and declared that whenever a notice or performance under the terms of this Agreement is to be made or given on a Saturday or Sunday or on a legal holiday observed by the City, it shall be postponed to the next following business day.

27. **Public Purpose.** The City and Seville acknowledge and agree that this Agreement satisfies, fulfills, and is pursuant to and for a public and municipal purpose, and is in the public interest, and is a proper exercise of the City's power and authority.

28. **Notices.** The Parties designate the following persons as representatives to receive any notices with regard to this Agreement:

For the City: Jimmy L. Morales
City of Miami Beach, City Manager
1700 Convention Center Drive
Miami Beach, Florida 33139

With a copy to: Jose Smith, Esq.
City of Miami Beach, City Attorney
1700 Convention Center Drive, Fourth Floor
Miami Beach, Florida 33139

For Seville: Seville Acquisition, LLC
c/o Marriott International, Inc.
10400 Fernwood Road
Bethesda, Maryland 20817
Attn: Regina A. Nelson, Dept. 52/923

With a copy to: John K. Shubin, Esq.
Shubin & Bass, P.A.
46 S.W. First Street, Third Floor
Miami, Florida 33130

With a copy to: Michael Larkin, Esq.
Bercow, Radell & Fernandez, P.A.
Wachovia Financial Center
200 S. Biscayne Boulevard, Suite 850
Miami, Florida 33131

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29. **Successors in Interest.** The obligations and benefits of this Agreement shall inure to all successors in interest to the Parties to this Agreement.

30. **Further Assurances.**

A. The Parties agree to execute and deliver from time to time such documents, and to perform all actions which may be necessary to effectively and completely carry out the intended effect of this Agreement, including but not limited to, defending the Agreement from legal or administrative challenges.

B. The City agrees, from the Effective Date of this Agreement, that nothing contained herein or in the Lawsuit shall be the basis for future downgrading or disadvantage of Seville as an applicant or petitioner of government redress.

31. **Exhibits.** Each Exhibit referred to and attached to this Agreement is an essential part of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement and incorporated herein.

32. **Technical Amendments.** In the event that due to minor inaccuracies contained herein or any Exhibit attached hereto or any other agreement contemplated hereby, or due to changes resulting from technical matters arising during the term of this Agreement, the Parties agree that amendments to this Agreement required due to such inaccuracies, unforeseen events or circumstances which do not change the substance of the Agreement, or prejudice either Party, may be made and incorporated herein.

33. **Execution.** The execution, delivery, and performance of this Agreement have been duly and validly authorized by all necessary corporate representatives of Seville and all necessary officials of the City. This Agreement constitutes, and when executed and delivered will constitute, a valid and binding obligation of the Parties enforceable in accordance with the terms set forth herein. The Parties agree that this Agreement may be executed in counterpart originals with the same force and affect as if fully and simultaneously executed as a single original document. A facsimile or electronic copy of this Agreement and any signatures thereon shall be considered for all purposes as originals.

34. **Florida Law.** This Agreement shall be governed by, construed, and enforced in accordance with, the laws of the State of Florida. Either of the Parties hereto may enforce the terms of this Agreement in Miami-Dade County Circuit Court.

35. **Time is of the Essence.** Time is of the essence for each and every provision of this Agreement.

36. **Preservation of Rights.** The City and Seville further acknowledge and agree that certain provisions of this Agreement will require the City and/or its boards, departments or agencies, acting in their government capacities, to consider governmental action as set forth herein. The City and Seville acknowledge and agree that all such actions undertaken by the City shall be undertaken in strict accordance with established requirements of the general laws of the State of Florida and City ordinances or regulations. Nothing in this Agreement or in the City's and Seville's acts or omissions in connection herewith shall be deemed in any manner to waive, limit, impair, or otherwise affect the authority of the City in the discharge of its police power or governmental power expressly including the land use and zoning power.

37. **Mediation.**

A. Notwithstanding anything to the contrary herein, no civil action with respect to any dispute, disagreement, claim or controversy arising out of or relating to any provision of this Agreement (the "Dispute") may be commenced until the matter has been submitted to JAMS, or its successor, for non-binding mediation (the "Mediation"). Either Party may commence the Mediation by providing to JAMS and the other Party a written request for the Mediation, setting forth the subject of the Dispute and the relief requested immediately after the occurrence of the Dispute. The particular mediator selected shall be subject to agreement between the Parties. The Mediation shall occur within 10 days of the Dispute, unless otherwise agreed by the Parties. The Parties agree to share equally in the costs of the mediation. Either Party may seek equitable relief prior to the Mediation to preserve the status quo pending the completion of the Mediation.

B. The Mediation shall not extend the deadlines in Sections 6, 8, and 9 of this Agreement as related to the Construction Commencement Date. To illustrate the purpose of this section, if mediation is commenced pursuant to this Section regarding any of the obligations contained in Sections 6, 8, and/or 9, including without limitation, the Elevated Site Plan, the permitting of the Elevated Site Plan, the costs associated with the Elevated Site Plan, the estimated completion date for the improvements contemplated by the Elevated Site plan, the alternate beach walk surface, the permitting of the alternate beach walk surface, and/or the costs associated with the alternate beach walk surface, and the Mediation has not occurred or has not resolved the Dispute by the Construction

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Commencement Date, Seville shall retain its rights to proceed as provided for in paragraphs 6, 8, and 9.

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Witness:

Print Name: _____

SEVILLE ACQUISITION, LLC

By: Courtyard Management Corporation,
its sole member

By: _____

Timothy J. Grisius
Vice President

STATE OF MARYLAND)
) SS
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this ___ day of _____, 2013, by TIMOTHY J. GRISIUS, the VICE PRESIDENT of COURTYARD MANAGEMENT CORPORATION, the sole member of **SEVILLE ACQUISITION, LLC**, a Maryland limited liability company, who is ___ personally known to me, or who has produced _____, as identification.

Notary Seal

Notary Public, State of Maryland
Print Name: _____

My Commission Expires: _____

SCHEDULE OF EXHIBITS

- Exhibit A: Property Legal Description
- Exhibit B: Resolution Adopting Agreement
- Exhibit C: Notice of Voluntary Dismissal Without Prejudice