

THIRD AMENDMENT ("THIRD AMENDMENT") TO AMENDED AND RESTATED LEASE ("LEASE") BETWEEN THE BILTMORE HOTEL LIMITED PARTNERSHIP, A FLORIDA LIMITED PARTNERSHIP ("DEVELOPER") AND THE CITY OF CORAL GABLES, A FLORIDA MUNICIPAL CORPORATION ("CITY") EXECUTED FEBRUARY 10, 1986 AND AMENDED AND RESTATED JULY 29, 1999 (THE "ORIGINAL LEASE") AND AMENDED ON JANUARY 2, 2001 (THE "FIRST AMENDMENT") AND ON MARCH 29, 2022 (THE "SECOND AMENDMENT") [THE ORIGINAL LEASE, THE FIRST AMENDMENT AND THE SECOND AMENDMENT BEING COLLECTIVELY REFERRED TO AS THE "LEASE"]

This Third Amendment made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 by and between The Biltmore Hotel Limited Partnership, a Florida limited partnership, (the "Developer") and the City of Coral Gables, a Florida municipal corporation ("City").

### R E C I T A L S

Now, therefore, for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged by the parties, it is hereby agreed as follows:

1. Insurance. Section 15.2.1(a) is hereby deleted in its entirety and replaced with the following:

#### Section 15. INSURANCE

15.2.1 The Developer shall, commencing with the Opening Date and throughout the term of this Lease, procure and maintain, at Developer's expense, at least the following insurance:

(a) Insurance on the Premises (including contents) against loss or damage by all risks of direct physical loss, including, without limitation, windstorm coverage, with commercially reasonable deductible limits. The Developer agrees to indemnify the City for any deductible amount that Developer chooses for its insurance coverages. The Developer will insure for the lesser of either (1) the full actual replacement cost of the buildings and structures, including improvement and betterments or (2) \$100,000,000. The policy shall contain a Historic Reproduction Cost Valuation Endorsement providing coverage that will pay the cost to replace, repair or restore damage to the premises, to the greatest extent possible, using the same materials, workmanship and architectural features and details that existed before the loss. The coverage shall be provided on an "Agreed Amount" basis "Not Subject to a Co-insurance Clause". The policy is to be on a replacement cost basis and cover the contingent increased cost from operation of building laws. Notwithstanding the foregoing, during the period from March 27, 2023 to March 27, 2024, the Developer's windstorm coverage on the Premises may be in the amount of \$50,000,000 ("Reduced Windstorm Limit"), subject to the terms and conditions of this Section 15. The parties acknowledge that as of the date of the Third Amendment,

Developer has obtained windstorm coverage on the Premises in the amount of the Reduced Windstorm Limit, with a self-insured retention of 20% of the loss (“Retention”) and a deductible of 5% of the actual value of the buildings and structures (capped at \$2,500,000) (“Deductible”). As a condition for the City to accept the foregoing Retention, Deductible and Reduced Windstorm Limit, the Developer must deliver to the City an unconditional letter of credit in the amount of \$9,800,000 (“Letter of Credit”) in accordance with the following terms and conditions. Developer must deliver to the City a term sheet for the Letter of Credit by July 21, 2023, and Developer must close on the Letter of Credit by August 10, 2023 (“LOC Outside Date”). The terms for the Letter of Credit must be acceptable to the City in its sole discretion. The Letter of Credit shall be issued by an FDIC-insured bank with an office in Miami-Dade County, Florida, and such bank must otherwise be acceptable to the City. The Letter of Credit shall serve as security for the payment of the Deductible and/or Retention. If an event occurs that requires the Deductible and/or Retention to be paid, the City shall have the right to draw against the Letter of Credit and apply such proceeds towards the payment of the Deductible and/or Retention. In no event may the Letter of Credit be terminated except with the express written consent of the City. Additionally, in no event may the Letter of Credit be drawn upon without the City’s approval and signature. If at any time after Developer obtains the Letter of Credit, Developer obtains windstorm coverage in the amount of the Reduced Windstorm Limit, with a maximum deductible no higher than the Deductible, without any self-insured retention, and otherwise on terms acceptable to the City, the City shall approve the termination of the Letter of Credit. If the Developer does not deliver to the City the Letter of Credit in accordance with the terms and conditions set forth above, Developer must deliver to the City by the LOC Outside Date a policy for windstorm coverage in the amount of the Reduced Windstorm Limit, with a maximum deductible no higher than the Deductible, without any self-insured retention, and otherwise on terms acceptable to the City, failing which, the City will automatically be in default of the Lease. For purposes of this Section 15, all references to “deductible” shall be deemed to include any self-insured retention, unless otherwise expressly set forth herein.

2. No Application of Section 15.8. The parties acknowledge that Developer made the request for the Reduced Windstorm Limit, and the City is agreeing to this Third Amendment as an accommodation to the Developer. As such, Section 15.8 of the Lease, including, without limitation, the provision which states that subsequent changes in the coverages or minimum limits of insurance will not be made until at least three (3) years after any prior change, shall not apply to the changes made to the required coverages and minimum limits set forth in this Third Amendment (i.e., this Third Amendment shall not re-start any 3-year time period for changes to coverages and minimum limits).

3. Capital Terms. All capitalized terms hereunder shall have the same meaning and definition as provided in the Lease or Management Agreement, as applicable.

4. Entire Agreement. This Third Amendment, together with the other writings signed by the parties expressly stated to be supplementary hereto and together with any instruments to be executed and delivered pursuant to this Third Amendment, constitutes the entire agreement between the parties and supersedes all prior understandings and writings, pertaining to the Third Amendment and the specific terms and conditions contained herein and may be changed only by a writing signed by the parties hereto. In interpreting this Third Amendment, no weight will be given to whether the provision in question was drafted by one party or the other.

5. Counterparts. This Third Amendment may be executed in multiple counterparts but such multiple counterparts shall constitute a single agreement. Signatures of this Third Amendment that are transmitted by either or both electronic or telephonic means (including, without limitation, facsimile, email, DocuSign, and .pdf) shall be considered to have the same legal and binding effect as any original signature.

6. Ratification. The parties hereto hereby ratify and confirm their respective covenants and obligations under the Lease, as incorporated herein and as amended hereby. Any inconsistency or conflict between the Lease and this Third Amendment shall be governed by the terms of this Third Amendment.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to be executed by their duly authorized officers on \_\_\_\_\_, 2023, but intending for the changes set forth herein to be binding and effective from \_\_\_\_\_, 2023.

ATTEST:

CITY OF CORAL GABLES (Seal)

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

THE BILTMORE HOTEL LIMITED  
PARTNERSHIP, a Florida limited  
Partnership

ATTEST:

By: SEAWAY BILTMORE, INC.  
Its sole General Partner

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
T. Gene Prescott  
President

STATE OF FLORIDA        )        SS:  
  )  
COUNTY OF DADE        )

Acknowledgement of City of Coral Gables

BEFORE ME, the undersigned authority, this day personally appeared, \_\_\_\_\_ City Manager and \_\_\_\_\_, City Clerk, respectively, of the City of Coral Gables, a municipal corporation of the State of Florida, who did acknowledge to and before me, that they executed the above and foregoing instrument for the uses and purposes therein expressed, with due authority in that behalf.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

STATE OF FLORIDA        )        SS:  
  )  
COUNTY OF DADE        )

Acknowledgement of The Biltmore Hotel Limited Partnership

BEFORE ME, personally appeared T. GENE PRESCOTT, President, respectively, of SEAWAY BILTMORE INC. General Partner of THE BILTMORE HOTEL LIMITED PARTNERSHIP, a Florida limited partnership, to me, well known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to and before me that he executed the same for the purposes therein expressed, with due authority from said limited partnership.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

Consent by Lender (\_\_\_\_\_)

The undersigned, being a Qualified Mortgagee under the Lease, does, pursuant to Section 22.13 of the Lease hereby consent to this Third Amendment of the Lease.

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

