

SECOND AMENDMENT ("SECOND 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") [THE ORIGINAL LEASE AND THE FIRST AMENDMENT BEING COLLECTIVELY REFERRED TO AS THE "LEASE"]

This Second Amendment made and entered into this ____ day of March, 2022 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 of the Lease is hereby deleted in its entirety and replaced with the following:

Section 15. INSURANCE

15.1 Builders Risk. Developer shall, at its expense, at all times during the period of renovation, rehabilitation, furnishing and equipping of the Premises, procure and maintain adequate builders risk, public liability and indemnity and property insurance (with limits and coverage to be mutually agreed upon) fully protecting City and Developer against loss or damage arising in connection with the preparation, construction, furnishing and equipping of the Hotel. Similar builders risk insurance shall be provided during the period of any subsequent construction during the term of this Lease.

15.2 Property 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 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.

(b) Insurance against loss or damage from explosion of boilers, pressure vessels, pressure pipes and sprinklers, to the extent applicable, installed in the Premises in an amount not less than \$100,000,000.

(c) Business interruption insurance covering loss of profits and necessary continuing expenses for interruptions caused by any occurrence covered by the insurance referred to in Section 15.2.1(a) and (b) of a type and in amounts generally prevailing and with deductible limits generally prevailing for Comparable Hotels.

(d) The property insurance policy(ies) shall contain a Priority of Payments endorsement stating that to the extent that any loss exceeds the Policy's applicable limits or sub-limits, any amounts paid under the Policy shall first apply to the necessary repair, restoration and replacement of property owned by the City.

15.2.2 Any mortgage on the Premises shall contain provisions to the effect that proceeds of the insurance policies required to be carried under this Section 15.2 shall be available for repair and restoration of the Premises.

15.2.3 The Developer shall have the improvements appraised every three (3) years for purposes of obtaining proper amount of property insurance coverage under this Section 15.2. A copy of each such appraisal shall be provided to the City.

15.3 Operations insurance. The Developer shall procure and maintain, at Developer's expense, the following insurance:

15.3.1 Commercial general liability insurance written on an occurrence basis, including but not limited to, coverage for contractual liability, products and completed operations, personal & advertising injury, bodily injury and property damage liabilities with limits of liability no less than:

Each Occurrence Limit - \$25,000,000
Personal & Advertising Injury Limit - \$25,000,000
General Aggregate Limit - \$25,000,000
Products & Completed Operations Aggregate Limit - \$25,000,000

15.3.2 Liquor Liability Insurance covering claims and losses arising out of the selling or serving of alcoholic beverages at the premises. Coverage shall be a on an occurrence basis with limits of liability no less than:

Each Occurrence Limit - \$25,000,000

General Aggregate Limit - \$25,000,000

15.3.3 Automobile Liability covering all owned, non-owned and hired vehicles used in connection with the Developer's use of the Premises and related operations, with a combined single limit of liability for bodily injury and property damage of not less than:

Combined Single Limit (Each Accident) - \$25,000,000
Any Auto (Symbol 1)
Hired Autos (Symbol 8)
Non-Owned Autos (Symbol 9)

15.3.4 Workers' Compensation and Employer's Liability Insurance covering all employees, subcontractors, and/or volunteers of the Developer. The minimum limits of liability shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation insurance, with the following limits:

Workers' Compensation - Coverage A
Statutory Limits (State of Florida or Federal Act)
Employers' Liability - Coverage B
Each Accident - \$1,000,000 Limit
Disease each Employee - \$1,000,000 Limit
Disease Policy Limit - \$1,000,000 Limit

15.3.5 Employment Practices Liability covering, at a minimum, claims and lawsuits brought by employees of Developer for sexual harassment, discrimination, and wrongful termination. If coverage is provided on a Claim Made Form, the coverages must respond to all claims reported within three years following the expiration or termination of the Lease. The minimum limits shall be as follows:

Each Claim - \$2,000,000
General Aggregate - \$2,000,000

15.3.6 Sexual Abuse and Molestation Liability covering claims and lawsuits brought against Developer. If coverage is provided on a Claim Made Form, the coverages must respond to all claims reported within three years following the expiration or termination of the Lease. The minimum limits shall be as follows:

Each Claim - \$25,000,000
General Aggregate - \$25,000,000

This requirement in Section 15.3.6 can be satisfied if the general liability and excess or umbrella liability policies do not contain any exclusions for sexual abuse and molestation acts.

15.3.7 Such other insurance in amounts as the City in its reasonable judgement deems advisable for Developer's and City's protection against claims, liabilities and losses arising out of or connected with performance under this Lease.

15.3.8 The required liability limits in Section 15.3 can be satisfied by utilizing umbrella or excess liability policies in addition to a primary policy.

15.4 Coverage.

15.4.1 All insurance described in Sections 15.1, 15.2 and 15.3 may be obtained by the Developer by endorsement or equivalent means under its blanket insurance policies or the blanket insurance companies of the Management Company, if it uses such form of insurance, provided that such blanket policies substantially fulfill the requirements specified herein.

15.4.2 Developer shall not self-insure, co-insure or otherwise retain such risks or portions thereof, for the Biltmore Hotel, as it might do with respect to other hotels or properties that it owns, leases or manages. The amount of deductibles associated with coverages required for compliance with this Lease shall be disclosed annually to the City. All deductibles associated with coverages required for compliance with this Lease shall remain the sole and exclusive responsibility of Developer. Under no circumstances will the City be responsible for paying any deductible related to the insurance required in this Section 15.

15.5 Policies and Endorsements.

15.5.1 All insurance provided for under Section 15 shall name the City as an additional insured (no additional insured is required for workers' compensation/employer's liability), contain a waiver of subrogation in favor of the City and contain this wording "This insurance shall be primary over any other insurance or self-insurance available to the City." Developer shall deliver to City certificates of insurance with respect to all policies so procured, including existing, additional and renewal policies and, in the case of insurance about to expire, shall deliver certificates of insurance with respect to the renewal policies not less than five (5) business days prior to the respective dates of expiration.

15.5.2 Insurance shall be written in mutual or stock companies authorized to do business in the State of Florida which are approved by any Qualified Mortgagee; if there is one that requires its approval, and if not, by the City. Such approval shall not be unreasonably withheld. All required Insurance shall be written by insurance companies with an A.M. Best Rating of A- VII or better, or some other rating level mutually agreed to by the parties hereto. The premium for all policies to be carried by Developer shall be paid promptly by the Developer.

15.5.3 All policies of insurance provided for under this Section shall, have attached thereto an endorsement that such policy shall not be cancelled or materially changed without at least thirty (30) days' prior written notice to City.

15.6 Limited Release of Liability and Waiver of Subrogation. To the extent a waiver of subrogation can be obtained from its insurance carrier, without a substantial increase in the premium, for its casualty insurance the Developer releases the City and its respective authorized representatives, from any claims for damage to any person or to the Premises that are caused by or result from risks insured against under any insurance policies carried by the Developer pursuant to the terms hereof and in force at the time of any such damages. If obtainable, without a substantial increase in the premium, the Developer shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against any insured party in connection with any damage covered by any policy. If the release of the City, as set forth in the first sentence of this Sub-section, shall contravene any law with respect to exculpatory agreements, the liability of the City shall be deemed not released but shall be secondary to the Developer's insurers.

15.7 Insurance Trustee. The policies of property and builders risk insurance shall contain a clause providing that any loss under the same shall be payable to the Qualified Mortgagee which has the first leasehold mortgage on the Premises, as insurance trustee, and, if no Qualified Mortgagee exists, then to such trust company authorized to do business in the State of Florida as City and Developer mutually agree upon and from time to time designate in writing. Except as set forth in Sections 18.4.3 and 22.6.4 hereof, said trustee shall act as trustee of a trust for City, Developer, and any Qualified Mortgagee, to receive and disburse all amounts collected on said policies. Such trust may be established at any time and shall be established prior to any payment under any such policy or insurance. Developer shall pay the costs of such insurance trust, including the charge of the trustee unless the Qualified Mortgagee is serving as trustee, in which event no such charges shall be payable by Developer or the City. The trustee shall be the trustee of the insurance trust as set forth in Section 18.4.

15.8. Changes in Coverages and Required Limits of Insurance. If, in the opinion of the City, circumstances merit a change in the required coverages or minimum limits of insurance required by the Lease, the City may change the coverages and minimum limits of insurance required, and the Developer will, within one-hundred & fifty (150) days of receipt of written notice of a change in the coverages and minimum limits required, comply with such change and provide evidence of such compliance in the manner required by the Lease. Provided, however, that no change in the coverages or minimum limits of insurance required will be made until at least three (3) years after any amendment to this Section 15. With respect to any change made, under this Section 15.8, the minimum limits required for any coverage shall not be increased to an amount greater than that which was required under the Original Lease. Subsequent changes in the coverages or minimum limits of insurance will not be made until at least three (3) years after any prior change unless such changes are agreeable to both parties.

2. Sovereign Immunity. The parties hereby agree to include the following provision as Section 25 of the Lease:

City and Developer acknowledge that the Florida Doctrine of Sovereign Immunity bars all claims against City other than claims arising out of this Lease. Specifically, Developer

acknowledges that it cannot and will not assert any claims against City, unless the claim is based upon a breach by City of this Lease. Furthermore, Developer understands that it has no right and will not make any claims based upon any of the following: (i) claims based upon any alleged breach by City of warranties or representations not specifically set forth in this Lease; (ii) claims based upon negligence or any tort arising out of this Lease; (iii) claims upon alleged acts or inaction by City, its elected officials, attorneys, administrators, consultants, agents, or any City employee; or (iv) claims based upon an alleged waiver of any of the terms of this Lease. Nothing in this Lease is intended to operate as a waiver of City's sovereign immunity, as set forth in the Florida Constitution and Florida Statutes Chapter 768.28.

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

4. Notices. All notices, demands, requests for approvals, approvals, statements and other communications which may be required to be given by either party to the other shall be in writing and shall be deemed given and if delivered by hand against receipt or sent by certified or registered mail, postage prepaid, return receipt requested:

To City:

City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Attn: City Manager

With a copy to:

Holland & Knight LLP
701 Brickell Avenue, Suite 3300
Miami, Florida 33131
Attn: Vivian de las Cuevas-Diaz, Esq.

And

City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Attn: City Attorney

To Biltmore:

c/o The Biltmore Hotel
1200 Anastasia Avenue
Coral Gables, Florida 33134
Attn: T. Gene Prescott and Tom Prescott

With a copy to:

S. Daniel Ponce, Esq.
Berger-Singerman, LLP
1450 Brickell Avenue, Suite 1900
Miami, Florida 33131

Or at such other address as from time to time may be designated by the party receiving the notice.

5. Entire Agreement. This Agreement, 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 Second Amendment, constitutes the entire agreement between the parties and supersedes all prior understandings and writings, pertaining to the Second 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 Agreement, no weight will be given to whether the provision in question was drafted by one party or the other.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be executed by their duly authorized officers on _____, 2022, but intending for the changes set forth herein to be binding and effective from _____, 2022.

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 Second Amendment of the Lease.

By: _____
Its: _____