AUTONOMOUS MUNICIPALITY OF SAN JUAN

GOVERMENT OF PUERTO RICO

December 8, 2021

FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING

2022-001514-A

THIS FIRST AMENDEDMENT TO MEMORANDUM OF UNDERSTANDING (as amended hereinafter, this "**MOU**"), dated as of December 8, 2021 (the "Effective Date") sets forth certain nonbinding understandings and binding agreements between **The Normandie OZ, LLC** (the "**NOZ**"), a Puerto Rico limited liability company, duly organized and registered in the Puerto Rico Department of State under the laws of the Government of Puerto Rico, with registration number 430078, represented at this act by EDDIE ISHAY, of legal age, single, businessperson, and resident of Carolina, Puerto Rico, and the Autonomous Municipality of San Juan (the "**MSJ**"), a governmental entity created and existing under Act No. 107 of August 14, 2020, also known as the Puerto Rico Municipal Code, as amended ("**Act 107-2020**"), represented at this act by its Mayor, MIGUEL A. ROMERO LUGO, of legal age, married and resident of San Juan, Puerto Rico, or his authorized representative, relating to the proposed conversion and redevelopment of certain sports facilities owned by MSJ in order to generate a parking lot facility and an improvement and refurbishment program of certain recreational areas also owned by MSJ (the "**Proposed Transaction**"). The NOZ and the MSJ are sometimes referred to individually as a "**Party**" and collectively as the "**Parties**".

WHEREAS, the Parties subscribed a Memorandum of Understanding under number 2022-001514 (the "Original MOU") that was properly registered before the office of the comptroller of Puerto Rico, in accordance with Regulation Number 33 (Registry of Contracts, Related Scriptures and Documents and Shipment of Copies to the Office of the Comptroller of Puerto Rico), in accordance with Law Num. 18 of October 30, 1975, as amended.

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WHEREAS, the effective date of the Original MOU is from November 5th, 2021 (the "**Original Effective Date**") until December 31st, 2024.

WHEREAS, pursuant to Section 3(a) of the Original MOU, NOZ and MSJ agreed among other things, to negotiate in good faith and use their best efforts to bring about a written amendment to the Original MOU stating the details of the Proposed Transaction, including but not limited to the details of the Proposal and the Long Term Lease (as such terms are defined in the Original MOU) agreed to by MSJ and NOZ, on or before November 24, 2021.

WHEREAS, since the Original Effective Date, representatives of NOZ and MSJ have met and exchange information regarding the Proposed Transaction and are now in a position to further elaborate the details of the Proposed Transaction, as agreed by the Parties under the Original MOU.

NOW, THEREFORE, in consideration of the premises and the agreements herein contained, NOZ and MSJ hereby agree to amend the Original MOU as follows:

A. **Both parties agree to amend section 2 of the MOU number 2022-001514 so that it reads the following:**

2. Nonbinding Understandings. This Section 2 sets forth the nonbinding understandings of the Parties with respect to the Proposed Transaction. It is the present intention of the Parties that NOZ and MSJ will carry out the actions herein expressed on terms and conditions substantially similar to those set forth in this Section 2. These terms are based upon information currently available. They do not reflect all of the material terms of the Proposed Transaction but provide a basis for negotiating the Definitive Agreement (as defined below).

(a) Definitive Agreement. The Parties intend to negotiate a formal written agreement that would govern the Proposed Transaction ("**Definitive Agreement**"). Binding obligations with respect to the Proposed Transaction shall only arise upon the execution of the Definitive Agreement by both Parties.

(b) Authorization. The representatives from each of the Parties hereby confirm that they have the proper authorization to execute this MOU, evidence of which they will provide whenever and wherever it is reasonably requested.

(c) Purpose. The purpose of this MOU is to establish the framework by which the Parties will continue to negotiate in good faith in order to facilitate the potential redevelopment of

the area surrounding the Escambrón Property (the "Escambrón Area") by providing the same with adequate parking facilities and other necessary areas for the benefit and use of the general public and, at the same time, improve the ancillary conditions, facilities and hotel-related amenities of the Normandie Hotel. As such, it is the desire of both Parties to express their respective positions and proposals and make good faith efforts to reach a final agreement, subject to the provisions of Act 107-2020 on the matters expressed herein.

(d) Undertakings by NOZ.

(i) Parking Facility Construction Proposal (the "Parking Facility Proposal"). NOZ shall be responsible, at its sole cost and expense, of the design and construction of a one level parking facility (the "Parking Facility") (I) to be located in the internal footprint of the Escambrón Track and Field Facilities (the "Track Facilities"), (II) with a proposed parking floor level three feet lower than the current level of the Track Facilities and (III) which would be leased, used and managed by NOZ for the use of the general public and guests of the Normandie Hotel pursuant to a long term Lease Agreement of no less than sixty (60) years to be entered into between MSJ and NOZ as part of the Proposed Transaction (the "Long Term Lease") (Conceptual Drawings of the Parking Facility are attached as **Exhibit D** with final details to be agreed upon between NOZ and MSJ as part of the Definitive Agreement). NOZ's responsibility related to the development of the Parking Facility will be limited to the design and constructions costs of (I) the excavation costs for the Parking Facility, (II) the concrete structure of the Parking Facility and (III) the refurbishing of the track and green sport area on top of the concrete structure of the Parking Facility. It is expressly understood and agreed to by the Parties that the historical façade and grandstand of the Sixto Escobar Stadium shall be preserved in accordance with all applicable Federal, State, and municipal laws and regulations, and that MSJ would retain fee simple title over the improved facilities located in the properties owned by MSJ.

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The Parties agree that the redevelopment costs of the Normandie Hotel, as well as the costs associated with the undertakings expressed herein will be substantial and significant. Moreover, at a future date, the Parties agree to negotiate in good faith and subject to the approval of the Municipal Legislature of MSJ, the terms and conditions of the Long Term Lease, including but not limited to the future administration rights of the Parking Facility, consistent with the benefits of the development for the MSJ and the costs incurred by NOZ.

(ii) North Wall of Sixto Escobar Stadium. NOZ shall be responsible, at its sole cost and expense, for the demolition of the north wall of the Sixto Escobar Stadium bleachers, which currently constitutes a serious safety hazard to the general public and the surrounding properties.

(iii) Events Pavilion Proposal (the "Events Pavilion Proposal"). NOZ shall be responsible, at its sole cost and expense, of the design and construction of an events pavilion (the "Events Pavilion") (I) to be located in the site of the facility which currently houses a scuba diving rental shop, to be relocated as herein provided and (II) which would be part of the Normandie Hotel and leased, used and managed by NOZ for the use of the general public visiting the Normandie Hotel and guests of the Normandie Hotel pursuant to the Long Term Lease (Conceptual Drawings of the Events Pavilion are attached as **Exhibit D** with final details to be agreed upon between NOZ and MSJ as part of the Definitive Agreement). Moreover, nothing herein included shall eliminate or limit, in any manner, way, or form, any public access currently existing to the beach area in this part of the Escambrón Property.

(iv) Recreational Areas. The Parties understand and recognize the importance of open public spaces for the health, benefit, and wellbeing of the general public. Therefore, and as consideration for MSJ's cooperation, assistance, and preliminary approval of the Proposal, NOZ has also agreed to be responsible for the refurbishment and redevelopment of certain open areas around the proposed project, as well as the substitution and relocation, in coordination with MSJ, of the facility which currently houses a scuba diving rental shop to another area within the Escambrón Property (the "Recreational Areas Proposal"; and together with the Parking Facility Proposal and the Events Pavilion Proposal, collectively referred to as the "Proposal") (Conceptual Drawings of the Recreational Areas Proposal will be agreed upon between NOZ and MSJ as part of the Definitive Agreement). The Recreational Areas Proposal will include the planting of a number of palm trees and other local flora to be determined by NOZ so as to provide shaded areas, as well as the installation of new picnic tables for the enjoyment of the general public; and the alternate scuba diving rental shop facility aforementioned shall be, at a minimum, of the same size and quality as the existing one. The Recreational Areas

Proposal herein described shall be at the sole cost and expense of NOZ and its implementation and design shall be subject to the prior written approval of MSJ, which shall not be unreasonably denied. Moreover, nothing herein included shall eliminate or limit, in any manner, way, or form, any public access currently existing to the beach area in this part of the Escambrón Property.

(e) Undertakings by MSJ.

(i) Skateboarding Park. MSJ shall be responsible, at its sole cost and expense, for the construction of a skateboarding park (the "Skate Park") to be constructed in the area where the current unused softball field of the Escambrón Property is located.

In order to facilitate the development of the Skate Park and as further consideration for MSJ's cooperation, assistance, and preliminary approval of the Proposal, upon the execution of the Definitive Agreement, NOZ has also agreed to be responsible for the payment of the costs of the preparations of the drawings and plans for the Skate Park as agreed to by NOZ and MSJ as part of the Definitive Agreement, by the Firm Marvel Marchand Architects.

(ii) Landscaping, Lighting, Sidewalks and Pave ways at the Escambrón Property. MSJ agrees to use its best efforts and to support in good faith with NOZ to identify and apply for federal funds that have not been already assigned to MSJ to enhance the area adjacent to the Normandie Hotel, including the planting of landscaping (not covered under the Recreational Areas Proposal) and the installation of lighting, sidewalks and pave ways in the area of the Escambrón Property located adjacent to Luis Muñoz Rivera Avenue in order to enhance the detrimental and perilous condition of the Escambrón Property.

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(iii) Operation and Maintenance of Common Areas. MSJ shall continue to be responsible for operating and providing maintenance services to those areas of the Escambrón Property that are not subject to the provisions of this MOU, including but not limited to, trash removal and clean-up services. In addition, MSJ may establish traffic controls so as to restrict access of private vehicles beyond the roundabout *(redondel)* area located near the entrance to the Sixto Escobar Stadium.

(iv) Authorizations and Permits. Understanding that time is of the essence, and as an essential part of this MOU, MSJ shall designate a contact person with whom NOZ shall communicate with regards to the contents of this MOU including, but not limited to, the approval process in the Municipal Legislature and final negotiations regarding the Proposal and other improvements to be undertaken by NOZ in the Escambrón Property.

(f) Joint Undertakings by NOZ and MSJ.

(i) Track and Field Facilities. NOZ and MSJ shall continue negotiations in good faith and best efforts of the Parties to reach an agreement for the joint redevelopment of Escambrón Track and Field Facilities on top of the Parking Facility to be constructed by NOZ (the "Track and Field Facilities Project"), with both NOZ and MSJ sharing the financial responsibility for the redevelopment of the Track and Field Facilities Project (Conceptual Drawings of the Track and Field Facilities Project will be agreed upon between NOZ and MSJ as part of the Definitive Agreement). It is expressly understood and agreed to by the Parties that the historical façade and grandstand of the Sixto Escobar Stadium shall be preserved in accordance with all applicable Federal, State, and municipal laws and regulations and that the Track and Field Facilities Project shall be for the use and enjoyment of the general public.

(ii) Additional Landscaping, Lighting, Sidewalks and Pave ways at the Escambrón Property. NOZ and MSJ shall continue negotiations in good faith and best efforts of the Parties to reach an agreement for the joint planting of landscaping (not covered under the Recreational Areas Proposal) and the installation of lighting, sidewalks and pave ways in the area of the Escambrón Property not located adjacent to Luis Muñoz Rivera Avenue (the "Additional Enhancement Project"), in order to enhance the detrimental and perilous condition of the Escambrón Property, with both NOZ and MSJ sharing the financial responsibility for the Additional Enhancement Project (Conceptual Drawings of the Additional Enhancement Project will be agreed upon between NOZ and MSJ as part of the Definitive Agreement).

(iii) Sources of Funding for the Track and Field Facilities Project and the Additional Enhancement Project. NOZ and MSJ understand and recognize the importance of the Proposed Transaction and the unique opportunity to develop the Escambrón Area, in a sustainable manner which will bring about "world class" enjoyment of public areas as well as tourism and

economic growth for MSJ and hence, the Parties agree that the procurement of funds from public and private sources and the use of the same for the Proposed Transaction is justifiable from an economic and policy perspective.

(g) Customary Provisions. The Definitive Agreement would contain such covenants, conditions, indemnities, representations, and warranties as are customary for this type of transaction and as the Parties would mutually agree.

B. **Both parties agree to amend section 3 of the MOU number 2022-001514 so that it reads the following:**

3. Binding Agreements. This Section 3 shall constitute a legally binding and enforceable agreement between the Parties. In consideration of the significant expenses that the Parties will incur in pursuing the Proposed Transaction and drafting and negotiating the Definitive Agreement, the Parties agree as follows:

(a) Good Faith Negotiations. The Parties shall negotiate in good faith and use their best efforts to bring about the execution and delivery of the Definitive Agreement at the earliest practicable time, but not later than **December 31, 2022.**

(b) Due Diligence. Conclusion of the Proposed Transaction is subject to completion of a due diligence investigation by NOZ. MSJ agrees to provide representatives of NOZ with reasonable access to such information and such individuals as NOZ may reasonably request in order to carry out its due diligence investigation. NOZ shall complete its due diligence investigation on or before **June 30, 2022.** After such time and prior to approval of the final terms, NOZ shall provide evidence to MSJ that it has the technical and economic capacity to undertake and complete the Project.

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(c) Costs and Expenses. Each Party shall be responsible for all of its costs and expenses associated with pursuing the Proposed Transaction, including without limitation (i) the performance of its obligations under this MOU, (ii) conducting its due diligence investigation, and (iii) and drafting and negotiating the Definitive Agreement.

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(d) Confidentiality. The Parties acknowledge and agree, to the fullest extent possible, that MSJ shall not disclose to third parties any information of a confidential nature regarding NOZ. Confidential information shall not include information which becomes generally available to the public, except as a result of the disclosure of such information by either Party or any of its respective representatives in violation of this Section 3(d). NOZ acknowledges that any information provided to the MSJ is subject to Law 122-2019, and to the exclusions specified in said legislation.

(e) Term and Termination. The rights and obligations of the Parties contained in this MOU shall be effective upon the **"Effective Date" and shall continue through December 31, 2024, or** upon the execution of the Definitive Agreement, whichever comes first. Either Party may terminate this MOU after twelve (12) months from the date of this MOU without any obligation or liability to the other Party, provided however that Section 3(d), Section 3(f), and Section 3(g) shall survive such termination.

MSJ may terminate this MOU immediately or suspend its effects if one of the following happen:

1. If NOZ engages in any acts or omissions that violate the law, morality or public order.
2. In the event that NOZ or any of its officials or directors were convicted or pleaded guilty in a state or federal jurisdiction for any offenses, felony or misdemeanor, which affects directly or indirectly the rights and obligations under this contract, under section 3.4 of Act No. 2 of January 4,2018. Likewise, the MOU shall be resolved if it becomes known to MSJ that NOZ or any of its directors or shareholders has been convicted of the crimes mentioned in the aforementioned Article 3.4, namely:

"Any person, whether natural or juridical, who has been convicted of: violation of Articles 4.2, 4.3 or 5.7 of Law 1-2012, known as the" Organic Law of the Office of Government Ethics ", for the violation of any of the serious crimes against the exercise of public office or against public funds contained in Articles 250 to 266 of Act 146-2012, as amended, known as the "Puerto Rico Penal Code", for any of the offenses established in this Code or any other serious crime involving the misuse of funds or public property,

including without limitation the offenses mentioned in Section 6.8 of Act 8-2017, will be barred from contracting or bidding with any executive agency of the Government for the term applicable under Article 6.8 of Law 8-2017. When a term is not available, the person shall be disqualified for ten (10) years counted from the date on which he finishes serving the sentence. "

(f) Governing Law. This MOU shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico, without giving effect to any choice or conflict of law provision or rule that would cause the application of laws of any jurisdiction other than those of the state of Puerto Rico. The Parties agree to submit to the jurisdiction of the Court of First Instance, Superior Court of San Juan, in case of any dispute or legal action arising from this MOU.

(g) No Third-Party Beneficiaries. Nothing herein is intended or shall be construed to confer upon any person or entity other than the Parties and their successors or assigns, any rights or remedies under or by reason of this MOU.

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(h) No Assignment. Neither this MOU, nor any rights or obligations hereunder may be assigned, delegated, or conveyed by either Party without the prior written consent of the other Party.

(i) Counterparts. This MOU may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement.

(j) Except for the continued negotiation in good faith and best efforts of the Parties to bring about (the execution and delivery of the Definitive Agreement at the earliest practicable time, but not later than December 31, 2022, no provision or consideration that is the object of this MOU may be required until it has been signed by both parties, or countersigned, and presented for registration at the Office of the Comptroller of Puerto Rico, in accordance with the provisions of Act No. 18-1975, as amended, which presentation MSJ agrees to do as expeditiously as practical. In the same way, services will not continue to be provided under this agreement from its expiration date, unless an amendment is signed by both parties and duly registered before its expiration date.

4. This amendment will be effective from the signature of both parties as of the Effective Date and will continue in effect until December 31st, 2024. Notwithstanding the foregoing, the extended term(s), if any, are subject to the same notification and recording strictures of the Office of the Comptroller for the Commonwealth of Puerto Rico. Both parties acknowledge that no benefit or consideration under this Agreement may be demanded until it has been signed by both parties and recorded with the Office of the Comptroller of Puerto Rico, pursuant to the provisions of Law No. 18-1975, as amended. Further, the covered services under this Agreement will only be provided until its date of expiration, unless there is an amendment signed by both parties and duly recorded as of that date.

4. With exception to the clauses amended here, the other clauses and conditions of the Original MOU, will remain unchanged and in full force and effect, subject to such terms and conditions. The amendments contemplated here constitute the entire understanding of the Parties concerning the subject matter correspondence and understanding between the Parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as of the date set forth above.

The Normandie OZ, LLC

By _____

Name: Eddie Ishay

Title: Authorized Representative

660-92-6882

Email: eddie@theishaygroup.com

Municipio Autónomo de San Juan

By _____

Name: Alberto Escudero

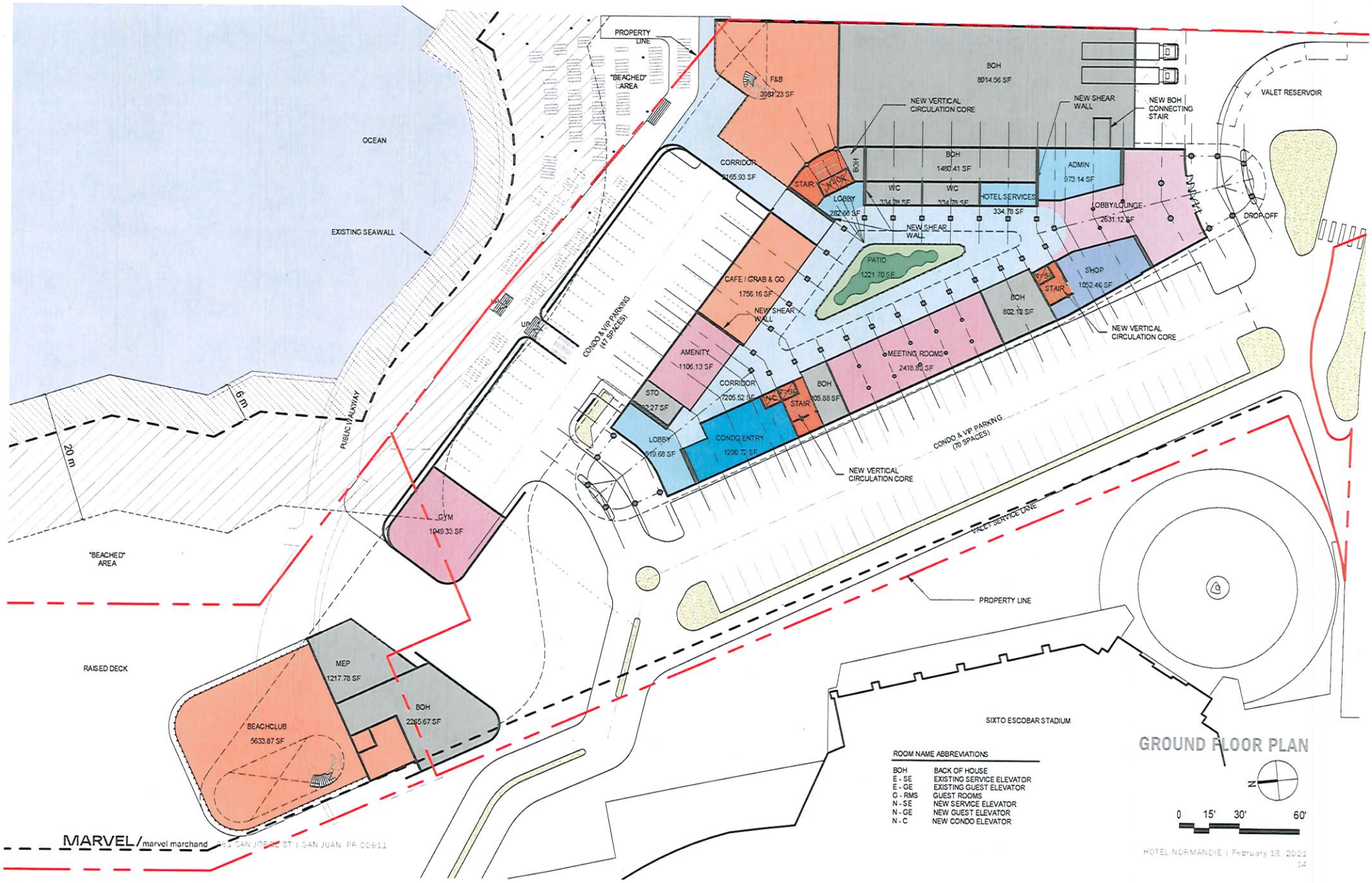
Title: Authorized Representative

660-42-7034

mromero@sanjuan.pr

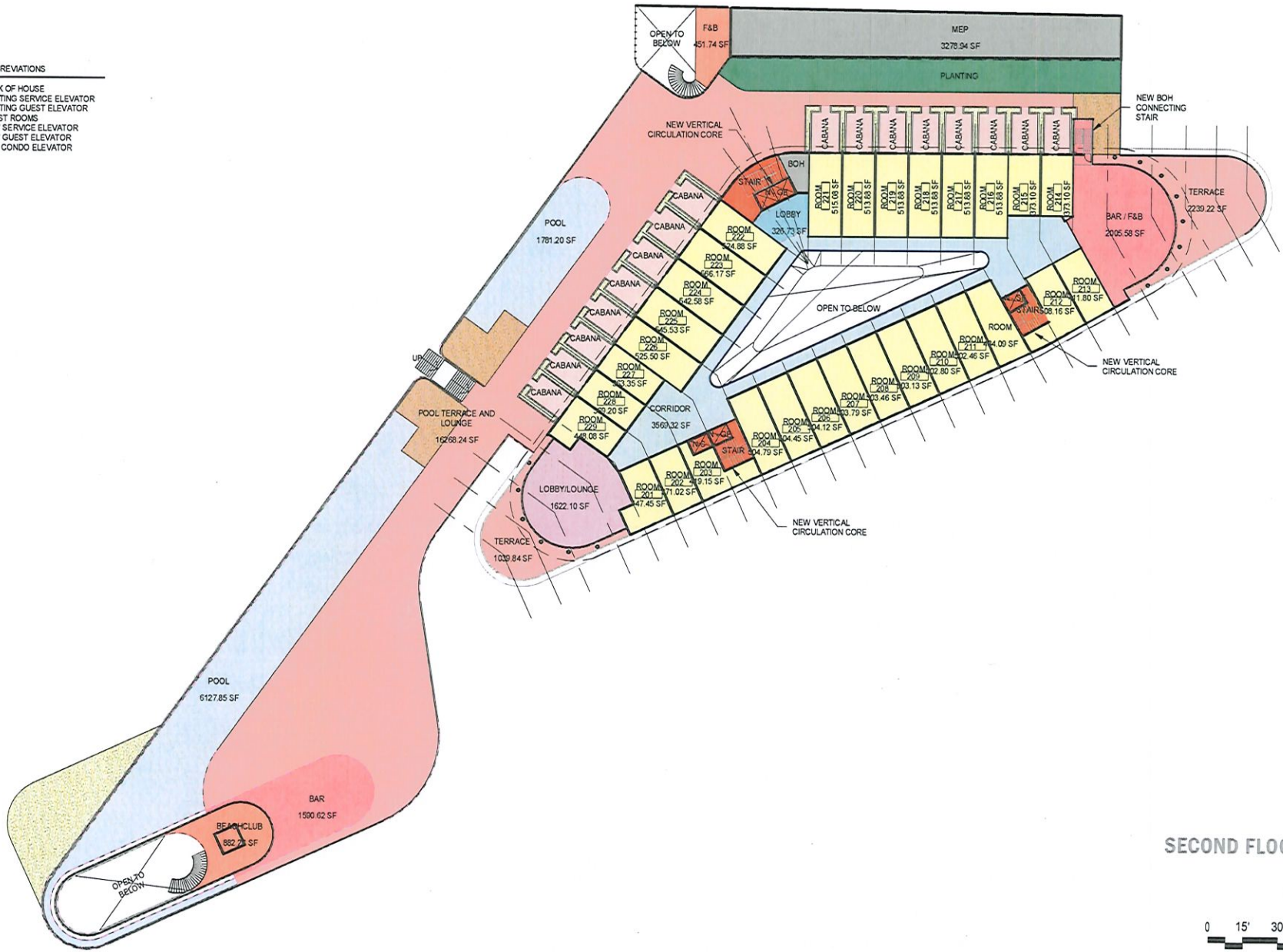
AERIAL VIEW FROM EAST




OCEAN
EXISTING SEAWALL
PROPERTY LINE
"BEACHED" AREA
F&B
3981.23 SF
BOH
8014.56 SF
NEW VERTICAL CIRCULATION CORE
NEW SHEAR WALL
NEW BOH CONNECTING STAIR
VALET RESERVOIR
CORRIDOR
2165.93 SF
STAIR
BOH
1480.41 SF
WC
334.78 SF
WC
334.78 SF
HOTEL SERVICES
334.78 SF
ADMIN
973.14 SF
LOBBY
282.68 SF
LOBBY/LOUNGE
2631.12 SF
DROP-OFF
NEW SHEAR WALL
PATIO
1221.70 SF
CAFE / GRAB & GO
1756.16 SF
SHOP
1052.46 SF
STAIR
BOH
802.18 SF
NEW SHEAR WALL
CONDO & VIP PARKING (47 SPACES)
NEW VERTICAL CIRCULATION CORE
AMENITY
1106.13 SF
MEETING ROOMS
2418.80 SF
CORRIDOR
1205.52 SF
STAIR
BOH
405.88 SF
STO
92.27 SF
LOBBY
919.68 SF
CONDO ENTRY
1290.72 SF
CONDO & VIP PARKING (70 SPACES)
NEW VERTICAL CIRCULATION CORE
6 m
20 m
PUBLIC WALKWAY
GYM
1949.33 SF
"BEACHED" AREA
VALET SERVICE LANE
PROPERTY LINE
RAISED DECK
MEP
1217.78 SF
BOH
2285.67 SF
BEACHCLUB
5633.87 SF
SIXTO ESCOBAR STADIUM
ROOM NAME ABBREVIATIONS
BOH BACK OF HOUSE
E - SE EXISTING SERVICE ELEVATOR
E - GE EXISTING GUEST ELEVATOR
G - RMS GUEST ROOMS
N - SE NEW SERVICE ELEVATOR
N - GE NEW GUEST ELEVATOR
N - C NEW CONDO ELEVATOR
GROUND FLOOR PLAN
N
0 15' 30' 60'

ROOM NAME ABBREVIATIONS

BOH	BACK OF HOUSE
E - SE	EXISTING SERVICE ELEVATOR
E - GE	EXISTING GUEST ELEVATOR
G - RMS	GUEST ROOMS
N - SE	NEW SERVICE ELEVATOR
N - GE	NEW GUEST ELEVATOR
N - C	NEW CONDO ELEVATOR



SECOND FLOOR PLAN

N

0 15' 30' 60'

Law Offices
JAVIER A. FELICIANO GUZMAN, PSC
322 Ave. De Diego, Suite 302
San Juan 00920-2223

Telephone: (787) 625-2550
Fax: (787) 625-2555

December 10, 2021

OFIC. DE ASUNTOS LEGALES
MSJ
2021 DEC 10 PM 3:20

BY MESSENGER
Frank Gotay, Esq.
Attorney
Autonomous Municipality of San Juan
Office of Legal Affairs
Trilito Building, Third Floor
130 De Diego Avenue
54 Street SE
Urb. La Riviera
San Juan, Puerto Rico

Re: First Amendment to Memorandum of Understanding Escambrón Property

Dear attorney Gotay:

As requested, attached is the original of the First Amendment to Memorandum of Understanding between The Normandie OZ, LLC (the "NOZ") and the Autonomous Municipality of San Juan (the "MSJ") related to certain properties owned by MSJ in the Escambrón area, duly executed by NOZ.

Please send me a copy of the attached document executed by MSJ at your earliest convenience.

Regards,

Javier A. Feliciano Guzmán

Attachments

C: Mr. Eddie Ishay

GOBIERNO DE PUERTO RICO
Municipio Autónomo de San Juan
OFICINA DE ASUNTOS LEGALES

10 de diciembre de 2021

Sr. Alberto Escudero Morales
Vice Alcalde
Municipio Autónomo de San Juan

Lcdo. Israel O. Alicea Luciano
Director
Oficina de Asuntos Legales

Lcda. Sandra E. Prieto
Lcdo. Frank E. Gotay
Oficina de Asuntos Legales

ACUERDO ENTRE EL MUNICIPIO AUTONOMO DE SAN JUAN Y THE NORMANDIE OZ, LLC

De conformidad con la certificación provista por la Oficina de Asuntos Legales del Municipio Autónomo de San Juan, esta Unidad Administrativa incluyó todos los términos y condiciones para este tipo de acuerdo. Asimismo, el personal técnico de la División de Contratos adscrita a la Oficina de Asuntos Legales del Municipio Autónomo de San Juan, realizó la correspondiente evaluación el contrato.

Luego de revisado, entendemos que el contrato contiene todas las cláusulas requeridas conformes las leyes y reglamentos aplicables, cumpliendo así con todos los requisitos de forma exigidos. De acuerdo a lo anterior, recomendamos el contrato para su consideración, aprobación y firma.

Agradecemos incluya sus iniciales al margen de cada una de las hojas del contrato propuesto y firme la última página, al igual que la hoja de Certificación de la Oficina del Contralor de Puerto Rico, en los espacios provistos para ello.

CONSIDERADO, APROBADO Y SUSCRITO,

_____
ALBERTO ESCUDERO MORALES

Oficina del Contralor
Datos del Contrato Registrado

16 dic. 2021 11:56 a.m.

Entidad
4065 | Municipio de San Juan

Representante
ALBERTO R ESCUDERO MORALES - VICEALCALDE

Número del Contrato
2022-001514-A

Fecha de Otorgamiento
08 dic. 2021

Vigencia Desde - Hasta
08 dic. 2021 - 31 dic. 2024

Categoría y Tipo de Servicio
17-ACUERDOS FINANCIEROS Y NO FINANCIEROS | 17.0011-ACUERDOS COLABORATIVOS

Cuantía a Pagar/Recibir
-

Fondo
Ingresos Propios

Contrato de Privatización
No

Dispensa
No Aplica

En Ciudad
San Juan

Firmado en
Puerto Rico

Con Documento
Sí

Cancelación Efectiva
-

Contratista
THE NORMANDIE OZ, LLC

Representante
EDDIE ISHAY

Correo Electrónico
EDDIE@THEISHAYGROUP.COM

Partidas Presupuestarias

Descripción

Fecha y Hora de Registro
16 dic. 2021 11:55 a.m.

Número Registro
1210289

Fecha de Vencimiento
22 dic. 2021

Oficial de Enlace
María M. Ríos Ríos