

## AGREEMENT FOR BEACH SERVICES ON HOLLYWOOD BEACH

This Agreement for Beach Services on Hollywood Beach (hereinafter the "Beach Agreement") is entered into this 9th day of February, 2011, by and between Margaritaville Hollywood Beach Resort, LLC, a Florida limited liability company (hereinafter the "Developer"), whose address is 101 N. Ocean Dr., #135, Hollywood, Florida 33019, and the City of Hollywood, Florida, a municipal corporation (hereinafter the "City"), whose address is 2600 Hollywood Blvd., Florida 33020 (collectively sometimes referred to as the "Parties").

WHEREAS, the Developer is owned in part by Margaritaville of Hollywood, Florida, LLC (hereinafter "Margaritaville"), which shall be sublicensing certain trademarks to the Developer for purposes of the Ground Lease and this Beach Agreement; and

WHEREAS, this Beach Agreement shall be **Exhibit F** to the Development Agreement and Ground Lease between Margaritaville Hollywood Beach Resort, LLC and the City of Hollywood (hereinafter the "Ground Lease");

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Developer and City agree as follows:

### A. TERM

The Beach Agreement's term shall commence on the date the Developer first applies for a certificate of occupancy for the Hotel, as defined in the Ground Lease. It shall terminate on the same date on which the Ground Lease, to which this Beach Agreement is attached as **Exhibit F**, terminates regarding both the Developer and any successors in interest, including but not limited to Lenders by way of foreclosure or otherwise.

### B. TERRITORY

The territory for this Beach Agreement is described in **Exhibit A** to this agreement, which is the Site Map, and is legally described as follows (hereinafter the "Hotel Territory"):

From The Easterly extension of the North Right-of-Way of Johnson Street, Southerly to the Easterly extension of the South Right-of-Way of Michigan Street and from the Easterly Right-of-Way of the Broadwalk to a point 150 feet East.

1. The City represents and warrants that:
  - a. it has resolved any contractual duties connected to the Hotel Territory it may owe to A & A through the A & A Agreement;

- b. it indemnifies Developer against any claims of any kind by A & A connected to the Developer using the Hotel Territory;
- c. A & A may continue to operate in the area located outside of the Hotel Territory, but shall be excluded from serving any person within the Hotel Territory.

### **C. TERMINATION OF AGREEMENT**

1. The City cannot terminate the Beach Agreement, except in the manner provided in the Ground Lease in conjunction with the termination of the Ground Lease.
2. The City shall not file a motion to compel or for contempt or a complaint of any kind against the Developer regarding this Beach Agreement, unless it first provides written notice of the alleged default and thirty (30) days for the Developer to cure.

### **D. SCOPE OF SERVICES**

1. Overview

The Developer agrees to provide commercially reasonable access to the public to rent beach equipment, cabanas and other equipment and products. All such equipment and products shall be sold within the Hotel Territory.

2. Equipment and Services

- a. Beach equipment as referred to herein shall mean chairs, cabanas, beach umbrellas, surfboards, mats, floats, windsurfers, windscreens, related equipment and the sale of beach-related products generally and commonly used by persons using beaches; provided, however, the Developer shall not sell any food or beverages.
- b. The Developer shall not be authorized to rent any equipment which is not listed in this agreement or covered by the insurance policy furnished to the City, unless prior to such rental, the Developer shall have furnished an additional list of equipment to the Director of Parks, Recreation and Cultural Arts and received written approval, which shall be granted on a commercially reasonable basis.
- c. The Developer shall have the right to install and utilize an unlimited number of cabanas, beach chairs and similar items, subject only to City ordinances and rules applicable to all beach service providers regarding safety issues such as spacing between cabanas.

3. Maintaining and Repairing Equipment

- a. The Developer must provide and maintain, in a good state of repair and at its own cost and expense, all equipment required to operate the beach services under this Beach Agreement. If equipment is lost, stolen or damaged, any required repairs or replacement of equipment shall be at the Developer's expense. The Developer shall repair and replace broken or weather-beaten equipment.
- b. Any repairs, cleaning or other maintenance as required to maintain a clean and safe working environment shall be provided on a continuous and immediate schedule. The beach services under this Beach Agreement must be maintained so as to provide an aesthetically pleasing appearance and not be detrimental to the immediate surroundings.

4. Rental Rates

- a. The Developer shall be permitted to operate as a free enterprise and to establish rates for renting beach equipment and services. The General Public will not be charged more than the standard rates for the Hotel Guests.
- b. A list of the rates must be on file with the City of Hollywood and posted by the Developer. A schedule of rate revisions must be provided to the Director of Parks, Recreation, and Cultural Arts or his designee at least ten (10) days prior to posting to the public.

5. Products

- a. The Developer shall be allowed to sell any brand of any product, including suntan or sun block lotion.
- b. The City shall not enter into any other contract or take any other action that would require the Developer to sell any brand of suntan or sun block lotion; and
- c. The City shall not enter into any other contract or take any other action that would prohibit the Developer from selling any product or any brand of any product.

6. Buildings

- a. Any buildings required by the Developer for storage and operations, shall conform to all applicable City codes and building requirements. Full responsibility for the maintenance, appearance and disposition of the buildings are Developer.

- b. The location of any buildings must be approved by the Director of Parks, Recreation and Cultural Arts. All locations are subject to removal or relocation upon 30 days notice for permanent removal or relocations and 7 days notice for temporary relocations. Notwithstanding anything to the contrary in this paragraph, the removal or relocation shall be commercially reasonable and the relocation shall be on that portion of Hollywood Beach that is described above in Section B.

7. Hours of Operation

- a. During the term of this Beach Agreement, the facility shall be open and properly staffed seven (7) days per week, on a 52-week per year schedule, with appropriate hours to serve the customers of the Hotel and the general public. Exceptions shall only be allowed when inclement weather conditions do not warrant providing the services described in this Beach Agreement.
- b. Operations under this Beach Agreement shall not take place during the hours of darkness, which for the purposes of this Beach Agreement begins one hour after sunset and ends at sunrise.

8. Advertising and Promotion

- a. Signs, posters and any other media involving the Margaritaville-related trademarks and logos shall be permitted to be used on all products and in connection with all services.
- b. This includes without limitation, the services discussed above in Section D.2.
- c. There shall be no restriction, except for matters involving safety, regarding the use of signs, posters and other media on cabana covers.
- d. The definition of "Margaritaville-related trademarks and logos" shall include all trademarks and logos for which any Margaritaville-related entity has obtained a trademark registration or for which a trademark application has been filed and not rejected by the Patent and Trademark Office in the United States.

9. Installation of Cabanas and Beach Chairs

The Developer shall not place or install equipment in any location other than herein specified.

- a. The Developer shall leave a corridor of thirty (30) feet at each street intersection for use of the public as convenient ingress and

egress to the beach. Equipment shall not be placed on the Broadwalk.

- b. Cabanas will be placed within fifty (50) feet of the Broadwalk bulkhead or natural dune lines where applicable. At all times, cabanas shall be placed so that there shall be a minimum clearance of four (4) feet between each cabana on all sides. The Developer's placement of equipment must never interfere with Beach Safety Division's observation of the public for said public's welfare and safety. Areas for placement of umbrellas and regulations of water-borne equipment shall be under the regulation of the Beach Safety Division.

10. Miscellaneous

- a. The public, in general, shall, at all times, have the free use of space allocated to the public in front of the Developer's location.
- b. All Developer attendants shall be neatly attired in approved uniforms properly identifying the Developer and the attendant. No person convicted of any offense involving moral turpitude or a felony shall be employed by the Developer under this agreement. Upon the City's request, background checks of the Developer's employees will be required to be provided by the Developer.
- c. The Developer shall not be permitted to provide the beach services under this Beach Agreement for any other purposes than the renting of beach equipment. The Developer shall conduct its business in a dignified manner and with no pressure, coercion, persuasion or hawking being done by the Developer or its attendant(s) in an attempt to influence the public to use this service.
- d. The Developer shall furnish the necessary janitorial services to maintain all areas in a proper state of cleanliness, i.e., litter and debris as a result of this operation. The Developer shall enforce all posted Beach regulations in its Territory.
- e. The Developer shall not install its equipment in an area outside of its own concession area, nor shall the Developer interfere with the operation of any concessionaires. Disputes arising between Developer and any third-party concerning their rights under their Beach Hotel Agreements shall be reported to the City Manager or his or her designee for review and necessary action.
- f. The Developer shall adhere to a maintenance schedule as may be set up by the Beach Safety Superintendent or Public Works Beach Maintenance Supervisor and shall provide personnel to move cabanas and rental equipment within one (1) hour after

notification, or according to the schedule, to facilitate the cleaning of the Municipal Beach. The Developer will be consulted on maintenance scheduling.

- g. Should Developer desire any additional building for storage of the equipment utilized for the purposes set forth herein, upon receiving the consent of the City and all necessary permits and approvals, any such building shall, unless otherwise provided by a written agreement, be the property of the Developer.
- h. Developer shall not be authorized to rent any equipment which is not scheduled in its application or covered by the insurance policy furnished the City unless, prior to such rental, it shall furnish an additional list of equipment to the Director of Parks, Recreation and Cultural Arts or his designee of the City.

#### **E. DEVELOPER'S COMPLIANCE WITH LAW**

1. The Developer, its representatives and employees, shall adhere to all City, County, State and Federal laws and regulations relating to the operational use of the City's beachfront areas. This shall relate to laws in force at the commencement of this Beach Agreement and those adopted and amended hereafter. Notwithstanding anything to the contrary in this Beach Agreement, the Developer retains its right to challenge each such law and regulation, including, without limitation, based on a constitutional objection that such law or regulation violates the Developer's constitutional rights regarding contracts.
2. The Developer shall comply in all particulars with all rules, regulations and ordinances and particularly in activities conducted upon the public beach of the City of Hollywood which shall in no way at any time be improper, immoral or illegal. Gambling of any type, kind or nature, direct or indirect, is specifically prohibited.
3. The security for all property, equipment and supplies owned and provided by the Developer shall remain the responsibility of the Developer.
4. Developer hereby waives all claims against the City for uninsured damages to or loss of any property belonging to Developer that may be in or about the premises.
5. The Developer will be responsible for all damage to City property or the City beachfront caused by the Developer, its employees or its agents. Any such damage that may occur shall be promptly corrected at the expense of the Developer.
6. The Developer will conduct its operation and provide contracted services in such a manner as to maintain commercially reasonable quiet and minimize disturbance to the general public.

## F. ALLOCATION OF LEGAL RESPONSIBILITY

1. Except for accidents or injuries caused at least in part by the City's negligence or more culpable conduct, Developer hereby agrees to indemnify, defend and save harmless City and its agents, officers, and employees from any and all claims of personal injury, loss of life or damage to property occasioned by or in connection with any activities conducted by the Developer pursuant to this Beach Agreement.
2. Except for accidents or injuries caused at least in part by the City's negligence or more culpable conduct, City assumes no responsibility whatsoever for any property located in the Territory.
3. The acceptance of a lease payment by City, whether in a single instance or repeatedly, after it falls due, or after knowledge of any breach hereby by Developer, where the giving or making of any notice or demand, whether according to any statutory provision or not, or any act or series of acts, except an express waiver in writing, shall not be construed as waiver of City's rights.

## G. INSURANCE

1. During this Beach Agreement, Developer shall maintain all insurance required as set forth below.
2. Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the Risk Manager. These certificates shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty (30) days' prior written notice has been given to the CITY. All policies shall be issued by companies authorized to do business under the laws of the State of Florida, shall have adequate Policyholders and Financial ratings in the latest ratings of A.M. Best, and shall be part of the Florida Insurance Guarantee Association Act.
3. Insurance shall be in force during the entire term of this agreement. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this agreement, the Developer shall furnish, at least thirty (30) days prior to the expiration of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the term of this agreement and any extension thereof is in effect.
4. The types of required insurance are set forth below:
  - a. Commercial General Liability Insurance to cover liability for bodily injury and property damage. The City must be named as an additional insured for the Commercial General Liability coverage. Exposures to be covered are: premises, operations, products/completed operations, and contractual. Coverage must be written on an occurrence basis, with no less than the following limits of liability:

(i) Single Limit Bodily Injury & Property Damage  
Each Occurrence \$1,000,000.00

(ii) Personal Injury  
Annual Aggregate \$1,000,000.00

b. Workers' Compensation Insurance shall be maintained during the life of this Contract to comply with statutory limits for all employees. The Developer shall maintain, during the term of this Beach Agreement, Employer's Liability Insurance. The following must be maintained:

(i) Workers' Compensation Statutory

(ii) Employer's Liability Not less than \$500,000  
per accident

#### **H. REPORTS AND RECORDS**

1. The Developer is responsible for acquiring all applicable City, County and State occupational licenses, fees and permits.
2. The Developer shall submit an annual report of revenues and expenses to the City.

#### **I. CONCESSION FEE PAYMENTS**

The Developer shall not pay the City for the rights set forth in this Beach Agreement. Rather, these rights are part of the Ground Lease to which this Beach Agreement is attached as **Exhibit F**. The consideration to the City is provided through the various types of rents discussed in the Ground Lease.

#### **J. ASSIGNMENT; AMENDMENTS**

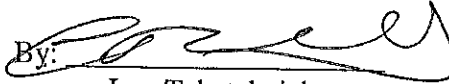
1. The Developer shall have the right, without consultation with the City, to sign, subcontract and in any other way provide for the services and products described in this Beach Lease.
2. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.



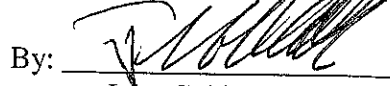
AGREEMENT FOR BEACH SERVICES ON HOLLYWOOD BEACH  
MARGARITAVILLE HOLLYWOOD,  
BEACH RESORT, LLC, a Florida limited  
liability company

By: Hollywood Resort Partners, L.P.  
Member

By: Lojeta-Millennium Group, LLC  
Its: General Partner

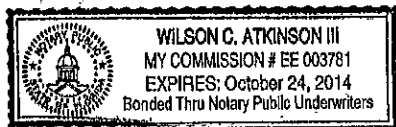
By:   
Lon Tabatchnick  
Its: Manager

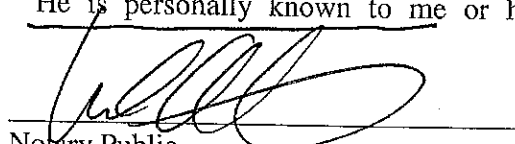
By: Margaritaville of Hollywood, Florida,  
LLC  
Member

By:   
John Cohan  
Its: Manager

STATE OF FLORIDA )  
COUNTY OF BROWARD )

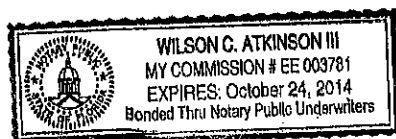
The foregoing instrument was acknowledged before me this 9th day of February, 2011, by Lon Tabatchnick, Manager of Lojeta-Millennium Group, LLC, General Partner of Hollywood Resort Partners, L.P., Member of Margaritaville Hollywood Beach Resort, LLC, a Florida limited liability company. He is personally known to me or has produced \_\_\_\_\_ as identification.




  
Notary Public  
Name: \_\_\_\_\_  
Commission Number: \_\_\_\_\_  
Commission expires: \_\_\_\_\_

STATE OF FLORIDA )  
COUNTY OF BROWARD )

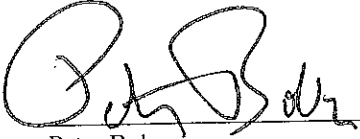
The foregoing instrument was acknowledged before me this 9th day of February, 2011, by John Cohan, Manager of Margaritaville of Hollywood, Florida, LLC, Member of Margaritaville Hollywood Beach Resort, LLC, a Florida limited liability company. He is personally known to me or has produced \_\_\_\_\_ as identification.



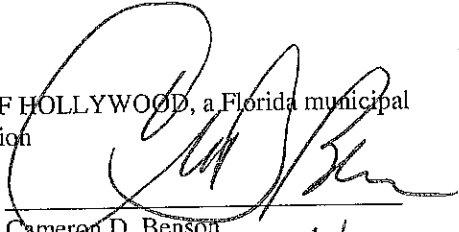

  
Notary Public  
Name: \_\_\_\_\_  
Commission Number: \_\_\_\_\_  
Commission expires: \_\_\_\_\_

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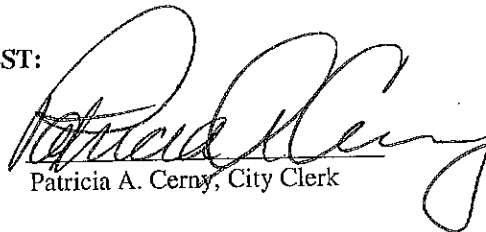
By authority of Resolution No. R-2011-014 duly  
passed and adopted by the Hollywood City  
Commission on January 19, 2011.

By:   
Name: Peter Bober  
Title: Mayor

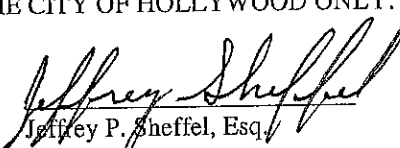
CITY OF HOLLYWOOD, a Florida municipal  
corporation

By:   
Name: Cameron D. Benson  
Title: City Manager 

ATTEST:

By:   
Patricia A. Cerny, City Clerk

APPROVED AS TO FORM AND  
SUFFICIENCY FOR THE USE AND RELIANCE  
OF THE CITY OF HOLLYWOOD ONLY:

By:   
Name: Jeffrey P. Sheffel, Esq.  
Title: City Attorney

Hollywood Beach 1st Addition  
(P.E. 1, Pg. 31, B.C.K.)

