

2017-111

EXHIBIT "F"
AMENDED AND RESTATED
AGREEMENT FOR BEACH SERVICES
ON HOLLYWOOD BEACH

This Amended and Restated Agreement for Beach Services on Hollywood Beach (hereinafter the "Beach Agreement") is entered into this 23 day of August, 2017, by and between Margaritaville Hollywood Beach Resort, LP, a Florida Limited Partnership (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").

RECITALS

WHEREAS, on February 9, 2011, the Parties entered into an Agreement for Beach Services on Hollywood Beach which is Exhibit "F" to the Development Agreement and Ground Lease between the Developer and City; and

WHEREAS, on June 21, 2012, the Parties entered into a First Amendment to the Beach Services (the "Beach Agreement") on Hollywood Beach to amend certain provisions to the Beach Agreement; and

WHEREAS, since the execution of the Beach Agreement, certain circumstances relating to the Beach Services have changed, and as a result, the Parties have agreed to amend and restate the Beach Agreement in its entirety as set forth herein;

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**, 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 of the Mean High Water Line.

1. The City represents and warrants that:
 - a. it has resolved any contractual duties it may owe to A & A regarding the A & A Agreement connected to the Hotel Territory;
 - 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.~~
 - b.e. 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 operation 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.
- d. ~~The Developer shall be allowed to sell beverages, including alcoholic beverages; provided, however, all sales of beverages shall be governed by the following terms and conditions:~~

~~(i) The sale of beverages may begin upon commencement of the term of this Beach Agreement as provided above in Section A and shall cease upon expiration of the first two years of the term of this Beach Agreement as provided above in Section A. The purpose of this temporary approval of the sale of beverages is to help promote and celebrate the exciting joint venture between the parties primarily embodied in the Ground Lease. The Developer shall have the right to request that the City Commission agree to an extension of this two year period but the City Commission shall have the right to approve, approve with conditions, or deny such request in its sole discretion.~~

~~(ii) The Developer shall not subcontract the sale or service of beverages without the City's prior written consent.~~

~~(iii) The Developer shall not provide takeout service and consistent with the goal of not serving beverages to "walk-ups" shall serve beverages only in areas adjacent to cabanas.~~

~~(iv) The Developer shall provide a sufficient number of trash cans and recycling containers and shall empty them regularly so as to avoid an accumulation of trash or recyclables inside or outside the cans and containers.~~

~~(v) While the service of beverages and the rental of cabanas will be conducted in close proximity to each other, the Developer shall ensure that persons renting cabanas are not pressured or coerced in any way to purchase beverages.~~

~~(vi) In serving beverages, the Developer shall fully comply with all applicable state, federal, county and City laws, including but not limited to Chapter 99, "Municipal Beach," of the City's Code of Ordinances.~~

~~(vii) The Developer shall serve beverages in an environmentally friendly manner, including but not limited to minimizing the packaging of beverages and not using materials such as Styrofoam.~~

~~(viii) In order to ensure that the area in which the Developer sells beverages is properly cleaned each day, including but not limited to the pickup of all trash from the sand and the emptying of all trash cans, the Developer shall stop serving beverages not less than one hour before the Hotel Territory closes for the day.~~

~~(ix) If the Developer chooses to use sandwich board signs or displays, such signs or displays shall be placed only in the area(s) in which the Developer serves beverages and food on the Boardwalk.~~

d. The Developer shall be allowed to sell food and beverages, including alcoholic beverages, only to guests of the hotel, including guests who rent cabanas; provided, however, all sales of food and beverages shall be governed by the following terms and conditions:

(i) The sale of food and beverages, including alcoholic beverages may begin upon commencement of the term of this Beach Agreement as provided above in Section A and shall cease August 27, 2025, which is ten years from the date the Developer applied for a certificate of occupancy of the Hotel. The purpose of this temporary approval of the sale of beverages is to help promote and celebrate the exciting joint venture between the parties primarily embodied in the Ground Lease. The Developer shall have the right to request that the City Commission agree to an extension of the ten year period, but the City Commission shall have the right to approve, approve with conditions, or deny such request in its sole discretion.

(ii) Payment for food, beverages and concession items may be made by cash, credit card, room #, room key, or guest pass issued by the Hotel.

(iii) The sale or consumption of beverages from glass containers is prohibited. No Hotel personnel, member of public, or any person or entity shall bring to, or use on the Hotel Territory any such glass containers, or polystyrene (e.g. Styrofoam) cups or containers. Beverages, including alcoholic beverages, must only be dispensed by the Hotel's personnel in paper cups or other biodegradable containers in accordance with applicable State, County, and City requirements. Use of polystyrene (e.g. Styrofoam) is strictly prohibited. Further, utensils, plates, to-go, any other food or beverage service items dispensed by Hotel personnel or used by members of the public, must only be made from paper or other biodegradable materials. The use of plastic bags (except plastic bags used for trash collection), plastic straws and polystyrene (e.g. Styrofoam) containers is prohibited. Notwithstanding the foregoing, biodegradable plastic bottles, biodegradable plastic cups, biodegradable plastic lids, biodegradable plastic straws, and cans are permitted.

(iv) The Developer/Hotel representative shall ensure that all furniture beach equipment cabanas, beach chairs, beach chair(s) with a cabana cover, beach umbrella(s), and small tables located within the Hotel Territory provide adequate access throughout the Hotel Territory for life safety and public works equipment/vehicles. The Developer/Hotel representative shall make adjustments for access upon request by either the Fire Rescue Beach Safety Lifeguards or other designated City staff.

(v) The Developer shall provide the name and contact information of the on-site representative of the Hotel who will be responsible for overseeing the food and beverage service within the Hotel Territory.

(vi) The Developer shall provide a copy of any and all Federal, State or Local licenses substantiating the Developer's ability to serve food and beverages within the Hotel Territory.

(vii) The Developer shall not subcontract the sale or service of beverages without the City's prior written consent.

(viii) The Developer shall not provide takeout service and consistent with the goal of not serving food and beverages to "walk-ups", shall serve food and beverages only in areas adjacent to cabanas.

(ix) While the service of food and beverages and the rental of cabanas will be conducted in close proximity to each other, the Developer shall ensure that persons renting cabanas are not pressured or coerced in any way to purchase beverages.

(x) Guests/Patrons of the Hotel shall not be permitted to place any items and/or equipment belonging to the Hotel outside the Hotel Territory.

(xi) In serving food and beverages, the Developer shall fully comply with all applicable state, federal, county and City laws, including but not limited to Chapter 99, "Municipal Beach," of the City's Code of Ordinances.

(xii) The Developer shall provide a sufficient number of trash cans and recycling containers and shall empty them regularly so as to avoid an accumulation of trash or recyclables inside or outside the cans and containers.

(xiii) The Developer shall ensure that the area in which the Developer sells food and beverages is properly cleaned each day, including but not limited to the pickup of all trash from the sand and the emptying of all trash cans.

(xiv) If the Developer chooses to use sandwich board signs or displays, such signs or displays shall be placed only in the area(s) in which the Developer serves beverages and food on the Broadwalk.

(xv) In the event that the Developer/Hotel fails to adhere to the terms and conditions for Food and Beverage Services within the Hotel Territory, or violates any federal, state or local law, the City Manager may suspend or revoke the Hotel's right to provide food and beverage services. Upon receipt of notification of such suspension or revocation, Developer/Hotel shall have 10 days from receipt of written notice to cure the violation unless the violation is for trash related issues and such violations will be cured within a 24 period after notification; provided, however, if the violation is a significant and is a threat to the public health, safety or welfare, then such suspension or revocation shall be effective immediately. Upon such suspension or revocation, all food and beverage services shall cease immediately. Said services may also be suspended or revoked in order to protect the health, safety, or welfare of the public or in the event of a Declaration of Emergency.

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. There should be at least one (1) designated employee onsite at all times in the Hollywood Territory where food and beverages are sold.
- 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. Exceptions shall only be allowed when inclement weather conditions do not warrant providing the services described in this Beach Agreement.~~

Food and Beverage Services shall be set up everyday no earlier than one (1) hour after sunrise and dismantled no later than one (1) hour before sunset, with service hours of 9.a.m. to 6 p.m. April to October, and 9 a.m. to 5 p.m. November to March. The Hotel must wait until Broward County has conducted its nesting survey before commencing setup each day, as applicable.

- 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, and for food and beverage services as more specifically set forth in Section D. 5.d. 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 to 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. Developer shall not assume all risks incident to or connected with the uses and services to be conducted hereunder.
2. 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.
3. 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.
4. 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 active or series of acts except an express waiver in writing shall not be construed as waiver of City's right or of any other right hereby given the City or as an election not to proceed under the provisions of this Beach Agreement.

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
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 - (ii) Personal Injury

Annual Aggregate	\$1,000,000.00
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 - 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. Except as otherwise provided above in Section D.5.d.(vii), Developer shall have the right, without consultation with the City, to assign, 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.

Margaritaville Hollywood Beach Resort,
LP

By: _____

Print Name & Title

City of Hollywood, Florida

By: _____

Josh Levy, Mayor

Attest:

Patricia A. Cerny, MMC
City Clerk

Approved as to form & legality
for the use and reliance of the
City of Hollywood, Florida only.

Alan Fallik, Acting City Attorney

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Margaritaville Hollywood Beach Resort,
LP

By: _____

LOWE PASTERNAK AUTHORIZED PERSON
Print Name & Title

City of Hollywood, Florida

By: _____

Josh Levy
Josh Levy, Mayor

Attest:

Patricia A. Cerny
Patricia A. Cerny, MMC
City Clerk

Approved as to form & legality
for the use and reliance of the
City of Hollywood, Florida only.

Alan Fallik *DL*
Alan Fallik, Acting City Attorney