

R-2013-132
5/29/13

AMENDED AND RESTATED DEVELOPMENT AGREEMENT AND GROUND LEASE

between

MARGARITAVILLE HOLLYWOOD BEACH RESORT, L.P., a
Delaware limited partnership

and

CITY OF HOLLYWOOD, a
Florida municipal corporation

DATED AS OF

June 21, 2013

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AMENDED AND RESTATED DEVELOPMENT AGREEMENT AND GROUND LEASE

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT AND GROUND LEASE (this "Lease") is executed as of the ___ day of June, 2013, by and between the CITY OF HOLLYWOOD, a Florida municipal corporation (the "City") and MARGARITAVILLE HOLLYWOOD BEACH RESORT, L.P., a Delaware limited partnership (formerly Margaritaville Hollywood Beach Resort, LLC, a Florida limited liability company) ("Developer").

RECITALS:

A. On July 30, 2009, the City issued Request for Proposal No. 4212-09-IS for the redevelopment of the site commonly known as Johnson Street for a resort hotel project. After a competitive process, which included public hearings and deliberations by the Mayor and City Commission, on April 7, 2010, pursuant to Resolution Number R-2010-097, the appropriate officers of the City were authorized to negotiate with Developer the basic terms and conditions for such redevelopment. Such terms and conditions are in the Memorandum of Understanding between the City, Developer and the Hollywood, Florida Community Redevelopment Agency (the "CRA"), approved by the City Commission on July 7, 2010 by Resolution Number R-2010-201 (the "MOU").

B. Consistent with the MOU and pursuant to the City Commission's authorization, appropriate officers of the City worked with the Developer's representatives regarding this Lease. It provides for the City to lease to Developer the Leased Property for constructing, developing, operating and maintaining the improvements more specifically described herein. They include, without limitation, developing public parking to be owned and operated by a community development district as further described herein.

C. Consistent with the MOU and pursuant to the City Commission's authorization, appropriate officers of City worked with Developer's representatives to prepare License Agreements. They provide for the City to license to Developer the Intracoastal Parcel and the Johnson Street Parcel (as hereinafter described) for using, operating and maintaining the public improvements more specifically described herein. This Lease will address the Developer's obligations regarding developing and constructing the public improvements on the Intracoastal Parcel and the Johnson Street Parcel.

D. On January 19, 2011, the City Commission, by Resolution Number R-2011-014, approved the execution of this Lease by the appropriate City officials on behalf of the City.

E. On February 9, 2011, City and Developer entered into that certain Development Agreement and Ground Lease (the "Original Ground Lease").

F. Since the Original Ground Lease was entered into, certain facts and circumstances involving the Leased Property and the rights and obligations of City and Developer with respect thereto have changed and, as a result thereof, City and Developer have agreed to amend and restate the Original Ground Lease in its entirety as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City hereby leases to Developer and Developer hereby leases from the City the Leased Property, at the rent and upon the covenants, conditions, limitations and agreements herein contained for the term hereinafter specified, and the parties mutually covenant and agree that the Original Ground Lease is hereby amended and restated as follows:

ARTICLE I

EXHIBITS AND DEFINITIONS

Section 1.1 Exhibits. Attached hereto and forming a part of this Lease are the following Exhibits:

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If any exhibit conflicts with the body of the Lease, the body of the Lease shall govern.

Section 1.2 Defined Terms. As used herein the term:

“Acceptable Owner” has the meaning ascribed to it in **Exhibit “A”**.

“Additional Rent” means any and all payments required of Developer to the City by the terms of this Lease other than Rent.

“Affiliate” means, regarding any Person:

- (a) any other Person directly or indirectly controlling, controlled by or under common control with such Person;
- (b) any officer, director, general partner, member, manager or trustee of such Person;
or
- (c) any other Person who is an officer, director, general partner, member, manager or trustee of such Person described in clauses (a) or (b) of this sentence.

For purposes of this definition, the terms "controlling," "controlled by" or "under common control with" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person or entity, whether through the ownership of voting securities, by contract or otherwise, or the power to elect at least fifty percent (50%) of the directors, managers, general partners, or persons exercising similar authority with respect to such Person.

“Approved Affiliate Sublease” means any Sublease to an Affiliate of Developer which is approved by the City under Section 5.6 of this Lease.

“Approved Plans” has the meaning ascribed to it in Section 3.3.

“Audited Financial Statement” means a Financial Statement certified by the CPA to have been prepared in accordance with GAAP and GAAS.

“Audited Project Revenue Schedule” means a Project Revenue Schedule to have been prepared in accordance with GAAP and GAAS, and included as additional information or as supplemental

schedule to the Audited Financial Statement to include revenue derived from Subleases. Such Audited Project Revenues may be based on relevant Audited Financial Statements prorated as necessary for the applicable Rental Year.

“Beach Services” means the agreement regarding the operation of beach services in **Exhibit “F”**.

“Bondholders” means the holder or holders of any Bond (as defined in Chapter 190, Florida Statutes) issued in connection with the CDD Financing.

“Budgeted Improvement Costs” means the estimated Improvement Costs as of the date hereof, as set forth in **Exhibit “C-1”**.

“CDD” means a community development district established pursuant to Chapter 190, Florida Statutes, for the limited purpose of financing the development, construction, maintenance and operation of the portion of the Parking Garage used for public parking, and thereafter owning (which will include an easement in the underlying Hotel Parcel in substantially the form in **Exhibit “L”** (the “CDD Easement”) and fee simple title to the facilities comprising the portion of the Parking Garage used for public parking as set forth in Section C.4. of **Exhibit “K”**) and operating such portion of the Parking Garage.

“CDD Financing” means the issuance of any notes, bonds or other evidence of indebtedness, including without limitation, assessment bonds, revenue bonds and/or certificates of indebtedness issued under Chapter 190, Florida Statutes for the limited purpose of financing the development, construction, maintenance and operation of the portion of the Parking Garage used for public parking as contemplated in this Lease.

“CDD Bonds” means the notes, bonds or other evidences of indebtedness, including without limitation, assessment bonds, revenue bonds and/or other certificates of indebtedness evidencing the CDD Financing.

“Certificate of Final Completion” has the meaning ascribed to it in Section 3.9.

“Certificate of Occupancy” means a certificate of occupancy or certificate of completion, as applicable, for the buildings and structures on the Leased Property, the Intracoastal Parcel Improvements, and the Johnson Street Improvements, and shall include any such certificate designated as “Temporary” in nature, provided it allows for occupancy of the Hotel.

“City” unless otherwise specified or required by the context, means the City of Hollywood, Florida, including its agents, as lessor and landlord hereunder, whether acting through the Commission of Hollywood or its designee, and not in its capacity as a municipality administering laws and ordinances that are applicable to the Project.

“City Manager” means Cathy Swanson-Rivenbark or her successor as City Manager of the City.

“Completion Date” means that date on which the City issues the Certificate of Final Completion pursuant to Section 3.9.

“Corrective Action Work” has the meaning ascribed to it in Section 8.4(a).

“CPA” means a firm of certified public accountants approved by the City, on a commercially reasonable basis, used by Developer for the purpose of certifying the annual reports, its financial condition or for any other purpose specified herein. For purposes of this Lease, Mallah Furman & Company, P.A. is hereby approved by the City as a CPA.

“CRA” has the meaning ascribed to such term in the Recitals.

“CRA Compensated Funding” means funding to be provided by the CRA, as funder, to Developer, as funding recipient, evidenced by the CRA Compensated Funding Agreement.

“CRA Compensated Funding Agreement” means the funding agreement dated June 21, 2013, between the CRA, as funder, and Developer, as funding recipient, evidencing the rights and obligations of the parties thereto.

“CRA Funding Agreement” means the funding agreement as referenced in **Exhibit “C-2”**.

“Debt Service Coverage Ratio” means the ratio of: (i) the amount calculated by subtracting Project Expenses from Project Revenues for the previous twelve (12) months; to (ii) the amount of Debt Service Payments actually required to be paid in such twelve (12) months, as reflected in Section 6.1(a)(iii). For example, if Project Revenues for a particular twelve (12) months equal \$3,700,000, Project Expenses equal \$1,000,000 and Debt Service Payments actually required to be paid equal \$1,800,000, the Debt Service Coverage Ratio for that twelve (12) months would be approximately 1.50.

“Debt Service Payments” means all principal, other than the CDD financing or any principal balloon payment, and interest, and other sums and amounts paid or payable by Developer for or during the applicable or pertinent period, in connection with any debt secured by a Leasehold Mortgage.

“Default Rate” means an interest rate equal to five percent (5%) per annum above the highest annual prime rate (or base rate) published from time-to-time in The Wall Street Journal under the heading “Money Rates” or any successor heading as being the rate in effect for corporate loans at large U.S. money center commercial banks (whether or not such rate has actually been charged by any such bank) or if such rate is no longer published, then the highest annual rate charged from time-to-time at a large U.S. money center commercial bank, selected by the City, on short-term, unsecured loans to its most creditworthy large corporate borrowers.

“Developer” means Margaritaville Hollywood Beach Resort, L.P., a Delaware limited partnership, and the successors, assigns or transferees thereof expressly approved or permitted by the terms and provisions of this Lease. An executed copy of Developer’s limited partnership agreement, is on file with the City as set forth on **Exhibit “D”**.

“Developer Equity” means the amount of money initially contributed to the Project by Developer for paying Budgeted Improvement Costs as set forth in Subsection 2.1(b)(vii)(Y), but excluding:

- (a) prior to the Minimum Rent Commencement Date, any such funds which are secured by liens on the Project and the EB-5 Contributions; and

- (b) the amount of money contributed by the Developer for the Intracoastal Parcel Improvements and the Johnson Street Improvements.

“Developer Improvements” means any and all permanent buildings, structures and machinery, equipment and fixtures, which are existing and may from time-to-time and at any time during the Term be erected or located on the Leased Property, including without limitation, the Hotel and the Parking Garage.

“Developer Investment” means the sum of:

- (a) the Improvement Costs;
- (b) all of the following actual, verifiable cost paid to arms-length third-parties, who are not Affiliates of Developer:
 - (i) for construction of capital improvements to the Leased Property that require a site plan amendment;
 - (ii) are required by the Florida Building Code; and
 - (iii) the cost of furniture, fixtures and equipment for new uses of the initial buildings or structures of the Development Improvements or for new buildings or structures on the Hotel Parcel;
- (c) actual construction and/or development management fees paid to Developer or Affiliates of Developer, not to exceed 3-1/2% however, specifically for Total Construction Costs improvements reflected in **Exhibit “C-1”** Budgeted Improvements Costs, not to exceed \$4,000,000; and
- (d) any other costs that are otherwise approved on a commercially reasonable basis by the City as increases to the Developer Investment, subsequent to completion of the Developer Improvements.

“EB-5 Contributions” means funds received by Developer to be invested in the Project, funded under the Immigration Act of 1990, EB-5 Visa program, as amended from time to time, which are subordinate to this Lease and the CRA Compensated Funding in all respects.

“Environmental Condition” has the meaning ascribed to it in Section 8.4.

“Environmental Claim” has the meaning ascribed to it in Section 8.4.

“Environmental Laws” has the meaning ascribed to it in Section 8.4.

“Environmental Permit” has the meaning ascribed to it in Section 8.4.

“Environmental Requirements” has the meaning ascribed to it in Section 8.4.

“Event of Default” has the meaning ascribed to it in Article VII.

“Force Majeure” has the meaning ascribed to it in Section 7.4.

“GAAP” means generally accepted accounting principles, as promulgated by the Financial Accounting Standards Board, consistently applied or a system generally recognized in the United States as having replaced GAAP.

“GAAS” means generally accepted auditing standards, as developed by the American Institute of Certified Public Accountants, consistently applied, or a system generally recognized in the United States as having replaced GAAS.

“Governmental Approvals” means all approvals that are required by any Governmental Authority for the construction of the Developer Improvements, the Intracoastal Parcel Improvements and the Johnson Street Improvements in accordance with the Approved Plans, and the use, occupancy and operation thereof in accordance with all applicable Governmental Requirements, including, without limitation the platting of the Hotel Parcel at the Developer’s cost. Notwithstanding anything to the contrary in the Lease, the Developer retains its rights to challenge or appeal any denial of Governmental Approvals.

“Governmental Authority” means any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency, or any instrumentality of any of them, with jurisdiction over the Leased Property or the Developer Improvements, the Intracoastal Parcel or the Intracoastal Parcel Improvements, and the Johnson Street Parcel or the Johnson Street Improvements.

“Governmental Requirements” means any law, enactment, statute, code, ordinance, rule, regulation, judgment, decree, writ, injunction, franchise, permit, certificate, license, or other similar requirement of any Governmental Authority, now existing or hereafter enacted, adopted, promulgated, entered, or issued, affecting the Leased Property, the Intracoastal Parcel or the Johnson Street Parcel, or the construction and operation of the Developer Improvements, the Intracoastal Parcel Improvements or the Johnson Street Improvements. Notwithstanding anything to the contrary in the Lease, the Developer retains its right to challenge Governmental Requirements, including without limitation, based on a constitutional objection that a Governmental Requirement violates Developer’s constitutional rights regarding contracts.

“Gross Operating Profit” means “Gross Operating Profit” as determined in accordance with the Uniform System, but after adding back any deductions for franchise or license fees that are otherwise deducted to calculate “Gross Operating Profit” under the Uniform System. Specifically, Gross Operating Profit is defined for this calculation as follows (using the categories provided for in the Uniform System): “Revenues” less “Departmental Expenses” less “Undistributed Operating Expenses (which includes “Administrative and General”, “Sales and Marketing”, “Property Operations & Maintenance”, and “Utilities”, but shall expressly exclude for this purpose any franchise or license fees) but before deduction for “Fixed Charges” (which includes “Rent”, “Property and Other Taxes”, insurance expenses), “Management Fees” and “Replacement Reserves”. The Summary Operating Statement from page 35 of the Uniform System which outlines such categories is attached as **Exhibit “Q”** (with the exception of “franchise or license fees” as noted above).

“Hazardous Substance” has the meaning ascribed to it in Section 8.4.

“Hotel” means the Margaritaville Beach Resort Hotel, as described in the Approved Plans, or any approved successor.

“Hotel Parcel” means the parcel of real property described in **Exhibit “E-1”**.

“Hotel Spaces” means the parking spaces within the Parking Garage not designated as Public Spaces.

“Hotel Standards” means the standards set forth in **Exhibit “B”**.

“Improvement Costs” means:

- (a) the actual, verifiable costs paid to third parties, not Affiliates of Developer, for constructing or purchasing the Developer Improvements on the Leased Property and, for those amounts expended by Developer in excess of the \$5,000,000 provided by the CRA Funding Agreement, the Intracoastal Parcel Improvements, the Johnson Street Improvements and the Off-Site Improvements, as reflected on the approved Site Plan; and
- (b) in recognition of Lojeta Group of Florida, LLC, an Affiliate of the Developer, serving as development and construction manager of the Project, a fee as specified in the Budgeted Improvement Costs and as further contemplated in the definition of “Developer’s Investment.”

“Indenture Trustee” means the trustee appointed by the CDD Board of Supervisors to represent the Bondholders under the master trust indenture executed in connection with the CDD Financing, including any successor thereto.

“Institutional Investor” means any of the following entities that have a net worth in excess of Fifty Million Dollars (\$50,000,000) (as adjusted by inflation over the Term pursuant to Section 13.21 hereof). But:

- (a) in the event of a syndicated loan, if one of the syndicate lenders is an Institutional Investor, all of the syndicate lenders shall be deemed to be Institutional Investors;
- (b) the Bondholders and Indenture Trustee shall each be deemed Institutional Investors; and
- (c) the City shall approve, within twenty (20) days from receipt by the City of commercially reasonable information properly identifying the proposed Institutional Investor including without limitation, its financial qualifications, any of the following entities as an “Institutional Investor.”
 - (i) any federal or state chartered commercial bank or national bank or any of its subsidiaries;

- (ii) any federal or state chartered savings and loan association, savings bank or trust company;
- (iii) any pension, retirement or welfare trust or fund, whose loans on real estate are regulated by state or federal laws;
- (iv) any public limited partnerships, public real estate investment trust or other public entity investing in commercial mortgage loans whose loans on real estate are regulated by state or federal laws;
- (v) any state licensed life insurance company in the business of making commercial mortgage loans or a subsidiary or affiliate of any such institution whose loans on real estate are regulated by state or federal laws;
- (vi) any private equity fund or similar private entity investing in commercial mortgage loans whose loans on real estate are regulated by state or federal laws or satisfy an exemption to such regulation;
- (vii) any agent, designee, or nominee of an Institutional Investor that is an Affiliate of any Institutional Investor or any other Person that is a subsidiary or an Affiliate of an Institutional Investor; and
- (viii) any entity commonly engaged in the origination of commercial mortgage loans intended for securitization in one or more private or public single asset or pooled loan securitizations and any agent or trust created to hold such commercial mortgage loans following any such securitization; it being understood and agreed that the above net worth requirement shall not be applicable to any such entity.

“Insurance Trustee” has the meaning ascribed to it in Section 9.9(a).

“Intracoastal Parcel” means that certain parcel lying west of the Leased Property between A1A and the Intracoastal Waterway as more fully described in **Exhibit “O”**.

“Intracoastal Parcel Improvements” means those certain improvements to be constructed, maintained and operated on and within the Intracoastal Parcel.

“Intracoastal Parcel License Agreement” means that certain License Agreement dated February 9, 2011, between the City and Developer relating to the Intracoastal Parcel Improvements.

“Johnson Street Parcel” means that certain public right-of-way adjacent to the Leased Property on Johnson Street from A1A to the Boardwalk as more fully described in **Exhibit “P”**.

“Johnson Street Improvements” means those certain improvements to be constructed, maintained and operated in the Johnson Street Parcel, in accordance with the Johnson Street License Agreement.

“Johnson Street License Agreement” means that certain License Agreement dated February 9, 2011, among the City, CRA and Developer, relating to the Johnson Street Improvements.

“Landlord’s Representative” has the meaning ascribed to in Section 3.8.

“Lease” means this Amended and Restated Development Agreement and Ground Lease, as the same may be modified or amended from time-to-time.

“Leasehold Mortgage” means a mortgage or assignment of the rents, issues and profits from the Project or other security instrument, which constitutes a lien on all, but not less than all, of the leasehold created by this Lease (other than the public parking portion of the Parking Garage) and Developer Improvements, but excluding, equipment, furniture, personal property and machinery that is not a fixture, during the Term.

“Leased Property” means the Hotel Parcel.

“Lender” means an Institutional Investor that is the owner and holder of a Leasehold Mortgage. But, the City shall have no duty or obligation to determine independently the relative priorities of any Leasehold Mortgages. Rather, it shall be entitled to rely absolutely upon a title report current as of the time of any determination of the priorities of such Leasehold Mortgage and prepared by a generally recognized title insurance company doing business in Broward County, Florida, or upon a certificate of Developer, signed and verified by an authorized person of Developer.

“Losses” has the meaning ascribed to it in Section 8.3.

“Market Area” means:

- (a) regarding a restaurant, café, bar or other food or beverage business, a geographical area of ten (10) miles from the Hotel in all directions; and
- (b) regarding a hotel or other lodging establishment:
 - (i) Broward, Miami-Dade and Palm Beach Counties for a period of five (5) years commencing on the Opening Date; and
 - (ii) during the balance of the Term, Broward and Miami-Dade Counties.

“Minimum Rent Commencement Date” means the earlier of the date a Certificate of Occupancy is issued for the Hotel or, twenty-seven (27) months after the commencement of construction, subject to an extension for any Force Majeure event.

“Minimum Guaranteed Rent” has the meaning ascribed to it in Section 2.4(c).

“Net Sale Proceeds” means, regarding a Transfer, the amount remaining from the gross proceeds of such Transfer (net of the expenses of the sale such as customary brokerage commissions, attorneys’ fees, transfer taxes and recording fees, but excluding items not directly related to the Transfer, such as tax planning costs). Net Sale Proceeds shall be calculated each time a Transfer

closes using the total money or money equivalent paid for the Transfer and shall include, without limitation, any purchase money financing or other deferred or delayed payments.

“Off-Site Improvements” means any and all improvements not located on the Leased Property shown on the Approved Plans and in accordance with the Governmental Approvals.

“Opening Date” means the date on which the Hotel first opens for business to the general public.

“Original Developer Investors” means initially Hollywood Resort Partners, LP, a Florida limited partnership, Lojeta-Millennium GP, L.L.C., a Florida limited liability company, Margaritaville of Hollywood, Florida, LLC, a Delaware limited liability company, and CH2MVResort, LLC, a Florida limited liability company, as identified on **Exhibit “J-1”**. After the Permitted Pre-Possession Transfer, the “Original Developer Investors” shall also include, SOF-IX Hollywood, L.P., a Delaware limited partnership, and SOF-IX Hollywood GP, L.L.C., a Delaware limited liability company, as identified on **Exhibit “J-2”**.

“Outside Possession Date” means the date of the recording of the plat for the Hotel Parcel, but in no event earlier than the date that all conditions precedent to possession are met and in no event later than July 9, 2013.

“Parking Garage” means that certain parking garage to be constructed upon the Leased Property with not less than 1056 parking spaces, to be utilized as follows, as more particularly provided herein:

Public Spaces:	579 spaces within the CDD portion of the garage and 21 spaces on the third floor and ramp to the fourth floor, six spaces of which are handicap spaces (total 600 spaces)
Hotel Spaces	456

“Parking Garage Standards” means procedures and policies for operating the Parking Garage in **Exhibit “G”**.

“Participation Rent” has the meaning ascribed to it in Section 2.4(d).

“Participation Rent Hurdle” means, for each Rental Year, an amount equal to \$18,500,000, as such amount shall be increased by fifteen percent (15%) on every fifth (5th) anniversary of the Minimum Rent Commencement Date.

“Permitted Pre-Possession Transfer” has the meaning ascribed to it in Section 5.3(b).

“Permitted Transfers” has the meaning ascribed to it in Section 5.3.

“Person” means any corporation, unincorporated association or business, limited liability company; business trust, real estate investment trust, common law trust, or other trust, general partnership, limited partnership, limited liability limited partnership, limited liability partnership, joint venture, or two or more persons having a joint or common economic interest, nominee, or other entity, or any individual (or estate of such individual).

"Possession Date" has the meaning ascribed to it in Section 2.1(b).

"Possession Conditions" has the meaning ascribed to it in Section 2.1(b).

"Project" means Developer's leasehold created by this Lease and the construction and purchase of the Developer Improvements.

"Project Expenses" means:

- (a) ordinary, commercially reasonable and necessary operating expenses incurred to arms-length third parties;
- (b) ordinary, commercially reasonable and necessary wages and benefits paid and payable to the hotel manager's full time or part-time on-site or off-site management employees and full or part-time non-management employees; and
- (c) commercially reasonable management fees, at prevailing market rates.

"Project Revenues" means in the applicable Rental Year, gross revenue collected by the Hotel as reported according to GAAP, with adjustments for:

- (a) proceeds, if any, from any business interruption or other loss of income insurance; and
- (b) the fair rental value of space within the Project occupied by Developer or any entity affiliated with or employed by Developer for purposes other than managing the Project (to the extent the occupants of such space are paying less than the fair market value of such space).

Project revenues shall also include, without limitation, revenues generated and collected by the Hotel in connection with Hotel operations conducted outside of the Leased Property, including the Intracoastal Parcel, the Johnson Street Parcel and the beach adjacent to the Project.

Project Revenues shall exclude user fees collected by or on behalf of the CDD, including without limitation, any CDD user fee to be collected from patrons and guests.

"Public Charges" has the meaning ascribed to it in Section 2.5.

"Public Spaces" means the public parking component of the Parking Garage, consisting of approximately 579 spaces within the CDD portion of the garage and 21 spaces on the third floor and ramp to the fourth floor, six spaces of which are handicap spaces (total 600 spaces).

"Reconstruction Work" has the meaning ascribed to it in Section 9.9.

"Rent" means all payments required pursuant to Section 2.4 (other than in Section 2.4(a) thereof) and any other payments characterized as rent hereunder.

"Rental Year" means a year consisting of twelve (12) consecutive calendar months. The first Rental Year during the term of this Lease shall commence on the Possession Date and end on

December 31st of the then current calendar year. The second and following Rental Years shall commence on the 1st day of January each calendar year.

“Schedule of Performance” has the meaning ascribed to it in Section 3.5.

“Section”, “Subsection”, “Paragraph”, “Subparagraph”, “Clause”, or “Subclause” followed by a number or letter means the section, subsection, paragraph, subparagraph, clause or subclause of this Lease so designated.

“Single Purpose Entity” means:

- (a) an entity or organization that does not and cannot by virtue of its organizational documents:
 - (i) engage in any business other than owning, developing, leasing and operating the Project, the Johnson Street Improvements, and the Intracoastal Parcel Improvements; or
 - (ii) acquire or own material assets other than the Project, the Johnson Street Improvements, and the Intracoastal Parcel Improvements and incidental personal property; and that
- (b) does not hold itself out to the public as anything but a legal entity or organization separate from any other person or entity or organization; and
- (c) conducts business solely in its name or under a fictitious name.

“Site Plan” means the site plan as defined in **Exhibit “H”**.

“Starwood Capital” means Starwood Capital Group Global, L.P. together with its successors and assigns whether by way of merger, business combination, sale of assets, reincorporation, consolidation, recapitalization, liquidation, amalgamation or similar transaction.

“Starwood Control Party” means (i) Starwood Capital, (ii) SOF-IX U.S. Holdings, L.P., a Delaware limited partnership, and (iii) any other Person that is directly or indirectly Controlling, Controlled by or under common Control with any of the Persons identified in clauses (i) and (ii) of this definition. For purposes of this definition, “Control” means the possession, directly or indirectly, of the power to direct or cause the direction or the management and policies of a Person, whether through the ownership of stock, by contract or otherwise (it being acknowledged that a Person shall not be deemed to lack Control of another Person even though certain decisions may be subject to “major decision” consent or approval rights of limited partners, shareholders or members, as applicable).

“Sublease” means any lease, sublease, license or other agreement by which Developer demises, leases, or licenses the use and occupancy by another person or entity of one or more specific retail or restaurant spaces, or other defined portion of the Project.

“Subtenant” means any person, firm, corporation or other legal entity using and occupying or intending to use and occupy one or more specific retail spaces or other defined portion of the Project.

“Trademark License Agreements” means the license agreement or agreements providing for the right of Developer to use the “Margaritaville” name, or such successor document or documents created to allow for a new name or flag.

“Transaction Rent” has the meaning ascribed to it in Section 2.4(e).

“Transfer” excludes sales, assignments and conveyances to Affiliates and to or by Lenders who take the Project as a result of a default under a Leasehold Mortgage, and, with respect to others, means a sale, assignment or conveyance or any other transaction or series of transactions in the nature of a sale of:

- (a) the Project or any part thereof;
- (b) any interest in the Project, or any part thereof;
- (c) any direct interest in Developer (including without limitation, the syndication of tax benefits); or
- (d) any series of such Transfers that have the cumulative effect of a sale.

“Uniform System” means the Uniform System of Accounts for the Lodging Industry, 10th Revised Edition, as may be modified from time-to-time by the International Association of Hospitality Accountants, consistently applied; provided, however, for purposes of the definition of Gross Operating Profit, the reference to the “Uniform System” shall not include any subsequent editions or revisions of the Uniform System.

“Work” has the meaning ascribed to it in Section 3.5.

ARTICLE II

GENERAL TERMS OF LEASE

Section 2.1 Lease of Leased Property to Developer. Subject to the conditions set forth in this Lease, including without limitation, the occurrence of the Possession Date, the payment of all Rent and all other payments by Developer provided herein, and the City’s and Developer’s performance of their duties and obligations required by this Lease:

- (a) Demise. The City, as of the Possession Date, demises and leases to Developer, and Developer takes and hires from the City, the Leased Property (except for the Developer Initial Parcel hereinafter defined) for a term of ninety-nine (99) years (the “Term”). Within thirty (30) days after the Possession Date, the City and Developer, upon request of either party, shall execute one or more written memoranda in such form as will enable them to be recorded among the Public Records of Broward County setting forth the beginning and termination dates of the Term, determined according to this Lease. Notwithstanding anything to the

contrary in this Lease, the City, as of the execution date of this Lease, demises and leases to Developer the Developer Initial Parcel for a term of ninety-nine (99) years.

- (b) Conditions Precedent to Possession. Except for that certain portion of the Leased Property more particularly described in **Exhibit "E-2"** (the "Developer Initial Parcel") and notwithstanding anything other to the contrary in this Lease, the City shall not be obligated to deliver possession of the Leased Property and Developer's rights as tenant hereunder shall not become effective until each of the events described in this subsection 2.1(b) shall have occurred, at which time, the City shall deliver possession of the Leased Property to Developer, Developer shall take possession thereof and the lease provisions of this Lease shall become effective. Until that time, except with respect to the Developer Initial Parcel, this Lease shall be construed to be in the nature of a development agreement, and not a lease. The conditions precedent to delivery of possession (collectively, the "Possession Conditions") are as follows:
- (i) There exists no uncured Developer Event of Default;
 - (ii) The CDD shall have been formed according to Governmental Requirements;
 - (iii) The City shall have approved the Approved Plans in its capacity as landlord under this Lease, and as licensor under the Intracoastal Parcel License Agreement and the Johnson Street License Agreement, according to Article III hereof;
 - (iv) Developer shall have obtained Governmental Approvals;
 - (v) Developer shall have entered into a general contract for construction and purchase of the Developer Improvements, the Intracoastal Parcel Improvements and the Johnson Street Improvements, in form and substance and with a general contractor reasonably acceptable to the City;
 - (vi) Developer shall have obtained and delivered to the City a performance and payment bond, with all premiums paid and with good and sufficient surety, in form and content reasonably acceptable to the City, in accordance with Florida law. Such bond shall be written in favor of Developer with a dual obligee rider in favor of the City and the CRA;
 - (vii) The City shall have received written evidence from Developer, that is commercially reasonable, confirming the following (collectively, the "Evidence of Funds"):
 - (U) good and sufficient funds are readily available for the complete construction and purchase of the Developer Improvements, the Intracoastal Parcel Improvements and the Johnson Street

Improvements, in an aggregate amount of not less than the Budgeted Improvement Costs;

- (V) the CRA Compensated Funding Agreement has been fully executed and delivered;
 - (W) the CRA Funding Agreement has been fully executed and delivered;
 - (X) the bond validation process has been completed and is not subject to appeal; and
 - (Y) Developer has, in the aggregate, expended and either (1) placed in an operating account immediately available funds, or (2) provided an equity commitment or assurances reasonably acceptable to City committing to invest, Developer Equity in an amount equal to not less than \$45,000,000 (provided, however, such equity may be reduced in the sole discretion of the Developer after the Minimum Rent Commencement Date, as long as it does not breach any other agreement to which Developer is a party);
- (viii) Developer shall have reimbursed the CRA for its third-party costs (including without limitation, third-party consultants and attorneys) incurred by the CRA to that date connected to the transaction contemplated herein, in an amount not to exceed \$150,000 in the aggregate in addition to the \$300,000 previously paid to the CRA; and
- (ix) Developer shall have presented evidence that all required insurance coverages are in place.

The date that the City delivers possession of the Leased Property to Developer according to this subparagraph (b), and is so designated by the City to Developer in writing, is referred to herein as, the "Possession Date."

- (c) Pre-Possession Period. Notwithstanding anything contained in this Lease to the contrary, in the event that the Possession Conditions have not occurred by the Outside Possession Date, Developer hereby waives any further right to cure, as set forth in Section 7.1(c) of this Lease (a "Developer's Waiver"), and such shall be considered a Developer Event of Default under this Lease. The one exception to this Developer's Waiver shall be a failure under Section 2.1(b)(iv) to have completed the platting process for the Hotel Parcel (and then only if Developer has satisfied the requirements of Section 7.1(c)). In case of such Developer Event of Default, the City shall be entitled to immediately terminate Lease (and the CRA shall be entitled to immediately terminate the CRA Compensated Funding Agreement and the CRA Funding Agreement) upon written notice to the Developer and the parties shall thereafter be released from all obligations set forth therein except any such obligations that expressly survive termination. The City shall also be entitled to its remedies as set forth in Section 7.2 of this Lease

including the provisions of Section 7.2(d). Notwithstanding anything contained in this Lease to the contrary, in no event shall either party be liable to the other for any consequential or punitive damages in connection with this Lease, the CRA Compensated Funding Agreement and/or the CRA Funding Agreement.

- (d) Other Funding Source. Developer acknowledges and agrees that the City reserves the right to renegotiate the proposed financial terms contemplated in this Lease, if Developer obtains New Markets Tax Credit financing.
- (e) CDD Easement/Release of CDD Easement. On the Possession Date, the CDD Easement and the release of the CDD Easement, in substantially the form attached hereto as **Exhibit "M"** ("Release of CDD Easement") shall be executed by all necessary parties pursuant to Section C.4 of **Exhibit "L"**. The CDD Easement shall thereafter be promptly recorded among the public records of Broward County, Florida. The Release of CDD Easement shall be held in escrow by the City and released therefrom and recorded among the public records of Broward County, Florida as set forth in subsection (f), immediately below.
- (f) Additional Third Party Costs. Notwithstanding anything in this Lease to the contrary and in addition to requirements of Section 2.1(b)(viii), Developer shall reimburse the City and CRA, as applicable, for their third-party costs (including, without limitation, third party consultants and attorneys) incurred by the City and CRA in connection with this Lease, or any subsequent amendments to this Lease or any other Project agreements between the parties that were requested by Developer. With respect to the payment of third-party costs by the Developer, for any subsequent Developer initiated amendments to this Lease, the CRA Compensated Funding Agreement and/or any other Project agreements, the parties shall attempt in good faith to mutually agree upon a budget for such third-party costs with the understanding that the payment of such third-party costs shall always be a condition precedent to the effectiveness of any such future amendments.
- (g) Condition Subsequent to Possession. If at any time the CDD Bonds shall not be sold so that the proceeds thereof are not available to the CDD and ready to be disbursed for acquisition purposes prior to the date when the construction of the Parking Garage has achieved ninety percent (90%) completion, then Developer has the right to:
 - (i) deliver a notice to City that it intends to terminate the Lease effective upon Developer's completion of the Parking Garage. Such completed garage structure must be architecturally complete on all sides and capable of receiving a Certificate of Occupancy. If Developer does not revoke such notice prior to completion of the Parking Garage, then upon Developer providing notice to the City that the Parking Garage has been completed then:

(W) this Lease shall terminate effective ten (10) days after completion of the Parking Garage,

(X) Developer shall execute and deliver to the City a written Acknowledgment of Termination in recordable form,

(Y) the City shall be free to record the Release of CDD Easement, and

(Z) the parties shall have no further rights or liabilities under this Lease, except those which expressly survive such termination.

(ii) deliver a notice to City that it intends to complete the Parking Garage and the other Developer Improvements as required by this Lease at its sole cost and expense, in which case the Parking Garage shall be owned by Developer and Developer (or the manager of the Hotel) shall operate the public parking facility within the Parking Garage, and Developer shall be entitled to all revenue generated therefrom, subject to the terms and conditions of this Lease.

No waiver of any condition in Section 2.1 shall be implied by any conduct of the City, it being agreed that any waiver by the City of any such condition shall be effected only by the City in an expressed written statement to that effect.

Section 2.2 Restrictive Covenants.

- (a) Permitted Use. Developer shall operate the Project throughout the Term as a destination hotel for the accommodation of hotel guests, and for related banquet, meeting and similar purposes, with related retail shops, restaurants and such other amenities as are consistent with the Hotel Standards.
- (b) Use Restrictions. The Project shall not be used by Developer, nor shall Developer permit the use thereof for the following: any unlawful or illegal business, use or purpose, or for any business, use or purpose which is immoral or disreputable (including without limitation, "adult entertainment establishments" and "adult" bookstores) or extra-hazardous, or in such manner as to constitute a nuisance of any kind (public or private), or for any purpose or in any way in violation of the Certificates of Occupancy (or other similar approvals of any Governmental Authority) or any Governmental Requirements. Developer shall have no right to convert the use of the Project or any portion thereof to any time sharing, time interval or cooperative form of ownership, or to subject the same to any condominium regime.
- (c) No Discrimination. Developer shall comply with Governmental Requirements prohibiting discrimination by reason of race, color, religion, sex, national origin, or handicap in the sale, lease, use or occupancy of the Project or any portion thereof.
- (d) Single Purpose Entity. The initial Developer shall maintain its existence as a Single Purpose Entity. This restriction shall not apply to any successor of the initial Developer, including without limitation, Lenders, assignees or purchasers.

- (e) Enforceability. The restrictive covenants contained in this Section 2.2 shall be binding upon the Developer and shall be for the benefit and in favor of, and enforceable by the City, its successors and assigns, as the case may be. It is further understood that such covenants shall not be enforceable by any other third party.

Section 2.3 “As Is” Condition of the Leased Property.

- (a) Developer acknowledges and agrees that it has been given the opportunity to perform all inspections and investigations concerning the Leased Property to its satisfaction and, except as expressly provided herein, the City is not making and has not made any representations or warranties, express or implied, as to the Leased Property (including without limitation, but not limited to, title, survey, physical condition, suitability or fitness for any particular purpose, value, financial prospects or condition or the presence or absence of hazardous substances).
- (b) Except regarding the information about the 1,000 gallon storage tank buried in the ground near the existing parking garage elevator shaft on the Leased Property, regarding which the Developer has relied on the City, Developer acknowledges it has relied solely on Developer’s own inspections and investigations of the Leased Property in its determination of whether to proceed with this Lease and the Project. As a material part of the consideration of this Lease, Developer agrees to accept the Leased Property on the Possession Date in its “AS IS” and “WHERE IS” condition with all faults, and without representations and warranties of any kind, express or implied, or arising by operation of law.
- (c) Notwithstanding anything to the contrary in this Lease, the City represents and warrants that:
 - (i) the Approved Plans for the Project meet all building and zoning requirements; and
 - (ii) there is sufficient water and sewer capacity available for the Project as shown on the Site Plan, and there shall be such capacity at all times during the Lease.

Section 2.4 Rent and Other Payments. Developer covenants and agrees to pay the City, from and after the date hereof and during the Term the following, as applicable:

- (a) Pre-Possession Payments. A payment for maintaining the Lease in good standing of \$20,000 per month, prorated as to any partial month, commencing on the earlier of (i) July 1, 2011 or (ii) the date the Regional Center approval is granted in connection with the EB-5 Contributions and continuing thereafter until the Possession Date or earlier termination of this Lease;

- (b) Construction Period Rent. Rent in the amount of \$20,000 per month, prorated as to any partial month, commencing on the Possession Date and continuing on the first day of each month thereafter until the Minimum Rent Commencement Date;
- (c) Minimum Guaranteed Rent. "Minimum Guaranteed Rent" shall be an annual rent of \$1,000,000 payable in twelve (12) equal monthly installments, prorated as to any partial month, commencing on the Minimum Rent Commencement Date and continuing on the first day of each month thereafter, increasing by fifteen percent (15%) on every fifth (5th) anniversary of the Minimum Rent Commencement Date.
- (d) Participation Rent. Developer covenants and agrees to pay the City, as additional annual rent ("Participation Rent"), an amount equal to ten percent (10%) of the amount by which: (i) Gross Operating Profit for such Rental Year exceeds (ii) the then Participation Rent Hurdle for such Rental Year. Participation Rent shall be calculated and included in the additional information or supplemental schedule of Gross Operating Profit included in the annual Audited Financial Statements. The amount due for each Rental Year shall be payable within thirty (30) days of the delivery of the Audited Financial Statements to the Developer. Participation Rent shall be paid pro rata in each Rental Year that the Participation Rent Hurdle adjusts.
- (e) Transaction Rent. Developer covenants and agrees to pay the City as additional rent, within sixty (60) days after the closing of each and every Transfer (or as noted below in the event of a sale involving Developer financing) other than the Permitted Pre-Possession Transfer, (A) with respect to any Transfer (or portion thereof) that results in any of the Original Developer Investors' interest in the Project or interest in the Developer being reduced or Transferred, an amount equal to five percent (5%) of the amount by which the applicable Net Sale Proceeds exceeds the portion of the Developer Investment allocated to the portion of the Original Developer Investors' interest in the Project or interest in the Developer being reduced or Transferred, and (B) with respect to any Transfer (or portion thereof) that does not result in any of the Original Developer Investors' interest in the Project or direct interest in the Developer being reduced or Transferred, an amount equal to zero and 60/100ths percent (0.60%) of the applicable Net Sale Proceeds with respect to such Transfer (each "Transaction Rent").
 - (i) An example of calculating Transaction Rent pursuant to Section 2.4(e) is set forth on **Exhibit "R"**.
 - (ii) In connection with the payment of Transaction Rent under Section 2.4(e)(A) above, such Transaction Rent shall be due as payments are made in excess of the portion of Developer Investment involved in the Transfer. For example, if the entire Project was sold for \$137,500,000 and the Developer Investment was \$127,500,000, the excess would be \$10,000,000 and the Transaction Rent would be \$500,000. The \$500,000

would be paid in equal amounts from the payments made to the Developer after the Developer has received \$127,500,000.

- (f) Payment of Rent and Other Payments. All Rent and other payments hereunder required to be made to the City shall be paid to the City at the Office of the Director of Finance, Hollywood City Hall, 2600 Hollywood Blvd., Hollywood, Florida 33020 or at such other place as the City shall designate from time-to-time in a notice given pursuant to the provisions of Section 13.5. Any late payment shall automatically accrue interest at the Default Rate from the date that payment was due until paid.
- (g) Records and Reporting.
 - (i) For the purpose of permitting verification by the City of any amounts due to it, including without limitation, an account of Participation Rent and Transaction Rent, if any, Developer shall keep and preserve for at least three (3) years in Broward County, Florida, at the address specified in Section 13.5, auditable original or duplicate books and records for the Project, the Intracoastal Parcel and the Johnson Street Parcel, which shall disclose all information regarding the Project, the Intracoastal Parcel and the Johnson Street Parcel, including information required to determine Participation Rent and Transaction Rent, if any. All such records shall be maintained in every material respect according to GAAP and the Uniform System. The City shall, on commercially reasonable notice, have the right during normal business hours to inspect such books and records and make any examination or audit or copy thereof which the City may desire. If such audit shall disclose a liability for Rent in excess of the Rent theretofore paid by Developer for the period in question, Developer shall pay such additional Rent within thirty (30) days after receipt of written demand therefor, and if such audit shall disclose an overpayment of the Rent theretofore paid, the City shall return the excess to Developer within thirty (30) days after receipt of written demand therefor.
 - (ii) Developer shall provide the City with an annual Audited Financial Statement for each Rental Year during the Term, certified by the CPA, within one hundred twenty (120) days after the close of each Rental Year (including the Rental Year in which the lease terminates or is terminated) including, as additional information or as a supplemental schedule, Participation Rent and Transaction Rent, if any.
 - (iii) If Developer shall fail to deliver the foregoing statements and information to the City within said one hundred twenty (120) day period, the City shall have the right to either conduct an audit itself or to employ an independent certified public accountant to examine such books and records as may be necessary to certify the amount of Rents due with respect to such Rental Year and to obtain the information described above. Developer shall pay

to the City, within thirty (30) days after receipt of written demand thereof, as Additional Rent, the cost of any audit performed by or for the City.

- (iv) If the City disagrees with the annual Audited Project Revenues Schedule and/or the annual Audited Financial Statement provided by Developer, it may conduct its own audit, which Developer shall pay for if said audit demonstrates a discrepancy of more than three percent (3%), in the amount of Participation Rent or Transaction Rent due to the City. Any dispute between the two audits which cannot be resolved by the parties shall be resolved by binding arbitration in accordance with the rules of the American Arbitration Association then in effect. The cost of any audit by the City which Developer is required to pay the cost of pursuant to this Section shall be the cost charged to the City by its independent auditors, or if done by City personnel, the direct employee salary cost to the City for the time spent by said employees in performing such audit, but not in excess of what would have been charged to the City for the same service by the City's outside auditors.
- (v) Quarterly, commencing on the Possession Date and continuing until the Completion Date, and not less often than annually thereafter, Developer shall deliver to the City a written report detailing the use by Developer of City of Hollywood small businesses in the construction, operation and maintenance of the Project, the Intracoastal Parcel Improvements and the Johnson Street Improvements.

Section 2.5 Covenants for Payment of Public Charges by Developer.

- (a) Payment of Public Charges. Payment of Public Charges includes without limitation:
 - (i) Developer, in addition to the Rent and all other payments due to City hereunder, covenants and agrees timely to pay and discharge, before any fine, penalty, interest or cost may be added, all real and personal property taxes, all ad valorem real property taxes, all taxes on Rents payable hereunder and under Subleases, tourist, room and restaurant taxes, public assessments and other public charges; and
 - (ii) Special Assessments pursuant to Section 2.5(e) (inclusive of any and all CDD assessments), electric, water and sewer rents, rates and charges levied, assessed or imposed by any Governmental Authority against the Leased Property, including all Developer Improvements (excluding the public parking portion of the Parking Garage) thereon, in the same manner and to the same extent as if the same, together with all Developer Improvements thereon (excluding the public parking portion of the Parking Garage) were owned in fee simple by Developer.

(collectively, "Public Charges");

- (b) But, Developer's obligation to pay and discharge Public Charges levied, assessed or imposed against or with respect to Leased Property shall not commence until the Possession Date. But, should the Broward County Property Appraiser make a determination that the Leased Property is taxable prior to the Possession Date, the City shall first be obligated to challenge such determination and, in the event the City's challenge is unsuccessful, it shall be the Developer's obligation to pay the appropriate ad valorem real property taxes). All such charges shall be prorated if the Possession Date is not at the beginning of the calendar year. Developer, upon written request, shall furnish or cause to be furnished, to the City, official receipts of the appropriate taxing authority, or other proof satisfactory to the City evidencing the payment of any Public Charges, which were delinquent or payable with penalty thirty (30) days or more prior to the date of such request.
- (c) Payment in Lieu of Ad Valorem Taxes. If all or a portion of the Project (other than the public parking component of the Parking Garage which shall not be subject to ad valorem taxes), during the Term, is no longer subject to ad valorem taxes (or to a tax imposed on the Project in lieu of or replacing an ad valorem tax) due to legal or judicial action or otherwise, then Developer shall, each year during the Term, make payments to the City in lieu of such ad valorem taxes, and/or applicable TIF (Tax Increment Financing) payments to the CRA, in an amount equal to that which would have accrued to the City and CRA if the Project was subject to ad valorem taxes in the applicable Rental Year (pro-rated for any partial calendar year). Such payment shall be made on the first day of April of each succeeding year.
- (d) Contesting Impositions.
- (i) Developer shall have the right to contest the amount or validity, in whole or in part, of any Public Charges, for which Developer is, or is claimed to be, liable, by appropriate proceedings diligently conducted. Upon the termination of any such proceedings, Developer shall pay the amount of such Public Charges or part thereof, if any, as finally determined in such proceedings, together with any costs, fees, including counsel fees, interest, penalties and any other liability in connection therewith.
- (ii) City shall not be required to join in any proceedings referred to in this Section 2.5(d) unless:
- (Y) Governmental Requirements shall require that such proceedings be brought by or in the name of City; or
- (Z) the proceeding involves the assessment or attempted assessment of a real estate or ad valorem tax on the Leased Property,
- in which event the City shall join in such proceedings or permit the same to be brought in the City's name.

- (iii) Except for any counsel it retains separately, the City shall not be subjected to any liability to pay any fees, including counsel fees, costs and expenses regarding such proceedings. Developer agrees to pay such fees, including commercially reasonable counsel fees, costs and expenses or, on demand, to make reimbursement to the City for such payment.
- (e) Special Assessments. The City retains all its rights to impose nondiscriminatory special assessments or other public charges; provided, however, if at any time the City, in its municipal capacity, subjects non-governmental users to an exclusive franchise for trash removal or other public services, Developer will be treated the same as similarly sized and situated properties (such as the Marriott and Crowne Plaza, but expressly excluding the Diplomat Resort). Developer covenants and agrees to pay any and all special assessment levied on the Project that may become due during the Term connected with any CDD Financing, including without limitation, any such special assessments that become due as a result of an acceleration thereof, without regard to the validity of such special assessments.

ARTICLE III **CONSTRUCTION OF IMPROVEMENTS**

Section 3.1 Developer's Responsibilities/Conformity of Plans.

- (a) Developer shall be responsible for preparing all plans and specifications for constructing the Project, the Intracoastal Parcel Improvements and the Johnson Street Improvements. Such plans and specifications shall conform to the Site Plan attached hereto as **Exhibit "H"**, which was approved by the City Commission on December 15, 2010;
- (b) The Approved Plans are a condition precedent to the effectiveness of this Lease; and
- (c) Notwithstanding any other provision or term of this Lease or any Exhibit hereto, the Site Plan, the Approved Plans and all work by Developer regarding the Project, the Intracoastal Parcel Improvements and the Johnson Street Improvements shall conform to the City of Hollywood Charter and Code, the Florida Building Code and all other Governmental Requirements and, to the extent consistent with the above, the provisions of this Lease and the Trademark License Agreements.

Section 3.2 INTENTIONALLY DELETED

Section 3.3 Approved Plans. The Approved Plans for the Intracoastal Parcel, the Johnson Street Parcel and the Hotel mean final working drawings and specifications prepared according to Governmental Requirements, and including without limitation, the following information:

- (a) definitive architectural drawings;
- (b) definitive foundation and structural drawings;

- (c) definitive electrical and mechanical drawings including without limitation, plans for all lighting facilities affecting the exterior appearance of the buildings and structures; and
- (d) final specifications.

The Approved Plans shall conform in all material respects to the approved Site Plan, or the Developer shall not be bound by the Lease.

Section 3.4 Facilities to be Constructed. Developer agrees to construct the buildings and structures on the Leased Property, and the related improvements, as set forth in the Approved Plans, not located on the Leased Property, in a good and workmanlike manner, containing the facilities more particularly described in the Site Plan, the Approved Plans and the Governmental Approvals, and which conform to and are in accordance with the terms of this Lease, the Intracoastal Parcel License Agreement, the Johnson Street License Agreement and the Trademark License Agreements.

Section 3.5 Schedule of Performance. The schedule attached hereto as **Exhibit "I"** (the "Schedule of Performance") sets forth the dates and times of delivery of the various plans, preparation and filing of applications for and obtaining the Governmental Approvals and time schedule for the construction, purchase and completion of the Developer Improvements, the Intracoastal Parcel Improvements and the Johnson Street Improvements (collectively the "Work"). Developer shall prosecute completion of the Work with all diligence and, in any event, in accordance with the Schedule of Performance, time being of the essence. The dates in **Exhibit "I"** shall not be extended except for an event of Force Majeure.

Section 3.6 Access. Prior to the Possession Date, the City shall permit Developer commercially reasonable access to the property shown in the Site Plan whenever and to the extent necessary to carry out the provisions of this Lease, but such access shall not unreasonably interfere with the City's current parking operation thereon. Developer, at all times and at its sole cost and expense, shall maintain or shall cause its general contractor or other contractor in privity with Developer to maintain, comprehensive general public liability insurance as required in Article IX.

Section 3.7 Construction Period.

- (a) Prior to the Completion Date, Developer shall:
 - (i) Perform and complete the Work;
 - (ii) Select the means and methods of construction. Only adequate and safe procedures, methods, structures and equipment shall be used;
 - (iii) Furnish, erect, maintain and remove such construction plant and such temporary work as may be required; and be responsible for the safety, efficiency and adequacy of the plant, appliance and methods used and any damage which may result from failure, improper construction, maintenance or operation of such plant, appliances and methods;

- (iv) Provide all architectural and engineering services, scaffolding, hoists, or any temporary structures, light, heat, power, toilets and temporary connections, as well as all equipment, tools and materials and whatever else may be required for the proper performance of the Work;
 - (v) Order and have delivered all materials required for the Work and shall be responsible for all materials so delivered to remain in good condition;
 - (vi) Maintain the Project site, the Intracoastal Parcel and the Johnson Street Parcel in a clean and orderly manner at all times commensurate with the public beachfront nature of the Project, and remove all paper, cartons and other debris from the Project site, the Intracoastal Parcel and the Johnson Street Parcel;
 - (vii) Erect, furnish and maintain a field office with a telephone at the Project site during the period of construction in which an authorized officer, employee or agent shall be accessible during regular business hours;
 - (viii) Protect all Work prior to its completion and acceptance;
 - (ix) Preserve all properties adjacent and leading to the Project site, the Intracoastal Parcel and the Johnson Street Parcel, and restore and repair any such properties damaged as a result of construction of the buildings and structures, the Intracoastal Parcel Improvements and the Johnson Street Improvements, whether such properties are publicly or privately owned;
 - (x) Implement, and maintain in place at all times, a comprehensive hurricane and flood plan for the Project site, the Intracoastal Parcel, the Johnson Street Parcel and the Work, and provide a copy of same to the City;
 - (xi) Upon completion, deliver to the City an as built survey and plans and specifications of the Project, the Intracoastal Parcel Improvements and the Johnson Street Improvements; and
 - (xiii) Upon completion, deliver to the City, a copy of the final certificate of occupancy or certificate of completion, as applicable, for the Project, the Intracoastal Parcel Improvements and the Johnson Street Improvements.
- (b) Developer shall carry on any construction, maintenance or repair activity with diligence and dispatch and shall use diligent efforts to complete the same in the shortest commercially reasonable time under the circumstances. Developer shall not, except if an emergency exists (then only to the extent that the City can grant such an exception), carry on any construction, maintenance or repair activity in any easement area that unreasonably interferes with using and enjoying the property encumbered by such easement.

- (c) Developer shall take commercially reasonable precautions to protect, and shall not damage property adjacent to the Project site, the Intracoastal Parcel or the Johnson Street Parcel, or which is in the vicinity of or is in anywise affected by the Work, and shall be entirely responsible and liable for all damage or injury as a result of its operations to all adjacent public and private property.
- (d) Developer shall at all times enforce discipline and good order among its employees and the general contractor at the Project site, the Intracoastal Parcel and the Johnson Street Parcel.

Section 3.8 Progress of Construction/Landlord's Representative.

- (a) Developer shall keep the City apprised of Developer's progress regarding the Work. Developer shall deliver written reports of same not less than monthly; and
- (b) The City may, from time-to-time, designate one or more employees or agents to be the City's representative ("Landlord's Representative") who may, during normal business hours, in a commercially reasonable manner, visit, inspect or appraise the Project, the Intracoastal Parcel and the Johnson Street Parcel, the materials to be used thereon or therein, contracts, records, plans, specifications and shop drawings relating thereto, whether kept at Developer's offices or at the Project construction site or elsewhere, and the books, records, accounts and other financial and accounting records of Developer wherever kept, and to make copies thereof as often as may be requested. Further, Landlord's Representative shall be advised of, and entitled to attend, meetings among Developer, Developer's representative and the contractor or subcontractor or any subset of this group. Developer will cooperate with the City to enable Landlord's Representative to conduct such visits, inspections and appraisals. Developer shall make available to Landlord's Representative, with commercially reasonable notice, daily log sheets covering the period since the immediately preceding inspection showing the date, weather, subcontractors on the job, number of workers and status of construction.

Section 3.9 Certificate of Final Completion.

- (a) Promptly after completing the Work and Developer's receipt of a Certificate of Occupancy, as applicable, for the Work, the City will deliver to Developer an appropriate instrument so certifying (the "Certificate of Final Completion") in recordable form;
- (b) The Certificate of Final Completion shall certify that, to the best of the City's knowledge, Developer has satisfied all of its obligations to the City, in its capacity as landlord under this Lease regarding constructing of the Project, or as Licensor under the Intracoastal Parcel License Agreement and the Johnson Street License Agreement regarding the Intracoastal Parcel Improvements and the Johnson Street Improvements; and
- (c) If the City shall refuse or fail to provide the Certificate of Final Completion, the City shall, within thirty (30) days after written request by Developer, provide

Developer with a written statement indicating, in commercially reasonable detail, in what respects Developer failed to complete the Work, or is otherwise in default, and what measures and acts, in the opinion of the City, are necessary for Developer to take or perform to obtain such certification.

Section 3.10 Connection of Buildings to Utilities.

- (a) Developer, at its sole cost and expense for the Leased Property and as a part of the CRA Funding Agreement for the Intracoastal Parcel Improvements and/or the Johnson Street Improvements, shall install or cause to be installed all necessary connections between the buildings and structures, the Intracoastal Parcel Improvements and/or the Johnson Street Improvements and the water, sanitary and storm drain mains and mechanical and electrical conduits whether or not owned by the City; and
- (b) Developer shall pay for the cost, for the Leased Property, and as a part of the CRA Funding Agreement for the Intracoastal Parcel Improvements and/or the Johnson Street Improvements, if any, of locating, grounding and installing within the Leased Property, the Intracoastal Parcel, the Johnson Street Parcel or Off-Site Improvements, as applicable, new facilities for sewer, water, electrical, and other utilities as needed to service the Project, the Intracoastal Parcel and the Johnson Street Parcel and, at its sole cost and expense for the Leased Property, and as a part of the CRA Funding Agreement for the Intracoastal Parcel Improvements and/or the Johnson Street Improvements, will install or cause to be installed inside the property line of the Leased Property, the Intracoastal Parcel and the Johnson Street Parcel all necessary utility lines, with adequate capacity and the sizing of utility lines for the Project, Intracoastal Parcel Improvements and the Johnson Street Improvements, as contemplated on the Site Plan.

Section 3.11 Permits and Approvals. Developer shall secure and pay for any Governmental Approvals for the Work including without limitation, any alterations and renovations made pursuant to Section 3.13, and shall pay any and all fees and charges due to and collected by the City or any other Governmental Authority connected with issuing such Governmental Approvals, if any.

Section 3.12 Compliance with Laws. Developer will comply in every respect with any Governmental Requirements in constructing and operating the Project, Intracoastal Parcel Improvements and the Johnson Street Improvements.

Section 3.13 Section 3.13 Alterations and Renovations. After completing the Work, if Developer wishes to make alterations or renovations thereof:

- (a) no renovation or alteration shall be made until Developer obtains Governmental Approvals, at Developer's sole cost and expense; and
- (b) except for furniture, fixtures and equipment, any renovation or alteration of Developer Improvements, the Intracoastal Parcel Improvements or the Johnson Street Improvements that cost more than \$3,000,000, or series of such renovations

or alterations which, in the aggregate cost more than \$5,000,000, as adjusted for inflation pursuant to Section 13.21 hereof, or which substantially affect the overall character or appearance of the Project, the Intracoastal Parcel Improvements or the Johnson Street Improvements shall require the City's approval in its capacity as landlord or licensor of the definitive construction plans and specifications therefor.

Section 3.14 License Agreement. The Intracoastal Parcel Improvements and the Johnson Street Improvements have been designed and will be approved and constructed in conjunction with the Project so as to maximize construction efficiency in a commercially reasonable manner and coordinate the construction schedule while minimizing public inconvenience, where possible. The Developer's obligations under this Lease, however, shall be conditioned on Developer's ability to obtain Governmental Approvals, or any other approvals required under the Intracoastal Parcel License Agreement for the Intracoastal Parcel Improvements, or under the Johnson Street License Agreement for the Johnson Street Improvements. The Intracoastal Parcel Improvements and the Johnson Street Improvements each will be constructed under a separate general contract.

Section 3.15 Other Development. Notwithstanding anything contained in this Lease to the contrary, the use of the Project in combination with or in support of development on land adjacent to the Intracoastal Parcel shall require approval by the City as to change of use, design, ownership structure and Participation Rent or other Additional Rent.

ARTICLE IV **LAND USES**

Developer agrees and covenants to devote, during the term of this Lease, the Project only to the uses specified in this Lease and to be bound by and comply with all of the provisions and conditions of this Lease. In addition, and except as hereinafter set forth, Developer shall not have the right to seek or obtain different uses or a change in such uses either by requesting a zoning change or by court or administrative action without first obtaining the City's consent, which consent may be granted or denied in the City's sole discretion.

ARTICLE V **ASSIGNMENT**

Section 5.1 Purpose of Restrictions on Transfer. This Lease is granted to Developer solely to develop the Project and its subsequent use according to the terms hereof, and not for speculation in landholding. Developer recognizes that, in view of the importance of developing the Project to the general welfare of the City and the general community, the Developer's qualifications and identity are of particular concern to the community and the City. Accordingly, Developer acknowledges that it is because of such qualifications and identity that the City is entering into this Lease with Developer, and, in so doing, the City is further willing to accept and rely on the Developer's obligations for faithfully performing all its undertakings and covenants.

Section 5.2 Transfers. Developer represents and warrants that Developer has not made, created or suffered any Transfers as of the date of this Lease and that the entities and individuals who or which have an ownership interest in Developer on the date of this Lease are listed,

together with their percentage and character of ownership, on **Exhibit "J-1"**. No Transfer may or shall be made, suffered or created by Developer, its successors, assigns or transferees without complying with the terms of this Article V. If, at the time of a requested Transfer under this Article, Developer is a corporation or other type entity, then the references to membership shall be changed to the type of entity in question and the interest being transferred shall be changed to the appropriate ownership interest. Any Transfer that violates this Lease shall be null and void and of no force and effect.

Section 5.3 Permitted Transfers.

- (a) Prior to the Opening Date, other than Permitted Transfers and the Permitted Pre-Possession Transfer, no Transfer will be permitted without the written consent of the City (excluding the conveyance to the CDD of the CDD Easement and the facilities comprising the portion of the Parking Garage used for public parking by special warranty deed in substantially the form attached of **Exhibit "N"** (the "CDD Special Warranty Deed"), which facilities conveyance may occur at any time before or after the Opening Date), which may be withheld or granted in the sole discretion of the City.
- (b) The City hereby consents to a Transfer prior to the Possession Date (the "Permitted Pre-Possession Transfer") of (i) a limited partner interest in MHBR JV, L.P., a Delaware limited partnership ("MHBR") to SOF-IX Hollywood, L.P., an entity that is controlled directly or indirectly by a Starwood Control Party, and (ii) a general partner interest in MHBR to SOF-IX Hollywood GP, L.L.C., an entity that is controlled directly or indirectly by a Starwood Control Party, which Permitted Pre-Possession Transfer results in the ownership structure reflected on **Exhibit "J-2"**.
- (c) Each of the following Transfers, shall be permitted hereunder without the City's consent ("Permitted Transfers"):
 - (i) a Transfer after the Opening Date of the entire Project or any direct or indirect interest in Developer provided that (i) the transferee is an Acceptable Owner (or the Developer remains an Acceptable Owner following such Transfer in the case of a Transfer of a direct or indirect interest in Developer); (ii) the City is given written notice thereof together with true and correct copies of the proposed transfer documents and other agreements between the parties and current certified financial statements (to the extent applicable) and other relevant information of the proposed transferee in accordance with the time frames set forth on **Exhibit "A"** attached hereto in order for City to confirm that the transferee (or the Developer) is an Acceptable Owner; and (iii) all of the conditions precedent to the effectiveness of such Transfer as set forth in Section 5.5 hereof are satisfied.
 - (ii) Any Transfer, if in accordance with the terms and conditions of Article VI, by a Lender to an Institutional Investor or to an agent, designee or

nominee of an Institutional Investor that is wholly owned or controlled by an Institutional Investor;

- (iii) Any Transfer directly resulting from the foreclosure of a Leasehold Mortgage or the granting of a deed in lieu of foreclosure of a Leasehold Mortgage or any Transfer made by the purchaser at foreclosure of a Leasehold Mortgage or by the grantee of a deed in lieu of foreclosure of a Leasehold Mortgage (if such purchaser or grantee is a nominee in interest of the Lender), and provided further that such Transfer, purchase or grant is in accordance with the terms and conditions of Article VI;
- (iv) Any Transfer directly resulting from a conveyance to a Lender of Developer's interest provided it is in accordance with the terms and conditions of Article VI;
- (v) Any Transfer of all or any portion of any ownership interest in Developer for estate planning purposes, including without limitation, any Transfer into a charitable trust or a blind trust, provided the transferor maintains control over the interest in Developer being transferred;
- (vi) Any Transfer, or series of Transfers, among Affiliates of Developer, provided that at all times after such Transfer, Lon Tabatchnick, John Cohan or other successor individual or entity approved by the City on a commercially reasonable basis, or following the Permitted Pre-Possession Transfer, any Starwood Control Party, has the power to direct the day-to-day management and policies of Developer;
- (vii) Any Transfer, or series of Transfers, of not more than ten percent (10%) of the direct or indirect ownership interests in Developer, provided that at all times after such Transfer, Lon Tabatchnick, John Cohan, or other successor individual or entity approved by the City, on a commercially reasonable basis, or following the Permitted Pre-Possession Transfer, any Starwood Control Party has the power to direct the day-to-day management and policies of Developer; and
- (viii) Following the Permitted Pre-Possessions Transfer, any Transfer, or series of Transfers of any (direct or indirect) interest in the Developer so long as a Starwood Control Party Controls the Developer. For purposes of this subsection "Control" means the possession, directly or indirectly, of the power to direct or cause the direction or the management and policies of a Person, whether through the ownership of stock, by contract or otherwise (it being acknowledged that a Person shall not be deemed to lack Control of another Person even though certain decisions may be subject to "major decision" consent or approval rights of limited partners, shareholders or members, as applicable).

Section 5.4 Transfer Requiring City's Consent.

- (a) Regarding any Permitted Transfer pursuant to Section 5.3(c)(i) or any other Transfer that is not a Permitted Transfer or the Permitted Pre-Possession Transfer, Developer shall give or cause to be given to the City written notice requesting approval of the Transfer and submitting all information necessary for the City to evaluate the proposed transferees and the Transfer and to obtain the City's consent to same. Said information shall include information which shows that the transferee is an Acceptable Owner as set forth on **Exhibit "A"** attached hereto. The City's approval process shall proceed as set forth on **Exhibit "A"** attached hereto. Any consent to a Transfer shall not waive any of the City's rights to consent to a subsequent Transfer.
- (b) Developer shall from time-to-time throughout the term of this Lease, as the City shall reasonably request, furnish the City with a complete statement, subscribed and sworn to by the Managing Member of Developer, setting forth the full names and address of holders of the partnership interests in Developer who hold at least a ten percent (10%) interest in Developer as well as to confirm the percentage ownership interest of the Managing Member. If Developer is an entity different than a limited liability company, this paragraph shall apply to the nature of the appropriate ownership interests for the entity in question.

Section 5.5 Effectuation of Transfers. No Transfer shall be effective unless and until all of the following conditions precedent are satisfied within thirty (30) days of such Transfer:

- (a) executed copies of the transfer documents and other agreements between the parties to the Transfer are delivered to the City; and
- (b) where the Transfer is pursuant to Section 5.3(c)(i), and if it is of the entire Project, the entity to which any such Transfer is made, by a commercially reasonable, written instrument and in form recordable among the public records, shall, for itself and its successors and assigns, and especially for the benefit of the City, expressly assume all of the obligations of Developer under this Lease and agree to be liable and subject to all conditions and restrictions to which Developer is subject.

Section 5.6 Subletting.

- (a) At the City's request, Developer shall allow the City to review and inspect any and all Subleases for the Project. Subject to the other terms and conditions of this Lease, Developer shall have the right to enter into Subleases at any time and from time-to-time during the term of this Lease with such Subtenants and upon such commercially reasonable terms and conditions as Developer shall deem fit and proper. Provided the Sublease is consistent with the Trademark License Agreements; and
- (b) Regarding any proposed Sublease to an Affiliate of Developer, the Sublease must be at fair market rent and cannot be structured in a manner to reduce the

Participation Rent payable to the City. Accordingly, Developer shall not enter into any Sublease with an Affiliate without first obtaining the City's approval, which approval the City may, on a commercially reasonable basis, withhold; and

- (c) Developer covenants that it will perform and observe all the terms, covenants, conditions and agreements required to be performed and observed by it under each Sublease. Developer agrees that each Sublease shall:
 - (i) require the subtenant to maintain adequate books and records including without limitation, reasonably detailed information on gross revenues and to submit the same for inspection and audit by the City and require the subtenant to comply with Governmental Requirements;
 - (ii) provide that, if the Lease terminates, the subtenant shall, if required by the City, attorn to and pay the previously agreed upon rents and all other charges directly to the City and
 - (iii) obligate the subtenant not to violate any term, covenant or restriction applicable to Developer that is contained in this Lease. In addition, Developer shall, in all events, use commercially reasonable efforts to require subtenants to perform obligations imposed by the Sublease (specifically including without limitation, but not limited to, those set forth in this Section 5.6).

ARTICLE VI

MORTGAGE FINANCING; RIGHTS OF MORTGAGEE AND DEVELOPER

Section 6.1 Leasehold Mortgage.

- (a) Developer shall have the right to encumber all, but not less than all, of the Developer's leasehold created by this by Leasehold Mortgage (including without limitation, an assignment of the rents, issues and profits from the Project) to secure repayment of a loan or loans (and associated obligations) made to Developer by an Institutional Investor for any purpose; provided, however, that:
 - (i) any such secured financing of the Project exclusively secures debt directly related to Developer and/or the Project;
 - (ii) any such secured financing of the Project is subject to a subordination agreement explicitly providing that any and all liens securing such secured financing are subordinate to:
 - (Y) the CDD Easement; and
 - (Z) the fee simple interest to the facilities comprising the portion of the Parking Garage used for public parking granted to the CDD by the CDD Special Warranty Deed; and

- (iii) no financing secured by the Project or any portion thereof shall be permitted unless Developer shall certify to the City that the Project, after taking into account all existing debt which will not be satisfied by such proposed financing, is projected to have and be able to sustain Debt Service Coverage Ratio of not less than 1.30, based on:
 - (Y) the reasonably projected first stabilized year for any financing taken out prior to the reasonably projected first stabilized year; and
 - (Z) any twelve (12) consecutive months out of the previous eighteen (18) months of operations for subsequent financings.
- (b) Developer shall deliver to the City, promptly after execution by Developer, a true and verified copy of any Leasehold Mortgage and any amendment, modification or extension thereof, together with the name and address of the owner and holder thereof. Developer shall not encumber or attempt to encumber the Project as security for any indebtedness of Developer regarding any other property now or hereinafter owned by Developer. Any such attempt shall be null and void and also constitute a Developer Event of Default hereunder.
- (c) During the continuance of any Leasehold Mortgage until such time as the lien of any Leasehold Mortgage has been extinguished, and if a true and verified copy of such Leasehold Mortgage shall have been delivered to the City together with a written notice of the name and address of the owner and holder thereof as provided in Section 6.1(b) above:
 - (i) The City shall not:
 - (Y) terminate, agree to any termination or accept any surrender or cancellation of this Lease (except upon the expiration of the Term); or
 - (Z) consent to any amendment, modification or mortgaging or other hypothecation of this Lease or waive any rights or consents it may be entitled to pursuant to the terms hereof, without the prior written consent of Lender, which consent shall not be unreasonably delayed, conditioned or withheld;
 - (ii) Notwithstanding anything to the contrary in subsection (c)(i) immediately above, the City shall not be prevented from or restricted in making the decisions it is entitled and/or required to make pursuant to this Lease so long as not inconsistent with the provisions of this Section 6.1;
 - (iii) Notwithstanding any Developer Event of Default regarding the Developer performing or observing any covenant, condition or agreement of this Lease, the City shall have no right to terminate this Lease, even though a Developer Event of Default under this Lease shall have occurred and be

continuing, or exercise its other remedies connected with this Lease, unless:

- (Y) the City shall have given Lender(s) written notice of such Developer Event of Default; and
 - (Z) Lender(s) or Developer do(es) not either remedy such default according to this Article VI below or does not acquire Developer's leasehold estate created hereby or fails to commence foreclosure or other appropriate proceedings in the nature thereof, all as set forth in, and within the time specified by this Article VI;
- (iv) Lender shall, in the event of default by Developer, and to prevent a termination of this Lease or the exercise by the City of its other remedies, have the right, but not the obligation:
- (W) to pay all of the Rent and other payments due hereunder (including any interest accrued thereon);
 - (X) to provide any insurance, to pay any taxes and other Public Charges (including any penalties);
 - (Y) make any other payments, to make any repairs to Developer Improvements, to continue to construct and complete Developer Improvements, and do any other act or thing required of Developer hereunder, and to do any act or thing which may be necessary and proper to be done in performing and observing the covenants, conditions and agreements hereof to prevent the termination of this Lease or the exercise by the City of its other remedies connected with this Lease; and
 - (Z) all payments so made and all things so done and performed by Lender, if done timely and according to the other provisions of this Subsection 6.1(c), shall prevent the City from terminating this Lease or exercising its other remedies connected with this Lease as the same would have been if made, done and performed by Developer instead of by Lender;
- (v) Should any Developer Event of Default under this Lease occur:
- (Y) Lender shall have thirty (30) days after receiving written notice from the City setting forth the nature of such Event of Default to cure same, but, if the Event of Default (payment of Rent or other monetary obligation not being such default) cannot be cured within thirty (30) days, shall have up to ninety (90) days to cure, if it has started to do so within thirty (30) days and continued to diligently pursue the cure; and

- (Z) If the Event of Default is such that possession of the Project may be commercially reasonably necessary to cure said default (payment of Rent or other monetary obligation not being such default) or if the default is of the type that cannot commercially reasonably be cured by Lender (*e.g.*, Developer bankruptcy), Lender shall, within such thirty (30) day period either provide notice of its intention to commence, and thereafter diligently prosecute, a foreclosure action or such other proceeding in the appropriate court or take whatever action to acquire Developer's leasehold interest as may be commercially reasonable to enable Lender to obtain such possession and acquire title thereto.
- (vi) The City's forbearance in taking action based upon Developer's Event of Default and in allowing Lender the opportunity to cure same (or, if the default cannot be cured by Lender; *e.g.* Developer's bankruptcy), to acquire Developer's leasehold interest in lieu of such cure) is expressly dependent upon:
 - (Y) Lender having fully cured any default in the payment of any Rent and other monetary obligations of Developer under this Lease within such initial thirty (30) day period and thereafter (if Developer fails to do so) continuing to pay currently such Rent and other monetary obligations as and when the same are due; and
 - (Z) Lender shall have acquired Developer's leasehold estate created hereby or commenced foreclosure or other appropriate proceedings in the nature thereof within such initial thirty (30) day period, and shall be diligently and continuously prosecuting any such proceedings to completion to enable Lender to acquire possession and title to Developer's leasehold interest;
- (d) If the Lender is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy, debtor rehabilitation or insolvency proceedings involving Developer from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof or taking any other action required by subsection (c) above:
 - (i) the times specified in subsection (c) above for commencing or prosecuting such foreclosure or other proceedings and for taking such other action shall be extended for the period of such prohibition; but,
 - (ii) that Lender shall have, within the initial thirty (30)-day notice period, fully cured any default in the payment of any Rent or other monetary obligations of Developer under this Lease and shall (if Developer fails to do so) continue to pay currently such Rent or other monetary obligations of Developer as and when the same fall due, and provided that Lender, within one hundred twenty (120) days after the filing of such bankruptcy,

debtor rehabilitation or insolvency proceedings, shall diligently attempt and continue to attempt to remove any such prohibition;

- (e) The City shall mail to any Lender two duplicate copies by certified mail of any and all Event of Default and other notices that relate to non-compliance with the terms of this Lease that the City may give to or serve upon Developer pursuant to this Lease;
- (f) Foreclosure of a Leasehold Mortgage or any sale thereunder, whether by judicial proceedings or by any power of sale contained in the Leasehold Mortgage or applicable law, or any conveyance of the Project from Developer to Lender by virtue or in lieu of the foreclosure or other appropriate proceedings in the nature thereof, shall not:
 - (i) require the City's consent; or
 - (ii) provided Lender has complied with the provisions of Article VI, constitute a breach of any provision of or a default under this Lease.
- (g) Upon such foreclosure, sale or conveyance, the City shall recognize any Lender, or any other foreclosure sale purchaser, as the successor Developer hereunder, provided that Lender complies with the provisions of Article VI.
- (h) If there are two or more Leasehold Mortgages or foreclosure sale purchasers (whether the same or different Leasehold Mortgages), the City shall have no duty or obligation whatsoever to determine the relative priorities of such Leasehold Mortgages or the rights of the different holders thereof and/or foreclosure sale purchasers.
- (i) if any Lender or any other foreclosure sale purchaser subsequently assigns or transfers its interest under this Lease after acquiring the same by foreclosure or by an acceptance of a deed in lieu of foreclosure or subsequently assigns or transfers its interest under any such new lease entered into pursuant to this Section 6.1, and in connection with any such assignment or transfer, Lender or any other foreclosure sale purchaser takes back a mortgage encumbering such leasehold interest to secure a portion of the purchase price, Lender or any other foreclosure sale purchaser shall be entitled to receive the benefit of this Article VI and all other provisions of this Lease intended for the benefit of a Lender and/or the holder of a Leasehold Mortgage.
- (j) Should the Lender or Developer not cure the alleged Developer Event of Default as provided in this Section 6.1, the City has the right to terminate this Lease by reason of any uncured Developer Event of Default. But, the City shall give written notification thereof to all Lenders and the City shall, upon written request by Lender to the City received within thirty (30) days after such termination, or within thirty (30) days after the Lease is terminated because of the bankruptcy of the Developer execute along with Lender and deliver within thirty (30) days after such termination, a new lease of the Leased Property to Lender for the remainder

of the Term with the same covenants, conditions and agreements (except for any requirements, which have been satisfied by Developer or City prior to termination) as are contained herein.

- (k) The City's delivery of any Developer Improvements (excluding the public parking portion of the Parking Garage) to Lender pursuant to a new lease shall be:
 - (i) made without representation or warranty of any kind or nature whatsoever either express or implied;
 - (ii) Lender shall take any such Developer Improvements "as-is" in their then current condition; and
 - (iii) upon execution and delivery of such new lease, Lender at its sole cost and expense shall be responsible for taking such action as shall be necessary to cancel and discharge this Lease and to remove Developer named herein and any other occupant (other than as allowed by Lender or the City) from the Project.
- (l) The City's obligation to enter into such new lease of the Leased Property with the Lender shall be conditioned upon Lender, on the date the new lease is executed, having paid all Rent or other monetary defaults hereunder and having remedied and cured (or has commenced and is diligently completing the cure) of all non-monetary defaults of Developer susceptible to cure by Lender. If the City receives written requests in accordance with the provisions of this Section 6.1 from more than one Lender, the City shall be required to deliver the new lease to all Lenders which are, those Lenders requesting a new lease. But, such Lenders shall, not later than the execution of such new lease, pay in full the sums secured by any or all Leasehold Mortgages that are prior in lien to the Leasehold Mortgage held by such Lender, unless such prior Lender(s) agree to the reinstatement of their Leasehold Mortgage(s).
- (m) If any Lender having the right to a new lease pursuant to this Section 6.1 shall elect to enter into a new lease, but shall fail to do so or shall fail to take the action required above, the City shall so notify all other Lenders (if any) and shall afford such other Lender a period of thirty (30) days from such notice within which to elect to obtain a new lease in accordance with the provisions of this Section, provided that upon the election to obtain a new lease, such Lender shall pay all Rent or other monetary obligations then due hereunder.
- (n) Except for any liens reinstated pursuant to this Section, any new lease entered into pursuant to this Section shall be prior to any mortgage or other lien, charge or encumbrance on the Leased Property (other than the interests of the CDD in the public parking component of the Developer Improvements granted to it by the CDD Easement and the CDD Special Warranty Deed) and shall have the same relative priority in time and in right as this Lease and shall have the benefit of all

of the right, title, powers and privileges of Developer hereunder in and to the Project;

- (o) In the payment of Participation Rent by Lender pursuant to this Article VI, if the Participation Rent currently due cannot be determined by Lender without possession of the Project, then the Lender may pay the amount of Participation Rent which was paid for the immediately previous period, with the adjustment, upward or downward, to be made ninety (90) days after the Lender obtains possession of the Project.

Section 6.2 No Waiver of Developer's Obligations or City's Rights. Nothing contained herein or in any Leasehold Mortgage shall be deemed or construed to relieve Developer from the full and faithful observance and performance of its covenants, conditions and agreements contained herein, or from any liability for the non-observance or non-performance thereof, or to require, allow or provide for the subordination to the lien of such Leasehold Mortgage or to any Lender of any estate, right, title or interest of the City in or to the Leased Property, buildings and structures (excluding the public parking portion of the Parking Garage and the CDD's interests therein) or this Lease (including without limitation, the right to Rents, additional Rent, Public Charges, and other monetary obligations of Developer to the City under this Lease), nor shall the City be required to join in such mortgage financing or be liable for same in any way.

Section 6.3 Payment of City's Attorney's Fees. Any Lender that seeks the benefit of the terms and provisions of Article VI shall, as a condition of the City's performance thereunder, pay the City's outside counsel's commercially reasonable attorney's fees and costs associated with the City's duties and responsibilities thereunder which the City does not otherwise recover from Developer.

Section 6.4 CDD Formation; CDD Financing. Subject to the terms and conditions set forth in this Lease, Developer shall cause the formation of the CDD exclusively to include Developer's leasehold in the Leased Property for the purpose of constructing the public portion of the Parking Garage and thereafter owning (by and through the CDD Easement and the CDD Special Warranty Deed), and operating and maintaining, the public portion of the Parking Garage. Provided that the CDD Bonds are sold, the public portion of the Parking Garage will be transferred to the CDD by the CDD Special Warranty Deed. The City further agrees to reasonably cooperate with Developer and the CDD in connection with the establishment of the CDD and the consummation of the CDD Financing. Attached as **Exhibit "K"** is the structure of the CDD Financing (the "CDD Financing Structure"). Subject to Section 2.1(g), any material modification to the CDD Financing Structure shall be subject to the City's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. The City, Developer, and any Lender or Holder of a Leasehold Mortgage Interest shall subordinate their rights and interest to the CDD Easement within which the public portion of the Parking Garage is constructed and to its fee simple interest in the improvements thereto conveyed to it by the CDD Special Warranty Deed.

Section 6.5 Ownership of Public Parking Following Payment of Bonds. If applicable under Section 6.4, upon the transfer of all of the Public Spaces within the Parking Garage by the CDD to the City, as contemplated in Paragraphs D.3 and D.6.g of **Exhibit "K"**, it is the intent of

the parties that the CDD shall be terminated according to a plan of termination that shall be adopted by its Board of Supervisors and filed with the clerk of the circuit court.

Section 6.6 Transfer of Management of Garage to Developer. If applicable under Section 6.4, upon the transfer described in Section 6.5 above, City shall own the public parking facility within the Parking Garage and shall engage Developer to manage public parking facility within the Parking Garage on the City's behalf (and Developer shall be permitted to delegate such management responsibility to the manager of the Hotel), and Developer (or the manager of the Hotel) shall operate the public parking facility within the Parking Garage consistently with the parking standards previously developed for the public use. The terms of such transfer and new management shall be documented as contemplated in Paragraphs D.3 of **Exhibit "K"**, pursuant to Florida Statute Section 190.046(4), (5) and (6), on terms that are commercially reasonable.

ARTICLE VII

REMEDIES; EVENTS OF DEFAULT

Section 7.1 Default by Developer. Each of the following occurrences shall constitute an "Event of Default" of Developer under this Lease:

(a) **Failure of Payment of Money.**

- (i) Failure of Developer to pay any Rent, Additional Rent or Public Charges or any other payments of money as herein-provided or required when due. In the event that any Rent, Additional Rent, Public Charges or other payment of money is not paid to the City on the date the same becomes due and payable, the City shall give Developer Notice and a fifteen (15)-day grace period to pay same;
- (ii) If Developer fails to pay the amount due to the City within the fifteen (15)-day grace period, Developer shall then pay the delinquent payment plus a late fee equal to five percent (5%) of the amount then due and owing no later than the 30th day after the date said payment was due, the failure of which shall entitle the City to collect the greater of the late fee or interest (at the Default Rate) due thereon until paid;
- (iii) In addition to the foregoing, but only after the fifteen (15)-day grace period terminates, the City will be entitled to proceed to exercise any and all remedies provided herein for a Developer Event of Default; and
- (iv) All payments of money required to be paid to the City by Developer under this Lease other than Rent, including without limitation, interest, late fees, penalties and contributions, shall be treated as Additional Rent.

(b) **Bankruptcy:**

- (i) If any petition is filed by or against Developer, as debtor, seeking relief (or instituting a case) under Chapters 7 or 11 of the United States Bankruptcy

Code or any successor thereto provided that Developer is given ninety (90) days after filing to dismiss an involuntary bankruptcy action and is unable to do so within the time allowed;

- (ii) If Developer admits its inability in writing to pay its debts, or if a receiver, trustee or other court appointee is appointed for all or a substantial part of Developer's property and such receiver, trustee or other appointee is not discharged within ninety (90) days from such appointment;
 - (iii) If the Project is levied upon or attached by process of law, and such levy or attachment is not discharged within ninety (90) days from such levy or attachment; or
 - (iv) If a receiver or similar type of appointment or court appointee or nominee of any name or character is made for Developer or its property, and such receiver or appointee or nominee is not discharged within ninety (90) days of such appointment.
- (c) Failure to Perform Regarding Other Covenants, Conditions and Agreements. Developer's failure to perform according to, or to comply with, any of the other covenants, conditions and agreements to be performed or complied with by Developer in this Lease, and the continuing failure for a period of sixty (60) days after notice thereof in writing from the City to Developer (which notice shall specify how the City contends that Developer has failed to perform any such covenants, conditions and agreements), shall, subject to the Developer's right to contest the alleged Event of Default, constitute a Developer Event of Default; provided, however, if such default is capable of cure, but cannot reasonably be cured within sixty (60) days, then Developer shall have an additional commercially reasonable time within which to cure such Developer Event of Default, but only if:
 - (i) Developer within said sixty (60) day period shall have commenced and thereafter shall have continued diligently to prosecute all actions necessary to cure such default; and
 - (ii) the Project continues to operate in the ordinary course of business, to the extent commercially reasonable taking into account the nature of the alleged failure to perform according to the covenant, condition or agreement in question.
- (d) Other Developer Events of Default:
 - (i) If, during the Term, there is a default by Developer in payment of CDD assessments securing the CDD Financing, that is not cured within the earlier of either the applicable grace periods thereunder or the provisions of Subsection 7.1(c);

- (ii) If, during the Term, there is a default by Developer under the Trademark License Agreements or any then applicable hotel management agreement and as a result of such default by Developer the applicable agreement is terminated and a replacement Trademark License Agreement or hotel management agreement, as applicable, is not entered into within ninety (90) days, provided that if Developer shall have commenced and thereafter shall have continued diligently to replace any such agreement within such ninety (90) day period and the Project continues to operate in the ordinary course of business, then Developer shall have an additional commercially reasonable period of time within which to enter into an applicable replacement agreement;
- (iii) If Developer voluntarily ceases construction of the Work for a period in excess of thirty (30) consecutive days and fails to start construction within sixty (60) days after receiving notice pursuant to Subsection 7.1(c); or
- (iv) If Developer sells or assigns its interest in this Lease or the Project or sublets any portion of the Leased Property, or attempts to consummate any Transfer (by entering into an agreement to sell or assign its interest in this Lease or the Project or to sublet any portion of the Leased Property or by agreeing to a Transfer without complying with the provisions governing same in this Lease), except as expressly permitted herein, and fails to correct such Transfer within an additional thirty (30) days of receiving notice as provided in Subsection 7.1(c), which then provides a total of ninety (90) days of receiving notice.

Section 7.2 Remedies for Developer's Default.

- (a) Upon the occurrence of a Developer Event of Default, subject to the provisions of Article VI, the City shall be entitled to seek all legal and equitable remedies available under Florida law, including without limitation, termination of this Lease, removal of Lessee from the Leased Property, the Intracoastal Parcel and the Johnson Street Parcel, specific performance, injunctive relief, and damages. If the City obtains the right to terminate this Lease, by mutual agreement with the Developer or from a final order by a court with jurisdiction from which the time for appeal has expired or an arbitration panel, the term of this Lease shall terminate, upon the mutually agreed upon date or the date set forth in the final order from such court or arbitration panel, as fully and completely as if that date were the date herein originally fixed for the expiration of the Term. On the date mutually agreed upon or as specified in such final order, Developer shall then quit and peaceably surrender the Project (which includes the Leased Property and the Developer Improvements), the Intracoastal Parcel and the Intracoastal Parcel Improvements, the Johnson Street Parcel and the Johnson Street Parcel Improvements, and all property in its possession to the City in accordance with Section 11.5;

- (b) Upon the termination of this Lease, as provided in this Section 7.2, all rights and interest of Developer in and to the Project (which includes the Leased Property and the Developer Improvements), the Intracoastal Parcel and the Intracoastal Parcel Improvements, the Johnson Street Parcel and the Johnson Street Parcel Improvements, and every part thereof shall cease and terminate, except that the interests of the CDD in the public portion of the Parking Garage, created by the CDD Easement and CDD Special Warranty Deed, shall survive undisturbed and the City may, in addition to any other rights and remedies it may have, retain all sums paid to it by Developer under this Lease;
- (c) Upon the termination of this Lease, as provided in this Section 7.2, Developer shall take whatever actions are necessary to transfer to City its rights to appoint members of the CDD Board of Directors; and
- (d) If this Lease is terminated after the Possession Date but prior to the Completion Date, Developer hereby agrees that, to the extent assignable, the City shall be entitled, without payment or further permission from either Developer or the professionals that created or prepared same, to use the plans and specifications, including without limitation, the Approved Plans, designs, approvals, permits and other work product produced by Developer and/or others for use in the development, construction and operation of the Work.

Section 7.3 Default by the City. An event of default by the City shall be deemed to have occurred under this Lease if the City fails to perform any obligation or fulfill any covenant or agreement of the City set forth in this Lease and such failure shall continue for sixty (60) days following the City's receipt of written notice of the non-performance; provided, however, the City shall not be in default of this Lease:

- (a) if the City provides Developer with a written response within said sixty (60) day period indicating the status of the City's resolution of the breach and providing for a mutually agreeable schedule to correct same; or
- (b) with respect to any breach that is capable of being cured but that cannot reasonably be cured within said sixty (60) day period, if the City commences to cure such breach within such sixty (60) day period (or as soon thereafter as is reasonably possible) and diligently continues to cure the breach until completion.

Section 7.4 Force Majeure. Neither the City nor Developer, as the case may be, shall be considered in breach of or in default of any of its non-monetary obligations, including without limitation suspension of construction activities, hereunder by reason of unavoidable delay due to strikes, lockouts, acts of God, inability to obtain labor or materials due to governmental restrictions, riot, war, hurricane or other similar causes beyond the commercially reasonable control of a party (in each case, an event of "Force Majeure") and the applicable time period shall be extended for the period of the Force Majeure event.

Section 7.5 Remedies Cumulative; Waiver. The rights and remedies of the parties to this Lease, whether provided by law or by this Lease, shall be cumulative and concurrent, and the

exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach, or of any of its remedies for any other default or breach by the other party. No waiver of any default or Event of Default hereunder shall extend to or affect any subsequent or other default or Event of Default then existing, or impair any rights, powers or remedies consequent thereon, and no delay or omission of any party to exercise any right, power or remedy shall be construed to waive any such default or Event of Default or to constitute acquiescence thereof.

Section 7.6 Right to Cure. If Developer shall default in the performance of any term, covenant or condition to be performed on its part hereunder, the City may, in its sole discretion, after notice to Developer and beyond applicable cure periods (or without such notice and cure in the event of an emergency), perform the same for the account and at the expense of Developer. If, at any time and by reason of such default, the City is compelled to pay, or elects to pay, any sum or money or do any act which will require the payment of any sum of money, or is compelled to incur any expense in the enforcement of its rights hereunder or otherwise, such sum or sums shall be deemed Additional Rent hereunder and, together with interest thereon at the Default Rate, shall be repaid to the City by Developer upon demand.

ARTICLE VIII
PROTECTION AGAINST MECHANICS' LIENS AND OTHER CLAIMS;
INDEMNIFICATION

Section 8.1 Developer's Duty to Keep Project Free of Liens.

- (a) Pursuant to Florida Statutes Section 713.10, any and all liens or lien rights shall extend to and only to the right, title and interest of Developer in the Project, the Intracoastal Parcel and to the Johnson Street Parcel.
- (b) The right, title and interest of the City in the Leased Property, the Intracoastal Parcel and the Johnson Street Parcel shall not be subject to liens or claims of liens for improvements made by Developer. Nothing contained in the Lease shall be deemed or construed to constitute the consent or request of the City express or implied by implication or otherwise; to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of the Project, the Intracoastal Parcel or the Johnson Street Parcel, or any part thereof, nor as giving Developer, any Lender, Subtenant, lessee, or sublessee any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against City's interest in the Leased Property, the Intracoastal Parcel or the Johnson Street Parcel, or any part thereof, or against assets of the City, or City's interest in any Rent and other monetary obligations of Developer as defined in this Lease.
- (c) Notice is hereby given, and Developer shall cause all construction agreements entered into between a Developer and a general contractor or other contractor in privity with Developer to provide that:

- (i) City shall not be liable for any work performed or to be performed at the Project, the Intracoastal Parcel or the Johnson Street Parcel, or any part thereof, for Developer, any Lender, Subtenant, lessee, or sublessee or for any materials furnished or to be furnished to the Project, the Intracoastal Parcel or the Johnson Street Parcel, or any part thereof, for any of the foregoing; and
- (ii) no mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials shall be attached to or affect City's interest in the Leased Property, the Intracoastal Parcel or the Johnson Street Parcel, or any part thereof, or any assets of the City, or the City's interest in any Rent or other monetary obligations of Developer arising under the Lease, the Intracoastal Parcel License Agreement or the Johnson Street License Agreement.

Section 8.2 Contesting Liens. If Developer desires to contest any such lien as described in Section 8.1, it shall notify the City of its intention to do so within thirty (30) days after the filing of such lien. In such case, Developer, at Developer's sole cost and expense, shall protect the City by a good and sufficient bond against any such lien and any cost, liability or damage arising out of such contest. The lien, if Developer timely provides the bond described above, shall not be an Developer Event of Default hereunder until thirty (30) days after the final determination of the validity thereof provided that, within that time, Developer shall satisfy and discharge such lien to the extent held valid; provided, however, that the satisfaction and discharge of any such lien shall not, in any case, be delayed until execution is had on any judgment rendered thereon, or else such delay shall be considered to be a monetary Developer Event of Default hereunder. In the event of any such contest, Developer shall protect and indemnify the City against all loss, expense and damage resulting therefrom as provided in Section 8.3.

Section 8.3 Indemnification.

- (a) Developer, on behalf of itself and future sublessees, visitors, trespassers, licensees, invitees, guests or of any person performing work or whosoever may at any time be using or occupying or visiting the Property, the Intracoastal Parcel or the Johnson Street Parcel, hereby agrees and covenants to indemnify, defend (with counsel selected by the Developer, after consulting with the City) and save harmless the City from and against any and all claims, actions, damages, liabilities, losses, costs and expenses, including without limitation, commercially reasonable Attorneys' Fees (collectively, "Losses") to the fullest extent permitted by law, arising in connection with:
 - (i) any default, breach or violation or non-performance of this Lease or any provision thereof by Developer;
 - (ii) Developer's use and operation of the Project, the Intracoastal Parcel or the Johnson Street Parcel, or any part thereof, during the Term;
 - (iii) the negligent or more culpable acts or omissions of Developer;

- (iv) any challenge to the validity of this Lease or any Transfer by a third party through legal proceedings or otherwise, except such challenge arising by, through or under the fee interest of the City; or
- (v) otherwise arising in connection with the subject matter of this Lease.
- (b) Notwithstanding anything to the contrary contained in Section 8.3, the duty to indemnify shall be limited to the percentage of negligence or more culpable acts or omissions of indemnitor.
- (c) Developer's indemnity under this Section 8.3 shall include any Losses resulting from constructing the buildings and structures, the Intracoastal Improvements and the Johnson Street Improvements, and any subsequent renovation and/or alterations thereof by the Developer.
- (d) Developer covenants and agrees that any contracts entered into by Developer and the general contractor or other contractor in privity with Developer for the Work shall include the indemnities required by this Section 8.3 from the general contractor or other contractor in privity with Developer in favor of Developer and the City.
- (e) The liability of Developer under this Lease shall not be limited in any way to the amount of proceeds actually recovered under the policies of insurance required to be maintained pursuant to the terms of this Lease.
- (f) Any tort liability to which the City is exposed under this Lease shall be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations shall be applied as if the parties had not entered into this Lease, and City expressly does not waive any of its rights and immunities thereunder.

Section 8.4 Environmental Matters.

- (a) Defined Terms.
 - (i) "Environmental Condition" means any set of physical circumstances in, on, under, or affecting the Project that may constitute a threat to or endangerment of health, safety, property, or the environment, including, but not limited to:
 - (W) the presence, except in such quantities and concentrations as are routinely found in nature or in products used in ordinary business or commercial activities, of any Hazardous Substance;
 - (X) any underground storage tanks, as defined in Subtitle I of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6991

et. seq., or the regulations thereunder, for the storage of hazardous wastes, oil, petroleum products, or their byproducts;

- (Y) any PCB, asbestos or any other substances specifically regulated under the Toxic Substances Control Act, 15 U.S.C. 2601 or regulations issued thereunder; and
 - (Z) any open dump or system of refuse disposal for public use without a permit, as prohibited by 42 U.S.C. 6945 and/or Florida law equivalent, or the regulations issued thereunder.
- (ii) “Environmental Laws” means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq.; the Toxic Substances Control Act, 15 U.S.C. 2601 et. seq.; the Clean Water Act, 33 U.S.C. 1251 et seq.; the Clean Air Act, 42 U.S.C. 7401 et. seq.; the Oil Pollution Act, 33 U.S.C. 2701 et. seq., the Hazardous Materials Transportation Act, 49 U.S.C. 1801 et. seq.; the Refuse Act of 1989, 33 U.S.C. 407; the Occupational Safety and Health Act, 29 U.S.C. 651 et. seq., as such laws have been amended or supplemented from time-to-time, and the regulations promulgated thereunder; and any analogous Governmental Requirements.
- (iii) “Environmental Requirements” means all present and future Governmental Requirements, including without limitation, the Environmental Laws, authorizations, judgments, decrees, concessions, grants, orders, agreements or other restrictions and requirements relating to any Environmental Conditions or any Hazardous Substances on the Leased Property.
- (iv) “Hazardous Substance” means any substances or materials presently or hereinafter identified to be toxic or hazardous according to any of the Environmental Laws, including without limitation, any asbestos, PCB, radioactive substances, methane, volatile hydrocarbons, acids, pesticides, paints, petroleum based products, lead, cyanide, DDT, printing inks, industrial solvents or any other material or substance that has in the past or could presently or at any time in the future cause or constitute a health, safety or other environmental hazard to any person or property. The term Hazardous Substances includes hazardous wastes, hazardous substances, extremely hazardous substances, hazardous materials, toxic substances, toxic chemicals, oil, petroleum products and their by-products, and pollutants or contaminants as those terms are defined in the Environmental Laws.
- (v) “Environmental Permit” means any Governmental Approval required under any Environmental Law in connection with the ownership, use or operation of the Project for the storage, treatment, generation,

transportation, processing, handling, production or disposal of Hazardous Substances, or the sale, transfer or conveyance of the Project, and all supporting documentation thereof.

(vi) “Environmental Claim” means any accusation, allegation, notice of violation, claim, demand, abatement or other order or direction (conditional or otherwise) by any Governmental Authority or any person for personal injury (including without limitation, sickness, disease, or death), tangible or intangible property damage, damage to the environment, nuisance, pollution, contamination or other adverse effects on the environment, or for fines, penalties, or restrictions, resulting from or based upon:

(X) the existence or release, or continuation of any existence of a release (including without limitation, sudden or non-sudden, accidental or non-accidental leaks or spills) of, or exposure to, any substance, chemical, material, pollutant, contaminant, or audible noise or other release or emission in, into or onto the environment (including without limitation, the air, ground, water or any surface) at, in, by, from or related to the Leased Property;

(Y) the environmental aspects of the transportation, storage, treatment or disposal of materials in connection with the activities on the Leased Property; or

(Z) the violation, or alleged violation, of any Governmental Requirements relating to Environmental Requirements on the Leased Property; but excluding any of the foregoing arising solely from the intentional actions of the City and its agents;

provided, however, Environmental Claims shall not include any claim related to the possible existence of a 1,000 gallon storage tank buried in the ground near the existing parking garage elevator shaft on the Leased Property placed on the Leased Property prior to the Effective Date.

(vii) “Corrective Action Work” means any and all activities of removal, response, investigation, testing, analysis, remediation taken to:

(Y) prevent, abate or correct an existing or threatened Environmental Condition at, about, affecting, or affected by the Leased Property; or

(Z) comply with all applicable Environmental Requirements.

(b) Environmental Indemnification.

(i) Developer covenants and agrees, at its sole cost and expense, to defend (with counsel selected by Developer, after consulting with the City),

indemnify and hold harmless the City, its successors, and assigns from and against, and shall reimburse the City, its successors and assigns, for any and all Environmental Claims, whether meritorious or not, brought against the City by any Governmental Authority;

- (ii) the foregoing indemnity includes, without limitation, indemnification against all costs of removal, response, investigation, or remediation of any kind, and disposal of such Hazardous Substances as necessary to comply with Environmental Laws, all costs associated with any Corrective Action Work, all costs associated with claims for damages to persons, property, or natural resources, any loss from diminution in the value of the Project and the City's commercially reasonable attorneys' fees and consultants' fees, court costs and expenses incurred in connection therewith;
- (iii) this indemnification shall be interpreted as broadly as possible and is in addition to all other rights of the City under this Lease; and
- (iv) payments by Developer under this Section shall not reduce Developer's obligations and liabilities under any other provision of this Lease.

Notwithstanding anything to the contrary contained in Section 8.4, neither the Developer nor general contractor, or other contractor in privity with Developer, has a duty to indemnify the City in connection with any Environmental Claims that are due to the negligent or more culpable conduct of the City or its agents, which negligence or more culpable conduct occurs following the date the Developer completed his environmental testing.

ARTICLE IX **INSURANCE**

Anything in this Article IX contained to the contrary notwithstanding, the following insurance provisions and requirements shall apply only to the Developer Improvements, excluding the Public Spaces in the Parking Garage, unless damage is caused by the negligent or more culpable acts or omissions of the Developer. The CDD's insurance obligations regarding the public parking facility within the Parking Garage are set forth in **Exhibit "K"**.

Section 9.1 General Insurance Provisions. Prior to any activity on the Leased Property, and at all times during the Term, Developer at its sole cost and expense shall procure the insurance specified below. In addition, Developer shall ensure its General Contractor and tenants maintain the insurance coverages set forth below. All policies must be executable in the State of Florida. All insurers must maintain an AM Best rating of A- or better. The terms and conditions of all policies may not be less restrictive than those contained in the most recent edition of the policy forms issued by the Insurance Services Office (ISO) or the National Council on Compensation Insurance (NCCI). If ISO or NCCI issues new policy forms during the policy term of the required insurance, complying with the new policy forms will be deferred until the expiration date of the subject policy. Said insurance policies shall be primary over any and all insurance available to the City whether purchased or not and shall be non-contributory. The Developer, its General Contractor or tenants shall be solely responsible for all deductibles and retentions

contained in their respective policies and shall be commercially reasonable. The City of Hollywood will be included as an "Additional Insured" on the Commercial General Liability, Umbrella Liability and Business Automobile policies. The City will also be named as "Loss Payee" on all Developer's Property Insurance policies.

Section 9.2 Evidence of Insurance. Prior to Developer taking possession of the Leased Property, satisfactory evidence of the required insurance shall be provided to the City. Satisfactory evidence shall be either: (a) a certificate of insurance; or (b) a certified copy of the actual insurance policy. The City, at its sole option, may request a certified copy of any or all insurance policies required by this Lease. All insurance policies must specify they are not subject to cancellation or non-renewal without a minimum of 45 days notification to the Developer; 10 days for Non-Payment of premium. The Developer will provide the City a minimum of 30 days written notice; 10 days for non-payment of premium, if any policies are cancelled or non-renewed. Developer shall deliver, together with each Certificate of Insurance, a letter from the agent or broker placing such insurance, certifying that the coverage provided meets the coverage required under this Lease.

Section 9.3 Required Coverages. As a minimum, Developer will procure and maintain (or cause to be procured and maintained) the following coverages:

- (a) **All Risk Property.** Developer shall obtain Property Coverage (Special Form), to cover the "All Other Perils" portion of the policy at the Replacement Cost Valuation as determined by a certified property appraiser acceptable to both the Developer and the City. The perils of Windstorm, Hail and Flood shall carry a \$25,000,000 sub limit or if such sub limit is not commercially reasonable, customary, commonly available for properties similar in type, size, use and location to the Leased Property and Developer Improvements, and is otherwise not available at commercially reasonable rates, such lower sub limit which is mutually agreed by the City and Developer on an annual basis which is commercially reasonable, customary, commonly available for properties similar in type, size, use and location to the Leased Property and Developer Improvements, and is otherwise available at commercially reasonable rates. To the extent available, coverage shall extend to furniture, fixtures, equipment and other personal property associated with the Leased Property.

The policy shall provide an "Agreed Amount" and a "No Co-Insurance" clause as respects the Building. The policy will also provide "Law & Ordinance" coverage, while giving deference to the age of the building, with limits acceptable to both the City and Developer. A Replacement Cost Value appraisal shall be completed by a licensed and certified appraiser at five (5) year intervals including bi annual updates. The selection and expense of said appraiser to be the sole responsibility of the Developer. A copy of the full report shall be provided to the City upon completion.

- (b) **Builders Risk** – During all construction activities conducted on the Leased Property, the Intracoastal Parcel or the Johnson Street Parcel, or modifications to existing buildings or structures located thereon that impact the structural integrity

of the buildings or structures, Developer shall obtain Builders Risk insurance (to include the perils of wind and flood) with minimum limits equal to the "Completed Value" of the buildings or structures being erected or the total value of the modifications being made. The perils of Windstorm, Hail and Flood shall carry a \$25,000,000 sub limit or if such sub limit is not commercially reasonable, customary, commonly available for properties similar in type, size, use and location to the Leased Property and Developer Improvements, and is otherwise not available at commercially reasonable rates, such lower sub limit which is mutually agreed by the City and Developer on an annual basis which is commercially reasonable, customary, commonly available for properties similar in type, size, use and location to the Leased Property and Developer Improvements, and is otherwise available at commercially reasonable rates.

- (c) Business Interruption - During the term of this Lease, Developer shall maintain Business Interruption coverage utilizing a Gross Earnings Value form with limits equal to twelve (12) months of Developer's projected profits (including all rental income) associated with the Leased Property. The City and Developer shall jointly review Developer's projected profits periodically and the limits of this policy shall be adjusted based on this review.
- (d) Commercial General Liability - During the term of the Lease, Developer shall maintain Commercial General Liability Insurance. Coverage shall include, as a minimum: (i) Premises Operations, (ii) Products and Completed Operations, (iii) Blanket Contractual Liability, (iv) Personal Injury Liability and (v) Expanded Definition of Property Damage. The minimum limits acceptable shall be \$10,000,000 Combined Single Limit (CSL). The use of an excess/umbrella liability policy to achieve the limits required by this paragraph will be acceptable as long as the terms and conditions of the excess/umbrella policy are no less restrictive than the underlying Commercial General Liability policy.
- (e) Business Automobile Liability - During the term of the Lease, Developer shall maintain Business Automobile Liability Insurance with coverage extending to all Owned, Non-Owned and Hired autos. The minimum limits acceptable shall be \$2,000,000 Combined Single Limit (CSL). The use of an excess/umbrella liability policy to achieve the limits required by this paragraph will be acceptable as long as the terms and conditions of the excess/umbrella policy are no less restrictive than the underlying Business Automobile Liability policy.
- (f) Workers' Compensation and Employers Liability - Developer shall maintain Workers' Compensation Insurance with limits sufficient to respond to Florida Statute §440. In addition, the Developer shall obtain Employers' Liability Insurance with limits of not less than: (i) \$500,000 Bodily Injury by Accident, (ii) \$500,000 Bodily Injury by Disease and (iii) \$500,000 Bodily Injury by Disease, each employee.
- (g) Professional Liability - Prior to commencing any construction activities on the Leased Property, the Intracoastal Parcel or the Johnson Street Parcel, or any other

construction activities, including without limitation, the Work, Developer shall cause any architects or engineers to maintain Architects and Engineers Errors and Omissions Liability insurance specific to the construction activities shall be obtained. If coverage is provided on a "Claims Made" basis, the policy shall provide for the reporting of claims for a period of two (2) years following the completion of all construction activities. The minimum limits acceptable shall be \$1,000,000 per occurrence and \$3,000,000 in the annual aggregate.

Section 9.4 Premiums and renewals. Developer shall pay as the same become due all premiums for the insurance required by this Article IX, shall renew or replace each such policy and deliver to the City evidence of the payment of the full premium thereof prior to the expiration date of such policy and shall promptly deliver to the City all original Certificates of Insurance and copies of all such renewal or replacement policies.

Section 9.5 Adequacy Of Insurance Coverage.

- (a) The adequacy of the insurance coverage required by this Article IX may be reviewed periodically by the City in its sole discretion. The City may request a change in the insurance coverage if it is commercially reasonable, customary and commonly available regarding properties similar in type, size, use and location to the Leased Property and Developer Improvements provided that such coverage is available at commercially reasonable rates (including without limitation, fiduciary liability and directors and officers liability insurance);
- (b) Developer has the right to contest the request for a change in insurance, but must be commercially reasonable;
- (c) Developer agrees that City may, if it so elects, have the Developer Improvements appraised for purposes of obtaining the proper amount of insurance hereunder. Any review by the City shall not constitute an approval or acceptance of the amount of insurance coverage; and
- (d) In the event that insurance proceeds are not adequate to rebuild and restore the damaged Developer Improvements to their previous condition before an insurable loss occurred, and the cause of the deficiency in insurance proceeds is the Developer's failure to adequately insure Developer Improvements as required by this Lease, Developer shall rebuild and restore such Developer Improvements pursuant to the terms hereof and shall pay any such deficiency notwithstanding the fact that such insurance proceeds are not adequate.

Section 9.6 City May Procure Insurance if Developer Fails To Do So. If Developer refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this Lease, the City, at its option, may procure or renew such insurance. In that event, all commercially reasonable amounts of money paid therefor by the City shall be treated as Additional Rent payable by Developer to the City together with interest thereon at the Default Rate from the date the same were paid by the City to the date of payment thereof by Developer. Such amounts, together with all interest accrued thereon, shall be paid by Developer

to the City within ten (10) days of written notice thereof.

Section 9.7 Effect of Loss or Damage. Any loss or damage by fire or other casualty of or to any of Developer Improvements on the Leased Property at any time shall not operate to terminate this Lease or to relieve or discharge Developer from the payment of Rent, or from the payment of any money to be treated as Additional Rent in respect thereto, pursuant to this Lease, as the same may become due and payable, as provided in this Lease, or from the performance and fulfillment of any of Developer's obligations pursuant to this Lease. No acceptance or approval of any insurance agreement or agreements by the City shall relieve or release or be construed to relieve or release Developer from any liability, duty or obligation assumed by, or imposed upon it by the provisions of this Lease.

Section 9.8 Proof of Loss. Whenever any Developer Improvements, or any part thereof, constructed on the Leased Property (including without limitation, any personal property furnished or installed in the premises) shall have been damaged or destroyed, Developer shall promptly make proof of loss in accordance with the terms of the insurance policies and shall proceed promptly to collect or cause to be collected all valid claims which may have arisen against insurers or others based upon any such damage or destruction. Developer shall give City written notice within forty-eight (48) hours of any material damage or destruction. For purposes of this Section 9.8, "material damage or destruction" shall mean any casualty or other loss the commercially reasonable cost of which to repair is in excess of \$50,000 or, notwithstanding the cost of repair, will have a material adverse effect on the day to day operations of the Project.

Section 9.9 Insurance Proceeds.

- (a) **Authorized Payment.** All sums payable for loss and damage arising out of the casualties covered by the property insurance policies shall be payable:
 - (i) Directly to Developer, if the total recovery is equal to or less than \$1,000,000 (as adjusted for inflation over the Term pursuant to Section 13.21 hereof), except that if a Developer Event of Default has occurred and is continuing hereunder, such proceeds, shall be paid over to the Insurance Trustee and disbursed in accordance with Section 9.9(a)(ii). Any remaining proceeds shall be paid over to Developer subject to its obligations to the Lender or the Indenture Trustee; and
 - (ii) To the Insurance Trustee, if the total recovery is in excess of \$1,000,000 (as adjusted for inflation over the Term pursuant to Section 13.21 hereof) or is less than \$1,000,000 but a Developer Event of Default has occurred and is continuing hereunder, to be held by the Insurance Trustee pending establishment of reconstruction, repair or replacement costs and shall be disbursed to Developer pursuant to the provisions of subparagraph (b) of this Section 9.9. If, at the time such proceeds become payable, there is a Leasehold Mortgage on the Leased Property, the Lender having the highest lien priority shall serve as the Insurance Trustee, but if there is no Leasehold Mortgage at that time, or if the Lender refuses to serve as Insurance Trustee, the Insurance Trustee shall be such commercial bank or

trust company as shall be designated by Developer and approved by the City, which approval shall not be unreasonably withheld or delayed (the "Insurance Trustee").

(b) Disposition of Insurance Proceeds for Reconstruction.

- (i) All insurance proceeds shall be applied for the reconstruction, repair or replacement of Developer Improvements and the personal property of Developer contained therein, so that Developer Improvements or such personal property shall be restored to a condition comparable to the condition prior to the loss or damage (hereinafter referred to as "Reconstruction Work");
- (ii) From the insurance proceeds received by the Insurance Trustee, there shall be disbursed to Developer such amounts as are required for the Reconstruction Work. Developer shall submit invoices or proof of payment to the Insurance Trustee for payment or reimbursement according to an agreed schedule of values approved in advance by the City and Developer;
- (iii) If the City and Developer do not agree on the schedule or values, they shall arbitrate the matter using the then-existing construction-related rules of the American Arbitration Association in Miami, Florida; and
- (iv) After the completion of the Reconstruction Work, any unpaid amounts shall be paid to Developer.

Section 9.10 Covenant for Commencement and Completion of Reconstruction. Developer covenants and agrees to commence the Reconstruction Work as soon as practicable, but in any event within three (3) months after the insurance proceeds in respect of the destroyed or damaged improvements or personally have been received, and to fully complete such Reconstruction Work as expeditiously as possible consistent with the nature and extent of the damage. Developer shall comply in all respects with the provisions of Section 3.13 with respect to any Reconstruction Work.

Section 9.11 Waiver of Subrogation. A full waiver of subrogation shall be obtained from all insurance carriers. 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 the City in connection with any damage covered by any policy.

Section 9.12 Inadequacy of Insurance Proceeds. Developer's liability hereunder to timely commence and complete restoration of the damaged or destroyed Developer Improvements shall be absolute, irrespective of whether the insurance proceeds received, if any, are adequate to pay for said restoration.

ARTICLE X
CONDEMNATION

Section 10.1 Complete Condemnation.

- (a) If the entire Project shall be taken or condemned for any public or quasi-public use or purpose, by right of eminent domain or by purchase in lieu thereof (in each case, a "Taking"), or if such Taking shall be for a portion of the Project such that the portion remaining is not sufficient and suitable, on a commercially reasonable basis (subject, however, to the rights of the Lender or Indenture Trustee hereunder), for the operation of the Hotel, then this Lease shall cease and terminate as of the date on which the condemning authority takes possession; and
- (b) If this Lease is so terminated, the entire award for the Project or the portion thereof so taken shall be apportioned among the City, the CDD and the Developer as of the day immediately prior to the vesting of title in the condemnor, as follows:
 - (i) First, but only if the City is not the authority condemning the Project, the City shall receive the then fair market value of the Leased Property so taken or condemned considered as vacant, unimproved, and unencumbered, together with the value of the Developer Improvements, discounted from the end of the Term;
 - (ii) Second, Developer shall be entitled to the then fair market value of its interest under this Lease and in the Developer Improvements (excluding the value of the portion of the Parking Garage used for public parking), less the discounted value of such Developer Improvements as allocated to the City, together with any and all business damages suffered by Developer (subject, however, to the rights of any Lender or Indenture Trustee thereto);
 - (iii) Third, the CDD shall be entitled to the then fair market value of its interest in the public parking component of the Developer Improvements; and
 - (iv) the City and Developer shall each receive one-half (1/2) of any remaining balance of the award, except that the Developer shall receive the entire remaining balance of the award if the City is the authority condemning the Project.

Section 10.2 Partial Condemnation.

- (a) If there is a Taking of a portion of the Project, and the remaining portion can, on a commercially reasonable basis (subject, however, to the rights of the Lender or Indenture Trustee hereunder) be adapted and used to operate the Hotel in the same manner it was previously operated, then this Lease shall continue in full force and effect; and

- (b) In such event, the award shall be apportioned as follows:
- (i) First, to the Developer to the extent required, pursuant to the terms of this Lease, for the restoration of the Project (excluding the portion of the Parking Garage used for public parking);
 - (ii) Second, to the CDD to the extent required for the restoration of the portion of the Parking Garage used for public parking;
 - (iii) Third, but only if the City is not the authority condemning the Project, to the City the portion of the award allocated to the fair market value of the Leased Premises which is so taken, considered as vacant and unimproved;
 - (iv) Fourth, to the Developer (subject, however, to the rights of the Lender or Indenture Trustee hereunder) the amount by which the value of Developer's interest in the Developer Improvements (excluding the portion of the Parking Garage used for public parking) and the Leased Property were diminished by the taking or condemnation;
 - (v) Fifth, to the CDD the amount by which the value of the CDD's interest in the portion of the Parking Garage used for public parking and the Leased Property were diminished by the taking or condemnation; and
 - (vi) the City and Developer shall each receive one-half (1/2) of any remaining balance of the award, except that the Developer shall receive the entire remaining balance of the award if the City is the authority condemning the Project.

Section 10.3 Restoration After Condemnation. If this Lease does not terminate due to a Taking, then:

- (a) Developer shall, with due diligence, restore the remaining portion of the Project in accordance with the provisions of Sections 9.10 hereof;
- (b) the entire proceeds of the award shall be deposited and treated in the same manner as insurance proceeds are to be treated under Article IX until the restoration has been completed and Developer and the City have received their respective shares thereof pursuant to this Article X;
- (c) if the award is insufficient to pay for the restoration, Developer shall be responsible for the remaining cost and expense; and
- (d) the Minimum Guaranteed Rent shall be adjusted proportionately based upon the proportion that the amount received by the City in respect of Leased Property Taken, if any, bears to the total fair market value of the overall Leased Property at that time.

Section 10.4 Temporary Taking. If there is a Taking of the temporary use (but not title) of the Project, or any part thereof, this Lease shall, but only to the extent it is commercially reasonable, remain in full force and effect and there shall be no abatement of any amount or sum payable by or other obligation of Developer hereunder. Developer shall receive the entire award for any such temporary Taking to the extent it applies to the period prior to the end of the Term (subject to the rights of the Lender or Indenture Trustee hereunder) and the City shall receive the balance of the award.

Section 10.5 Determinations. If Landlord and the Developer cannot agree in respect of any matters to be determined under this Article, a determination shall be requested of the court having jurisdiction over the taking. For purposes of this Article, any personal property taken or condemned shall be deemed to be a part of the Developer Improvements, and the provisions hereof shall be applicable thereto.

Section 10.6 Payment of Fees and Costs. All fees and costs incurred in connection with any condemnation proceeding described in Article X shall be paid in accordance with the law governing same, as determined by the court, if appropriate.

ARTICLE XI

QUIET ENJOYMENT AND OWNERSHIP OF IMPROVEMENTS

Section 11.1 Quiet Enjoyment.

- (a) The City represents and warrants that Developer, upon paying the Rent, Additional Rent and other monetary obligations pursuant to this Lease and observing and keeping the covenants and agreements of this Lease on its part to be kept and performed, shall lawfully and quietly hold, occupy and enjoy the Leased Property during the Term without hindrance or molestation by the City or by any person or persons claiming under the City. The City shall, at its own cost and expense, through the City Attorney's office or other counsel selected by the City in its sole discretion, defend any suits or actions which may be brought upon any such claims; and
- (b) except for negligent or more culpable acts or omissions by the City, in no event shall the City be liable for, and Developer hereby expressly waives, any claim for damages of any kind whatsoever, including without limitation, damages for loss of income, revenue, profit or value, and whether such damages are compensatory, consequential, punitive or exemplary. Developer shall have the right to retain its own counsel connected with such proceedings, at Developer's sole cost and expense.
- (c) However, if the City is acting in its governmental capacity, any liability under this Section shall only be to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations shall be applied as if the parties had not entered into this Lease.

Section 11.2 Waste. Developer shall not permit, commit or suffer waste or impairment of the

Project, or any part thereof; provided, however, demolition of existing improvements on the Leased Property existing on the date hereof shall not constitute waste.

Section 11.3 Maintenance and Operation of Improvements. Without limiting the provisions of Article XII, Developer shall at all times keep the Project in good and safe condition and repair in accordance with the Hotel Standards, commercially reasonable wear and tear excepted. Regarding the occupancy, maintenance and operation of the Project, the Developer shall comply with Governmental Requirements.

Section 11.4 Ownership of Improvements During Lease.

- (a) Prior to the expiration or termination of this Lease, title to the Developer Improvements (excluding, in the event the CDD Bonds are sold and the public parking component of the Parking Garage is transferred to the CDD as provided in Section 6.4, the public parking component thereof, title to which shall be vested in the CDD, until the CDD Bonds are paid) shall not vest in the City by reason of its ownership of fee simple title to the Leased Property, but title to the Developer Improvements (excluding the public parking portion of the Parking Garage, until the bonds are paid) shall remain in Developer.
- (b) If this Lease shall terminate, based on a mutual agreement between the parties or an final order from a court with jurisdiction from which the time for appeal has expired or an arbitration panel, prior to the expiration of the Term and if, at that time, any Lender shall exercise its option to obtain a new lease for the remainder of the Term pursuant to Article VI, then title to the Developer Improvements (excluding the public parking portion of the Parking Garage, until the bonds are paid) shall automatically pass to, vest in and belong to such Lender or any designee or nominee of such Lender permitted hereunder, until the expiration or sooner termination of the term of such new lease.
- (c) The City and Developer covenant that, to confirm the automatic vesting of title as provided in this paragraph, each will execute and deliver such further assurances and instruments of assignment and conveyance as may be commercially reasonably required by the other for that purpose.

Section 11.5 Surrender of Leased Property.

- (a) Upon the expiration of the Term or earlier termination, but only if mutually agreed upon or determined by an final order from a court with jurisdiction from which the time for appeal has expired or an arbitration panel, of this Lease, title to Developer Improvements (other than the public parking portion of the Parking Garage), free and clear of all debts, mortgages, encumbrances, and liens (which for this purpose shall include all personal property or equipment furnished or installed on the Project and owned or leased by Developer), shall automatically pass to, vest in and belong to the City or its successor in ownership and it shall be lawful for the City or its successor in ownership to re-enter and repossess the Leased Property

and Developer Improvements (other than the public parking portion of the Parking Garage) thereon without process of law; and

- (b) The City and Developer covenant that, to confirm the automatic vesting of title as provided in this Section, each will execute and deliver such further assurances and instruments of assignment and conveyance as may be reasonably required by the other for that purpose.

Section 11.6 City and Developer to Join in Certain Actions. Within thirty (30) days after receiving a written request from Developer, the City shall join Developer when required by law in any and all applications for Governmental Approvals as may be commercially reasonably necessary for constructing of the buildings and structures. Developer shall pay all fees and charges for all such applications.

ARTICLE XII

MAINTENANCE AND MANAGEMENT

Section 12.1 Standards Generally. The City and Developer agree that the manner in which the Project is developed, operated and maintained is important to the City by reason of its interest in having a destination resort hotel and parking facility for use by its residents and visitors to the City. Therefore, Developer hereby agrees to develop, operate and maintain the Project and all other property and equipment located thereon consistent with the Hotel Standards.

Section 12.2 Hotel Standards.

- (a) Developer covenants and agrees that it will utilize the Hotel Standards to maintain and operate the Hotel, the Intracoastal Parcel Improvements and the Johnson Street Improvements, and operate in compliance with the Trademark License Agreements and Governmental Requirements;
- (b) Any commercial operations on the Project, whether conducted by Developer, an Affiliate of Developer or any concessionaire, involving any unreasonably noisy, dangerous or obnoxious activities or the leasing or rental of unreasonably noisy, dangerous or obnoxious equipment, including without limitation, water ski rides or instruction and rental of "jet skis," mopeds or similar items, shall require the prior written approval of the City and City may withhold such approval or require the termination of any such commercial operations then in existence on the Project in its commercially reasonable judgment. Notwithstanding the foregoing, Developer shall operate a "Flo-Rider" type artificial sheet wave surfing environment at the Project, provided it shall be constructed, maintained and operated at all times according to the Approved Plans and Governmental Requirements; and
- (c) Developer shall use commercially reasonable efforts to ensure that any concession, commercial activity, or other Hotel activity shall be generally consistent with the Hotel Standards.

Section 12.3 Parking Garage Standards and Management.

- (a) The parties acknowledge that the provision of 579 spaces within the Parking Garage and 21 spaces on the third floor and ramp to the fourth floor, six spaces of which are handicap spaces (total 600 spaces) Public Spaces is a requirement of this Lease. Such public parking spaces shall be incorporated into the Hotel structure for esthetic reasons;
- (b) Accordingly:
 - (i) the Parking Garage shall be designed and operated so the public is generally aware that public parking is available;
 - (ii) the Parking Garage shall be appropriately signed and managed so that the 579 spaces within the public parking component of the Parking Garage and 21 spaces on the third floor and ramp to the fourth floor, six spaces of which are handicap spaces (total 600 spaces) are available to the public on a daily first come first served basis, subject to repairs and maintenance; and
 - (iii) Developer shall set rates for the Hotel Spaces that promote, encourage and incentivize overnight guests of the Hotel to park in the Hotel Spaces and not the Public Spaces.
- (c) Notwithstanding any other provision of this Lease to the contrary, in the event the CDD Bonds are sold and the public parking component of the Parking Garage is transferred to the CDD as provided in Section 6.4, the public parking spaces shall be operated by the CDD or its manager according to any standards and policies adopted by the CDD Board of Supervisors from time-to-time, pursuant to the requirements of the Internal Revenue Code (IRC), so as to preserve the tax exempt status of the CDD Bonds. Any parking operating agreement between the CDD and a parking operator for the public spaces in the Parking Garage shall comply with the IRC's requirements to preserve the tax exempt status of the CDD Bonds. The Parking Garage standards are set forth in **Exhibit "G"**.

Section 12.4 Intentionally Omitted.

Section 12.5 Covenant to Operate Hotel.

- (a) Subject to the need to make repairs and perform maintenance and any Force Majeure, Developer shall diligently and continuously operate (or cause to be operated) the Hotel and Parking Garage 365 days each year consistent with the Hotel Standards;
- (b) Subject to the need to make repairs and perform maintenance and subject to any Force Majeure events, for each day the Hotel or the Parking Garage is not operated continuously, the City shall, in addition to any other remedies available to it under this Lease, be entitled to receive a rental which shall be no less per day

than the average of the Minimum Guaranteed Rent payable during the preceding three (3) full Rental Years; and

- (c) Notwithstanding the foregoing, Developer shall have the right from time-to-time to close the Hotel, the Parking Garage or parts thereof for such commercially reasonable periods of time to make repairs, alterations, remodeling or for any reconstruction after casualty or condemnation or any Force Majeure event.

Section 12.6 Hotel Name. Developer may enter into new Trademark License Agreements or change the name of “flag” of the Hotel so long as such brand or flag is of a four star quality or better. Lessee will not enter into a new trademark license or change the name or “flag” of the Hotel without the City’s prior written consent, which may be withheld or granted on a commercially reasonable basis. In determining whether or not to give any consent (to the extent such consent is required), the City may consider, by way of example and not of limitation, the public image of the proposed name or flag, its AAA or other quality classification and whether such image is commensurate with the public image the City desires to project. Provided that no Event of Default is then continuing, Developer’s request for approval shall be deemed approved if (i) the first correspondence from Developer to City requesting such approval or consent is in an envelope marked “PRIORITY” and contains a bold-faced, conspicuous (in a font size that is not less than fourteen (14)) legend at the top of the first page thereof stating that “FIRST NOTICE: THIS IS A REQUEST FOR CONSENT UNDER SECTION 12.6. OF THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT AND GROUND LEASE, DATED AS OF JUNE [21], 2013, AND FAILURE TO RESPOND TO THIS REQUEST WITHIN TWENTY (20) DAYS MAY RESULT IN THE REQUEST BEING DEEMED GRANTED”, and is accompanied by the information and documents required above, and any other information reasonably requested by City in writing prior to the expiration of such twenty (20) day period in order to adequately review the same has been delivered; and (ii) if City fails to respond or to deny such request for approval in writing within the first fifteen (15) days of such twenty (20) day period, a second notice requesting approval is delivered to City from Developer in an envelope marked “PRIORITY” containing a bold-faced, conspicuous (in a font size that is not less than fourteen (14)) legend at the top of the first page thereof stating that “SECOND AND FINAL NOTICE: THIS IS A REQUEST FOR CONSENT UNDER SECTION 12.6 OF THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT AND GROUND LEASE, DATED AS OF JUNE [21], 2013. IF YOU FAIL TO PROVIDE A SUBSTANTIVE RESPONSE (E.G., APPROVAL, DENIAL OR REQUEST FOR CLARIFICATION OR MORE INFORMATION) TO THIS REQUEST FOR APPROVAL IN WRITING WITHIN FIVE (5) DAYS, YOUR APPROVAL SHALL BE DEEMED GIVEN” and City fails to provide a substantive response to such request for approval within such final five (5) day period.

Section 12.7 Non-Competition. Developer shall not, and shall cause its Affiliates to not, during the Term, without first obtaining the written consent of the City, which consent may be withheld in the City’s sole discretion, directly or indirectly own any interest in, operate, or in any manner be connected or associated with any full or limited service hotel, food or beverage business operated under the name “Margaritaville” and located within the applicable Market Area. This restriction shall not apply to one (1) restaurant, hotel or other lodging establishment located at an existing non-oceanfront pari-mutuel licensed location. Developer hereby stipulates and agrees that the foregoing non-competition agreement shall be enforceable by injunction

without requiring of a bond and that, because the City's actual damages would be difficult if not impossible to estimate, in the event of any breach of this non-competition agreement by Developer, the City shall be entitled to recover liquidated damages from Developer in an amount equal to Developer's net cash proceeds after taxes from any such activity undertaken by Developer, or an Affiliate of Developer, in violation of this Section 12.7. Developer shall use its commercially reasonable efforts to name the City as a third party beneficiary of any non-competition clause of the applicable Trademark License Agreements and Developer hereby grants the City the non-exclusive right to enforce the terms of any non-completion clause against the franchisor or licensor thereunder if it violates the non-competition clause the in the event Developer fails to enforce the terms of the applicable Trademark License Agreements.

ARTICLE XIII **MISCELLANEOUS PROVISIONS**

Section 13.1 No Partnership or Joint Venture. It is mutually understood and agreed that nothing contained in this Lease is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners, or creating or establishing the relationship of a joint venture between the City and Developer, or as constituting Developer as the agent or representative of the City for any purpose or in any manner whatsoever.

Section 13.2 Recording, Documentary Stamps. A memorandum of this Lease, in form mutually satisfactory to the parties, may be recorded by either party among the Public Records of Broward County, Florida and the cost of any such recordation, the cost of any documentary stamps which legally must be attached to any or all of said documents shall be paid in full by Developer. The parties shall cooperate in structuring the transactions contemplated hereby in such a manner as to reduce such costs, provided such structure shall not have any adverse consequence for the City.

Section 13.3 Florida and Local Laws Prevail. This Lease shall be governed by the laws of the State of Florida. This Lease is subject to and shall comply with the Charter of the City of Hollywood as the same is in existence as of the execution of this Lease and the ordinances of the City of Hollywood. Any conflicts between this Lease and the aforementioned Charter and ordinances shall be resolved in favor of the latter. If any term, covenant, or condition of this Lease or the application thereof to any person or circumstances shall to any extent, be illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity or becomes unenforceable because of judicial construction, the remaining terms, covenants and conditions of this Lease, or application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 13.4 Conflicts of Interest: City Representatives not Individually Liable. No member, official, representative, or employee of the City or the CRA shall have any personal interest, direct or indirect, in this Lease, nor shall any such member, official, representative or employee participate in any decision relating to this Lease which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is,

directly or indirectly, interested. No member, official, elected representative or employee of the City or the CRA shall be personally liable to Developer or any successor in interest in the event of any default or breach by the City or for any amount which may become due to Developer or successor or on any obligations under the terms of the Lease.

Section 13.5 Notice. A notice or communication, under this Lease by the City, on the one hand, to Developer, or, on the other, by Developer to the City shall be sufficiently given or delivered if dispatched by hand delivery, or by nationally recognized overnight courier providing receipts, or by registered or certified mail, postage prepaid, return receipt requested to:

- (a) Developer. In the case of a notice or communication to Developer if addressed as follows:

To: Margaritaville Hollywood Beach Resort, L.P.
Attn: Lon Tabatchnick
3501 N. Ocean Drive
Hollywood, Florida 33019

With Copies To:

Margaritaville of Hollywood, Florida LLC
Attn: John Cohan
256 Worth Avenue, Suite Q
Palm Beach, Florida 33480

and

Jeffrey M. Smith
Greenberg Traurig, LLP
3290 Northside Parkway, Suite 400
Atlanta, Georgia 30327

Hollywood Resort Partners, LP,
Attn: Lon Tabatchnick
3501 N. Ocean Drive
Hollywood, Florida 33019

and after the Permitted Pre-Possession Transfer:

c/o Starwood Capital Group Global, L.P.
591 W. Putnam Avenue
Greenwich, CT 06830
Attn: Ellis F. Rinaldi

and

Rinaldi, Finkelstein & Franklin
591 W. Putnam Avenue
Greenwich, CT 06830
Attn: Eric W. Franklin

and

Latham & Watkins LLP
233 S. Wacker Drive, Suite 5800
Chicago, Illinois 60606
Attn: Gary E. Axelrod

cc: Fowler White Boggs
Attn: Wilson C. Atkinson, III
1200 East Las Olas Blvd., Suite 500
Ft. Lauderdale, Florida 33301

and: Any Mortgagee of Developer whose
address has been provided to
the City in writing

(b) City. In the case of a notice or communication to the City, if addressed as follows:

To: City of Hollywood
Hollywood City Hall
2600 Hollywood Blvd.
Hollywood, Florida 33020
Attn: City Manager

cc: City of Hollywood
Hollywood City Hall
2600 Hollywood Blvd.
Hollywood, Florida 33020
Attn: City Attorney

or if such notice is addressed in such other way in respect to any of the foregoing parties as that party may, from time-to-time, designate in writing, dispatched as provided in this Section 13.5.

Section 13.6 Estoppel Certificates. The City and Developer shall, within thirty (30) days after written request by the other, execute, acknowledge and deliver to the party which has requested the same or to any actual or prospective Lender or the CDD, a certificate stating that:

(a) this Lease is in full force and effect and has not been modified, supplemented or amended in any way, or, if there have been modifications, the Lease is in full force and effect as modified, identifying such modification agreement, and if the Lease is not in force and effect, the certificate shall so state;

- (b) this Lease as modified represents the entire agreement between the parties as to this subject matter, or, if it does not, the certificate shall so state;
- (c) the dates on which the Term of this Lease commenced and will terminate;
- (d) to the knowledge of the certifying party all conditions under the Lease to be performed up to that date by the City or Developer, as the case may be, have been performed or satisfied and, as of the date of such certificate, there are no existing defaults, defenses or offsets which the City or Developer, as the case may be, has against the enforcement of the Lease by the other party, or, if such conditions have not been satisfied or if there are any defaults, defenses or offsets, the certificate shall so state; and
- (e) the Rent due and payable for the year in which such certificate is delivered has been paid in full, or, if it has not been paid, the certificate shall so state.

The party to whom any such certificate shall be issued may rely on the matters therein set forth; however, in delivering such certificate neither Developer nor the City (nor any individual signing such certificate on such party's behalf) shall be liable for the accuracy of the statements made therein, but rather shall be estopped from denying the veracity or accuracy of the same. Any certificate required to be made by the City or Developer pursuant to this paragraph shall be deemed to have been made by the City or Developer (as the case may be) and not by the person signing same.

Section 13.7 Provisions not Merged with Deed. Unless otherwise expressed in the instrument of conveyance or transfer, none of the provisions of this Lease are intended to or shall be merged by reason of any deed:

- (a) transferring the Project or any part thereof from Developer (or its successors or assigns) to the City (or its successors or assigns); or
- (b) transferring title to the Leased Property or any part thereof from the City to Developer, its successors or assigns. Any such deed shall not be deemed to affect or impair the provisions and covenants of this Lease.

Notwithstanding anything to the contrary contained herein, so long as there is a Lender holding a Leasehold Mortgage, the City and Developer agree that the City shall not transfer any fee interest in the Leased Property to Developer without such Lender's prior written consent.

Section 13.8 Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of this Lease are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 13.9 Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original. Any such counterparts shall constitute one and the same instrument. This Lease shall become effective only upon execution and delivery of this Lease by the parties hereto.

Section 13.10 Successors and Assigns. Except to the extent limited elsewhere in this Lease, all of the covenants conditions and obligations contained in this Lease shall be binding upon and inure to the benefit of the respective successors and assigns of the City and Developer.

Section 13.11 Entire Agreement. This Lease and its Exhibits constitute the sole and only agreement of the parties hereto with respect to the subject matter hereof and correctly set forth the rights, duties, and obligations of each to the other as of its date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Lease are of no force or effect and are merged into this Lease.

Section 13.12 Amendments. No amendments to this Lease shall be binding on either party unless in writing and signed by both parties. The City shall not be obligated to expend any money or undertake any obligation connected with any such amendment proposed by Developer, or otherwise connected with any action requested by Developer under this Lease, and shall be reimbursed by Developer for all third-party costs (including without limitation, third-party consultants and attorneys) incurred by the City. Prior to the City taking action regarding any such request, Developer shall deposit with the City the estimated amount of such costs, as reasonably determined by the City.

Section 13.13 Non-Subordination of City's Interest. Subject to Section 6.1, the City's fee interest in and ownership of the Leased Property and the City's rights and interest in this Lease (including without limitation, the rights to Rents, additional Rents, Public Charges and other monetary obligations of Developer to the City under this Lease) shall not be subject or subordinate to or encumbered by any financing for the Project or lien or encumbrances affecting Developer's interest in this Lease or Developer's Improvements or by any acts or omissions of Developer or any sublessee hereunder. In this regard, the Rents (including Minimum Guaranteed Rent, Participation Rent and Transaction Rent), additional Rents and other monetary obligations of Developer to the City under this Lease then payable at any point in time during the Term shall be paid by Developer to the City and shall be superior in right to all claims or rights hereunder or described above in this Section including without limitation, all Project operating expenses, the payment of debt service, and any distributions of profits to Developer or any of its Affiliates or owners. However, this provision shall not affect the CDD's interest in the public spaces in the Parking Garage. Notwithstanding any other provision herein, the City, Developer and any Lender or holder of a Leasehold Mortgage interest shall subordinate their rights and interests to the CDD Easement within which the public portion of the Parking Garage is constructed and to its fee simple interest in the improvements thereto conveyed to it by the CDD Special Warranty Deed.

Section 13.14 Authorization and Approvals by the City. All requests for action or approvals by the City shall be sent to the City Attorney for decision as to who within the City, including the City Commission, must act or approve the matter on behalf of the City.

Section 13.15 Prevailing Party's Attorneys' Fees. In the event either party hereto shall institute legal proceedings in connection with, or for the enforcement of, this Lease, the prevailing party shall be entitled to recover its costs of suit, including without limitation, commercially reasonable attorneys' fees, at both trial and appellate levels.

Section 13.16 Holidays. It is hereby agreed that whenever a notice or performance under the terms of this Lease is to be made or given on a Saturday or Sunday or on a legal holiday recognized by the City, it shall be postponed to the next following business day, not a Saturday, Sunday or legal holiday.

Section 13.17 No Brokers. Developer shall be responsible for, and shall hold the City harmless with respect to, the payment of any commission claimed by or owed to any real estate broker or other person retained by Developer and which is entitled to a commission as a result of the execution and delivery of this Lease. The City similarly shall be responsible for, and shall hold Developer harmless with respect to, the payment of any commission claimed by or owed to any real estate broker or other person retained by the City and which is entitled to a commission as a result of the execution and delivery of this Lease.

Section 13.18 No Liability for Approvals and Inspections. Except as may be otherwise expressly provided herein, no approval to be made by the City in its capacity as landlord under this Lease or any inspection of the Work or the Project by the City under this Lease, shall render the City liable for its failure to discover any defects or nonconformance with any Governmental Requirement.

Section 13.19 Radon. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the county public health unit for Broward County.

Section 13.20 Developer Entity. On the date of execution hereof, Developer is a Delaware limited partnership. In the event that at any time during the term of this Lease and any extensions and renewals thereof, Developer is a corporation or an entity other than a Delaware limited partnership, then any references herein to member, membership interest, manager and the like which are applicable to a Delaware limited partnership shall mean and be changed to the equivalent designation of such term which is appropriate to the nature of the new Developer entity.

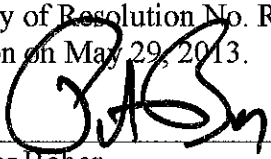
Section 13.21 Inflation Adjustments. All adjustments for inflation required under this Lease shall be calculated utilizing the United States Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers; U.S. City average (1982-84=100). If the United States Department of Labor should no longer compile and publish this index, the most similar index compiled and published by said Department or any other branch or department of the federal government shall be used for the purpose of computing the inflation adjustments provided for in this Lease. If no such index is compiled or published by any branch or department of the federal government, the statistics reflecting cost of living increases as compiled by any institution or organization or individual designated by the City and generally recognized as an authority by financial or insurance institutions shall be used as a basis for such adjustments.

Section 13.22 Standard of Conduct. The implied covenant of good faith and fair dealing under Florida law is expressly adopted.

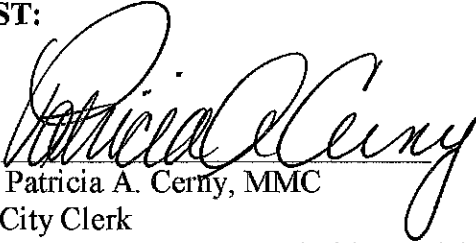
IN WITNESS WHEREOF, Developer has caused this Lease Agreement to be signed in its name by its Managing Member, and the City Commission of Hollywood has caused this Lease Agreement to be signed in its name by the City Manager, and duly attested to by the City Clerk, and approved as to form and sufficiency by the City Attorney, on the day and year first above written.

CITY


By authority of Resolution No. R-2013-132 duly passed and adopted by the Hollywood City Commission on May 29, 2013.

By: 
Name: Peter Bober
Title: Mayor

ATTEST:

By: 
Name: Patricia A. Cerny, MMC
Title: City Clerk
CITY OF HOLLYWOOD, a Florida municipal corporation

**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

DEVELOPER

MARGARITAVILLE HOLLYWOOD BEACH RESORT, L.P.,
a Delaware limited partnership

By: Margaritaville Hollywood Beach Resort GP, L.L.C.,
a Delaware limited liability company,
its general partner

By: MHBR JV, L.P.,
a Delaware limited partnership,
its sole member

By: Lojeta-Millennium GP, LLC,
a Florida limited liability company,
its Operating General Partner

By: [Signature]

Name: Lon Tabatchnick

Title: AUTHORIZED SIGNATORY

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 12 day of June, 2013, by Lon Tabatchnick, the A.S. of Lojeta-Millennium GP, LLC, as operating general partner of MHBR JV, L.P., as sole member of Margaritaville Hollywood Beach Resort GP, L.L.C., as general partner of Margaritaville Hollywood Beach Resort, L.P., a Delaware limited partnership. He is personally known to me, or has produced _____ as identification.

[Signature]
Notary Public

Name: _____

Commission Number: _____

Commission expires: _____



EXHIBIT "A"
ACCEPTABLE OWNER DEFINITION

A. "Acceptable Owner" means any individual, corporation or other entity which has, at a minimum, the following qualifications:

1. The proposed owner must possess the qualifications, good reputation and financial resources necessary for the ownership of the Project, according to the Trademark Agreements and this Lease, in a manner consistent with the quality, reputation and economic viability of the Project.

2. The proposed owner shall have no outstanding material violations of any Governmental Requirement against the proposed owner, or any hotel or other property owned or managed by such proposed owner, or an Affiliate of such proposed owner, within Florida, which have remained uncured for more than ninety (90) days.

3. The proposed owner must not be owned, controlled or run by entities or individuals who have been convicted, or are presently under indictment, for felonies under the laws of any foreign or United States of America jurisdiction. But, the foregoing shall not apply to individuals or entities owning less than a ten (10%) percent equity interest in the proposed owner, other than officers, directors, managers or others who have the power to direct and control the business and affairs of the proposed owner.

4. The proposed owner must not (nor any of the individuals or entities who own at least a ten (10%) percent equity interest in the proposed owner or are officers, directors, managers or otherwise have the power to direct and control the business and affairs of the proposed owner) have filed or been discharged from bankruptcy, or have been the subject of an involuntary bankruptcy, reorganization or insolvency proceedings within the past five (5) years (bankruptcy filings by affiliates shall not disqualify a proposed owner, unless such affiliates are any of the individuals or entities described in the parenthetical immediately above).

5. The proposed owner must not in its charter or organizations documents (defined as the articles of incorporation and bylaws for any corporation, the partnership agreement and partnership certificate for any partnership, the trust agreement for any trust and the constitution of the relevant government for any governmental entity, but expressly excluding any statements, positions, actions or allegations not contained in such charter organizational documents) expressly advocate or have as its stated purpose: (a) the violent overthrow of or armed resistance against, the U.S. government; or (b) genocide or violence against any persons; or (c) discrimination, hatred or animosity toward persons based solely on their race, creed, color, sex or national origin.

B. "Acceptable Owner Criteria": The foregoing five (5) categories of requirements are collectively defined as the "Acceptable Owner Criteria."

C. Evaluation of the "Acceptable Owner Criteria": Solely for the purpose of evaluating whether the proposed owner has met the five (5) criteria set forth above, it, he or she shall provide the following information to the Developer, which shall provide a copy to be reviewed by the City:

- (i) Information sufficient for the Hollywood Police Department to perform a background check according to Chapter 95 of the City of Hollywood Code of Ordinances;
- (ii) Financial statements reflecting the proposed owner's financial ability to meet the obligations and requirements for purchasing the Project;
- (iii) A list of all bankruptcies filed by or which the proposed Acceptable Owner was a party-bankrupt, if any;
- (iv) A list of all pending litigation, liens or claims in which the proposed owner is currently involved; and
- (v) A list of four (4) persons or firms with whom proposed owner has conducted business transactions during the past three (3) years. At least two (2) of those references must have knowledge of the proposed owner's debt payment history.

D. Approval Process: Regarding the issue of approving a proposed owner as an Acceptable Owner, the parties hereby agree that:

- (i) It is understood and agreed that the City will not unreasonably withhold its consent if the proposed Acceptable Owner complies with the Acceptable Owner Criteria;
- (ii) If a proposed Transfer requires the City's consent, Developer shall deliver written notice to the City, which shall confirm the identity of the proposed owner, and shall include with such notice:
 - (a) copies of any applicable operating licenses;
 - (b) identification of the hotels owned or managed by the proposed owner;
 - (c) the resume of the proposed owner, senior executives, and other key employees thereof, including without limitation, identification of and duration, of hotel ownership experience; and
 - (d) such other evidence as is commercially reasonably necessary to establish that the new entity proposed to be the Acceptable Owner, meets the Acceptable Owner Criteria.
- (iii) The City shall have forty-five (45) days after the delivery of such written notice and the information required under subparagraphs D(i) and (ii) immediately above, to determine whether, on a commercially reasonable basis, the proposed owner meets the Acceptable Owner Criteria.

- (iv) Provided that no Event of Default is then continuing, Developer's request for approval shall be deemed approved if (i) the first correspondence from Developer to City requesting such approval or consent is in an envelope marked "PRIORITY" and contains a bold-faced, conspicuous (in a font size that is not less than fourteen (14)) legend at the top of the first page thereof stating that "FIRST NOTICE: THIS IS A REQUEST FOR CONSENT UNDER SECTION 5.4. OF THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT AND GROUND LEASE, DATED AS OF JUNE 21, 2013, AND FAILURE TO RESPOND TO THIS REQUEST WITHIN FORTY-FIVE (45) DAYS MAY RESULT IN THE REQUEST BEING DEEMED GRANTED", and is accompanied by the information and documents required above, and any other information reasonably requested by City in writing prior to the expiration of such forty-five (45) day period in order to adequately review the same has been delivered; and (ii) if City fails to respond or to deny such request for approval in writing within the first thirty (30) days of such forty-five (45) day period, a second notice requesting approval is delivered to City from Developer in an envelope marked "PRIORITY" containing a bold-faced, conspicuous (in a font size that is not less than fourteen (14)) legend at the top of the first page thereof stating that "SECOND AND FINAL NOTICE: THIS IS A REQUEST FOR CONSENT UNDER SECTION 5.4 OF THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT AND GROUND LEASE, DATED AS OF JUNE 21, 2013. IF YOU FAIL TO PROVIDE A SUBSTANTIVE RESPONSE (E.G., APPROVAL, DENIAL OR REQUEST FOR CLARIFICATION OR MORE INFORMATION) TO THIS REQUEST FOR APPROVAL IN WRITING WITHIN FIFTEEN (15) DAYS, YOUR APPROVAL SHALL BE DEEMED GIVEN" and City fails to provide a substantive response to such request for approval within such final fifteen (15) day period.
- (v) If the City notifies Developer, in writing, within such forty-five (45)-day period, that the information submitted is, on a commercially reasonable basis, incomplete or insufficient (and specifies in what ways it is incomplete or insufficient), then Developer shall supplement such information, on a commercially reasonable basis, and the City shall have thirty (30) days after such supplemental information is provided to make its determination whether the proposed owner meets the Acceptable Owner Criteria.
- (vi) If the City disapproves the proposed owner, the City shall provide to Developer specific written, commercially reasonable reasons for such disapproval. The failure to object to the proposed owner within either of the two time periods set forth above shall be deemed to be the approval by the City of the proposed owner as an Acceptable Owner.
- (vii) Any entity approved as an Acceptable Owner must meet the Acceptable Owner Criteria throughout its service as an Acceptable Owner hereunder

unless certain of said qualifications were waived by the City, in writing, at the time of original approval.

- (viii) No approval by the City of a proposed owner as an Acceptable Owner or its meeting of the Acceptable Owner Criteria shall have the effect of waiving or estopping the City from later claiming that said Acceptable Owner is no longer operating or maintaining the Project according to the terms of this Lease, thereby creating an Event of Default. But, the time periods, such as “within the five (5) years”, set forth in the Acceptable Owner Criteria are measured from the date each proposed Acceptable Owner submits its application for approval by the City.

E. Dispute Resolution: If there is any dispute, in whole or in part, over the provisions of this **Exhibit “A”**, it shall be resolved in Broward County, Florida, using the then-applicable Commercial Arbitration rules of the American Arbitration Association, except that, in any event, there shall be three (3) arbitrators. They shall be the last three (3) people left on a list, after both parties alternate striking names, provided by the American Arbitration Association. The party that shall strike first shall be determined by lot. The list shall contain the names of twenty-one (21) people with substantial experience in hotel projects.

F. Interpretation:

- (i) All acts and omissions as well as rights and duties shall be done in a commercially reasonable manner, unless the standard of “sole discretion” is used.
- (ii) The implied covenant of good faith and fair dealing under Florida law is expressly adopted.

EXHIBIT "B"
HOTEL STANDARDS DEFINITION

Starting thirty-seven (37) months from the Completion Date, the Developer shall operate the Hotel so that:

- (a) it meets a sufficient number of the standards then required to be able to obtain a four-diamond rating from the American Automobile Association; or
- (b) if that system or the American Automobile Association itself does not exist in substantially the same manner as it does on the date of execution of this Lease, then the most analogous system shall be used.

The Developer does not have to actually obtain the four-diamond or equivalent rating. But, it must be able to meet the standards for obtaining it.

If the Developer elects, in its sole discretion, not to obtain that rating, the City shall have the right once every thirty-six (36) months to require the Developer to retain a hotel consultant proficient in the AAA Diamond ratings and with at least ten (10) years' experience in the hotel industry to produce a report within sixty (60) days of the City's request that states the Hotel does or does not meet the standards for a four-diamond rating or the equivalent.

The City has the right to accept or reject the report. If it rejects the report, the City shall retain its own hotel consultant proficient in the AAA Diamond ratings and, who shall also have at least ten (10) years experience in the hotel industry. That consultant shall produce a report at any time explaining in commercially reasonable detail why the report by the Developer's hotel consultant is not correct.

After the City's hotel consultant's report is delivered to the Developer, the City and Developer shall not take any formal action for thirty (30) days. They may elect to discuss or mediate the matter during that period of thirty (30) days.

At the end of that period of time, if the City does not agree that the Hotel is being operated at the standards required to obtain a four-diamond rating or the equivalent, then the City has the right to require that the City and Developer jointly file a complaint for declaratory relief from the American Arbitration Association in Miami, Florida, but always with three (3) arbitrators with expertise in the hotel industry.

The arbitrators shall either rule that the Hotel meets or does not meet the standards required to obtain a four-diamond rating or the equivalent. If the ruling is that the standards have not been met, the order shall state which standards have not been met.

If the Developer receives an order specifying the standards that have not been met and which prevent the Hotel from obtaining a four-diamond rating or the equivalent, Developer shall have six (6) months within which to take the necessary action to meet a sufficient number of the standards as required to be able to obtain a four-diamond rating or the equivalent. The Developer does not have to take corrective action regarding any of the standards identified in the arbitrators order as deficient, but may take any action that will achieve a four-diamond rating or

the equivalent, and shall within nine (9) months from the date of the order actually obtain that rating or the equivalent and thereafter maintain that rating or the substantial equivalent throughout the remaining term of this Lease.

Should Developer fail to satisfy the requirements of an arbitration order within the time allowed, City shall be entitled to liquidated damages, it being agreed that the actual damages the City has suffered in this circumstance would be difficult to calculate, in the amount of two hundred dollars (\$200) per day. But, neither the arbitrators nor any court shall be permitted to terminate the Ground Lease as a remedy regarding any failure to meet or obtain a four-diamond rating or the equivalent. The provisions above regarding the \$200 per day remedy and the restriction regarding termination shall apply to any breach of **Exhibit "B"** during the Term.

EXHIBIT "C-1"
BUDGETED IMPROVEMENT COSTS

Project Costs

Soft Costs	
Architecture	\$ 2,600,000.00
Design Architect	\$ 1,000,000.00
Landscape Architect	\$ 325,000.00
Traffic Engineer	\$ 130,000.00
Civil Engineer	\$ 520,000.00
Misc .Consultants	\$ 750,000.00
Legal and Administrative	\$ 1,500,000.00
Real Estate Taxes	\$ 1,000,000.00
Developers Fee	\$ 3,827,915.00
Building Permits	\$ 1,240,000.00
Insurance - Builders Risk	\$ 868,000.00
Pre- Opening Expense	\$ 5,500,000.00
Sewer/Water Hook Up	\$ 200,000.00
Coral Hospitality	\$ 675,000.00
Marketing	\$ 150,000.00
EB- 5	\$ 275,000.00
Reimbursables	\$ 200,000.00
CDD Soft Costs	\$ 4,950,000.00
Interest reserve	\$ 3,500,000.00
Investment Banking fee	\$ 500,000.00
Broward County	\$ 350,000.00
City of Hollywood	\$ 1,450,000.00
Soft Cost Contingency	\$ 941,000.00
Total Soft Cost	\$ 32,451,915.00
Construction Costs	
Construction Cost Hotel	\$ 85,950,000.00
CRA Public Improvements	\$ 5,000,000.00
Construction Contingency	\$ 4,297,500.00
Payment & Performance Bonds	\$ 600,000.00
FF&E	\$ 11,129,000.00
OS&E	\$ 7,290,000.00
Total Construction Cost	\$ 114,266,500.00
Total Project Costs	\$ 146,718,415.00

EXHIBIT "C-2"
CRA FUNDING AGREEMENT

**CRA FUNDING AGREEMENT BETWEEN THE HOLLYWOOD, FLORIDA COMMUNITY
REDEVELOPMENT AGENCY AND MARGARITAVILLE HOLLYWOOD BEACH RESORT, LLC**

THIS CRA FUNDING AGREEMENT (the "Agreement") dated as of this _____ day of February, 2011, by and between the HOLLYWOOD COMMUNITY REDEVELOPMENT AGENCY, a dependent special district of the City of Hollywood ("CRA") and MARGARITAVILLE HOLLYWOOD BEACH RESORT, LLC a Florida limited liability company ("Developer").

RECITALS

A. WHEREAS, on even date herewith, Developer has entered into that certain Development Agreement and Ground Lease (the "Lease Agreement") with the City of Hollywood, Florida ("City"), which, among other things, provides for the 99 year lease of the City owned property commonly referred to as Johnson Street located within the CRA for the construction, development, operation and maintenance of a resort hotel, together with a parking garage (as hereinafter defined as the "Project") pursuant to the Site Plan (the "Site Plan") approved by the City Commission in Resolution No. R-2010-364; and

B. WHEREAS, CRA is desirous of improving certain public properties and public rights-of-way within the Project known herein as the "Johnson Street Parcel" and the "Intracoastal Parcel", and Developer is willing to perform same pursuant to the terms of this Agreement (the "Public Improvements"); and

C. WHEREAS, the Lease Agreement provides for the development and construction by the Developer of the Public Improvements on the Johnson Street Parcel, the Intracoastal Parcel and other rights-of-way within or adjacent to the Project; and

D. WHEREAS, the Developer and City, on even date herewith, have also entered into License Agreements for the Johnson Street Parcel and the Intracoastal Parcel, which provide for the use, maintenance and operation by the Developer of those Public Improvements thereon; and

E. WHEREAS, the Developer has estimated that the Public Improvements, as required by the Site Plan and desired by the CRA, have an estimated cost of Five Million (\$5,000,000) Dollars; and

F. WHEREAS, the Project and the Public Improvements will significantly reduce the blight in the CRA and will bring significant economic redevelopment to the area; and

G. WHEREAS, the appropriate officials of the CRA have worked with representatives of Developer to negotiate the terms and conditions of this Agreement relating to the Public Improvements, and the appropriate officials of the CRA are recommending this Agreement to the CRA Board.

NOW, THEREFORE, in consideration of the obligations of the parties one to another as set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CRA and Developer agree as follows:

**ARTICLE 1
RECITALS INCORPORATED AND DEFINITIONS**

Section 1.1 Recitals. The foregoing recitals are true and correct and are incorporated in this Agreement.

Section 1.2 Definitions. For all purposes of this Agreement, the terms defined in this Article I shall have the following meanings and other provisions of this Article I shall apply:

"Agreement" is defined as this CRA Funding Agreement by and between Developer and the CRA evidencing the funding provided by the CRA to Developer for the development and construction of the Public Improvements in accordance with the Site Plan.

"City" is defined as the City of Hollywood, Florida, its successors and assigns, in whole or in part.

"City Indemnified Party" is defined collectively as City, CRA and the City's and CRA's respective elected and appointed officials, directors, officers, employees and agents.

"CRA" is defined as the City of Hollywood Community Redevelopment Agency, a dependent special district of the City, its successors and assigns, in whole or in part.

"Default Notice" is defined as written notice by the CRA to DEVELOPER of Default under this Agreement.

"Developer" is defined as Margaritaville Hollywood Beach Resort, LLC, a Florida limited liability company and the successors, assigns or transferees thereof expressly approved or permitted by the terms and provisions of this Lease.

"Developer Indemnified Party" is defined collectively as Developer, its directors, officers, shareholders, partners, members, employees and agents.

"Effective Date" is defined as the date the last party executes this Agreement.

"Event of Default" is defined as set forth in Section 4.1 hereof.

"Notice" is defined as set forth in Section 6.1 hereof.

"Project" is defined as the hotel resort development set forth within the Site Plan, civil plans and landscaping plans as prepared by the Adache Group Architects consisting of approximately 74 pages submitted to the City of Hollywood's Development Review Board, Planning and Zoning Board, and City Commission and approved in Resolution No. R-2010-364 on December 15, 2010.

"Public Improvements" are defined as improvements to public property and/or public rights-of-way, known as the Johnson Street Parcel, the Intracoastal Parcel, A1A and Michigan Street as required by the Site Plan to be completed by the Developer and which improvements are specifically described in **Exhibit "A"** hereto.

"Substantial Completion" or "Substantially Complete" is defined as (i) all Public Improvements have been substantially completed in accordance with the Site Plans and Specifications, and (ii) all Public Improvements therein shall have been issued temporary or final certificates of completion and may be used for their intended purposes.

ARTICLE 2

DEVELOPER'S OBLIGATIONS

Section 2.1 The Developer shall build the Public Improvements consistent with the Site Plan approved by the City Commission.

Section 2.2 The Developer shall perform the Public Improvements set forth in **Exhibit "A"**. Such Public Improvements shall be completed no later than two (2) years from the Effective Date. The estimated value of the Public Improvements set forth in **Exhibit "A"** is \$5,000,000. The Developer shall be responsible for the actual payment of these Public Improvements. CRA shall reimburse the Developer for said Public Improvements in an amount not to exceed \$5,000,000. Said reimbursement shall be in accordance with Section 3.1 hereof. The Developer shall bear all costs for these Public Improvements exceeding \$5,000,000. Further, Developer shall be required and be solely responsible for obtaining any and all federal, state and local approvals and permits relating to the Public Improvements. Developer shall obtain such approvals expeditiously and with reasonable due diligence.

Section 2.3 In order to protect the CRA and City from all accidents and occurrences that occur prior to the CRA's or City's acceptance of the Public Improvements, the Developer shall:

(i) Indemnify, hold harmless and, at the City Attorney's/General Counsel's option, defend, or pay for an attorney selected by the City Attorney/General Counsel to defend the City and CRA, their officers, agents, servants and employees, against any and all claims, losses, liabilities, and expenditures of any kind, including attorney's fees, court costs, and expenses, caused by the negligent act or omission of contractor(s) or subcontractor(s), their employees, agents, servants or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages to any person or property.

(ii) In order to insure the indemnification obligation contained above, the Developer's contractor(s) shall, as a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverages set forth below, in accordance with the terms and conditions of this section.

(iii) Such policy or policies shall contain deductible amounts no greater than those standard in the insurance industry and shall be issued by United States Treasury approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in Broward County, Florida. Contractor(s) shall specifically protect City and CRA by naming City, CRA and the City Commission Members as additional insureds.

(iv) Comprehensive General Liability Insurance. A Comprehensive General Liability Insurance Policy with the minimum limits of Five Million Dollars (\$5,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

Premises and/or operations.

Independent contractors.

Product and/or completed operations for contracts.

Broad Form Contractual Coverage applicable to this specific contract, including any hold harmless and/or indemnification agreement.

Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

Underground coverages.

(v) Business Automobile Liability Insurance. Business Automobile Liability Insurance with minimum limits of Five Hundred Thousand Dollars (\$500,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

Owned vehicles.

Hired and non-owned vehicles.

Employers' non-ownership.

(vi) Workers' Compensation Insurance. Workers' Compensation Insurance shall apply for all employees in compliance with the "Worker's Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include: Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000.00) each accident.

(vii) Developer shall furnish to the CRA's Executive Director, certificates of insurance or endorsements (collectively, "Certificates of Insurance") evidencing the insurance coverages specified by this subsection prior to beginning performance any work under this Agreement. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Agreement, and state that such insurance is as required by this Agreement.

(viii) Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required under this Agreement is completed. All policies must be endorsed to provide CRA with at least thirty (30) days' prior written notice of cancellation and/or restriction. If any of the insurance coverages will expire prior to the completion of the work, copies of renewal policies shall be furnished at least thirty (30) days' prior to the date of their expiration.

Section 2.4 Except as provided in Section 2.3 above, Developer shall have the full right and authority to enter into any and all construction agreements it deems necessary for the development and construction of the Public Improvements. Neither the City nor CRA shall have any right of approval over said construction agreements or contractors or subcontractors, and each agrees not to unreasonably interfere with same, except to the extent required to carry out its governmental functions. All such construction agreements shall be the sole responsibility of Developer.

Section 2.5 In connection with any construction work, and with the maintenance, management, use and operation of the Public Improvements and Developer's performance of its obligations hereunder, Developer shall comply promptly with all requirements, without regard to the nature of the work required to be done, whether extraordinary or ordinary, and whether requiring the removal of any encroachment (but Developer may seek to obtain an easement in order to cure an encroachment, if permitted by requirements), or affecting the maintenance, management, use or occupancy of the Public Improvements, or involving or requiring any structural changes or additions in or to the Public Improvements and regardless of whether such changes or additions are required by reason of any particular use to which the Project, or any part thereof, may be put.

Section 2.6 During the construction period Developer shall maintain all of the Public Improvements, except for the roadway, curb and gutter improvements, at all times, and keep said Public Improvements in good and safe order and condition, and in compliance with all applicable laws, rules, regulations, codes and ordinances.

ARTICLE 3 **CRA'S OBLIGATIONS**

Section 3.1 Reimbursement for the Public Improvements. The CRA shall provide Developer with reimbursement for the Public Improvements specifically set forth in **Exhibit "A"** in an amount not to exceed Five Million Dollars (\$5,000,000) as follows:

Each month Developer shall submit unto the Executive Director of the CRA an application and Certificate for Payment for the percentage of completed work as per the draw schedule attached hereto as **Exhibit "B"**, together with other information or documentation

reasonably deemed necessary by the CRA, including, but not limited, to releases of liens. The Executive Director shall have thirty (30) days from such submittal to review the application and Certificate for Payment and may request further documentation to substantiate the expenditures. Upon approval of the application and Certificate for Payment, the Executive Director shall forward the approval to the City's Director of Financial Services for reimbursement to the Developer within fifteen (15) days. If Developer submits an application and Certificate of Payment seeking reimbursement for a particular Public Improvement that exceeds the dollar amount indicated for that Public Improvement in **Exhibit "A,"** the application and/or Certificate of Payment shall specify transfers from other Public Improvements in **Exhibit "A"** in amounts that equal the amount of excess.

ARTICLE 4

EVENTS OF DEFAULT, REMEDIES, ETC.

Section 4.1 Definition. Each of the following events shall be an "Event of Default" hereunder:

(a) if Developer shall default in the observance or performance of any term, covenant or condition of this Agreement, the Lease Agreement and related documents, on Developer's part to be observed or performed and Developer shall fail to remedy such Default within thirty (30) days after written notice by the CRA of such Default (the "Default Notice"). If, however, such a Default is of such a nature that it cannot reasonably be remedied within thirty (30) days (but is otherwise susceptible to cure), the following events shall be an "Event of Default" hereunder: (i) if Developer shall fail, within thirty (30) days after the giving of such Default Notice, to advise the CRA of Developer's intention to institute all steps necessary to remedy such Default, (ii) from time to time, as reasonably requested by the CRA, if Developer shall fail to advise the CRA of the steps being taken that are necessary to remedy such Default (which steps shall be reasonably designed to effectuate the cure of such Default in a professional and expeditious manner), or (iii) if Developer shall fail thereafter to diligently prosecute to completion all such steps necessary to remedy such Default.

(b) to the extent permitted by law, if Developer admits, in writing, that it is generally unable to pay its debts as such become due;

(c) to the extent permitted by law, if Developer makes an assignment for the benefit of creditors;

(d) to the extent permitted by law, if Developer files a voluntary petition under Title 11 of the United States Code, or if Developer files a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, or seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Developer's, of all or any substantial part of its properties, or of all or any part of Developer's interest in the Project, and the foregoing are not stayed or dismissed within one hundred and fifty (150) days after such filing or other action; or

(e) to the extent permitted by law, if, within one hundred and eighty (180) days after the commencement of a proceeding against Developer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or future federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, such proceeding has not been dismissed, or if within one hundred eighty (180) days after the appointment, without the consent or acquiescence of Developer, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Developer, of all or any substantial part of its properties, or all or any part of Developer's interest in the Project, such appointment has not been vacated or stayed on appeal or otherwise, or if, within one hundred eighty (180) days after the expiration of any such stay, such appointment has not been vacated; or

(f) if CRA fails to make any payments required by Article 3 when due hereunder, and such failure continues for a period of thirty (30) days after written notice is given by Developer that the same is past due; or

(g) if CRA shall default in the observance or performance of any term, covenant or condition of this Agreement on CRA's part to be observed or performed and CRA shall fail to remedy such Default within thirty (30) days after written notice by the Developer of such Default (the "Default Notice"). If, however, such a Default is of such a nature that it cannot reasonably be remedied within thirty (30) days (but is otherwise susceptible to cure), the following events shall be an "Event of Default" hereunder: (i) if CRA shall fail, within thirty (30) days after the giving of such Default Notice, to advise the Developer of CRA's intention to institute all steps, (ii) from time to time, as reasonably requested by the Developer, if CRA shall fail to advise the Developer of the steps being taken that are necessary to remedy such Default (which steps shall be reasonably designed to effectuate the cure of such Default in a professional and expeditious manner), or (iii) if CRA shall fail thereafter to diligently prosecute to completion all such steps necessary to remedy such Default.

Section 4.2 Enforcement of Performance; Damages; and Termination. If an Event of Default occurs, the non-defaulting party may elect to either: (a) enforce performance or observance by the defaulting party of the applicable provisions of this Agreement, or (b) subject to the provisions of Article 5, recover damages from the defaulting party for breach of this Agreement. The exercise of a remedy hereunder with respect to an Event of Default shall not limit or otherwise affect a party's right to exercise any of the remedies available hereunder with respect to that Event of Default or to any other Event of Default.

Section 4.3 Strict Performance. No failure by CRA or Developer to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or failure to exercise any right or remedy available to such party by reason of the other party's Default or an Event of Default, shall constitute a waiver of any such Default or Event of Default or of such covenant, agreement, term or condition or of any other covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by a party, and no Default by a party, shall be waived, altered or modified except by a written instrument executed by the parties. No waiver of any Default or Event of Default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Default.

Section 4.4 Right to Enjoin Default. In the Event of Developer's Default or Event of Default, the CRA shall be entitled to seek to enjoin the Default or Event of Default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent the CRA's remedies are expressly limited by the terms hereof. In the event of any Default by the CRA of any term, covenant or condition under this Agreement, Developer shall be entitled to seek to enjoin the Default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent Developer's remedies are expressly limited by the terms hereof. Each right and remedy of the CRA and Developer provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing at law or equity or by statute or otherwise except to the extent the CRA's remedies and Developer's remedies are expressly limited by the terms hereof, and the exercise or beginning of the exercise by the CRA or Developer of any one or more of the rights or remedies provided for in this Agreement or now or hereafter existing by law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the CRA or Developer of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, except to the extent the CRA's remedies and Developer's remedies are expressly limited by the terms hereof.

Section 4.5 Remedies Under Bankruptcy and Insolvency Code. If an order for relief is entered or if any stay of proceeding or other act becomes effective in any proceeding which is commenced by or against Developer, under the present or future Federal Bankruptcy Code or in a proceeding which is

commenced by or against Developer seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, CRA shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law or this Agreement.

ARTICLE 5

ENFORCEMENT OF AGREEMENT

Section 5.1 CRA Exculpation. Notwithstanding any other provisions of this Agreement, Developer's remedies under this Agreement shall be solely limited to the amount of unpaid reimbursements which are legally owing to Developer pursuant to this Agreement. Nothing contained in this Section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the CRA's liability as set forth in Section 768.28, Florida Statutes, or of any other constitutional, statutory, common law or other protections afforded to public bodies or governments.

Section 5.2 Developer's Exculpation. Except for the rights and remedies available to the CRA under Sections 2.3, 4.2, 4.4 and 4.5 of this Agreement, CRA's remedies under this Agreement shall be limited to the reimbursement of any monies paid to Developer pursuant to this Agreement.

ARTICLE 6

NOTICES, CONSENTS AND APPROVALS

Section 6.1 Service of Notices and Other Communications.

(a) In Writing. Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall, or may be given to, or served upon, a party, either of the parties by another, or whenever a party or either of the parties desire to give or serve upon another any notice, demand, request, consent, approval or other communication with respect hereto or to the Public Improvements, each such notice, demand, request, consent, approval or other communication shall be in writing (whether or not so indicated elsewhere in this Agreement) and shall be effective for any purpose only if given or served by certified or registered U.S. Mail, postage prepaid, return receipt requested, personal delivery with a signed receipt or a recognized national courier service, addressed as follows or to such other address as a party may provide in writing to the other party:

If to CRA:	Executive Director Hollywood, Florida Community Redevelopment Agency 2600 Hollywood Blvd. Hollywood, Florida 33020
With a copy to:	CRA General Counsel City of Hollywood 2600 Hollywood Blvd. Hollywood, Florida 33020
If to Developer:	Margaritaville Hollywood Beach Resort, LLC 3501 N. Ocean Drive Hollywood, FL 33019 Attn: Lon Tabatchnick
With a copy to:	Wilson C. Atkinson, III, Esquire Atkinson, Diner, Stone, Mankuta & Ploucha, P.A. 100 SE 3 rd Avenue, Suite 1400 Ft. Lauderdale, FL 33394

(b) Effectiveness. Every Notice shall be effective on the date actually received, as indicated on the receipt therefore or on the date delivery thereof is refused by the recipient thereof.

(c) References. All references in this Agreement to the "date" of Notice shall mean the effective date, as provided in the preceding subsection (b).

Section 6.2 Consents and Approvals. All consents and approvals which may be given under this Agreement shall, as a condition of their effectiveness, be in writing. The granting by a party of any consent to, or approval of, any act requiring consent or approval under the terms of this Agreement, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its rights to require such consent or approval for any other act unless provided for elsewhere in this Agreement. Wherever consent or approval is required by either party within this Agreement, such consent or approval shall not be unreasonably withheld.

ARTICLE 7 **MISCELLANEOUS**

Section 7.1 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, without regard to principles of conflict of laws.

Section 7.2 Assignment. This Agreement shall not be assigned nor transferred by Developer.

Section 7.3 References.

(a) Captions. The captions of this Agreement are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

(b) Reference to Successors and Assigns. The use herein of the words "successors and assigns" shall be deemed to include the heirs, legal representatives and assigns of any of the parties hereto.

(c) City's and CRA's Governmental Capacity. Nothing in this Agreement or in the parties' acts or omissions in connection herewith shall be deemed in any manner to waive, impair, limit or otherwise affect the authority of the CRA or City in the discharge of its police or governmental powers.

(d) Reference to "herein", "hereunder", etc. All references in this Agreement to the terms "herein", "hereunder" and words of similar import shall refer to this Agreement, as distinguished from the paragraph, Section or Article within which such term is located.

Section 7.4 Entire Agreement, etc.

(a) Entire Agreement. This Agreement, together with the exhibits and attachments hereto, contains all of the promises, agreements, conditions, inducements and understandings between the CRA and Developer concerning the Public Improvements and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as expressly set forth herein and in such exhibits and attachments hereto or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the parties hereto. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall represent one instrument.

(b) Waiver, Modification, etc. No covenant, agreement, term or condition of this Agreement shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by the CRA and Developer. No waiver of any Default or Event of Default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Default or Event of Default thereof.

Section 7.5 Invalidity of Certain Provisions. If any provision of this Agreement or the application thereof to any person or circumstances is, to any extent, finally determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, and the application of such provision to persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 7.6 Remedies Cumulative. Each right and remedy of either party provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), and the exercise or beginning of the exercise by a party of any one or more of the rights or remedies provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise, except as otherwise expressly limited by this Agreement, shall not preclude the simultaneous later exercise by such party of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise except as otherwise expressly limited by the terms of this Agreement.

Section 7.7 Performance at Each Party's Sole Cost and Expense. Unless otherwise expressly provided in this Agreement, when either party exercises any of its rights, or renders or performs any of its obligations hereunder, such party shall do so at its sole cost and expense, except in the event of litigation between the parties hereto, in which case attorney's fees shall be paid to the prevailing party in any such litigation.

Section 7.8 Agreement Negotiated by All Parties. The parties recognize and acknowledge that they both participated, with the assistance of respective counsel in negotiation and preparation of this Agreement and no party shall have any negative inference or presumption raised against it for having drafted the Agreement.

Section 7.9 Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, CRA and Developer and, except as otherwise provided herein, their respective permitted successors and permitted assigns and shall be construed as covenants running with the land.

Section 7.10 Nonliability of Officials and Employees. No member, officer, director, stockholder, partner, elected or appointed official or employee of the CRA, City or Developer shall be personally liable to Developer, CRA or City, as the case may be, or any successor in interest, in the event of default or breach by a party or for any amount or obligation which may become due to the other party or successor under the terms of this Agreement; and, any and all such personal liability, either at common law or in equity or by constitution or statute, any and all such rights and claims against, every such person, or under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

Section 7.11 Conflict of Interest. Developer represents and warrants that, to the best of its knowledge, no member, official or employee of CRA or City has any direct or indirect financial interest in this Agreement, nor has participated in any decision relating to this Agreement that is prohibited by law. Developer represents and warrants that, to the best of its knowledge, no officer, agent, employee or representative of CRA or City has received any payment or consideration for the making of this Agreement, directly or indirectly from Developer. Developer warrants and represents that it has not been paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and cost of professional services such as architects, engineers, and attorneys providing services to Developer. Developer acknowledges that CRA and City are relying upon the foregoing representations and warranties in entering into this Agreement and would not enter into this Agreement absent the same.

Section 7.12 No Partnership. The parties hereby acknowledge that it is not their intention under this Agreement to create between themselves a partnership, joint venture, tenancy-in-common, joint tenancy, or agency relationship for the purpose of developing the Site Plan, or for any other purpose whatsoever. Accordingly, notwithstanding any provisions contained herein, nothing in this Agreement or other documents executed by the parties with respect to the Site Plan and Public Improvements, shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy or agency relationship of any kind or nature whatsoever among the parties hereto. The provisions of this section shall survive the expiration of the Agreement.

Section 7.13 No Third Party Beneficiaries. Nothing in this Agreement shall confer upon any person, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

Section 7.14 Progress of Construction/CRA's Representative. Developer shall keep the CRA at all times apprised of the progress of Developer with respect to the Public Improvements, and shall deliver written reports of same not less than monthly. The CRA may, from time to time, designate one or more employees or agents to be the CRA's representative ("CRA's Representative") who may, during normal business hours, in a reasonable manner, visit, inspect or appraise the Public Improvements, the materials to be used thereon or therein, contracts, records, plans, specifications and shop drawings relating thereto, whether kept at Developer's offices or at the construction site or elsewhere, and the books, records, accounts and other financial and accounting records of Developer wherever kept, and to make copies thereof as often as may be requested. Further, CRA's Representative shall be advised of, and entitled to attend, meetings among Developer, Developer's representative and the contractor or subcontractor or any subset of this group. Developer will cooperate with the CRA to enable CRA's Representative to conduct such visits, inspections and appraisals. Developer shall make available to CRA's Representative, upon request, daily log sheets covering the period since the immediately preceding inspection showing the date, weather, subcontractors on the job, number of workers and status of construction.

CRA FUNDING AGREEMENT BETWEEN THE HOLLYWOOD, FLORIDA COMMUNITY REDEVELOPMENT AGENCY AND MARGARITAVILLE HOLLYWOOD BEACH RESORT, LLC

IN WITNESS WHEREOF, CRA and DEVELOPER intending to be legally bound, have executed this Agreement as of the day and year first above written.

By authority of Resolution No. R-BCRA-2011-03
duly passed and adopted by the Board of the
Hollywood Community Redevelopment Agency on
January 19, 2011.

HOLLYWOOD COMMUNITY REDEVELOPMENT
AGENCY, a dependent special district of the City of
Hollywood

By: _____
Name: Peter Bober
Title: Chair

By: _____
Name: Jorge A. Camejo
Title: Executive Director

ATTEST:

APPROVED AS TO FORM AND
SUFFICIENCY FOR THE USE AND RELIANCE
OF THE HOLLYWOOD COMMUNITY
REDEVELOPMENT AGENCY ONLY:

By: _____
Phyllis Lewis, Board Secretary

By: _____
Name: Jeffrey P. Sheffel, Esq.
Title: General Counsel

**CRA FUNDING AGREEMENT BETWEEN THE HOLLYWOOD, FLORIDA COMMUNITY
REDEVELOPMENT AGENCY AND MARGARITAVILLE HOLLYWOOD BEACH RESORT, LLC**

DEVELOPER

ATTEST:

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 ____ day of _____, 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 ____ day of _____, 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: _____

EXHIBIT "A"
PUBLIC IMPROVEMENTS

**EXHIBIT "A" TO CRA FUNDING AGREEMENT BETWEEN THE HOLLYWOOD, FLORIDA
COMMUNITY REDEVELOPMENT AGENCY AND MARGARITAVILLE HOLLYWOOD BEACH
RESORT, LLC**

The relocation and installation of all off-site underground utilities and infrastructure, as well as the ground level installation of sidewalks, curbing, landscaping, public restrooms, and brick pavers and other depicted improvements, all as more formally set forth within the Site Plan on those certain Civil Plans prepared by Consulting Engineers & Science, Inc., Sheets C-4 and C-10, dated 10/27/2010 which may be subsequently revised at the request of the City of Hollywood and other authorizing agencies for the purpose of permitting.

Off-Site Public Improvements & Estimated Costs:

<u>No.</u>	<u>Description</u>	<u>Amount</u>
1	General Requirements	\$454,546
2	Construction Layout/Survey	\$ 46,000
3	Maintenance of Traffic	\$ 39,675
4	Demolition	\$241,560
5	Walkway & Breezeway Pavers	\$460,794
6	Pavers & Subbase - Street	\$307,050
7	Asphalt Paving	\$108,867
8	Great Lawn @ Band Shell	\$ 50,140
9	Dance Area	\$ 36,760
10	Curbing / Bands & Site Concrete	\$168,238
11	Traffic Signalization	\$247,250
12	Landscaping	\$603,750
13	Site Lighting	\$293,250
14	Refurbish Band Shell Stage & Equipment*	\$402,500
15	Restrooms, Storage & Information Booth	\$619,620
16	Relocation- Bury Overhead Booth	\$575,000
17	Utilities - Water, Sewer & Drainage	<u>\$345,000</u>
18	PROJECT TOTALS (CRA PUBLIC IMPROVEMENTS)	\$5,000,000

* Although Developer intends to construct or install a control booth on the Leased Property for the operation of the technical equipment within the Bandshell area, said equipment will also be operational and fully functional from the Bandshell area itself independently of the Leased Property.

EXHIBIT "B"

DRAW SCHEDULE

**EXHIBIT "B" TO CRA FUNDING AGREEMENT BETWEEN THE HOLLYWOOD, FLORIDA
COMMUNITY REDEVELOPMENT AGENCY AND MARGARITAVILLE HOLLYWOOD BEACH
RESORT, LLC**

(SEE NEXT PAGE)

MARGARITAVILLE RESORT AT HOLLYWOOD BEACH, LLC.
APPLICATION AND CERTIFICATE FOR PAYMENT

JOB: MARGARITAVILLE RESORT
CRA Public Improvements

APPLICATION NO.
 APPLICATION DATED:
 PERIOD FROM:
 PERIOD TO:
 PROJECT NO.

Arch# 94 08A

A	B	C	D		E	F	G		H	I
			WORK COMPLETED				TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G/C)		
ITEM NO	DESCRIPTION OF WORK	SCHEDULED VALUE	FROM PREVIOUS APPLICATION (D+E)	THIS PERIOD		MATERIALS PRESENTLY STORED (NOT IN D OR E)				
1	General Requirements	454,546.00	-	-					454,546.00	
2	Construction Layout/Survey	46,000.00	-	-					46,000.00	
3	Maintenance of Traffic	39,675.00	-	-					39,675.00	
4	Demolition	241,560.00	-	-					241,560.00	
5	Walkway & Breezeway Pavers	460,794.00	-	-					460,794.00	
6	Pavers & Subbase - Street	307,050.00	-	-					307,050.00	
7	Asphalt Paving	108,867.00	-	-					108,867.00	
8	Great Lawn @ Band Shell	50,140.00	-	-					50,140.00	
9	Danco Area	36,760.00	-	-					36,760.00	
10	Curbing / Bands & Site Concrete	168,238.00	-	-					168,238.00	
11	Traffic Signalization	247,250.00	-	-					247,250.00	
12	Landscaping	603,750.00	-	-					603,750.00	
13	Site Lighting	293,250.00	-	-					293,250.00	
14	Refurbish Band Shell Stage & Equipment	402,500.00	-	-					402,500.00	
15	Restrooms, Storage & Information Booth	619,620.00	-	-					619,620.00	
16	Relocation - Bury Overhead Booth	575,000.00	-	-					575,000.00	
17	Utilities - Water, Sewer & Drainage	345,000.00	-	-					345,000.00	
	PROJECT TOTALS (CRA Public Improvements):	5,000,000.00	-	-				0.00%	5,000,000.00	

**FIRST AMENDMENT TO THE CRA FUNDING AGREEMENT BETWEEN THE HOLLYWOOD,
FLORIDA COMMUNITY REDEVELOPMENT AGENCY AND MARGARITAVILLE HOLLYWOOD
BEACH RESORT, LLC**

THIS FIRST AMENDMENT TO THE CRA FUNDING AGREEMENT (the "Agreement") dated as of this ____ day of September, 2012, by and between the HOLLYWOOD COMMUNITY REDEVELOPMENT AGENCY, a dependent special district of the City of Hollywood ("CRA") and MARGARITAVILLE HOLLYWOOD BEACH RESORT, LLC a Florida limited liability company ("Developer").

RECITALS

- A. CRA and Developer previously entered into that certain Funding Agreement dated February 9, 2011 (the "Agreement").
- B. CRA and Developer desire to amend the Agreement in certain respects as set forth herein.

NOW, THEREFORE, in consideration of the obligations of the parties one to another as set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CRA and Developer agree as follows:

1. Exhibits.

The following Exhibits are hereby deleted and replaced as follows:

Public Improvements. **Exhibit "A"** - Public Improvements attached to the Agreement is hereby deleted in its entirety and replaced by **Exhibit "A" - Version 2** - Public Improvements attached hereto and by this reference made a part hereof.

Draw Schedule. **Exhibit "B"** - Draw Schedule attached to the Agreement is hereby deleted in its entirety and replaced by **Exhibit "B" - Version 2** - Draw Schedule attached hereto and by this reference made a part hereof.

2. Article 2, Section 2.2, is deleted in its entirety and replaced with the following:

**ARTICLE 2
DEVELOPER'S OBLIGATIONS**

*

*

*

Section 2.2 The Developer shall perform the Public Improvements set forth in **Exhibit "A"**. Such Public Improvements shall be completed no later than the date the first Certificate of Occupancy for the project is issued. The estimated value of the Public Improvements set forth in **Exhibit "A"** is \$5,000,000. The Developer shall be responsible for the actual payment of these Public Improvements. CRA shall reimburse the Developer for said Public Improvements in an amount not to exceed \$5,000,000. Said reimbursement shall be in accordance with Section 3.1 hereof. The Developer shall bear all costs for these Public Improvements exceeding \$5,000,000. Further, Developer shall be required and be solely responsible for obtaining any and all federal, state and local approvals and permits relating to the Public Improvements. Developer shall obtain such approvals expeditiously and with reasonable due diligence.

3. Article 3, Section 3.1, is amended as follows:

ARTICLE 3
CRA'S OBLIGATIONS

Section 3.1 Reimbursement for the Public Improvements. The CRA shall provide Developer with reimbursement for the Public Improvements specifically set forth in **Exhibit "A"** in an amount not to exceed Five Million Dollars (\$5,000,000) as follows:

Each month Developer shall submit unto the Executive Director of the CRA an aApplication and Certificatione for Payment for the percentage of completed work as per the draw schedule attached hereto as **Exhibit "B"**, together with other information or documentation reasonably deemed necessary by the CRA, including, but not limited, to releases of liens. The Executive Director shall have thirty (30) days from such submittal to review the aApplication and Certificatione for Payment and may request further documentation to substantiate the expenditures. Upon approval of the aApplication and Certificatione for Payment, the Executive Director shall forward the approval to the City's Director of Financial Services for reimbursement to the Developer within fifteen (15) days. If Developer submits an aApplication and Certificatione of Payment seeking reimbursement for a particular Public Improvement that exceeds the dollar amount indicated for that Public Improvement in **Exhibit "A,"** the aApplication and Certificatione of Payment shall specify transfers from other Public Improvements in **Exhibit "A"** in amounts that equal the amount of excess. Developer's final application for payment shall be submitted no later than 120 days after the first Certificate of Occupancy is issued for the Hotel Parcel. Thereafter, the CRA shall have no obligation to fund additional payment requests even if there remains a balance from the \$5,000,000 amount.

**FIRST AMENDMENT TO THE CRA FUNDING AGREEMENT BETWEEN THE HOLLYWOOD,
FLORIDA COMMUNITY REDEVELOPMENT AGENCY AND MARGARITAVILLE HOLLYWOOD
BEACH RESORT, LLC**

DEVELOPER

MARGARITAVILLE HOLLYWOOD BEACH
RESORT, LLC, a Florida Limited Liability Company

By: _____

Its: Managing Member

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, Managing 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: _____

**EXHIBIT "A" -VERSION 2
PUBLIC IMPROVEMENTS**

**EXHIBIT "A" TO CRA FUNDING AGREEMENT BETWEEN THE HOLLYWOOD, FLORIDA
COMMUNITY REDEVELOPMENT AGENCY AND MARGARITAVILLE HOLLYWOOD BEACH
RESORT, LLC**

The relocation and installation of all off-site underground utilities and infrastructure, as well as the ground level installation of sidewalks, curbing, landscaping, public restrooms, and brick pavers and other depicted improvements, all as more formally set forth within the Site Plan on those certain Civil Plans prepared by Consulting Engineers & Science, Inc., Sheets C-4 and C-10, dated 10/27/2010 which may be subsequently revised at the request of the City of Hollywood and other authorizing agencies for the purpose of permitting.

Off-Site Public Improvements & Estimated Costs:

<u>No.</u>	<u>Description</u>	<u>Amount</u>
1	General Requirements	\$454,546
2	Construction Layout/Survey	\$ 46,000
3	Maintenance of Traffic	\$ 39,675
4	Demolition	\$241,560
5	Walkway & Breezeway Pavers	\$460,794
6	Pavers & Subbase - Street	\$307,050
7	Asphalt Paving	\$108,867
8	Great Lawn @ Band Shell	\$ 50,140
9	Dance Area	\$ 36,760
10	Curbing / Bands & Site Concrete	\$168,238
11	Traffic Signalization	\$247,250
12	Landseaping	\$603,750
13	Site Lighting	\$293,250
14	Refurbish Band Shell Stage & Equipment *	\$402,500
15	Restrooms, Storage & Information Booth	\$619,620
16	<u>LandShark Bar & Grill/Relocation - Bury Overhead Utilities</u>	\$575,000
17	Utilities - Water, Sewer & Drainage	<u>\$345,000</u>
18	PROJECT TOTALS (CRA PUBLIC IMPROVEMENTS)	\$5,000,000

* Although Developer intends to construct or install a control booth on the Leased Property for the operation of the technical equipment within the Bandshell area, said equipment will also be operational and fully functional from the Bandshell area itself independently of the Leased Property.

EXHIBIT "B" -VERSION 2

DRAW SCHEDULE

**EXHIBIT "B" TO CRA FUNDING AGREEMENT BETWEEN THE HOLLYWOOD, FLORIDA
COMMUNITY REDEVELOPMENT AGENCY AND MARGARITAVILLE HOLLYWOOD BEACH
RESORT, LLC**

(SEE NEXT PAGE)

APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702

Page One of Two Pages

TO: Margaritaville Hollywood Beach Resort, LLC. 3501 North Ocean Drive Hollywood, Florida 33019	PROJECT: INTRACOASTAL PAREL AND JOHNSON / MICHIGAN STREET IMPROVEMENTS LandShark Bar & Grill 1112 North Ocean Drive, Hollywood, Florida 33019	APPLICATION NO: 0 PROJECT NO: Arch# 94.08A CONTRACT DATE:	Distribution to: <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="text-align: center;">X</td> <td>OWNER</td> </tr> <tr> <td style="text-align: center;"></td> <td>ARCHITECT</td> </tr> <tr> <td style="text-align: center;"></td> <td>CONTRACTOR</td> </tr> </table>	X	OWNER		ARCHITECT		CONTRACTOR
X	OWNER								
	ARCHITECT								
	CONTRACTOR								
FROM: JJW CONSTRUCTION, INC. 1670 West McNab Road Fort Lauderdale, FL 33309	VIA ARCHITECT: ADACHE GROUP ARCHITECTS 550 South Federal Highway Fort Lauderdale, Florida 33301								

CONTRACT FOR:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1 ORIGINAL CONTRACT SUM	\$5,000,000.00
2 Net change by Change Orders	\$0.00
3 CONTRACT SUM TO DATE (Line 1 + 2)	\$5,000,000.00
4 TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$ -
5 RETAINAGE:	
a. 10% of Completed Work	\$ -
(Column D + E on G703)	
b. 10% of Stored Materials	\$ -
(Column F on G703)	
Total Retainage (Lines 5a + 5b or	\$ -
Total in Column I on G703)	
6 TOTAL EARNED LESS RETAINAGE (Line 4 less Line 5 Total)	\$ -
7 LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate & Payments not received)	\$ -
8 CURRENT PAYMENT DUE	\$ -
9 BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 8)	\$5,000,000.00

CHANGE ORDER SUMMARY	ADDITIONS:	DEDUCTIONS:
Total changes approved in previous months by Owner	\$ -	\$ -
Total approved this Month	\$ -	\$ -
TOTALS	\$ -	\$ -
NET CHANGES by Change Order	\$0.00	

Based on AIA DOCUMENT G702 - APPLICATION AND CERTIFICATION FOR PAYMENT - 1992 EDITION - AIA © 1992

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: JJW CONSTRUCTION, INC.

By: Kenneth Wilson, Controller Date: _____
State of: Florida County of: Broward
Subscribed and Sworn to before me this _____ day of _____
Notary Public:
My Commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED: \$ -

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT: ADACHE GROUP ARCHITECTS

By: _____ Date: _____
This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

EXHIBIT "B" - Version 2

CONTINUATION SHEET

similar to AIA DOCUMENT G703

PAGE 2 OF 2 PAGES

JOB: INTRACOASTAL PARCEL AND JOHNSON /
MICHIGAN STREET IMPROVEMENTS
LandShark Bar & Grill
1112 North Ocean Drive, Hollywood, FL 33019

JJW CONSTRUCTION, INC.
APPLICATION AND CERTIFICATE FOR PAYMENT

APPLICATION NO:
APPLICATION DATED:
PERIOD FROM:
PERIOD TO:
PROJECT NO: Arch# 04.08A

A	B	C	D E		F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G/C)	BALANCE TO FINISH (C-G)	RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D+E)	THIS PERIOD					
1	General Requirements	454,546.00	-	-	-	-	-	454,546.00	
2	Construction Layout/Survey	46,000.00	-	-	-	-	-	46,000.00	
3	Maintenance of Traffic	39,675.00	-	-	-	-	-	39,675.00	
4	Demolition	241,560.00	-	-	-	-	-	241,560.00	
5	Walkway & Breezeway Pavers	460,794.00	-	-	-	-	-	460,794.00	
6	Pavers & Subbase - Street	307,050.00	-	-	-	-	-	307,050.00	
7	Asphalt Paving	108,867.00	-	-	-	-	-	108,867.00	
8	Great Lawn @ Band Shell	50,140.00	-	-	-	-	-	50,140.00	
9	Dance Area	36,760.00	-	-	-	-	-	36,760.00	
10	Curbing / Bands & Site Concrete	168,238.00	-	-	-	-	-	168,238.00	
11	Traffic Signalization	247,250.00	-	-	-	-	-	247,250.00	
12	Landscaping	603,750.00	-	-	-	-	-	603,750.00	
13	Site Lighting	293,250.00	-	-	-	-	-	293,250.00	
14	Refurbish Band Shell Stage & Equipment	402,500.00	-	-	-	-	-	402,500.00	
15	Restrooms, Storage & Information Booth	619,620.00	-	-	-	-	-	619,620.00	
16	LandShark Bar & Grill / Bury Overhead Utilities	575,000.00	-	-	-	-	-	575,000.00	
17	Utilities - Water, Sewer & Drainage	345,000.00	-	-	-	-	-	345,000.00	
									-
	PROJECT TOTALS (CRA & Intracoastal):	5,000,000.00	-	-	-	-	0.00%	5,000,000.00	

**SECOND AMENDMENT TO THE CRA FUNDING AGREEMENT BETWEEN THE HOLLYWOOD,
FLORIDA COMMUNITY REDEVELOPMENT AGENCY AND MARGARITAVILLE HOLLYWOOD
BEACH RESORT, L.P.**

THIS SECOND AMENDMENT TO THE CRA FUNDING AGREEMENT (the "Amendment") dated as of this __ day of June, 2013, by and between the HOLLYWOOD, FLORIDA COMMUNITY REDEVELOPMENT AGENCY, a dependent special district of the City of Hollywood ("CRA") and MARGARITAVILLE HOLLYWOOD BEACH RESORT, L.P., a Delaware limited partnership ("Developer").

RECITALS

- A. CRA and Developer previously entered into that certain CRA Funding Agreement dated February 9, 2011 (the "Agreement");
- B. The CRA approved the First Amendment to the Agreement by resolution R-BCRA-2012-49 on September 5, 2012;
- C. CRA and Developer desire to further amend the Agreement in certain respects as set forth herein.

NOW, THEREFORE, in consideration of the obligations of the parties one to another as set forth in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CRA and Developer agree as follows:

- 1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.
- 2. Conflicts; Definitions. In the event of any conflict between this Amendment and the First Amendment or the Agreement, the parties agree that the terms and provisions of this Amendment shall control. All references herein to "this Agreement" shall include the Agreement, the First Amendment and this Amendment as well, as the context shall dictate. Any defined terms not defined in this Amendment shall have the meanings ascribed to them in the Agreement or the Lease Agreement as the context shall dictate.

- 3. Exhibits.

The following Exhibits are hereby deleted in their entirety and replaced as follows:

Public Improvements. **Exhibit "A" Version 2** - Public Improvements attached to the First Amendment is hereby deleted in its entirety and replaced by **Exhibit "A" - Version 3** - Public Improvements attached hereto and by this reference made a part hereof.

Draw Schedule. **Exhibit "B" - Version 2** is hereby deleted in its entirety and replaced by **Exhibit "B" - Version 3** - Draw Schedule attached hereto and by this reference made a part hereof.

- 4. Lease Agreement. All references to the "Lease Agreement" are hereby amended to refer to the Amended and Restated Development Agreement and Ground Lease dated June __, 2013, as the same may be amended from time to time.

- 5. Article 4, Section 4.1(a) is amended by deleting the words "~~the Lease and related documents~~" from the first sentence.

- 6. Article 4, Section 4.2 is deleted in its entirety and replaced with the following:

Section 4.2 Enforcement of Performance; Damages and Termination. If an Event of Default occurs and is continuing, the non-defaulting party may elect to either: (a) enforce performance or observance by the defaulting party of the applicable provisions of this Agreement, (b) seek actual damages resulting from the Default; provided, however, if the Ground Lease Agreement has terminated and the City has taken over the Project, then the parties agree that such

ownership shall be the CRA's sole remedy, or (c) seek reimbursement for any monies paid to Developer pursuant to this Agreement which were provided to Developer and were not used for the Public Improvements.

7. Article 5, Section 5.2, is deleted in its entirety.

8. Article 6, Section 6.1, the following parties are added as notices parties for the Developer:

With a copy to: c/o Starwood Capital Group Global, L.P.
591 W. Putnam Avenue
Greenwich, CT 06830
Attn: Ellis F. Rinaldi

With a copy to: Rinaldi, Finkelstein & Franklin
591 W. Putnam Avenue
Greenwich, CT 06830
Attn: Eric W. Franklin

With a copy to: Latham & Watkins, LLP
233 S. Wacker Drive, Suite 5800
Chicago, IL 60606
Attn: Gary E. Axelrod, Esq.

9. Article 7, Section 7.2, is deleted in its entirety and replaced with the following:

Section 7.2 No Assignment, Pledge or Hypothecation. Developer shall not assign, pledge or hypothecate Developer's interest under this Agreement, or in any monies due or to become due hereunder or thereunder without the CRA's prior written consent in each instance, which consent may be withheld in the CRA's sole and absolute discretion; provided, however, Developer shall have the right to pledge or collaterally assign its interest in this Agreement to any Lender providing construction financing to the Project and such Lender shall have the right to take over the rights and obligations of the Developer under this Agreement upon Lender's exercise of its remedies under the Leasehold Mortgage provided that the Lender complies with the terms of this Agreement and Article VI of the Ground Lease Agreement following the occurrence and during the continuance of an event of default under the Leasehold Mortgage. Developer shall provide the CRA with a copy of any pledge or collateral assignment of this Agreement. Upon Developer's request, the CRA shall, subject to approval by the CRA Board in each instance, execute, acknowledge and deliver any instrument reasonably required by the Lender acknowledging the pledge or collateral assignment of this Agreement. Any assignment, pledge or hypothecation without such consent or not otherwise provided in Section 7.2 shall be void.

10. A new sentence is added to the end of Section 7.10, as follows:

"The provisions of this section shall survive the expiration of this Agreement."

11. Ratification. Except as set forth in this Amendment, all other terms and provisions of the Agreement shall remain unmodified and in full force and effect and the parties hereby ratify the terms and conditions set forth in the Agreement.

IN WITNESS WHEREOF, CRA and DEVELOPER intending to be legally bound, have executed this Second Amendment to the CRA Funding Agreement as of the day and year first above written.

CRA

HOLLYWOOD COMMUNITY REDEVELOPMENT AGENCY

ATTEST:

Board Secretary

By: _____
Peter Bober, Chair

APPROVED AS TO FORM & LEGALITY
FOR THE USE AND RELIANCE OF THE
HOLLYWOOD FLORIDA COMMUNITY
REDEVELOPMENT AGENCY, ONLY

Jeffrey P. Sheffel, General Counsel

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this __ day of June, 2013, by Peter Bober, Chair of the Hollywood Florida Community Redevelopment Agency. He (check one) [☐] is personally known to me or [☐] has produced _____ as identification.

Notary Public
Name: _____
Commission Number: _____
Commission expires: _____

SECOND AMENDMENT TO THE CRA FUNDING AGREEMENT BETWEEN THE HOLLYWOOD COMMUNITY REDEVELOPMENT AGENCY AND MARGARITAVILLE HOLLYWOOD BEACH RESORT, L.P.

DEVELOPER

MARGARITAVILLE HOLLYWOOD BEACH RESORT, L.P.,
a Delaware limited partnership

By: Margaritaville Hollywood Beach Resort GP, L.L.C.,
a Delaware limited liability company,
its general partner

By: MHBR JV, L.P.,
a Delaware limited partnership,
its sole member

By: Lojeta-Millennium GP, LLC,
a Florida limited liability company,
its Operating General Partner

By: _____
Name: _____
Title: _____

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of June, 2013, by Lon Tabatchnick, the _____ of Lojeta-Millennium GP, LLC, as operating general partner of MHBR JV, L.P., as sole member of Margaritaville Hollywood Beach Resort GP, L.L.C., as general partner of Margaritaville Hollywood Beach Resort, L.P., a Delaware limited partnership. He is personally known to me or has produced _____ as identification.

Notary Public
Name: _____
Commission Number: _____
Commission expires: _____

**EXHIBIT "A" -VERSION 3
PUBLIC IMPROVEMENTS**

The relocation and installation of all off-site underground utilities and infrastructure, as well as the ground level installation of sidewalks, curbing, landscaping, public restrooms, and brick pavers and other depicted improvements, all as more formally set forth within the Site Plan on those certain Civil Plans prepared by Consulting Engineers & Science, Inc., Sheets C-4 and C-10, dated 10/27/2010 which may be subsequently revised at the request of the City of Hollywood and other authorizing agencies for the purpose of permitting.

Off-Site Public Improvements & Estimated Costs:

<u>No.</u>	<u>Description</u>	<u>Amount</u>
1	General Requirements	\$454,546
2	Construction Layout/Survey	\$ 46,000
3	Maintenance of Traffic	\$ 39,675
4	Demolition	\$241,560
5	Walkway & Breezeway Pavers	\$460,794
6	Pavers & Subbase - Street	\$307,050
7	Asphalt Paving	\$108,867
8	Great Lawn @ Band Shell	\$ 50,140
9	Dance Area	\$ 36,760
10	Curbing / Bands & Site Concrete	\$168,238
11	Traffic Signalization	\$247,250
12	Landscaping	\$603,750
13	Site Lighting	\$293,250
14	Refurbish Band Shell Stage & Equipment *	\$402,500
15	Restrooms, Storage & Information Booth	\$619,620
16	LandShark Bar & Grill/Relocation - Bury Overhead Utilities	\$575,000
17	Utilities - Water, Sewer & Drainage	<u>\$345,000</u>
18	PROJECT TOTALS (CRA PUBLIC IMPROVEMENTS)	\$5,000,000

* Although Developer intends to construct or install a control booth on the Leased Property for the operation of the technical equipment within the Bandshell area, said equipment will also be operational and fully functional from the Bandshell area itself independently of the Leased Property.

EXHIBIT "B" -VERSION 3

DRAW SCHEDULE
(SEE NEXT PAGE)

JOB: INTRACOASTAL PARCEL AND JOHNSON /
MICHIGAN STREET IMPROVEMENTS
LandShark Bar & Grill
1112 North Ocean Drive, Hollywood, FL 33019

A	B	C	D	E	H	I
			WORK COMPLETED		BALANC E TO FINISH (C-G)	RETAINAGE (IF VARIABLE RATE)
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	FROM PREVI OUS APPLIC	THIS PERIOD		
1	General Requirements	454,546.00	-	-	454,546.00	
2	Construction Layout/Survey	46,000.00	-	-	46,000.00	
3	Maintenance of Traffic	39,675.00	-	-	39,675.00	
4	Demolition	241,560.00	-	-	241,560.00	
5	Walkway & Breezeway Pavers	460,794.00	-	-	460,794.00	
6	Pavers & Subbase • Street	307,050.00	-	-	307,050.00	
7	Asphalt Paving	108,867.00	-	-	108,867.00	
8	Great Lawn @ Band Shell	50,140.00	-	-	50,140.00	
9	Dance Area	36,760.00	-	-	36,760.00	
10	Curbing / Bands & Site Concrete	168,238.00	-	-	168,238.00	
11	Traffic Signalization	247,250.00	-	-	247,250.00	
12	Landscaping	603,750.00	-	-	603,750.00	
13	Site Lighting	293,250.00	-	-	293,250.00	
14	Refurbish Band Shell Stage &	402,500.00	-	-	402,500.00	
15	Restrooms, Storage & Information	619,620.00	-	-	619,620.00	
16	LandShark Bar & Grill/ Bury	575,000.00	-	-	575,000.00	
17	Utilities • Water, Sewer & Drainage	345,000.00	-	-	345,000.00	
						-
	PROJECT TOTALS (CRA &	5,000,000.00	-	-	5,000,000.00	-

EXHIBIT "C-3"
CRA COMPENSATED FUNDING AGREEMENT

AMENDED AND RESTATED COMPENSATED FUNDING AGREEMENT

THIS AMENDED AND RESTATED COMPENSATED FUNDING AGREEMENT ("Agreement" or "Compensated Funding Agreement") is entered into as of June __, 2013 (the "Effective Date") by and between MARGARITAVILLE HOLLYWOOD BEACH RESORT, L.P., a Delaware limited partnership (hereinafter referred to as "Developer") and the HOLLYWOOD, FLORIDA COMMUNITY REDEVELOPMENT AGENCY, a dependent special district of the City of Hollywood (hereinafter referred to as "CRA"). The parties to this Agreement may hereinafter be referred to collectively as "Parties", individually as a "Party" or by name.

RECITALS:

- A. On July 30, 2009, the City of Hollywood (the "City") issued Request for Proposal No. 4212-09-1S for the redevelopment of the City-owned site commonly known as Johnson Street, comprising two contiguous parcels, for a resort hotel project. After a competitive process, which included public hearings and deliberations by the Mayor and City Commission, on April 7, 2010, pursuant to Resolution Number R-2010-097, the appropriate officials of the City were authorized to negotiate with Developer the basic terms and conditions for such redevelopment;
- B. The CRA approved the original Compensated Funding Agreement by resolution R-BCRA-2012-49 on September 5, 2012;
- C. The appropriate officials of the City have subsequently worked with representatives of Developer in the preparation of that certain Amended and Restated Development Agreement and Ground Lease dated June __, 2013, (as may be amended from time to time, "Ground Lease Agreement") which, among other things, provides for the construction, development, operation and maintenance of a resort hotel (the "Hotel") on the Leased Property (as therein defined), together with a Parking Garage (collectively, the "Developer Improvements"), and the development and construction of certain public improvements or facilities (the "Public Improvements"), as more particularly set forth in the Site Plan (the "Site Plan") attached to the Ground Lease Agreement;
- D. In accordance with the terms and provisions set forth in the Ground Lease Agreement, and pursuant to the authorization of the Board of Commissioners of the CRA ("CRA Board"), the appropriate officials of the CRA have worked with representatives of Developer in the preparation of this Agreement which provides for, among other things, (1) the CRA to provide a compensated funding to Developer up to a maximum of Twenty-Three Million and 00/100 Dollars (\$23,000,000) to fund certain of the Improvement Costs (as that term is defined in the Ground Lease Agreement), as more specifically described in this Agreement, and (2) in conjunction with the foregoing, the Developer to comply with all the terms, conditions, responsibilities, and obligations set forth within the Ground Lease Agreement; and
- E. The Developer desires to accept the Compensated Funding subject to the terms, conditions and restrictions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and CRA hereby agree as follows:

1. RECITALS. The foregoing recitals are true and correct and are incorporated herein by reference. All capitalized terms not otherwise defined in this Agreement shall have the meaning ascribed thereto in the Ground Lease Agreement.
2. COMPLIANCE WITH GROUND LEASE AGREEMENT: As a material inducement for CRA to enter into this Agreement with Developer, Developer hereby covenants, at all times during the Term (as defined below) of this Agreement, to comply with, perform, and/or satisfy each and every term, condition, obligation, and/or responsibility required of Developer set forth within the Ground Lease Agreement in all material aspects, including, but not limited to, the development, construction, maintenance, and operation (if applicable) of the Public Improvements and the Developer Improvements as contemplated therein.

3. TERMINATION OF LOAN AGREEMENT: Reference is made to that certain Loan Agreement dated February 9, 2011, between CRA, as Funder, and Developer, as Borrower. CRA and Developer hereby acknowledge and agree that (a) the Loan Agreement is terminated and of no further force and effect between the parties and (b) the parties are released from all rights and obligations set forth in the Loan Agreement including, but not limited to, the CRA's obligation to fund the Loan.

4. COMPENSATED FUNDING AMOUNT & TERM:

- (a) The compensated funding (the "Compensated Funding") as contemplated herein shall be in the maximum amount of Twenty-Three Million and 00/100 Dollars (\$23,000,000) and shall be disbursed pursuant to this Agreement. The Compensated Funding shall be bifurcated into two tranches consisting of (a) Ten Million and 00/100 Dollars (\$10,000,000) (the "FF&E Compensated Funding") to be used solely for the Improvement Costs designated in the Budgeted Improvement Costs, as "Furniture, Fixtures, and Equipment" or "Operating Supplies and Equipment" (collectively the "FF&E") and (b) Thirteen Million and 00/100 Dollars (\$13,000,000) (the "Construction Costs Compensated Funding") to be used solely for the Improvement Costs designated in the Budgeted Improvement Costs, as "Constructions Costs" exclusive of; (i) "Furniture, Fixtures, and Equipment," (ii) "Operating Supplies and Equipment," (iii) "Construction Contingency" and (iv) "Payment and Performance Bonds." The FF&E Compensated Funding shall not be used for Construction Costs, and the Construction Costs Compensated Funding shall not be used for FF&E, without the prior written consent of the CRA in each instance, which consent may be withheld in the CRA's sole discretion. Reference in this Agreement to the Compensated Funding shall collectively mean and refer to both the FF&E Compensated Funding and Construction Costs Compensated Funding.
- (b) The "Term" of this Agreement shall commence upon the Effective Date and the obligation of the CRA to fund the Compensated Funding shall terminate thirty-six (36) months from the commencement of construction as set forth in the Ground Lease Agreement, unless sooner terminated by either party as set forth herein (the "Funding Termination Date"). In addition to any other rights and remedies of the CRA set forth in this Agreement, any portion of the Compensated Funding for which a Draw Request (as defined below) has not been submitted by Developer to the CRA by the Funding Termination Date, shall be forfeited and Developer hereby waives any rights to such forfeited portion of the Compensated Funding. Notwithstanding the foregoing, this Agreement shall remain in full force and effect following the Funding Termination Date for such time periods as necessary to give the terms and provisions of this Agreement their full force and effect.
- (c) The Compensated Funding shall be funded pursuant to Draw Requests; provided, however, that (i) with respect to the FF&E Compensated Funding, the initial Draw Request shall not be made until such time as an FF&E order needs to be timely placed by Developer based upon the progress of the Hotel's construction, and in no event shall said Draw Request be earlier than six (6) months following the commencement of said construction and (ii) with respect to the Construction Costs Compensated Funding, the initial Draw Request shall not be made until such time as construction has commenced with Disbursements (as defined below) to be based upon the progress of the Developer Improvements' construction. Such Disbursements shall be made not more than monthly on a percentage of construction completion basis, up to a maximum, in the first CRA fiscal year (i.e., the twelve (12) months ending September 30) in which construction occurs, of Six Million Five Hundred Thousand and 00/100 Dollars (\$6,500,000.00) (the "First Year Limit"). In the event that the Developer submits Draw Requests for the Construction Costs Compensated Funding in excess of the First Year Limit, such Draw Requests shall not be funded until the second CRA fiscal year in which construction occurs and the CRA shall make Disbursements of such excess amount at the start of the CRA's second fiscal year and then make additional Disbursements on a percentage of construction completion basis, up to the total maximum amount of the Compensated Funding.

5. USE OF PROCEEDS/DISBURSEMENT PROCEDURES:

- (a) General Conditions Precedent to All Disbursements. CRA's obligation to fund any portion of the Compensated Funding, or take any other action under this Agreement for the benefit of Developer, shall be subject at all times to satisfaction of each of the following conditions precedent;
- a. There exists no Default under this Agreement or the Ground Lease Agreement; and
 - b. CRA shall have received all other documents, instruments and forms of evidence or other materials reasonably required or requested by the CRA under the terms of this Agreement; and
 - c. CRA shall have received evidence reasonably satisfactory to it that the Leased Property and the Developer Improvements are insured as required under Section 7 hereof; and
 - d. Developer shall have paid all fees then due and payable to CRA hereunder; and
 - e. CRA shall have received an "Application and Certification for Payment" in substantially the form attached hereto as **Exhibits "B and C"**, signed by an authorized officer of Developer certifying that (i) with respect to the FF&E Compensated Funding, the progress of the Hotel's construction requires the placement of an FF&E order by Developer and (ii) with respect to the Construction Costs Compensated Funding, the percentage completion of the Developer Improvements' construction based on the expenditure of Construction Costs for the Developer Improvements to date as to the overall Budgeted Construction Costs for the Developer Improvements, plus such other information as required by this Agreement. Such Application and Certification for Payment will be required with each Draw Request for a Disbursement of a portion of the FF&E Compensated Funding and Construction Costs Compensated Funding.
- (b) Disbursements of FF&E Compensated Funding. The proceeds from the FF&E Compensated Funding will be used solely for the FF&E, and disbursed pursuant to monthly Draw Requests submitted by the Developer to the CRA meeting the requirements set forth herein.
- a. During the Term, but after the date of receipt by the CRA of the Application and Certification for Payment certifying that the progress of the Hotel's construction requires the placement of an FF&E order by Developer, CRA shall make disbursements (each, a "Disbursement" or "FF&E Disbursement" with such terms used interchangeably) of the FF&E Compensated Funding to Developer in the amount requested in the Draw Request, up to an amount not to exceed Ten Million and 00/100 Dollars (\$10,000,000).
 - b. Developer may submit to CRA, not more than once per calendar month, a draw request ("Draw Request"), setting forth a description of the FF&E supplied and/or costs incurred or due for which an FF&E Disbursement is requested with respect to any line item ("Item") shown on the Budgeted Improvement Costs; and the total amount incurred, expended and/or due for each requested Item, less prior FF&E Disbursements; and the date on which Developer requests that such FF&E Disbursement be made (the "Funding Date"), which date shall in no event be earlier than five (5) Business Days following submittal by Developer to CRA of the Draw Request (together with all related supporting information and certificates) and the satisfaction by Developer of each applicable condition to an FF&E Disbursement set forth in this Agreement. Each Draw Request shall include: (i) an Application and Certification for Payment, each in substantially the form attached hereto as **Exhibit "C"**; and (ii) such additional information and documentation as may be reasonably required by CRA.
 - c. The Draw Request shall have been made on the forms described above and shall have included: (i) all invoices from all FF&E suppliers and all other persons paid or to be paid

from such an FF&E Disbursement; (ii) lien waivers or releases to the extent permitted by law, conditioned only upon payment of the amount requested in such Draw Request, or evidence of acknowledgement of payment to date reasonably satisfactory to CRA; and (iii) certifications from CRA's Consultant (who shall be the Landlord's Representative as identified in Section 3.8(b) of the Ground Lease Agreement), Developer and the Contractor regarding substantial conformance with the Plans and Specifications and compliance with the construction Budgeted Improvement Costs, along with certifications from the architect regarding substantial conformance with the Plans and Specifications.

- d. Each Draw Request and Application and Certification for Payment by Developer shall constitute a representation and warranty by Developer that (i) the Developer is in compliance with all the conditions precedent to an FF&E Disbursement as specified in this Agreement and (ii) all monies previously disbursed by the CRA to the Developer have been disbursed to the appropriate FF&E suppliers.
 - e. FF&E Disbursements shall be conditioned on the following: (x) the conditions precedent set forth in Section 5(a) above shall be satisfied as of the date of the Disbursement; and (y) such request shall include reasonable evidence of each of the following: (i) that the FF&E for which an FF&E Disbursement has been requested have been purchased by Developer; (ii) that the FF&E is insured as required hereunder; and (iii) that the FF&E is stored in an area in the Project or offsite for which adequate security is provided against theft and vandalism.
 - f. No Draw Request, or Application and Certification for Payment, shall be processed without the documentation required by this Agreement and the CRA reserves the right to withhold all or any portion of the FF&E Compensated Funding if required and/or requested documentation is not submitted or is in a form and substance not reasonably acceptable to the CRA. The payment of any Draw Request by the CRA shall not be construed as a representation or acknowledgment by the CRA that the FF&E or any portion thereof complies with (i) the Plans and Specifications and any other Project documents, and/or (ii) applicable law including the Florida Building Code, it being acknowledged and agreed by the Developer that it is the Developer's sole responsibility to ensure the work complies with (i) and (ii) above.
- (c) Disbursements of Construction Costs Compensated Funding. The proceeds from the Construction Costs Compensated Funding will be used solely for the Construction Costs exclusive of FF&E, Construction Contingency and Payment and Performance Bonds, and disbursed pursuant to monthly Draw Requests submitted by the Developer to the CRA, meeting the requirements set forth herein.
- a. During the Term, but after the date of receipt by the CRA of the Application and Certification for Payment certifying the percentage completion of the Developer Improvements' construction based on the expenditure of Construction Costs for the Developer Improvements to date as to the overall Budgeted Construction Costs for the Developer Improvements, CRA shall make disbursements (each, a "Disbursement" or "Construction Costs Disbursement" with such terms used interchangeably) of the Construction Costs Compensated Funding to Developer to fund Construction Costs, in an amount not to exceed Thirteen Million and 00/100 Dollars (\$13,000,000). Construction Costs Disbursements shall be made on a percentage of construction completion basis based on the certification from the Architect as provided in Section 5(c)c. below. Notwithstanding anything herein to the contrary, in the first CRA fiscal year in which construction occurs, the CRA shall not be required to make Construction Costs Disbursements in excess of the First Year Limit. In the event that the Developer submits Draw Requests for the Construction Costs Compensated Funding in excess of the First Year Limit, such Draw Requests shall not be funded until the second year of construction in the manner specified in Section 4(c).

- b. Developer may submit to CRA, not more than once per calendar month, a Draw Request, setting forth a description of the Construction Costs incurred or due for which a Construction Costs Disbursement is requested, as shown on the Budgeted Improvement Costs; and the total amount incurred, expended and/or due for such Construction Costs, less prior Construction Costs Disbursements; and the Funding Date for such Construction Costs Disbursement, which date shall in no event be earlier than the later of five (5) Business Days following submittal by Developer to CRA of the Draw Request (together with all related supporting information and certificates) and the satisfaction by Developer of each applicable condition to a Construction Costs Disbursement set forth in this Agreement. Each Draw Request shall include: (i) an Application and Certification for Payment, in substantially the form attached hereto as **Exhibit "B"**; and (ii) such additional information and documentation as may be required by CRA.
- c. The Draw Request shall have been made on the forms described above and shall have included: (i) lien waivers or releases to the extent permitted by law, conditioned only upon payment of the amount requested in Developer's Draw Request, or evidence of acknowledgement of payment to date reasonably satisfactory to CRA; and (ii) certifications from CRA's Consultant, Developer and the Contractor regarding substantial conformance with the Plans and Specifications and compliance with the construction Budgeted Improvement Costs, along with certifications from the architect regarding substantial conformance with the Plans and Specifications (may be the AIA form). Additionally, each Application for Payment for a Construction Costs Disbursement shall show a complete breakdown of (1) the actual portion of the work completed and the amount due and (2) the percentage of the work completed along with documentation substantiating same, all in a form and substance reasonably acceptable to the CRA.
- d. Each Draw Request and Application and Certification for Payment by Developer shall constitute a representation and warranty by Developer that (i) the Developer is in compliance with all the conditions precedent to a Construction Costs Disbursement specified in this Agreement, (ii) the work has progressed to the point indicated, (iii) the quality of the work is in accordance with the applicable Plans and Specifications, and (iv) all monies previously disbursed by the CRA to the Developer have been disbursed to the appropriate contractors, consultants, subcontractors, materialmen, vendors and suppliers based upon the prior Application and Certification for Payment.
- e. Construction Costs Disbursement shall be conditioned on the following: (x) the conditions precedent set forth in Section 5(a) above shall be satisfied as of the date of the Construction Costs Disbursement; and (y) such request shall include evidence of each of the following: (i) that the work for which the Construction Costs Disbursement is being made is insured as required hereunder; and (ii) that any construction materials for which the Construction Costs Disbursement is being made are stored in an area in the Project or offsite for which adequate security is provided against theft and vandalism.
- f. No Draw Request and Application and Certification for Payment shall be processed without the documentation required by this Agreement and the CRA reserves the right to withhold all or any portion of the Construction Costs Compensated Funding if required and/or requested documentation is not submitted or is in a form and substance not reasonably acceptable to the CRA. The payment of any Draw Request by the CRA shall not be construed as a representation or acknowledgment by the CRA that the work or any portion thereof complies with (i) the Plans and Specifications and any other Project documents, and/or (ii) applicable law including the Florida Building Code, it being acknowledged and agreed by the Developer that it is the Developer's sole responsibility to ensure the work complies with (i) and (ii) above.

6. REPRESENTATIONS AND WARRANTIES:

As a material inducement to CRA's entry into this Agreement, Developer represents and warrants to CRA as of the Effective Date that:

- (a) Authority/Enforceability. Developer is in compliance with all laws and regulations applicable to its organization, existence and transaction of business and has all necessary rights and powers to (i) own, improve and operate the Leased Property as contemplated by the Ground Lease Agreement, this Agreement and any other Project documents and (ii) enter in the funding documents for the Construction Costs Compensated Funding.
- (b) Binding Obligations. Developer is authorized to execute, deliver and perform its obligations under this Agreement, and such obligations shall be valid and binding obligations of Developer.
- (c) Formation and Organizational Documents. Developer has delivered, to CRA all formation and organizational documents of Developer and of the direct partners of Developer as shown on **Exhibit J** to the Ground Lease Agreement, and all such formation and organizational documents remain in full force and effect and have not been amended or modified since they were delivered to CRA. Developer's delivery of any such formation and organizational documents of Developer and direct members of Developer to the City shall be deemed delivery thereof to the CRA.
- (d) No Violation. Developer's execution, delivery, and performance under this Agreement does not: (a) require any consent or approval not heretofore obtained under any partnership agreement, operating agreement, articles of incorporation, bylaws or other formation or organizational document of the Developer; (b) violate any governmental requirement applicable to the Leased Property or any other statute, law, regulation or ordinance or any order or ruling of any court or governmental entity; (c) conflict with, or constitute a breach or default or permit the acceleration of obligations under any agreement, contract, lease, or other document by which the Developer or the Leased Property is bound or regulated; or (d) violate any statute, law, regulation or ordinance, or any order of any court or governmental entity, in any material respect.
- (e) Compliance with Laws. Developer has, and at all times shall have, obtained, all permits, licenses, exemptions, and approvals necessary to develop, occupy, operate and market the Leased Property, and shall maintain compliance with all governmental requirements applicable to the Leased Property and all other applicable statutes, laws, regulations and ordinances necessary for the transaction of its business.
- (f) Litigation. Except as disclosed to CRA in writing, there are no claims, actions, suits, or proceedings pending, or to Developer's knowledge, threatened, against Developer, that would materially and adversely affect the Developer's business operations or its ability to meet its obligations under this Agreement.
- (g) Financial Condition. All financial statements and information heretofore and hereafter delivered to CRA by Developer, including, without limitation, information relating to the financial condition of Developer and the Leased Property, and/or Developer Improvements, fairly and accurately represent the financial condition of the subject thereof and have been prepared (except as noted therein) in accordance with generally accepted accounting principles consistently applied. Developer acknowledges and agrees that CRA may request and obtain additional information from third parties regarding any of the above, including, without limitation, credit reports.
- (h) No Material Adverse Change. There has been no material adverse change in the financial condition of Developer since the dates of the latest financial statements furnished to CRA and, except as otherwise disclosed to CRA in writing, Developer has not entered into any material transaction which is not disclosed in such financial statements.
- (i) Accuracy. All reports, documents, instruments, information and forms of evidence delivered to

CRA concerning the Compensated Funding or disbursement of the Compensated Funding or required by this Agreement are, in all material respects, accurate, correct and sufficiently complete to give CRA true and accurate knowledge of their subject matter, and do not contain any material misrepresentation or omission. Developer's representations in this Section 6 as to third party reports shall be limited to Developer's knowledge, after due inquiry.

- (j) Americans with Disabilities Act Compliance. Developer represents and warrants to CRA that the Leased Property and the Developer Improvements shall be hereafter maintained in material compliance with the requirements and regulations of the Americans With Disabilities Act, of July 26, 1990, Pub. L. No. 101336, 104 Stat. 327, 42 U.S.C. § 12101, et seq., as hereafter amended. At CRA's written request from time to time, Developer shall provide CRA with written evidence of such compliance reasonably satisfactory to CRA. Developer shall be solely responsible for all such ADA costs of compliance and reporting.
- (k) Title. Developer owns good, indefeasible and marketable title to Developer's leasehold interest in the Leased Property and Developer Improvements free and clear of all liens, except for (i) the lien created by the leasehold mortgage for any Construction Loan, if any (ii) title exceptions shown on Schedule B of the Title Policy, and (iii) non-monetary encumbrances affecting Developer's leasehold interest in the Leased Property or the Developer Improvements that are permitted pursuant to the Ground Lease Agreement. No non-monetary encumbrance affecting Developer's leasehold interest in the Leased Property or the Developer Improvements has or will have a materially adverse effect on the title, ownership, value, use or operation of Developer's leasehold interest in the Leased Property and Developer Improvements.
- (l) Management Agreement. Developer is not a party or subject to any management agreement with respect to the Leased Property, except for those permitted by the Ground Lease Agreement.

7. INSURANCE:

Developer shall, during the Term of this Agreement and while any obligation of Developer or CRA under this Agreement remains outstanding, comply with the provisions of Article IX of the Ground Lease Agreement regarding insurance. The CRA shall be entitled to the same rights as the City under Article IX of the Ground Lease Agreement with all references to the City meaning the CRA in the context of this Agreement. The foregoing expressly includes the CRA being (a) included as an "Additional Insured" on the Commercial General Liability, Umbrella Liability and Business Automobile policies and (b) named a "Loss Payee" in all Developer's Property Insurance policies. The failure of the Developer to comply with Article IX of the Ground Lease Agreement as applied to the CRA hereunder shall be a default under this Agreement. Prior to any Disbursement of the Compensated Funding or any portion thereof, Developer shall provide to CRA insurance certificates or other evidence of coverage in form reasonably acceptable to CRA, with the same coverage amounts, deductibles, limits and retentions and under the same terms and conditions as set forth within the Ground Lease Agreement.

8. ENVIRONMENTAL MATTERS:

With respect to Environmental Matters, the CRA shall be entitled to the same rights as the City under Section 8.4 of the Ground Lease Agreement with all references to the City meaning the CRA in the context of this Agreement. The foregoing expressly includes, without limitation, the Environmental Indemnification set forth in Section 8.4(b). The failure of the Developer to comply with Section 8.4 of the Ground Lease Agreement as applied to the CRA hereunder shall be a default under this Agreement.

9. COVENANTS OF DEVELOPER:

- (a) Expenses. Developer shall immediately pay CRA, upon demand, all reasonable out-of-pocket costs and expenses incurred by CRA in connection with: (a) the preparation of this Agreement, and all other documents contemplated hereby and (b) the enforcement or satisfaction by CRA of any of Developer's obligations under this Agreement. For all purposes of this Agreement, CRA's

reasonable costs and expenses shall include, without limitation, all due diligence costs (including travel related thereto), appraisal fees, cost engineering and inspection fees, legal fees and expenses (at both the trial and appellate levels as well as all legal fees and expenses incurred in collecting any costs and expenses under this Section 9(a)), accounting fees, environmental consultant fees, auditor fees, and the cost of any title searches (as may be required by the CRA to confirm the status of title from time to time), title surveys, reconveyance and notary fees. Developer recognizes that CRA may, at its option, require inspection of the Leased Property by an independent supervising architect and/or cost engineering specialist annually and, in addition, at any time a Default exists.

- (b) Further Assurances. Upon CRA's request and at Developer's sole cost and expense, Developer shall execute, acknowledge and deliver any other instruments and perform any other acts necessary, desirable or proper, as reasonably determined by CRA, to carry out the purposes of this Agreement.
- (c) No Assignment; Pledge or Hypothecation. Developer shall not assign, pledge or hypothecate Developer's interest under this Agreement, or in any monies due or to become due hereunder or thereunder including, but not limited to, the Compensated Funding, without the CRA's prior written consent in each instance, which consent may be withheld in the CRA's sole and absolute discretion; provided, however, Developer shall have the right to pledge or collaterally assign its interest in this Agreement to any Lender (as such term is defined in the Ground Lease Agreement) providing construction financing to the Project and such Lender shall have the right to take over the rights and obligations of the Developer under this Agreement upon Lender's exercise of its remedies under the Leasehold Mortgage provided that the Lender complies with the terms of this Agreement and Article VI of the Ground Lease Agreement following the occurrence and during the continuance of an event of default under the Leasehold Mortgage. Developer shall provide the CRA with a copy of any pledge or collateral assignment of this Agreement. Upon Developer's request, the CRA shall, subject to reasonable approval by the CRA Board in each instance, execute, acknowledge and deliver any instrument reasonably required by the Lender acknowledging the pledge or collateral assignment of this Agreement. Any assignment, pledge or hypothecation without such consent or not otherwise provided in Section 9(c) shall be void.
- (d) Existence. Developer shall at all times maintain its existence as a Delaware limited partnership, authorized to transact business in Florida, and preserve and keep in full force and effect its rights and franchises unless the failure to maintain such rights and franchises does not have a material adverse effect on Developer.
- (e) Qualification; Name. Developer shall qualify and remain qualified to do business in each jurisdiction in which the nature of its business requires it to be so qualified except for those jurisdictions where failure to so qualify does not have a material adverse effect on Developer. Developer will transact business in its own name or fictitious name in keeping with its status as a Single Purpose Entity. Developer will not change its name, address or state of formation without the prior written consent of CRA, which consent shall not be unreasonably withheld, conditioned or delayed, except that Developer shall be entitled to convert or otherwise change its form of organization to a limited partnership in accordance with the Ground Lease Agreement.
- (f) Compliance With Laws, Etc. Developer shall (a) comply with all applicable laws, and all restrictive covenants of record affecting Developer or the Leased Property, performance, prospects, assets or operations of Developer, and (b) obtain as needed all permits necessary for its operations and maintain such in good standing, except in each of the foregoing cases where the failure to do so will not have a material adverse effect on Developer.
- (g) Payment of Property Taxes, Etc. Developer shall pay all taxes, assessments, water rates, sewer rates and other charges, now or hereafter levied or assessed against the Leased Property, the improvements and all personal property including the FF&E (hereinafter referred to as the "Property Taxes") prior to the date upon which any fine, penalty, interest or cost may be added

thereto or imposed by law for the nonpayment thereof except to the extent Developer is contesting such Property Taxes through the appropriate proceedings. Developer shall pay any Property Taxes being contested upon the completion of the contest or sooner if required by law as a condition to such contest. Developer shall deliver to CRA, upon request, receipted bills, cancelled checks and other evidence satisfactory to CRA evidencing the payment of the Property Taxes prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by law for the nonpayment thereof.

10. REPORTING COVENANTS:

Financial Information. Throughout the Term, Developer shall deliver to CRA, as soon as available, but in no event later than one hundred twenty (120) days after Developer's fiscal year end, copies of any financial records Developer is obligated to provide to the City pursuant to the terms and conditions of the Ground Lease Agreement, with said copies being certified to the CRA.

11. EVENTS OF DEFAULT/REMEDIES:

- (a) Default. The occurrence of any one or more of the following, during the Term of this Agreement, shall constitute an event of default ("Default") under this Agreement:
- a. Monetary. Developer's failure to pay, when due, any sums payable under this Agreement, which are not paid within ten (10) days after written demand by the CRA to the Developer for such payment; or
 - b. Performance of Obligations. Developer's failure to perform any covenant, agreement or obligation to be performed by Developer under this Agreement (other than the monetary obligations in Section 11(a). immediately above), and such failure continues for a period of more than twenty (20) days after written notice thereof is given by CRA to Developer or, if such default is not reasonably susceptible to cure within such twenty (20) day period, such longer period as is necessary (but not to exceed one hundred and twenty (120) days after such written notice), provided Developer delivers written notice to CRA to such effect in the original twenty (20) day period with a plan to cure the default including a timetable therefore and promptly commences and thereafter diligently prosecutes the cure; or
 - c. Use. If Developer voluntarily ceases construction of the Work for a period in excess of thirty (30) consecutive days and fails to start construction within sixty (60) days after receiving notice from the City pursuant to the Ground Lease Agreement; or
 - d. Liens; Condemnation; Attachment. (i) The recording of any claim of lien against any portion of the Leased Property and the continuance of such claim of lien for twenty (20) days after Developer receives notice but not more than sixty (60) days after the creation of the lien, without discharge, satisfaction, or removal of record by bonding or provision for payment being made by Developer; or (ii) the sequestration or attachment of, or any levy or execution upon any of the Leased Property and/or improvements thereon, or any substantial portion of the other assets of Developer, which sequestration, attachment, levy or execution is not released, expunged or dismissed prior to the earlier of thirty (30) days or the sale of the assets affected thereby; or
 - e. Representations and Warranties. The failure of any representation or warranty of Developer in this Agreement as of the date made (or remade if applicable) and the continuation of such failure for more than ten (10) days after written notice to Developer from CRA requesting that Developer cure such failure; or
 - f. Voluntary Bankruptcy Insolvency; Dissolution. (i) The filing of a petition by Developer for relief under the Bankruptcy Code, or under any other present or future state or federal

law regarding bankruptcy, reorganization or other debtor relief law; (ii) the filing of any pleading or an answer by Developer in any involuntary proceeding under the Bankruptcy Code or other debtor relief law which admits the jurisdiction of the court or the petition's material allegations regarding Developer's insolvency; (iii) a general assignment by Developer for the benefit of creditors; or (iv) Developer applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Developer or any of its property; or

- g. Involuntary Bankruptcy. The failure of Developer to effect a full dismissal of any involuntary petition under the Bankruptcy Code or under any other debtor relief law that is filed against Developer or in any way restrains or limits Developer or CRA regarding the Compensated Funding or the Leased Property, prior to the earlier of the entry of any court order granting relief sought in such involuntary petition, or ninety (90) days after the date of filing of such involuntary petition; or
 - h. Transfer of Assets. Any transfer of assets not permitted pursuant to the terms of the Ground Lease Agreement or Other Related Documents; or
 - i. Change in Management or Control. Any change in Management or Control not permitted under the Ground Lease Agreement or Other Related Documents; or
 - j. Environmental Matters. The breach by Developer of the provisions of Section 8.4 of the Ground Lease Agreement; or
 - k. Misapplication; Misappropriation or Misuse. The misapplication; misappropriation or misuse of the Compensated Funding or any portion thereof in violation of the terms of this Agreement.
- (b) Remedies. First, upon occurrence of a Default, any and all obligations of CRA to fund further Disbursements of the Compensated Funding shall immediately terminate. Further upon the occurrence of any Default specified in this Section 11, CRA may (i) seek actual damages resulting from the Default; provided, however, if the Ground Lease Agreement has terminated and the City has taken over the Developer Improvements the parties agree that such ownership shall be the CRA's sole remedy, or (ii) seek reimbursement for any portion of the Compensated Funding which was provided to Developer and (x) was not used for Construction Costs or FF&E and/or (y) was used for Construction Costs or FF&E but such Developer Improvements and/or FF&E are not present on the Leased Property when the City takes possession of the Leased Property, unless such Improvements were damaged or destroyed as a result of a casualty and not required to be replaced or were taken by condemnation, or such FF&E was replaced in the ordinary course of business due to damage, obsolescence or otherwise.
- (c) Disbursements To Third Parties. Upon the occurrence of a Default occasioned by Developer's failure to pay money to a third party as required by this Agreement, CRA may, but shall not be obligated to, make such payment from other funds of CRA. Developer shall immediately repay such funds upon written demand of CRA. In all events, the Default with respect to which any such payment has been made by CRA shall not be deemed cured until such repayment has been made by Developer to CRA.
- (d) Repayment of Funds Advanced. Any funds expended by CRA in the exercise of its rights or remedies under this Agreement shall be payable to CRA upon demand, together with interest from the date the funds were expended, at the same rate per annum as judgments in Florida courts are entitled to, from the date the funds were expended until fully paid. The foregoing shall include, without limitation, all direct and indirect costs associated with termination of this Agreement including, but not limited to, attorneys' fees and costs at both the trial and appellate levels and also incurred in enforcing this attorneys' fees provision.
- (e) Rights Cumulative, No Waiver. All CRA's rights and remedies provided in this Agreement,

together with those granted by law or at equity, are cumulative and. may be exercised by CRA at any time, CRA's exercise of any right or remedy shall not constitute a cure of any Default unless all sums then due and payable to CRA under this Agreement are repaid and Developer has cured all other Defaults. No waiver shall be implied from any failure of CRA to take, or any delay by CRA in taking, action concerning any Default or failure of condition under this Agreement, or from any previous waiver of any similar or unrelated Default or failure of condition. Any waiver or approval under this Agreement must be writing and shall be limited to its specific terms. The consent or approval by CRA to or of any act by Developer requiring further consent or approval, shall not deemed to waive or render unnecessary consent or approval to or of any subsequent act.

- (f) Other Remedies. Upon the occurrence of any Default specified in this Section 11, CRA may, at its option, exercise any and all of CRA's other rights and remedies under this Agreement, or as provided by applicable Laws, all in such order and in such manner as CRA in its sole discretion may determine.

12. MISCELLANEOUS PROVISIONS.

- (a) Indemnity. DEVELOPER HEREBY AGREES TO PROVIDE THE CRA, AND ITS COMMISSIONER, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS, THE SAME INDEMNIFICATION OWED TO THE CITY UNDER SECTION 8.3 OF THE GROUND LEASE AGREEMENT. DEVELOPER'S DUTY AND OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CRA, AND ITS COMMISSIONERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS SHALL SURVIVE THE TERM OF THIS AGREEMENT AND THE DISBURSEMENT OF THE COMPENSATED FUNDING.
- (b) Form of Documents. The form and substance of all documents, instruments, and forms of evidence to be delivered to CRA under the terms of this Agreement shall be subject to CRA's approval, not to be unreasonably withheld, conditioned or delayed and shall not be modified, superseded or terminated in any respect without CRA's prior written approval, not to be unreasonably withheld, conditioned or delayed.
- (c) No Third Parties Benefited. No person other than CRA and Developer and their permitted successors and assigns shall have any right of action under this Agreement.
- (d) Notices. All notices, demands, consents, or other communications under this Agreement shall be in writing and shall be delivered to the appropriate party at the mailing and e-mail addresses set forth on the signature page of this Agreement (subject to change from time to time by written notice to all other parties to this Agreement). All communications shall be deemed served upon delivery of, or if mailed, upon the first to occur of receipt or the expiration of three (3) days after the deposit in the United States Postal Service mail, postage prepaid and addressed to the address of Developer or CRA at the address specified; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.
- (e) Actions. Developer agrees that CRA, in exercising the rights, duties or liabilities of CRA or Developer under this Agreement may commence, appear in or defend any action or proceeding purporting to affect any portion of the Property, or this Agreement and Developer shall immediately reimburse CRA upon demand for all such expenses so incurred or paid by CRA, including, without limitation, attorneys' fees and expenses and court costs.
- (f) Right of Contest. Developer may contest in good faith any claim, demand, levy, lien or assessment by any person other than CRA which would constitute a Default if: (a) Developer pursues the contest diligently, in a manner which CRA determines is not prejudicial to CRA, and does not impair the rights of CRA under this Agreement; and (b) Developer deposits with CRA any funds or other forms of assurance, which CRA in good faith determines from time to time

appropriate, to protect CRA from the consequences of the contest being unsuccessful, (including, without limitation, Developer's bonding over any lien), Developer's compliance with this Section shall operate to prevent such claim, demand, levy or assessment from becoming a Default.

- (g) Delay Outside CRA's Control. CRA shall not be liable in any way to Developer or any third party for CRA's failure to perform or delay in performing under this Agreement (and CRA may suspend or terminate all or any portion of CRA's obligations under this Agreement) if such failure to perform or delay in performing results directly or indirectly from, or is based upon, the action, inaction, or purported action, of any governmental or local authority, or because of war, rebellion, insurrection, strike, lock-out, boycott or blockade, or from any Act of God or other cause or event beyond CRA's control.
- (h) Attorneys' Fees and Expenses; Enforcement. If any attorney is engaged by CRA to enforce or defend any provision of this Agreement, or as a consequence of any Default under this Agreement, with or without the filing of any legal action or proceeding, and including, without limitation, any fees and expenses incurred in any bankruptcy proceeding of the Developer, then unless Developer is the prevailing party in the applicable legal proceeding, Developer shall immediately pay to CRA, upon demand, the amount of all reasonable attorney's fees and expenses and all costs incurred by CRA in connection therewith, together with interest thereon from the date of such demand at the rate of twelve percent (12%) per annum.
- (i) Immediately Available Funds. Unless otherwise expressly provided for in this Agreement, all amounts payable by Developer to CRA shall be payable only in United States currency, immediately available funds.
- (j) Non-liability of CRA. Developer acknowledges and agrees that:
 - a. By accepting or approving anything required to be provided to CRA pursuant to this Agreement, including any certificate, financial statement, survey, appraisal or insurance policy, CRA shall not be deemed to have warranted or represented the sufficiency, effectiveness or legal effect of any law or provision thereof, and such acceptance or approval thereof shall not constitute a warranty or representation to anyone with respect thereto by CRA;
 - b. CRA neither undertakes nor assumes any responsibility or duty to Developer to select, review, inspect, supervise, pass judgment upon or inform Developer of any matter in connection with the Leased Property, except as otherwise expressly set forth in the Other Related Documents;
 - c. The relationship of Developer and CRA under this Agreement is, and shall at all times remain, solely that of CRA and Developer, and CRA does not undertake or assume any responsibility or duty to Developer or to any other Person with respect to the Leased Property or the Compensated Funding, except as expressly provided in this Agreement; and notwithstanding any other provision of this Agreement: (i) CRA is not, and shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of Developer or any Affiliate, and CRA does not intend to ever assume such status; and (ii) CRA shall not be deemed responsible for or a participant in any acts, omissions or decisions of Developer or any Affiliate;
 - d. CRA shall not be directly or indirectly liable or responsible for any loss, claim, cause of action, liability, indebtedness, damage or injury of any kind or character to any Person or property arising from any construction on, or occupancy or use of, the Leased Property, whether caused by, or arising from (1) any defect in any building, structure, grading, fill, landscaping or other improvements thereon or in any on site or off site improvement or other facility therein or thereon; (ii) any act or omission of Developer, any Affiliates, or any agents, employees, independent contractors, licensees or invitees of Developer; (iii)

any accident in or on the Leased Property or any fire, flood or other casualty or hazard thereon; (iv) the failure of Developer, any of Developer's licensees, employees, invitees, agents, independent contractors or other representatives to maintain the Leased Property in a safe condition; and (v) any nuisance made or suffered on any part of the Leased Property; provided, however, that the foregoing shall not apply to any loss, claim, cause of action, liability, indebtedness, damage or injury caused by the gross negligence or willful misconduct of CRA; and

- e. Developer shall be solely responsible for all aspects of Developer's business and conduct in connection with the Leased Property,
- (k) CRA's Agents. CRA may designate an agent or independent contractor to exercise any of CRA's rights under this Agreement. Any reference to CRA in this Agreement shall include CRA's agents, employees or independent contractors.
- (l) Amendments and Waivers.
 - a. No amendment or modification of any provision of this Agreement shall be effective without the written agreement of CRA and Developer;
 - b. No termination or waiver of any provision of this Agreement, or consent to any departure by Developer therefrom, shall in any event be effective without the written concurrence of CRA, which CRA shall have the right to grant or withhold at its sole discretion; and
 - c. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Developer in any case shall entitle Developer to any other further notice or demand in similar or other circumstances.
- (m) Waiver of Right To Trial By Jury. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THIS AGREEMENT, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.
- (n) Severability. If any provision or obligation under this Agreement shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall be deemed severed from this Agreement, as applicable, and the validity, legality and enforceability of the remaining provisions or obligations shall remain in full force as though the invalid, illegal, or unenforceable provision had never been a part of this Agreement, as applicable.
- (o) Heirs, Successors and Assigns. Except as otherwise expressly provided under the terms and conditions of this Agreement, the terms of this Agreement shall bind and inure to the benefit of the heirs, successors and assigns of the parties.
- (p) Time. Time is of the essence of each and every term of this Agreement.

- (q) Headings. All article, section or other headings appearing in this Agreement are for convenience of reference only and shall be disregarded in construing this Agreement.
- (r) Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Florida, except to the extent preempted by federal laws. Developer and all persons and entities in any manner obligated to CRA under this Agreement consent to the jurisdiction of any federal or state court within the State of Florida having proper venue and also consent to service of process by any means authorized by Florida or federal law.
- (s) Integration; Interpretation. This Agreement contains or expressly incorporates by reference the entire agreement of the parties with respect to the matters contemplated therein and supersedes all prior negotiations or agreements, written or oral. This Agreement shall not be modified except by written instrument executed by all parties. Any reference to this Agreement, as applicable includes any amendments, renewals or extensions now or hereafter approved by CRA in writing.
- (t) Further Assurances. Developer shall, at its sole cost and expense, do such further acts and execute and deliver such further documents as CRA from time to time may reasonably require for the purpose of assuring and confirming to CRA the rights hereby created, or for carrying out the intention or facilitating the performance of the terms of this Agreement.
- (u) Joint and Several Liability. The liability of all persons and entities obligated in any manner under this Agreement shall be joint and several.
- (v) Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

If these conditions are acceptable to you, please indicate your acceptance by having authorized signatures affixed in the space provided below and return a fully executed copy to CRA.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date above written.

CRA:

HOLLYWOOD COMMUNITY REDEVELOPMENT AGENCY, a dependent special district of the City of Hollywood

By: _____
Name: Peter Bober
Title: Chair

ATTEST:

Phyllis Lewis, Board Secretary

Address of CRA:

330 North Federal Highway
Hollywood, FL 33020

JCAMEJO@hollywoodfl.org

APPROVED AS TO FORM & LEGALITY
FOR THE USE AND RELIANCE OF THE
HOLLYWOOD, FLORIDA COMMUNITY
REDEVELOPMENT AGENCY, ONLY

Jeffrey P. Sheffel, General Counsel

DEVELOPER

MARGARITAVILLE HOLLYWOOD BEACH RESORT, L.P.,
a Delaware limited partnership

By: Margaritaville Hollywood Beach Resort GP, L.L.C.,
a Delaware limited liability company,
its general partner

By: MHBR JV, L.P.,
a Delaware limited partnership,
its sole member

By: Lojeta-Millennium GP, LLC,
a Florida limited liability company,
its Operating General Partner

By: _____
Name: _____
Title: _____

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of June, 2013, by Lon Tabatchnick, the _____ of Lojeta-Millennium GP, LLC, as operating general partner of MHBR JV, L.P., as sole member of Margaritaville Hollywood Beach Resort GP, L.L.C., as general partner of Margaritaville Hollywood Beach Resort, L.P., a Delaware limited partnership. He is personally known to me or has produced _____ as identification.

Notary Public
Name: _____
Commission Number: _____
Commission expires: _____

Address of Developer:

3501 N. Ocean Drive
Hollywood, FL 33019

lon@lojeta.com

With a copy to:
c/o Starwood Capital Group
Global, L.P.
Greenwich, CT 06830
Attn: Ellis F. Rinaldi
rinaldi@starwood.com

EXHIBIT "A"

INTENTIONALLY BLANK

EXHIBIT B

APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702

Page One of One Page

TO:	PROJECT:	APPLICATION NO:	Distribution to:						
HOLLYWOOD BEACH COMMUNITY REDEVELOPMENT AGENCY (CRA) 330 North Federal Highway Hollywood, Florida 33020	CONSTRUCTION FUNDING MARGARITAVILLE RESORT HOLLYWOOD BEACH, FL 1111 North Ocean Drive Hollywood, Florida 33019	0	<table><tr><td>X</td><td>OWNER</td></tr><tr><td></td><td>ARCHITECT</td></tr><tr><td></td><td>CONTRACTOR</td></tr></table>	X	OWNER		ARCHITECT		CONTRACTOR
X	OWNER								
	ARCHITECT								
	CONTRACTOR								
FROM:	VIA ARCHITECT:	PROJECT NO:							
CONTRACT FOR:	ADACHE GROUP ARCHITECTS 550 South Federal Highway Fort Lauderdale, Florida 33301	0							
CONTRACT DATE:									

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below.

1 ORIGINAL CONTRACT SUM \$13,000,000.00

2 TOTAL COMPLETED & STORED TO
DATE (Column G on G703) \$

3 PERCENT COMPLETE: 0%

4 LESS PREVIOUS CERTIFICATES
FOR PAYMENT (Line 5 from prior
Certificate) \$

5 CURRENT PAYMENT DUE \$

6 BALANCE TO FINISH
(Line 1 less Line 2) \$13,000,000.00Similar to AIA DOCUMENT G702 *APPLICATION AND CERTIFICATION FOR
PAYMENT* 1992 EDITION* AIA© 1992

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By:	Controller	Date:
State of:	Florida	County of:
Subscribed and Sworn to before me this		day of
Notary Public:		
My Commission expires:		

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED: \$

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT: ADACHE GROUP ARCHITECTS

By: Date:
This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

EXHIBIT C

APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702

Page One of Two Pages

TO:		PROJECT:	APPLICATION NO: 0	Distribution to:
HOLLYWOOD BEACH COMMUNITY REDEVELOPMENT AGENCY (CRA) 330 North Federal Highway Hollywood, Florida 33020		FIXTURE, FURNISHINGS & EQUIPMENT (FF&E / OS&E) MARGARITAVILLE RESORT 1111 North Ocean Drive Hollywood, Florida 33019	1/01/1900	<input checked="" type="checkbox"/> OWNER <input type="checkbox"/> ARCHITECT <input type="checkbox"/> CONTRACTOR
FROM:		VIA ARCHITECT:	PROJECT NO:	
MARGARITAVILLE HOLLYWOOD BEACH RESORT, LLC. 3501 North Ocean Drive Hollywood, Florida 33019		ADACHE GROUP ARCHITECTS 550 South Federal Highway Fort Lauderdale, Florida 33301	Arch# B4.08A	
CONTRACT DATE:				

CONTRACT FOR:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

1 ORIGINAL CONTRACT SUM	\$ 10,000,000.00
2 TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$ -
3 PERCENT COMPLETE:	0%
4 LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 5 from prior Certificate)	\$ -
5 CURRENT PAYMENT DUE	\$ -
6 BALANCE TO FINISH (Line 1 less Line 2)	\$ 10,000,000.00

Similar to AIA DOCUMENT G702 * APPLICATION AND CERTIFICATION FOR
PAYMENT * 1992 EDITION * AIA © 1992

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: MARGARITAVILLE HOLLYWOOD BEACH RESORT, LLC.

By: Lon Tabelchnick, Manager
Date:
 State of: Florida County of: Broward
 Subscribed and Sworn to before me this day of
 Notary Public:
 My Commission expires:

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED: \$ -

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT: ADACHE GROUP ARCHITECTS

By: **Date:**
 This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under the Contract.

EXHIBIT C

CONTINUATION SHEET

similar to AIA DOCUMENT G703

PAGE 2 OF 2 PAGES

MARGARITAVILLE HOLLYWOOD BEACH RESORT, LLC.
APPLICATION AND CERTIFICATE FOR PAYMENTJOB: MARGARITAVILLE RESORT
Fixture, Furnishings & Equipment (FF&E / OS&E)APPLICATION NO:
APPLICATION DATED:
PERIOD FROM:
PERIOD TO:
PROJECT NO: Arch# 94.08A

A	B	C	D		E	F	G		H	I
			WORK COMPLETED				TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G/C)		
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	FROM PREVIOUS APPLICATION (D+E)	THIS PERIOD		MATERIALS PRESENTLY STORED (NOT IN D OR E)				
1	Café FF&E	2,000,000.00	-	-			-		2,000,000.00	-
2	Guest Rooms & Balconies FF&E	2,000,000.00	-	-			-		2,000,000.00	
3	Convention Area FF&E	1,000,000.00	-	-			-		1,000,000.00	
4	Spa FF&E	500,000.00	-	-			-		500,000.00	
5	Common Areas & Cabanas FF&E	500,000.00	-	-			-		500,000.00	
6	OS&E	4,000,000.00	-	-			-		4,000,000.00	
7			-	-			-		-	
8			-	-			-		-	-
	PROJECT TOTALS (FF&E / OS&E):	10,000,000.00	-	-		-	-	0.00%	10,000,000.00	-

EXHIBIT "D"
OPERATING AGREEMENT

That certain Limited Partnership Agreement of Margaritaville Hollywood Beach Resort, L.P., a Delaware limited partnership, made and entered into by MHBR JV, L.P., a Delaware limited partnership, and Margaritaville Hollywood Beach Resort GP, L.L.C., a Delaware limited liability company, as may be amended from time-to-time pursuant to the terms of the Lease, was delivered to the City Manager, a copy of which is on file at the City Manager's office located at Hollywood City Hall, 2600 Hollywood Blvd., Hollywood, Florida 33020, and can be viewed as a public document.

EXHIBIT "E-1"
LEGAL DESCRIPTION OF HOTEL PARCEL

Parcel "A", "MARGARITAVILE AT HOLLYWOOD", according to the Plat thereof as recorded in Plat Book 180, Page 177 of the Public Records of Broward County, Florida; and subject to a right-of-way and sewer easement unto owner over the South 20 feet of said Block "A".

Uses within the right-of-way and sewer easement shall be subject to specific approval from the owner and generally shall be limited to walkways, landscaping, signage, lighting, and other similar elements consistent with right-of-way and utility uses.

Said land situate, lying and being in the City of Hollywood, Broward County Florida.

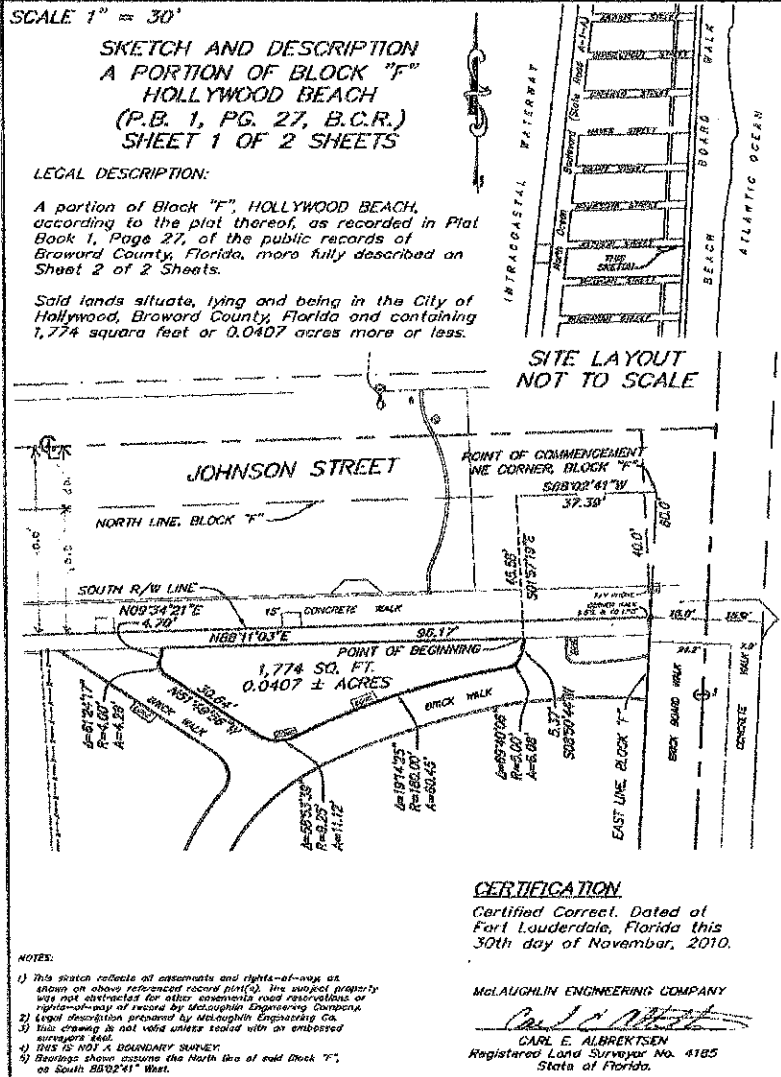
Notwithstanding the legal description of the Hotel Parcel provided above, upon the issuance of a Certificate of Occupancy for the Project, the Developer shall provide the City with an as-built survey delineating public right-of-way improvements as reflected per the approved Site Plan which affect the Hotel Parcel. Upon presentation of the as-built survey to the City, the aforementioned description shall be amended by the City to exclude from the Hotel Parcel the reflected public improvements.

EXHIBIT "E-2" **LEGAL DESCRIPTION OF DEVELOPER INITIAL PARCEL**



McLAUGHLIN ENGINEERING COMPANY
LB#265

ENGINEERING * SURVEYING * PLATTING * LAND PLANNING
 400 N.E. 3rd AVENUE, FORT LAUDERDALE, FLORIDA
 33301 PHONE (954) 763-7811 * FAX (954) 763-7613



FIELD BOOK NO. _____
 JOB ORDER NO. U-5265
 C:\JMLF\2010\J5265
 NLF. DWG.: 08-5-009

DRAWN BY: JMLF
 CHECKED BY: _____



McLAUGHLIN ENGINEERING COMPANY
LB#285

ENGINEERING * SURVEYING * PLATTING * LAND PLANNING
 400 N.E. 3rd AVENUE FORT LAUDERDALE, FLORIDA
 33301 PHONE (954) 763-7611 * FAX (954) 763-7615

SKETCH AND DESCRIPTION
A PORTION OF BLOCK "F"
HOLLYWOOD BEACH
(P.B. 1, PG. 27, B.C.R.)
SHEET 2 OF 2 SHEETS

LEGAL DESCRIPTION:

A portion of Block "F", HOLLYWOOD BEACH, according to the plat thereof, as recorded in Plat Book 1, Page 27, of the public records of Broward County, Florida, more fully described as follows:

Commencing at the Northeast corner of said Block "F"; thence South 88°02'41" West, on the North line of said Block "F", a distance of 37.39 feet; thence South 01°57'19" East, a distance of 45.58 feet to the Point of Beginning; thence South 08°50'44" West, a distance of 5.37 feet to a point of curve; thence Southwesterly on said curve to the right, with a radius of 5.00 feet, a central angle of 69°40'06", an arc distance of 6.08 feet to a point of reverse curve; thence Southwesterly on said curve to the left, with a radius of 180.00 feet, a central angle of 19°14'25", an arc distance of 60.45 feet to a point of reverse curve; thence Northwesterly on said curve to the right, with a radius of 9.25 feet, a central angle of 58°53'39", an arc distance of 11.12 feet to a point of tangency; thence North 51°49'56" West, a distance of 30.64 feet to a point of curve; thence Northwesterly on said curve to the right, with a radius of 4.00 feet, a central angle of 61°24'17", an arc distance of 4.29 feet to a point of tangency; thence North 09°34'21" East, a distance of 4.70 feet; thence North 88°11'03" East, a distance of 96.17 feet to the Point of Beginning.

Said lands situate, lying and being in the City of Hollywood, Broward County, Florida and containing 1,774 square feet or 0.0407 acres more or less.

CERTIFICATION

Certified Correct. Dated at
 Fort Lauderdale, Florida this
 30th day of November, 2010.

NOTES:

- 1) This sketch reflects all easements and rights-of-way, as shown on above referenced record plat(s), the subject property was not abstracted for other easements, road reservations or rights-of-way of record by McLaughlin Engineering Company.
- 2) Legal description prepared by McLaughlin Engineering Co.
- 3) This drawing is not valid unless sealed with an embossed surveyor's seal.
- 4) THIS IS NOT A BOUNDARY SURVEY.
- 5) Bearings shown assume the North line of said Block "F", as South 88°02'41" West.

McLAUGHLIN ENGINEERING COMPANY

Carl E. Alsrehtsen
 CARL E. ALSREHTSEN
 Registered Land Surveyor No. 4185
 State of Florida.

FIELD BOOK NO. _____

DRAWN BY: JMM

JOB ORDER NO. U-5265
C:\JMM\2010\U5265
 REF. DWG.: 08-3-009

CHECKED BY: _____

EXHIBIT "F"
Agreement for Beach Services

**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, L.P., a Delaware 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").

WHEREAS, the Developer is owned in part by Margaritaville of Hollywood, Florida, LLC (hereinafter "Margaritaville"), which shall be licensing 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, L.P., 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: _____

AGREEMENT FOR BEACH SERVICES ON HOLLYWOOD BEACH

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

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

EXHIBIT "A" BEACH TERRITORY SITE MAP

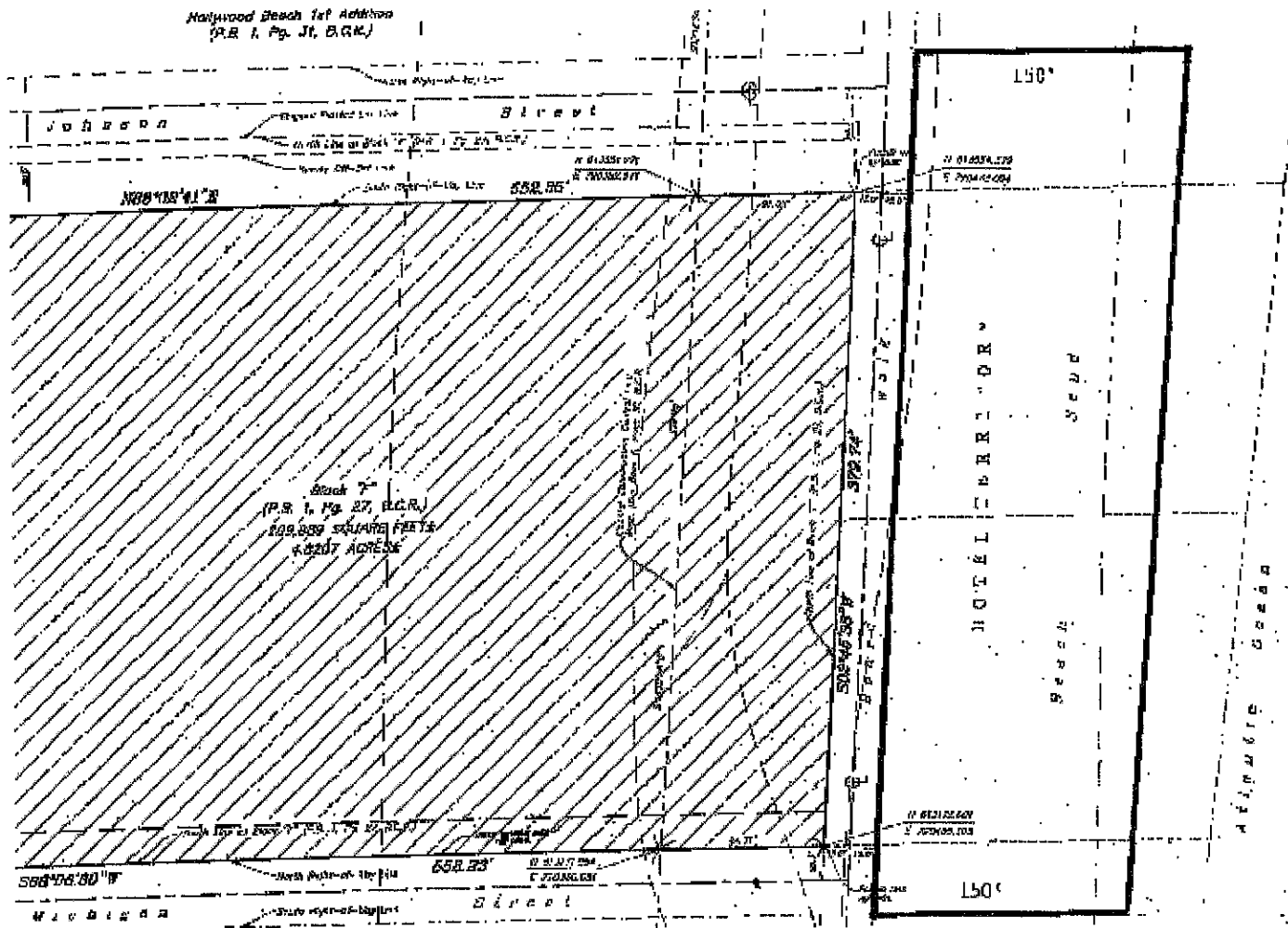


EXHIBIT "A"

FIRST AMENDMENT TO AGREEMENT FOR BEACH SERVICES
ON HOLLYWOOD BEACH

This First Amendment to Agreement for Beach Services on Hollywood Beach is entered into this _____ day of _____, 2012, by and between Margaritaville Hollywood Beach Resort, L.P., a Delaware limited partnership (hereinafter the "Developer"), and the City of Hollywood, Florida (hereinafter the "City") (collectively sometimes referred to as the "Parties").

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

WHEREAS, the Parties have negotiated certain amendments to the Beach Agreement;

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

1. Section D of the Beach Agreement is hereby amended to read as follows:

D. SCOPE OF SERVICES

* * *

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.

* * *

5. Products

* * *

- 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 sell 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 not on the Boardwalk.

2. Section J of the Beach Agreement is hereby amended to read as follows:

J. ASSIGNMENT; AMENDMENTS

1. Except as otherwise provided above in Section D.5.d(ii) with respect to the sale of beverages, the Developer shall have the right, without consultation with the City, to assign sign, subcontract and in any other way provide for the services and products described in this Beach Agreement Lease.

FIRST AMENDMENT TO AGREEMENT FOR BEACH SERVICES ON HOLLYWOOD BEACH

MARGARITAVILLE HOLLYWOOD BEACH RESORT, L.P.,
a Delaware limited partnership

By: Margaritaville Hollywood Beach Resort GP, L.L.C.,
a Delaware limited liability company,
its general partner

By: MHBR JV, L.P.,
a Delaware limited partnership,
its sole member

By: Lojeta-Millennium GP, LLC,
a Florida limited liability company,
its Operating General Partner

By: _____
Name: _____
Title: _____

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of June, 2013, by Lon Tabatchnick, the _____ of Lojeta-Millennium GP, LLC, as operating general partner of MHBR JV, L.P., as sole member of Margaritaville Hollywood Beach Resort GP, L.L.C., as general partner of Margaritaville Hollywood Beach Resort, L.P., a Delaware limited partnership. He is personally known to me or has produced _____ as identification.

Notary Public
Name: _____
Commission Number: _____
Commission expires: _____

By authority of Resolution No. _____ duly
passed and adopted by the Hollywood City
Commission on _____.

CITY OF HOLLYWOOD,
a Florida municipal corporation

By: _____
Name: Peter Bober
Title: Mayor

ATTEST:

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

By: _____
Patricia A. Cerny, City Clerk

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

EXHIBIT "G"
PARKING GARAGE STANDARDS

The Parking Garage Standards shall apply to the Parking Garage and use of public and non-public spaces. But, in the event the CDD Bonds are sold and the public parking component of the Parking Garage is transferred to the CDD as provided in Section 6.4, the public parking spaces shall be operated according to standards and policies adopted by the CDD Board of Supervisors from time-to-time, pursuant to the requirements of the Internal Revenue Code ("IRC") to the extent necessary to preserve the tax exempt status of the CDD Bonds. If a conflict exists regarding operating the public portion of the Parking Garage between these Parking Garage Standards and the IRC's requirements, the IRC's requirements shall prevail for so long as any of the CDD Bonds remain outstanding.

The Developer shall provide 456 Hotel Spaces. The remaining portion of the Parking Garage will contain 579 spaces and 21 spaces on the third floor and ramp to the fourth floor, six spaces of which are handicap spaces (total 600 spaces) dedicated to general public parking and such spaces shall:

- (a) be properly signed and (other than the handicap spaces) located on floors four (4) through seven (7);
- (b) in the event the CDD Bonds are sold and the public parking component of the Parking Garage is transferred to the CDD as provided in Section 6.4, be under the ownership and control of the CDD pursuant to an easement and special warranty deed; and
- (c) in the event the CDD Bonds are sold and the public parking component of the Parking Garage is transferred to the CDD as provided in Section 6.4, any management agreement entered into by the CDD shall be in compliance with these Parking Garage Standards and the requirements of the IRS for management of public parking facilities (currently IRS Rev. Proc. 97-13) in order to preserve the tax-exempt status of the CDD Bonds.

The intended use of the Public Spaces is short-term parking for visitors (diners, shoppers, beach patrons etc.), not working in the Project. The Public Spaces shall not be used to service valet operations or employee parking. The Developer, regarding the private spaces, and, if applicable, the CDD, regarding the Public Spaces, shall manage or provide for management of the Parking Garage in a manner consistent with the following provisions:

I. Rates

Developer shall at all times set rates for the Hotel Spaces that promote, encourage and incentivize overnight guests of the Hotel to park in the Hotel Spaces and not the Public Spaces.

II. Hours of Operation

The minimum hours of operation for the public parking provided in this facility are 7:00 a.m. to 12:00 a.m. Sunday through Saturday. During all hours of operation, Developer, with respect to

the Hotel Spaces, and, if applicable, the CDD, with respect to the Public Spaces, will provide or cause to be provided staff that will monitor the garage and assist patrons as needed.

III. Interior Finish and Lighting

Adequate lighting is one of the most important design features in a parking facility. Quality lighting improves user comfort, security, safety and overall experience. Developer will ensure that lighting within the parking structure meets or exceeds the minimum standards set forth by the Illuminating Engineering Society for parking structures. Basic lighting requirements are as shown in the table below. In addition, Developer will ensure that all interior walls and ceilings are highly reflective with a uniform finish that provides a minimum of 70% reflectance.

	Minimal Horizontal		Maximum/Minimum	Minimum Vertical	
	Illuminance on Floor		Horizontal Uniformity	Illuminance at Five Feet	
	Lux	Footcandles	Ratio	Lux	Footcandles
Basic	10	1	10:1	5	0.5
Ramps					
Day	20	2	10:1	10	1
Night	10	1	10:1	5	0.5
Entrance Area					
Day	500	50		250	25
Night	10	1	10:1	5	0.5
Stairways	20	2	10:1	10	1
Source: Illuminating Engineering Society of N.A. RP-20-98 Lighting for Parking Facilities (New York: IES 1998).					

IV. Signage

If applicable, the CDD will pay for and post signs at the entrance to the public parking facility identifying it as a public parking facility. These signs will be consistent with public parking signs in use by the City of Hollywood. In addition, hours of operation and parking rates will be posted at the entrance to the facility.

Interior signage will provide patrons with clear indications of traffic patterns, ingress and egress locations, short-term parking, permit parking and restricted residential parking.

V. Operating Standards

The City of Hollywood and Developer acknowledge that the 600 Public Spaces identified are primarily intended for public use and the benefit of visitors to the Central Beach area not associated with the Development. The Developer, with respect to the private spaces, and the CDD, with respect to the public spaces, and, if applicable, the management of the Parking Garage will manage these parking spaces in a commercially reasonable and responsible manner

to benefit visitors and employees. Patron comfort is greatly improved when the Parking Garage is clean and in good repair.

To ensure that the Parking Garage is well maintained, Developer will provide the City with documentation of an ongoing maintenance program for the Parking Garage. This maintenance program will, at a minimum, include the following:

- (a) Daily schedules to remove trash and debris from the facility, to clean ingress and egress areas, and to ensure the overall cleanliness of the facility;
- (b) Inspection, maintenance and repair schedules for fixtures, mechanical, electrical, plumbing, HVAC, and revenue systems equipment, and finishes within the Parking Garage; and
- (c) Inspection, maintenance and repair schedules for the structural systems within the Parking Garage including without limitation, elevators, fire systems, emergency devices and sprinklers.

VI. Audit Rights

The City of Hollywood and Developer acknowledge that operation of the Public Spaces has a significant influence on the continued development and vitality of the central beach area. Developer or the CDD, if applicable, will provide or cause to be provided quarterly reports that summarize garage traffic for the Public Spaces. These reports will be in a form acceptable to the City Parking Director or other staff assigned by the City. In addition, the City is allowed to review garage operations, management records and documents related to the Parking Garage.

EXHIBIT "H"
SITE PLAN

The Site Plans, Civil Plans and Landscaping Plans (collectively, the Site Plans) as prepared by the Adache Group Architects making up this **Exhibit "H"** consist of approximately 74 pages submitted to the City of Hollywood's Development Review Board, Planning and Zoning Board, and City Commission and approved in Resolution No. R-2010-364 on December 15, 2010. Additionally, this Site Plan was amended on September 21, 2011, by Resolution No. R-2011-246. Copies of the Site Plans are on file at the City of Hollywood's Planning Department and can be viewed as a public document. Attached hereto as part of this **Exhibit "H"** is a copy of the front page of the Site Plan.

EXHIBIT "I"
SCHEDULE OF PERFORMANCE

**Execution of the Amended and Restated Development
And Ground Lease Agreement (including related
Agreements):**

May 29, 2013

Possession Date:

July 9, 2013

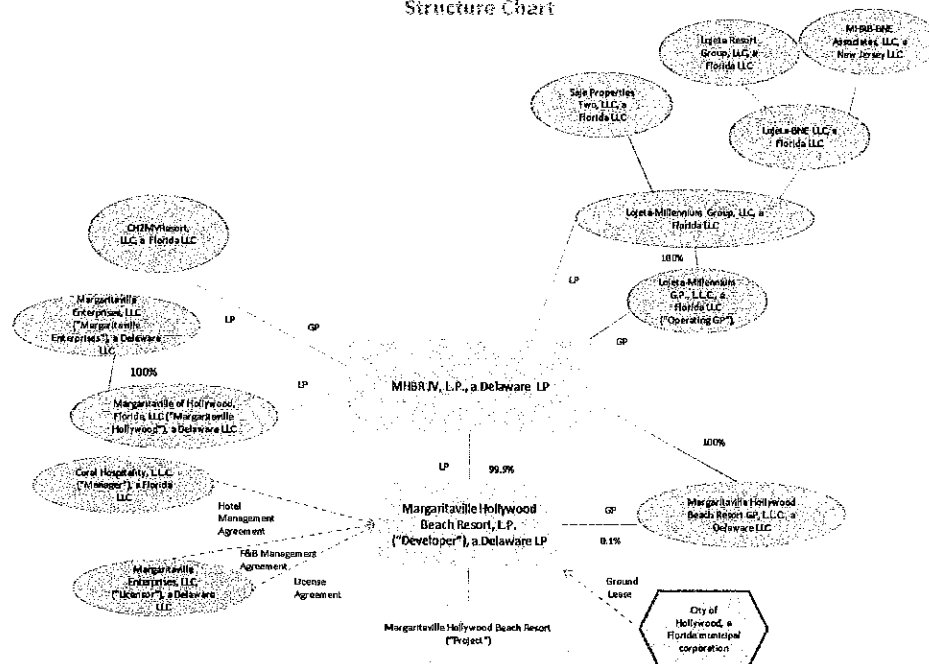
Conditions to Possession Date (except for Developer Initial Parcel)

Formation of CDD:	Completed
Final plans and specifications:	Completed
Public Approvals (except for replat)	Completed
Supplemental Third Party Fees Reimbursement:	Possession
Commitment for financing:	Possession
Permitted Pre-Possession Transfer	Possession
General construction contract:	Possession
Delivery of payment and performance bonds:	Possession
Demolition and building permits:	Possession
Satisfactory evidence of the required insurance	Possession
Legal Review regarding satisfaction of Conditions Precedent to Possession	Possession

Post Possession

Commencement of Site Clearance/Demolition:	No later than 30 days after Possession
Commencement of Construction:	No later than 90 days after commencement of site clearance / demolition
Construction Completed (issuance of certificate of occupancy):	No later than 27 months after commencement of construction
Project opening:	No later than 60 days after completion of construction

OWNERSHIP INTEREST IN DEVELOPER



OWNERSHIP INTEREST IN DEVELOPER AFTER PERMITTED PRE-POSSESSION TRANSFER



EXHIBIT "K"

CDD FINANCING STRUCTURE
TO
AMENDED AND RESTATED DEVELOPMENT AGREEMENT AND GROUND LEASE
BETWEEN
MARGARITAVILLE HOLLYWOOD BEACH RESORT, L.P.
AND THE CITY OF HOLLYWOOD, FLORIDA

DATED AS OF June __, 2013

Summary of Potential Community Development District Bond Financing

- A. Project. The City of Hollywood, Florida (the "City") seeks to redevelop real property owned by the City located between the Atlantic Ocean and the Intracoastal Waterway in the vicinity of Johnson Street, to include:
1. Margaritaville Resort Hotel. A 349 room hotel with convention, restaurant/bar and retail space ("Hotel") and certain boat landing improvements.
 2. Parking Garage. A multi-level parking facility with:
 - a. Public Parking comprising 579 spaces within the CDD portion of the garage and 21 spaces on the third floor and ramp to the fourth floor, six spaces of which are handicap spaces (total 600 spaces) for use by the general public in accordance with the Parking Garage Standards attached to the Amended and Restated Development Agreement and Ground Lease as **Exhibit "G"**; and
 - b. Private Parking comprising 456 spaces for use in connection with the operation of the Hotel.
- B. Developer. Margaritaville Hollywood Beach Resort, L.P. a company possessing the experience and financial resources to develop the Project.
- C. Real Property Ownership.
1. City Remains Fee Owner of Land. The City will retain the fee interest in the real property.
 2. Ground Lease. The City will enter into a ground lease with the Developer for a term of 99 years for the property ("Leased Property") upon which the 1056 private and public parking facilities and the Hotel will be constructed. The parking facilities will comprise the lower floors (3 through 8) and the Hotel will be constructed above the parking facilities.
 3. Specific Ground Lease Provisions.

a. **Covenant to Pay Special Assessments.** Under the ground lease, the Developer will agree to pay all special assessments levied by the CDD on the Developer's leasehold interest in the Leased Property and private vertical construction thereon to finance the portion of the Parking Garage designated for public parking. Failure to pay such special assessments will be considered a payment default under the ground lease.

b. **Covenant to Impose User Fee.** The Developer may impose a public user fee for the benefit of the CDD, but not imposed through the exercise of any power by the CDD, to be remitted to, and collected by, the CDD to be applied by the bond trustee for the payment of the special assessment bonds issued by the CDD. Any public user fee shall be imposed on sales of goods or services that occur within the Leased Property.

c. **Leasehold Mortgages Subordinated.** Leasehold mortgages secured by the Developer's leasehold interest in the Leased Property and vertical construction thereon will be contractually subordinated to the easement interest of the CDD and the fee title ownership of the facilities conveyed by special warranty deed, comprising the portion of the Parking Garage designated for public parking.

d. **Leasehold Mortgagee Cure Provisions.** The ground lease will contain typical provisions such that a leasehold mortgagee will have the opportunity to cure defaults under the ground lease for specified periods of time. This includes right to cure payment of CDD and other special assessments on the Developer's ground lease interests and vertical construction.

e. **City Guaranty of Payments of Principal and Interest on Assessment Bonds Under Certain Circumstances.**

- (i) There will be created as a separate deposit account in the custody of the bond trustee, a trust fund designated the Debt Service Reserve Fund, the "Reserve Fund". In the event that (i) the Developer fails timely to make any payment due with regard to special assessments on the Leased Property, (ii) the applicable lender/mortgagee, or a replacement Developer, if any, does not cure such default within the time frames provided under the special assessment bond documents (which shall be substantially similar to the time frames provided in Article VI of the ground lease), (iii) the CDD does not have funds available from collection of user fees, or from operation of the Public Parking, taking into account commercially reasonable reserves for future expenses for the Public Parking, to make up the shortfall; and (iv) as a result, the amounts in the Bond Fund no less than twenty (20) days prior to a Bond Payment Date are less than the amount due on such Bonds on such Bond Payment Date, the bond trustee shall transfer, from the Reserve Fund an amount sufficient to make up any deficiency in the Bond Fund. In the event of any such transfer, the bond trustee shall, within five (5) days after making such transfer, provide written notice to the Developer, with a copy to the City,

of the amount and date of such transfer and the Developer shall, within five (5) days of receipt of such written notice, pay to the Trustee for deposit into the Reserve Fund an amount necessary to cause the moneys in the Reserve Fund to be equal to the Reserve Fund Requirement. In the event the Developer does not reinstate the balance in the Reserve Fund to the Reserve Fund Requirement within the time frame provided above, or if the amount paid by the Developer is not sufficient to cause the moneys in the Reserve Fund to be equal to the Reserve Fund Requirement, then the Trustee within two (2) days shall provide written notice of such deficiency to the City. The Trustee shall notify the City of any draw upon or deficiency in the Reserve Fund as provided herein and shall make demand on the City to replenish the Reserve Fund to the Reserved Fund Requirements as provided in Paragraph (ii) immediately below.

- (ii) Covenant to Budget and Appropriate (the "Guaranty"). The City hereby covenants to budget and appropriate to replenish the Reserve Fund at the next City Commission meeting following receipt of the above notice of deficiency from the Trustee while the CDD Bonds are outstanding and to deposit into the Reserve Fund no later than sixty (60) days following such City Commission meeting, from all legally available Non-Ad Valorem Revenues of the City, sufficient Non-Ad Valorem Revenues to supplement the moneys in the Reserve Fund to the extent necessary to cure any deficiencies therein.

The Guaranty is cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to cure any deficiency in the Reserve Fund shall have been budgeted, appropriated and actually paid. Except with respect to such Non-Ad Valorem Revenues deposited in the Reserve Fund, the Guaranty does not create a lien upon or pledge of such Non-Ad Valorem Revenues nor does it preclude the City from pledging in the future all or any specified portion of the Non-Ad Valorem Revenues, nor does it give the Registered Owners a prior claim on all or any specified portion of the Non-Ad Valorem Revenues as opposed to claims of general creditors of the City.

Although the City's obligation to make payments under its Guaranty is subject to the conditions set forth in paragraph (i) above, the Guaranty is on par with other debt of the City supported with the City's pledge of Non-Ad Valorem Revenues and the City's covenant to budget and appropriate Non-Ad Valorem Revenues. The Guaranty is intended to have the effect of making available for the deposit into the Reserve Fund, at such times as may be required to cure any deficiency therein within the time frames described in paragraph (i) and under the special assessment bond documents as may be required by bond rating agencies or credit enhancers, the Non-Ad Valorem Revenues and placing on the City a positive duty to appropriate and budget, by amendment if necessary,

amounts sufficient to cure such deficiency. The Guaranty is subject in all respects to the restrictions of Section 166.241, Florida Statutes, which provides that the governing body of each municipality shall make appropriations for each Fiscal Period which, in any one year, shall not exceed the amount to be received from taxation and other revenue sources, and to payments which are legally mandated by applicable law.

The obligations of the City contained herein shall not be construed as a limitation on the ability of the City to pledge or covenant to pledge or use all or any portion of the Non-Ad Valorem Revenues for other legally permissible purposes. The obligation of the City to cure such deficiency in the Reserve Fund within the time frames provided under the special assessment bond documents, is subject to the availability of money in the treasury of the City and funding requirements for essential public purposes affecting the health, welfare and safety of the inhabitants of the City or which are legally mandated by law; however, such obligation is cumulative and shall carry over from Fiscal Period to Fiscal Period.

- (iii) Moneys in the Reserve Fund shall only be used for the purpose of transferring to the Bond Fund an amount sufficient to make up for deficiencies in amounts deposited to the Bond Fund, in the event that moneys therein are less than the amount then due to the owners of the Bonds on any Bond Payment Date.
 - (iv) The obligation of the City hereunder will not constitute general obligation debt or indebtedness within the meaning of any constitutional or statutory limitation, or a pledge of the faith and credit or the taxing power of the City; no one seeking recourse under the Guaranty shall ever have the right to compel any exercise of any ad valorem taxing power of the City, directly or indirectly, to enforce such obligations.
 - (v) The City will have the option, but not the obligation, any time notice and demand is made upon the City to replenish the balance in the Reserve Fund to the Reserve Fund Requirement, to redeem all outstanding Bonds at a redemption price of 100% of the principal amount thereof, plus accrued interest, instead of replenishing or continuing to replenish the Reserve Fund. Subject to the foregoing, the City's obligation to replenish the Reserve Fund shall continue until such time as the Bonds are paid in full or legally defeased according to their terms.
4. Easement and Special Warranty Deed for Public Parking . The Developer will be responsible for retaining a contractor for construction of the Parking Garage and the CDD (defined below) will pay its pro rata share of construction costs attributable to the Public Parking component of the Parking Garage. Prior to commencement of construction of the Parking Garage, the CDD will be granted an easement for the construction of the Public Parking component of the Parking Garage. After the Parking Garage is constructed, the Developer will execute a

special warranty deed and any other appropriate instrument of conveyance to transfer its interest in the Public Parking component of the Parking Garage to the CDD. The City and the Developer agree to execute such appropriate documents as are necessary to effectuate such transfer, including a joinder, and obtain the subordination of the rights of third parties, to the easement of the CDD in the underlying land and the fee title to the facilities conveyed by special warranty deed comprising the public portion of the Parking Garage.

D. Community Development District

1. Formation of Community Development District ("CDD"). Community development districts in Florida are created through a petition which petition must include the eight items set forth in Florida Statutes §190.005(1)(a). Florida Statutes §190.005(2)(e) provides that in the case of a community development district of less than a 1,000 acres in size, that if all the land for the proposed district is in the territorial jurisdiction of a municipal corporation the petition requesting the creation of the CDD is filed with the municipal corporation.
2. Special Assessments. The security for special assessment bonds will include the net revenues from the Public Parking component of the Parking Garage as well as non-ad valorem special assessments and user fees. The CDD will levy special assessments on the Hotel and the Private Parking component of the Parking Garage pursuant to § 190.022 Florida Statutes using the procedures set forth in Chapter 170, Florida Statutes. The assessment lien shall not be a lien encumbrance on the fee interest of the City of Hollywood, nor on the leasehold interest of the Developer. Collection of the assessments shall be enforced pursuant to the provisions of Section 196.199(8), Florida Statutes, and to the extent applicable, Chapters 170, 173 and 197 Florida Statutes.
3. Ownership of Public Parking Following Payment of Bonds. Sections 190.046(4), (5) and (6), Florida Statutes provide a method for transfer of the Public Parking from the District to the City of Hollywood through adoption by the City of a non-emergency ordinance. Under existing law, the City must assume and guarantee debt, if any, of the CDD that is related to the Public Parking. The statute currently provides for no other consideration from the City. In addition, the City must demonstrate the ability of the City to provide the public parking service: (a) as efficiently as the CDD; (b) at a level of quality equal to or higher than the level of quality actually delivered by the CDD to the users of the Public Parking; and (c) at a charge equal to or lower than the actual charge by the CDD to Public Parking customers. No later than 30 days following the adoption of a transfer plan ordinance, the board of supervisors may file in the circuit court a petition seeking review by certiorari of the factual and legal basis for the adoption of the transfer plan ordinance. Upon the transfer of all of the services of the CDD to the City, the CDD shall be terminated in accordance with a plan of termination which shall be adopted by the board of supervisors and filed with the clerk of the circuit court.

In the event such transfer of the Public Parking to the City is completed as aforesaid, the Developer and the City shall execute such amendments to the ground lease(s) as are necessary or desirable to properly reallocate management responsibilities, procedures, and operating expenses concerning the Public Parking.

4. Validation of CDD Bonds. The CDD special assessment bonds will be subject to validation through judicial process under Chapter 75, Florida Statutes, prior to the delivery of possession by the City to the Developer of the Hotel and Parking Garage component of the Leased Property under the ground lease, other than the Developer Initial Parcel. It shall be the responsibility of Developer to cause the CDD to diligently undertake the said validation process at the CDD's sole cost and expense through a funding agreement with the Developer. In general, the court will hold a validation hearing 75 to 90 days after the filing of a validation complaint. The final judgment of the appropriate court shall include an order (the "CDD Bond Validation Order") validating and confirming the legality of the special assessment bonds, the ground lease, the Guaranty, and all other financing documents and agreements within the scope of the court's jurisdiction, and the legality of all proceedings in connection therewith. The CDD Bond Validation Order will be subject to a 30 day appeal period under Florida law.
5. Right of Eminent Domain. Pursuant to Section 190.011(11), Florida Statutes, the City will grant to the CDD by resolution the right of extraterritorial eminent domain within the geographical limits of the Hollywood Beach CRA, for water, sewer, district roads and water management, specifically including the power for taking of easements for drainage.
6. Interlocal Agreement. Upon its organization, the City and the CDD shall enter into an interlocal agreement which will embody the parties' agreements as follows:
 - a. The CDD will agree that it will not (i) refinance the special assessment bonds issued to finance the construction of the Public Parking, or (ii) issue any other bonds or debt instruments, without the prior written approval of the City, which may be granted or withheld by the City in its sole discretion.
 - b. At all times during the existence of the CDD the chief administrative officer of the City, or his or her designee, shall serve on the Board of Supervisors of the CDD. The Developer as landowner and the Board of Supervisors of the CDD shall take all actions necessary to assure the election of at least one (1) supervisor meeting the requirements of this paragraph.
 - c. The CDD shall submit its proposed annual budget to the Chief Administrative Officer of the City for his or her approval prior to final adoption for the sole purpose of determining whether the projected revenues including special assessments and net parking revenues will be sufficient to pay the annual debt service due in the fiscal year for which the final budget is to be adopted.

d. The limits of personal injury, property damage, and liability insurance to be procured by the CDD shall be subject to review and approval of the Chief Administrative Officer of the City, which review and approval shall be exercised in his or her commercially reasonable judgment. If permitted by the issuers of such policies, the City shall be named as an additional insured.

e. The Board of Supervisors shall establish parking rates for the public portion of the Parking Garage sufficient to cover the costs of operation, maintenance and debt service thereon. Subject to the requirements of the preceding sentence, the CDD will agree that such parking rates will reflect rates charged by parking facilities open to the public within the barrier island known as Hollywood Beach.

f. The CDD Board of Supervisors will adopt and implement the policies set forth in **Exhibit "G"** Parking Garage Standards that are applicable to it, with respect to the public portion of the Parking Garage, so long as such policies are consistent with the requirements of the Internal Revenue Code in order to preserve the tax exemption of the interest on the CDD's bonds.

g. Once the CDD Bonds are paid in full, the District agrees that the City shall have the right to dissolve the District and have the District transfer the Public Parking to the City pursuant to the provisions and requirements of Section 190.046 (4), (5), and (6), Florida Statutes as set forth in Section D.3. of this **Exhibit "K"**.

E. Summary of Financing Sources.

1. Private Financing. The Developer will obtain financing to construct the Hotel and the Private Parking component of the Parking Garage.
2. CDD Bonds. The proceeds from issuance of special assessment bonds will be used to acquire the Public Parking component of the Parking Garage. The Public Parking component of the Parking Garage will be sold and transferred to the CDD upon completion of the construction of the improvements. The bond obligations will remain in place as permanent financing upon completion of construction of the Public Parking component of the Parking Garage.

EXHIBIT "L"
CDD EASEMENT FORM

RECORDING REQUESTED BY: AND WHEN RECORDED MAIL TO:

Gerald L. Knight
Billing, Cochran, Lyles, Mauro & Ramsey, P.A.
515 East Las Olas Boulevard, Sixth Floor
Fort Lauderdale, FL 33301

EASEMENT AGREEMENT

MARGARITAVILLE CDD
(Hollywood, Florida)

THIS EASEMENT AGREEMENT (this "**Easement**") is made as of _____, 20__ (the "**Effective Date**"), by and between the **CITY OF HOLLYWOOD**., a municipal corporation of the State of Florida ("**City**"), **MARGARITAVILLE COMMUNITY DEVELOPMENT DISTRICT**, a local unit of special-purpose government organized and existing under Chapter 190, Florida Statutes ("**District**"), and **MARGARITAVILLE HOLLYWOOD BEACH RESORT, L.P.**, a Delaware limited partnership ("**Margaritaville**").

RECITALS:

A. Margaritaville and the District have entered into a certain Assignment and Acquisition Agreement ("**Acquisition Agreement**") dated as of _____, 20__ for the development and acquisition by the District of certain public parking garage improvements (the "**Public Garage Improvements**") located or to be located on certain land more particularly described on **Exhibit "A"** attached hereto (the "**Easement Area**"); and

B. The City is the fee owner of the Easement Area; and

C. Margaritaville is the holder of a 99-year ground leasehold estate and interest in and to certain lands owned by the City (the "**Leasehold Property**") more particularly described in **Exhibit "B"**, attached hereto including the lands located within the Easement Area, pursuant to an Amended and Restated Development Agreement and Ground Lease with the City dated as of June __, 2013 (the "**Ground Lease**"); and

E. Margaritaville intends to develop and construct certain improvements and structures on the Leasehold Property (the "**Private Improvements**"), including the parking garage (the "**Parking Garage**") which consists in part of the Public Garage Improvements; and

F. The City and Margaritaville wish to grant to the District a non-exclusive easement for the purpose of utilizing, occupying, improving and maintaining the Public Garage Improvements on, over, under, above and through the Easement Area, as more particularly described herein for the time period set forth in Section 6 below;

NOW, THEREFORE, with reference to the foregoing, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, the District and Margaritaville hereby declare and agree that the easement rights created and reserved hereunder shall be held, conveyed, used, occupied and improved subject to the following limitations, covenants, conditions, restrictions and easements:

1. GRANT OF EASEMENT

1.1 Grant of Easement to District. The City and Margaritaville each hereby grants to the District a non-exclusive easement on, over, under, across and through the Easement Area to accommodate the design, construction, maintenance, repair, replacement, as well as the ownership, use and enjoyment of the Public Garage Improvements by the District. Such easement shall be used only for the purposes stated herein.

1.2 Construction, Encroachment and Support. In addition, the City and Margaritaville each hereby grants to the District the following additional rights to benefit the Public Garage Improvements and the Easement Area:

1.2.1 the right to own, use and enjoy the Public Garage Improvements;

1.2.2 rights of lateral and subjacent support between and among elements of the Public Garage Improvements necessitated by vertical or lateral development of said Public Garage Improvements and attachment to the other elements of the Public Garage Improvements and the Private Improvements; and

1.2.3 rights of ingress, egress and access to and through the Easement Area;

provided, however, such rights shall be exercised in all respects so as to avoid interfering unreasonably with the City's, Margaritaville's or any Occupant's (as hereinafter defined) use, occupancy and enjoyment of the Easement Area, the Private Improvements or any other improvements constructed thereon or therein by the City, Margaritaville or any Occupant.

The parties acknowledge and agree that the Public Garage Improvements will be constructed by Margaritaville, and that the easement rights granted herein to the District with respect to the Public Garage Improvements shall be effective as of the date of the Garage Closing (as defined in the Acquisition Agreement) and shall be self-operative without further action by any party hereto.

The parties further acknowledge and agree that the Public Garage Improvements shall remain open to the general public; provided, however, nothing herein shall limit or restrict the ability of District to charge the general public for the use of the Public Garage Improvements.

1.3 Grant of Easement to City and Margaritaville. The District hereby grants to the City and Margaritaville the following easements to exist over the Public Garage Improvements:

1.3.1 Easements for ingress, egress and access over, under, across and through the Public Garage Improvements to design, install, construct, maintain, repair, replace and use

the Private Improvements, including without limitation, any improvements constructed hereafter on any of the Leasehold Property;

1.3.2 Easements for support of any Private Improvements located from time-to-time above, below or adjacent to the Public Garage Improvements; and

1.3.3 Easements for ingress, egress and access over, under, across and through all of the Public Garage Improvements which are designed for the purposes of pedestrian or vehicular ingress, egress or access, including without limitation, easements for ingress, egress and access through all portions of the Public Garage Improvements for the purpose of use of the balance of the Parking Garage or the Private Improvements to be constructed vertically above, or adjacent to, the Parking Garage.

All the foregoing rights shall be exercised so as to avoid interfering unreasonably with the District's ownership, use, occupancy and enjoyment of the Public Garage Improvements.

1.4 Ingress, Egress and Parking. The parties acknowledge and agree that the District intends to own and operate the Public Garage Improvements for public purposes in accordance with Chapter 190 of the Florida Statutes. The District hereby covenants and agrees to operate the Public Improvements in the manner customary for comparable facilities in Broward County, Florida, and in accordance with the terms of this Easement. Any or all of the District's rights, obligations and easements granted herein may be assigned by the District to the City, provided written notice of each such assignment is promptly provided to Margaritaville.

1.5 Easements Appurtenant. The rights and easements granted herein in and to the Easement Area are expressly for the benefit of the District; and the rights and easements granted and reserved herein in and to the Public Garage Improvements are expressly for the benefit of the District and the public, as well as of the City and Margaritaville, and their respective "**Occupants**" (as defined hereinbelow). All easements created in this Easement shall be appurtenant easements and not easements in gross. Any such easement may be abandoned or terminated by execution of an instrument so abandoning or terminating the same by the parties of the dominant and servient estates and consented to in writing by the mortgagee, if any, of the District, Margaritaville or the City, as the case may be; provided that as long as any "tax exempt" debt which financed any of the Public Garage Improvements is outstanding, any such termination must provide that the ownership and maintenance responsibility of the Public Garage Improvements must remain with the District or the City. For purposes of this Lease, "**Occupants**" shall mean any Person from time-to-time entitled to the exclusive use and occupancy of space under, above or across the Easement Area (including the Leasehold Property, but specifically excluding the Public Garage Improvements) or a portion thereof, under any lease, deed or other instrument or arrangement whereunder such entity or person has acquired exclusive rights with respect to the use and occupancy of any such space.

1.6 Duration of Easements. The easements granted herein shall remain in effect from the Effective Date for the term of this Easement, as the same may be extended in accordance herewith, as set forth in Section 6 below.

2. INDEMNIFICATION

2.1 General Indemnification. Subject to the next sentence, (i) Margaritaville and the City, to the full extent allowed by Florida law, each severally hereby indemnifies and agrees to defend and hold harmless the District from and against all claims occurring or arising out of their respective acts and omissions under this Easement; and (ii) the District, to the full extent allowed by Florida law, hereby indemnifies and agrees to defend and hold harmless Margaritaville and the City from and against all claims occurring or arising out of its acts and omissions under this Easement. Notwithstanding the foregoing, no party shall be obligated to indemnify or defend another "**Person**" (as defined hereinbelow) to the extent the claim underlying the other Person's request to be indemnified was caused by or directly resulted from (A) the negligence of the other Person, or the other Person's agents, employees or contractors, (B) the other Person's failure to perform or cause to be performed its obligations under this Easement or any other agreement to which such parties are a party, or (C) a willful, intentional or wanton act or omission of the other Person or its agents, servants or employees. For purposes of this Easement, "**Person**" shall mean and include an individual or a corporation, partnership, limited liability company, joint venture, firm, trust, association or any other form of business, or government entity, or quasi-governmental entity.

2.2 Liens. The District shall pay all claims relating to any work performed on or for the benefit of the Public Garage Improvements when and as the same become due, and the District shall not permit any construction, mechanics', materialmen's and/or laborers' liens to be filed against the Easement Area (including the Leasehold Property), the Private Improvements or other improvements of the City and/or Margaritaville in connection with any work performed by or at the direction of the District with respect to the Public Garage Improvements. The District hereby indemnifies and agrees to defend and hold harmless, subject to and in accordance with applicable Florida law, Margaritaville and the City from and against any construction, mechanics', materialmen's and/or laborers' liens, and all costs, expenses and liabilities in connection therewith, including without limitation, attorneys' fees, arising out of work undertaken, pursuant to any easement granted hereunder, by or at the direction of the District with respect to the Public Garage Improvements. If the Easement Area (including the Leasehold Property), the Private Improvements or any other improvements of the City and/or Margaritaville shall become subject to any such lien, the District shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting such bond or other security as shall be required by law to obtain such release and discharge.

3. REPAIR, MAINTENANCE OF PUBLIC GARAGE IMPROVEMENTS; INSURANCE

3.1 Obligation to Maintain and Repair. The District shall, at all times during the term of this Easement from and after the completion of Public Garage Improvements and conveyance of the Public Garage Improvements to the District, keep, maintain and repair all of the Public Garage Improvements, or cause all Public Garage Improvements to be kept, maintained and repaired in good order, condition and repair.

3.2 Insurance. The parties acknowledge that Margaritaville intends to develop, or cause to be developed, additional improvements above certain Public Garage Improvements (as defined in the Acquisition Agreement). The parties further acknowledge that it is in their respective interests to describe and document, prior to the Garage Closing (as defined in the Acquisition Agreement), the insurance required to be carried by each of the District and Margaritaville with respect to their respective ownership interests in the Parking Garage and the process for the deposit and disbursement of insurance proceeds in the event of a casualty affecting either or both of their respective interests in the Parking Garage. Promptly following the execution of this Easement, the parties agree to negotiate the terms and conditions of such insurance requirements, which requirements shall recognize the interests and insurance requirements of any mortgagee of Margaritaville and City as ground lessor. The parties hereto agree to execute a document reflecting the foregoing agreement at or before the Garage Closing and record the same among the public records of Broward County, Florida.

4. FORCE MAJEURE

Each party shall be excused from performing any obligation or undertaking provided in this Easement, except any obligation to pay any sums of money under the provisions hereof, if and for so long as the performance of such obligation is prevented or delayed, retarded or hindered by act of God, fire, earthquake, flood, explosion, actions of the elements, war, acts of terrorism, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor union; condemnation, requisition, laws, orders of governmental or civil or military or naval authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of such party; provided, however, that the unavailability of sufficient funds, regardless of the cause, shall under no circumstances excuse any party from performing its obligations or undertakings pursuant to this Easement. A party seeking to be temporarily excused from performing an obligation on account of one of the foregoing events must notify the other parties of the delay within twenty (20) days after the occurrence of the applicable event. In such event, the time for performing the applicable obligation shall be extended by a period of time equal to the duration of the event that excused timely performance.

5. NOTICES

5.1 Notice to Parties. All approvals, notices or other communications required or permitted hereunder to be given to a party shall be in writing, and shall be personally delivered or delivered by overnight commercial carrier, or sent by registered or certified mail, postage prepaid, return receipt requested or sent by facsimile to the facsimile numbers set forth herein (provided that notice is also simultaneously sent by registered or certified mail or by overnight carrier). Notice shall be deemed effective upon actual receipt or first rejection, as applicable, in each case as shown on the carrier's delivery receipt or other records; provided, however, if any delivery is received after 5:00 p.m. (local time for the recipient's address) on a business day or at any time on a non-business day, notice will be deemed given on the next business day. For purposes of this Section 5.1, a business day is Monday through Friday, excluding holidays observed by the United States Postal Service. The addresses for the parties are set forth below:

City: City of Hollywood
Hollywood City Hall
2600 Hollywood Blvd.
Hollywood, Florida 33020
Attn: City Manager

with a copy to: City of Hollywood
Hollywood City Hall
2600 Hollywood Blvd.
Hollywood, Florida 33020
Attn: City Attorney

Margaritaville: Margaritaville Hollywood Beach Resort, L.P.
Attn: Lon Tabatchnick
3501 N. Ocean Drive
Hollywood, Florida 33019

with a copy to: Margaritaville of Hollywood, Florida LLC,
Attn: John Cohan
256 Worth Avenue, Suite Q
Palm Beach, Florida 33480

And after the Permitted Pre-Possession Transfer

c/o Starwood Capital Group Global, L.P.
591 W. Putnam Avenue
Greenwich, CT 06830
Attn: Ellis F. Rinaldi

District: The Margaritaville Community Development District
c/o

with a copy to: Billing, Cochran, Lyles, Mauro, & Ramsey, P.A.
515 East Las Olas Boulevard, Sixth Floor
Fort Lauderdale, Florida 33301
Attn: Susan F. Delegal, Esq.
Telephone: 954-764-7150

6. DURATION AND EXTENSION

This Easement and the rights and easements created hereby shall continue in full force for a term of ninety-nine (99) years from the Effective Date, at which time the same shall automatically be extended for successive periods of ten (10) years each unless an instrument terminating this Easement and the rights and easements created hereby is executed by the parties and consented to by each mortgagee holding a mortgage encumbering all or any part of the

Easement Area, including the Leasehold Property, and recorded among the public records of Broward County, Florida.

7. MISCELLANEOUS

7.1 Amendments. The provisions of this Easement may be modified or amended, in whole or in part, only by a written instrument, executed and acknowledged by the parties and duly recorded in the Official Records of Broward County, Florida. Except as provided below, any amendment or modification hereof (including any extension and renewal hereof), whenever made, shall be superior to any and all liens to the same extent as if such amendment or modification had been executed concurrently with this Easement.

7.2 No Third Party Beneficiaries. The provisions of this Easement are for the exclusive benefit of the parties and of their respective successors and assigns, and are not for the benefit of any third person, nor shall this Easement be deemed to have conferred any rights, express or implied, upon any third person. No modification or amendment, in whole or in part, of this Easement shall require any consent or approval on the part of any Occupant.

7.3 Breach Shall Not Permit Termination. No breach of this Easement shall entitle any party to cancel, rescind or otherwise terminate this Easement or any portion hereof, but such limitation shall not affect, in any manner, any other rights or remedies which any party may have hereunder by reason of any breach of this Easement.

7.4 Interpretation. The language in all parts of this Easement shall be in all cases construed simply according to its fair meaning and not strictly for or against any party. The captions of the Sections of this Easement are for convenience only and shall not be considered or referred to in resolving questions of interpretation and construction. References to "Sections" are to sections of this Easement unless otherwise indicated.

7.5. Consent Time for Approval. In any instance in which a party is requested to consent to or approve any matter with respect to which such consent or approval is required by any of the provisions of this Easement, such consent or approval shall be given in writing, and shall not be unreasonably withheld, conditioned or delayed, unless the provisions of this Easement with respect to a particular consent or approval shall expressly provide that the same shall be given or refused in the sole discretion of such party or is otherwise qualified. Wherever in this Easement approval of a party is required, then, unless a different time limit is provided in this Easement, such approval or disapproval shall be given within thirty (30) days following the receipt of the item to be so approved or disapproved, or, unless specifically provided to the contrary in this Easement, and provided such notice complies with this Section 7.5, the same shall be conclusively deemed to have been approved by such party. Any disapproval shall specify with particularity the reasons therefor, provided, however, that wherever in this Easement a party is given the right to approve or disapprove in its sole discretion, it may disapprove without specifying a reason therefor. Any document submitted for consent or approval shall contain a cover page prominently listing the date mailed, and if applicable, a statement to the effect that the document or the facts contained within such document shall be deemed approved or consented to by the recipient unless the recipient makes objection thereto within the time periods specified or permitted in this Easement.

7.6 Governing Laws. This Easement shall be governed by and construed in accordance with the laws of the State of Florida without regard to its conflicts of law principles.

7.7 Remedies. Except as otherwise expressly provided herein, Margaritaville and the City shall have all rights and remedies at law or in equity if the District fails to cure any default or breach hereunder within thirty (30) days after receipt of written notice of any such default.

7.8 Not a Public Dedication. Except to the extent of the public purposes for which the Public Garage Improvements were designed and intended to be used, nothing in this Easement shall be deemed to be a gift or dedication of any portion of the Public Garage Improvements to the general public or for the general public or for any public purposes whatsoever.

7.9 Severability. If any term, provision or condition contained in this Easement shall, to any extent, be invalid or unenforceable, the remainder of this Easement (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision and condition of this Easement shall be valid and enforceable to the fullest extent permitted by law.

7.10 Number and Gender. The use of the singular herein includes the plural and the use of the neuter herein includes the masculine and/or feminine, as the context may require.

7.11 Successors and Assigns. This Easement shall, except as otherwise provided herein, be binding upon and inure to the benefit of the successors and assigns of the parties. Without limiting the generality of the foregoing, any notice received by a party from a mortgagee pursuant hereto shall be binding on the successors and assigns of such party, and such mortgagee shall have no obligation to provide any further notice to the successors and assigns of such party in order to be entitled to the rights hereunder. Notwithstanding anything herein to the contrary, the Public Garage Improvements shall at all times be owned, in whole or in part, by the District or the City.

7.12 Time of Essence. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Easement.

7.13 Waiver of Default. No waiver of any default by a party shall be implied from any failure by the non-defaulting party to take any action in respect of such default if such default continues or is repeated. No express waiver of any default shall affect any default or cover any period other than the default and period specified in such express waiver. One or more waivers of any default in the performance of any term, provision or covenant contained in this Easement shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Easement. The consent or approval by any party to or of any act or request by the other parties requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar acts or requests. The rights and remedies given to any party by this Easement shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or of any other right or remedy at law or in equity which such party might otherwise have by virtue of a default under this Easement, and the exercise of one

**SIGNATURE PAGE TO
EASEMENT AGREEMENT**

MARGARITAVILLE HOLLYWOOD BEACH RESORT, L.P.,
a Delaware limited partnership

By: Margaritaville Hollywood Beach Resort GP, L.L.C.,
a Delaware limited liability company,
its general partner

By: MHBR JV, L.P.,
a Delaware limited partnership,
its sole member

By: Lojeta-Millennium GP, LLC,
a Florida limited liability company,
its Operating General Partner

By: _____
Name: _____
Title: _____

WITNESS:

Print Name: _____

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of May, 2013, by Lon Tabatchnick, the _____ of Lojeta-Millennium GP, LLC, as operating general partner of MHBR JV, L.P., as sole member of Margaritaville Hollywood Beach Resort GP, L.L.C., as general partner of Margaritaville Hollywood Beach Resort, L.P., a Delaware limited partnership. He is personally known to me or has produced _____ as identification.

Notary Public
Name: _____
Commission Number: _____
Commission expires: _____

JOINDER , CONSENT AND SUBORDINATION TO EASEMENT

The undersigned hereby certifies that it is the holder of a mortgage, lien or other encumbrance upon the fee simple title to the Easement Area and other land owned by _____ and that the undersigned hereby joins in and consents to the Easement to which this Joinder, Consent and Subordination to Easement is attached, and hereby subordinates its mortgage, lien or other encumbrance, as amended from time-to-time, which is recorded in O.R. Book _____, page _____ of the Public Records of Broward County, Florida, to the Easement, as amended from time-to-time, and the rights and interests of the District, City and the Margaritaville thereunder. Capitalized terms used herein and not otherwise defined herein shall have the meanings given such terms in the Easement.

Witness

Printed Name

By: _____

Print Name: _____

Its:

Date: _____, 20____

Witness

Printed Name

[Notarial Certification Attached]

EXHIBIT "A" TO EASEMENT AGREEMENT

Easement Area

EXHIBIT "B" TO EASEMENT AGREEMENT

Leasehold Property

EXHIBIT "M"
RELEASE OF CDD EASEMENT FORM

Prepared By:
Record and Return to:
Gerald L. Knight, Esq.
Billing, Cochran, Lyles, Mauro & Ramsey, P.A.
515 East Las Olas Blvd, Sixth Floor
Fort Lauderdale, FL 33301

TERMINATION OF EASEMENT

This Termination of Easement ("Termination") made and entered into this ____ day of _____, 20__, by the CITY OF HOLLYWOOD, a Florida municipal corporation, whose address is: 2600 Hollywood Boulevard, Hollywood, Florida 33020 ("City"), MARGARITAVILLE HOLLYWOOD BEACH RESORT, L.P., a Delaware limited partnership ("Margaritaville"), and MARGARITAVILLE COMMUNITY DEVELOPMENT DISTRICT, a local unit of special-purpose government organized and existing under Chapter 190, Florida Statutes.

WITNESSETH:

WHEREAS, the City and Margaritaville granted an easement to the District which said easement was dated _____ and recorded on _____ in Official Records Book _____, Page _____, of the Public Records of Broward County, Florida ("Easement"); and

WHEREAS, the City, Margaritaville and the District desire to terminate said Easement.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other valuable consideration in hand paid, and in further consideration of the mutual terms, covenants and conditions contained herein, it is agreed as follows:

1. The Easement identified above as recorded in Official Records Book _____, Page _____, of the Public Records of Broward County, Florida is hereby terminated and is of no further force and effect.
2. This Termination also releases and terminates all obligations and covenants by and among the parties contained in the Easement.

IN WITNESS WHEREOF, the City, Margaritaville, and the District have caused this Termination of Easement to be signed in its name by their proper officers this ____ day of _____, 20__.

sign

print

sign

print

CITY OF HOLLYWOOD, FLORIDA, a
Florida municipal corporation

By: _____

Print Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

On the _____ day of _____, 20__, before me, a Notary Public in and for the above state and county, personally appeared _____ as _____ of the City of Hollywood, Florida, a Florida municipal corporation, known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that he or she executed said instrument for the purposes therein contained as his or her free and voluntary act and deed.

NOTARY PUBLIC

My Commission Expires: _____

(SEAL)

MARGARITAVILLE HOLLYWOOD BEACH RESORT, L.P.,
a Delaware limited partnership

By: Margaritaville Hollywood Beach Resort GP, L.L.C.,
a Delaware limited liability company,
its general partner

By: MHBR JV, L.P.,
a Delaware limited partnership,
its sole member

By: Lojeta-Millennium GP, LLC,
a Florida limited liability company,
its Operating General Partner

By: _____
Name: _____
Title: _____

WITNESS:

Print Name: _____

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of May, 2013, by Lon Tabatchnick, the _____ of Lojeta-Millennium GP, LLC, as operating general partner of MHBR JV, L.P., as sole member of Margaritaville Hollywood Beach Resort GP, L.L.C., as general partner of Margaritaville Hollywood Beach Resort, L.P., a Delaware limited partnership. He is personally known to me or has produced _____ as identification.

Notary Public
Name: _____
Commission Number: _____
Commission expires: _____

Exhibit "A"
to Termination Of Easement

[Same Legal Description as in Easement]

EXHIBIT "N"
CDD SPECIAL WARRANTY DEED FORM

This Instrument Prepared by:

Gerald L. Knight, Esq.
Billing, Cochran, Lyles, Mauro & Ramsey, P.A.
Suntrust Center, Sixth Floor
515 East Las Olas Boulevard
Fort Lauderdale, FL 33301

Grantee's Tax Identification No.:

Property Appraiser's Folio No.:

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED (this "Deed") is made as of the ____ day of _____, 20__ from **MARGARITAVILLE HOLLYWOOD BEACH RESORT, L.P.**, a Delaware limited partnership, with an address at _____ ("**Grantor**"), to **MARGARITAVILLE COMMUNITY DEVELOPMENT DISTRICT**, a local unit of special purpose government established pursuant to Chapter 190, Florida Statutes, with an address at _____ ("**Grantee**").

WITNESSETH:

Grantor, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, by these presents does grant, bargain and sell unto Grantee, and Grantee's successors and assigns forever, all the right, title, interest, claim and demand that Grantor have or may have in and to the following described real property (the "**Property**") located and situate in the County of Broward and State of Florida, to wit:

See **Exhibit "A"** attached hereto and made a part hereof

Subject To: The Permitted Exceptions listed on **Exhibit "B"** attached hereto and made a part hereof.

TO HAVE AND TO HOLD the same in fee simple forever.

Grantor does hereby warrant, and will defend, the title to the Property hereby conveyed, subject as aforesaid, against the lawful claims of all persons claiming by, through or under Grantor, but none other.

IN WITNESS WHEREOF, Grantor has caused this Deed to be executed and its seal to be affixed the day and year first above written.

MARGARITAVILLE HOLLYWOOD BEACH RESORT, L.P.,
a Delaware limited partnership

By: Margaritaville Hollywood Beach Resort GP, L.L.C.,
a Delaware limited liability company,
its general partner

By: MHBR JV, L.P.,
a Delaware limited partnership,
its sole member

By: Lojeta-Millennium GP, LLC,
a Florida limited liability company,
its Operating General Partner

By: _____
Name: _____
Title: _____

WITNESS:

Print Name: _____

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Lon Tabatchnick, the _____ of Lojeta-Millennium GP, LLC, as operating general partner of MHBR JV, L.P., as sole member of Margaritaville Hollywood Beach Resort GP, L.L.C., as general partner of Margaritaville Hollywood Beach Resort, L.P., a Delaware limited partnership. He is personally known to me or has produced _____ as identification.

Notary Public
Name: _____
Commission Number: _____
Commission expires: _____

EXHIBIT "A"
to Special Warranty Deed

Legal Description of Property

**[To be provided after the structure of the public portion of the Parking Garage is
completed]**

EXHIBIT "B"
to Special Warranty Deed

Permitted Exceptions

**[To be determined after review of a title commitment to be issued on or about
the time the Special Warranty Deed is to be executed and delivered]**

EXHIBIT "O"
LEGAL DESCRIPTION OF INTRACOASTAL PARCEL

Parcel "B", "MARGARITAVILLE AT HOLLYWOOD", according to the Plat thereof as recorded in Plat Book 180, Page 177 of the Public Records of Broward County, Florida; and subject to a 20 foot wide sewer easement unto the owner commencing on the Southwest corner of Parcel "B", thence along the west property line a distance of 110.1 feet, to the centerline of the 20 foot wide sewer easement, extending easterly and parallel to the south property line of said Parcel "B" across said parcel a distance of 57.4 feet to the east property line of said parcel (as reflected on the plat).

Uses within the sewer easement shall be subject to specific approval from the owner and generally shall be limited to walkways, landscaping, signage, lighting, and other similar elements consistent with utility uses.

Said land situate, lying and being in the City of Hollywood, Broward County Florida.

EXHIBIT "P"
DESCRIPTION OF JOHNSON STREET PARCEL

The public right-of-way as reflected on the plat of HOLLYWOOD BEACH, as recorded in Plat Book 1, Page 27, of the public records of Broward County, Florida, and any additions thereto, extending northward from south right-of-way line abutting the property owned by the City until the north right-of-way line, and extending from the westerly boundary of A1A to the easterly wall of the structure commonly known as the Bandshell. This description includes that portion of the Boardwalk lying within said description, but specifically restricts the use of that portion of the Boardwalk to the public as required by those certain deeds of conveyance as recorded in: (1) Official Records Book 276, Page 402; and (2) Official Records Book 238, Page 219, both in the public records of Broward County, Florida.

EXHIBIT "Q"
UNIFORM SYSTEM

Summary Operating Statement¹

	CURRENT PERIOD				YEAR-TO-DATE			
	ACTUAL		FORECAST		ACTUAL		FORECAST	
	\$	%	\$	%	\$	%	\$	%
REVENUE ²								
Rooms								
Food and Beverage								
Other Operated Departments								
Rentals and Other Income								
Total Revenue								
DEPARTMENTAL EXPENSES ³								
Rooms								
Food and Beverage								
Other Operated Departments								
Total Departmental Expenses								
TOTAL DEPARTMENTAL INCOME								
UNDISTRIBUTED OPERATING EXPENSES								
Administrative and General								
Sales and Marketing								
Property Operation & Maint.								
Utilities								
Total Undistributed Expenses								
GROSS OPERATING PROFIT								
MANAGEMENT FEES								
INCOME BEFORE FIXED CHARGES								
FIXED CHARGES								
Rent								
Property and Other Taxes								
Insurance								
Total Fixed Charges								
NET OPERATING INCOME								
LESS: REPLACEMENT RESERVES								
ADJUSTED NET OPERATING INCOME								

¹ For a complete Statement of Income, refer to page 18.

² Departmental Revenue is shown as a percentage of Total Revenue.

³ Departmental Expenses is the sum of Cost of Sales (when applicable) and Total Expenses. Departmental Expenses are shown as a percentage of their respective department revenue.

EXHIBIT "R"
EXAMPLE OF TRANSACTION RENT CALCULATION

The example of Transaction Rent in this **Exhibit "R"** is for illustrative purposes only.

1. Assuming that, for the first Transfer for which Transaction Rent would be payable, (i) the Developer sells a 50% interest in the Project to Owner #2 for \$68,750,000 of Net Sales Proceeds, and (ii) the Developer Investment at the time of such sale is \$127,500,000, then the Transaction Rent payable in connection with such Transfer would be calculated as follows:

Net Sales Proceeds	=	\$68,750,000
Developer' Investment		
Allocable to such Transfer	=	\$63,750,000 (i.e., 50% of \$127,500,000)
Developer's Gain on		
Such Transfer	=	\$5,000,000 (i.e., \$68,750,000 minus \$63,750,000)
Transaction Rent	=	\$250,000 (i.e., 5% of \$5,000,000)

2. Assuming that Developer and Owner #2 each Transfer their 50% share in the Project to Owner #3 (i.e., 100% of the Project is being Transferred) for \$149,500,000 of Net Sales Proceeds, then the Transaction Rent payable in connection with such Transfer would be calculated as follows:

Transaction Rent payable by Developer:

Net Sales Proceeds	=	\$74,750,000 (i.e., 50% of \$149,500,000)
Developer' Investment		
Allocable to such Transfer	=	\$63,750,000 (i.e., 50% of \$127,500,000)
Developer's Gain on		
Such Transfer	=	\$11,000,000 (i.e., \$74,750,000 minus \$63,750,000)
Transaction Rent	=	\$550,000 (i.e., 5% of \$11,000,000)

Transaction Rent payable by Owner #2:

Net Sales Proceeds	=	\$74,750,000 (i.e., 50% of \$149,500,000)
Transaction Rent	=	\$448,500 (i.e., 0.60% of \$74,750,000)