

appeal such assessment or imposition, in whole or in part, by appropriate proceedings, administrative, legal or judicial action, or otherwise, and the City shall not object if Developer wishes to participate in such contest, challenge or appeal. If the City is unsuccessful in such challenge to the Public Charges, the Developer shall have the right to pay such Public Charges within thirty (30) days of written notice from the City or the City may elect to terminate the License.

(b) Utilities. During the Term, the Developer shall pay utility rates and charges levied, assessed or imposed by any Governmental Authority against the Licensed Parcel, including the Public Improvements thereon, including electric, water and sewer, garbage and trash removal.

ARTICLE II

TRANSFER OF LICENSE

Section 2.1 Transfers. If, at any time, during the Term of this License, the Lease or the Resort Hotel is transferred to a third party transferee as permitted by the Lease, this License, and its terms, conditions and maintenance obligations shall transfer along with the Lease and/or Resort Hotel to said permitted third party transferee, so as to ensure that the Intracoastal Parcel is maintained for the mutual benefit of the Resort Hotel and the public. No other transfers, except as expressly permitted by the Lease, shall be permitted without the prior written consent of the City in its sole discretion.

ARTICLE III

REMEDIES; EVENTS OF DEFAULT

Section 3.1 Default by Developer. Each of the following occurrences shall constitute an "Event of Default" of Developer under this License:

(a) Failure-Payment of Money. Failure of Developer to pay any License Fees, Additional Fees or any other payments of money as herein-provided or required when due. In the event that any License Fees, Additional Fees 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 written notice and a fifteen (15) day grace period to pay same. 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. 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 an Event of Default. All payments of money required to be paid to the City by Developer under this License other than License Fees, including interest, late fees, penalties and contributions, shall be treated as Additional Fees.

(b) 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 License, 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.

(c) Other Defaults:

(1) If Developer shall voluntarily abandon all or any portion of the Intracoastal Parcel during the Term for a period of thirty (30) consecutive days; or

(2) If Developer shall sell or assign its interest in this License or the Intracoastal Parcel or sublicense or sublet any portion of the Intracoastal Parcel, or attempt to consummate any transfer (by entering into an agreement to sell or assign its interest in this License or the Intracoastal Parcel or to sublicense or sublet any portion of the Intracoastal Parcel) in violation of Section 2.1 of this License.

Section 3.2 Remedies for Developer's Default.

(a) Upon the occurrence of a Developer Event of Default, the City shall be entitled to seek all legal and equitable remedies available under Florida law, including without limitation, termination of this License, removal of Licensee from the Licensed Property, specific performance, injunctive relief, and damages. If the City obtains the right to terminate this License, 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 License shall terminate, upon the date specified in the written 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 Intracoastal Parcel.

(b) Upon the termination of this License, as provided in this Section 3.2, all rights and interest of Developer in and to the Intracoastal Parcel and the Intracoastal Parcel

Improvements, and every part thereof shall cease 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 License.

Section 3.3 Default by the City. An event of default by the City shall be deemed to have occurred under this License if the City fails to perform any obligation or fulfill any covenant or agreement of the City set forth in this License 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 License:

(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 3.4 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 3.5 Remedies Cumulative; Waiver. The rights and remedies of the parties to this License, whether provided by law or by this License, 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 thereto.

Section 3.6 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 IV

PROTECTION AGAINST MECHANICS' LIENS AND OTHER CLAIMS; INDEMNIFICATION

Section 4.1 **Liens.** Developer shall be responsible for the satisfaction and payment of all liens and other claims of any provider of work, labor, materials or services to the Intracoastal Parcel claiming by, through or under Developer. Developer shall also indemnify, hold harmless and defend the City against any such liens, including reasonable attorneys' fees and costs. Such liens shall be discharged by Developer within thirty (30) days after notice of filing thereof by bonding, payment or otherwise, provided the Developer may contest in good faith by appropriate proceedings any such lien.

ARTICLE V

OWNERSHIP OF INTRACOASTAL PARCEL

Section 5.1 **Ownership of Public Improvements During License.** The parties acknowledge that during the Term of this License, and at all times, title to the Intracoastal Parcel and all improvements thereon shall vest in the City by reason of its ownership of fee simple title or similar interest to the Intracoastal Parcel.

Section 5.2 **Surrender of Licensed Parcel.** Upon the expiration of the Term or earlier termination of this License, title to the Intracoastal Parcel, free and clear of all debts, mortgages, encumbrances, and liens (except as otherwise provided in the last sentence of this section), shall automatically pass to and continue 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 Intracoastal Parcel and associated improvements thereon without process of law. Developer in such event does hereby waive any demand for possession thereof and agrees to surrender and deliver the Intracoastal Parcel without process of law peaceably to the City or its successor in ownership immediately upon such expiration or termination. Notwithstanding the above provisions of this section, upon the expiration of the Term of this License without renewal, prior to the expiration or termination of the Lease, the City shall promptly grant to Developer a non-exclusive easement providing access to the Intracoastal Waterway through the Intracoastal Parcel for the public, including, without limitation, guests of the Resort Hotel. Specifically, such easement will provide Developer, upon demonstration and maintenance of adequate insurance and indemnification, the non-exclusive right to the continuing use of the Intracoastal Parcel for the benefit and enjoyment of Resort Hotel guests and the public, including the provision of fee-based tours such as Eco-tours throughout the area, including excursions by kayak and canoe to the West Lake (Anne Kolb) Preserve; sightseeing, fishing, and dive boat excursions north through the Port, and other water-based experiences (and related storage) while also serving water taxis and private boats for the pick up and drop off of passengers. The related storage area shall be for the exclusive use of the Resort Hotel to provide kayak, canoe and watercraft for the use of its guests and the public utilizing same.

ARTICLE VI

INSURANCE; INDEMNIFICATION

Section 6.1 **Insurance.** Developer shall at all times during the Term maintain comprehensive general liability insurance, property insurance and such other insurance on the Intracoastal Parcel as may be required under the Lease, under the same terms and conditions as set forth therein.

Section 6.2 **Indemnification.**

- (a) Developer, on behalf of itself and future visitors, trespassers, licensees, invitees, guests or of any person performing work or whosoever may at any time be using or occupying or visiting the Intracoastal 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 License or any provision thereof by Developer;
 - (ii) Developer's use and operation of the Intracoastal Parcel, or any part thereof, during the Term;
 - (iii) the negligent or more culpable acts or omissions of Developer;
- (b) Notwithstanding anything to the contrary contained in this Section 6.2, the duty to indemnify the City shall be limited to the percentage of negligent or more culpable acts or omissions assigned to the indemnitor, if the Losses are caused in part by the negligent or more culpable acts or omissions of the City, but only to the extent permitted by the 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 License.

ARTICLE VII

MAINTENANCE AND MANAGEMENT

Section 7.1 **Public Facility Standards.** The parties recognize and acknowledge that the manner in which the Intracoastal Parcel is operated and maintained is important to the City and the Developer. Developer covenants and agrees that it will maintain and operate the Intracoastal Parcel in a manner consistent with the condition in which the Intracoastal Parcel was received by the Developer on the Commencement Date, excluding wear and tear (the "Public Facility

Standard”). Developer shall use commercially reasonable efforts to ensure that any concession, commercial activity, or other activity shall be in keeping with the Public Facility Standard.

Section 7.2 **Covenant to Operate Intracoastal Parcel**. Developer covenants and agrees that it will in good faith diligently and continuously operate (or cause to be operated) the Intracoastal Parcel in accordance with reasonable business practices, the Public Facility Standard and any rules and regulations as may be established by the parties for the use of the Intracoastal Parcel by the Developer and City. Developer shall have the exclusive right to operate the Intracoastal Parcel. Notwithstanding the foregoing, Developer acknowledges and agrees to the following:

(a) The pump station located on the Intracoastal Parcel as depicted on the Site Plan shall be solely and exclusively operated and maintained by the City. The City shall have at all times access to and from the pump station through the Intracoastal Parcel for the purpose of operation and maintenance thereof; and

(b) Developer shall maintain the restrooms as shown on the Site Plan for the benefit of the public, and the public shall have free access to these restroom facilities from 10:00 a.m. EST until one hour preceding sundown, 7 days a week, subject only to repair and maintenance requirements; and

(c) Developer shall provide reasonable access from a point on the parcel adjoining the Intracoastal Waterway (hereinafter referred to as the “Water-Taxi Stand”) for those members of the public wishing to access the beach by water taxi or other water craft. No docking facilities shall be provided to the public. The public shall have the right to traverse and travel across the Intracoastal Parcel to and from the Water-Taxi Stand and A-1-A, as designated by Developer.

Developer shall have the right from time to time to close the Water-Taxi Stand or restrooms, upon at least sixty (60) days prior written notice to the City, for such reasonable periods of time as may be required to make repairs, alterations, remodeling or for any reconstruction after casualty or condemnation.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.1 **No Partnership or Joint Venture**. It is mutually understood and agreed that nothing contained in this License 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 8.2 **No Recording**. Neither this License nor a memorandum thereof may be recorded by either party among the Public Records of Broward County, Florida.

Section 8.3 **Florida and Local Laws Prevail.** This License shall be governed by the laws of the State of Florida. This License is subject to and shall comply with the Charter and Code of the City of Hollywood as the same is in existence as of the execution of this Agreement and the ordinances of the City of Hollywood. Any conflicts between this License and the aforementioned Charter, Code and ordinances shall be resolved in favor of the latter. If any term, covenant, or condition of this License 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 License, 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 License shall be valid and be enforced to the fullest extent permitted by law.

Section 8.4 **Notice.** A notice or communication, under this License 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, LLC
Attn: Lon Tabatchnick
3501 N. Ocean Drive
Hollywood, Florida 33019

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

cc: Wilson C. Atkinson, III, Esq.
Atkinson, Diner, Stone, Mankuta & Ploucha, P.A.
100 S.E. 3rd Avenue, Suite 1400
Ft. Lauderdale, Florida 33394

(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.

Section 8.5 **Estoppel Certificates.** The City and Developer shall at any time and from time to time, within thirty (30) days after written request by the other, execute, acknowledge and deliver to the party which has requested the same, a certificate stating that: (i) this License is in full force and effect and has not been modified, supplemented or amended in any way, or, if there have been modifications, the License is in full force and effect as modified, identifying such modification agreement, and if the License is not in force and effect, the certificate shall so state; (ii) this License as modified represents the entire agreement between the parties as to this subject matter, or, if it does not, the certificate shall so state; (iii) the dates on which the Term of this License commenced and will terminate; (iv) to the knowledge of the certifying party all conditions under the License 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 License 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 (v) the License Fees due and payable for the year in which such certificate is delivered have been paid in full, or, if they have 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 8.6 **Titles of Articles and Sections.** Any titles of the several parts, Articles and Sections of this License are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 8.7 **Counterparts.** This License may be executed in counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument. This License shall become effective only upon execution and delivery of this License by the parties hereto.

Section 8.8 **Successors and Assigns.** Except to the extent limited elsewhere in this License, all of the covenants, conditions and obligations contained in this License shall be binding upon and inure to the benefit of the respective successors and assigns of the City and Developer.

Section 8.9 **Entire Agreement.** This License 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 License are of no force or effect and are merged into this License.

Section 8.10 **Amendments.** No amendments to this License 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 in connection with any such amendment proposed by Developer, or otherwise in connection with any action requested by Developer under this License, and shall be reimbursed by Developer for all third-party costs (including third party consultants and attorneys) incurred by the City. Prior to the City taking action with respect to any such request, Developer shall deposit with the City the estimated amount of such costs, as reasonably determined by the City.

Section 8.11 **No Authority to Contract in Name of City.** Nothing contained in this License 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 Intracoastal Parcel or any part thereof, nor as giving Developer, 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 Licensed Parcel or any part thereof or against assets of the City, or City's interest in any License Fees, Additional Fees or any other monetary obligations of Developer to the City under this License.

Section 8.12 **Authorization and Approvals by the City.** All requests for action or approvals by the City shall be sent to the City Manager for decision as to who within the City, including the City Commission, must act or approve the matter on behalf of the City.

Section 8.13 **Prevailing Party's Attorneys' Fees.** In the event either party hereto shall institute legal proceedings (other than arbitration proceedings which shall be governed by the rules of the American Arbitration Association then in effect) in connection with, or for the enforcement of, this License, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorneys' fees, at both trial and appellate levels.

Section 8.14 **Holidays.** It is hereby agreed that whenever a notice or performance under the terms of this License 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 8.15 **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 License. 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 License.

Section 8.16 **Third Party Challenges**. In the event that the validity of this License or the improvements constructed by Developer pursuant to the terms of the Lease are challenged by a third party against the City through legal proceedings or otherwise, the Developer, as an interested party, shall have the right, but not the obligation, to participate in the defense against said challenge as if the Developer was a named party to the proceeding or otherwise.

Section 8.17 **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.

IN WITNESS WHEREOF, Developer has caused this License to be signed in its name by its Managing Member, and the City Commission of Hollywood has caused this License to be signed in its name by the appropriate City officials, 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.

ATTEST:

MARGARITAVILLE HOLLYWOOD
BEACH RESORT, LLC, a Florida limited
liability company

Name: _____

By: _____
Name: _____
Title: _____

Name: _____

By authority of Resolution No. _____
duly passed and adopted by the Hollywood
City Commission on _____, 2011.

ATTEST:

CITY OF HOLLYWOOD, a Florida municipal
corporation

By: _____
Patricia A. Cerny, City Clerk

By: _____
Name: _____
Title: Mayor

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"

INTRACOASTAL PARCEL

Lots 2, 3, 5 and 6, LESS the East 12.50 feet thereof, of Block "A", "HOLLYWOOD BEACH", according to the plat thereof recorded in Plat Book 1, Page 27 of the Public Records of Broward County, Florida; and subject to a right-of-way reserve area unto the owner across the West 10 feet of the East 22.5 feet of said Lots;

Together with:

Lot 4, LESS the East 12.50 feet thereof of Block "A", "HOLLYWOOD BEACH", according to the plat thereof recorded in Plat Book 1, Page 27, of the Public Records of Broward County, Florida; and subject to a right-of-way reserve area unto the owner across the West 10 feet of the East 22.5 feet of said Lot 4 LESS the East 12.5 feet thereof.

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

LICENSE AGREEMENT

JOHNSON STREET PARCEL

THIS LICENSE AGREEMENT (this "License") is executed as of the ____ day of _____, 2011, by and between the CITY OF HOLLYWOOD, a Florida municipal corporation (the "City"), MARGARITAVILLE HOLLYWOOD BEACH RESORT, LLC, a Florida limited liability company (the "Developer"), and the HOLLYWOOD COMMUNITY REDEVELOPMENT AGENCY, a dependent special district of the City of Hollywood (the "CRA").

RECITALS:

WHEREAS, on January 19, 2011, the City Commission, by Resolution No. R-2011-____ approved the execution of the Development Agreement and Ground Lease (the "Lease") by the appropriate City officials on behalf of the City which among other things provides for: (1) the leasing by the City to Developer of the Leased Property (as therein defined), and for the construction, development, operation and maintenance of the hotel and parking improvements on the Leased Property known as the Margaritaville Hollywood Beach Resort Hotel (the "Resort Hotel"), as more specifically described in the Lease; and (2) the development and construction by Developer of certain improvements and facilities on the public right-of-way adjacent to the Leased Property (the "Johnson Street Parcel"), including the creation of a large public open space with portable seating and a refurbished theater/bandshell, additional streetscape and the underground installation of public utilities; and

WHEREAS, prior to the City Commission's approval of the execution of the Lease, the site plan (the "Site Plan") required for the development and construction of the Resort Hotel on the Leased Property and the improvements and facilities to be constructed on the Johnson Street Parcel was approved by the City's Development Review and Planning and Zoning Boards on November 18, 2010, and thereafter by the City Commission on December 15, 2010, which Site Plan is more fully described and attached to the Lease; and

WHEREAS, this License provides for the use, operation and maintenance responsibilities and obligations of the Johnson Street Parcel by the Developer, the City and the CRA upon Developer's completion of the construction of the Resort Hotel and the improvements and facilities on the Johnson Street Parcel as set forth within the Site Plan, which Johnson Street Parcel is more particularly described in Exhibit "A" hereto; and

WHEREAS on January 19, 2011, in a joint session between the City Commission and the CRA, the City Commission and the CRA approved the execution of this License by the appropriate City officials on behalf of the City.

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 grants this License to Developer and Developer hereby accepts this License from the City for the Licensed Parcel, for the fees, if any, and upon the terms,

covenants, conditions, limitations and agreements herein contained for the term hereinafter specified and the parties mutually covenant and agree as follows:

ARTICLE I

GENERAL TERMS OF LICENSE

Section 1.1 **Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference. The Lease, and all of the terms and conditions therein, are hereby incorporated into this License as if fully set forth herein.

Section 1.2 **License.** The City, as of the Commencement Date, hereby grants a non-exclusive license to Developer, and Developer takes and hires from the City, the Johnson Street Parcel during the Term (as more fully defined below) of this License for the use, operation and maintenance of the Johnson Street Parcel thereon in accordance with the terms and conditions of this License.

Section 1.3 **Term.** The term of this License, along with the use, operation and maintenance obligations provided for herein, shall commence on the date on which the Resort Hotel first opens for business to the general public (the "Commencement Date") and shall continue for a period of five (5) years thereafter (the "Term"). The Developer, pursuant to Article III herein, shall have priority in negotiating a renewal Term, on such terms and conditions as may be acceptable to the City.

Section 1.4 **Restrictive Covenants.**

(a) **Use Restrictions.** Developer shall use, manage and operate the Johnson Street Parcel throughout the Term consistent with the Public Facility Standard (as hereinafter defined), and for no other purpose, and except for reasonable interruptions for reasonable periods for repairs, renovations, replacements and rebuilding in the ordinary course of operations, all of which will be carried out pursuant to, and in accordance with, the applicable provisions of this License. The Johnson Street Parcel 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 (as said terms are defined in the Lease).

(b) **No Discrimination.** Developer shall comply with all Governmental Requirements prohibiting discrimination by reason of race, color, religion, sex, national origin, or disability in the lease, use or occupancy of the Johnson Street Parcel or any portion thereof.

(c) Enforceability. The restrictive covenants contained in this Section 1.4 shall be binding upon the Developer and shall be for the benefit and in favor of, and enforceable by the City, the CRA, and their 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 1.5 License Fees and Other Payments. Developer covenants and agrees to pay the City upon the commencement of the Term of this License and continuing during the Term the following:

(a) Naming Rights Revenues. Developer covenants and agrees to pay to City an amount equal to twenty five percent (25%) of any gross revenues generated by the sale, lease or use of naming rights (the "Naming Rights Revenues") to all or any portion of the Johnson Street Parcel, which shall be payable within sixty (60) days of Developer entering into or executing any agreement or obligation as to naming rights. The Developer's sale, lease or use of naming rights to all or any portion of the Johnson Street Parcel shall be subject to the prior written approval of the City on a commercially reasonable basis. Any agreement or obligation entered into by the Developer providing for naming rights pursuant to this section shall not extend beyond the Term of this License.

(b) Payment of License Fees. All Naming Rights Revenues and other payments hereunder required to be made to the City (collectively, the "License Fees") shall be paid to the City at the Office of the Director of Finance, Hollywood City Hall, 2600 Hollywood Boulevard, 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 9.4. Any late payment shall automatically accrue interest at the Default Rate (as said term is defined in the Lease) from the date that payment was due until paid.

(c) Records and Reporting. For the purpose of permitting verification by the City of any License Fees or other amounts due to it or derived from the Developer's use and operation of the Johnson Street Parcel, Developer will keep and preserve for at least three (3) years in Broward County, Florida auditable original or duplicate books and records for the Johnson Street Parcel which shall disclose all information with respect to the use of the Johnson Street Parcel, including information required to determine revenue generated from the use of the Johnson Street Parcel, including Naming Rights Revenues, if any. All such records shall be maintained in every material respect, in accordance with the uniform system of accounts and in accordance with GAAP (Generally Accepted Accounting Principles as promulgated by the Financial Accounting Standards Board). The City shall, on commercially reasonable notice, have the right during 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 License Fees in excess of the License Fees theretofore paid by Developer for the period in question, Developer shall pay such additional License Fees within thirty (30) days after receipt of written demand therefor, and if such audit shall disclose an overpayment of the License Fees theretofore paid, the City shall return the excess to Developer within thirty (30) days after receipt of written demand therefor.

Section 1.6 **Covenants for Payment of Public Charges by Developer.**

(a) **Imposition of Public Charges; Contesting Impositions.** In the event that the Johnson Street Parcel and improvements thereon are charged, levied, assessed or imposed with any real or personal property taxes, ad valorem real property taxes, taxes on License Fees payable hereunder, public assessments and other public charges (the "Public Charges"), the City shall contest, challenge or appeal such assessment or imposition, in whole or in part, by appropriate proceedings, administrative, legal or judicial action, or otherwise, and the City shall not object if Developer wishes to participate in such contest, challenge or appeal. If the City is unsuccessful in such challenge to the Public Charges, the Developer shall have the right to pay such Public Charges within thirty (30) days of written notice from the City or the City may elect to terminate the License.

(b) **Utilities.** During the Term, the City or the CRA shall pay utility rates and charges levied, assessed or imposed by any Governmental Authority against the Johnson Street Parcel, and any improvements thereon, including electric, water and sewer, garbage and trash removal.

ARTICLE II

TRANSFER OF LICENSE

Section 2.1 **Transfers.** If, at any time, during the Term of this License, the Lease or the Resort Hotel is transferred to a third party transferee as permitted by the Lease, this License, and its terms, conditions and maintenance obligations shall transfer along with the Lease and/or Resort Hotel to said permitted third party transferee, so as to ensure that the Johnson Street Parcel is maintained for the mutual benefit of the Resort Hotel and the public. No other transfers, except as expressly permitted by the Lease, shall be permitted without the prior written consent of the City in its sole discretion.

ARTICLE III

ENTERTAINMENT BASELINE STANDARD; LICENSE RENEWAL

Section 3.1 **Entertainment Baseline Standard.** The parties acknowledge that an integral part of this License is the public entertainment programming and scheduling offered within the Bandshell Area (as hereinafter defined) pursuant to the terms and conditions of this License. This programming and scheduling is intended to serve as a catalyst to revitalize, stimulate and strengthen the City's central beach economy. To that extent, Developer has committed its time and resources as more particularly set forth in Article VIII in the furtherance of this goal. The parties further recognize that, throughout the Term of this License, and in conjunction with the quarterly meetings between Developer and the appropriate City officials (including, but not limited to, representatives from the CRA and the City's Parks, Recreation and Cultural Arts Department), the caliber, kind and quality of entertainment programming and scheduling

provided will set an entertainment baseline standard ("Entertainment Baseline Standard") for all future entertainment programming and scheduling within the Bandshell Area.

Section 3.2 **License Renewal; Future Programming and Scheduling Obligations.** The parties shall commence negotiations to renew this License at the beginning of the forty-eighth (48) month of the License's Term. Subject to the provisions of Section 3.4 below, if the parties are unable to reach an agreement to renew this License prior to the first day of the fifty-fifth (55) month of the License's Term, the City or CRA shall provide for all future entertainment programming and scheduling for the Bandshell Area consistent with the Entertainment Baseline Standard as set forth in Section 3.1 above for a term of ten (10) years beyond the expiration of the Term (the "Ten (10) Year Entertainment Baseline Standard Term"). In addition to the foregoing but also subject to the provisions of Section 3.4 below, if the City enters into any subsequent license(s) with a third party during the Ten (10) Year Entertainment Baseline Standard Term that includes entertainment programming and scheduling for the Bandshell Area, said entertainment programming and scheduling shall be at the same Entertainment Baseline Standard established during the Term of this License. Likewise, in the event that this License is renewed between the City and Developer, the Developer shall continue to provide entertainment programming and scheduling at the same Entertainment Baseline Standard previously established for any renewal term.

Section 3.3 **Post Termination.** Subject to the provisions of Section 3.4 below, the obligations of this Article III shall specifically survive the termination of this License, and the City, through either the renewal of this License, its own efforts, or the contracting with others, shall continue to maintain this Entertainment Baseline Standard for the Bandshell Area throughout the Ten (10) Year Entertainment Baseline Standard Term; provided, however, that if this License is terminated for cause directly related to the public entertainment programming and scheduling offered by Developer within the Bandshell Area or other cause pursuant to the terms and conditions of this License, this post termination obligation as to the Ten (10) Year Entertainment Baseline Standard Term shall not be applicable.

Section 3.4 **License Renewal under Same Terms and Conditions as in Effect during the Term.** Notwithstanding anything to the contrary contained in this Article III, if the parties are unable to reach an agreement to renew this License and during the negotiations, the City offers to renew this License under the same terms and conditions as in effect during the Term and Developer rejects such offer, neither the City nor the CRA shall be obligated to continue to maintain the Entertainment Baseline Standard after the expiration of the Term.

ARTICLE IV

REMEDIES; EVENTS OF DEFAULT

Section 4.1 **Default by Developer.** Each of the following occurrences shall constitute an "Event of Default" of Developer under this License:

(a) **Failure-Payment of Money.** Failure of Developer to pay any License Fees, Additional Fees or any other payments of money as herein-provided or required when due. In the

event that any License Fees, Additional Fees 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 written notice and a fifteen (15) day grace period to pay same. 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. 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 an Event of Default. All payments of money required to be paid to the City by Developer under this License other than License Fees, including interest, late fees, penalties and contributions, shall be treated as Additional Fees.

(b) Failure-Performance of Other Covenants. Failure of Developer to perform in accordance with or to comply with any of the other covenants, conditions and agreements which are to be performed or complied with by Developer in this License or the Lease, or an Event of Default occurs under the Lease, and the continuance of such failure for a period of sixty (60) days after notice thereof in writing from the City to Developer (which notice shall specify the respects in which 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 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 Johnson Street Parcel continues to operate in the ordinary course of business.

(c) Other Defaults:

(1) If Developer shall voluntarily abandon all or any portion of the Johnson Street Parcel during the Term for a period of thirty (30) consecutive days; or

(2) If Developer shall sell or assign its interest in this License or the Johnson Street Parcel or sublicense or sublet any portion of the Johnson Street Parcel, or attempt to consummate any transfer (by entering into an agreement to sell or assign its interest in this License or the Johnson Street Parcel or to sublicense or sublet any portion of the Johnson Street Parcel.

Section 4.2 Remedies for Developer's Default. Upon the occurrence of an Event of Default by Developer, the City shall be entitled to seek legal and equitable remedies available under Florida law, including termination of this License and removal of Developer from the Licensed Parcel, recovery of all License Fees and Additional Fees due the City, and damages, if any. If this License is determined to be in default, and Developer has exhausted or waived all of its rights to appeal, then all rights and interest of Developer in and to the Johnson Street Parcel and every part thereof shall cease and terminate 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 License.

Section 4.3 **Default by the City.** The City or CRA shall be deemed to be in default under this License if the City or CRA fails to perform any obligation or fulfill any covenant or agreement of the City or CRA set forth in this License and such failure shall continue for sixty (60) days following the City's and CRA's receipt of written notice of the non-performance; provided, however, the City and CRA shall not be in default of this License (i) if the City or CRA provides Developer with a written response within said sixty (60) day period indicating the status of the City's or CRA's resolution of the breach and providing for a mutually agreeable schedule to correct same, or (ii) 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 or CRA commences to cure such breach within such sixty (60) day period (or as soon thereafter as is reasonably possible) and diligently and in good faith continues to cure the breach until completion.

Section 4.4 **Unavoidable Delay or Force Majeure.** Neither the City, the CRA, nor Developer, as the case may be, shall be considered in breach of or in default of any of its non-monetary obligations 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 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 unavoidable delay.

Section 4.5 **Remedies Cumulative; Waiver.** The rights and remedies of the parties to this License, whether provided by law or by this License, shall be cumulative and concurrent, and the exercise by any 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 another 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 thereto.

Section 4.6 **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 or CRA may, in its sole discretion, after notice to Developer (or without notice 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 or CRA 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 Fees ("Additional Fees") hereunder and shall be repaid to the City or CRA by Developer upon demand.

ARTICLE V

PROTECTION AGAINST MECHANICS' LIENS AND OTHER CLAIMS; INDEMNIFICATION

Section 5.1 **Liens.** Developer shall be responsible for the satisfaction and payment of all liens and other claims of any provider of work, labor, materials or services to the Johnson Street Parcel claiming by, through or under Developer. Developer shall also indemnify, hold harmless and defend the City against any such liens, including reasonable attorneys' fees and costs. Such liens shall be discharged by Developer within thirty (30) days after notice of filing thereof by bonding, payment or otherwise, provided the Developer may contest in good faith by appropriate proceedings any such lien.

ARTICLE VI

OWNERSHIP OF JOHNSON STREET PARCEL

Section 6.1 **Ownership of Johnson Street Parcel During License.** The Parties acknowledge that during the Term of this License, and at all times, title to the Johnson Street Parcel and all improvements thereon shall vest in the City by reason of its ownership of fee simple title or similar interest to the Johnson Street Parcel. Developer acknowledges and agrees that the Johnson Street Parcel consists of a public-right-of way, a bandshell and Great Lawn area as described in Exhibit B attached hereto, public restrooms, a storage facility, and a public information area. This License shall exclude the public information area which is reserved for the exclusive use of the City for any purpose that does not conflict or compete with the Resort Hotel and/or the Bandshell activities.

Section 6.2 **Surrender of Licensed Parcel.** Upon the expiration of the Term or earlier termination of this License, title to the Johnson Street Parcel and all associated improvements thereon (including all technical or other equipment installed at the Johnson Street Parcel or Hotel Resort and used in connection with the operation of the Hollywood Beach Theater/Bandshell), free and clear of all debts, mortgages, encumbrances, and liens, shall automatically pass to and continue 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 Johnson Street Parcel and associated improvements thereon without process of law. Developer in such event does hereby waive any demand for possession thereof and agrees to surrender and deliver the Johnson Street Parcel without process of law peaceably to the City or its successor in ownership immediately upon such expiration or termination. The parties acknowledge and agree that Developer has created an off-site control booth location to operate the electronics and equipment within the Bandshell Area. Upon the expiration of the Term or earlier termination of this License, Developer shall cause all off-site technical or other equipment previously utilized by Developer for the operation of the Bandshell Area to be delivered to the City, and City shall be solely responsible for the relocation, installation and connection of same.

ARTICLE VII

INSURANCE; INDEMNIFICATION

Section 7.1 **Insurance.** Developer shall at all times during the Term maintain comprehensive general liability insurance and such other insurance on the Johnson Street Parcel as may be required under the Lease, under the same terms and conditions as set forth therein.

Section 7.2 **Indemnification.**

(a) Developer, on behalf of itself and future visitors, trespassers, licensees, invitees, guests or of any person performing work or whosoever may at any time be using or occupying or visiting 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 License or any provision thereof by Developer;
- (ii) Developer's use and operation of the Bandshell Area, or any part thereof, during the Term; or
- (iii) the negligent or more culpable acts or omissions of Developer.

(b) The City and the CRA, on behalf of themselves and future visitors, trespassers, licensees, invitees, guests or of any person performing work or whosoever may at any time be using or occupying or visiting the Johnson Street Parcel, hereby agree and covenant to indemnify, defend (with counsel selected by the City or the CRA, as the case may be, after consulting with the Developer) and save harmless the Developer 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 License or any provision thereof by the City or the CRA, as the case may be;
- (ii) use and operation, by the City or the CRA, as the case may be, of the Johnson Street Parcel, or any part thereof, during the Term; or
- (iii) the negligent or more culpable acts or omissions of the City or the CRA, as the case may be.

(c) The parties recognizes that at times, they may jointly use and/or operate the Johnson Street Parcel, or any part thereof. In those situations, each agrees to be fully responsible

for its negligent or more culpable acts or omissions and those of its agents. Notwithstanding the foregoing, as to the City and CRA, such responsibility shall be 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 License.

- (d) Notwithstanding anything to the contrary contained in this Section 7.2, the duty to indemnify shall be limited to the percentage of negligence or more culpable acts or omissions assigned to the indemnitor, if the Losses are caused in part by the negligent or more culpable acts or omissions of the indemnitee. Notwithstanding the foregoing, as to the City and CRA, such indemnification, shall be 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 License.
- (e) Developer's indemnity under this Section 7.2 shall include any Losses resulting from constructing the buildings and structures on the Johnson Street Parcel, and any subsequent renovation and/or alterations thereof by the Developer.

ARTICLE VIII

MAINTENANCE AND MANAGEMENT

Section 8.1 **Public Facility Standard.** The parties recognize and acknowledge that the manner in which the Johnson Street Parcel is operated and maintained is important to the City, the CRA and the Developer. Developer covenants and agrees that it will maintain and operate the Johnson Street Parcel, including the Bandshell and technical equipment, in a manner consistent with the condition in which the Johnson Street Parcel was received by the Developer on the Commencement Date, excluding normal wear and tear (the "Public Facility Standard"). Developer shall ensure that any concession, commercial activity, or other activity shall be in keeping with the Public Facility Standard.

Section 8.2 **Maintenance Responsibilities.** Consistent with the Public Facility Standard set forth in this section, Developer shall clean, maintain and repair the Bandshell Area as defined hereinbelow and as set forth in **Exhibit "B"** attached hereto, the public bathrooms and the trolley stop and shelter. All other cleaning, maintenance and repair of the remainder of the Johnson Street Parcel shall be performed by the City and/or CRA in accordance with baseline maintenance standards typically provided by the City and/or CRA, including utility facilities, lighting, pavers, landscaping within the public right-of-way, and monthly pressure cleaning and daily de-littering or trash removal. Developer, at its sole cost and expense, may elect to provide a higher level or standard of cleaning or maintenance than that provided by the City and/or CRA in accordance with its baseline maintenance standards. All material replacements of improvements, facilities or structures within the Johnson Street Parcel shall be the responsibility of the City and/or CRA, as determined to be necessary by the City and/or CRA on a commercially reasonable basis, and shall be performed in accordance with the City and/or CRA's baseline maintenance and replacement standards.

Section 8.3 **Security Services to Licensed Parcel.** The City and/or CRA currently provide general security services to the central beach area, and will continue to provide such security services to the Johnson Street Parcel during the Term of this License. Developer, at its sole cost and expense, may elect to provide a higher level of security than that provided by the City and/or CRA, subject to prior notice to the City and CRA as to the additional security services or measures provided by Developer. Developer shall be solely responsible for providing security services for scheduled performances, programs or events within the Bandshell Area which exclude the general public and are for the exclusive use of the Resort Hotel's patrons and guests. Similarly, the City and/or CRA shall be solely responsible for providing security services for scheduled performances, programs or events within the Bandshell Area which are City and/or CRA sponsored events under the exclusive control of the City and/or CRA.

Section 8.4 **Covenant to Operate Johnson Street Parcel.** Developer covenants and agrees that it will in good faith diligently operate (or cause to be operated) the Johnson Street Parcel in accordance with commercially reasonable business practices, the Public Facility Standard and the rules and regulations as may be established by the parties for use and joint use of the Johnson Street Parcel by the Developer, City and CRA. Developer shall operate the Bandshell Area in accordance with commercially reasonable business practices, the Public Facility Standard and any rules and regulations for use and joint use of the Bandshell Area as may be established by the City, CRA and Developer.

Section 8.5 **Joint Use of Johnson Street Parcel; Programming and Entertainment Scheduling.** Developer agrees that this License is non-exclusive in nature and that the City, the CRA and third parties shall have the right, subject to the limitations set forth herein, to use the Johnson Street Parcel for City or CRA and other programs and events throughout the calendar year. Upon the Commencement Date of the Term of this License, and quarterly thereafter, Developer shall meet with the appropriate City officials and staff (including, but not limited to, the appropriate representatives from the CRA and the City's Parks, Recreation and Cultural Arts Department) to coordinate and finalize programming and entertainment scheduling requested by the parties for the Bandshell Area for the upcoming quarter. Developer shall provide programming within the Bandshell Area, at Developer's sole cost and expense, for a minimum of five (5) nights per week, weather permitting, from the hours of 7:00 p.m. to 9:00 p.m. Any programming or entertainment within the Bandshell Area sponsored by or offered through the City, CRA, Parks, Recreation or Cultural Arts Department or other city agency or department shall be at such party's sole cost and expense. Third party public scheduling requests, such as those made by civic organizations or other public groups, to perform within the Bandshell Area shall be coordinated with the City, the CRA and Developer for programming and entertainment scheduling. The City, including its agencies and departments, and the CRA shall encourage such third party scheduling requests to be considered simultaneously with the quarterly programming and entertainment scheduling established between the City, the CRA and the Developer for the upcoming quarter. Notwithstanding the foregoing, the Developer shall be expressly permitted to have the exclusive use of the Bandshell Area not to exceed ten (10) times per calendar year, to the exclusion of the general public, for a period not to exceed three (3) hours in duration for each such scheduled performance, program or event. Similarly, the City, the CRA or its agencies or departments, shall be expressly permitted to have the exclusive use of the Bandshell Area not to

exceed ten (10) times per calendar year, to the exclusion of the Developer, for a period not to exceed three (3) hours in duration for each such scheduled performance, program or event. Developer, City or CRA shall have the right to divert pedestrian, bicycle or any other Broadwalk traffic to move around, rather than through, the perimeter of the Bandshell Area during any scheduled performance, program or event sponsored by such party.

In addition to the foregoing, the Developer shall at all times during the Term of this License: (1) have the exclusive right to provide food, beverage and alcohol to within ten (10) feet of the property line on the north side of Johnson Street; (2) have the exclusive right to set up tables, chairs and booths within the Bandshell Area (except during City or CRA sponsored events or programs); and (3) have the exclusive right to use the storage room facility within the Bandshell Area as depicted within the Site Plan. Notwithstanding the foregoing, the City or CRA shall have the right to set up tables, chairs and booths within the Bandshell Area, but shall not provide food or drink that competes with the Resort Hotel. Developer shall have the right from time to time, with prior notice to the City and CRA and approval by the City and CRA, to close the Bandshell Area or parts thereof for such reasonable periods of time as may be required to make repairs, alterations, remodeling or for any reconstruction after casualty.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 9.1 **No Partnership or Joint Venture.** It is mutually understood and agreed that nothing contained in this License 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, the CRA and Developer, or as constituting Developer as the agent or representative of the City or CRA for any purpose or in any manner whatsoever.

Section 9.2 **No Recording.** Neither this License nor a memorandum thereof may be recorded by either party among the Public Records of Broward County, Florida.

Section 9.3 **Florida and Local Laws Prevail.** This License shall be governed by the laws of the State of Florida. This License is subject to and shall comply with the Charter and Code of the City of Hollywood, and the ordinances of the City of Hollywood. Any conflicts between this License and the aforementioned Charter, Code, or ordinances shall be resolved in favor of the latter. If any term, covenant, or condition of this License 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 License, 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 License shall be valid and be enforced to the fullest extent permitted by law.

Section 9.4 **Notice.** A notice or communication, under this License by the City or CRA, on the one hand, to Developer, or, on the other, by Developer to the City and CRA 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, LLC
Attn: Lon Tabatchnick
3501 N. Ocean Drive
Hollywood, Florida 33019

cc: Wilson C. Atkinson, III, Esq.
Atkinson, Diner, Stone, Mankuta & Ploucha, P.A.
100 S.E. 3rd Avenue, Suite 1400
Ft. Lauderdale, Florida 33394

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

(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

(c) **CRA.** In the case of a notice or communication to the CRA, if addressed as follows:

To: Hollywood Community Redevelopment Agency
Hollywood City Hall
2600 Hollywood Blvd.
Hollywood, Florida 33020
Attn: Executive Director

cc: Hollywood Community Redevelopment Agency
Hollywood City Hall
2600 Hollywood Blvd.
Hollywood, Florida 33020
Attn: General Counsel

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.

Section 9.5 **Estoppel Certificates.** The City, the CRA and Developer shall at any time and from time to time, within thirty (30) days after written request by the another, execute, acknowledge and deliver to the party which has requested the same, a certificate stating that: (i) this License is in full force and effect and has not been modified, supplemented or amended in any way, or, if there have been modifications, the License is in full force and effect as modified, identifying such modification agreement, and if the License is not in force and effect, the certificate shall so state; (ii) this License as modified represents the entire agreement between the parties as to this subject matter, or, if it does not, the certificate shall so state; (iii) the dates on which the Term of this License commenced and will terminate; (iv) to the knowledge of the certifying party all conditions under the License to be performed up to that date by the City, the CRA 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, the CRA or Developer, as the case may be, has against the enforcement of the License by another party, or, if such conditions have not been satisfied or if there are any defaults, defenses or offsets, the certificate shall so state; and (v) the License Fees due and payable for the year in which such certificate is delivered have been paid in full, or, if they have 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 or CRA (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, the CRA or Developer pursuant to this paragraph shall be deemed to have been made by the City, the CRA or Developer (as the case may be) and not by the person signing same.

Section 9.6 **Titles of Articles and Sections.** Any titles of the several parts, Articles and Sections of this License are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 9.7 **Counterparts.** This License may be executed in counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument. This License shall become effective only upon execution and delivery of this License by the parties hereto.

Section 9.8 **Successors and Assigns.** Except to the extent limited elsewhere in this License, all of the covenants conditions and obligations contained in this License shall be binding upon and inure to the benefit of the respective successors and assigns of the City, the CRA and Developer.

Section 9.9 **Entire Agreement.** This License 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 License are of no force or effect and are merged into this License.

Section 9.10 **Amendments.** No amendments to this License shall be binding on any party unless in writing and signed by all parties. Neither the City nor the CRA shall be obligated to expend any money or undertake any obligation in connection with any such amendment proposed by Developer, or otherwise in connection with any action requested by Developer under this License, and shall be reimbursed by Developer for all third-party costs (including third party consultants and attorneys) incurred by the City or CRA. Prior to the City or CRA taking action with respect to any such request, Developer shall deposit with the City or CRA the estimated amount of such costs, as reasonably determined by the City or CRA.

Section 9.11 **No Authority to Contract in Name of City or CRA.** Nothing contained in this License shall be deemed or construed to constitute the consent or request of the City or CRA, 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 Johnson Street Parcel or any part thereof, nor as giving Developer, 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 Johnson Street Parcel or any part thereof or against assets of the City, or City's interest in any License Fees, Additional Fees or any other monetary obligations of Developer to the City under this License.

Section 9.12 **Authorization and Approvals by the City or CRA.** All requests for action or approvals by the City or CRA shall be sent to the City Manager on behalf of the City and the Executive Director on behalf of the CRA for decision as to who within the City or CRA, including the City Commission or CRA Board, must act or approve the matter on behalf of the City or CRA.

Section 9.13 **Prevailing Party's Attorneys' Fees.** In the event any party hereto shall institute legal proceedings (other than arbitration proceedings which shall be governed by the rules of the American Arbitration Association then in effect) in connection with, or for the enforcement of, this License, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorneys' fees, at both trial and appellate levels.

Section 9.14 **Holidays.** It is hereby agreed that whenever a notice or performance under the terms of this License 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 9.15 **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 License. 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 License.

Section 9.16 **Third Party Challenges.** In the event that the validity of this License or the improvements constructed by Developer pursuant to the terms of the Lease are challenged by a third party against the City and/or the CRA through legal proceedings or otherwise, the Developer, as an interested party, shall have the right, but not the obligation, to participate in the defense against said challenge as if the Developer was a named party to the proceeding or otherwise.

Section 9.17 **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.

[Signature page to follow]

IN WITNESS WHEREOF, Developer has caused this License to be signed in its name by its Managing Member, and the City Commission of Hollywood has caused this License to be signed in its name by the appropriate City officials, 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.

ATTEST:

MARGARITAVILLE HOLLYWOOD
BEACH RESORT, LLC, a Florida limited
liability company

Name: _____

By: _____

Name: _____

Title: _____

Name: _____

By authority of Resolution No. _____
duly passed and adopted by the Hollywood
City Commission on _____, 2011.

ATTEST:

CITY OF HOLLYWOOD, a Florida municipal
corporation

By: _____
Patricia A. Cerny, City Clerk

By: _____
Name: _____
Title: Mayor

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

By authority of Resolution No. _____
duly passed and adopted by the Hollywood
City Commission on _____, 2011.

ATTEST:

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

By: _____

By: _____
Name: _____
Title: Executive Director

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

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

EXHIBIT "A"

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 Broadwalk lying within said description, but specifically restricts the use of that portion of the Broadwalk 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 “B “

BANDSHELL AREA