RESOLUTION NO. R-2011-014

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE THE ATTACHED DEVELOPMENT AGREEMENT AND GROUND LEASE BETWEEN MARGARITAVILLE HOLLYWOOD BEACH RESORT, LLC ("MARGARITAVILLE") AND THE CITY, THE ATTACHED LICENSE AGREEMENT FOR THE INTRACOASTAL PARCEL BETWEEN MARGARITAVILLE AND THE CITY, AND THE ATTACHED LICENSE AGREEMENT FOR THE JOHNSON STREET PARCEL BETWEEN MARGARITAVILLE, THE CITY AND THE HOLLYWOOD, FLORIDA COMMUNITY REDEVELOPMENT AGENCY ("THE CRA"), ALL IN CONNECTION WITH THE DEVELOPMENT OF THE CITY-OWNED JOHNSON STREET PROPERTY.

WHEREAS, on July 30, 2009, the City of Hollywood, Florida issued Request for Proposals No. 4212-09-IS for the redevelopment of the site commonly known as Johnson Street for a resort hotel project; and

WHEREAS, 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 Margaritaville the basic terms and conditions for such redevelopment; and

WHEREAS, the basic terms and conditions for the redevelopment are in the Memorandum of Understanding between the City, Margaritaville and the CRA, approved by the City Commission on July 7, 2010 by Resolution Number R-2010-201 (the "MOU"); and

WHEREAS, consistent with the MOU, appropriate officers of the City and the CRA negotiated with Margaritaville's representatives, and these negotiations resulted in a number of agreements; and

WHEREAS, one of the agreements is the attached Development Agreement and Ground Lease, which provides (i) for the City to lease to Margaritaville the Johnson Street Property, (ii) for Margaritaville to construct, develop, operate and maintain a resort hotel and related improvements including, without limitation, a parking garage containing public parking and (ii) for Margaritaville to construct public improvements on the Johnson Street Parcel and the Intracoastal Parcel; and

WHEREAS, two of the agreements are the attached License Agreement for the Johnson Street Parcel and the attached License Agreement for the Intracoastal Parcel, which provide for the City to grant to Margaritaville a non-exclusive license to use, operate and maintain the public improvements to be constructed by Margaritaville on these parcels; and

WHEREAS, the City will not be a party to the remaining agreements, which are a Loan Agreement, Promissory Note, and Leasehold Mortgage and Security Agreement, which provide for the CRA to loan to Margaritaville an amount not to exceed $10,000,000 for furniture, fixtures and equipment for the hotel, and a CRA Funding Agreement, which provides for the CRA to pay up to $5,000,000 towards the public improvements to be constructed by Margaritaville on the Johnson Street Parcel and the Intracoastal Parcel; and

WHEREAS, the City Manager and City Attorney recommend that the City Commission approve execution of the attached Development Agreement and Ground Lease and two attached License Agreements;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA:

Section 1: That it hereby approves and authorizes the execution, by the appropriate City officials, of the attached Development Agreement and Ground Lease between Margaritaville and the City the attached License Agreement for the Johnson Street Parcel between Margaritaville, the City and the CRA, and the attached License Agreement for the Intracoastal Parcel between Margaritaville and the City, all in connection with the development of the City-owned Johnson Street property, together with such nonmaterial changes as may be subsequently agreed to by the City Manager and approved as to form and legality by the City Attorney.

Section 2: That this resolution shall be in full force and effect immediately upon its passage and adoption.

RESOLUTION APPROVING AGREEMENTS RELATED TO MARGARITAVILLE RESORT HOTEL TO BE CONSTRUCTED ON CITY-OWNED JOHNSON STREET PROPERTY.

PASSED AND ADOPTED this 19 day of Jan, 2011.

PETER BOBER, MAYOR

ATTEST:

PATRICIA A. CERNY
CITY CLERK

APPROVED AS TO FORM & LEGALITY
for the use and reliance of the
City of Hollywood, Florida only:

JEFFREY P. SHEFFEL
CITY ATTORNEY

DEVELOPMENT AGREEMENT AND GROUND LEASE

between

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

and

CITY OF HOLLYWOOD, a
Florida municipal corporation

DATED AS OF

_____, 2011

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DEVELOPMENT AGREEMENT AND GROUND LEASE

THIS DEVELOPMENT AGREEMENT AND GROUND LEASE (this "Lease") is executed as of the _____ day of _____, 2011, by and between the CITY OF HOLLYWOOD, a Florida municipal corporation (the "City") and 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 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. It provides 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-___ approved the execution of this Lease 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 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 as follows:

ARTICLE I
EXHIBITS AND DEFINITIONS

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

Exhibit A	Acceptable Owner Definition
Exhibit B	Hotel Standards
Exhibit C-1	Budgeted Improvement Costs
Exhibit C-2	CRA Funding Agreement
Exhibit D	Operating Agreement
Exhibit E-1	Legal Description of Hotel Parcel
Exhibit E-2	Legal Description of Developer Initial Parcel
Exhibit F	Agreement for Beach Services
Exhibit G	Parking Garage Standards
Exhibit H	Site Plan
Exhibit I	Schedule of Performance
Exhibit J	Transfers (Ownership Interests In Developer)
Exhibit K	CDD Financing Structure
Exhibit L	CDD Easement Form
Exhibit M	Release of CDD Easement Form
Exhibit N	CDD Special Warranty Deed Form
Exhibit O	Legal Description of Intracoastal Parcel
Exhibit P	Legal Description of Johnson Street Parcel

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.

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 Cameron D. Benson or his 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 Funding Agreement" means the funding agreement as referenced in **Exhibit "C-2"**.

"CRA Loan" means a construction loan made by the CRA, as lender, to Developer, as borrower, evidenced by the CRA Loan Agreement, secured by the Project.

"CRA Loan Agreement" means the loan agreement of even date herewith between the CRA, as lender, and Developer, as borrower, evidencing the rights and obligations of the parties thereto.

"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, including without limitation the $10,000,000 balloon payment on the CRA Loan, and interest, and other sums and amounts paid or payable for or during the applicable or pertinent period or in connection with the CRA Loan, the EB-5 Contributions, or 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, 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. An executed copy of Developer's limited liability company operating agreement, together with any and all material agreements pertaining to the limited liability company operating agreement, is attached hereto as **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)(Z), 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:

(a) regarding the initial Developer (*i.e.*, Margaritaville Hollywood Beach Resort, LLC), the sum of:

(i) the Improvement Costs;

(ii) all of the following actual, verifiable cost paid to arms-length third-parties, who are not Affiliates of Developer:

(W) for construction of capital improvements to the Leased Property that require a site plan amendment;

(X) are required by the Florida Building Code; and

(Y) 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;

(iii) actual construction and/or development management fees paid to Developer or Affiliates of Developer, not to exceed 3 1/2% however, specifically for those improvements reflected in the Budgeted Improvements Costs, not to exceed $3,039,000 in the aggregate; and

(iv) 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; and

(b) regarding any successor Developer, the total of:

(i) purchase price, in money or money equivalent, paid in the Sale in which such Developer acquired an interest in the Project;

(ii) all of the following actual, verifiable cost paid to arms-length third-parties, who are not Affiliates of Developer:

(X) for construction of capital improvements to the Leased Property that require a site plan amendment;

(Y) are required by the Florida Building Code; and

(Z) 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; and

(iii) actual construction and/or development management fees paid to the successor Developer or Affiliates of the successor Developer, not to exceed three and one half percent (3 1/2%) of construction costs in the aggregate.

"EB-5 Contributions" means funds received by Developer to be invested in the Project in the amount of no less than $75,000,000, funded under the Immigration Act of 1990, EB-5 Visa program, which are subordinate to this Lease and the CRA Loan 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. 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.

"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). 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;

(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; and

(vi) any agent, designee or nominee of an Institutional Investor that is a public company and wholly owned by the Institutional Investor.

"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 of even date herewith, 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 Broadwalk 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 of even date herewith, 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 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 its Managing Member or other 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 Completion Date; and

(ii) during the balance of the Term, Broward and Miami-Dade Counties.

"Minimum Rent Commencement Date" means the date a Certificate of Occupancy is issued for the Hotel.

"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 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.

"Outside Possession Date" means February 1, 2012.

"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:	600
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).

"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 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, the currently planned one percent (1%) 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 600 parking 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; or

(ii) acquire or own material assets other than the Project 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"**.

"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 Agreement" means the license agreement appended as an exhibit to **Exhibit "D"** (the Operating Agreement) or such successor document created to allow for a new name or flag.

"Trademark Sublicense Agreement" means the sublicense agreement appended as an exhibit to **Exhibit "D"** (the Operating Agreement) or such successor document 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 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 of:

(a) the Project or any part thereof;

(b) any interest in the Project, or any part thereof;

(c) any interest in Developer (including without limitation, the syndication of tax benefits);

(d) any series of such Transfers, or any contract or agreement to do any of the same, that have the cumulative effect of a sale; or

(e) any other transaction or series of transactions in the nature 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.

"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 oblige 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) 100% of the EB-5 Contributions shall be available from the EB-5 Investors, or bridge financing or other funds in an equivalent amount, or a commercially reasonable written commitment, free of all conditions for such funds, in an equivalent amount shall be available to Developer;

(W) the CRA Loan Agreement has been fully executed and delivered;

(X) the CRA Funding Agreement has been fully executed and delivered;

(Y) the bond validation process has been completed and is not subject to appeal; and

(Z) Developer has, in the aggregate, expended or placed in an operating account of immediately available funds, Developer Equity in an amount equal to $10,000,000 (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); and

(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 $300,000 in the aggregate.

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.

(i) If all of the Possession Conditions have not been satisfied prior to the Outside Possession Date, the City must notify the developer promptly, specifying in writing why it believes any particular Possession Condition has not been satisfied.

(ii) If the Developer does not remedy the alleged failure to satisfy the Possession Conditions, the City, on a commercially reasonable basis, may terminate this Lease (including, without limitation, Developer's leasehold interest and possession in and to the Developer Initial Parcel) by delivering written notice to Developer, in which case:

(X) this Lease shall terminate;

(Y) within ten (10) days of such termination Developer shall execute and deliver to the City a written Acknowledgment of Termination in recordable form; and

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

(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) Condition Subsequent to Possession. The CDD Bonds shall be sold so that the proceeds thereof become available to the CDD and ready to be disbursed for acquisition purposes by a date when the construction of the Developer Improvements has achieved seventy-five percent (75%) completion (the "CDD Bonds Funding Date"). If that does not occur, the City has a right to deliver a notice that it intends to terminate the Lease, following which the Developer shall have sixty (60) days within which to cure. In the event the CDD Bonds are not sold and funded by the CDD Bonds Funding Date, including the cure period, the City, on a commercially reasonable basis, may terminate this Lease by delivering written notice to Developer, in which case:

(i) this Lease shall terminate;

(ii) within ten (10) days of such termination, Developer shall execute and deliver to the City a written Acknowledgment of Termination in recordable form;

(iii) the City shall be free to record the Release of CDD Easement; and

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

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) Use Restrictions. 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) 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. Annual rent of $500,000, prorated as to any partial month, commencing on the Minimum Rent Commencement Date and continuing on the first day of each month thereafter, increasing each Rental Year by three percent (3%) per year, payable in equal monthly payments on the first day of each month during the Term ("Minimum Guaranteed Rent"). For example, in the second Rental Year, Minimum Guaranteed Rent will be $515,000; in the third Rental Year, it will be

$530,450, and so on;

(d) Participation Rent. Commencing in the eleventh (11th) Rental Year, Developer covenants and agrees to pay the City, as additional annual rent, an amount equal to one percent (1.0%) of annual Project Revenues for such Rental Year ("Participation Rent"). Participation Rent shall increase each successive Rental Year thereafter by one-tenth of one percent (0.1%) of Project Revenues received during each such Rental Year until the Participation Rent equals four percent (4.0%) of annual Project Revenues in the forty-first (41st) Rental Year. For each Rental Year thereafter during the Term, Participation Rent shall equal four percent (4.0%) of Project Revenues received during the applicable Rental Year. Participation Rent shall be calculated and included in the additional information or supplemental schedule of Project Revenues 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.

(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), an amount equal to seven percent (7%) of the amount by which the applicable Net Sale Proceeds exceed the applicable Developer Investment ("Transaction Rent"):

(i) In the event of a Transfer of less than 100% of the Project, or less than 100% of the interests in the Project, Transaction Rent shall be calculated using an equivalent portion of the applicable Developer Investment. For example, in the event of a Transfer of 50% of the Project, Transaction Rent would be calculated using 50% of the applicable Developer Investment.

(ii) Payment of Transaction Rent shall be due as payments are made to Developer/seller 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 $700,000. The $700,000 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 14.5. 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 ninety (90) 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 ninety (90) 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 both the Trademark License and Sublicense 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 and Sublicense 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 proceeding inspection showing the date, weather, subcontractors on the job, number of workers and status of construction.

Section 3.9 Certificate of Final Completion; Opening Date.

(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 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 $1,000,000, or series of such renovations or alterations which, in the aggregate cost more than $3,000,000, as adjusted for inflation, 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 not 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".** 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, 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; and

(b) After the Opening Date, the following Transfers, shall be permitted hereunder without the City's consent ("Permitted Transfers") provided:

(i) such Transfer is of the entire Project;

(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 at least thirty (30) days prior to the intended effective date of such Transfer; and

(iii) all of the conditions precedent to the effectiveness of such Transfer as set forth in Section 5.5 hereof are satisfied.

(c) The following Transfers shall also be Permitted Transfers:

(i) 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;

(ii) 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;

(iii) Any Transfer directly resulting from a conveyance to a Lender of Developer's interest provided: (I) it is in accordance with the terms and conditions of Article VI; and (II) such transferee must, either assume the existing Hotel Management Agreement or enter into, a new Hotel Management Agreement pursuant to Section 12.4 and **Exhibit "B"** of this Lease;

(iv) 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;

(v) Any Transfer, or series of Transfers, among Affiliates of Developer, provided that at all times after such Transfer, Lon Tabatchnick or John Cohlan, or other successor individual approved by the City, on a commercially reasonable basis, has the power to direct the day-to-day management and policies of Developer; or

(vi) 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 Cohlan or other successor individual approved by the City, on a commercially reasonable basis, has the power to direct the day-to-day management and policies of Developer.

Section 5.4 Transfer Requiring City's Consent.

(a) Regarding any Transfer other than a Permitted 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. The City shall, within thirty (30) days of its receipt of such information, advise Developer if it shall consent to same. If the City shall fail to respond during such thirty (30) days, it shall be deemed to have withheld its consent to the Transfer in question. The City may reject any transferee or Transfer proposed under this Section, without further justification and in its sole discretion, if the transferee is not an Acceptable Owner. 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 membership 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(b)(i), or pursuant to Section 5.3 (c), 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 Sublicense Agreement; 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:

(X) the lien of the leasehold mortgage securing the CRA Loan;

(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 and the proposed Lender 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) 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 commence and 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):

(i) 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; and

(ii) 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.

(i) Should the Lender 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, 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.

(j) 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.

(k) 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).

(l) 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.

(m) 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 CRA Loan and the leasehold mortgage lien securing the same and 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;

(n) 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. 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"). 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. Upon the transfer of all of the Public Parking facility 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. Upon the transfer described in Section 6.5 above, City shall relet its interest in the Public Parking Facility to Developer's Leasehold. Thereafter Developer shall operate the Public Parking Facility consistently with the terms of this Lease and consistently with the parking standards previously developed for the public use.

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 owning 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 there is a default by Developer in any Leasehold Mortgage, payment of CDD assessments securing the CDD Financing, Trademark Sublicense Agreement or Hotel Management Agreement during the Term that is not cured within the earlier of either the applicable grace periods thereunder or the provisions of Subsection 7.1(c);

(ii) 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

(iii) 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 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 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 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 without limitation,, 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.

(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 portion of 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 polices. 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 is 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 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 sub limits to be determined annually and acceptable to the City, but in no case less than $25 million. 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 sub limits to be determined annually and acceptable to the City, but in no case less than $25 million.

(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, 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 (including without limitation, environmental liability insurance, 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 $100,000 (as adjusted for inflation over the Term), except that if a Developer Event of Default has occurred and is continuing hereunder, such proceeds, subject to the requirements of the Lender and/or Indenture Trustee, shall be paid over to the City who shall apply the proceeds first to the curing of Event of Default and then to the rebuilding, replacing and repairing of the Leased Property. Any remaining proceeds shall be paid over to Developer subject to its obligations to the Lender or the Indenture Trustee;

(ii) To the Insurance Trustee, if the total recovery is in excess of $100,000 (as adjusted for inflation over the Term), 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 9.8 and 3.13 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 Tenant 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 the public parking component thereof, title to which shall be vested in the CDD, until the 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 Sublicense Agreement 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 600 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 600 Public 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, 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"**; and

(d) Notwithstanding any other provision of this Lease to the contrary, the Developer shall not manage, directly or indirectly (the Developer's right to appoint members to the CDD Board of Directors shall not be deemed direct or indirect management of the garage for purposes of this Section), or have any special rights in the public parking spaces or the property of the CDD.

Section 12.4 Intentionally Omitted.

Section 12.5 Covenant to Operate Hotel.

(a) Subject to the need to make repairs and perform maintenance, 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, 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 that 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.

Section 12.6 Hotel Name. Lessee will not enter into a new trademark license or sublicense agreement 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. 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.

Section 12.7 Non-Competition. Developer shall not, and shall cause its Affiliates and their respective principals, partners, shareholders or stockholders and members to not, during the Term, without first obtaining the written consent of the City, which consent