



City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Members of the Finance and Citywide Projects Committee

FROM: Jimmy L. Morales, City Manager

DATE: June 3, 2015

This shall serve as written notice that a meeting of the Finance and Citywide Projects Committee has been scheduled for June 3, 2015, at 12:00 P.M. in the Commission Chambers.

The agenda is as follows:

BUDGET BRIEFING:

NEW BUSINESS

1. **General Fund CSL Update and Proposed Millage Rate**
2. **Review of Proposed Capital Budget**
3. **Proposed Uses of Law Enforcement Trust Funds**

FINANCE AGENDA:

OLD BUSINESS

4. **Discussion Regarding The Live Nation Management Agreement For The Jackie Gleason Theater** (*November 19, 2014 Commission Item C4F)(234)*

Max Sklar – Tourism, Cultural and Economic Development Director

5. **Discussion Regarding Flooding and Sea Rise Regarding The 2015-2016 Storm Water Utilities Methodology** (*September 10, 2014 Commission Item C4G)(215)*

Eric Carpenter – Public Works Director
Bruce Mowry – City Engineer

NEW BUSINESS

6. **Discussion Regarding the Convention Headquarter Hotel Lease**

Maria Hernandez – Capital Projects Director Convention Center
Raul Aguila – City Attorney

7. **Discussion Regarding A Resolution Approving The Term Sheet Attached And Incorporated As Exhibit "A" To This Resolution, And Authorizing The City Attorney's Office To Negotiate A Purchase And Sale Agreement (PSA) Between The City And 8701 Collins Development, LLC ("8701") For The Sale Of The City Property Located At 226 87 Street To 8701 (City Parcel), And To Develop Both The City Parcel And 7925 Collins Avenue (The "8701 Parcel") Under A Unified Development Project (The "Project"); Which PSA Will Include The Design, Development And Construction Of The Project, At 8701's Sole Cost And Expense, A Main Use Parking Garage, Which Shall Include (I) Commercial Uses Such As Spa, Restaurants, And Similar Uses; (II) One Or More Levels Of Parking Garage Directly Above The First Floor, Including Mechanical Parking Elements With Valet Service; (Except For The City Unit); (III) Approximately 12,000 Square Feet Of Retail On The First Floor; And (IV) A City Municipal Parking Condominium Unit (The "City Unit") Of 75 Parking Spaces Which May Be Located In The Basement; And Pursuant To Section 82-37 Of The City Code, Directing The City Manager To Transmit The Term Sheet And Draft PSA To The Finance And Citywide Projects Committee For Review Prior To City Commission Final Approval Of The PSA; And The Term Sheet And Draft PSA Shall Also Be Reviewed By The Planning Board As Required By Section 1.03(B)(4) Of The City Charter (*May 6, 2015 Commission Item R90*)(275)**

Raul Aguila – City Attorney

Finance and Citywide Projects Committee Meetings for 2015:

July 1, 2015 Budget
July 29, 2015 Budget
August 12, 2015
September 4, 2015
October 5, 2015
November 4, 2015
December 7, 2015

PDW/rs/kd

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Cc. Mayor and Members of the City Commission
Management Team

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Discussion Item

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MIAMI BEACH

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COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jimmy L. Morales, City Manager

DATE: June 3, 2015

SUBJECT: FY 2015/16 Proposed Capital Budget

The Capital Improvement Plan (CIP) is a financing and construction/acquisition plan for projects that require significant capital investment. The CIP, which is now updated annually and submitted to the City Commission for adoption, specifies and describes the City's capital project schedules and priorities for the five years immediately following the Commission's adoption. In addition, the first year of the plan provides the funding to be appropriated in the annual Capital Budget.

This document is an official statement of public policy regarding long-range physical development in the City of Miami Beach. The Fiscal Years (FY) 2015/16-2019/20 Proposed CIP of the City of Miami Beach will be the five year plan for public improvements and capital expenditures by the City. A capital improvement is defined as capital or "in-kind" expenditure of \$25,000 or more, resulting in the acquisition, improvement, or addition to fixed assets in the form of land, buildings, or improvements more or less permanent in character, and durable equipment with a life expectancy of at least five years.

CAPITAL BUDGET PRIORITIZATION

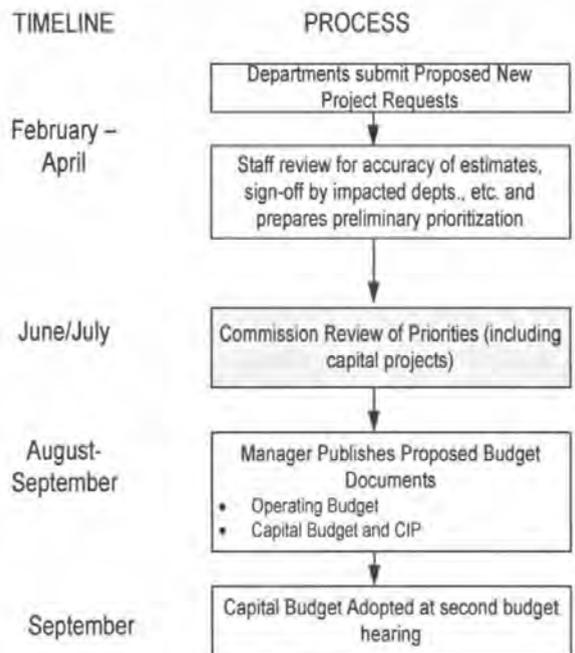
On July 21, 1999, the Commission approved the FY 1998/99 – FY 2004/05 Capital Improvement CIP for the City and the Redevelopment Agency. Since that time, the City has issued additional General Obligation Bonds pursuant to referendum; Water and Sewer Revenue Bonds; Stormwater Revenue Bonds; 2001, 2006, and 2010 Gulf Breeze Loans; and a \$15 million Equipment Loan. In addition, beginning in Fiscal Year 2005/06 the City committed to funding a Pay-As-You-Go component of the capital budget funded from General Fund Revenues, as well as committing to using Resort Tax Quality of Life funds in north, middle, and south beach for capital projects. Also in 2005, through a series of workshops with the Mayor and Commission for the City of Miami Beach, previously approved appropriations were reviewed to ensure that projects scheduled to begin construction in the next few years are fully funded, appropriating funds from other projects scheduled to begin in later years and providing for those to be replaced from future financings. These changes were reflected in the 2005/06 – 2009/10 Capital Budget and CIP for the City and the Redevelopment Agency, which was approved by the Commission on September 21, 2005.

In the spring of 2006, the City created a Capital Budget Process Committee with the responsibility of reviewing and prioritizing new capital projects that will be funded in a given Fiscal Year, and for recommendation of funding allocations from authorized sources for the prioritized projects. The Committee developed and implemented a structured committee-based process for the development

of the Capital Plan and Budget, including review criteria projects must meet in order to be considered for funding. This process is reviewed and refined annually by the Committee.

Based on the direction received from the Finance and Citywide Projects Committee in February 2008, the process was modified to allow for early input to the prioritization process by the Commission. Under the new process, a preliminary list of unfunded projects is presented to the Commission or the Finance and Citywide Projects Committee, providing the opportunity for input and prioritization. This is consistent with the process for Commission input regarding operating budget priorities and the format used would be similar to that used to seek guidance on operating budget priorities in prior years. This revised process allows early input by the Commission regarding priorities for funding, subject to availability.

The attached chart provides an overview of the process and timelines.



Construction management for the CIP is provided by the CIP Office. This office is designed to consolidate the City's capital construction effort into a single entity and is tasked with constructing the City's funded Capital Improvements in a timely manner. Projects within neighborhood areas are combined to create a single project that addresses the neighborhood needs for infrastructure upgrades, traffic flow, enhancements, etc. This comprehensive approach minimizes disruptions and generates costs savings. To forward this on-going implementation effort, the City has entered into agreements with various firms for program management, architectural, engineering and other relevant professional services, as well as awarding contracts for construction.

In addition, several other departments provide management of some specialized projects. For example, Public Works provides construction management for environmental projects and some utility projects; and Parks and Recreation provides management of some landscaping projects. The Fiscal Years (FY) 2014/15 - 2018/19 Adopted Capital Budget and CIP of the City of Miami Beach containing a full listing of adopted and programmed projects is available at <http://web.miamibeachfl.gov/obpi/budget/>

Attachment 1 provided for your review includes an overview of available funding by source as well as funding requests for new and existing projects. The funding recommendations in the proposed FY 2015/16 Capital Budget are based on the City Commission's priorities and needs identified by various City departments.

RENEWAL AND REPLACEMENT PROJECTS

Prior to FY 2004/05, the City made significant investment in the routine maintenance of its assets as well as funding major capital projects, bringing on line miles of sidewalks and curbing; additional streetlights; new parks and park facilities, new Fire station facilities, etc. However, maintenance of the capital investments competed with general fund services and routine maintenance, with the result that funding levels did not provide for major capital renewal and replacement projects. As a result, these projects often were deferred many years beyond the useful life of the capital component requiring replacement or renewal, in some cases until the point where an entire capital project is required for major improvements.

To ensure that renewal and replacement of General Fund assets are funded and addressed when needed, in FY 2004/05, the City of Miami Beach established a dedicated millage for renewal and replacement funding to be used for capital projects that extend the useful life of the City's General Fund assets to be used exclusively to provide for renewal and replacement of capital items related to our facilities and infrastructure over and above routine maintenance. The following restrictions regarding the fund were established at the time that the dedicated funding was created:

- Projects must meet the following criteria for funding:
 - Projects that extend the useful life of a City of Miami Beach general fund asset by at least 5 years with a threshold value of at least \$25,000; for example the replacement a major component of the asset such as roofs, HVAC systems, electrical systems, fire alarm systems, sprinkler systems that due to significant deterioration would constrain the remaining useful life of the asset, OR
 - Projects that significantly reduce future maintenance cost over the remaining life of the asset providing for a reduction in future maintenance costs that are greater than the cost of the project.
- The Mayor and Commission may authorize additional uses of the funds for unforeseen or unanticipated events affecting life, health, property or public safety subject to a five-sevenths (5/7) vote.
- Appropriation of project specific expenditures from the General Fund Capital Renewal and Replacement Fund shall be included in the City Manager's annual proposed budget, to be approved by the Mayor and City Commission annually during the City's second public hearing on the budget.
- Interest earnings that accrue in the General Fund Capital Renewal and Replacement Fund shall be included in the appropriation for the Fund in the following fiscal year.
- Changes among project specific appropriations may be authorized by the City Manager to the extent that no new projects be added and the total annual allocation is not exceeded.

- During a fiscal year, changes to the total allocation and changes to the list of projects to be funded from the General Fund Capital Renewal and Replacement Fund shall require prior approval and authorization by a majority of the City Commission. Excess project specific appropriations not required will be available for re-appropriation the following year.
- Project specific appropriations that are not expended in a given fiscal year shall remain in the General Fund Capital Renewal and Replacement Fund for the life of the project

At the same time, the City established a systematic approach to identify renewal and replacement needs. City facilities are inspected at least once every five years to determine current renewal and replacement needs as well as projected replacement dates for all of the major Building components. A Facility Condition Index Rating (FCI) is assigned to each facility based on the total value of existing requirements divided by the current replacement value of the building. The FCI's for various City facilities are in the process of being updated and should be complete in the Fall.

Based on industry standards ratings are assigned as follows:

- 0.00 to 0.10 Excellent
- 0.11 to 0.20 Good
- 0.21 to 0.30 Fair
- Greater than 0.31 Poor

Attachment 2 provides the proposed project specific appropriations for FY 2015/16 for all Funds, including the General Fund Capital Renewal and Replacement Fund.

The current dedicated millage of 0.1083 mills (as of FY 2015/16) is estimated to generate \$2,300,000 for the General Fund Capital Renewal and Replacement Fund based on a 5 percent increase in property values. This amount will be updated once final property values are received from the Property Appraiser on July 1st. Revenue of \$2,300,000 is available for funding FY 2015/16 General Fund renewal and replacement projects, as compared to \$3,009,000 requested in projects. At this time, \$1,716,000 of projects are recommended with the remaining amount of \$584,000 as contingency.

GENERAL FUND	
Available funding	\$2,300,000
Project requests	\$3,009,000
Recommended projects	\$1,716,000
Contingency	\$584,000
Total	\$2,300,000

The funds listed below also have recommended renewal and replacement projects and are anticipated to have sufficient available funding for the projects.

- Parking fund – Hand Rail Replacement at 13th Street Garage: \$40,000
- Quality of Life funds – Eight projects for \$1,470,000

INFORMATION & COMMUNICATIONS TECHNOLOGY PROJECTS

Since FY 2005/06, the adopted work plan and budget for the General Fund has included funding specifically for Information & Communications Technology Projects. Each year, departments propose projects which are then reviewed and prioritized by the IT Steering Committee, which is comprised of the Assistant City Managers, the Chief Financial Officer, the Fire and Police Chiefs, the IT Director, and the Budget Director.

Funding for the FY 2014/15 proposed projects totals \$395,000 and is funded by a transfer of \$395,000 (same amount as FY 2014/15) from the General Fund to the Information & Communications Technology Fund. Below is a summary of the proposed projects. Please see Attachment C for additional details by project.

Video Server and Loss Prevention (\$101,000): This project would purchase local enterprise storage for the Communications Department to address multiple points of failure that have resulted in the loss of video records and files. For example, recently a City Vision show that was 90% complete was lost because the current external disk drives and multiple servers are not supported by the City's internal redundant methods. The need for this project is exacerbated by the higher storage requirements needed for high definition video.

New World Product Enhancements (\$70,000): This project would provide the following enhancements for the Police Department, Fire Department, Parking Department and Code Enforcement;

- Server migration (PD, Fire, EMGT, Code & Parking) – To complete a server build to support the New World System Aegis application suite on a new set of Microsoft Windows servers. New World strongly advises this enhancement for Miami Beach, given the planned move to CAD Enterprise and Records Enterprise over the next year as Miami Beach's current environment is at risk.
- eMobile Enhancement for Geo-verification (PD, Fire, EMGT, Code & Parking) – Allows geo-verification functionality within Mobile Field Reporting prior to merging to Aegis Records. This functionality would allow the system to verify the address while the officer is filling out the report based on the geographical location. This is critical with regard to UCR reporting, investigative search results, crime analysis and force deployment.
- New World Conversion Script to Consolidate Global Jackets (PD, Fire, Code & Parking) – Since the beginning of the New World Project in 2008, user's inexperience with the system and its functionality resulted in duplication of thousands of global jackets when merging police reports. This conversion would eliminate or significantly reduce duplicate jackets and data in order to streamline investigative search results and data analysis.

Residential Housing Program System (\$14,000): This project would address the need to manage work orders, property maintenance, and tenant compliance needs for the five residential, multi-family building acquired by the City during FY 2014/15.

Further, the following projects do not require funding, but are planned to be under development next year with in-house staffing resources:

ADA Features in Cleanliness Assessment Program: This project would add ADA features to the current Cleanliness and Appearance Assessment Program to create a Walkability index. This information would help identify ADA issues that do not require construction and can be addressed in-house in a short time frame before they become liability issues to the City and/or generate complaints by pedestrians such as low or obstructing tree limbs, beach mats that are not level or covered in sand, and obstructed sidewalks.

Automated Benefit Payments: This project would automate the current labor-intensive manual process of producing benefit reports for retirees resulting in a more efficient, accurate, and time-saving process.

Finally, the following previously approved project anticipated to be completed using in-house staffing resources has not been able to be addressed in a timely manner due to the current workload of the GIS division and is recommended to be contract out.

Information Reporter Web Application: The purpose of the project is to provide a site selection tool for potential businesses. The tool will add GIS functionality to the Economic Development website to include information related to retail spending potential, population density, traffic counts, commercial lease rates/sales, etc.

The remainder of the funding would be used to pay \$49,000 for the final year of debt service for the CAD RMS project and to add \$86,000 to Contingency.

CONVENTION CENTER

Since the mid-1950s, the convention center, originally known as the Miami Beach Exhibition Hall, was the commercial center of the city. Over time as the center grew, the surrounding area developed to include City Hall, a botanical garden, the Holocaust Memorial, Lincoln Road, and the New World Symphony building designed by world-renowned architect Frank Gehry.

Today, the center hosts internationally acclaimed trade shows such Art Basel Miami Beach and Maison & Objet. Through a combination of municipal and county bonds, the center is being redesigned as a state-of-the-art facility that will continue as a "Gateway to the Americas." It will accommodate and attract new international and national events and conventions assuring its significance as one of the largest visitor draws for the South Florida region. Funding for the renovation of the Convention Center was included in the FY 2014/15 Capital Budget as follows:

- County G.O. Bonds: \$55.0 million
- Proposed 1% Resort Tax Bonds: \$204.5 million
- Proposed RDA Bonds: \$274.3 million
- Future Parking Bonds: \$49.0 million

No changes to the project's funding are proposed at this time. The project timeline is for groundbreaking to commence in December, 2015 and completion to take place by December, 2017. The 5.8 acre Convention Center Park and outdoor public spaces will be completed by mid-2018.

CITY CENTER RDA

The 332-acre City Center/Historic Convention Village Redevelopment and Revitalization Area (CC/HCVRRRA or City Center) was established in 1993, in order to provide the funding mechanism to foster the development of new convention hotel development within proximity of the Miami Beach Convention Center and to establish the necessary linkages between the City's many core area civic, cultural and entertainment uses in order to create the fabric of a true urban downtown.

In January of 2015, the City of Miami Beach and Miami-Dade County agreed to extend the RDA until 2044 to provide funding for the renovation of the Convention Center as well as various operating expenditures. The RDA extension agreement eliminated funding for new capital projects in the District and stipulated that the net surplus funds after operating expenses are to be used to cover debt service associated with the Convention Center bonds.

FORMER SOUTH POINTE RDA

The South Pointe redevelopment district was the most successful redevelopment district in the State of Florida. Assessed values increased from \$59 million when the district was established in 1976 to almost \$2.2 billion as of January 1, 2005 when the district expired.

With the expiration of the district and pursuant to the 2001 and 2003 amendments to the Convention Development Tax (CDT) Interlocal Agreement with Miami-Dade County, additional intergovernmental revenues are received from Miami-Dade County for a limited number of years to be used for projects in the South Pointe area.

In January of 2015, the City of Miami Beach and Miami-Dade County amended the Interlocal Agreement to allow for the funding of capital projects outside of the former RDA district. The City Commission has provided direction that these funds should be used to address flooding, sea walls, and sea-level rise.

The remaining payments for capital projects from Miami-Dade County through the expiration of the agreement are below.

FY 2016	188,000
FY 2017	5,319,000
FY 2018	15,056,000
FY 2019	11,862,000
FY 2020	7,419,000
FY 2021	15,633,000
FY 2022	5,975,000

For FY 2015/16, it is proposed to fund several high priority seawall projects using these funds as follows:

- Indian Creek Park seawall: \$715,000
- Indian Creek Park seawall: \$709,000
- Lincoln Court Rehabilitation seawall: \$548,000
- Bay Road Rehabilitation seawall: \$275,000
- Normandy Shores Park seawall: \$226,000

QUALITY OF LIFE FUNDS

Quality of Life funding is provided by the 1 percent Resort Tax on room rents, which was approved by referendum on November 3, 1992. This additional tax became effective on October 1, 1996. As part of the FY 2013/14 budget adoption, a fifth category for Transportation was created from the Quality of Life resort tax funds in addition to the existing allocations for arts and tourism-related capital projects in North, Mid, and South Beach. For the FY 2014/15 adopted budget, the allocations for each category were 20% as shown below.

	Current %	Adopted FY2015 Funding by Allocation
North Beach - Capital	20%	1,228,850
Mid Beach - Capital	20%	1,228,850
South Beach - Capital	20%	1,228,850
Arts	20%	1,228,850
Transportation	20%	1,228,850
	100%	6,144,250

Prior to FY 2014/15, 50% of the third penny of Resort Tax funded the five categories above and 50% funded debt service on RDA bonds as a supplemental pledge until RDA funds became available as taxable values increased over time. During FY 2014/15 the resort tax pledge from the RDA bonds was released resulting in an additional \$6.1 million becoming available for funding the five Quality of Life categories.

During FY 2014/15 the allocations were revised to provide additional funding for Transportation to increase the capacity of the trolley system as shown below and provide additional funding for capital in North, Mid, and South Beach.

	Revised %	Revised Change to Funding by Allocation
North Beach - Capital	15%	1,843,275
Mid Beach - Capital	15%	1,843,275
South Beach - Capital	15%	1,843,275
Arts	10%	1,228,850
Transportation	45%	5,529,825
	100%	12,288,500

For FY 2015/16, the proposed capital projects recommended for funding are listed below.

Quality of Life – North

- Kayak Launch Docks – additional funding \$155,000
- Tent for North Shore Bandshell – additional funding \$200,000
- Vendome Public Plaza: \$100,000; FY17 \$1,000,000
- North Beach Streetscape pilot program: \$100,000; FY17 \$230,000
- Bonita Drive Street End improvements: \$35,000
- 86th Street Sidewalk & Roadway improvements: \$285,000
- 81st Street Pedestrian Bridge Area: \$30,000
- Street Lighting – tourist areas: \$334,000
- Altos del Mar Park: \$863,000
- North Shore Open Space Park - Restroom addition: \$410,000
- North Shore Open Space Park - Dog fountains: \$35,000
- Beach Showers renovation: \$177,000
- Normandy Shores Golf Club landscape replacement: \$47,000
- Standardized Park replacements - benches, picnic tables, trash cans: \$27,000

Quality of Life – Mid

- 28th Street Obelisk Phase II grant matching funds: \$250,000
- Street Lighting – tourist areas: \$334,000
- Beach Showers renovation: \$89,000
- Collins Ave. Boardwalk replacement of decking: \$150,000
- Indian Creek Bridge Color Lights System: \$75,000
- Accessible Ramp to Boardwalk on 41st Street: \$50,000
- Standardized Park replacements - benches, picnic tables, trash cans: \$30,000
- Citywide Dune restoration and enhancement: \$7,000

Quality of Life – South

- Española Way Conversion to Pedestrian Mall: \$264,000; FY17 \$848,000
- Street Lighting – tourist areas: \$334,000
- Bass Museum - Exterior Walls and Parapet Caps: \$250,000
- Bass Museum - Emergency Generator Replacement: \$150,000
- Lummus Park - Playground replacement: \$128,000
- Lummus Park - Volleyball courts: \$49,000
- Collins Park Lighting & Sound System: \$236,000
- Beachwalk II: \$500,000
- Beach Showers renovation: \$200,000
- Beach Access Control Gates: \$110,000
- Digital Cinema Projection System for Colony Theater: \$90,000
- Miami Beach Golf Course outdoor furniture replacement: \$39,000
- Soundscape Speakers painting & other improvements: \$28,000
- Standardized Park replacements - benches, picnic tables, trash cans: \$28,000
- Citywide Dune restoration and enhancement: \$25,000

PEOPLE'S TRANSPORTATION PLAN (PTP) FUNDS

The People's Transportation Plan (PTP) is a half-penny transportation surtax that was overwhelmingly approved by Miami-Dade County voters in November 2002. The Ordinance creating the half-penny transportation surtax calls for 20 percent of surtax proceeds to be distributed directly to municipalities on a pro rata basis for use on local transportation and transit projects. Municipalities must apply at least 20 percent of their share of surtax proceeds toward transit uses.

For FY 2014/15 PTP funding was projected at \$3.2 million: \$1.7 million in Capital budget and \$1.5 million in Operating budget (funds South Beach Local). For FY 2015/16, PTP funds of \$1.7 million are recommended to be re-programmed from the Capital budget to the Operating budget to help fund the expanded trolley system.

Project requests in FY 2015/16 are proposed to be funded by re-programming existing project funds. It is anticipated that existing funds should be sufficient to fund project requests for approximately one to two more years. Once existing funds are fully re-reprogrammed, future projects would likely need to be funding from another funding source such as PAYGO funds from the General Funds.

PAY-AS-YOU-GO (PAYGO) FUNDS

PAYGO funds are funded by the General Fund at \$1.4 million annually. Funding levels have been as high as \$7.5 million in the past. These funds help ensure adequate on-going reinvestment in the City's capital plant and equipment. PAYGO funding can be used for any general government purpose and is the most flexible funding source in the Capital Budget.

For FY 2015/16, the proposed capital projects recommended for funding are listed below.

- Maurice Gibb Soil Remediation: \$800,000
- Commission Chambers Renovation: \$575,000

If a pending \$1.3 million reimbursement is received from FDOT for the West Avenue Bridge project as anticipated during FY 2015/16, the following projects are also recommended for funding:

- City Hall Space Plan Implementation: \$634,000
- Normandy Isle Park Turf Replacement: \$255,000
- Pine Tree Drive – Structural Pruning: \$147,000

Additional PAYGO funds are recommended to be added to the Budget over the next few years to help meet the need for capital project funding for the following:

- Current lack of dedicated pavement funds
- Neighborhood improvement projects costs have increased over time
- Stormwater projects are generating need for above ground funds
 - Lighting, landscaping, sidewalks, signage, traffic markings
- Replace PTP funding of \$1.7 million reprogrammed for enhanced trolley system
- Lighting and Crime Prevention Through Environmental Design (CPTED) improvements in non-tourist areas
- Park projects in non-tourist areas
- Seawall funding

OTHER FUNDING SOURCES

The proposed FY 2015/16 Capital Budget also proposes the following projects from various funding sources as shown below.

- Art in Public Places
 - Soundscape Park Art: \$352,000

- Concurrency Mitigation
 - Intelligent Transportation System Match: \$2.3 million
 - Funding for 16th Street Operational Improvement/Enhancement moved from PTP: \$4.8 million

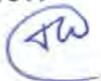
- Programming to expend various General Obligation (G.O.) bond fund balances:
 - Parks & Rec Beautification
 - Maurice Gibb Park Redesign: \$1.4 million
 - Maurice Gibb Park Floating Dock: \$196,000
 - MB Golf Course-Landscape Replacement: \$51,000
 - Altos del Mar Park Project Phase One: \$15,000
 - 1996 Recreation, Culture, Parks
 - Altos del Mar Park Project Phase One: \$104,000
 - 2003 Parks & Beaches
 - Pine Tree Dog Park Expansion: \$106,000
 - Normandy Shores Park Fitness Circuit: \$112,000
 - Palm Island Park Landscaping: \$41,000
 - Altos del Mar Park Project Phase One: \$19,000
 - 2003 Fire Safety
 - Fire Station #4 Exterior Paint & Waterproofing: \$43,000

CONCLUSION

The City administration recommends the proposed FY 2015/16 Capital Budget. The funding recommendations in the proposed FY 2015/16 Capital Budget are based on the City Commission's priorities and needs identified by various City departments. The final FY 2015/16 Capital Budget will be adopted at the second public hearing in September.

Attachment 1 – Capital Budget Prioritization
Attachment 2 – Proposed Renewal & Replacement Projects
Attachment 3 – Proposed Information & Communications Technology Projects

JLM/JW





FY 2015/16 Proposed Capital Budget



June 3, 2015



FY 2015/16 – 2019/20 CAPITAL IMPROVEMENT PROGRAM

- Official statement of public policy regarding long-range physical development in Miami Beach
- Proposed funding plan for 5 years
- First year of the plan is appropriated
 - FY 2015/16
- Capital projects for Water, Sewer, Stormwater, and Parking will be discussed on July 22nd

FY 2015/16 CAPITAL BUDGET

- Attachments

1. Overview of available funding by source as well as funding requests for new and existing projects
2. Summary of proposed Renewal & Replacement projects
3. Summary of proposed IT projects

RENEWAL & REPLACEMENT

- Established in FY 2004/05
- Used exclusively to provide dedicated funding for renewal and replacement of City facilities and infrastructure for General Fund departments
- Funded by dedicated millage rate

General Fund	5.6859 mills
Renewal & Replacement	<u>0.1083 mills</u>
Operating Millage Rate	5.7942 mills

- Millage rate generated \$2.18 million in FY 2014/15
- FY 2015/16 estimated at \$2.3 million (based on 5 percent increase)
- Project requests total \$3.0 million

RENEWAL & REPLACEMENT

- Recommend funding projects totaling \$1.7 million
 - \$1.3 million of unfunded project requests
 - Additional funding may be available depending on June 1st property values
- Projects listed in Attachment 2 (and page 1 of Attachment 1)
- Requests are prioritized using the following categories
 - Life Safety
 - Critical to Continued Operations
 - Prevent Additional Damage to City Property
 - Beyond Useful Life
- Also use Facility Condition Index (FCI) to rank projects
 - FCI's updated during FY 2014/15

RENEWAL & REPLACEMENT

- Highlights

- Police facilities

- Police Station Building

- HVAC retrofit (\$50K)

- Main gate replacement and helipad
wheeled fire extinguisher equipment (\$45K)

- Marine Patrol exterior restoration/roof repl. (\$150K)

- General facilities

- 777 Building – 4th floor retrofit of HVAC controls (\$170K)



RENEWAL AND REPLACEMENT

- Highlights continued

- Fire Facilities

- Fire Station #2 exterior painting & waterproofing (\$90K)
 - Fire Station #4 exterior painting & waterproofing (\$17K)



- Fire Station #3

- Fire alarm system upgrade (\$100K)
 - Emergency generator replacement (\$95K)
 - Restrooms renovation (\$75K)

RENEWAL AND REPLACEMENT

- Highlights continued

- Parks Facilities

- Flamingo Park

- Pool roof replacements on 5 structures (\$140K)
- Football stadium bleachers replacement (\$116K)
- Pool playground replacement (\$245K)
- Pool deck renovations (\$43K)

- Normandy Isle park and pool decking/roof repairs (\$200K)
- South Shore Community Center exterior restoration (\$100K)
- Palm Island playground safety surface (\$80K)



INFORMATION COMMUNICATIONS TECHNOLOGY PROJECTS

- Funding from General Fund – Citywide
- Recommended funding totals \$395,000 (same as FY15)
- Projects listed in Attachment 3
- Projects are prioritized by IT Steering Committee
- Evaluated using IT business case



INFORMATION COMMUNICATIONS TECHNOLOGY PROJECTS

- Recommended funding for new projects
 - Video server and loss prevention (\$101K)
 - New World product enhancements (\$70K)
 - Residential housing program system (\$14K)
- New projects using in-house resources, in-kind only
 - ADA features in Cleanliness Assessment program
 - Automated benefit payments

INFORMATION COMMUNICATIONS TECHNOLOGY PROJECTS

- Existing project using in-house resources, recommended to be contracted out
 - Information reporter web application (\$75K)
 - Existing GIS division resources not available for > 1 year
- Other
 - Last year of debt service for CAD RMS project (\$49K)
 - Contingency (\$86K)

CONVENTION CENTER

- Funding for the Convention Center (page 5 & 6)
 - County G.O. Bonds previously appropriated \$55 million
 - Proposed 1% Resort Tax Bonds: \$204.5 million
 - Proposed RDA Bonds: \$274.3 million
 - Future Parking Bonds: \$49.0 million
 - Total: \$582.8 million
- \$14 million from the Non-TIF RDA fund to be reimbursed once the bonds are issued (page 1)



CITY CENTER RDA

- RDA extension agreement with the County in FY 2014/15:
 - Eliminated funding for additional capital projects
 - Net surplus funds after operating expenses to be used to cover debt service for Convention Center bonds

SOUTH POINTE CAPITAL

- Funding from former South Pointe RDA (page 5)
 - Agreement with the County in FY 2014/15 allows use citywide (ex. flooding, sea walls, sea-level rise)
 - Indian Beach Park seawall (\$715K)
 - Indian Creek Park seawall (\$709K)
 - Lincoln Court Rehabilitation seawall (\$548K)
 - Bay Road Rehabilitation seawall (\$275K)
 - Normandy Shores Park seawall (\$226K)

SOUTH POINTE CAPITAL

- Funding from former South Pointe RDA continued
 - County agreement payment schedule

FY 2016	188,000
FY 2017	5,319,000
FY 2018	15,056,000
FY 2019	11,862,000
FY 2020	7,419,000
FY 2021	15,633,000
FY 2022	5,975,000

Assumes 3.5 percent increase in taxable value

QUALITY OF LIFE FUNDS

- Funded by 1 percent Resort Tax revenues
- Used for tourism-related projects
- 3 geographic areas: North, Mid, South
- During FY 2014/15 revenue was increased from \$1.2 to \$1.8 million
 - Resort tax pledge from the RDA bonds was released resulting in an additional \$6.1 million available
 - Revised funding splits: 15% for North, Mid, South capital; 45% for Transportation; 10% for Arts

QUALITY OF LIFE FUNDS

- Quality of Life (QOL) – North (page 4)
 - Recommended projects by Mayor’s Blue Ribbon Panel for North Beach
 - Kayak Launch Docks – additional funding (\$155K)
 - Tent for North Shore Bandshell – additional funding (\$200K)
 - Vendome Public Plaza (\$100K); FY17 \$1M
 - North Beach Streetscape pilot program (\$100K); FY17 \$230K
 - Bonita Drive Street End improvements (\$35K)
 - 86th Street Sidewalk & Roadway improvements (\$285K)
 - 81st Street Pedestrian Bridge Area (\$30K)
 - Street Lighting – tourist areas (\$334K)
 - Altos del Mar Park (\$863K)

QUALITY OF LIFE FUNDS

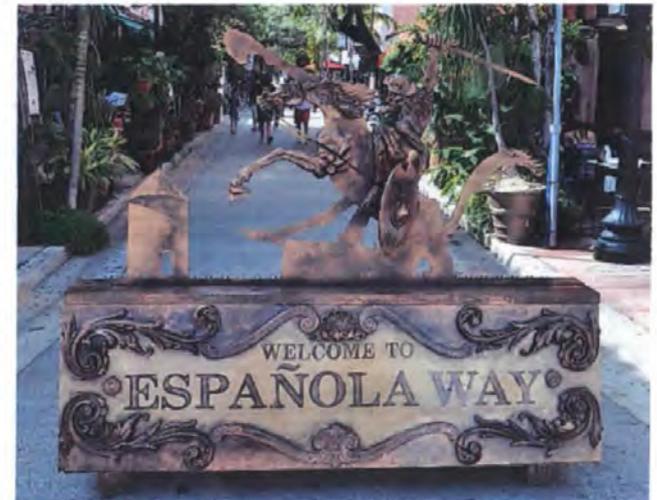
- Quality of Life (QOL) – North continued
 - Other projects
 - North Shore Open Space Park
 - Restroom addition (\$410K)
 - Dog fountains (\$35K)
 - Beach Showers renovation (\$177K)
 - Normandy Shores Golf Club landscape replacement (\$47K)
 - Standardized Park replacements - year 2 of 3
 - Benches, picnic tables, trash receptacles (\$27K)

QUALITY OF LIFE FUNDS

- Quality of Life (QOL) – Mid (page 3)
 - 28th Street Obelisk Phase II grant matching funds (\$250K)
 - Street Lighting – tourist areas (\$334K)
 - Beach Showers renovation (\$89K)
 - Collins Ave. Boardwalk replacement of decking (\$150K)
 - Indian Creek Bridge Color Lights System (\$75K)
 - Accessible Ramp to Boardwalk on 41st Street (\$50K)
 - Standardized Park replacements - year 2 of 3
 - Benches, picnic tables, trash receptacles (\$30K)
 - Citywide Dune restoration and enhancement (\$7K)

QUALITY OF LIFE FUNDS

- Quality of Life (QOL) – South (page 3)
 - Española Way Conversion to Pedestrian Mall (\$264K); FY17 \$848K
 - Street Lighting – tourist areas (\$334K)
 - Bass Museum
 - Exterior Walls and Parapet Caps (\$250K)
 - Emergency Generator Replacement (\$150K)
 - Lummus Park
 - Playground replacement (\$128K)
 - Volleyball courts (\$49K)
 - Collins Park Lighting & Sound System (\$236K)



QUALITY OF LIFE FUNDS

- Quality of Life (QOL) – South continued
 - Beachwalk II (\$500K)
 - Beach Showers renovation (\$200K)
 - Beach Access Control Gates (\$110K)
 - Digital Cinema Projection System for Colony Theater (\$90K)
 - Miami Beach Golf Course outdoor furniture replacement (\$39K)
 - Soundscape Speakers painting & other improvements (\$28K)
 - Standardized Park replacements - year 2 of 3
 - Benches, picnic tables, trash receptacles (\$28K)
 - Citywide Dune restoration and enhancement (\$25K)

PEOPLE'S TRANSPORTATION PLAN (PTP)

- People's Transportation Plan *(page 2)*
 - Funded by Half-Cent Transit sales tax
 - Imposed in 2002
 - 20 percent of proceeds distributed directly to municipalities on a pro-rata basis
 - Used for local transportation and transit projects
 - Minimum of 20% of the City's PTP share must be allocated for transit

PEOPLE'S TRANSPORTATION PLAN (PTP)

- People's Transportation Plan continued
 - FY 2014/15 PTP funding projected was \$3.2 million
 - \$1.7 million in Capital budget
 - \$1.5 million in Operating budget (funds South Beach Local)
 - For FY 2015/16 recommending re-programming \$1.7 million from Capital budget to Operating budget to help fund the expanded trolley system
 - FY 2015/16 requests funded by re-programming existing projects
 - Existing funds should be sufficient for approximately 1-2 years
 - Would likely need to fund future projects from PAYGO



OTHER FUNDS

- Art in Public Places (*page 1*)
 - Soundscape Park Art (\$352K)
- Concurrency Mitigation (*page 1*)
 - Intelligent Transportation System Match (\$2.3M)
 - Funding for 16th Street Operational Improv/Enhanc moved from PTP (\$4.8M)

OTHER FUNDS

- Programming to expend General Obligation (GO) bond fund balances
 - Parks & Rec Beautification (*page 4*)
 - Maurice Gibb Park Redesign (\$1.4M)
 - Maurice Gibb Park Floating Dock (\$196K)
 - MB Golf Course-Landscape Replacement (\$51K)
 - Altos del Mar Park Project Phase One (\$15K)
 - 1996 Recreation, Culture, Parks (*page 4*)
 - Altos del Mar Park Project Phase One (\$104K)

OTHER FUNDS

- Programming to expend General Obligation (GO) bond fund balances continued
 - 2003 Parks & Beaches (page 5)
 - Pine Tree Dog Park Expansion (\$106K)
 - Normandy Shores Park Fitness Circuit (\$112K)
 - Palm Island Park Landscaping (\$41K)
 - Altos del Mar Park Project Phase One (\$19K)
 - 2003 Fire Safety (page 5)
 - Fire Station #4 Exterior Paint & Waterproofing (\$43K)

OTHER FUNDS

- Possible grant funding – should know in July (*page 6*)
 - Neptune \$30K
 - Madeline \$25K
 - Lottie \$150K
 - Barclay \$6.0M

PAY-AS-YOU-GO (PAYGO)

- Pay-As-You-Go (page 2)
 - Funded from the General Fund at \$1.4 million annually
 - Previously as high as \$7.5 million
 - Ensures adequate on-going reinvestment in capital plant and equipment
 - No restrictions
 - Used after all other funding sources exhausted

PAY-AS-YOU-GO (PAYGO)

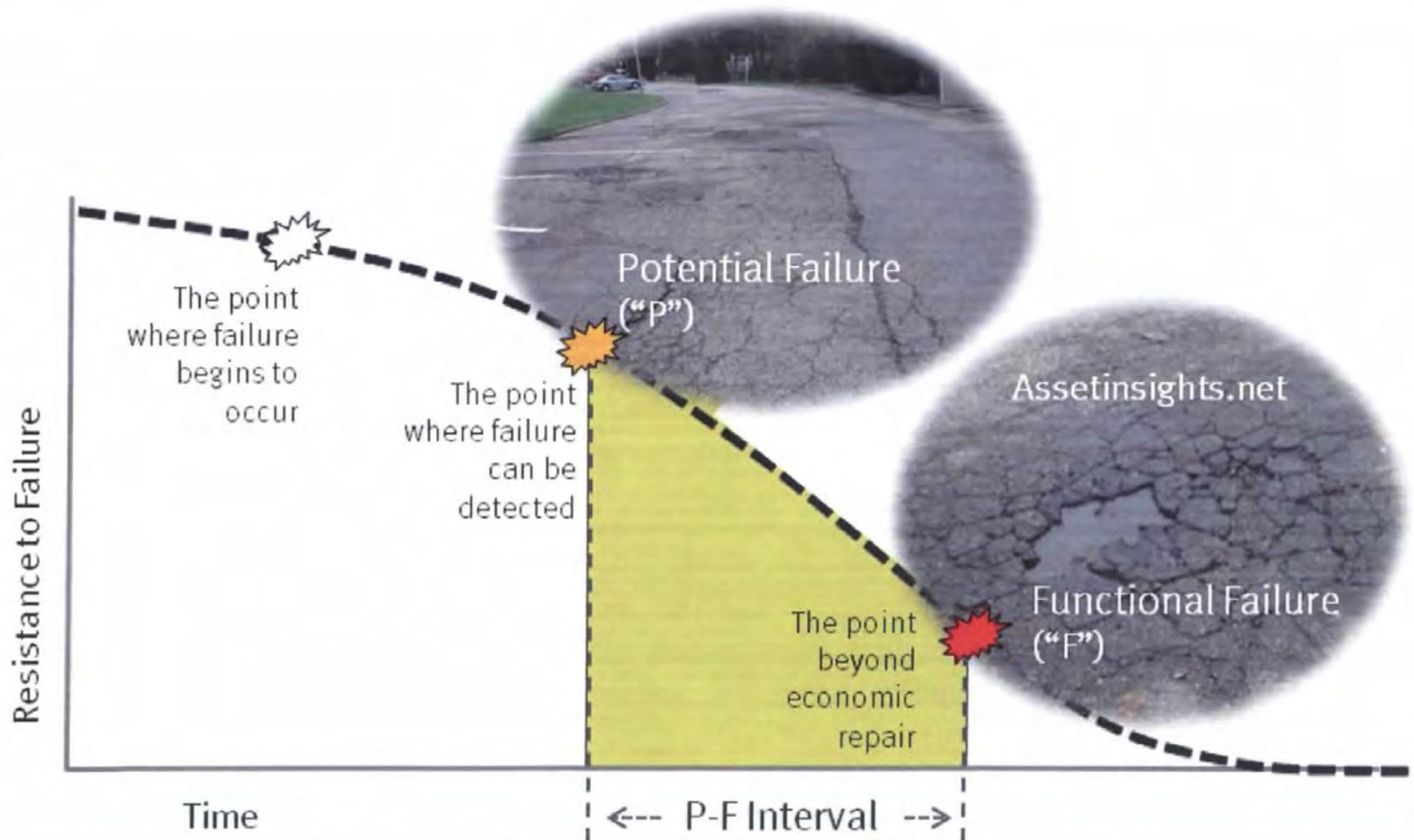
- Recommended project highlights
 - Maurice Gibb Soil Remediation (\$800K)
 - Commission Chambers Renovation (\$575K)
- If receive \$1.3 million reimbursement from FDOT for West Ave. Bridge project, recommend funding the following projects:
 - City Hall Space Plan Implementation (\$634K)
 - Normandy Isle Park Turf Replacement (\$255K)
 - Pine Tree Drive – Structural Pruning (\$147K)

PAY-AS-YOU-GO (PAYGO)

- Need for additional PAYGO funding
 - Current lack of dedicated pavement funds
 - Funded pavement assessment in FY 2014/15
 - Pavement assessment generates pavement condition ratings
 - Ratings are used to rank the list of streets to pave each year
 - FY 2015/16 proposed Capital Budget includes \$945,000 for Pavement program from Local Option Gas Tax
 - Funding from this source will not be available in future years

PAY-AS-YOU-GO (PAYGO)

PCI	RATING
100	EXCELLENT
85	VERY GOOD
70	GOOD
55	FAIR
40	POOR
25	VERY POOR
10	FAILED
0	



PAY-AS-YOU-GO (PAYGO)

- Need for additional PAYGO funding continued
 - Neighborhood improvement projects costs have increased over time
 - Stormwater projects are generating need for above ground funds
 - Lighting, landscaping, sidewalks, signage, traffic markings
 - PTP funding of \$1.7 million reprogrammed for enhanced trolley system
 - Lighting and Crime Prevention Through Environmental Design (CPTED) improvements in non-tourist areas
 - Park projects in non-tourist areas
 - Seawall funding

NEXT STEPS

- Update proposed capital budget with any necessary changes
 - Finance and Citywide Projects Committee meetings
 - July 1st and July 22nd
 - Two public hearings in September
 - September 10th
 - September 30th

QUESTIONS



ATTACHMENT 1

FUNDING	PROJECT NAME	Prior Years	2014/15	FY15 Amendments	FY15 Borrowed \$	2015/16 Programmed	FY16 New Requests	FY16 Proposed Budget	2016/17 Programmed	2017/18 Programmed	2018/19 Programmed	2019/20 Programmed	Future	Total
125 Renewal & Replacement Fund														
	Marine Patrol Exterior Restoration / Roof Replacement						150,000	150,000						150,000
	Fire Station #3 Fire Alarm System Upgrade						100,000	100,000						100,000
	Flamingo Park Pool Roof Replacement Replace Roofs on (5) Structures						140,000	140,000						140,000
	Normandy Isle Park and Pool Pool Decking Resurfacing/Roof Repairs/ Painting & Waterproofing (4) Structures						200,000	200,000						200,000
	South Shore Community Center Exterior Restoration						100,000	100,000						100,000
	Fire Station #2 Exterior Paint & Waterproofing						90,000	90,000						90,000
	Flamingo Football Stadium Bleachers Replacement						115,550	116,000						116,000
	Fire Station #4 Exterior Paint & Waterproofing						16,390	17,000						17,000
	777 Building - 4th Floor Retrofit HVAC controls & dampers.						170,000	170,000						170,000
	Palm Island Playground Safety Surface						79,537	80,000						80,000
	Flamingo Park Pool Playground Replacement						245,000	245,000						245,000
	Flamingo Pool Deck Renovations						43,000	43,000						43,000
	Replacement of Emergency Generator at Fire Station #3						95,000	95,000						95,000
	Police Station Building HVAC Retrofit Installation						50,000	50,000						50,000
	Police Station Building Main Gate Replacement & Helipad Wheeled Fire Extinguisher Equipment						45,000	45,000						45,000
	Fire Station #3 Restrooms Renovation Renovate dated restrooms.						75,000	75,000						75,000
	Normandy Isle Pool Playground Equipment						245,000							-
	Neighborhood Basketball Court Renovations						137,000							-
	Neighborhood Tennis Court Renovations						92,000							-
	North Shore Park Youth Center Facility Painting						113,000							-
	North Shore Park Playground Safety Surface						31,000							-
	Scott Rakow Youth Center Reception and Bowling Enhancements						66,000							-
	Fire Station #3 Kitchen Renovation						120,000							-
	PAL Building Exterior Paint & Waterproofing Waterproof/paint exterior walls, windows, openings.						50,000							-
	City Attorney Office Renovation Demolition of existing library and constructing 4 new offices.						80,000							-
	City Hall Roof & Skylight Restoration						300,000							-
	Police Station Awning Installation - Exterior Garage Card Readers.						61,000							-
Sum		11,934,299	1,966,000	744,120	-	-	3,009,477	1,716,000	-	-	-	-	-	16,360,419
Available Balance														
FY16 Proj Revenue (Assumes 5% Growth in Property Value)								2,300,000						
Remaining Available Balance								584,000						
147 AiPP														
	Soundscape Park Art in Public Places						352,000	352,000						352,000
Sum		-	-	-	-	-	352,000	352,000	-	-	-	-	-	352,000
Available Balance								2,166,155						
FY16 Proj Revenue (Estimate from FY 16 CIP Projects)								21,000						
Remaining Available Balance								1,835,155						
158 Concurrency Mitigation Fund														
trs16stops	16th St. Operational Improv/Enhancement	3,550,160	-				4,777,934	4,777,934						8,328,094
trcintsyst	Intelligent Transportation System Match	-	2,060,000				2,340,000	2,340,000						4,400,000
trnbtownc	North Beach Town Center Complete Streets	272,000	-				-	-						272,000
pwndaveshr	Seawall-Dickens Av Shoreline & Bike Path	200,000	-				(200,000)	(200,000)						-
rwcweavbri	West Ave Bridge Over Collins Canal	108,068	-				-	-						108,068
Sum		4,362,494	2,060,000	-	-	-	6,917,934	6,917,934	-	-	-	-	-	13,340,428
Available Balance								8,477,783						
FY16 Proj Revenue														
Remaining Available Balance								1,559,849						
165 Non - TIF RDA Fund (Loews / Royal Palm Proceeds)														
pfconvctr	Convention Center	14,000,000	(12,312,000)				-	-						1,688,000
pfconvhot	Convention Center Hotel	-	600,000				-	-						600,000
Sum		14,000,000	(11,712,000)	-	-	-	-	-	-	-	-	-	-	2,288,000
Available Balance								14,338,704						
FY16 Proj Revenue														
Remaining Available Balance								14,338,704						

FY 16 Estimated Revenue = \$2,300,000

Proposed total of \$1,716,000

FUNDING	PROJECT NAME	Prior Years	2014/15	FY15 Amendments	FY15 Borrowed \$	2015/16 Programmed	FY16 New Requests	FY16 Proposed Budget	2016/17 Programmed	2017/18 Programmed	2018/19 Programmed	2019/20 Programmed	Future	Total
171 Local Option Gas Tax (3 Cent Gas Tax)														
rwnstnsisl	Streetlighting Improv-North Shore Island	544,000	-			-	300,000	300,000	300,000	300,000	-		-	1,444,000
	Pavement Management Program CW						1,000,000	945,000						945,000
Sum		915,190	336,000	-	-	-	1,300,000	1,245,000	300,000	300,000	-		-	2,151,190
	Available Balance							872,599						
	FY16 Proj Revenue							373,355						
	Remaining Available Balance							954						
187 Half Cent Transit Surtax - County (PTP)														
trs16stops	16th St. Operational Improv/Enhancement	3,030,934	-			1,747,000	(4,777,934)	(4,777,934)						(1,747,000)
rwn73bridg	Bridges: Holocaust, Biarritz, Palm Islan	-	-			-								-
rwnoverpav	Everglades Court Alleyway Paving	-	150,000			150,000		150,000						300,000
pwepecs15	Pedestrian Crossing Improvements FY 15	-	-			100,000		-						-
rcrowim15	ROW Improvement Project FY 15	-	-			330,000		-						-
stcsideasv	Sidewalk Assessment Survey	-	75,000			75,000		-						75,000
rcwsiderep	Sidewalk Repairs (City-Wide)	-	225,000			-	225,000	225,000						450,000
rwswestrow	West Avenue/Bay Road Improvements	-	378,000			1,512,000		1,512,000						1,890,000
	On-Street Bicycle parking at Street Corners						33,000							-
	Bicycle Shared Path, Meridian Avenue (North) between 28th Street and Dade Blvd.						278,000	278,000						278,000
	Euclid Avenue between 17th Street and 5th Street Protected Bike Lanes						122,000	122,000						122,000
	Alton Road between Chase Avenue and North Michigan Avenue protected bike lanes						418,000	418,000						418,000
	73rd Street Protected Bike Lanes						39,000	39,000						39,000
	72nd Street Protected Bike Lane						39,000	39,000						39,000
	Bike Lanes . 51st Street between Alton Road and Pine Tree Drive						50,000	50,000						50,000
pkcaspdriv	Driveway and Sidewalk Repairs						171,000	171,000						171,000
pwndaveshr	Seawall-Dickens Av Shoreline & Bike Path						200,000	200,000						200,000
Sum		18,358,937	2,333,000	-	-	3,914,000	(3,202,934)	(1,573,934)	-	-	-		-	19,118,003
	Available Balance							1,033,017						
	FY16 Proj Revenue							-						
	Remaining Available Balance							2,606,951						
302 Pay-As-You-Go														
pfschsplm	City Hall Space Plan Implementation	170,000	265,000			-	634,029							435,000
pknturfrep	Fairway Park Turf Replacement & Other Im	-	-			918,000								-
eqcdfilfep	FD Lifepak Upgrade Project	60,000	60,000			60,000								120,000
pkcmgposoil	Maurice Gibb Soil Remediation	70,000	222,000			-	800,000	800,000						1,092,000
pfpolfire	MBPD Firearms Range Upgrades	-	-			100,000								-
pknnorturf	Normandy Isle Park Turf Replacement & Ot	-	-			345,000	255,000							-
pknpvientp	Park View Island- Entrance Planting	-	-			-				129,000				129,000
pfmpkmaint	Parks Maintenance Facility	-	-			965,000								-
pwndaveshr	Seawall-Dickens Av Shoreline & Bike Path	134,526	-			-	(131,106)	(131,106)						3,420
ensshanews	Shane Watersport Seawall	-	134,000			495,000								134,000
pkcbenchrr	Standardized Park Bench Replacements Cit	-	50,000			50,000			50,000					100,000
pkctablerr	Standardized Park Picnic Table Replaceme	-	50,000	(34,000)		50,000			50,000					66,000
pkctrashrr	Standardized Park Trash Receptacle Repla	-	16,000	34,000		16,000			16,000					66,000
rcstreetr	Street Pavement Restoration	400,000	-			-	1,000,000		1,000,000	1,000,000				2,400,000
rcweavbri	West Ave Bridge Over Collins Canal	1,303,396	-			(1,304,000)		(1,304,000)						(604)
pwcstrpp	Aluminum Streetlighting Pole Replacement	-	-				1,000,000		1,000,000					1,000,000
	Pavement Management Program CW						1,000,000							-
	Lummus Park Lighting Improvement - Turtle friendly lighting								100,000	2,000,000				2,100,000
	Pinetree Dr. Australian Pine Tree Structural Pruning						147,000							-
	Commission Chambers Renovation						575,000	575,000						575,000
pfsfir1ref	Fire Station 1 Refurbishment	-	-			-	1,082,000							-
	Stillwater Fitness Circuit						36,000							-
	Lighting Upgrades in Normandy Isles						100,000							-
pknkaylaun	Kayak Launch Docks						131,106	131,106						-
Sum		19,743,762	2,630,000	233,000	-	1,695,000	6,497,923	(60,106)	2,216,000	3,129,000	-		-	27,891,656
	Available Balance							(136,000)						
	FY16 Proj Revenue							1,400,000						
	Subtotal Remaining Available Balance							156,106						
	Potential Revenue from County Reimbursement							1,304,000						
	Funding for Projects in Tier 2 (shaded in Dark Gray)							1,036,029						
	Remaining Available Balance							424,077						

-Revenue Re-programmed in Operating for Trolley System
 -FY 16 Project Requests Funded by Reprogramming Existing Funds

FUNDING	PROJECT NAME	Prior Years	2014/15	FY15 Amendments	FY15 Borrowed \$	2015/16 Programmed	FY16 New Requests	FY16 Proposed Budget	2016/17 Programmed	2017/18 Programmed	2018/19 Programmed	2019/20 Programmed	Future	Total
305 SB Quality of Life Resort Tax Fund - 1%														
pksfountan	Alton Road Fountain @ 20th Street	-	-			-		-	-	-	-	-	279,000	279,000
encbeachag	Beach Access Control Gates	119,200	137,000			110,000		110,000	-	-	-	-	-	366,200
encduneres	Citywide Dune Restoration & Enhancement	57,861	25,000			-	25,000	25,000	-	-	-	-	-	107,861
pkstenproj	Flamingo Park Tennis Project	-	-			-		-	-	-	95,000	-	-	95,000
pkclifegds	Lifeguard Stands Replacement	600,000	-			-	720,000	-	720,000	-	-	-	-	1,320,000
pkcbenchrr	Standardized Park Bench Replacements Cit	-	10,000			10,000		10,000	10,000	-	-	-	-	30,000
pkctablerr	Standardized Park Picnic Table Replaceme	-	7,000	4,000		7,000		7,000	7,000	-	-	-	-	25,000
pkctrashrr	Standardized Park Trash Receptacle Repla	-	11,000	(4,000)		11,000		11,000	11,000	-	-	-	-	29,000
pkswwarmem	World War Memorial	-	-			-		-	-	-	-	-	62,000	62,000
	Espanola Way conversion to Pedestrian Mall						1,111,485	264,000	848,000					1,112,000
	Ocean Drive						???							
	Miami Beach Golf Course - Outdoor Furniture replacement						39,000	39,000						39,000
	Street Lighting Improvements CW - Tourist Areas						333,333	334,000	333,333	333,333				1,000,666
	Beach Showers/Drainage Drainage renovation of 26 Showers.						199,950	200,000						
	Lummus Park Playground Replacement						127,489	128,000						
	Lummus Park Volleyball Courts						48,265	49,000						
	Replacement of Emergency Generator at the Bass Museum - R&R (other potential funding source 165 Non-TIF RDA Fund)						150,000	150,000						
	Bass Museum Exterior Walls & Parapet Caps- R&R (other potential funding source 165 Non-TIF RDA Fund)						250,000	250,000						
	Digital Cinema Projection System for Colony (other potential funding source 165 Non-TIF RDA Fund)						90,000	90,000						90,000
	Soundscape Speakers Painting and Other Improvements						28,000	28,000						
	Collins Park Lighting & Sound System						236,000	236,000						
enbchwalk2	Beachwalk II						500,000	500,000						500,000
Sum		3,439,686	1,870,000	-	-	138,000	3,858,522	2,431,000	1,929,333	333,333	95,000		341,000	9,398,352
	Available Balance							837,832						
	FY 15 Revenue as of 3/31/15							863,642						
	FY16 Proj Revenue							1,884,300						
	Remaining Available Balance							1,154,774						
306 MB Quality of Life Resort Tax Fund - 1%														
encduneres	Citywide Dune Restoration & Enhancement	128,967	-			-	7,000	7,000	-	-	-	-	-	135,967
pkmcollaum	Collins Avenue Medians (41st To 60th Str	-	-			-		-	-	-	-	-	26,000	26,000
pkclifegds	Lifeguard Stands Replacement	300,000	-			-	240,000	-	240,000	-	-	-	-	540,000
enmbchwlk3	Middle Beach Rec Corridor Ph III	-	475,000			-		-	6,047,000	6,047,000	-	-	-	12,569,000
pkmgcmpr3	Par 3 Golf Course Master Plan now Banyan Tree Park	490,000	-			-	???	-	-	-	-	-	-	490,000
pkcbenchrr	Standardized Park Bench Replacements Cit	-	15,000			15,000		15,000	15,000	-	-	-	-	45,000
pkctablerr	Standardized Park Picnic Table Replaceme	-	7,000	1,000		7,000		7,000	7,000	-	-	-	-	22,000
pkctrashrr	Standardized Park Trash Receptacle Repla	-	8,000	(1,000)		8,000		8,000	8,000	-	-	-	-	23,000
	Indian Creek Bridge Color Lights System						75,000	75,000						75,000
	Street Lighting Improvements CW - Tourist Areas						333,333	334,000	333,333	333,333				1,000,666
	28th Street Obelisk Phase II Grant Matching Funds						250,000	250,000						
	Collins Avenue Boardwalk Replacement Replacement of Rotten joist and decking						150,000	150,000						
	Beach Showers/Drainage Drainage renovation of 26 Showers.						88,350	89,000						
	Accesible Ramp to Boardwalk on 41st Street						50,000	50,000						
Sum		2,061,342	5,044,000	191,900	-	30,000	1,193,683	985,000	6,650,333	6,380,333	-		26,000	20,799,908
	Available Balance							(710,591)						
	FY 15 Revenue as of 3/31/15							863,642						
	FY16 Proj Revenue							1,884,300						
	Remaining Available Balance							1,052,351						

FUNDING	PROJECT NAME	Prior Years	2014/15	FY15 Amendments	FY15 Borrowed \$	2015/16 Programmed	FY16 New Requests	FY16 Proposed Budget	2016/17 Programmed	2017/18 Programmed	2018/19 Programmed	2019/20 Programmed	Future	Total
307 NB Quality of Life Resort Tax Fund - 1%														
pkn71stfou	71st Fountain Renovation	350,000	-	-	-	-	-	-	-	-	-	-	-	350,000
pkcdicavel	7300 Dickens Ave L/scape-Irrigation Sys.	-	-	-	-	-	-	-	-	-	-	-	37,000	37,000
pknalpred	Allison Park Redesign	-	500,000	-	-	-	-	-	-	-	-	-	-	500,000
pknbandshe	Band Shell Master Plan Improv	1,009,470	-	-	-	-	-	-	-	-	-	-	-	1,009,470
encbeachag	Beach Access Control Gates	17,000	-	-	-	-	-	-	-	-	-	-	-	17,000
pfbeachsh	Beach Shower Replacement & Renovations	12,500	-	-	-	-	-	-	-	-	-	-	-	12,500
pfbyronups	Byron Carlyle Upgrades & Repairs	-	145,000	-	-	-	-	-	-	-	-	-	-	145,000
pfnskatepk	City of Miami Beach Skatepark	400,000	-	-	-	-	-	-	-	-	-	-	-	400,000
encduneres	Citywide Dune Restoration & Enhancement	246,805	-	-	-	-	-	-	-	-	-	-	-	246,805
trmentsign	Entrance Signs to North Beach	-	300,000	-	-	-	-	-	-	-	-	-	-	300,000
pknngscpl	Install lighting NSGC	50,000	-	-	-	-	-	-	-	-	-	-	-	50,000
pknkaylaun	Kayak Launch Docks	-	175,000	-	-	-	150,000	150,000	-	-	-	-	-	325,000
pkclifegds	Lifeguard Stands Replacement	300,000	-	-	-	-	240,000	-	240,000	-	-	-	-	540,000
pknbandssy	North Beach Band Shell Sound System Upgr	-	40,000	197,000	-	-	-	-	-	-	-	-	-	237,000
pknbdompk	North Beach Domino Park	-	400,000	-	-	-	-	-	-	-	-	-	-	400,000
pknnbospsi	North Beach Open Space Park Security Imp	225,000	-	-	-	-	-	-	-	-	-	-	-	225,000
rmrestren	North Shore Park Restroom Renovations	-	100,000	-	-	-	-	-	-	-	-	-	-	100,000
pknnsrptp	North Shore Park Tennis Project	-	-	-	-	-	-	-	-	-	75,000	-	-	75,000
pknftcirc	NSOSP Replacement Fitness Circuit/Trail	99,000	-	-	-	-	-	-	-	-	-	-	-	99,000
rrplbridnb	Painting & Lighting of Bridges in NB	-	1,100,000	-	-	-	-	-	60,000	165,000	165,000	165,000	910,000	2,565,000
pkctreph2c	RestorativeTreeWell-2C-71St Bay D/RueNot	85,432	-	-	-	-	-	-	-	-	-	-	-	85,432
pkcbenchrr	Standardized Park Bench Replacements Cit	-	15,000	-	-	15,000	-	15,000	15,000	-	-	-	-	45,000
pkctablerr	Standardized Park Picnic Table Replaceme	-	7,000	(2,000)	-	7,000	-	7,000	7,000	-	-	-	-	19,000
pkctrashrr	Standardized Park Trash Receptacle Repla	-	5,000	2,000	-	5,000	-	5,000	5,000	-	-	-	-	17,000
pknnsbshe	Tent for the North Shore Bandshell	100,000	-	-	-	-	200,000	200,000	-	-	-	-	-	300,000
	Bonita Drive Street End Improvements	-	-	-	-	-	35,000	35,000	100,000	200,000	-	-	-	335,000
	North Beach Streetscape Pilot Program	-	-	-	-	-	330,000	100,000	230,000	-	-	-	-	330,000
	North Beach Streetscape	-	-	-	-	-	-	-	550,000	550,000	550,000	550,000	8,800,000	11,000,000
	Collins / Harding Alleyway Reconstruction	-	-	-	-	-	-	-	100,000	850,000	-	-	-	950,000
	86th Street Sidewalk & Roadway Improvements	-	-	-	-	285,000	285,000	-	-	-	-	-	-	285,000
	81st Street Pedestrian Bridge Area	-	-	-	-	30,000	30,000	-	150,000	-	-	-	-	180,000
	North Shore Open Space Park Dog Fountains	-	-	-	-	35,000	35,000	-	-	-	-	-	-	35,000
	North Shore Park Restroom Addition	-	-	-	-	410,000	410,000	-	-	-	-	-	-	410,000
	Normandy Shores Golf Club - Landscape Removal & Replaceme	-	-	-	-	47,000	47,000	-	-	-	-	-	-	47,000
	Vendome Public Plaza	-	-	-	-	100,000	100,000	-	1,000,000	-	-	-	-	1,100,000
	Street Lighting Improvements CW	-	-	-	-	333,333	334,000	334,000	333,333	333,333	333,333	333,333	-	1,667,332
	Byron Carlyle West Roof Replacement Project	-	-	-	-	200,000	-	-	-	-	-	-	-	-
	Byron Carlyle HVAC Replacement Replacement of HVAC system.	-	-	-	-	105,000	-	-	-	-	-	-	-	-
	Byron Carlyle Renovation	-	-	-	-	1,500,000	-	-	-	-	-	-	-	-
	Beach Showers/Drainage Drainage renovation of 26 Showers.	-	-	-	-	176,700	-	177,000	-	-	-	-	-	177,000
	Altos Del Mar Park Project Phase I	-	-	-	-	862,416	-	863,000	-	-	-	-	-	863,000
		-	-	-	-	-	-	-	-	-	-	-	-	-
Sum		2,895,207	2,787,000	197,000	-	27,000	5,324,449	2,793,000	2,790,333	2,098,333	1,123,333	1,048,333	9,747,000	25,479,539
	Available Balance							762,262						
	FY 15 Revenue as of 3/31/15							863,642						
	FY16 Proj Revenue							1,884,300						
	Remaining Available Balance							717,204						
366 Parks & Rec Beautification														
	Miami Beach Golf Course - Landscape Removal & Replacement	-	-	-	-	-	51,000	51,000	-	-	-	-	-	51,000
	Maurice Gibb Park Floating Dock for non-motorized vessels	-	-	-	-	-	196,000	196,000	-	-	-	-	-	196,000
	Maurice Gibb Park Redesign	-	-	-	-	-	1,453,000	1,453,000	-	-	-	-	-	1,453,000
	Altos Del Mar Park Project Phase I	-	-	-	-	-	14,383	14,383	-	-	-	-	-	-
Sum		-	-	-	-	-	1,714,383	1,714,383	-	-	-	-	-	1,700,000
	Available Balance							1,714,383						
	FY16 Proj Revenue							-						
	Remaining Available Balance							-						
370 RCP - 1996 15M GO Bond														
	Altos Del Mar Park Project Phase I	-	-	-	-	-	104,175	104,175	-	-	-	-	-	-
Sum		1,005,358	-	-	-	-	104,175	104,175	-	-	-	-	-	1,005,358
	Available Balance							104,175						
	FY16 Proj Revenue							-						
	Remaining Available Balance							0						

FUNDING	PROJECT NAME	Prior Years	2014/15	FY15 Amendments	FY15 Borrowed \$	2015/16 Programmed	FY16 New Requests	FY16 Proposed Budget	2016/17 Programmed	2017/18 Programmed	2018/19 Programmed	2019/20 Programmed	Future	Total
382 2003 GO Bonds - Fire Safety														
rrnfi4air	Fire Station # 4 Air Handler Replacement	-	60,000			-		-	-	-	-	-	-	60,000
pfsfir1ref	Fire Station 1 Refurbishment	-	500,000			-		-	-	-	-	-	-	500,000
rrmfir3tan	Fire Station 3 Fuel Tank and Piping Rest	-	65,000			-		-	-	-	-	-	-	65,000
	Fire Station #4 Exterior Paint & Waterproofing - R&R	-	-				43,610	43,610	-	-	-	-	-	43,610
Sum		217,229	625,000					43,610						885,839
Available Balance								43,610						
FY16 Proj Revenue														
Remaining Available Balance														
383 2003 GO Bonds - Parks & Beaches														
pkmpinedog	Pinetree Dog Park Expansion	-	-			106,000		106,000						106,000
pknsptlss	Normandy Shores Park Fitness Circuit	-	-			-	112,000	112,000						112,000
	Palm Island Park Landscaping, Sod, and Irrigation	-	-			-	41,000	41,000						41,000
	Altos Del Mar Park Project Phase I	-	-			-		19,026						19,026
Sum		12,862,226				106,000	112,000	278,026						13,140,252
Available Balance								278,026						
FY16 Proj Revenue														
Remaining Available Balance														
389 South Pointe Capital (As of FY 16 only funding Sea Level Rise & Seawall projects)														
encbaywalk	Baywalk Phase 1	-	-								3,000,000			3,000,000
enninbchsw	Indian Beach Park Seawall	-	-			715,000		715,000	-	-	-		-	715,000
ensbayrdsw	Seawall-Bay Road Rehabilitation	-	-			275,000		275,000	-	-	-		275,000	550,000
enslinccsw	Seawall-Lincoln Court Rehabilitation	-	-			548,000		548,000	-	-	-		-	548,000
ennindcrsw	Indian Creek Park Seawall	-	-				708,501	709,000						
	Normandy Shores Park Seawall	-	-				225,478	226,000						
Sum		48,059,329	10,574,000	4,300,000		1,538,000	933,979	2,473,000			3,000,000		275,000	67,746,329
Available Balance								13,840,952						
FY16 Proj Revenue														
Remaining Available Balance								11,367,952						
cty Miami-Dade County Bond														
pfccconvctr	Convention Center	-	54,400,000											54,400,000
Sum		7,509,847	54,400,000											61,909,847
Available Balance														
FY16 Proj Revenue														
Remaining Available Balance														
ppb Proposed Parking Bonds														
pgcprefgar	Preferred Lot Parking Garage	-	59,500,000											59,500,000
Sum			59,500,000										101,678,000	161,178,000
Available Balance														
FY16 Proj Revenue														
Remaining Available Balance														
prd Proposed Future RDA Bonds														
rws17thstn	17th Street North Imprv Penn Av to Wash	-	2,000,000											2,000,000
pkcbassph2	Bass Museum Interior Space Expansion	-	3,750,000											3,750,000
pfccconvctr	Convention Center	-	274,300,000											274,300,000
rwmconvctr	Convention Center Lincoln Rd Connectors	-	10,000,000											10,000,000
rwslinwash	Lincoln Road Washington Av to Lenox Ave	-	20,000,000											20,000,000
Sum			310,050,000											310,050,000
Available Balance														
FY16 Proj Revenue														
Remaining Available Balance														

FUNDING	PROJECT NAME	Prior Years	2014/15	FY15 Amendments	FY15 Borrowed \$	2015/16 Programmed	FY16 New Requests	FY16 Proposed Budget	2016/17 Programmed	2017/18 Programmed	2018/19 Programmed	2019/20 Programmed	Future	Total
prt Proposed Future Resort Tax 1% Bond														
pfconvctr	Convention Center	-	204,500,000			-			-	-	-		-	204,500,000
Sum		-	204,500,000	-	-	-	-	-	-	-	-		-	204,500,000
	Available Balance													
	FY16 Proj Revenue													
	Remaining Available Balance													
unf Unfunded														
pkcaspdriv	Driveway and Sidewalk Repairs	-	-			Moved to Fund 187			-	-	-		-	-
enninbchsw	Indian Beach Park Seawall	-	-			Moved to Fund 389			-	-	-		-	-
rwmicbridg	Indian Creek Pedestrian Bridges	-	-						-	-	-		595,000	595,000
rcirmacc	Irrigation Sys MacArthur Cswy Repair/Upg	-	-						-	-	-		28,000	28,000
pkmnoptrp	Nautilus / Orchard Park Tree Replacement	-	-						-	-	-		119,000	119,000
trnbtownc	North Beach Town Center Complete Streets	-	-						-	-	-		1,672,000	1,672,000
rwnbtctsti	North Beach Town Center Streetscape Imp	-	-						11,790,000	-	-		-	11,790,000
pknsospmf	NSOP Beach Maint. Facility	-	-						-	-	-		2,745,000	2,745,000
pkspalmfou	Palm Island Fountain	-	-						-	-	-		100,000	100,000
pkmpinedog	Pinetree Dog Park Expansion	-	-			Moved to Fund 383			-	-	-		-	-
rwnirraltr	Repair & Upgrade Irr Sys 2000-6300 Alton	-	-						-	-	-		72,000	72,000
ensbayrdsw	Seawall-Bay Road Rehabilitation	-	-			Moved to Fund 389			-	-	-		275,000	275,000
ensbiscbse	Seawall-Biscayne Bay St End Enh Phill	-	-						-	-	-		542,000	542,000
pwndaveshr	Seawall-Dickens Av Shoreline & Bike Path	-	-						-	-	-		150,000	150,000
enmindcrkg	Seawall-Indian Creek Greenway	-	-						-	-	-		15,000,000	15,000,000
enslinccsw	Seawall-Lincoln Court Rehabilitation	-	-			Moved to Fund 389			-	-	-		-	-
pkswatrest	Water Tower Restoration Star Island	-	-						-	-	-		593,000	593,000
pwnwbdpken	West Bay Drive Parking Enhancements	-	-						-	-	-		120,000	120,000
pkflam10g	Flamingo 10g-6 Street ROW improvements	-	-						1,441,264	-	-		-	1,441,264
Sum		-	-	-	-	-	-	-	13,231,264	-	-		22,011,000	35,242,264
	Available Balance													
	FY16 Proj Revenue													
	Remaining Available Balance													
Possible Grant Funding Will know by July 2015														
	Neptune		-				30,000	30,000	-	-	-		-	-
	Madeline						25,000	25,000						
	Lottie						150,000	150,000						
	Barclay (possibly be funded by a developer and we need to check with Trish if this will be a city asset.)						6,000,000	6,000,000						
Sum							6,205,000	6,205,000	-	-	-		-	-
	Available Balance													
	FY16 Proj Revenue													
	Remaining Available Balance							(6,205,000)						

ATTACHMENT 2

5/28/2015

FY 16 CAPITAL RENEWAL & REPLACEMENT				.00 to .10 - Excellent .11 TO .21 - Good .22 to .32 - Poor .33 or above - Evaluate value of facility vs cost to repair		PRIORITY CATEGORIES: (LS) Life Safety (CO) Critical to Continued Operations (PD) Prevent Additional Damage to City Property (UL) Beyond Useful Life	
No.	Prior Year Ranking	Asset	Project	FCI - Facility Condition Index	Category	Over 25k	Cumulative Over 25k
1	22	Marine Patrol	Exterior Restoration / Roof Replacement	0.53	CO	150,000	150,000
2		Fire Station #3	Fire Alarm System Upgrade	0.83	LS/UL	100,000	250,000
3	21	Flamingo Park Pool	Roof Replacement Replace Roofs on (5) Structures	0.09	PD/UL	\$140,000	390,000
4	20	Normandy Isle Park and Pool	Pool Decking Resurfacing/Roof Repairs/ Painting & Waterproofing (4) Structures	0.28	UL	\$200,000	590,000
5	23	South Shore Community Center	Exterior Paint & Waterproofing	0.28	PD/UL	\$100,000	690,000
6	24	Fire Station #2	Exterior Paint & Waterproofing	0.07	PD/UL	\$90,000	780,000
7		Flamingo Park	Flamingo Football Stadium Bleachers Replacement	0.46	PD/UL	\$116,000	896,000
8	25	Fire Station #4	Exterior Paint & Waterproofing	0.15	PD/UL	\$17,000	913,000
9		777 Building	777 Building - 4th Floor Retrofit HVAC controls & dampers.	0.19	CO	\$170,000	1,083,000
10		Palm Island Park	Palm Island Playground Safety Surface		CO	\$80,000	1,163,000
11		Flamingo Park	Flamingo Park Pool Playground Replacement	0.46	CO	\$245,000	1,408,000
12		Palm Island Park	Flamingo Pool Deck Renovations	0.46	CO	\$43,000	1,451,000
13		Fire Station #3	Replacement of Emergency Generator	0.83	CO/UL	\$95,000	1,546,000
14		Police Station Building	HVAC Retrofit Installation	0.25	CO/UL	\$50,000	1,596,000
15		Police Station Building	Main Gate Replacement & Helipad Wheeled Fire Extinguisher Equipment	0.25	CO/UL	\$45,000	1,641,000
17		Fire Station #3	Restrooms Renovation Renovate dated restrooms.	0.83	CO/UL	\$75,000	1,716,000
18		Normandy Isle Park and Pool	Normandy Isle Pool Playground Equipment	0.04	CO/UL	\$245,000	1,961,000
20		Neighborhood Basketball Court	Neighborhood Basketball Court Renovations		CO/UL	\$137,000	2,098,000
21		Neighborhood Tennis Court	Neighborhood Tennis Court Renovations		CO/UL	\$92,000	2,190,000
22		North Shore Park Youth Center	North Shore Park Youth Center Facility Painting	0.21	CO/UL	\$113,000	2,303,000
23		North Shore Park	North Shore Park Playground Safety Surface	0.21	CO/UL	\$31,000	2,334,000
24		Scott Rakow Youth Center	Scott Rakow Youth Center Reception and Bowling Enhancements	0.31	CO/UL	\$66,000	2,400,000
26		Fire Station #3	Kitchen Renovation	0.25	CO/UL	\$120,000	2,520,000
27	20	PAL Building	Exterior Paint & Waterproofing Waterproof/paint exterior walls, windows, openings.	0.18	UL	\$50,000	2,570,000
28		City Hall	City Attorney Office Renovation Demolition of existing library and constructing 4 new offices.	0.18	CO	\$80,000	2,650,000
29		City Hall	Roof & Skylight Restoration	0.18	CO	\$300,000	2,950,000
30		Police Station	Awning Installation - Exterior Garage Card Readers.	0.25	PD	\$61,000	3,011,000
GENERAL FUND TOTAL							\$3,011,000

FY 16 CAPITAL RENEWAL & REPLACEMENT	.00 to .10 - Excellent	PRIORITY CATEGORIES: <i>(LS) Life Safety</i> <i>(CO) Critical to Continued Operations</i> <i>(PD) Prevent Additional Damage to City Property</i> <i>(UL) Beyond Useful Life</i>
	.11 TO .21 - Good	
	.22 to .32 - Poor	
	.33 or above - Evaluate value of facility vs cost to repair	

Quality of Life Funds

No.	Prior Year Ranking	Asset	Project	FCI - Facility Condition Index	Category	Over 25k	Cumulative Over 25k
31		Beach Showers	Beach Showers/Drainage Drainage renovation of 27 Showers.		CO	\$465,000	465,000
32		Boardwalk	Collins Avenue Boardwalk Replacement Replacement of Rotten joist and decking	0.17	CO/UL	\$150,000	615,000
33	23	28th Street Obelisk	Phase II Grant Matching Funds		UL	\$250,000	865,000
34		Lumms Park	Lumms Park Playground Replacement		CO/UL	\$128,000	993,000
35		Lumms Park	Lumms Park Volleyball Courts		CO/UL	\$49,000	1,042,000
36		Bass Museum	Replacement of Emergency Generator	0.21	CO/UL	\$150,000	1,192,000
33		Bass Museum	Bass Museum Exterior Walls & Parapet Caps Exterior restoration/Waterproofing & Roof Restoration	0.21	PD	\$250,000	1,442,000
34		Soundscape Park	Soundscape Speakers Painting and Other Improvements		CO/UL	\$28,000	1,470,000
35		Byron Carlyle	West Roof Replacement Project	0.28	UL	\$200,000	1,670,000
36		Byron Carlyle	HVAC Replacement Replacement of HVAC system.	0.28	CO/UL	\$105,000	1,775,000
37		Byron Carlyle	Byron Carlyle Renovation	0.28	CO/UL	\$1,500,000	3,275,000
QUALITY OF LIFE TOTAL							\$1,470,000

ENTERPRISE FUNDS - Parking

No.	Prior Year Ranking	Asset	Project			Over 25k	Cumulative Over 25k
35		13th Street Garage	Handrail Replacement Replace all handrails throughout the garage.	0.14	LS	\$40,000	\$40,000
PARKING TOTAL							\$40,000
Enterprise & Quality of Life Funds Total:							\$1,510,000
GRAND TOTAL: GENERAL FUND + QUALITY OF LIFE + ENTERPRISE:							\$4,521,000

FY 16 CAPITAL RENEWAL & REPLACEMENT - UNDER \$25K				.00 to .10 - Excellent	PRIORITY CATEGORIES:		
				.11 TO .21 - Good	(LS) Life Safety		
				.22 to .32 - Poor	(CO) Critical to Continued Operations		
				Evaluate value of facility vs cost	(PD) Prevent Additional Damage to City Property		
					(UL) Beyond Useful Life		
No.	Prior Year Ranking	Asset	Project	FCI - Facility Condition Index	Category	Under 25k	Cumulative Under 25k
1		Fire Station #2	Redundant A/C System in IT Room	0.20	PD/UL	\$24,000	\$24,000
2		Police Station	Roof Repairs Repair Roof	0.25	PD/UL	\$20,000	\$44,000
2		Fire Station #3	Roof Repairs Repair Roof	0.83	CO	\$15,000	\$59,000
3		City Hall	City Hall Elevator Room A/C Replacement Installation of a/c unit in mechanical room	0.18	LS/CO	\$24,000	\$83,000
4		Fire Station # 1	A/C Replacement	1.06	LS/CO	\$12,000	\$95,000
5		Police Station	Containment Area Install secured containment area.	0.25	CO/UL	\$8,000	\$103,000
6		Police Station Garage	Parking Garage Lighting Enhancement Enhance Lighting in Police Station Parking Garage.	0.18	CO/UL	\$10,000	\$113,000
7		Oceanfront Auditorium - MDPL	Louver Door Replacement Replace rusted metal louvered doors. \$5,000 Funded In FY 15 - Additional Funds needed. Total amount needed \$20,000 - FY 15 funds will not roll over.	0.04	CO	\$20,000	\$133,000
8		Oceanfront Auditorium - MDPL	Railing Replacement Replace damaged stainless steel railing.	0.04	CO	\$24,500	\$157,500
9		Fire Station # 3	Interior Painting Painting of the interior.	0.83	CO/PD	\$24,000	\$181,500
10		Log Cabin	Logs and Roof Fascia Repair Structural repairs to logs and roof fascia.		CO	\$10,000	\$191,500
11		Normandy Shores Park Restrooms	Steel Window Replacement Replace steel windows.	0.75	CO/UL	\$8,000	\$199,500
12		Marine Patrol	Exterior Door Replacement Replace exterior door.	0.53	PD/UL	\$16,000	\$215,500
13		Marine Patrol	Boat Storage Expansion Extend Aluminum Fence and Gates.	0.53	PD/UL	\$20,000	\$235,500
14		Fire Station # 3	Exterior Door Replacement FPL Vault Replace exterior door.	0.83	CO/UL	\$8,000	\$243,500
15		Normandy Shores Park Restrooms	Exterior Door Replacement Replace exterior door.	0.75	CO/UL	\$21,000	\$264,500
16		23rd & 28th Street Foot Bridges	Painting and Electrical Retrofits Painting & Electrical Retrofits for 23rd & 28th Street Footbridge.		CO/UL	\$24,000	\$288,500
17		41st Street Bridge	Tile Replacement Replace missing tiles on bridge parapet walls.		PD	\$20,300	\$308,800
GENERAL FUND TOTAL							\$308,800

ENTERPRISE FUND - PUBLIC WORKS - WATER & SEWER

No.	Prior Year Ranking	Asset	Project			Under 25k	Cumulative Under 25k
18		Public Works Operations	Public Works Operations Building Roof Repair	0.17	CO/PD	\$15,000	\$15,000
19		Public Works Operations	Public Works Operations Building Exhaust Fan Replacement	0.17	CO/PD	\$24,000	\$39,000
20		Public Works Pump Station #28	Stairway Concrete and Railing Repairs		CO/PD	\$24,400	\$63,400
PUBLIC WORKS TOTAL							\$63,400

ENTERPRISE FUND - PARKING - OFF STREET

No.	Prior Year Ranking	Asset	Project			Under 25k	Cumulative Under 25k
21		17th Street Garage	Parking Garage Booth A/C Units Replace Four Parking Booth A/C Units	0.13	CO/PD	\$8,000	\$8,000
PARKING OFF STREET TOTAL							\$8,000

7TH ST FUND - 7TH STREET GARAGE

No.	Prior Year Ranking	Asset	Project			Under 25k	Cumulative Under 25k
22		7th Street Garage	Parking Garage Booth A/C Units Replace One Parking Booth A/C Unit	0.10	CO/UL	\$2,000	\$2,000
7th STREET GARAGE TOTAL							\$2,000

INTERNAL SERVICE FUND - FLEET MANAGEMENT

No.	Prior Year Ranking	Asset	Project			Under 25k	Cumulative Under 25k
23		Fleet Management	Fleet Management Electrowave Building Repair Metal Walls of the Electrowave Building.	0.61	CO/UL	\$22,800	\$22,800
INTERNAL SERVICE FUND - FLEET MANAGEMENT TOTAL							\$22,800

RDA Fund

No.	Prior Year Ranking	Asset	Project			Under 25k	Cumulative Under 25k
24		Botanical Garden	Paint			\$7,500	\$7,500
RDA TOTAL							\$7,500

GRAND TOTAL - CAPITAL RENEWAL & REPLACEMENT UNDER \$25K						\$412,500
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ATTACHMENT 3

Proposed FY2015/16 Information Communications Technology Projects

Department	Project Name	Amount
Recommended Funding for New Information Technology Projects		
Communications	Video Server and Loss Prevention	\$ 101,000
Police/Fire/Code	New World Product Enhancements	\$ 70,000
HCS	Residential Housing Program System	\$ 14,000

New Projects Using In-House Resources, Not Requiring Funding

ODPI	ADA Features in Cleanliness Assessment Program	\$ -
HR	Automated Benefit Payments	\$ -

Existing Projects Using In-House Resources, Recommend for Contracting Out

TCED	Information Reporter Web Application	\$ 75,000
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Other

	Debt Service for Prior Year Project (CAD RMS)	\$ 49,000
	Contingency	\$ 86,000

Total Recommended Information Technology Funding		\$ 395,000
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MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee
FROM: Jimmy L. Morales, City Manager
DATE: June 3, 2015
SUBJECT: Proposed FY 2015/16 Uses of Law Enforcement Trust Funds

Background

Florida Statute 932.7055 provides for expenditures of forfeiture funds for law enforcement purposes. The Miami Beach Chief of Police, Daniel Oates, has reviewed and identified the need for the FY 2015/16 appropriation and has established that the expenditures of forfeiture funds are in compliance with Section 932.7055, Florida State Statutes, and the Guide to Equitable Sharing of Federally Forfeited Property for Local Law Enforcement Agencies. These forfeiture funds have been deposited in the Police Confiscation Trust Fund.

Proposed FY 2015/16 Uses of Law Enforcement Trust Funds

Attachment 1 provides the proposed uses of Law Enforcement Trust Funds for FY 2015/16.

The September 30, 2014 available balances, net of FY 2014/15 appropriations and revenue collections are approximately \$351,000 in Federal Funds and \$393,000 in State Funds. Of these available balances, the FY 2015/16 request from Federal funds totals \$235,000 and \$317,000 from State funds.

Conclusion

The City administration is recommending funding for proposed FY 2015/16 uses of Law Enforcement Trust Funds as shown in Attachment 1.

Attachment

DJO/MR

Attachment 1

**Police Department
Confiscations - Federal & State Funds
FY 2015/16 BUDGET REQUEST**

FEDERAL FUNDS:**Federal Funds - (603)**

	FY16 Request
Organizational Development Travel & Off-site testing	70,000
Training Supplement to supplement LETTF	70,000
Bulletproof Vest Partnership	60,000
Graffiti eradication through Teen Job Corp.	25,000
Gym Equipment	10,000
Total Funds (603)	235,000

STATE FUNDS:**State Funds - (607)**

Costs connected with the prosecution/processing of forfeitures.	20,000
Crime Prevention initiatives & School Liaison Projects	20,000
AR Rifle Program/initiative- City's match for reimbursement of rifles at \$500.	15,000
15% of State Funds collected in FY14 to be used for drug abuse treatment, drug and crime prevention education and non-profit community based programs.	29,000
Chief's Conference Room Upgrade	28,000
CID Interview Room Audio Video Recording	60,000
MBPD Facilities Security Camera System Upgrades	110,000
Articulated Aerial Work Platform Trailer	35,000
Total Funds (607)	317,000

Total Federal & State Funds**552,000**

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COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jimmy L. Morales, City Manager

DATE: June 3, 2015

SUBJECT: **A DISCUSSION REGARDING THE LIVE NATION MANAGEMENT AGREEMENT FOR THE JACKIE GLEASON THEATER.**

BACKGROUND

On January 29, 2015 the City issued Request for Proposals No. 2015-103-ME (the RFP) for the Development of a Convention Headquarter Hotel Adjacent to the Miami Beach Convention Center. A voluntary pre-proposal meeting was held on February 26, 2015. On April 10, 2015 the City received proposals from Portman Holdings, LLC ("Portman") and Oxford Capital Group/RLB Swerdling ("Oxford Capital"). On April 21, 2015, the City Manager notified Oxford Capital that its proposal was not responsive to the RFP. On April 29, 2015, the City Manager via Letter to Commission (LTC) No. 176-2015, appointed an Evaluation Committee (the "Committee"), which convened on May 7, 2015 to interview the Portman team and score the proposal consistent with the evaluation criteria outlined in the RFP.

The following outlines hotel RFP schedule and actions the Commission will need to take action on to meet the desired schedule.

- June-July – Finalize lease negotiations, draft ballot language.
- August 2015 – City Commission approval of the ballot language and final lease.
- September 4, 2015 – Ballot language and final lease to County Clerk.
- November 2015 – Hotel Referendum.
- 2016 Hotel design (if referendum passes).
- 2017-2018 Hotel construction (opens 12 months after Convention Center project completion)

In evaluating potential site, it was probable that the hotel will impact the rehearsal hall / backstage performance space and loading dock of the Fillmore. Therefore, the Administration began preliminary conversations with Live Nation to discuss the potential impact of this to their operations and negotiate mutually acceptable terms if the City were to proceed with the Convention Center Hotel at this location following the November 2015 referendum.

This item was discussed at the February 2, 2015 Finance Committee and staff was directed to further negotiate with Live Nation and bring the item back to the March 2, 2015 Finance Committee meeting. There are several items that the Administration did not recommend including the following:

- Paying for an option to recapture and demolish the rehearsal hall whether or not the final plan required demolition, which was proposed for \$250,000 and would have been in addition to another \$100,000 if the City exercised the option;
- use of Community Benefit Fund for capital repairs;
- reset of the Required City Distribution from \$1,171,659 to \$1,000,000;
- extension of the expiration term of the contract whenever there are construction impacts beyond 30 days;

- construction interruption credit as a result of the convention center redevelopment. This item was originally recommended by the Administration, but the Finance Committee did not support this item and has since been removed from the Administration's recommendation; and
- allowing Live Nation to pre-purchase parking at the 17th Street Garage was originally part of the Administration's recommendation, but has since been removed because the Finance Committee did not support this request.

The Committee discussed this subject at their March meeting and recommended bringing this item back to the Finance Committee after Administration has re-negotiated the contract terms. Committee members focused much of their comments on the lack of information provided by Live Nation to support their statement that they would lose in approximately \$250,000 in net revenue from the loss of the rehearsal hall. Committee members also stated that construction interruption credit should only apply if and when the hotel construction impacts operations at the Fillmore.

As a result of the direction from the March Finance Committee meeting, the Administration continued discussions with Live Nation. The Administration was provided information to show that Live Nation is currently generating approximately \$16,365 in monthly net revenue, which would equal approximately \$196,000 in annual net revenue. Year to date Live Nation has generated approximately \$82,000 in net revenue from January – May 2015. There are three (3) other events that Live Nation has booked for the main stage that also require use of the rehearsal hall and are estimated to generate \$150,000 in net revenue. There are a total of 100 confirmed events in the rehearsal hall in calendar year 2015. In addition, Live Nation has requested a one-time credit of \$50,000 to offset the cost of building out additional catering space. The rehearsal hall is used for catering to support approximately 60 events per year.

The Administration's recommendation, as well as deal points at each stage of the negotiation process is summarized in the attached Exhibit A.

The below chart reflects the impact of the Administration's recommendations.

2015	Projected	Notes			
Req. City Distribution	\$ 1,171,659				
Chilled Water Credit	\$ (164,000)				
Subtotal	\$ 1,007,659				
Backstage Demo Credit	\$ (250,000)	Projected Direct Revenue Loss from Loss of Rehearsal Hall	\$ (192,000)	Projected Revenue Loss if 1 of 3 events that use Rehearsal Hall in addition to rest of facility	\$ (50,000)
Total	\$ 757,659				
	Add'l Revenue Potential				
Bottle Service	\$ 36,000				
Parking Revenue	\$ 65,000				
Revenue Total	\$ 101,000				

- Please note the chart does not reflect potential credits/refund against the Required City Distribution as a result of the construction of the convention center hotel or any closures to the Fillmore during the Convention Center Renovation and Expansion Project.
- Please note that any final agreement is subject to review by the City Attorney and Live Nations' attorneys.

CONCLUSION

Since the February 2, 2015 Finance Committee meeting, the Administration and Live Nation have continued negotiating revisions to the Management Agreement. Live Nation heard the comments from the Committee members and made several compromises in an effort to reach an agreement. The Administration's recommendation is outline in the memorandum and is now seeking direction from the Committee prior to the conclusion of negotiations.


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DEAL POINTS	PROPOSALS			
	LN Original Proposal	LN Second Proposal	LN Third Proposal	City Admin Recommendation
Term	LN to exercise its option to continue until 2022 and would also agree to second extension until 2027.	LN to exercise its 1st five (5) year option and have requested authority to exercise second option with same economic terms.	LN to exercise its 1st five (5) year option and have requested authority to exercise second option with same economic terms.	LN to exercise the first Renewal Option to continue until August 31, 2022, this renewal option is at Live Nation's discretion. The second renewal option, September 1, 2022 – August 31, 2027, to remain subject to mutual agreement.
Required City Distribution (RCD)	Decrease RCD from \$1,153,000 to \$450,000.	(1) Re-set RCD to \$1,000,000 with 2% annual increases thereafter; (2) LN to provide City with an option to recapture the rehearsal hall for a \$250,000 annual credit in the RCD; and (3) if City exercises its option to recapture the rehearsal hall then LN to receive \$100,000 additional credit in RCD.	LN to receive \$250,000 credit in RCD if City recaptures rehearsal hall due to loss of net revenue LN generates from use of the rehearsal hall.	Based on net revenue generated from both exclusive and non-exclusive use of the rehearsal hall space, the Administration recommends a reduction of \$250,000 annually in the RCD, subject to audit verification at year end.
Chilled Water Credit	Not Applicable	Annual credit toward RCD for chilled water charges of \$164,378, AND retroactive credit for charges paid from 2007-2014 totaling \$657,514.	Annual credit toward RCD for chilled water charges of \$164,378.	Annual credit toward RCD for chilled water charges of \$164,378.
Capital Improvement Contribution	LN requested City help to fund repairs that will extend useful life of the facility.	Not Applicable.	LN to receive a one-time credit of up to \$50,000 in capital improvement costs incurred to accommodate catering operations due to loss of rehearsal hall.	LN to receive a one-time credit of up to \$50,000 in capital improvement costs incurred to accommodate catering operations due to loss of rehearsal hall.

<p style="text-align: center;">CPI Adjustment</p>	<p>Not Applicable</p>	<p>Delete 10 year CPI adjustment from Section 3.2 of Agreement.</p>	<p>Clarify that the ten (10) year CPI adjustment in the contract which would be effective in 2017, is a 10-year true-up as opposed to an adjustment of the Required City Distribution in addition to the 2% annual increase paid every year.</p>	<p>Clarify that the ten (10) year CPI adjustment in the contract which would be effective in 2017, is a 10-year true-up as opposed to an adjustment of the Required City Distribution in addition to the 2% annual increase paid every year.</p>
<p style="text-align: center;">Construction Interruption</p>	<p>Not Applicable</p>	<p>(1) If facility is closed on one or more occasions because of construction related events, then LN to receive a pro-rated per diem credit against the RCD equal to the duration of the closure(s); (2) LN entitled to a credit in RCD equal to the difference between LN's average annual contribution margin and the actual contribution margin during impacted period; and (3) If, the venue is closed on more than one occasion for an aggregate total of 30 days due to construction related impacts, then the expiration date of the Management agreement would be extended for the number of days of such closure periods.</p>	<p>(1) If facility is closed on one or more occasions because of construction related events, then LN to receive a pro-rated per diem credit against the RCD equal to the duration of the closure(s); (2) LN entitled to a credit in RCD equal to the difference between LN's average annual contribution margin and the actual contribution margin during impacted period; and (3) If, the venue is closed on more than one occasion for an aggregate total of 30 days due to construction related impacts, then the expiration date of the Management agreement would be extended for the number of days of such closure periods.</p>	<p>If the facility closes on one or more occasions associated solely with the hotel development, the Administration agrees and recommends that Live Nation should receive a pro-rated per diem credit against the annual RCD payment equal to the duration of all such closure(s).</p>

Ticket Fund	Not Applicable	Make available for facility capital repairs 50% of amount by which future ticket surcharge revenue exceeds demand for senior/student ticket subsidies and rent waiver program.	Make available for facility capital repairs 50% of amount by which future ticket surcharge revenue exceeds demand for senior/student ticket subsidies and rent waiver program.	Not recommended
Food & Bev Restrictions	Allow LN to offer bottle service for all events.	Allow LN to offer bottle service for all events.	Allow LN to offer bottle service for all events.	Allow LN to offer bottle service for all events.
Midnight Restrictions	Allow LN to sell alcohol past midnight, until 2am, for all events. LN is currently prohibited from selling alcohol past midnight on New Year's Eve and during Winter Music Conference.	Allow LN to sell alcohol past midnight, until 2am, for all events. LN is currently prohibited from selling alcohol past midnight on New Year's Eve and during Winter Music Conference.	Allow LN to sell alcohol past midnight, until 2am, for all events. LN is currently prohibited from selling alcohol past midnight on New Year's Eve and during Winter Music Conference.	Allow LN to sell alcohol past midnight, until 2am, for all events. LN is currently prohibited from selling alcohol past midnight on New Year's Eve and during Winter Music Conference.
DJ and EDM Programming	Allow LN to book DJ / EDM events without restriction. The current Management Agreement allows LN to book DJ and EDM events, but requires them to conclude by midnight.	Allow LN to book DJ / EDM events without restriction. The current Management Agreement allows LN to book DJ and EDM events, but requires them to conclude by midnight.	Allow LN to book DJ / EDM events without restriction. The current Management Agreement allows LN to book DJ and EDM events, but requires them to conclude by midnight.	Allow LN to book DJ / EDM events without restriction. The current Management Agreement allows LN to book DJ and EDM events, but requires them to conclude by midnight.
Valet Parking	Allow LN to increase valet charge from \$15 to \$20 and allow LN pre-sell and package valet parking with ticket sales and retain additional revenue.	Allow LN to increase valet charge from \$15 to \$20 and allow LN pre-sell and package valet parking with ticket sales and retain additional revenue.	Allow LN to increase valet charge from \$15 to \$20 and allow LN pre-sell and package valet parking with ticket sales and retain additional revenue.	Allow LN to increase valet charge from \$15 to \$20 and allow LN pre-sell and package valet parking with ticket sales and retain additional revenue.
Garage Parking	Allow LN to pre-purchase 200 spaces per event at the 17th Street Garage for \$8 per space and allow LN pre-sell and package valet parking with ticket sales and retain additional revenue.	Allow LN to pre-sell parking for the 17th Street Garage.	Allow LN to pre-sell parking for the 17th Street Garage.	Not recommended

<p align="center">Complimentary Tickets</p>	<p>Not Applicable.</p>	<p>Not Applicable.</p>	<p>Not Applicable.</p>	<p>Given the administrative requirements associated with the implementation of the City's Complimentary Ticket Policy, which was adopted via Resolution No. 2014-28638, the Administration recommends removing this requirement from the Management Agreement.</p>
<p align="center">Community Benefit Fund</p>	<p>Not Applicable.</p>	<p>Not Applicable.</p>	<p>Not Applicable.</p>	<p>Resolution 2014-28732 adopted on September 10, 2014, which approved the Cultural Affairs Strategic Plan. This approval included changes to the Fillmore Community Benefit Fund rent waiver program, including the addition of 12 waivers restricted to live theater productions. This would bring the total to 24 rent waiver grants available. Waivers for use of the smaller 'Backstage' theater would require recipients to cap ticket prices at \$19, inclusive of all house and Ticketmaster surcharges. This change should be made to the Management Agreement at the time any other amendments are considered.</p>

* Contribution Margin is defined as the aggregate of all event revenues (ticket sales, food and beverage, fees, etc), less the aggregate of all event expenses (talent costs, production, operations, cost of goods, labor, etc.).

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Discussion Item

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MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Finance and Citywide Committee Members

FROM: Jimmy L. Morales, City Manager

DATE: June 3, 2015

SUBJECT: **A DISCUSSION REGARDING THE TERMS OF THE PROPOSED GROUND LEASE AGREEMENT BY AND BETWEEN THE CITY OF MIAMI BEACH AND PORTMAN HOLDINGS, LLC, FOR THE DEVELOPMENT OF A CONVENTION HEADQUARTER HOTEL ADJACENT TO THE MIAMI BEACH CONVENTION CENTER, AS REQUIRED PURSUANT TO SECTION 82-37(a)(1) OF THE CITY OF MIAMI BEACH CODE.**

BACKGROUND

On January 27, 2015, the City Commission authorized the issuance of Request for Proposals No. 2015-103-ME (the RFP) for the Development of a Convention Headquarter Hotel Adjacent to the Miami Beach Convention Center ("MBCC").

On April 10, 2015, the City received proposals from Portman Holdings, LLC ("Portman") and Oxford Capital Group/RLB Swerdling ("Oxford Capital"). On April 21, 2015, the City Manager notified Oxford Capital that its proposal was not responsive to the RFP.

On April 29, 2015, the City Manager via Letter to Commission (LTC) No. 176-2015, appointed an Evaluation Committee, which convened on May 7, 2015, to interview the Portman team and score the proposal, consistent with the evaluation criteria outlined in the RFP.

On May 20, 2015, the Mayor and City Commission approved Resolution No. 2015-29029, authorizing the Administration to negotiate a Development and Ground Lease Agreement with Portman Holdings, LLC, with said Agreement subject to prior approval by the Mayor and City Commission before the final execution thereof.

ANALYSIS

As part of the RFP process, the City issued the form of its proposed Development and Ground Lease Agreement and Room Block Agreement to prospective proposers, based on the Hotel Project requirements approved by the City Commission on January 27, 2015 and set forth in the RFP. In accordance with the RFP submission requirements, Portman submitted its proposed comments and revisions to the City's Development and Ground Lease Agreement ("Proposed Lease"), and such comments and revisions will serve as the basis of the on-going negotiations between City and Portman pursuant to Resolution No. 2015-29029.

In accordance with Section 82-37(a)(1) of the City Code, the most recent version of the Proposed Lease (which is the subject of on-going negotiations) is attached hereto as Exhibit 1 for the Finance and City-wide Projects Committee's review.

Summary of Lease Terms

For ease of reference, a summary of the Proposed Lease is set forth below.

Description of Hotel Site

The proposed boundaries for the leased property are approximately depicted in Exhibit 2 attached hereto ("Hotel Site").

Lease Term

The term for the Hotel Site ground lease is a period of 99 years.

Development and Funding of Hotel Project at Portman's Sole Cost

Portman shall be solely responsible for the development, design, construction, and operation of a full-service convention headquarter hotel with approximately (but not-to-exceed) 800 hotel rooms and related improvements ("Hotel"), including the design, construction and operation of an enclosed overhead pedestrian walkway or "Skybridge" connecting the Hotel and the MBCC (collectively, as described more fully in the Lease, the "Hotel Project").

No City Subsidies or Public Financing for the Hotel Project

The City shall not provide any public subsidy or public financing for the Hotel Project. Any use of the MBCC for meetings or other space shall be at prevailing/market rates, and subject to availability. Portman shall also pay for the referendum-related printing costs.

Base Rent to City

Portman has proposed lease payments of the greater of a fixed schedule or 4% of gross hotel operating revenues. A schedule of the proposed lease payments is in attached Exhibit 3. Below is a table of the total and net present value ("NPV") of the lease payments:

	<u>Over 30 Years</u>		<u>Over 99 Years</u>	
	Total	NPV @ 5%	Total	NPV @ 5%
Minimum Fixed Rent	\$91m	\$36m	\$708m	\$60m
Variable Rent	89m	35m	705m	59m
Percentage Rent	\$180m	\$71m	\$1.4B	\$119m

The lease stream NPV of \$119 million over the term of the lease equates to \$149,000 per room. This is higher than the City 2013 independent appraisal indicating a range of value from \$103,500 to \$129,900 per room. The Administration is in the process of obtaining an updated appraisal.

Additional Rent / Transaction Rent

Portman has proposed for the City to receive additional rent in connection with the first three sales of the hotel to a third party, where such sales price exceeds \$580 million. Under the Proposed Lease, the City is to receive the lesser of \$2 million or 0.25% of the gross sales price for each such transaction.

Proposed Hotel Program

Consistent with the RFP requirements, Portman proposes to develop an 800-room convention headquarter hotel to include the following program elements:

<u>Ballroom/Meeting Space</u>	<u>Sq. Feet</u>	<u>Food & Beverage</u>	<u>Seats</u>
Grand Ballroom	26,500	3-meal	300
Junior Ballroom (2)	21,000	Lobby Lounge	180
Breakout Meeting	<u>47,700</u>	Pool Grille	130
Total	<u>95,200</u>	Rooftop	120
		Club Lounge	92
Parking Spaces	320	Café	40

The 320 parking spaces proposed adheres to the requirement in the RFP of 0.4 parking spaces per room (including ancillary uses) in accordance with the City's Land Development Regulations. The maximum height cannot exceed 300 feet, as permitted by the City's Land Development Regulations.

Use Restrictions/No Gambling

The Proposed Lease contains a use restriction to prohibit gambling on the Hotel Site. Portman and/or subsequent owners of the Hotel may not own, operate or manage any establishment offering gambling or wagering in Miami-Dade County.

Approved Brand for Hotel Operator

The Proposed Lease provides that the flag of the Hotel must be an "Approved Brand," which shall mean (a) the following national hotel operators but only if their reputation for quality and quality of operation, at the time Portman engages such operator, is generally known and recognized by the hotel industry as not having substantially declined: Marriott (e.g., the Marriott, Marriott Marquis or JW Marriott brands), Westin, Omni, Hyatt Regency, Sheraton, La Meridien, or Hilton, or (b) any other hotel operator Approved by City in its sole discretion.

Portman has indicated it intends to consider national hotel brand/operators with an established and consistently maintained reputation for quality operations. Brands to be considered include Marriott, Marriott Marquis, JW Marriott, Westin, Omni, Hyatt Regency and Hilton. During negotiations, Portman will work with the City to determine the best brand/operator for the hotel.

Room Block Agreement

Portman has agreed to the City's terms outlined in the City's proposed Room Block Agreement, which provides that a City-wide Event is an event requiring a three-night stay with at least 1,500 guest rooms on peak with at least 115,000 gross square feet of MBCC space utilized for one day or more while the event is being held. A City-wide Event shall also include the annual Orange Bowl and any Super Bowl, even though it may not utilize the MBCC.

- For City-wide Events that are to occur at least 30 months in the future, Portman will make available for City-wide Events eighty percent (80%) of all guest rooms (and associated suites), for up to 14 nights per calendar month. Portman can book rooms in excess of that amount at its discretion, at the rate of its choosing.

- For City-wide Events that are to occur between 18 and 30 months in the future, Portman will make available for City-wide Events eighty percent (80%) of all guest rooms (and associated suites) if rooms and space are available, and will make available for City-wide Events eighty percent (80%) of all guest rooms (and associated suites) for one consecutive four-day period each month. Portman will determine the four-day period and will notify City on a monthly basis. Portman may book rooms in excess of that amount at its discretion.
- For up to fourteen (14) nights per month, City may elect to require Hotel to offer room block pricing at 105% of Portman's average group room rates. In addition, for up to 6 special events per year, City may elect to require Hotel to offer room block pricing at 100% of Portman's average group room rates.

Approval of Preliminary Design / Final Design Subject to City's Standard Design Review Process

The Proposed Lease contemplates that the City, in its proprietary capacity as owner of the Hotel Site, will have the right to approve the initial preliminary concept design for the Hotel Project. In recognition that the design for the Hotel Project will evolve as part of the development process, the City shall also have the right to approve substantial design changes to the Hotel Project, including any change that materially affects the exterior façade, massing, orientation, size or configuration of the tower structure or podium design.

In addition, the final design for the Hotel Project shall be subject to review and approval by the City's Design Review Board and, if applicable, the Planning Board. Portman shall be required to obtain all regulatory approvals and/or permits that may be required for the Hotel Project in the same manner as may be applicable to any other developer.

Development Budget and Finance Plan

Portman has estimated the preliminary development budget to be \$405.5 million and intends to finance the hotel with an estimated 60% in debt and 40% in equity. Portman has indicated it plans to provide \$17 million in equity, with the remaining equity to be funded by Portman institutional relationships. The Portman proposal included construction debt financing support letters from Regions Bank, PNC Bank, and an equity support letter from China Orient Summit Capital.

Development Schedule

Portman is estimating the hotel design to be complete in late 2016 and construction to be complete in late 2018 with the hotel opening targeted to occur prior to Art Basel 2018. The Proposed Lease will include outside dates by which certain key development activities must take place, including an Outside Construction Loan Closing Date, Outside Construction Commencement Date, an Outside Completion Date, and an Outside Opening Date, with such dates to be determined during the City's on-going negotiations with Portman.

Other Lease Terms

- Portman accepts the Hotel Site in its "AS IS" condition.
- Portman accepts City's restrictions on transfer of interests in the Lease and City's approval requirements with respect to subsequent transfers, including the City's "Acceptable Owner" criteria with respect thereto.
- City's rights and interest in the Lease will not be subordinate to any mortgage, lien or encumbrance placed on Portman's (or any subsequent owner's) interest in the lease.
- Portman is committed to supporting and encouraging the application of responsible wages and local employment of City and Miami-Dade County residents.

- The Proposed Lease also includes a variety of other terms, including with respect to maintenance and repair obligations, insurance requirements, obligations to reconstruct the Hotel in the event of force majeure or other casualty, indemnification in favor of the City, and remedies to the City in the event of default, including termination rights.
- For the protection of the City, the City will not deliver possession of the leased property to Portman until Portman has met certain key milestones and satisfied a number of conditions with regard to the development of the Hotel Project, including delivery of evidence that equity commitments and construction loan commitments required to build the Hotel Project are in place, verification that a management agreement with the initial Hotel Operator is in place, and evidence that all required governmental approvals for commencement of construction have been obtained, among other conditions.
- The Lease shall be contingent upon 60% voter approval in accordance with the City Charter. The referendum is contemplated to occur on November 3, 2015.

Public Revenue Impact

The Hotel Site is currently a parking lot that generates \$263,700 annually in revenues for the City. If the site is developed with a hotel annual (year 4) lease and tax revenue generated is estimated to be \$22.2 million. Over time the hotel is estimated to generate:

- City: \$438 million (\$178 million NPV) over 30 years and \$3 billion (\$278 million NPV) over 99 years in lease payments, resort taxes, CRA revenues, property taxes and County CDT allocations to the City.
- County: \$110 million (\$42 million NPV) over 30 years and \$1.25 billion (\$87 million NPV) over 99 years in convention development taxes, local option sales taxes and property taxes.
- Schools: \$60 million (\$24 million NPV) over 30 years and \$453 million (\$40 million NPV) over 99 years in property taxes.
- State: \$264 million (\$107 million NPV) over 30 years and \$2 billion (\$176 million NPV) over 99 years in sales taxes.
- Total: \$878 million (\$354 million NPV) over 30 years and \$6.7 billion (\$586 million NPV) over 99 years in lease payments and taxes.

Refer to attached Exhibit 3.

Appraisal and Planning Analysis

An appraisal of the Hotel Site and planning analysis, as required by Sections 82-38 and 82-39 of the City Code, are in process and will be submitted to the City Commission concurrent with its consideration of the Development and Ground Lease Agreement.

CONCLUSION

Pursuant to Section 82-37 of the City Code, the Administration has submitted the Proposed Lease for the Finance and City-wide Projects Committee's review and input, as the Administration progresses with its final negotiations with Portman pursuant to Resolution No. 2015-29029.

Exhibits:

- Exhibit 1: Proposed Development and Ground Lease Agreement (as of May 26, 2015)
- Exhibit 2: Proposed Hotel Site Description
- Exhibit 3: Summary of Proposed Minimum Fixed Rent
- Exhibit 4: Summary of Public Revenue Impact
- Exhibit 5: Power Point Presentation

JLM / MH 

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EXHIBIT 1

DEVELOPMENT AND GROUND LEASE AGREEMENT

between

_____, a

and

CITY OF MIAMI BEACH, a

Florida municipal corporation

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List of Exhibits

EXHIBIT "A" Acceptable Owner Definition

EXHIBIT "B" Hotel Standards

EXHIBIT "C" Budgeted Improvement Costs

EXHIBIT "D" Legal Description of Hotel Site

EXHIBIT "E" Approved Plans

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EXHIBIT "H" Presently Permitted Development

EXHIBIT "I" Public Facilities

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EXHIBIT "R" Minimum Fixed Rent

EXHIBIT "S" Mandatory Hotel Project Design Elements

EXHIBIT "T" Lessee's [Corporate, Partnership, LLC Documents]

DEVELOPMENT AND GROUND LEASE AGREEMENT

THIS DEVELOPMENT AND GROUND LEASE AGREEMENT ("Lease") is executed as of the _____ day of _____, 2015, by and between the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation (the "City") and _____, a _____ (the "Lessee").

RECITALS:

A. The City has a material interest in maximizing the performance of the Miami Beach Convention Center (as hereinafter defined in Section 1.3) and encouraging convention and tourism business in the City. To further those goals, the City desires to facilitate development of an adjacent full service convention center headquarter hotel on real property owned by the City and described more fully in **Exhibit "D"** hereto, to be connected to the Convention Center by an enclosed overhead pedestrian Skybridge (as hereinafter defined in Section 1.3).

B. The City is a Florida municipal corporation with powers and authority conferred under the Florida Constitution, the Municipal Home Rule Powers Act set forth in Chapter 166 of the Florida Statutes, and the Miami Beach City Charter and Code of Ordinances (the "City Code"). The City has all governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal and governmental functions, and render municipal services, including the authority to adopt, implement and enforce (together with any other required Governmental Approvals) comprehensive plans, zoning ordinances, redevelopment plans, and other police power and legislative measures necessary to assure the health, safety and general welfare of the City and its inhabitants.

C. This Lease, among other things, is intended to and shall constitute a development agreement between the parties pursuant to Sections 163.3220-163.3243, Florida Statutes, the "Florida Local Government Development Agreement Act" and Section 118-4 of the City's Code.

D. On or about January 29, 2015, the City issued Request for Proposal No. 2015-103-ME, for the Development of a Convention Hotel Adjacent to the Miami Beach Convention Center ("RFP"). After a competitive RFP process, and the City having fully considered this Lease at two duly noticed public hearings in compliance with Section 163.3225 of the Act; having determined that the Hotel Project (as hereinafter defined in Section 1.3) and this Lease are in compliance with the City's Comprehensive Plan and Land Development Regulations (as each are hereinafter defined in Section 1.3) as of _____, 2015; and having further determined that it is in the City's best interest to address the issues covered by this Lease in a comprehensive manner, in compliance with all applicable laws, ordinances, plans, rules and regulations of the City, the City has agreed to enter into this Lease with the Lessee, subject to the terms and conditions herein.

E. On _____, the City Commission, by Resolution Number R-_____, approved the execution of this Lease.

NOW THEREFORE, for and in consideration of the foregoing, and of the mutual covenants and agreements contained herein, the parties agree as follows:

ARTICLE I
VOTER REFERENDUM, EFFECTIVE DATE AND DEFINITIONS

Section 1.1. Voter Referendum Requirement. The parties acknowledge and agree that, pursuant to Section 1.03(b)(3) of the City Code, this Lease and the obligations herein are subject to and contingent upon the approval of this Lease by vote of at least sixty percent (60%) of the voters voting thereon in a City-wide referendum ("Referendum"). In the event the Referendum is not successful, or if the ballot question is removed or election results are invalidated by a court of competent jurisdiction, this Lease shall be deemed null and void and the parties shall have no obligations or liabilities of any kind or nature whatsoever hereunder.

Section 1.2. Effective Date. If the Referendum is successful and all requirements of the City Code and applicable law are satisfied, this Lease shall be effective upon the City Commission's adoption of a resolution accepting the certification of the official results of the November 3, 2015 election with respect to the Referendum ("Effective Date").

Section 1.3. 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 Lessee to the City by the terms of this Lease other than Base 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.

When used in reference to Lessee, for so long as _____ (or any of its Affiliates) holds an interest, directly or indirectly, in Lessee, "Affiliate" shall include any Person Controlling, Controlled by, or under common Control with _____.

"Approval, Approve or Approved" means the approval or consent of a Party, which unless otherwise specified herein by reference to "sole discretion" or words of similar effect, shall be commercially reasonable and made in good faith and with due diligence.

"Approved Brand" means (a) each of the following national hotel operators but only if its reputation for quality and quality of operation, at the time Lessee engages such operator, is generally known and recognized by the hotel industry as not having substantially declined, as of the time in question, in comparison to their reputation for quality and quality of operation as of the Effective Date: Marriott (i.e., the Marriott, Marriott Marquis or JW Marriott brands), Westin, Omni, Hyatt Regency, Sheraton, La Meridien, or Hilton, or (b) any other hotel operator Approved by City in its sole discretion.

"Approved Plans" means the renderings and diagrams attached hereto as **Exhibit "Q"** depicting the Mandatory Hotel Project Design Elements, which renderings and diagrams the City has Approved as of the Effective Date, as may be modified from time to time in accordance with the terms of this Lease.

"Assignment of Plans and Approvals" means an assignment from Lessee, as assignor, to the City, as assignee, assigning in favor of the City all of Lessee's right, title and interest in and to all Approved Plans, designs, Governmental Approvals and other work product produced by Lessee and any other Person for use in the development, construction and operation of the Work, which assignment shall include a duly executed consent by each Person other than the Lessee having an interest in such Approved Plans, designs, Governmental Approvals and other work product and shall otherwise be in form and substance reasonably satisfactory to the City (together with any necessary consents required in connection with such assignment), which assignment shall be an absolute assignment from Lessee to the City, provided that for so long as no Event of Default has occurred hereunder, the City shall give Lessee a license of all such Approved Plans, designs, Governmental Approvals and other work product assigned to the City for the duration of the Term.

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

"Audited Gross Operating Revenues Schedule" means a Gross Operating Revenues schedule prepared in accordance with GAAP and GAAS, and including, as additional information or as supplemental schedule to the Audited Financial Statement, revenue derived from Subleases. Such Audited Gross Operating Revenues shall be based on relevant Audited Financial Statements prorated as necessary for any partial Rental Year.

"Base Rent" shall have the meaning ascribed to it in Section 4.4(a).

"Brand Approvals" means the written confirmation from the Initial Hotel Operator approving the design of the Hotel Project, and, prior to Opening, approving the FF&E to be installed in the Hotel Project.

"Budgeted Improvement Costs" means the estimated Improvement Costs as of the date hereof, as set forth in **Exhibit "C"**.

"Certificate of Occupancy" means a certificate of occupancy or certificate of completion, as applicable, for the buildings and structures on the Leased Property, and shall include any such certificate designated as "Temporary" in nature, provided it allows for occupancy of the Hotel by paying guests.

"City" shall mean the City of Miami Beach, a Florida municipal corporation, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida 33139. In all respects hereunder, City's obligations and performance is pursuant to City's position as the owner of the Hotel Site acting in its proprietary capacity. In the event City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances (including through the exercise of the City's building, fire, code enforcement, police department or otherwise) shall be deemed to have occurred pursuant to City's regulatory authority as a governmental body and shall not be attributable in any manner to City as a party to this Lease or in any way be deemed in conflict with, or a default under, the City's obligations hereunder.

"City Code" has the meaning ascribed to it in the recitals hereto.

"City Commission" shall mean the governing and legislative body of the City.

"City Manager" shall mean the Chief Administrative Officer of the City. The City Manager shall be construed to include any duly authorized representatives designated in writing with respect to any specific matter(s) concerning this Lease (exclusive of those authorizations reserved to the City Commission or regulatory or administrative bodies having jurisdiction over any matter(s) related to this Lease).

"City's Representative" has the meaning ascribed to it in Section 2.9(b).

"Commence Construction" or "Commencement of Construction" means, with respect to the Hotel Project, the commencement of bona-fide pouring of the concrete foundation for the Hotel Project, provided that the pour is completed in the ordinary course.

"Complete Construction" or "Completion of Construction" means the date Lessee has completed the Hotel Project substantially in accordance with the requirements of the Approved Plans and all conditions of permits and regulatory agencies have been satisfied, all Governmental Authorities have issued a Certificate of Occupancy, the Hotel has been accepted by the Hotel Operator, and the Hotel Project is ready for occupancy, utilization and continuous commercial operation for the uses and purposes intended by this Lease, without material interference from incomplete or improperly completed Work, and substantially all of the FF&E required for the Opening Date has been purchased, delivered to and installed in the Hotel Project.

"Comprehensive Plan" means the comprehensive plan which the City Commission has adopted and implemented for the redevelopment and continuing development of the City pursuant to Chapter 163 Part II, of the Florida Statutes.

"Concurrency Requirements" shall have the meaning ascribed to it in Section 3.3.

"Construction Lender" means the Institutional Lender selected by Lessee to provide the Construction Loan.

"Construction Loan" means the loan to be provided by the Construction Lender to the Lessee for development and construction of the Hotel Project in an amount not more than ___% of the Budgeted Improvement Costs.

"Construction Loan Commitment" means a financing commitment by the Construction Lender that has been executed and delivered by and between Lessee and the Construction Lender(s) that confirms availability of the Construction Loan to fund the construction of the Hotel Project in accordance with the requirements of this Lease.

"Control," "Controlling" or "Controlled" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, by Governmental Requirements or otherwise, or the power to elect at least fifty percent (50%) of the directors, managers, general partners or other Persons exercising similar authority with respect to such Person (it being acknowledged that a Person shall not be deemed to lack Control of another Person even though certain decisions may be subject to "major decision" consent or approval rights of limited partners, shareholders or members, as applicable).

"Convention Center" means the Miami Beach Convention Center located at 1901 Convention Center Drive, Miami Beach, Florida, 33139.

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

"CPA" means a firm of certified public accountants Approved by the City, used by Lessee for the purpose of certifying the annual reports, its financial condition or for any other purpose specified herein.

"Debt Service Coverage Ratio" means the ratio of: (i) Gross Operating Profit 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)(ii)~~. For example, if Gross Operating 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, interest and other sums and amounts paid or payable by Lessee for or during the applicable or pertinent period, in connection with any debt secured by a Leasehold Mortgage.

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

"Deficiency" has the meaning ascribed to it in Section 7.2(b)(ii).

"Development Order" means any order granting, denying, or granting with conditions an application for a Development Permit.

"Development Permit" shall have the meaning set forth in Section 163.3221(5), Florida Statutes (2014).

"Economic Force Majeure" means ~~severe and systemic~~ economic or political conditions or events that materially impair access to debt or equity markets by developers for development of projects in the United States similar to the Hotel Project or allow a committed debt or equity participant to terminate its debt or equity commitment, such as a temporary or long term liquidity crisis or major recession.

"Effective Date" has the meaning ascribed to in Section 1.2.

"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.

"Equity Commitment" means the commitment of Lessee to contribute not less than \$ _____ in cash to pay Improvement Costs, or such other, greater amount as may be necessary, at the time of determination, when combined with the Initial Hotel Operator Financial Commitment and the proceeds available under the Construction Loan, to maintain the Hotel Project In Balance. As of the date of execution of this Lease, the Parties anticipate that the Equity Commitment will be not less than \$ _____.

"Exterior Elements Features" means the design features and treatments described in **Exhibit "P"** attached hereto.

"FF&E" means the furniture, fixtures and equipment for the Hotel Project to be procured and maintained by the Lessee.

"Fillmore Theater" means _____

"First Class Quality" means the ~~highest level of quality of~~ appearance, maintenance, conduct of operation, personnel, services and use, from time to time, as that maintained among the hotel(s) of a similar age, size and purpose as the Hotel operated from time to time by the ~~Approved Brands~~Hotel Operator.

"First Leasehold Mortgage" means a Leasehold Mortgage which is a first lien on Lessee's interest in this Lease and the leasehold interest created hereby.

"First Leasehold Mortgagee" means the Institutional Lender that is a holder of a First Leasehold Mortgage, which shall be evidenced by, and the City shall be able to rely absolutely on, a title report current as of the time of any determination and prepared by a generally recognized title insurance company doing business in Miami-Dade County, Florida, or upon a certificate of Lessee, signed and verified by a Responsible Officer of Lessee.

"Force Majeure Event" means the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies, whether actual or threatened; orders of any civil or military authority; insurrections; riots; acts of terrorism; epidemics; landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts and other natural disasters; inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, or failure or unavailability of transportation generally; or other similar extraordinary causes beyond the commercially reasonable control of the Party claiming such inability. In no event shall "Force Majeure Event" include economic hardship or financial inability to perform specific to the Party nor shall it include Economic Force Majeure.

"GAAP" means generally accepted accounting principles, as in effect from time to time, 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 in effect from time to time, 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.

"Gaming Establishment" means any establishment offering or otherwise engaged in gambling or wagering of any nature or kind.

"Governmental Approvals" means all permits, approvals, certificates of occupancy, notifications, certifications, registrations, authorizations and other rights and privileges that are required by any Governmental Authority. Notwithstanding anything to the contrary in this Lease, the Lessee retains its rights in accordance with applicable Governmental Requirements 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, the Lessee Improvements, the Work or the Off-Site Improvements.

"Governmental Requirements" means any law, enactment, statute, code, order, 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 or the construction and operation of the Lessee Improvements. Notwithstanding anything to the contrary in this Lease, the Lessee retains its right to challenge Governmental Requirements in accordance with all other applicable Governmental Requirements, including based on a constitutional objection that a Governmental Requirement violates Lessee's constitutional rights regarding contracts.

"Gross Operating Profit" means the amount calculated by subtracting Project Expenses from Gross Operating Revenues.

"Gross Operating Revenues" means all revenues and income of any nature derived directly or indirectly from the Hotel or from the use or operation of the Leased Property, including gross rooms sales, gross food and beverage sales (whether any food and beverage establishment is operated by Lessee or a Subtenant), catering receipts, telephone, facsimile and/or internet services, in-room video and parking and valet service receipts (whether the parking or valet services are operated by Lessee or a Subtenant), vending machines, gross receipts, rents or license fees from the operation of newsstand, gift shop, business center or other stores, or from

any other sub-lessees, concessionaires, third-parties conducting operations on the Leased Property or other sources, the fair rental value of space within the Hotel Project occupied by Lessee or any entity affiliated with or employed by Lessee for purposes other than managing the Hotel Project (to the extent the occupants of such space are paying less than the fair market value of such space) and the proceeds of business interruption, other loss of income, use, occupancy or similar insurance, as determined in accordance with GAAP (to the extent not inconsistent with the Uniform Systems of Accounts), and the Uniform System of Accounts, and without any reduction or allowance for uncollectable charges or bad debts. Notwithstanding the foregoing, the following shall not constitute Gross Operating Revenues: (i) any gratuities or service charges added to a customer's bill and distributed as compensation to the Hotel's employees; (ii) any credits or refunds made to customers, guests or patrons; (iii) any sums and credits received for lost or damaged merchandise; (iv) any sales taxes, excise taxes, or other similar taxes or charges collected by the Hotel and remitted to tax authorities; (v) any proceeds from the sale or other disposition of FF&E or capital equipment; (vi) any interest earned with respect to the deposit or investment of proceeds from operation of the Hotel; (vii) any fire and extended coverage insurance proceeds (except that proceeds of business interruption or other loss of income insurance shall be included in Gross Operating Revenues); (viii) any condemnation awards; and (ix) any proceeds of sale or financing or refinancing of the Hotel.

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

"Hotel" means the hotel complex to be developed and constructed on the Hotel Site substantially in accordance with the Approved Plans, which will contain approximately (but not more than) 800, separately keyed sleeping rooms capable of individual rental on a day-to-day overnight basis to hotel patrons and guests. For the purpose of determining the maximum number of separately keyed sleeping rooms contained within the Hotel at any time during the Term, each such room which is capable of being separately keyed will be deemed to be separately keyed, without regard to the actual use thereof.

"Hotel Operator" means and includes the Initial Hotel Operator and upon the expiration or sooner termination of the Management Agreement between the Initial Hotel Operator and the Lessee, any Approved Brand engaged by the Lessee to be responsible for overseeing the day-to-day management of the Hotel Project (or, if at any time there is no such operator, Lessee as operator of the Hotel Project).

"Hotel Project" means Lessee's leasehold created by this Lease and the development, design, construction and purchase of the Lessee Improvements and their subsequent use; the completion of the Work substantially in accordance with the Approved Plans, including (1) the Hotel and all associated infrastructure (including on-site parking and all supporting Hotel facilities and amenities), (2) the Skybridge and all associated infrastructure, (3) the installation of FF&E and other improvements and appurtenances of every kind and description (including all landscaping, planting and other improvements of any type) now located or hereafter erected, constructed or placed upon the Leased Property; (4) any and all alterations, renewals and replacements thereof, additions thereto and substitutions therefor.

"Hotel Project General Construction Contract" means the construction contract between Lessee and the Hotel Project General Contractor for the construction of the Hotel Project ~~and completion of the Work,~~ in accordance with the Approved Plans, within the contract time specified for completion of the Work, for a guaranteed maximum price that will not exceed the sum allocated for construction of the Work in the Budgeted Improvement Costs, and that

includes provisions requiring a Performance and Payment Bond and all other terms or conditions required under this Lease.

"Hotel Project General Contractor" means the duly licensed general contractor(s) engaged by Lessee for the construction of the Hotel Project and completion of the Work.

"Hotel Site" means the parcel of real property described in **Exhibit "D"**.

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

"Improvement Costs" means the actual, verifiable costs and expenses paid to third parties, not Affiliates of Lessee (unless such costs paid to Affiliates of Lessee are at fair market value and with notice to ~~and Approval by~~ the City), in the design, permitting, development, construction and equipping of the Hotel Project;

"In Balance" means, at any time in question, that the sum of (a) the then unfunded amount of the Construction Loan available to Lessee for payment of costs of labor and materials to achieve Completion of Construction of the Hotel Project, plus (b) the then remaining balance to be funded under the Equity Commitments and the Initial Hotel Operator Financial Commitment, if any, plus (c) any additional cash amounts deposited with the City by Lessee in order to fund the difference, if any, between the sum of (a) and (b) above and the then remaining Improvement Costs, is adequate to pay all of the then remaining Improvements Costs that are reasonably likely to be incurred through Complete Construction of the Hotel Project.

"Initial Hotel Operator" means _____.

"Initial Hotel Operator Financial Commitment" means the commitment of the Initial Hotel Operator to fund, in the aggregate, cash, to be used to pay Budgeted Improvement Costs, in such amount as may be necessary when combined with the Equity Commitment and the proceeds available under the Construction Loan, to maintain the Hotel Project In Balance.

"Institutional Lender" means, subject to the City's approval within twenty (20) days from receipt by the City of commercially reasonable information properly identifying the proposed Institutional Lender, including its financial qualifications, any of the following entities that have a net worth in excess of Fifty Million Dollars (\$50,000,000) (as adjusted by inflation over the Term pursuant to Section 14.20 hereof):

- (a) any federal or state chartered commercial bank or national bank or any of its subsidiaries;
- (b) any federal or state chartered savings and loan association, savings bank or trust company;
- (c) any pension, retirement or welfare trust or fund, whose loans on real estate are regulated by state or federal laws;
- (d) 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;

(e) 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~~

(f) any agent, designee, or nominee of an Institutional Lender that is an Affiliate (solely as described in clause (a) of the definition thereof) of any Institutional Lender or any other Person that is a subsidiary or an Affiliate (solely as described in clause (a) of the definition thereof) of an Institutional Lender; ~~and-~~

~~(f)(g) Any private debt fund having assets in excess of \$2 billion.~~

In the event of a syndicated loan, if fifty-one percent (51%) or more of the syndicate of lenders are Institutional Lenders, then the syndicated loan shall be deemed to be made by an Institutional Lender.

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

"Land Development Regulations" shall have the meaning set forth in Section 163.3221(8), Florida Statutes and shall also include the definition of "land development regulations" in Section 114-1 of the City Code.

"Lease" means this Development and Ground Lease Agreement, and all exhibits annexed hereto and made a part hereof, as the same may be modified or amended from time to time.

"Leased Property" means the Hotel Site.

"Leasehold Mortgage" means a mortgage, including an assignment of the rents, issues and profits from the Hotel Project or other security instrument in favor of a Leasehold Mortgagee, which constitutes a lien on Lessee's leasehold interest created by this Lease during the Term.

"Leasehold Mortgagee" means an Institutional Lender that is the owner and holder of a Leasehold Mortgage.

"LEED Status" means a certification by the U.S. Green Building Counsel's ("USGBC") Leadership in Energy and Environmental Design ("LEED") that the Hotel Project has satisfied all of the requirements associated with the then current USGBC Silver LEED certification.

"Lessee" means _____, and the successors, assigns or transferees thereof expressly Approved or permitted by the terms and provisions of this Lease. An executed copy of Lessee's [corp., partnership, limited liability company documents] is on file with the City as set forth on **Exhibit "T"**.

"Lessee 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 the Hotel and associated infrastructure and the Skybridge and associated infrastructure.

"Liquid Assets" means (a) cash on hand or on deposit in any federal or state chartered commercial bank or national bank or any of its subsidiaries, (b) readily marketable securities, (c)

readily marketable commercial paper rated A-1 by Standard & Poor's Corporation (or a similar rating by any similar organization that rates commercial paper), (d) certificates of deposit issued by commercial banks operating in the United States with maturities of one year or less, (e) money market mutual funds, (f) the uncommitted amount of any available line(s) of credit and (g) the unfunded amount of any Equity Commitments.

"Management Agreement" means the hotel operating or management agreement, as it may be extended, supplemented, amended or replaced from time to time, between Lessee and the Hotel Operator and which provides Lessee with the right to use the name or flag of the Hotel (if Lessee does not otherwise have such rights), and specifies the terms and conditions applicable to the day-to-day management of the Hotel, including the obligation of the Hotel Operator to comply with the Room Block Agreement.

"Mandatory Hotel Project Design Elements" means the design features, components or other elements of the Hotel Project to be developed by the Lessee as further described on **Exhibit "S"**.

"MBCC Project" means the Miami Beach Convention Center Renovation and Expansion Project, consisting of the renovation of the Convention Center, expansion of ballroom and auxiliary spaces, parking levels above portions of the Convention Center, exterior landscaping and a 6.5 acre public park, the renovation of Convention Center Drive, including relocation of utilities, and other improvements to the Convention Center and surrounding areas.

"Mezzanine Loan" means a loan to be made to the Lessee to provide financing for the Project, subordinate to the First Leasehold Mortgagee, which may be secured by a lien on the Project or Lessee's equity interest.

"Minimum Fixed Rent" has the meaning ascribed to it in Section 4.4(a)(i).

"Minimum Fixed Rent Commencement Date" means the Opening Date, earlier of the date a Certificate of Occupancy is issued for the Hotel or, twenty-four (24) months after the commencement of construction, subject to a reasonable extension for any Force Majeure Event in accordance with this Lease.

"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, including demolition of any portion of the Fillmore Theater located on the Leased Property and enclosure of the any remaining portion of the Fillmore Theater located outside the Leased Property.

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

"Original Lessee Investors" means the owners of Lessee on the date hereof, as identified on **Exhibit "M"**.

"Outside Construction Commencement Date" means August 15, 2017, by which date Commencement of Construction must take place, as such date may be reasonably extended for a Force Majeure Event in accordance with this Lease.

"Outside Construction Loan Closing Date" means June 15, 2017, as the same may be extended in accordance with this Lease ~~for a period not exceeding six (6) months~~ for actual delays

suffered by Lessee in achieving closing of the Construction Loan caused by Economic Force Majeure.

"Outside Completion Date" means June 30, 2019, by which date Completion of Construction shall have occurred, as such date may be reasonably extended for a Force Majeure Event in accordance with this Lease.

"Outside Opening Date" means _____, the date by which the Opening Date must have occurred as such date may be reasonably extended for a Force Majeure Event in accordance with this Lease.

"Outside Possession Date" means _____, by which date the plat for the Hotel Site must be recorded and all Possession Conditions must be satisfied as such date may be reasonably extended for a Force Majeure Event in accordance with this Lease.

"Parties" means City and Lessee, and "Party" is a reference to either City or Lessee, as the context may indicate or require.

"Performance and Payment Bond" means a performance and payment bond with regard to the Hotel Project General Construction Contract in the full amount of the guaranteed maximum price thereof, with a good and sufficient surety, in compliance with all applicable Governmental Requirements and in form and content Approved by the City, or such other security as is reasonably acceptable to the City.

"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); and shall include any Governmental Authority.

"Possession Conditions" has the meaning ascribed to it in Section 4.1(b).

"Possession Date" has the meaning ascribed to it in Section 4.1(b).

"Prohibited Hotel Project Changes" means

(a) after the Effective Date and prior to the Possession Date, any changes to the Approved Plans that result in any of the following except to the extent previously Approved in a writing executed by City and expressly providing that it is thereby Approving a Prohibited Hotel Project Change (which Approval may be granted or withheld by City in its sole and absolute discretion), or which are required because of Governmental Requirements: (i) a failure of the Hotel Project to contain any of the Mandatory Hotel Project Design Elements, or a material change to the design thereof; (ii) failure to obtain any Brand Approval; (iii) a material change in the massing of the development, including the orientation and general configuration of the tower structure or the size and configuration of the tower structure and podium design reflected in the Approved Plans, or (iv) any change that materially affects the façade of the Hotel Project Approved by the City, or otherwise materially affects the exterior appearance of the Hotel Project or materially impairs the ability of the Hotel Project to function as a convention center hotel, or

(b) after the Possession Date and prior to the Opening Date, any changes to the Approved Plans or any actual construction that results in any of the following, except to the extent previously Approved in a writing executed by City and expressly providing that it is thereby Approving a Prohibited Hotel Project Change (which Approval may be granted or withheld by City in its sole and absolute discretion), or which are required because of Governmental Requirements: (i) a failure of the Hotel Project to contain any of the Mandatory Hotel Project Design Elements, or a material change to the design thereof; (ii) failure to obtain any Brand Approval; (iii) a material change in the design or actual scope, appearance or quality of any of the Mandatory Hotel Project Design Elements; (iv) a material change in the massing of the development, including the orientation and general configuration of the tower structure or the size and configuration of the tower structure and podium design reflected in the Interim Hotel Project Plans and Specifications, or (v) any change that materially affects the façade of the Hotel Project Approved by the City, or otherwise materially affects the exterior appearance of the Hotel Project or materially impairs the ability of the Hotel Project to function as a convention center hotel.

"Project Expenses" means:

(a) ~~ordinary,~~ commercially reasonable ~~and necessary~~ operating expenses of the Hotel Project incurred to Persons other than Affiliates of the Lessee (unless such expenses paid to Affiliates of Lessee are at a fair market rate and with notice ~~to and Approval by~~ the City);

(b) ~~ordinary,~~ commercially reasonable ~~and necessary~~ wages and benefits paid and payable to the Hotel Operator'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.

"Public Charges" has the meaning ascribed to it in Section 4.5(a).

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

"Rent" means all payments required pursuant to Section 4.4 and any other payments characterized as rent hereunder, including Base Rent and Additional Rent.

"Rental Year" means a year, other than the first and last year of the Term, 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 year in which the Possession Date occurs. The second and following Rental Years shall commence on the 1st day of January each calendar year, whether or not a partial calendar year.

"Responsible Officer" means any executive officer or manager of Lessee responsible for the administration of the obligations of Lessee in respect of this Lease.

"Room Block Agreement" means the room block agreement, in the form of **Exhibit "L"** attached hereto, to be executed by and between the City and the Lessee, and pursuant to which Lessee agrees to provide the services therein described to City in exchange for the agreements of City hereunder.

"Schedule of Performance" has the meaning ascribed to it in Section 2.7.

"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 Hotel Project; or

(ii) acquire or own material assets other than the Hotel 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; and

(c) conducts business solely in its name or under a duly registered fictitious name.

"Skybridge" means the overhead, enclosed, climate-controlled pedestrian walkway to be constructed, operated and maintained by Lessee in accordance herewith connecting the Hotel Project to the Convention Center and included in the Hotel Site described on **Exhibit "D"**.

"Sublease" means any lease, sublease, license or other agreement by which Lessee demises, leases, or licenses the use and occupancy by another Person of one or more specific retail, parking/valet, spa or restaurant spaces, or other defined portion of the Hotel Project.

"Subtenant" means any Person using and occupying or intending to use and occupy one or more specific spaces or other defined portion of the Hotel Project pursuant to a Sublease.

"Target Dates" means the following dates that have been targeted by Lessee to achieve the following activities or events:

(a) The "Target Possession Date": the date targeted for satisfaction of the Possession Conditions, which date is _____, 20__.

(b) The "Target Construction Loan Closing Date": the date targeted for Lessee's closing of the Construction Loan for the Hotel Project, which date is December 15, 2016.

(c) The "Target Completion Date": the date targeted for completion of construction of the Hotel Project, which date is _____, 20__.

"Term" has the meaning ascribed to it in Section 4.1(a).

"Total Required Equity" means, as of the Possession Date, a sum equal to the difference between (a) the total Budgeted Improvement Costs and (b) the original principal amount of the Construction Loan, and (c) the Initial Hotel Operator Financial Commitment.

"Transfer" means any sale, assignment or conveyance or any other transaction or series of transactions in the nature of a sale, assignment or conveyance of:

- (a) the Hotel Project or any part thereof;
- (b) any legal or beneficial interest in the Hotel Project, or any part thereof;
- (c) any direct or indirect legal or beneficial interest in Lessee (including the syndication of tax benefits); or

any series of such Transfers that have the cumulative effect of a sale, transfer or conveyance of any of the foregoing (a), (b), or (c).

"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, or any successor thereto generally recognized by the Lodging Industry.

"Work" means the design, permitting, development and construction of the Lessee Improvements in accordance with the Approved Plans, including all design, architectural, engineering and other professional services, demolition and construction services, supervision, administration and coordination services and the provision of all drawings, specifications, labor, materials, equipment, supplies, tools, machinery, utilities, fabrication, transportation, storage, insurance, bonds, permits and conditions thereof, zoning approvals, changes required to comply with building codes ~~changes~~ and government ~~Governmental~~ Approvals, licenses, tests, inspections, surveys, studies, and other items, work and services that are necessary or appropriate for the demolition of existing structures and other preparatory or remediation work on the Hotel Site; utility relocations, installations, hook-ups or other infrastructure as may be required to make the Leased Property suitable for the use of the Hotel Project; total design, construction, installation, furnishing, equipping, and functioning of the Lessee Improvements, together with all additional, collateral and incidental items, work and services required for completion of the Lessee Improvements (including all such items, work and services as are necessary to provide fully functional and functioning Lessee Improvements). The Work also includes completion of all ~~Off-site~~ Site Improvements.

Section 1.4. Exhibits. If any exhibit to this Lease conflicts with the body of this Lease, the body of this Lease shall govern.

Section 1.5. Interpretation. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as appropriate. The words "herein," "hereof," "hereunder," "hereinafter," and words of similar import refer to this Lease as a whole and not to any particular Article, Section or Subsection hereof. The terms "include" and "including" and words of similar import shall each be construed as if followed by the phrase "without limitation". This Lease will be interpreted without interpreting any provision in favor of or against either party by reason of the drafting of such provision.

ARTICLE II **THE HOTEL PROJECT IMPROVEMENTS**

Section 2.1. Development and Conformity of Plans.

(a) Lessee shall be responsible for preparing all plans and specifications for constructing the Hotel Project. Such plans and specifications shall conform in all material respects to the Approved Plans;

(b) Notwithstanding any other provision or term of this Lease or any Exhibit hereto, the Approved Plans and all work by Lessee regarding the Hotel Project shall conform to the City Code, the Florida Building Code and all other Governmental Requirements and, to the extent consistent with the above, the provisions of this Lease.

Section 2.2. Approved Plans. The City shall have the right to Approve, in its sole discretion, (x) any substantial deviation of the Hotel Project from the Approved Plans and (y) any Prohibited Hotel Project Changes. Notwithstanding any Approval provided pursuant to this Section 2.2, Lessee shall be solely responsible for obtaining all required final, non-appealable Governmental Approvals as more fully set forth in Article IV of this Lease. Any Approval of the Approved Plans or any component thereof by the City shall be for its own benefit in its proprietary capacity as the owner of the Leased Property and shall not be deemed to mean, and the City, in such proprietary capacity, makes no representation, that such Approved Plans comply with all applicable Governmental Approvals and Governmental Requirements.

Section 2.3. Lessee's Hotel Project Obligations. Subject to the terms hereof, Lessee is obligated to and shall (i) design, permit, and construct, in a good and workmanlike manner, and at its sole cost and expense, the Hotel Project substantially in accordance with and subject to all of the terms and provisions of this Lease and to Complete Construction thereof by the Outside Completion Date, (ii) obtain a certificate of the LEED Status in accordance with Section 100-6 of the City Code and provide reasonable evidence of such certification to City within a reasonable period following the Opening Date, and (iii) operate, maintain, repair and replace, at its sole cost and expense, the Hotel Project in accordance with and subject to all of the terms and provisions of this Lease.

Section 2.4. Payment of Hotel Project Costs.

(a) As between Lessee and the City, the Lessee shall bear and be solely responsible for all costs and expenses related to the design, permitting and construction of the Work, the Hotel Project and its subsequent use, including the following:

- (i) Lessee's land use approvals, development fees, and permit fees for the design, construction, and subsequent use of the Hotel Project;
- (ii) Lessee's design and construction of the Hotel Project;
- (iii) Lessee's financing, construction bonding and insurance, building permits, utility installations and/or hook-ups or other infrastructure, as may be required to make the Leased Property suitable for the use of the Hotel Project;
- (iv) Lessee's consultants, accountants, financing charges, legal fees, furnishings, equipment, and other personal property of the Lessee; and
- (v) all other Lessee direct or indirect costs associated with the approvals, design, construction, and financing of the Lessee Improvements, and their subsequent use.

(b) Lessee acknowledges that the City shall have no maintenance responsibility for any of the Leased Property and Lessee Improvements, and utilities and infrastructure to be constructed by Lessee.

(c) Lessee shall be exclusively responsible for locating and thereafter dealing with the presence of underground utility lines and facilities. Under no circumstances shall City be responsible for paying the cost of, or otherwise reimbursing Lessee for, relocation, removal, or payment of charges to utility companies for, any utility lines or facilities lying on, under, or around the Leased Property. City shall provide reasonable cooperation and assistance to Lessee in the resolution of issues associated with existing underground utilities. Lessee shall not remove, disturb, or relocate any existing utilities on the Leased Property without City's prior written Approval.

Section 2.5. Financing Matters.

(a) Lessee shall pay for all Improvement Costs from funds required to be provided under the Equity Commitment, the Initial Hotel Operator Financial Commitment, and the Construction Loan; provided that if the proceeds of the Construction Loan are not available or are inadequate for any reason, Lessee shall be responsible to provide funds from such other sources as Lessee may identify to pay all costs and expenses necessary to Complete Construction of the Hotel Project and cause the Opening Date to occur in accordance herewith.

(b) Lessee shall be solely responsible for obtaining the Construction Loan, for all Construction Loan completion guaranties, and for providing all collateral and other security, and otherwise satisfying all conditions thereof and covenants, agreements and obligations of the borrower thereunder. In no event shall City have any responsibility, obligation or liability with respect to the Construction Loan, and Lessee shall reimburse City for all of City's third party costs and expenses (including attorneys' fees) reasonably incurred in connection with any requirements or requests of the Construction Lender in connection with the Construction Loan.

Section 2.6. No Claim for Value of Lessee Improvements. Lessee shall have no claim against the City for the value of the Lessee Improvements following any termination of this Lease, whether at the natural expiration of the Term or otherwise, except any claims related to a condemnation by the City.

Section 2.7. Schedule of Performance. The schedule attached hereto as **Exhibit "F"** (the "Schedule of Performance") sets forth the dates and times of delivery of the Hotel Project, including the Target Dates, and other milestones for development and approval of the plans and specifications listed in Section 2.2, preparation and filing of applications for and obtaining all applicable Governmental Approvals for the Hotel Project and schedule for the completion of the Work. Lessee shall prosecute completion of the Work substantially in accordance with the Approved Plans (with only such changes hereto that do not constitute Prohibited Hotel Project Changes), with all-commercially reasonable diligence, in good and workmanlike manner, and in accordance with the Schedule of Performance, time being of the essence. The dates in **Exhibit "F"** shall not be extended except for a Force Majeure Event or in the case of an Economic Force Majeure in accordance with this Lease.

(a) Lessee shall endeavor, through the use of diligent, good-faith efforts, to cause the prosecution of the Work in accordance with the Target Dates and other dates set forth in the Schedule of Performance.

(b) As further delineated in the Schedule of Performance, Lessee shall Complete Construction by the Outside Completion Date.

(c) The failure of Lessee to (i) satisfy all of the Possession Conditions by the Outside Possession Date, (ii) commence construction by the Outside Construction ~~Lease~~ Closing/Commencement Date, (iii) Complete Construction by the Outside Completion Date or (iv) achieve the Opening Date by the Outside Opening Date shall each be deemed an Event of Default under this Lease.

Section 2.8. Construction Obligations.

(a) **Bonds.** By no later than Commencement of Construction, Lessee shall provide a Performance and Payment Bond, with all premiums paid and in favor of Lessee with an obligee rider in favor of the City and the First Leasehold Mortgagee. Lessee shall also provide City with a demolition bond or other form of financial instrument reasonably acceptable to City to assure the availability of funds for demolition or removal of any uncompleted facility in the event Lessee, after receipt of a written demand from City, fails to demolish and remove the uncompleted facility following either (1) Lessee's failure to substantially complete such facility as required herein, or (2) termination of this Agreement in accordance with its terms.

(b) **Construction Obligations.** Prior to the Outside Completion Date, Lessee shall, or shall cause its Hotel Project General Contractor to:

(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 Hotel Project site in a clean and orderly manner at all times, and remove all paper, cartons and other debris from the Hotel ~~Project's~~Site;

(vii) Erect, furnish and maintain a field office with a telephone at the Hotel Site during the period of construction in which a supervisor-level employee shall be on site during the performance of any Work in connection with the Hotel Project; and cause the Hotel Project General Contractor to require in each subcontract having a price in excess of \$ _____ (and to require each subcontractor to require in each sub-subcontract having a price in excess of \$ _____) that ~~each such~~ subcontractor (and sub-subcontractor) have on-site a supervisor-

level employee at all times during the performance of any Work under such subcontract (and sub-subcontract);

(viii) Protect all Work prior to its completion and acceptance;

(ix) Preserve all properties adjacent and leading to the Hotel Site and restore and repair any such properties damaged as a result of construction of the ~~buildings and structures~~Hotel, 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 Hotel Site and the Work, and provide a copy of same to the City;

(xi) Upon Completion of Construction, deliver to the City ~~an~~ as built drawings and plans and specifications of the Hotel Project; and

(xii) Upon Completion of Construction, deliver to the City, a copy of the final certificate of occupancy or certificate of completion, as applicable, for the Hotel Project.

Notwithstanding any provision hereof to the contrary, at no time during construction of the Hotel Project may Lessee make any Prohibited Hotel Project Changes without the express, prior written Approval of City (which Approval may be granted or withheld by City in City's sole and absolute discretion).

(c) Lessee shall carry on any construction, maintenance or repair activity with diligence and dispatch and shall use diligent, good-faith efforts to complete the same in ~~the shortest commercially reasonable time under the circumstances~~accordance with the Schedule of Performance. Lessee 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.

Section 2.9. Progress of Construction/City's Representative.

(a) Lessee shall keep the City apprised of Lessee's progress regarding the Work. Lessee 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 ("City's Representative"), who may, during normal business hours, in a commercially reasonable manner, visit, inspect and monitor the Hotel Project, the materials to be used thereon or therein, contracts, records, plans, specifications and shop drawings relating thereto, whether kept at Lessee's offices or at the Hotel Project construction site or elsewhere, and the books, records, accounts and other financial and accounting records of Lessee wherever kept, and to make copies thereof as often as may be requested. Further, City's Representative shall be advised of, and entitled to attend, meetings among Lessee, Lessee's representative and the Hotel Project General Contractor or any subset of this group. Lessee will cooperate with the City to enable City's Representative to conduct such visits, inspections and appraisals. Lessee shall make available to City's Representative, with commercially reasonable notice, daily log sheets covering the period since the immediately preceding inspection showing the date, weather, subcontractors on the job, number of workers and status of construction.

Section 2.10. Delivery of Plans.

Promptly after completing the Work and Lessee's receipt of a Certificate of Occupancy, as applicable, for the Work, Lessee will deliver to the City a copy of the plans and specifications, including shop drawings, for the Lessee Improvements.

Section 2.11. Connection of Buildings to Utilities.

(a) Lessee, at its sole cost and expense for the Leased Property and in compliance with all Governmental Approvals and Governmental Requirements, shall install or cause to be installed all necessary connections between the ~~buildings and structures~~ Lessee Improvements, and the water, sanitary and storm drain mains and mechanical and electrical conduits whether or not owned by the City.

(b) Lessee shall pay for the cost, for the Leased Property, if any, of locating, grounding and installing within the Leased Property, as applicable, new facilities for sewer, water, electrical, and other utilities as needed to service the Hotel Project, and, at its sole cost and expense for the Leased Property, will install or cause to be installed inside the property line of the Leased Property, all necessary utility lines, with adequate capacity and the sizing of utility lines for the Hotel Project, as contemplated on the Approved Plans.

(c) Lessee shall perform, or cause to be performed, all Work on the Leased Property so as not to unreasonably interfere with or adversely affect in a material way the City's geothermal system located adjacent to the Leased Property. In the event that Lessee, Hotel Project General Contractor or their respective agents, representatives, employees or invitees causes any damage to such system, Lessee shall promptly repair and restore same to its condition existing immediately prior to such damage. This paragraph shall expressly survive termination of this Lease.

Section 2.12. Permits and Approvals. Lessee shall secure and pay for all Governmental Approvals for the Work, including any alterations and renovations made pursuant to Section 2.15, 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 2.13. City and Lessee to Join in Certain Actions. Within ~~thirty-five~~ (30) days after receiving a written request from Lessee, the City shall join Lessee when required by law in any and all applications for Governmental Approvals as may be commercially reasonable necessary for constructing of the buildings and structures. Lessee shall pay all fees and charges for all such applications.

Section 2.14. Compliance with Laws. Lessee will comply in every material respect with any Governmental Requirements in constructing and operating the Hotel Project.

Section 2.15. Alterations and Renovations. After completing the Work, if Lessee wishes to make alterations or renovations thereof:

(a) no renovation or alteration shall be made until Lessee obtains all required Governmental Approvals, at Lessee's sole cost and expense;

(b) except for FF&E, any renovation or alteration of Lessee Improvements that involves a substantial deviation from the Approved Plans or otherwise substantially affects the overall character or appearance of the exterior of the Hotel Project, shall require the City's approval in its proprietary capacity in its sole discretion; and

(c) all such alterations and renovations shall be performed by duly licensed and insured contractors in a good and workmanlike manner, and in any event, shall be consistent with the Hotel Standards ~~and in a First Class Quality condition.~~

Section 2.16. Art in Public Places. Lessee shall comply with the City's Art In Public Places (AIPP) program requirements under Section 82-536 through 82-612 of the City Code, as applicable, and shall contribute to the City's Art in Public Places fund the total of 1.5% of the "construction cost" of the Hotel Project no later than date of execution of the Hotel Project General Contract by Lessee and the Hotel Project General Contractor, as required by the City Code.

ARTICLE III **LAND USES AND DEVELOPMENT OBLIGATIONS**

Section 3.1. Covenant Regarding Land Uses. Lessee agrees and covenants to devote, during the term of this Lease, the Hotel Project only to the uses specified in this Lease and to be bound by and comply in all material respects with all of the provisions and conditions of this Lease. In addition, and except as hereinafter set forth, Lessee 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 Approval, which Approval may be granted or denied in the City's sole discretion.

Section 3.2. Applications for Development Approvals and Development Permits. Promptly following the Effective Date of this Lease, the Lessee will initiate and diligently pursue all applications for Development Orders and Development Permits that may be required in connection with the Hotel Project. Lessee shall be solely responsible for obtaining all final, non-appealable Development Orders and Development Permits for the Hotel Project. No extension of any time period herein shall be deemed to be an extension of any time periods contained within the Development Permits or Development Orders.

Section 3.3. Concurrency. Lessee shall be solely responsible for obtaining all land use permits, including all permits and approvals required pursuant to Section 163.3180, Florida Statutes, with respect to concurrency requirements for roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation, and schools (the "Concurrency Requirements"). Prior to applying for its building permit for the Hotel Project, Lessee shall apply to the appropriate Governmental Authorities and obtain letters or other evidence that Lessee has obtained all applicable Concurrency Requirements, and shall diligently and in good faith obtain such letters or other evidence that the Hotel Project meets all applicable Concurrency Requirements and shall pay such impact fees as may then be due or applicable to meet Concurrency Requirements.

Section 3.4. Compliance with Local Regulations Regarding Development Permits. This Lease is not and shall not be construed as a Development Permit, approval or authorization to commence any development, fill, or other land modification. The Lessee and the City agree that the failure of this Lease to address a particular permit, approval, procedure, condition, fee, term

or restriction in effect on the Effective Date of this Lease shall not relieve Lessee of the necessity of complying with the regulation governing said permitting requirements, conditions, fees, terms or restrictions, subject to the terms of this Lease.

Section 3.5. Consistency with the City's Comprehensive Plan. The City has adopted and implemented the Comprehensive Plan. The City hereby finds and declares that the provisions of this Lease dealing with the Hotel Site and the Hotel Project are consistent with the City's Comprehensive Plan and Land Development Regulations (subject to all applicable requirements, permits and approvals).

Section 3.6. Presently Permitted Development. The development that is presently permitted on the Leased Property, including population densities, and building intensities and height, which are subject to this Lease, are more specifically set forth in **Exhibit "H"** hereto.

Section 3.7. Public Facilities to Serve the Leased Property. A description of the public facilities that will service the Hotel Project of the properties subject to this Lease, including who shall provide such facilities; the date any new facilities, if needed, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of the development is included as **Exhibit "I"** hereto.

Section 3.8. Public Reservations, Dedications. A description of the reservations and/or dedications of land for public purposes that are proposed under the terms of this Lease is included as **Exhibit "J"** hereto.

Section 3.9. Required Development Permits. Attached and made a part hereof as **Exhibit "K"** is a listing and description of certain local development permits approved or needed to be approved for the development of the Hotel Project, provided that City makes no representation or warranty that the information set forth on **Exhibit "K"** is correct or complete, Lessee releases City from any liability with respect to such information and Lessee acknowledges and Lessee agrees that Lessee is solely responsible for confirming the correctness and completeness of such information and obtaining all applicable Governmental Approvals whether or not set forth on **Exhibit "K"**.

Section 3.10. Responsible Wages and Local Employment. The City supports and encourages the application of responsible wages and City of Miami Beach and Miami-Dade County workforce hiring with respect to the Hotel Project.

ARTICLE IV GENERAL TERMS OF LEASE

Section 4.1. Lease of Leased Property to Lessee. Subject to the conditions set forth in this Lease, including the occurrence of the Possession Date, the payment of all Rent and all other payments by Lessee provided herein, and the City's and Lessee's performance of their duties and obligations required by this Lease:

(a) **Demise.** The City, as of the Possession Date, demises and leases to Lessee, and Lessee takes and hires from the City, the Leased Property for a term of ninety-nine (99) years (the "Term"). Within thirty (30) days after the Possession Date, the City and Lessee, upon request of either Party, shall execute a commencement date agreement and/or one or more written memoranda in such form as will enable them to be recorded among the Public Records

of Miami-Dade County, in each case, setting forth the beginning and termination dates of the Term, determined according to this Lease, and recording any such other documents as may be required under this Lease.

(b) **Possession Date; Conditions Precedent to Possession.** The Parties recognize that as of the Effective Date there remain various items and matters to be satisfied, obtained and Approved in order that the Hotel Project may proceed as intended by the Parties. The date that the City delivers possession of the Leased Property to Lessee according to this Section 4.1(b), as designated by the City to Lessee in writing, is referred to herein as, the "**Possession Date**." The City shall not be obligated to deliver possession of the Leased Property and Lessee's rights as tenant hereunder shall not become effective until each of the events described in this Section 4.1(b) irrevocably shall have occurred, at which time, the City shall deliver possession of the Leased Property to Lessee, Lessee shall take possession thereof and the lease provisions of this Lease shall become effective. Until that time, 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 Event of Default;

~~(ii) The City shall have Approved the Approved Plans in its capacity as landlord under this Lease, in accordance with Article III hereof;~~

(iii) Lessee shall have entered into, and delivered to the City a duly executed copy of, the Hotel Project General Construction Contract (and all then existing change orders thereto), in form and substance and with a Hotel Project General Contractor Approved by the City reflecting the guaranteed maximum price for completion of the Lessee Improvements;

(iv) Lessee shall have delivered to City written evidence of the Equity Commitment, Initial Hotel Operator Financial Commitment and Construction Loan Commitments which together demonstrate that the Hotel Project is In Balance;

(v) Lessee shall have provided to City, and City shall have Approved in its sole discretion, any changes to the Budgeted Improvement Costs, provided that City shall not withhold its Approval so long as Lessee has obtained and delivered to the City written evidence of the Equity Commitment, the Initial Hotel Operator Financial Commitment and Construction Loan Commitments that demonstrate that the Hotel Project is In Balance;

(vi) Lessee shall have reimbursed the City for the costs associated with the City's voter referendum in connection with this Lease, not to exceed \$[25,000];

(vii) Lessee shall have obtained, and shall have delivered to City a copy of, all Governmental Approvals necessary for the Commencement of Construction and necessary for construction of all vertical elements of the Hotel Project;

(viii) Lessee and the Initial Hotel Operator shall have delivered to the City an instrument or instruments reasonably acceptable to the City (A) certifying that Lessee and the Initial Hotel Operator have duly executed and entered into the Management Agreement and any related franchise, technical services and/or centralized services agreements, that the Management Agreement and any other such agreements are in full force and effect and there are no defaults (or any events that could ripen into defaults) and attaching a true and correct copy of the Management Agreement and any such other agreements thereto, (B)

acknowledging that for so long as the Initial Hotel Operator is managing and operating the Hotel Project it shall observe and comply with the Room Block Agreement and (C) in the form of an agreement among Lessee, the Initial Hotel Operator and the City, to the effect that if this Lease is terminated as a result of any Event of Default, the Hotel Operator shall continue to perform under the Management Agreement in accordance with the terms thereof so long as the City is receiving [all Rent due hereunder], the Hotel Operator is being paid compensation thereafter accruing under the Management Agreement and the City shall perform, and the Hotel Operator shall accept the City's performance of, the duties and obligations under the Management Agreement to be performed by the Lessee, as "owner," thereunder, but only to the extent accruing from and after the date of termination of this Lease;

(ix) Lessee shall have delivered to City, and City shall have Approved, the Schedule of Performance for the Hotel Project (City agrees that it shall not withhold Approval thereof so long as the same reflects Completion of Construction by the Outside Completion Date and Lessee has provided reasonable evidence that such schedule is reasonable);

(x) Lessee shall have presented evidence reasonably acceptable to the City that all required insurance coverages are in place;

(xi) Lessee shall have delivered to the City reasonable evidence that the Approved Plans have been approved by the First Leasehold Mortgagee and the Initial Hotel Operator;

(xii) Lessee shall have delivered to the City, a duly executed Assignment of Plans and Approvals;

(xiii) Lessee shall have delivered to the City reasonable evidence of the availability of Liquid Assets to fund the remaining balances of (which balances shall be identified by Lessee) the ~~Total Required Equity~~ Commitment and that Lessee remains committed to fund the same on the Possession Date and that the aggregate amount thereof, combined with the Initial Hotel Operator Financial Commitment, is equal to the Total Required Equity;

(xiv) Lessee has provided to the City reasonable evidence that all conditions to funding the Construction Loan that can be satisfied as of such date have been satisfied and the Lessee has paid all commitment or loan fees due under the Construction Loan documents; and

(xv) the representations and warranties made by the Lessee in this Lease remain true and correct in all material respects on and as of the Possession Date.

(c) **Pre-Possession Period.** From and after the Effective Date, the Parties shall each use their respective diligent and commercially reasonable efforts to achieve the Possession Date timely.

(d) **Hotel Site Inspections.** Commencing on the ~~Effective Date~~ date hereof and thereafter until this Lease is terminated or the Possession Date occurs, the City shall permit Lessee commercially reasonable access to the Hotel Site to conduct at Lessee's sole cost and expense, physical inspections, tests and studies of the Hotel Site and to the extent necessary to carry out the provisions of this Lease; provided, however, that such access shall not materially interfere with any ongoing operations at the Convention Center or the Fillmore Theater or the City's construction activity relating to the MBCC Project. Lessee, at all times and at its sole cost and expense, shall maintain or shall cause its Hotel Project General Contractor or other

contractors in privity with Lessee to maintain, comprehensive general liability insurance as required in Article IX. Lessee shall restore any damage to the Hotel Site caused by any such inspections, tests or studies; provided that in no event shall Lessee be responsible for the discovery, exposure or release of hazardous substances or materials in, on or about the Hotel Site that are not introduced to the Hotel Site by Lessee, its agents, representatives, contractors, invitees or employees.

(e) **Indemnification.** Whether or not the Possession Date occurs, Lessee shall indemnify, defend and hold City and its respective officers, employees, agents, representatives, consultants, counsel and contractors (of any tier) harmless from and against all claims, actions, suits, charges, complaints, orders, liability, damages, loss, costs and expenses (including any attorneys' fees and costs of litigation) related to, arising from or in connection with the acts or omissions of Lessee, its agents, representatives, contractors or employees, including injury or death to persons or damage to their property, while exercising Lessee's right to access the Hotel Site and performance of such inspections, tests or studies pursuant hereto, unless resulting from the negligence or willful misconduct of City or its officers, employees, agents, representatives, consultants, counsel and contractors. The indemnification obligations of Lessee set forth in this paragraph shall expressly survive the expiration or termination of this Lease and notwithstanding any provision of this Lease to the contrary, City shall have all rights and remedies available at law or in equity in the enforcement of such indemnification obligations of Lessee or arising from Lessee's failure to perform such indemnification obligations.

(f) **Failure to Satisfy Conditions.** Notwithstanding anything contained in this Lease to the contrary, if: (i) any of the Possession Conditions have not occurred by the Outside Possession Date; (ii) Lessee does not close the Construction Loan by the Outside Construction Loan Closing Date; or (iii) the Opening Date does not occur by the Outside Opening Date, then notwithstanding anything to the contrary set forth in Section 7.1 below, Lessee hereby waives any further right to cure, ~~and such shall be considered an Event of Default under this Lease~~ and the City shall be entitled to immediately revoke the license granted to Lessee pursuant to the Assignment of Plans and Approvals and to immediately terminate this Lease upon written notice to the Lessee and the Parties shall thereafter be released from all obligations set forth herein except any such obligations that expressly survive termination. ~~The City shall also be entitled to its remedies other as set forth in Section 7.2 of this Lease.~~

(g) **Easements.** Lessee agrees that this Lease shall be subject to and contingent upon the execution of certain easements, including any applicable access easements. On the Possession Date, the easements in substantially the forms attached hereto as **Exhibit "G"** (the "Easements") shall be executed by all necessary parties. The Parties shall thereafter cause the Easements to be promptly recorded among the public records of Miami-Dade County, Florida. The Easements shall be held in escrow by the City and released therefrom and recorded among the public records of Miami-Dade County, Florida prior to the Commencement of Construction.

Section 4.2. Restrictive Covenants.

(a) **Permitted Use.** Lessee shall operate the Hotel Project throughout the Term as a convention headquarter hotel for the accommodation of hotel guests, and for related banquet, meeting and similar purposes, with related retail shops, restaurants and such other amenities as are consistent with the Hotel Standards.

(b) **Use Restrictions.** The Hotel Project shall not be used by Lessee, nor shall Lessee knowingly permit the use thereof by any other Person for the following: *any unlawful or*

illegal business, use or purpose, or for any business, use or purpose which is immoral, disreputable (including "adult entertainment establishments" and "adult" bookstores) or extra-hazardous, for any Gaming Establishment (whether or not such use is permitted by applicable law), or in such manner as to constitute a public nuisance of any kind. Lessee shall have no right to convert the use of the Hotel 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) **Nuisances Disallowed**. Lessee shall not make any use of the Leased Property, nor shall it allow any of its sub-lessees or invitees to make use of the Leased Property, in a manner that creates or reasonably will lead to a public or private nuisance under state or local law. Upon notification by City that such a nuisance is then being allowed on the Leased Property, Lessee shall promptly take steps necessary to abate such nuisance to the City's reasonable satisfaction. City shall retain all of its contract rights to abate a nuisance under the terms of this Lease, as well as its regulatory rights to abate such nuisance in accordance with then-current law.

(d) **No Discrimination**. Lessee shall comply with, and shall cause others to comply with, Governmental Requirements prohibiting discrimination by reason of race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, and age or disability in the sale, lease, use or occupancy of the Hotel Project or any portion thereof. Lessee's compliance with the City's Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, shall be a material term of this Lease. Lessee shall cause for this provision to be incorporated in the Management Agreement with the Hotel Operator.

(e) **Lessee's Rights To Operate a Convention Hotel Not Exclusive**. Notwithstanding anything herein, it is expressly understood and agreed that the rights granted under this Lease are non-exclusive and City reserves the right to grant similar privileges and similar leases to other lessees on other City-owned or leased property, and to take any and all actions (including the leasing of City property other than the Leased Property for any lawful purpose) that City is permitted to take under federal, state, and local law. Notwithstanding the foregoing, the City shall not permit another hotel to be constructed on City-owned or leased property within [] miles of the Hotel Site for a period of [] years after the Possession Date.

(f) **Room Block Agreement**. Lessee shall ~~have duly executed and delivered to the City its counterpart signature to the Room Block Agreement and shall operate,~~ and cause the Hotel Operator to operate, the Leased Property in strict-material compliance with the terms ~~thereof of the Room Block Agreement~~ throughout the Term.

(g) **No Ownership Interests in Gaming Establishments in Miami-Dade County**. Lessee, and any Persons with an ownership interest in Lessee, shall not, directly or indirectly, own, operate or manage a Gaming Establishment in Miami-Dade County, Florida; provided, however, that the foregoing restriction shall not prevent Persons having an ownership interest in Lessee, from owning or Controlling in the aggregate five percent (5%) or less of the voting securities of any owner, operator or manager of a Gaming Establishment in Miami-Dade County, Florida.

(h) **Enforceability**. The restrictive covenants contained in this Section 4.2 shall be binding upon the Lessee-Parties and shall be for the benefit and in favor of, and enforceable by, the CityParties, ~~its and their~~ successors and assigns, as the case may be. It is further understood that such covenants shall not benefit or be enforceable by any other Person.

Section 4.3. Representations.

(a) **Lessee's Representation.** Lessee represents to the City that its ~~is principals and Affiliates are~~ experienced in the development, construction, leasing and operation of hotel properties generally, and that Lessee has independently determined the merits and risks of electing to proceed with the development of the Hotel Project, and that Lessee is not and, will not be relying upon any information that may have been or hereafter be provided to Lessee with respect to or relating to the financial results derived from, financial merits of investing in, or other economic or other benefits that may be realized from the development, construction, leasing and operation of the Hotel Project or sale of Lessee's interests in this Lease.

(b) **No Representation or Warranties By City.** Lessee acknowledges and agrees that it ~~has been~~ will be given the opportunity to perform all inspections and investigations concerning the Leased Property to its satisfaction prior to the Possession Date, and the City (i) except as provided in this Lease, is not making and has not made any representations or warranties, express or implied, of any kind whatsoever with respect to the Leased Property, including any representation or warranty of any kind with respect to title, survey, physical condition, suitability or fitness for any particular purpose, the financial performance or financial prospects of the Hotel Project, its value, or any other economic benefit that can be realized or expected therefrom, the presence or absence of ~~hazardous~~ Hazardous substances ~~Substances~~, the tenants and occupants thereof, the zoning or other Governmental Requirements applicable thereto, taxes, the use that may be made of the Leased Property, or any other matters with respect to this transaction or Lease); (ii) Lessee has relied on no such representations, statements or warranties, and (iii) City will in no event whatsoever be liable for any latent or patent defects in the Leased Property (including any subsurface conditions).

(c) **"AS IS" Condition of Leased Property.** Lessee acknowledges it has relied solely on Lessee's own inspections, tests, evaluations and investigations of and related to this Lease and the Leased Property in its determination of whether to proceed with this Lease and the Hotel Project. As a material part of the consideration of this Lease, Lessee agrees to accept the Leased Property on the Possession Date in its "AS IS" and "WHERE IS" condition "WITH ALL FAULTS" and latent or patent defects, and without representations and warranties of any kind, express or implied, or arising by operation of law.

(d) The provisions of this Section 4.3 shall survive the termination of this Lease.

Section 4.4. Rent and Other Payments. Lessee covenants and agrees to pay the City, from and after the date hereof and during the Term the following Rent, as applicable:

(a) **Base Rent.** Commencing as of the Minimum Fixed Rent Commencement Date ~~Opening Date~~, monthly rent in the amount of the greater of (x) four percent (~~—%~~) (4%) of the Gross Operating Revenues or (y) one-twelfth (1/12th) of the Minimum Fixed Rent set forth in Section 4.4(a)(i) of this Lease ("Base Rent"); provided that in the first year after the Minimum Fixed Rent Commencement Date the monthly rent shall be 25% of the greater of such amounts, in the second year after the Minimum Fixed Rent Commencement Date the monthly rent shall be 45% of the greater of such amounts, in the third year after the Minimum Fixed Rent Commencement Date the monthly rent shall be 75% of the greater of such amounts, and in the fourth year after the Minimum Fixed Rent Commencement Date, and thereafter, the monthly rent shall be 100% of the greater of such amounts. The Base Rent shall be due and payable on or before the twenty-fifth (25th) day of each month following the month for which the Base Rent is applicable.

(i) Minimum Fixed Rent. "Minimum Fixed Rent" shall be an annual fixed rent payable in twelve (12) equal monthly installments, prorated as to any partial month, commencing on the Minimum Fixed Rent Commencement Date and continuing on the first day of each month thereafter. A schedule setting forth the Minimum Fixed Rent for the Term is set forth on **Exhibit "R"** attached hereto. Ten (10) years after the Minimum Fixed Rent Commencement Date, and every ten (10) years thereafter (each a "Minimum Fixed Rent Reset Date"), the Minimum Fixed Rent shall be adjusted to equal the greater of (x) the Minimum Fixed Rent payable for the period immediately preceding the Minimum Fixed Rent Reset Date, or (y) fifty five percent (55%) of the average Rent payable during the preceding ten (10) year period; provided that for the first Minimum Fixed Rent Reset Date item (y) shall be fifty five percent (55%) of the average Rent payable during the preceding five (5) year period.

(ii) Each Base Rent payment shall be accompanied with documentation sufficient for City to verify the accuracy of the Base Rent payment, and in a format and of a detail reasonably required by City.

(iii) By April 1 of each year following the Opening Date, Lessee shall provide City with a certified report, prepared and attested to by an independent CPA, as to the correct Gross Operating Revenues for the previous calendar year. The report shall be prepared in accordance with the American Institute of Certified Public Accountants' requirements for special reports. All Base Rent payments and annual reports are subject to audit under Section 4.4(ii).

(iv) Lessee shall be responsible for any applicable sales tax payable in connection with the Rent.

(b) Additional Rent on Sale of the Hotel. Lessee shall pay as Additional Rent at the time of the first three (3) sales of the Hotel to a third party, an amount equal to the lesser of (x) \$2 million, or (y) 0.25% of the gross sales price (less typical closing adjustments and credits) of the Hotel; provided that such Additional Rent shall be payable in connection with the first such sale only if the gross sales price exceeds \$580 million.

~~(b)~~(c) Non-subordination of Rent. The Rent payable to City hereunder shall never be subordinated, including to any sums due under the Construction Loan or any other financing by Lessee, and City shall at all times have a first priority right to payment of the Rent from Gross Operating Revenues.

~~(c)~~(d) 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, Miami Beach City Hall, 1700 Convention Center Drive, 3rd Floor, Miami Beach, Florida 33139 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.

~~(d)~~(e) Late Payment Charge. In the event the Lessee fails to make any payments, as required to be paid under the provisions of this Lease, within fifteen (15) days after same shall become due, interest at the Default Rate shall accrue against the delinquent payment(s) from the original due date until the City actually receives payment. The right of the City to require payment of such interest and the obligation of the Lessee to pay same shall be in addition to and not in lieu of the rights of the City to enforce other provisions herein, including termination of this Lease, and to pursue other remedies provided by law. All payments of money required to

be paid to the City by Lessee under this Lease other than Base Rent, including interest, late fees, penalties and contributions, shall be treated as Additional Rent.

~~(e)~~(f) **Dishonored Check or Draft.** In the event that the Lessee delivers a dishonored check, draft or wire transfer to the City in payment of any obligation arising under this Lease, the Lessee shall incur and pay City an amount that is three (3) times the service fee incurred by City for such dishonored check or draft. Further, in such event, the City may require that future payments required pursuant to this Lease be made by cashier's check or other means acceptable to the City.

~~(f)~~(g) **Holdover Rental.** In the event that the Lessee remains in possession of the Leased Property beyond the Term or termination of this Lease, the Lessee shall be bound by all of the terms and conditions of this Lease to the same extent as if this Lease were in full force and effect during the time beyond the expiration date of this Lease. However, during any such possession of the Leased Property, as a holdover tenant after the City has demanded the return of the Leased Property, the Lessee shall be liable for double the Base Rent being paid at that time, or, if Section 83.06, Florida Statutes, as amended provides a greater amount, then whatever greater amount is specified in the Florida Statutes.

~~(g)~~(h) **No Abatement of Rent.** Except as may be otherwise expressly provided herein, there will be no abatement, diminution or reduction of Rent payable by Lessee hereunder or of the other obligations of Lessee hereunder under any circumstances.

~~(h)~~(i) **Lessee Improvements Not Deemed Rent.** The cost or value of the Lessee Improvements is intended by the parties to inure solely to the benefit of the Lessee and no portion of such cost or value is intended to inure to the benefit of the City or constitute rent, license fee or other consideration for the right to occupy the Leased Property or the Lessee Improvements until the surrender of the Leased Property from Lessee to the City at the expiration or earlier termination of this Lease.

~~(i)~~(j) **Records and Reporting.**

(i) For the purpose of permitting verification by the City of any amounts due to it, including an account of Gross Operating Revenues, ~~and~~ Base Rent, Lessee shall keep and preserve for at least three (3) years in Miami-Dade County, Florida, at the address specified in Section 14.5, or at its home office, auditable original or duplicate books and records for the Hotel Project, which shall disclose all information regarding the Hotel Project, including information required to determine Base Rent. All such records shall be maintained in every material respect according to GAAP and as applicable to the Hotel, the Uniform System. The City shall, on commercially reasonable notice, have the right during normal business hours at the expense of the City unless otherwise provided herein to inspect such books and records and make any examination or audit or copy thereof which the City may desire at any time within one year after submittal of an Audited Financial Statement to City by Lessee. If such audit shall disclose a liability for Rent in excess of the Rent theretofore paid by Lessee for the period in question, Lessee shall pay such excess amounts, together with interest at the Default Rate, as 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 Lessee within thirty (30) days after receipt of written demand therefore.

(ii) Lessee shall provide the City with an annual Audited Financial Statement for each Rental Year during the Term, certified by the CPA, within one hundred twenty (120)

days after the close of each Rental Year (including the Rental Year in which this Lease terminates or is terminated) including, as additional information or as a supplemental schedule, Gross Operating Revenues, Base Rent.

(iii) If Lessee shall fail to deliver the foregoing statements and information to the City within said one hundred twenty (120) day period, the City shall have the right to either conduct an audit itself or to employ an independent certified public accountant to examine such books and records as may be necessary to certify the amount of Rents due with respect to such Rental Year and to obtain the information described above. Lessee 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 pursuant to this item (iii).

(iv) If the City disagrees with the annual Audited Gross Operating Revenues Schedule and/or the annual Audited Financial Statement provided by Lessee, it may conduct its own audit within one year after receipt of same by City, which Lessee shall pay for if said audit demonstrates a discrepancy-deficiency of more than three percent (3%), in the amount of Base Rent due to the City. Any dispute between the two audits which cannot be resolved by the Parties shall be resolved in accordance with Section 7.8 of this Lease. The cost of any audit by the City which Lessee 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, Lessee shall deliver to the City a written report detailing the employment by Lessee of City of Miami Beach and Miami-Dade County residents in the construction, operation and maintenance of the Hotel Project.

Section 4.5. Covenants for Payment of Public Charges by Lessee.

(a) **Payment of Public Charges.** Payment of Public Charges includes:

(i) Lessee, 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 4.5(~~ed~~), electric, water and sewer rents, rates and charges levied, assessed or imposed by any Governmental Authority against the Leased Property, including all Lessee Improvements thereon, in the same manner and to the same extent as if the same, together with all Lessee Improvements thereon were owned in fee simple by Lessee.

(collectively, "Public Charges");

(b) Lessee's obligation to pay and discharge Public Charges levied, assessed or imposed against or with respect to the Leased Property shall not commence until the Possession Date. ~~But, should the Miami Dade 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 Lessee'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. Lessee, 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.

(c) **Contesting Impositions.**

(i) Lessee shall have the right to contest the amount or validity, in whole or in part, of any Public Charges, for which Lessee is, or is claimed to be, liable, by appropriate proceedings diligently conducted but only after payment of such Public Charges, unless such payment would operate as a bar to such contest or materially interfere with the prosecution thereof, in which event, payment of such Public Charges may be postponed if, and only if, Lessee has deposited with City, in its capacity as landlord under this Lease, cash or other security Approved by the City, in its capacity as landlord under this Lease, in the amount so contested and unpaid, together with interest and penalties in connection therewith and any other charges that may be assessed against or become a charge on the Leased Property or any part thereof in such proceedings. Upon the termination of any such proceedings, Lessee 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, and may use the cash or other security deposited with the City for such purpose.

(ii) City shall not be required to join in any proceedings referred to in this Section 4.5(c) unless:

(1) Governmental Requirements shall require that such proceedings be brought by or in the name of City; or

(2) 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. Lessee 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. The City will endeavor to use in house counsel whenever possible.

(d) **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, Lessee will be treated the same as similarly sized and situated properties (such as the Loews Hotel).

**ARTICLE V
ASSIGNMENT**

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

Section 5.2. Transfers. Lessee represents and warrants that Lessee has not made, created or suffered any Transfers as of the date of this Lease and that the Persons that have an ownership interest in Lessee on the date of this Lease are listed, together with their percentage and character of ownership, on **Exhibit "M"**. No Transfer may or shall be made, suffered or created by Lessee, its successors, assigns or transferees without complying with the terms of this Article V. Any Transfer that violates this Lease shall be null and void and of no force and effect.

Section 5.3. Permitted Transfers.

(a) Prior to the Opening Date, other than Permitted Transfers, no Transfer will be permitted without the written Approval of the City (excluding the conveyance of the Easements).

(b) Each of the following Transfers, shall be permitted hereunder without the City's consent ("Permitted Transfers"):

(i) a Transfer after the Opening Date of the entire Hotel Project ~~of or~~ any direct or indirect interest in Lessee provided that (i) the transferee is an Acceptable Owner (or the Lessee remains an Acceptable Owner following such Transfer in the case of a Transfer of a direct or indirect interest in Lessee); (ii) the City is given written notice thereof together with true and correct copies of the proposed Transfer documents and other agreements between the parties and current certified financial statements (to the extent applicable) and other relevant information of the proposed transferee in accordance with the time frames set forth on **Exhibit "A"** attached hereto in order for City to confirm that the transferee (or the Lessee) is an Acceptable Owner; and (iii) all of the conditions precedent to the effectiveness of such Transfer as set forth in Section 5.5 hereof are satisfied;

(ii) Any Transfer, if in accordance with the terms and conditions of Article VI, by the First Leasehold Mortgagee to an agent, designee or nominee of the First Leasehold Mortgagee that is wholly owned or Controlled by such First Leasehold Mortgagee;

(iii) Any Transfer directly resulting from the foreclosure of a First Leasehold Mortgage or the granting of a deed in lieu of foreclosure of a First Leasehold Mortgage or any Transfer made to the purchaser at foreclosure of a First Leasehold Mortgage or to the grantee of a deed in lieu of foreclosure of a First Leasehold Mortgage (if such purchaser or grantee is a nominee in interest of the First Leasehold Mortgagee), and provided further that such Transfer, purchase or grant is in accordance with the terms and conditions of Article VI;

(iv) Any Transfer directly resulting from a conveyance to a First Leasehold Mortgagee of Lessee's interest provided it is in accordance with the terms and conditions of Article VI;

(v) Any Transfer, or series of Transfers, of not more than an aggregate of ten percent (10%) of the direct or indirect ownership interests in Lessee, provided that at all times after such Transfer, _____, or other successor Person Approved by the City has the power to direct the day-to-day management and policies of Lessee;

provided, however, in the case of any Transfer hereunder, the proposed transferee shall not, directly or indirectly, own, operate or manage any Gaming Establishment in Miami-Dade County, Florida and any purported Transfer in violation hereof shall be null and void and of no force and effect.

Section 5.4. Transfer Requiring City's Consent. Regarding any Permitted Transfer pursuant to Section 5.3(b) or any other Transfer that is not a Permitted Transfer, Lessee shall give or cause to be given to the City written notice of a Transfer (in the case of a Permitted Transfer), or written notice requesting approval of any other Transfer that is not a Permitted Transfer, and submitting all information reasonably necessary for the City to evaluate the proposed transferees and the Transfer and to obtain the City's Approval of same. Said information shall demonstrate that the transferee is an Acceptable Owner as set forth on **Exhibit "A"** attached hereto. The City's Approval process shall proceed as set forth on **Exhibit "A"** attached hereto. Any Approval of a Transfer shall not waive any of the City's rights to Approve or disapprove of any subsequent Transfer. Lessee shall from time to time throughout the Term, as the City shall reasonably request, furnish the City with a complete statement, subscribed and sworn to by a Responsible Officer of Lessee, setting forth the full names and address of holders of the ownership interests in Lessee who hold, directly or indirectly, at least a ten percent (10%) interest in Lessee as well as to confirm the percentage ownership interest of such Responsible Officer.

Section 5.5. Effectiveness 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), and if it is of the entire Hotel Project, the Person 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 Lessee under this Lease accruing after the date of the Transfer, and agree to be liable and subject to all conditions and restrictions to which Lessee is subject.

Section 5.6. Subletting.

(a) Subject to the other terms and conditions of this Lease, Lessee shall have the right to enter into Subleases of portions of the Leased Property 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 Lessee shall deem fit and proper, provided the Sublease is consistent with this Lease and consistent with the Hotel Standards; provided, however, Lessee shall not, without the City's prior Approval, ~~which may be withheld in the City's sole discretion,~~

enter into any Sublease the income for which is included in Gross Operating Revenues, or for which the Subtenant thereunder requires from the City a non-disturbance agreement, or with an Affiliate of Lessee. At the City's request, Lessee shall allow the City to review and inspect any and all Subleases for the Hotel Project.

(b) Lessee covenants that it will perform and observe in all material respects all the terms, covenants, conditions and agreements required to be performed and observed by it under each Sublease. Lessee agrees that each Sublease shall:

(i) require the Subtenant to maintain adequate books and records including reasonably detailed information on Gross Operating Revenues of the applicable subleased portion of the Leased Premises 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 this Lease terminates, the Subtenant shall, if required by the City, pay all rents and all other charges required by such Sublease directly to the City; and

(iii) obligate the Subtenant not to violate any term, covenant or restriction applicable to Lessee that is contained in this Lease. In addition, Lessee shall in all events require and cause Subtenants to perform obligations imposed by the Lease and applicable to such Sublease (specifically including the obligations set forth in this Section 5.6).

(c) Notwithstanding anything to the contrary contained herein, at all times the Base Rent payable to the City with respect to all portions of the Leased Property, whether or not subleased to a Subtenant, shall be based on the Gross Operating Revenues of the Leased Property, including any subleased portion of the Leased Property, and shall not be based on the Sublease rent paid by any Subtenant thereunder, except solely with respect to a portion of the Leased Property leased to a Subtenant for purposes of operating a gift shop.

ARTICLE VI

MORTGAGE FINANCING; RIGHTS OF MORTGAGEE AND LESSEE

Section 6.1. Conditions of Financing and Leasehold Mortgage.

(a) Lessee shall have the right to secure one or more financings or re-financings and, in conjunction with and to secure that financing or re-financing, may enter into a First Leasehold Mortgage in favor of a First Leasehold Mortgagee, provided that:

(i) any such secured financing of the Hotel Project exclusively secures debt of the Lessee directly related to the Hotel Project;

(ii) Lessee certifies to the City that the Hotel Project, after taking into account all existing debt of the Lessee, is projected to have and be able to sustain a Debt Service Coverage Ratio of not less than 1.25 (based on the reasonably projected first stabilized year for any financing that closes prior to the end of the reasonably projected first stabilized year, and any twelve (12) consecutive months out of the previous eighteen (18) months of operations for subsequent financings);

(iii) at the time of the closing of the financing or re-financing, the aggregate amount of the principal indebtedness secured by mortgages encumbering Lessee's interest in

the Leased Property does not exceed an amount equal to seventy percent (70%) of the sum of (1) the then value of Lessee's interest in the Leased Property and any improvements previously constructed on the Leased Property, as reasonably determined by a third-party appraiser selected by the City and engaged at Lessee's sole expense, (2) the value of any improvements to be constructed on the Leased Property with the proceeds of such financing or re-financing, and (3) all costs incurred, and all reserves required, in connection with such financing or re-financing;

(iv) no First Leasehold Mortgage or other encumbrance executed by the Lessee in connection with such First Leasehold Mortgage or otherwise will extend to or be a lien or encumbrance upon City's interest in any part of the Leased Property or in any right appurtenant to that interest;

(v) the First Leasehold Mortgage and any other encumbrance executed by the Lessee in connection with such First Leasehold Mortgage or otherwise shall at all times, without the necessity for the execution of any further documents, be subject and subordinate to the interest of the City in the Leased Property; provided that the First Leasehold Mortgagee agrees from time to time upon request and without charge to execute, acknowledge and deliver any instruments reasonably requested by the City under this Lease to evidence the foregoing subordination;

(vi) the First Leasehold Mortgagee waives all right and option to retain and apply the proceeds of any insurance or the proceeds of any condemnation award toward payment of the sum secured by the First Leasehold Mortgage to the extent such proceeds are required for the demolition, repair or restoration of the Leased Property in accordance with the provisions of this Lease;

(vii) the rights of the City in the Leased Property and arising out of this Lease shall not be affected by the First Leasehold Mortgage or First Leasehold Mortgagee, nor shall the City be deprived in any other way of its rights in the Leased Property or under this Lease;

(viii) Lessee shall at all times remain liable hereunder for the payment of Rent and the performance of all covenants and conditions of this Lease; and

(ix) no purchaser at any foreclosure sale will acquire any right, title or interest in or to this Lease, unless such purchaser, in a written instrument reasonably satisfactory to the City, assumes and agrees to perform all of the terms, covenants and conditions of Lessee hereunder arising after the date of such Transfer, that no additional mortgage or assignment of this Lease will be made except in accordance with the provisions contained in this Article VI, and that a duplicate original of such written instrument, duly executed and acknowledged by such purchaser and in recordable form, is delivered to the City immediately after the consummation of such sale, or, in any event, prior to taking possession of the Leased Property.

(b) Prior to the date a First Leasehold Mortgage is recorded, the First Leasehold Mortgagee, Lessee and the City shall enter into a non-disturbance and attornment agreement containing the provisions set forth in Section 6.1(d) below and such other terms and conditions as are reasonably acceptable to the City and First Leasehold Mortgagee.

(c) Lessee shall deliver to the City, promptly after execution by Lessee, a true and verified recorded copy of any First Leasehold Mortgage and any amendment, modification or extension thereof, together with the name and address of the First Leasehold Mortgagee.

(d) For so long as any First Leasehold Mortgage encumbers the Leased Property and provided the conditions of Section 6.1(a) through (c) above have been satisfied:

(i) in any event where the City gives Lessee notice of an Event of Default, the City shall deliver a copy of such notice to the First Leasehold Mortgagee, at the name and address designated in writing by the First Leasehold Mortgagee to the City from time to time (the City shall be deemed to have fulfilled its notice obligation by providing the required notice to the address delivered to the City in accordance with Section 6.1(c) or such other address so designated by the First Leasehold Mortgagee to the City in writing and shall not be responsible for any liability in the event such address is not current);

(ii) notwithstanding the time allowed for Lessee to cure an Event of Default, the First Leasehold Mortgagee shall have the right, but not the obligation, up to fifteen (15) days following the City's notice thereof to cure a monetary default and thereafter keep all Rent and other amounts due hereunder current, and up to thirty (30) days following the City's notice thereof to cure a non-monetary Event of Default (except an Event of Default under Sections 7.1(c), (d) or (e) hereof, for which the First Leasehold Mortgagee will not be given any additional time to remedy), but if such non-monetary Event of Default cannot be cured within such thirty (30) day period, then the First Leasehold Mortgagee shall have up to ninety (90) days to cure, provided that it has started to do so within the initial thirty (30) day period and thereafter continues to diligently pursue the cure. The City will accept performance by the First Leasehold Mortgagee of any covenant, condition or agreement on Lessee's part to be performed hereunder with the same force and effect as though performed by Lessee; and

(iii) notwithstanding the provisions of Article VII hereof, no Event of Default by Lessee will be deemed to exist as long as the First Leasehold Mortgagee, in good faith, either promptly (A) commences to cure such Event of Default and prosecute the same to completion in accordance with clause (ii) above, or (B) if the nature of any non-monetary Event of Default (except an Event of Default under Sections 7.1(c), (d), (e) or (f) hereof, for which the First Leasehold Mortgagee will not be given any additional time to remedy) is such that possession of the Hotel Project is reasonably necessary to cure the Event of Default or if the Event of Default is of the type that cannot commercially reasonably be cured by the First Leasehold Mortgagee (e.g., Lessee bankruptcy), files a complaint for foreclosure and thereafter prosecutes the foreclosure action and obtains possession directly or through a receiver and prosecutes such proceedings in good faith and with diligence and continuity and as promptly as practicable after obtaining such possession, commences promptly to cure such Event of Default and to prosecute the same to completion in good faith and with diligence and continuity; provided, however, that the First Leasehold Mortgagee has delivered to the City, in writing, its agreement to take the action described in clause (A) or (B) of this clause (iii), and that during the period in which such action is being taken (and any foreclosure proceedings are pending), all of the other obligations of Lessee under this Lease, to the extent they are susceptible of being performed by the First Leasehold Mortgagee, are being duly performed. However, at any time after the delivery of the aforementioned agreement, the First Leasehold Mortgagee may notify the City, in writing, that it has relinquished possession of the Leased Property or that it will not institute foreclosure proceedings or, if such proceedings have been commenced, that it has discontinued them, and in such event, the First Leasehold Mortgagee will have no further liability under such agreement from and after the date which is 30 days after it delivers such notice to the City (except for any obligations accruing prior to 30 days after the date it delivers such notice), and, thereupon, the City will have the unrestricted right to terminate this Lease and to take any other

action it deems appropriate by reason of any Event of Default, and upon any such termination, the provisions of Section 6.1(h) hereof will apply.

(e) From and after the date upon which the City receives the notice described in Section 6.1(c) hereof, the City will not consent to any amendment or modification materially increasing the Lessee's obligations hereunder or terminate this Lease other than as provided in this Article VI (except upon the expiration of the Term) without the prior written consent of the First Leasehold Mortgagee, which consent shall not be unreasonably delayed, conditioned or withheld.

(f) Foreclosure of a First Leasehold Mortgage or any sale thereunder, whether by judicial proceedings or by any power of sale contained in the First Leasehold Mortgage or applicable law, or any conveyance of the Hotel Project from Lessee to the First Leasehold Mortgagee in lieu of the foreclosure or other appropriate proceedings in the nature thereof, shall not:

(i) require the City's consent; or

(ii) provided the First Leasehold Mortgagee has complied with the provisions of this Article VI, constitute a breach of any provision of or a default under this Lease.

(g) If the First Leasehold Mortgagee 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 Section 6.1(h) below, and in connection with any such assignment or transfer, the First Leasehold Mortgagee or any other foreclosure sale purchaser takes back a First Leasehold Mortgage to secure a portion of the purchase price, the holder of such First Leasehold Mortgage shall be a First Leasehold Mortgagee entitled to receive the benefit of this Article VI and all other provisions of this Lease intended for the benefit of a First Leasehold Mortgagee.

(h) Should the Lessee or any First Leasehold Mortgagee not cure the alleged Event of Default as provided in this Section 6.1, the City has the right to terminate this Lease by reason of any uncured Event of Default as provided in this Lease. If this Lease is terminated by the City in accordance with the foregoing or is terminated as a result of the bankruptcy of the Lessee, the City shall give written notification of such termination to the First Leasehold Mortgagee, and the City shall, upon written request of the First Leasehold Mortgagee to the City received within thirty (30) days after such notice of termination, enter into a new lease of the Leased Property with such First Leasehold Mortgagee, as lessee, for the remainder of the Term with the same covenants, conditions and agreements (except for any requirements, which have been fully satisfied by Lessee or City prior to termination or which pertain to the ownership of Lessee) as are contained herein.

(i) The City's delivery of the Leased Property to the First Leasehold Mortgagee, as lessee, pursuant to a new lease shall be:

(i) made without representation or warranty of any kind or nature whatsoever either express or implied;

(ii) First Leasehold Mortgagee, as lessee, shall take such Leased Property "as-is" in its then current condition; and

(iii) upon execution and delivery of such new lease, First Leasehold Mortgagee, as lessee, 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 Lessee named herein and any other occupant (other than as allowed by the First Leasehold Mortgagee, as lessee, or the City) from the Hotel Project.

(j) The City's obligation to enter into such new lease of the Leased Property with the First Leasehold Mortgagee shall be conditioned upon, on the date the new lease is executed:

(i) the City receiving payment all Rent due hereunder through the date of such new lease;

(ii) all monetary defaults hereunder having been cured;

(iii) all non-monetary defaults susceptible to cure having been remedied and cured (or First Leasehold Mortgagee, as tenant, having commenced such cure and continuing to diligently complete the cure); and

(iv) the City receiving payment of all expenses, including reasonable attorneys' fees and disbursements and court costs, incurred by the City in connection with such Event of Default, the termination of this Lease and the preparation of the new lease, together with interest thereon at the lesser of the Default Rate or the highest rate permitted by law, from the due date or the date expended by the City, as the case may be, to the date of actual payment.

(k) With respect to the payment of Rent by the First Leasehold Mortgagee pursuant to this Article VI, if the Rent currently due cannot be determined by the First Leasehold Mortgagee without possession of the Hotel Project, then the First Leasehold Mortgagee may pay the amount of Base Rent which was paid for the immediately previous period, with the adjustment, upward or downward, to be made ninety (90) days after the First Leasehold Mortgagee obtains possession of the Hotel Project.

Section 6.2. No Waiver of Lessee's Obligations or City's Rights. Nothing contained herein or in any Leasehold Mortgage shall be deemed or construed to relieve Lessee 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 Leasehold Mortgagee of any estate, right, title or interest of the City in or to the Leased Property, buildings and structures or this Lease (including the right to Rent, Public Charges, and other monetary obligations of Lessee 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. City's interest in the Leased Property and this Lease, as the same may be modified, amended or renewed, will not at any time be subject or subordinate to (a) any mortgage now or hereafter placed upon Lessee's interest in this Lease, or (b) any other liens or encumbrances hereafter affecting Lessee's interest in this Lease.

ARTICLE VII
REMEDIES: EVENTS OF DEFAULT

Section 7.1. Default by Lessee. Each of the following occurrences shall constitute an "Event of Default" of Lessee that shall entitle City to terminate this Lease and seek any other remedies as set forth in Section 7.2:

(a) if Lessee fails to pay any installment of Rent, including Base Rent, or any part thereof, when the same becomes due and payable;

(b) if Lessee fails to make any payment of Additional Rent, Public Charges or any other payment required to be paid by Lessee hereunder for a period of 10 Business ~~d~~Days after notice thereof from City to Lessee;

~~(c) if Lessee fails to satisfy all of the Possession Conditions by the Outside Possession Date;~~

~~(d)(c)~~ if Lessee fails to Commence Construction no later than the Outside Construction ~~Loan Closing~~Commencement Date;

~~(e)(d)~~ if Lessee fails to satisfy the conditions as more fully set forth in Section 4.1(f) or fails to Complete Construction by the Outside Completion Date;

~~(f)(e)~~ if Lessee fails to cause the Opening Date to occur by the Outside Opening Date;

~~(g)(f)~~ if Lessee conducts on the Leased Property any business, the performance of any service, or the sale or marketing of any product or service by Lessee which is prohibited by the terms of this Lease;

~~(h)(g)~~ if Lessee fails to maintain or provide evidence of all insurance in strict compliance with Article IX hereof and such failure continues for a period of ten (10) Business Days from the date of written notice thereof from City;

~~(i)(h)~~ if Lessee fails to operate the Hotel in strict compliance in all material respects with the Hotel Standards, regardless of the Hotel's AAA rating, and such failure continues for a period of ninety (90) days from the date of written notice thereof from City, or such longer period as may be reasonable under the circumstances, subject to the rights of any First Leasehold Mortgagees and sub-lessees hereunder;

~~(j)(i)~~ if there is a default by Lessee under the Management Agreement and as a result of such default the Management Agreement is terminated and a replacement Management Agreement is not entered into within ninety (90) days thereafter, provided that if Lessee shall have commenced and thereafter shall have continued diligently to replace the Management Agreement within such ninety (90) day period and the Hotel Project continues to operate in the ordinary course of business, then Lessee shall have an additional commercially reasonable period of time not to exceed one hundred eighty (180) days within which to enter into a replacement Management Agreement;

~~(k)(j)~~ if prior to the Opening Date, any lawsuit is filed against the Lessee, which is not dismissed within sixty (60) days and the amount in controversy of which is not covered by insurance and which, if adversely determined, would substantially impair the ability of Lessee to perform ~~each and every one of~~ its obligation to open the Hotel by the Outside Opening Dates

~~under and by virtue of this Lease~~, unless Lessee is contesting such lawsuit in good faith and through appropriate action.

~~(k)~~ if Lessee fails to observe or perform one or more of the other terms, conditions, covenants or agreements of this Lease not otherwise addressed in this Section 7.1 and such failure continues for a period of 45 days after written notice thereof by City to Lessee specifying such failure, unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature reasonably be performed, done or removed, as the case may be, within such 45 day period, in which case no Default will be deemed to exist as long as (i) Lessee commences curing the same within such 45 day period and diligently and continuously prosecutes the same to completion and (ii) after the Opening Date the Hotel 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;

~~(l)~~ if Lessee is generally not paying its debts as such debts become due or admits, in writing, that it is unable to pay its debts as such debts become due;

~~(m)~~ if Lessee makes an assignment for the benefit of creditors;

~~(n)~~ if Lessee files a voluntary petition under Title 11 of the United States Code or if such petition is filed against Lessee and an order for relief is entered, or if Lessee files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code or any other present or future applicable federal, state or other statute or law, or seeks or consent to or acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Lessee, or of all or any substantial part of its properties or of the Leased Property or any interest of Lessee therein ~~or if Lessee takes any corporate action in furtherance of any action described in Section 7.1(e), (p) or (q) hereof;~~

~~(o)~~ if within ~~60-90~~ days after the commencement of any proceeding against Lessee seeking to have an order for relief entered against it as debtor or to adjudicate it a bankrupt or insolvent, or seeking any reorganization, arrangement, composition, readjustment or adjustment, winding-up, liquidation, dissolution or similar relief under the Bankruptcy Code or any other present or future applicable federal, state or other statute or law of any jurisdiction, domestic or foreign, such proceeding has not been dismissed, or if, within ~~60-90~~ days after the appointment, without the consent or acquiescence of Lessee, of any trustee, receiver, custodian, assignee, sequestrator or liquidator of Lessee, or of all or any substantial part of its properties or of the Leased Property or any interest of Lessee therein, such appointment has not been vacated or stayed on appeal or otherwise, or if, within 30 days after the expiration of any such stay, such appointment has not been vacated;

~~(p)~~ if any case, proceeding or other action is commenced or instituted against Lessee seeking the issuance of a warrant of attachment, execution or similar process against all or any substantial part of its property, which case, proceeding or other action results in the entry of an order for any such relief which has not been vacated, discharged, stayed or bonded pending Lessee's appeal therefrom within 30 days from the entry thereof;

~~(q)~~ if Lessee fails, or fails to cause the Hotel Operator, to continuously operate the Leased Property in accordance with Section 13.2 hereof;

~~(s)~~(r) if Lessee vacates or abandons the Leased Property or any portion thereof, or voluntarily abandons construction of any portion of the Hotel Project, which abandonment is not cured within a reasonable time, not less than thirty (30) days, following written notice from City;

~~(t)~~(s) if this Lease or the leasehold estate of Lessee hereunder is assigned, subleased, transferred, mortgaged, pledged or encumbered in any manner without compliance with the provisions of this Lease, or if Lessee attempts to consummate any Transfer (by entering into an agreement to sell or assign its interest in this Lease or the Hotel Project or to sublet any portion of the Leased Property which is not conditioned on satisfying the Transfer provisions of this Lease, 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 thirty (30) days after receiving notice from City;

~~(u)~~(t) if a levy under execution or attachment is made against Lessee or its property and such execution or attachment has not been vacated or removed by court order, bonding or otherwise within a period of 30 days after such execution of attachment;

~~(v)~~(u) if Lessee uses the Leased Property in violation of any of the use restrictions set forth in Section 4.2(b) or violates the ownership restrictions set forth in Section 4.2(g);

and

~~(w)~~(v) if Lessee or Hotel Operator fails to comply with the Room Block Agreement in a manner that constitutes an Event of Default under such agreement.

Section 7.2. Remedies for Lessee's Default.

(a) If an Event of Default occurs hereunder, the City may elect any one or more of the following remedies, without limitation:

(i) enforce strict performance by Lessee;

(ii) terminate this Lease immediately upon the occurrence of any Event of Default;

(iii) enter upon and take possession of the Leased Property without terminating this Lease and without relieving the Lessee of its obligation to pay Rent herein reserved, and as provided by applicable law, expel, remove or dispossess the Lessee and any other Person who may be occupying the Leased Property or any part thereof, any Lessee Improvements, FF&E, personal property or trade fixtures located therein by summary proceedings or otherwise and relet the Leased Property in the name of the City, as landlord, at any rent readily obtainable, and receive the rent thereof; in such event, the City shall have the right to keep in place and use, or remove and store, all of the FF&E, personal property and trade fixtures located therein and Lessee shall pay to the City, upon demand, any deficiency that may arise by reason of such reletting and any and all expenses, costs and brokerage commissions of such reletting, for the remaining term of this Lease;

(iv) immediately revoke the license granted to Lessee pursuant to the Assignment of Plans and Approvals;

(v) with respect to any Event of Default under Sections 7.1(~~v~~u), the City shall be entitled, for each month so long as such Event of Default has not been cured, to liquidated damages in an amount equal to three times the Base Rent being paid at the time of such Event of Default for each month until such Event of Default has been cured; it being acknowledged by the Parties that because of the difficulty and uncertainty of ascertaining actual damages, the liquidated damages provided for herein do not constitute a penalty but represent fair, adequate and reasonable compensation to the City as a result of such Event of Default by Lessee; and in the event that Lessee does not cure such Event of Default within ninety (90) days after the occurrence of such Event of Default, the City shall have the right to terminate this Lease or exercise any other remedy set forth in this Section 7.2(a); and

(vi) pursue any other remedy available to the City at law or in equity.

The City's election of a remedy hereunder with respect to any one or more Events of Default shall not limit or otherwise affect the City's right to elect any of the remedies available to it hereunder with respect to that or any other Event of Default.

(b) If this Lease is terminated as provided in Section 7.2(a)(ii) hereof or Tenant is dispossessed by summary proceedings or otherwise pursuant to Section 7.2(a)(iii) hereof:

(i) Lessee will pay to the City all Rent payable by Lessee hereunder through the date of such termination or date of reentry upon the Leased Property by the City, as the case may be;

(ii) Lessee will be liable for and will pay to the City, as damages, any deficiency (a "Deficiency") between the Rent reserved in this Lease for the period which otherwise would have constituted the unexpired portion of the Term and (A) in the event the Leased Property are not relet by the City, the City's net income (which Lessee acknowledges may be a negative number) during such period from the operation of the Leased Property, determined on a cash basis but otherwise in accordance with GAAP, or (B) if the Leased Property is relet by the City, the net amount, if any, of rents collected under any reletting pursuant to Section 7.2(a)(iii) hereof for any part of such period provided that the Base Rent which will be deemed to have been due for such period will be in an amount equal to the largest amount of Base Rent which was due in each of the three (3) full Rental Years preceding the Event of Default during which the Hotel was in full operation, with all rooms and suites available for rental. Any such Deficiency shall be paid in installments by ~~Tenant~~-Lessee on the days specified in this Lease for the payment of installments of Rent, and the City will be entitled to recover from Lessee each Deficiency installment as the same arise, and no suit to collect the amount of such Deficiency for any installment period will prejudice the City's right to collect the Deficiency for any subsequent installment period by a similar proceeding; and

(iii) whether or not the City has collected any Deficiency installments pursuant to Section 7.2(b)(ii) hereof, the City will be entitled to recover from Lessee, and Lessee will pay to the City, on demand, in lieu of any further Deficiencies, as and for liquidated and agreed final damages with respect to Deficiencies (it being agreed that it would be impracticable or extremely difficult to fix the actual damage), a sum equal to the amount by which the Rent reserved in this Lease for the period which otherwise would have constituted the unexpired portion of the Term (with the amount constituting Base Rent to be deemed to be in an annual amount equal to the largest amount of Base Rent which was due in each of the three (3) full Rental Years preceding the Event of Default during which the Hotel was in full operation) exceeds the then fair and reasonable rental value of the Leased Property for the same period,

both discounted to their present value at the rate of ____percent (___%) per annum, less the aggregate amount of Deficiencies theretofore collected by Landlord pursuant to the provisions of Section 7.2(b)(ii) hereof for the same period; it being agreed that before presentation of proof of such liquidated damages to any court, commission or tribunal, if the Leased Property, or any part thereof, have been relet by the City for the period which otherwise would have constituted the unexpired portion of the Term, or any part thereof, the amount of rent reserved upon such reletting (if a fixed amount) will be deemed, prima facie, to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

(c) If an Event of Default occurs, until such time that the occurrence which caused such Event of Default is remedied or until City elects to terminate this Lease (or Lessee's right to possession) in accordance with the provisions of this Lease, Lessee will indemnify City against and compensate City from and for any and all damages incurred by City as a result of such Event of Default. Subsequent to such Event of Default, Lessee will nevertheless be obligated to continue to pay all Rent.

(d) Upon the termination of this Lease, Lessee shall quit and peaceably surrender the Hotel Project (which includes the Leased Property and the Lessee Improvements), and all property in its possession to the City in accordance with Sections 7.9 and 11.5.

(e) Upon the termination of this Lease, as provided in this Section 7.2, all rights and interest of Lessee in and to the Hotel Project (which includes the Leased Property and the Lessee Improvements), and every part thereof shall cease and terminate, and the City may, in addition to any other rights and remedies it may have, retain all sums paid to it by Lessee under this Lease.

(f) If this Lease is terminated prior to the Outside Completion Date, City shall have the right to cause Lessee to assign to the City (or another Person as "Assignee") all or a portion of its rights under the Hotel Project General Construction Contract, all contracts and agreements with the design professionals, and the Management Agreement, on a non-recourse basis, and to entitle City or Assignee to all of the rights and benefits of Lessee thereunder, and to provide that City or Assignee, upon the assignment of such agreement(s) pursuant to this section, shall only be responsible for amounts due thereunder for work performed or services rendered with City's or Assignee's consent after such assignment.

(g) In the event the City elects to terminate this Lease after an Event of Default and such termination is stayed by order of any court having jurisdiction of any matter relating to this Lease, or by any federal or state statute, then following the expiration of any such stay, the City shall have the right, at its election, to terminate this Lease with five (5) days' written notice to Lessee, Lessee as debtor in possession or if a trustee has been appointed, to such trustee.

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-thirty~~ (6030) 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 Lessee with a written response within said ~~sixty-thirty~~ (6030) 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-thirty (60/30)~~ day period, if the City commences to cure such breach within such ~~sixty-thirty (60/30)~~ day period (or as soon thereafter as is reasonably possible) and diligently continues to cure the breach until completion, but no longer than a total of one hundred twenty (120) days.

Section 7.4. Force Majeure and Economic Force Majeure.

(a) Neither the City nor Lessee, as the case may be, shall be considered in breach of or in default of any of its non-monetary obligations, including suspension of construction activities, hereunder by reason of unavoidable delay due to any Force Majeure Event; provided that the Party claiming such Force Majeure Event delivers written notice to the other Party of such Force Majeure Event within fifteen (15) days after ~~the first~~ becoming aware of the occurrence thereof, which notice shall describe in reasonable detail the events giving rise to the Force Majeure Event; and such Party shall diligently attempt to remove, resolve or otherwise seek to mitigate such delay and keep the other Party advised with respect thereto. Time is of the essence with respect to this provision, and any failure by a Party to timely deliver such notice of a Force Majeure Event shall be deemed a waiver of such Party's right to delay performance as a result of such Force Majeure Event for the period by which such notice is delayed beyond such fifteen (15) day period.

(b) Economic Force Majeure. If, prior to Possession, Lessee is delayed, hindered or prevented from being able to obtain a Construction Loan Commitment or satisfy the Possession Conditions due to Economic Force Majeure, the Outside Date for Possession, Outside Construction Loan Closing Date and the Outside Completion Date shall each be extended for the period of such delay (but not to exceed eighteen (18) months); provided, that, with respect to any such delay by Economic Force Majeure, the Lessee shall give written notice of such occurrence to City within ~~ten-fifteen (15/0)~~ days after Lessee has knowledge of such occurrence, which notice shall describe in reasonable detail the events giving rise to the Economic Force Majeure and Lessee shall diligently attempt to remove, resolve, or otherwise seek to mitigate such delay, and keep City advised with respect thereto. Time is of the essence with respect to this provision, and any failure by Lessee to timely deliver such notice of Economic Force Majeure shall be deemed a waiver of Lessee's right to extend the Outside Date for Possession, Outside Construction Loan Closing Date and Outside Completion Date, as applicable, as a result of such Economic Force Majeure for the period by which such notice is delayed beyond such fifteen (15) day period.

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 Lessee 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 Lessee 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 Lessee. If, at any time and by reason of such default, the City is compelled to pay, or elects to pay, any sum ~~or of~~ 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 Lessee upon demand.

Section 7.7. Room Block Agreement. No termination or expiration of this Lease shall affect or impair the Room Block Agreement, or the obligations imposed upon the Lessee, its successors and assigns, City and the Hotel Site thereunder.

Section 7.8. Dispute Resolution.

(a) City and Lessee agree that any dispute, claim or controversy between them relating to or arising under this Lease ("Dispute") will first be submitted, by written notice, to a designated representative of both City and Lessee who will meet at City's place of business or other mutually agreeable location, or by teleconference, and confer in an effort to resolve such dispute. Any decision of the representatives will be final and binding on the parties. In the event the representatives are unable to resolve any dispute within ten (10) days after submission to them, either Party may refer the dispute to mediation. The exclusive venue for any Dispute not resolved by mediation shall be any state or federal court of competent jurisdiction sitting in or for Miami-Dade County, Florida.

(b) TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE CITY AND LESSEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER OF THEM OR THEIR HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS OR ASSIGNS MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LEASE OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE PARTIES ENTERING INTO THIS LEASE.

Section 7.9. Plans and Data. In the event of a termination of this Lease, Lessee shall deliver to City, copies of any and all Subleases and service and maintenance agreements then affecting the Leased Property, all maintenance records, all warranties or guaranties then in effect which Lessee received in connection with any work or services performed or FF&E installed on the Leased Property, the plans and specifications, surveys, studies, reports, cost estimates, designs, Governmental Approvals, keys, combinations to locks, access codes, records, correspondence and any and all other records, files, documents and other items and materials of every kind and nature whatsoever relating to the development, operation, maintenance or ownership of the Hotel Project, all of which shall be delivered by Lessee to the City within thirty (30) days after such termination. Such materials will be provided to City without any representation or warranty of any kind, express or implied (including regarding the truth, accuracy or completeness thereof and fitness for a particular purpose). The obligations of Lessee under this Section 7.9 survive the termination of this Lease.

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

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

(a) Pursuant to Section 713.10, Florida Statutes, any and all liens or lien rights shall extend to, and only to, the right, title and interest of Lessee in the Hotel Project and shall not encumber or affect the City's fee simple title to the Leased Property.

(b) The right, title and interest of the City in the Leased Property shall not be subject to liens or claims of liens for improvements made by Lessee. Nothing contained in this Lease shall be deemed or construed to constitute the consent or request of the City, express or 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 Hotel Project, or any part thereof, nor as giving Lessee, any Leasehold Mortgagee, Subtenant, lessee, or sub-lessee 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, or any part thereof, or against assets of the City, or City's interest in any Rent and other monetary obligations of Lessee as defined in this Lease.

(c) Notice is hereby given, and Lessee shall cause all construction agreements entered into between Lessee and the Hotel Project General Contractor or other contractor in privity with Lessee or subcontractor in privity with the Hotel Project General Contractor or any other subcontractor to provide that:

(i) City shall not be liable for any work performed or to be performed at the Hotel Project or any part thereof for or on behalf of the Lessee, any Leasehold Mortgagee, Subtenant, lessee, or sub-lessee or for any materials furnished or to be furnished to the Hotel Project, 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, or any part thereof, or any assets of the City, or the City's interest in any Rent or other monetary obligations of Lessee arising under this Lease.

(d) Lessee acknowledges and agrees that the City shall be entitled to record in the public records of Miami-Dade County, Florida a notice of no lien in accordance with Chapter 713.10, Florida Statutes, and that if requested by the City, Lessee will execute and deliver a countersignature to such notice within ten (10) days of the City's request.

Section 8.2. Contesting Liens. If Lessee 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, Lessee, at Lessee's sole cost and expense, shall furnish a cash deposit or surety bond in an amount sufficient to pay such lien and any cost (including interest and penalties), liability or damage arising out of such contest. The lien, if Lessee timely provides the bond described above, shall not be an Event of Default hereunder until thirty (30) days after the final determination of the validity thereof provided that, within that time, Lessee 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 Event of Default hereunder. In the event of any such contest, Lessee 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) Lessee acknowledges and agrees that this Lease is not an agreement between City and any architect, engineer, general contractor, subcontractor, sub-subcontractor, or materialman or any combination thereof for the construction, alteration, repair, or demolition of a building, structure, appurtenance, or appliance on the Leased Property, and therefore that the limitations on indemnity provisions in Section 725.06, Florida Statutes, as such statute may be amended from time to time, do not apply to this Lease. Accordingly, to the fullest extent permitted by law, the Lessee shall defend, indemnify and hold harmless the City and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense, which the City or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature first arising following the Effective Date, and arising out of, relating to or resulting from any of the following occurrences or events, whether by the Lessee or its employees, agents, servants, partners, principals, sub-lessees, ~~invitees, trespassers,~~ or contractors: (i) any default, breach or violation or non-performance of this Lease or any provision thereof; (ii) ~~the use and operation of the Hotel Project or any part thereof;~~ (iii) or the negligent acts or omissions of Lessee or its employees, agents, servants, partners, principals, sub-lessees, ~~invitees, trespassers,~~ or contractors; (iv) ~~any challenge to the validity of this Lease or any Transfer by a third party through legal proceedings or otherwise;~~ or (v) ~~occurrences or events otherwise arising in connection with the subject matter of this Lease,~~ except to the extent any liability, losses or damages ~~is~~ are caused by the ~~gross~~ negligence or willful misconduct of the City or its officers, employees, agents, or contractors.

(b) Lessee shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the City which are covered by this indemnity obligation, where applicable, including appellate proceedings, and shall pay reasonable costs, judgments, and reasonable attorney's fees which may issue thereon.

(c) Lessee expressly understands and agrees that any insurance protection required by this Lease or otherwise provided by Lessee shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City or its officers, employees, agents and instrumentalities as herein provided. The City shall give to the Lessee reasonable notice of any such claims or actions. The provisions of this section shall survive the expiration or early termination of this Lease.

(d) Lessee covenants and agrees that any contracts entered into by Lessee and the Hotel Project General Contractor or other contractors in privity with Lessee for the Work shall include the indemnities required by this Section 8.3 from the Hotel Project General Contractor or other contractors in privity with Lessee in favor of Lessee and the City.

Section 8.4. Environmental Matters.

(a) **Defined Terms.**

(i) "Environmental Condition" means any set of physical circumstances in, on, under, or affecting the Hotel Project that may constitute a threat to or endangerment of health, ~~safety, property,~~ or the environment, including:

(1) ~~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 in violation of Environmental Laws which were introduced to the Hotel Site after the Possession Date;~~

(2) 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;

(3) ~~The presence of~~ any PCB, asbestos or any other substances specifically regulated under the Toxic Substances Control Act, 15 U.S.C. 2601 or regulations issued thereunder, ~~in violation of Environmental Laws which were introduced to the Hotel Site after the Possession Date;~~ and 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~~ equivalent state or local laws.

~~(iii) "Environmental Requirements" means all present and future Governmental Requirements, including 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)~~(iii) "Hazardous Substance" means any substances or materials presently or hereinafter identified to be toxic or hazardous according to any of the Environmental Laws, including 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~~ and 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.

~~(iv)~~(iv) "Environmental Permit" means any Governmental Approval required under any Environmental Law in connection with the ownership, use or operation of the Hotel Project for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances, or the sale, transfer or conveyance of the Hotel Project, and all supporting documentation thereof.

~~(v)~~(v) "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 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:

(1) the existence or release, or continuation of any existence of a release ~~(including 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~~ Hazardous Substance in, into or onto the environment (including the air, ground, water or any surface) at, in, ~~by, or~~ -from ~~or related to~~ the Leased Property in violation of Environmental Laws;

(2) the ~~environmental aspects of~~ the transportation, storage, treatment or disposal of ~~materials any~~ Hazardous Substance in connection with the activities on the Leased Property in violation of Environmental Laws; or

(3) the violation, or alleged violation, of any ~~Governmental Requirements relating to~~ Environmental ~~Requirements~~ Laws on the Leased Property; but excluding any of the foregoing arising ~~solely~~ from the ~~negligent or~~ intentional actions of the City and its agents; provided, however, Environmental Claims shall not include any claim related to the possible existence of a 1,000 gallon storage tank buried in the ground near the existing parking garage elevator shaft on the Leased Property placed on the Leased Property prior to the Effective Date.

~~(vi)~~(vi) "Corrective Action Work" means any and all activities of removal, response, investigation, testing, analysis, remediation taken to:

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

(2) comply with all applicable Environmental ~~Requirements~~ Laws.

(b) **Environmental Indemnification.**

(i) Lessee covenants and agrees, at its sole cost and expense, to defend (with counsel selected by Lessee, 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 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 Hotel 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 Lessee under this Section shall not reduce Lessee's obligations and liabilities under any other provision of this Lease.

Notwithstanding anything to the contrary contained in this Section 8.4, neither the Lessee nor Hotel Project General Contractor, or other contractor in privity with Lessee, has a duty to indemnify the City in connection with any Environmental Claims that are due to the ~~grossly negligent or intentional~~ conduct of the City or its agents, ~~servants, employees or contractors,~~ which ~~grossly negligent or intentional~~ conduct occurs following the date the Lessee completed ~~his-its~~ environmental testing.

Section 8.5. Limitation of City's Liability.

(a) 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.

(b) City will not in any event whatsoever be liable for any injury or damage to Lessee (unless caused by the gross negligence of City, its agents, servants, contractors or employees) or to any other Person happening on, in or about the Leased Property and its appurtenances, nor for any injury or damage to the Leased Property or to any property belonging to Lessee (unless caused by the gross negligence of City, its agents, servants, contractors or employees) or to any other Person which may be caused by any fire or breakage, or by the use, misuse or abuse of any of the Lessee Improvements (including any of the common areas within the buildings, equipment, elevators, hatches, openings, installations, stairways, hallways or other common facilities or the improvements to the land described in this Lease), or which may arise from any other cause whatsoever.

(c) City will not be liable to Lessee or to any other Person for any failure of telephone, computer system, cable TV, water supply, sewage disposal, gas or electric current, nor for any injury or damage to any property of Lessee or to any Person or to the Leased Property caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Leased Property, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by any Person (unless caused by the gross negligence of City, its agents, servants, contractors or employees).

ARTICLE IX
INSURANCE AND RECONSTRUCTION

Section 9.1. General Insurance Provisions. Prior to any activity on the Leased Property, and at all times during the Term, Lessee at its sole cost and expense shall procure the insurance specified below. In addition, Lessee shall ensure its Hotel Project 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 Lessee, its Hotel Project General Contractor or tenants shall be solely responsible for all deductibles contained in their respective policies. All policies procured pursuant to this Article IX shall be subject to maximum deductibles reasonably acceptable to the City. —The City of Miami Beach will be included as an "additional insured" on the commercial general liability, automobile liability, property insurance, and pollution liability policies. The City will also be named as an insured as its interests may appear with respect to the builder's risk policy, and as "loss payee" on Lessee's property insurance and business interruption policies.

Section 9.2. Evidence of Insurance. Prior to Lessee taking possession of the Leased Property, and annually thereafter, Lessee shall deliver satisfactory evidence of the required insurance to the City. Satisfactory evidence shall be: (a) a certificate of insurance for all required coverage; and (b) a copy of the actual insurance policy for builder's risk coverage. The City, at its sole option, may request a certified copy of any or all insurance policies required by this Lease. All insurance policies must specify they are not subject to cancellation or non-renewal without a minimum of 30 days notification by the insurer to the City, the City's Risk Management Division and the First Leasehold Mortgagee, with a minimum of 10 days notification by the insurer to the City, the City's Risk Management Division and the First Leasehold Mortgagee prior to cancellation or non-renewal for non-payment of premium. The Lessee will deliver to the City, at least 30 days prior to the date of expiration of any insurance policy, a renewal policy replacing any policies expiring during the term of this Lease, or a certificate thereof, together with evidence that the full premiums have been paid. Premiums on policies will not be financed in any manner whereby any Leasehold Mortgagee, on default or otherwise, will have the right or privilege of surrendering or cancelling the policies; provided, however, that premiums may be paid in annual installments. All certificates of insurance shall (i) be in a form acceptable to the City, (ii) name the types of policies provided, (iii) refer specifically to this Lease; (iv) evidence the waiver of subrogation in favor of the City as required by Section 9.11 below; and (v) evidence that coverage shall be primary and noncontributory, and that each policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium payment by the City. Lessee shall deliver, together with each certificate of insurance, a letter from the agent or broker placing such insurance, certifying to the City that the coverage provided meets the coverage required under this Lease. The official title of the certificate holder is "City of Miami Beach, Florida." Additional insured certificates for the City shall read "City of Miami Beach, Florida", and shall be addressed to 1700 Convention Center Drive, Miami Beach, FL, 33139, Attn: Risk Management, 3rd Floor.

Section 9.3. Required Coverages. In addition to such insurance as may be required by law, the Lessee shall procure and maintain, or cause others to procure and maintain, without lapse or material change, for so long as it occupies the Leased Property, the following insurance:

(a) **Commercial General Liability Insurance** on a comprehensive basis, including contractual liability, to cover the Leased Property and Lessee's operations and indemnity obligations, in an amount not less than \$5,000,000 combined single limit per occurrence for bodily injury and property damage.

(b) **Automobile Liability Insurance** covering all owned, non-owned and hired vehicles used by the Lessee in connection with its operations under this Lease in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office (ISO).

(c) **Pollution Liability Insurance** in an amount not less than \$10,000,000 per claim, covering third party claims, remediation expenses, and legal defense expenses arising from on-site and off-site loss, or expense or claim related to the release or threatened release of Hazardous Materials at the Leased Property. Such policy shall include an annual policy aggregate in the amount of \$20,000,000.

(d) **Builders Risk Insurance** during the course of construction, issued in the name of the Lessee, the Hotel Project General Contractor and the City as their interests may appear, in amount(s) not less than 100% of the insurable value of the Hotel Project completed structure(s), covering perils on an "All Risk" basis, including flood, earthquake, and windstorm. Policy(s) must clearly indicate that underground structures (if applicable) and materials being installed are covered. Any deductibles are the sole responsibility of the Lessee.

(e) **Commercial Property Insurance** in an amount of 100% of the insurable value of all Lessee Improvements under an "all risk" form, including damage by water, flood, subsistence, tornado, hurricane and earthquake.

(f) **Business Interruption Insurance** coverage utilizing a gross earnings value form with limits equal to twelve (12) months of Lessee's projected Gross Operating Revenues associated with the Leased Property. The City and Lessee shall jointly review Lessee's projected Gross Operating Revenues periodically and the limits of this policy shall be adjusted based on this review.

(g) **Workers' Compensation and Employers Liability Insurance** with limits sufficient to respond to Florida Statute §440. In addition, the Lessee 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.

(h) **Professional Liability**. Lessee shall cause any architects or engineers to maintain architects and engineers errors and omissions liability insurance specific to the activities or scope of work such consultants will perform. If coverage is provided on a "claims made" basis, the policy shall provide for the reporting of claims for a period of five (5) 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.

(i) **Terrorism Insurance.** So long as the Terrorism Risk Insurance Program Reauthorization Act of 2015 ("TRIPRA") or a similar or subsequent statute is in effect, terrorism insurance for "certified" and "non-certified" acts (as such terms are used in TRIPRA or a similar or subsequent statute) in an amount equal to the full replacement cost of the Leased Property plus 12 months of business interruption coverage. If TRIPRA or a similar or subsequent statute is not in effect, then the "all risk" property insurance required pursuant to Section 9.3(e) of this Lease shall not exclude coverage for acts of terror or similar acts of sabotage unless terrorism insurance is not commercially available, in which case, Lessee shall obtain stand-alone coverage in commercially reasonable amounts (for purposes of this clause (i), commercially reasonable amounts shall mean amounts that would be (A) obtained by property owners or lessees of properties located in markets similar to that of the Hotel Project and similar in size and type to the Hotel Project and (B) required by prudent Institutional Lenders or landlords in such similar markets with similar properties).

Section 9.4. Premiums and renewals. Lessee 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 reserves the right, but not the obligation, to review and reasonably revise the insurance requirements every three (3) years, (including but not limited to deductibles, limits, coverages and endorsements) provided such revisions are commercially reasonable, customary and commonly available regarding properties similar in type, size, use and location to the Leased Property and Lessee Improvements and further provided that such coverage is available at commercially reasonable rates (including fiduciary liability and directors and officers liability insurance);

(b) Lessee agrees that City may, if it so elects, at City's expense, have the Lessee 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.

Section 9.6. City May Procure Insurance if Lessee Fails To Do So. If Lessee refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this Lease within thirty (30) days after written notice from the City, 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 Lessee 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 Lessee. Such amounts, together with all interest accrued thereon, shall be paid by Lessee 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 the Lessee Improvements on the Leased Property at any time shall not operate to terminate this Lease or to relieve or discharge Lessee 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 Lessee'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 Lessee 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 Lessee Improvements, or any part thereof, constructed on the Leased Property (including any personal property furnished or installed in the premises) shall have been damaged or destroyed, Lessee 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. Lessee 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 \$250,000 (to be adjusted for inflation in accordance with Section 14.20) or, notwithstanding the cost of repair, will have a material adverse effect on the day to day operations of the Hotel 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 Lessee, if the total recovery is equal to or less than \$1,000,000 (as adjusted for inflation over the Term pursuant to Section 14.20 hereof), except that if an Event of Default has occurred and is continuing hereunder, such proceeds, shall be paid over to the Insurance Trustee and disbursed in accordance with Section 9.9(a)(ii). After the completion of all Restoration Work in accordance herewith, any remaining proceeds shall be paid over to Lessee subject to its obligations to the First Leasehold Mortgagee; and

(ii) to a commercial bank or trust company designated by Lessee and Approved by the City (the "Insurance Trustee"), if the total recovery is in excess of \$1,000,000 (as adjusted for inflation over the Term pursuant to Section 14.20 hereof) or is less than \$1,000,000 but an Event of Default has occurred and is continuing hereunder, to be held by the Insurance Trustee pending establishment of reconstruction, repair or replacement costs and shall be disbursed to Lessee pursuant to the provisions of subparagraph (b) of this Section 9.9.

(b) Disposition of Insurance Proceeds for Reconstruction.

(i) All insurance proceeds shall be applied for the reconstruction, repair or replacement of Lessee Improvements and the FF&E and other personal property of Lessee located on the Leased Property, so that Lessee Improvements, FF&E and such other personal property shall be restored to a condition comparable to the condition prior to the loss or damage but in all cases consistent with the Hotel Standards ~~and in a First Class Quality condition~~ (hereinafter referred to as "Reconstruction Work");

(ii) From the insurance proceeds received by the Insurance Trustee, there shall be disbursed to Lessee such amounts as are required for the Reconstruction Work. Lessee 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 Lessee;

(iii) If the City and Lessee do not agree on the schedule or values, they shall resolve the matter in accordance with Section 7.8; and

(iv) After the completion of the Reconstruction Work, any unused insurance proceeds shall be paid to Lessee.

Section 9.10. Reconstruction.

(a) In the event of any loss or damage by fire or other casualty of or to any of the Lessee Improvements, FF&E and other personal property of Lessee located on the Leased Property, Lessee shall give the City ~~immediate~~ notice thereof as provided in Section 9.8, and Lessee, at its sole cost and expense, whether or not such loss or damage has been insured, and whether or not the 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 personal property ~~ly~~ have been received, and to fully complete such Reconstruction Work as expeditiously as reasonably possible consistent with the nature and extent of the damage. Lessee shall comply in all respects with the provisions of Section 2.15 with respect to any Reconstruction Work.

(b) In the event that Lessee fails to perform the Reconstruction Work in accordance herewith and within a reasonable time after such loss or damage, the City shall have the right to terminate this Lease after thirty (30) days, or such longer time as is reasonably required to complete the Reconstruction Work if not completed within such time period, in which case, upon the City's request, the Lessee shall surrender and return the Leased Property to the City in the same condition existing on the Possession Date, including demolition of all Lessee Improvements and repair and restoration of any property, including the Convention Center, affected by the demolition of the Lessee Improvements, and free and clear of all debts, mortgages, encumbrances and liens.

(c) Notwithstanding the foregoing, if, during the last ~~forty-nineten~~ (49)10 years of the Term, the Lessee Improvements are totally destroyed or so damaged as to render them unusable, then (i) Lessee or the City may terminate this Lease by delivery of written notice of such termination to the other Party not later than sixty (60) days after the occurrence of such casualty, whereupon this Lease will terminate as of the date of such casualty. Upon such termination, the insurance proceeds shall be payable as follows: (i) first, to demolish the Lessee Improvements and clear the site of all Lessee Improvements and debris to the City's reasonable satisfaction, (ii) second to reimburse Lessee for the fair market value of the Lessee Improvements as of the date ef-prior to such loss or destruction and (iii) third, the balance, if any, to the City. If neither the Lessee nor the City timely elect to terminate this Lease in accordance with this Section 9.10(c), Lessee shall restore the Lessee Improvements in accordance with Section 9.10(a) hereof.

Section 9.11. Waiver of Subrogation. Where permitted by law, Lessee hereby waives all rights of recovery by subrogation or otherwise (including, without limitation, claims related to deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage), against City, and its respective officers, agents, or employees.

Section 9.12. Inadequacy of Insurance Proceeds. Lessee's liability hereunder to timely commence and complete restoration of the damaged or destroyed Lessee *Improvements* shall

be absolute, irrespective of whether the insurance proceeds received, if any, are adequate to pay for said restoration.

Section 9.13. No City Obligation to Provide Property Insurance. Lessee acknowledges and agrees that City shall have no obligation to provide any property insurance on any Lessee Improvements or property of Lessee located on the Leased Property. If City does provide any property insurance coverage, Lessee acknowledges that such insurance shall be for the sole benefit of the City and Lessee shall have no right or claim to any such proceeds.

Section 9.14. Compliance. Lessee's compliance with the requirements of this Article IX shall not relieve the Lessee of its liability, or be construed to relieve or limit, Lessee of any responsibility, liability, or obligation imposed under any other portion of this Lease, or by law, including, without limitation, any indemnification obligations which Lessee owes to City.

Section 9.15. Right to Examine. The City reserves the right, upon reasonable notice, to examine the original or true copies of policies of insurance (including binders, amendments, exclusions, riders and applications) to determine the true extent of coverage. The Lessee agrees to permit such inspection and make available such policies at the offices of the City.

Section 9.16. Personal Property. Any personal property of the Lessee or of others placed in the Leased Property shall be at the sole risk of the Lessee or the owners thereof, and the City shall not be liable for any loss or damage thereto for any cause except as a result of the negligence or willful misconduct of the City or its employees, agents or contractors.

ARTICLE X CONDEMNATION

Section 10.1. Complete Condemnation.

(a) If the entire Hotel 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 Hotel Project such that the portion remaining is not sufficient and suitable, on a commercially reasonable basis, 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 Hotel Project or the portion thereof so taken shall be apportioned among the City and the Lessee as of the day immediately prior to the vesting of title in the condemning authority, as follows:

(i) First, but only if the City is not the authority condemning the Hotel 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 City's remainder interest in the Lessee Improvements which have been taken;

(ii) Second, Lessee shall be entitled to the then fair market value of its interest under this Lease and in the Lessee Improvements, less the discounted value of such Lessee Improvements as allocated to the City, together with any and all business damages

suffered by Lessee (subject, however, to the rights of the First Leasehold Mortgagee thereto); and

(iii) the City and Lessee shall each receive one-half (1/2) of any remaining balance of the award, except that the Lessee shall receive the entire remaining balance of the award if the City is the authority condemning the Hotel Project.

Section 10.2. Partial Condemnation.

(a) If there is a Taking of a portion of the Hotel Project, and the remaining portion can, on a commercially reasonable basis 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 Lessee to the extent required, pursuant to the terms of this Lease, for the restoration of the Hotel Project;

(ii) Second, but only if the City is not the authority condemning the Hotel Project, to the City the portion of the award allocated to the fair market value of the Leased Property which is so taken, considered as vacant and unimproved;

(iii) Third, to the Lessee the amount by which the value of Lessee's interest in the Lessee Improvements and the Leased Property were diminished by the taking or condemnation; and

(iv) the City and Lessee shall each receive one-half (1/2) of any remaining balance of the award, except that the Lessee shall receive the entire remaining balance of the award if the City is the authority condemning the Hotel Project.

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

(a) Lessee shall, with ~~due~~-commercially reasonable diligence, restore the remaining portion of the Hotel Project in accordance with the provisions of Sections 9.10(a) 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 Lessee and the City have received their respective shares thereof pursuant to this Article X; and

(c) if the award is insufficient to pay for the restoration, Lessee shall be responsible for the remaining cost and expense.

Section 10.4. Temporary Taking. If there is a Taking of the temporary use (but not title) of the Hotel 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 Lessee hereunder. Lessee 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 and the City shall receive the balance of the award.

Section 10.5. Determinations. If Landlord and the Lessee 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 Utaking. For purposes of this Article, any personal property taken or condemned shall be deemed to be a part of the Lessee 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 Lessee, 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, acting in its proprietary capacity, or by any Person claiming under the City, acting in its proprietary capacity. 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 except for negligent acts or omissions by the City, in no event shall the City be liable for, and Lessee hereby expressly waives, any claim for damages of any kind whatsoever, including damages for loss of income, revenue, profit or value, and whether such damages are compensatory, consequential, punitive or exemplary.~~ Lessee shall have the right to retain its own counsel connected with such proceedings, at Lessee's sole cost and expense.

(b) 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. Lessee shall not knowingly permit, commit or suffer waste or material impairment of the Hotel Project, or any part thereof; provided, however, demolition of existing improvements on the Leased Property existing on the date ~~hereof~~ or redevelopment or reconstruction of the Hotel Project as permitted under this Lease shall not constitute waste.

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

Section 11.4. Ownership of Improvements During Lease.

(a) Prior to the expiration or termination of this Lease, title to the Lessee Improvements shall not vest in the City by reason of its ownership of fee simple title to the Leased Property, but title to the Lessee Improvements shall remain in Lessee.

(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, prior to the expiration of the Term and if, at that time, the First Leasehold Mortgagee shall exercise its option to obtain a new lease for the remainder of the Term pursuant to Article VI, then title to the Lessee Improvements shall automatically pass to, vest in and belong to such First Leasehold Mortgagee or any designee or nominee of such First Leasehold Mortgagee permitted hereunder, until the expiration or sooner termination of the term of such new lease.

(c) The City and Lessee 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 (provided that no First Leasehold Mortgagee has exercised its option to obtain a new lease for the remainder of the Term pursuant to Article VI), 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, of this Lease, title to Lessee Improvements, 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 Hotel Project and owned or leased by Lessee), 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 Lessee Improvements thereon without process of law; and

(b) The City and Lessee 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.

**ARTICLE XII
MAINTENANCE AND REPAIRS**

Section 12.1. Standards Generally. The City and Lessee agree that the manner in which the Hotel Project is developed, operated and maintained is important to the City by reason of its interest in having a convention hotel facility for use by its residents and visitors to the City. Therefore, Lessee hereby agrees to develop, operate and maintain the Hotel Project and the Lessee Improvements thereon (including all FF&E) consistent with the Hotel Standards ~~and in a First-Class-Quality condition~~ and in good order and repair, and will replace the same when necessary with items of similar utility and value in order to maintain such ~~First-Class-Quality condition~~ throughout the Term.

Section 12.2. Utilities. City will not be required to furnish any services, utilities or facilities whatsoever to the Leased Property pursuant to this Lease. Any services *provided to the Leased Property* shall be pursuant to the terms of a separate agreement. ~~Any such agreement~~

~~shall provide, among other things, that any default thereunder by Lessee will also constitute an Event of Default under this Lease, and will further provide that upon the occurrence of any Event of Default under this Lease City may terminate such agreement at its option.~~

Section 12.3. Cleaning. Lessee shall, at its sole cost and expense, perform or cause to be performed, services which will at all times keep the Leased Property and the Lessee Improvements thereon, whether partially or fully constructed, in a clean, neat, orderly, sanitary and presentable condition.

Section 12.4. Removal of Trash. Lessee shall, at its sole cost and expense, store, dispose of, and remove or cause to be removed from the Leased Property all trash and refuse which might accumulate and arise from its use of the Leased Property.

Section 12.5. Maintenance and Repairs.

(a) Lessee shall be exclusively responsible for maintenance and repair of the Leased Property and the Lessee Improvements, (except for the ~~Off-site~~ Site Improvements or to the extent infrastructure maintenance has been transferred by Lessee to a utility company by means of a written contract), to the extent and at the times that are consistent with standard industry practice for each applicable Lessee Improvement. Maintenance and repairs by Lessee, including landscape maintenance, shall be in quality and class equal to or better than the original Work to preserve the Leased Property and Hotel Project in good condition and working order. The Lessee shall repair all damage caused by the Lessee and its employees, agents, independent contractors, patrons, servants, invitees, and trespassers.

(b) In no event shall City be responsible or liable for any maintenance or repair of any Lessee Improvement, fixture, equipment, structure, facility, alteration, or addition thereto on the ~~portion of the~~ Leased Property.

(c) Lessee shall be responsible for complying at its cost with any Governmental Requirements, including construction re-certification of any Lessee Improvement on the Leased Property (other than the ~~Off-site~~ Site Improvements), including the "40-year recertification" requirement under the current building code.

(d) Maintenance and repair of the Hotel Project must be at a level that is in compliance with the Hotel Standards and that will cause the Hotel Project to be in a usable condition at the expiration or termination of this Lease, and with Lessee having expended sufficient funds during the last ten (10) years of this Lease that will cause each Lessee Improvement to be useful and functional and code compliant. During the Term of this Lease, Lessee shall (1) adequately and reasonably fund maintenance reserve accounts for each Lessee Improvement on the Leased Property in amounts that are consistent with standard industry practice applicable to each particular Lessee Improvement, (2) periodically expend funds from such accounts for maintenance purposes in an amount and at a time or times that are customary and ordinary for a sound maintenance program for the Leased Property and consistent with commercial development practices prevailing in South Florida and (3) comply at all times with the terms set forth in the Management Agreement from time to time regarding accrual, maintenance and expenditure of reserves, including FF&E reserves.

Section 12.6. Excavation of Land. Except in connection with the construction of the Hotel Project, or redevelopment or reconstruction of the Hotel Project as permitted under this Lease, no excavation of any of the land shall be made, no soil or earth shall be removed from the

Leased Property, and no well of any nature shall be dug, constructed or drilled on the Leased Property, except as may be required for environmental monitoring purposes, without the prior written Approval by City.

Section 12.7. Water and Sewerage System. The Lessee shall operate and maintain, at its sole cost and expense, all the components of the water, sanitary sewerage and storm drainage facilities constructed by Lessee as part of the Hotel Project within the boundaries of the Leased Property. Once constructed, Lessee shall not make any alterations or modifications to these facilities without the advance written Approval of the City, which approval shall not be unreasonably withheld. Such consent shall be granted if any such alterations or modifications are required to comply with Governmental Requirements.

Section 12.8. Industrial Waste Facilities. The Lessee shall be fully responsible for all industrial wastes on the Leased Property caused or produced by Lessee, its Subtenants or third-parties operating on the Leased Property and the proper disposal thereof, in accordance with applicable Governmental Requirements.

Section 12.9. Inspections. City and/or its designated representatives shall have the right, during normal working hours, after prior reasonable notice to inspect the Leased Property and the Lessee Improvements to identify those items of maintenance, repair, replacement, modification and refurbishment reasonably required of Lessee to keep the Leased Property and the Lessee Improvements in good order and condition. If Lessee has failed to fulfill its maintenance and repair obligations under this Lease, City shall provide written notice and the Lessee shall perform all corrective work identified in such notice within thirty (30) days of receipt of the notice from City; provided, however that if such corrective work cannot be reasonably accomplished within a thirty (30) day period, then the Lessee shall commence the corrective work within that thirty (30) day period and diligently prosecute same to completion. Trash and debris maintenance shall be corrected within two (2) business days following receipt of written notice from City. Failure of City to inspect as aforementioned shall not impose any liability on the City. Nothing in this contractual provision relating to City's inspections shall preclude City from making inspections of the Leased Property in accordance with City's regulatory authority.

Section 12.10. Failure of Lessee to Maintain. If Lessee has failed to properly clean, remove trash and debris, maintain, repair, replace and refurbish the Leased Property as required by this Article XII, the City shall provide to the Lessee a written list of deficiencies, reflecting the amount of time to be reasonably allowed for the Lessee to correct same. If the Lessee fails to correct such deficiencies within the time allowed and has not registered an objection as to its obligation to do so, the City, following fifteen (15) days further written notice to the Lessee, if the Lessee has not corrected the same, may enter upon the Leased Property and perform all work, which, in the reasonable judgment of the City, is necessary and the City shall add the cost of such work, plus twenty-five percent (25%) for administrative costs, to the Rent due hereunder on the first day of the month following the date of such work, and such cost shall be and constitute a part of the Rent. ~~Subsequent to receipt of the further written notice of intent to perform repairs or cleanup from the City, the Lessee shall not undertake performance of such repairs or cleanup without specific prior written authorization from the City.~~

ARTICLE XIII
MANAGEMENT OF HOTEL

Section 13.1. Hotel Standards.

(a) Lessee covenants and agrees that it will utilize the Hotel Standards, as delineated in **Exhibit "B"**, to maintain and operate the Hotel, and operate or cause for the Hotel to be operated in compliance with this Lease, Management Agreement and Governmental Requirements;

(b) Any commercial operations on the Hotel Project, whether conducted by Lessee, an Affiliate of Lessee or any concessionaire, involving any unreasonably noisy, dangerous or obnoxious activities or the leasing or rental of unreasonably noisy, dangerous or obnoxious equipment, 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 Hotel Project in its commercially reasonable judgment; and

(c) Lessee 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 13.2. Covenant to Continuously Operate Hotel.

(a) Subject to the need to make repairs and perform maintenance and any Force Majeure Event in accordance herewith, after the Opening Date, Lessee shall diligently and continuously operate (or cause to be operated) the Hotel for 365 days each year consistent with the Hotel Standards;

(b) Subject to the need to make repairs and perform maintenance and subject to any Force Majeure Events in accordance herewith, after the Opening Date, for each day the Hotel is not operated continuously, the City, in addition to any other remedies available to it under this Lease, shall be entitled to receive a rental which shall be no less per day than the average of the Base Rent payable during the preceding three (3) full Rental Years; and

(c) Notwithstanding the foregoing, Lessee shall have the right from time-to-time to close the Hotel or parts thereof for such commercially reasonable periods of time to make repairs, alterations, remodeling or for any reconstruction after casualty or condemnation or any Force Majeure Event; provided that the Lessee is using commercially reasonable diligent efforts to repair and restore the Hotel or, as applicable, to mitigate the impact of such Force Majeure Events on its operations.

Section 13.3. Hotel Name. Lessee may enter into new Management Agreements or change the name of "flag" of the Hotel so long as such brand or flag is an Approved Brand. In determining whether or not to give any Approval of a brand that is not an Approved Brand, the City may consider, by way of example and not of limitation, the public image of the proposed name or flag, its AAA or other quality classification and whether such image is commensurate with the public image the City desires to project. Provided that no Event of Default is then continuing, Lessee's request for approval shall be deemed approved if (i) the first correspondence from Lessee to City requesting such approval or consent is in an envelope marked "PRIORITY" and contains a bold-faced, conspicuous (in a font size that is not less than fourteen (14)) legend at the top of the first page thereof stating that "FIRST NOTICE: THIS IS A

REQUEST FOR CONSENT UNDER SECTION 13.3 OF THE DEVELOPMENT AND GROUND LEASE AGREEMENT, DATED AS OF _____, 2015, AND FAILURE TO RESPOND TO THIS REQUEST WITHIN TWENTY (20) DAYS MAY RESULT IN THE REQUEST BEING DEEMED GRANTED", and is accompanied by the information and documents required above, and any other information reasonably requested by City in writing prior to the expiration of such twenty (20) day period in order to adequately review the same has been delivered; and (ii) if City fails to respond or to deny such request for approval in writing within the first fifteen (15) days of such twenty (20) day period, a second notice requesting approval is delivered to City from Lessee in an envelope marked "PRIORITY" containing a bold-faced, conspicuous (in a font size that is not less than fourteen (14)) legend at the top of the first page thereof stating that "SECOND AND FINAL NOTICE: THIS IS A REQUEST FOR CONSENT ~~ORDER UNDER~~ SECTION 13.3 OF THE DEVELOPMENT AND GROUND LEASE AGREEMENT, DATED AS OF _____, 2015. IF YOU FAIL TO PROVIDE A SUBSTANTIVE RESPONSE (E.G., APPROVAL, DENIAL OR REQUEST FOR CLARIFICATION OR MORE INFORMATION) TO THIS REQUEST FOR APPROVAL IN WRITING WITHIN FIVE (5) DAYS, YOUR APPROVAL SHALL BE DEEMED GIVEN" and City fails to provide a substantive response to such request for approval within such final five (5) day period.

ARTICLE XIV
MISCELLANEOUS PROVISIONS

Section 14.1. No Partnership or Joint Venture. It is mutually understood and agreed that nothing contained in this Lease is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners, or creating or establishing the relationship of a joint venture between the City and Lessee, or as constituting Lessee as the agent or representative of the City for any purpose or in any manner whatsoever.

Section 14.2. Recording, Documentary Stamps. A memorandum of this Lease, in form mutually satisfactory to the parties, may be recorded by either Party among the Public Records of Miami-Dade County, Florida and the cost of any such recordation, the cost of any documentary stamps which legally must be attached to any or all of said documents shall be paid in full by Lessee. The Parties shall cooperate in structuring the transactions contemplated hereby in such a manner as to reduce such costs, provided such structure shall not have any adverse consequence for the City.

Section 14.3. Florida and Local Laws Prevail. This Lease shall be governed by the laws of the State of Florida. This Lease is subject to and shall comply with the City Code as the same is in existence as of the execution of this Lease and the ordinances of the City of Miami Beach. Any conflicts between this Lease and the City Code shall be resolved in favor of the latter. If any term, covenant, or condition of this Lease or the application thereof to any Person or circumstances shall to any extent, be illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity or becomes unenforceable because of judicial construction, the remaining terms, covenants and conditions of this Lease, or application of such term, covenant or condition to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 14.4. No Conflicts of Interest/City Representatives not Individually Liable. No member, official, representative, or employee of the City shall have any personal interest, direct

or indirect, in this Lease, nor shall any such member, official, representative or employee participate in any decision relating to this Lease which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. No member, official, elected representative or employee of the City shall be personally liable to Lessee or any successor in interest in the event of any default or breach by the City or for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease.

Section 14.5. Notice. A notice or communication, under this Lease by the City, on the one hand, to Lessee, or, on the other, by Lessee to the City shall be sufficiently given or delivered if dispatched by hand delivery, or by nationally recognized overnight courier providing receipts, or by registered or certified mail, postage prepaid, return receipt requested to:

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

To:

With Copies To:

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

With Copies To:

or if such notice is addressed in such other way in respect to any of the foregoing Parties as that Party may, from time-to-time, designate in writing, dispatched as provided in this Section 14.5.

Section 14.6. Estoppel Certificates. The City and Lessee shall, within thirty (30) days after written request by the other, execute, acknowledge and deliver to the Party which has requested the same or to any actual or prospective First Leasehold Mortgagee, a certificate stating that:

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

(b) this Lease as modified represents the entire agreement between the Parties as to this subject matter, or, if it does not, the certificate shall so state;

(c) the dates on which the Term of this Lease commenced and will terminate;

(d) to the knowledge of the certifying Party all conditions under this Lease to be performed up to that date by the City or Lessee, as the case may be, have been performed or satisfied and, as of the date of such certificate, there are no existing defaults, defenses or offsets which the City or Lessee, as the case may be, has against the enforcement of this Lease by the other Party, or, if such conditions have not been satisfied or if there are any defaults, defenses or offsets, the certificate shall so state; and

(e) the Rent due and payable for the year in which such certificate is delivered has been paid in full, or, if it has not been paid, the certificate shall so state.

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

Section 14.7. Provisions not Merged with Deed. Unless otherwise expressed in the instrument of conveyance or transfer, none of the provisions of this Lease are intended to or shall be merged by reason of any deed:

(a) transferring the Hotel Project or any part thereof from Lessee (or its successors or assigns) to the City (or its successors or assigns); or

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

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

Section 14.8. Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of this Lease are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 14.9. Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original. Any such counterparts shall constitute one and the same instrument. This Lease shall become effective only upon execution and delivery of this Lease by the Pparties hereto.

Section 14.10. Successors and Assigns; No Third Party Beneficiaries. Except to the extent limited elsewhere in this Lease, all of the covenants conditions and obligations contained in this Lease shall be binding upon and inure to the benefit of the respective successors and assigns of the City and Lessee. Lessee and the City acknowledge and agree that, except for parties having a security interest in the Hotel Site, as provided in this Lease, no third party shall have any rights or claims arising hereunder, nor is it intended that any third party shall be a third party beneficiary of any provisions hereof.

Section 14.11. Entire Agreement. This Lease and its Exhibits constitute the sole and only agreement of the Pparties hereto with respect to the subject matter hereof and correctly set forth the rights, duties, and obligations of each to the other as of its date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Lease are of no force or effect and are merged into this Lease.

Section 14.12. Amendments. No amendments to this Lease shall be binding on either Party unless in writing and signed by both Parties. The restrictions in Sections __, __ and __ may not be modified except by a 6/7th vote of the City Commission and approval of such modifications by at least sixty percent (60%) of the voters voting thereon in a City-wide referendum, in the same manner as required for approval of the initial Lease pursuant to Section 1.03(b)(3) of the City Charter. The City shall not be obligated to expend any money or undertake any obligation connected with any such amendment proposed by Lessee, or otherwise connected with any action requested by or for the benefit of Lessee under this Lease, and shall be reimbursed by Lessee for all out of pocket expenses (including third party consultants and attorneys) incurred by the City. Prior to the City taking action regarding any such request, Lessee shall deposit with the City the estimated amount of such costs, as reasonably determined by the City.

Section 14.13. Non-Subordination of City's Interest. The City's fee interest in and ownership of the Leased Property and the City's rights and interest in this Lease (including the rights to Rent, Public Charges and other monetary obligations of Lessee to the City under this Lease) shall not be subject or subordinate to or encumbered by any financing for the Hotel Project or lien or encumbrances affecting Lessee's interest in this Lease or Lessee Improvements or by any acts or omissions of Lessee or any Subtenant hereunder. In this regard, the Rent, Additional Rent, Public Charges and other monetary obligations of Lessee to the City under this Lease then payable at any point in time during the Term shall be paid by Lessee to the City and shall be superior in right to all claims or rights hereunder or described above in this Section, including all Hotel Project operating expenses, the payment of debt service, and any distributions of profits to Lessee or any of its Affiliates or owners.

Section 14.14. Authorization and Approvals by the City. All requests for action or approvals by the City shall be sent to the City Attorney for decision as to who within the City, including the City Commission, must act or approve the matter on behalf of the City. The City Attorney will make such determination within three (3) days after request from Lessee.

Section 14.15. Holidays. It is hereby agreed that whenever a notice or performance under the terms of this Lease is to be made or given on a Saturday or Sunday or on a legal holiday recognized by the City, it shall be postponed to the next following business day, not a Saturday, Sunday or legal holiday.

Section 14.16. No Brokers. Lessee shall be responsible for, and shall hold the City harmless with respect to, the payment of any commission claimed by or owed to any real estate broker or other Person retained by Lessee and which is entitled to a commission as a result of the execution and delivery of this Lease. The City similarly shall be responsible for, and shall hold Lessee harmless with respect to, the payment of any commission claimed by or owed to any real estate broker or other Person retained by the City and which is entitled to a commission as a result of the execution and delivery of this Lease.

Section 14.17. No Liability for Approvals and Inspections. Except as may be otherwise expressly provided herein, no approval to be made by the City in its capacity as landlord under this Lease or any inspection of the Work or the Hotel Project by the City under this Lease, shall render the City liable for its failure to discover any defects or nonconformance with any Governmental Requirement.

Section 14.18. Radon. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are

exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the county public health unit for Miami-Dade County.

Section 14.19. Lessee Entity. On the date of execution hereof, Lessee is a _____ [type of entity]. In the event that at any time during the term of this Lease and any extensions and renewals thereof, Lessee is a corporation or an entity other than a _____ [type of entity], then any references herein to member, membership interest, manager and the like which are applicable to a _____ [type of entity] shall mean and be changed to the equivalent designation of such term which is appropriate to the nature of the new Lessee entity.

Section 14.20. Inflation Adjustments. All adjustments for inflation required under this Lease shall be calculated utilizing the United States Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers; U.S. City average (1982-84=100). If the United States Department of Labor should no longer compile and publish this index, the most similar index compiled and published by said Department or any other branch or department of the federal government shall be used for the purpose of computing the inflation adjustments provided for in this Lease. If no such index is compiled or published by any branch or department of the federal government, the statistics reflecting cost of living increases as compiled by any institution or organization or individual designated by the City and generally recognized as an authority by financial or insurance institutions shall be used as a basis for such adjustments.

Section 14.21. Standard of Conduct. The implied covenant of good faith and fair dealing under Florida law is expressly adopted.

Section 14.22. Waiver of Consequential Damages. Notwithstanding anything contained in this Lease to the contrary, in no event shall either Party be liable to the other for any consequential or punitive damages.

Section 14.23. Reservation of Rights. This Lease shall not affect any rights that may have accrued to any Party to this Lease under applicable laws and each Party hereto reserves any and all of such rights.

[signature page to follow]

IN WITNESS WHEREOF, Lessee has caused this Lease to be signed in its name by its _____, and the City of Miami Beach has caused this Lease to be signed in its name by the Mayor, and duly attested to by the City Clerk, and approved as to form and sufficiency by the City Attorney, on the day and year first above written.

WITNESSED BY:

CITY OF MIAMI BEACH, FLORIDA

Print Name:

Print Name:

By: _____
Philip Levine
Mayor

ATTEST

Approved for form and legal sufficiency

By: _____
City Clerk

By: _____
City Attorney

LESSEE

Print Name:

Print Name:

By: _____
Name:
Title:

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, as _____ of _____ Who is personally known to me or who produced _____ as identification.

Notary Public
Commission Number: _____
Commission Expires: _____

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, as _____ of _____ Who is personally known to me or who produced _____ as identification.

Notary Public
Commission Number: _____
Commission Expires: _____

EXHIBIT "A"
ACCEPTABLE OWNER DEFINITION

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

1. Neither the proposed owner nor any Persons with an ownership interest in the proposed owner shall, directly or indirectly, own, operate or manage a Gaming Establishment in Miami-Dade County, Florida; provided, however, that the foregoing restriction shall not prevent a proposed owner who otherwise qualifies as an Acceptable Owner from so qualifying if all Persons owning or Controlling such proposed owner, own or control in the aggregate five percent (5%) or less of the voting securities of any owner, operator or manager of a Gaming Establishment in Miami-Dade County, Florida.

2. The proposed owner, or the Affiliates of the proposed owner or Persons with an ownership interest in the proposed owner, must possess the qualifications, good reputation and financial resources necessary for an interest in the Hotel Project in accordance with this Lease, in a manner consistent with the quality, reputation and economic viability of the Hotel Project.

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

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

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

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

B. "Acceptable Owner Criteria": The foregoing six (6) categories of requirements set forth in paragraph A above are collectively defined as the "Acceptable Owner Criteria."

C. Evaluation of the "Acceptable Owner Criteria": Solely for the purpose of evaluating whether the proposed owner has met the six (6) criteria set forth above, it, he or she shall provide the following information to the Lessee, which shall provide a copy to be reviewed by the City:

1. Information sufficient for the Miami Beach Police Department to perform a background check in accordance with the City of Miami Beach Code;

2. Financial statements reflecting the proposed owner's financial ability to meet the obligations and requirements for purchasing the Hotel Project;

3. A list of all bankruptcies filed by or which the proposed Acceptable Owner was a party-bankrupt, if any;

4. A list of all pending litigation, liens or claims in which the proposed owner is currently involved; and

5. A list of four (4) persons or firms with whom the principals of the proposed owner ~~has~~have conducted business transactions during the past three (3) years. At least two (2) of those references must have knowledge of the proposed owner's debt payment history.

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

1. It is understood and agreed that the City will not unreasonably withhold its consent if the proposed Acceptable Owner complies with the Acceptable Owner Criteria;

2. If a proposed Transfer requires the City's consent, Lessee shall deliver written notice to the City, which shall confirm the identity of the proposed owner, and shall include with such notice:

(i) copies of any applicable operating licenses;

(ii) identification of the hotels owned or managed by the proposed owner or its Affiliates or pincipals;

(iii) the resume of the proposed owner, senior executives, and other key employees thereof, including identification of and duration, of hotel ownership experience; and

(iv) such other evidence as is commercially reasonably necessary to establish that the new entity proposed to be the Acceptable Owner, meets the Acceptable Owner Criteria.

3. The City shall have ~~forty-five~~twenty (~~2045~~) days after the delivery of such written notice and the information required under subparagraphs D(1) and (2) immediately above, to determine whether, on a commercially reasonable basis, the proposed owner meets the Acceptable Owner Criteria.

4. Provided that no Event of Default is then continuing, Lessee's request for approval shall be deemed approved if (i) the first correspondence from Lessee to the City requesting such approval or consent is in an envelope marked "PRIORITY" and contains a bold-faced, conspicuous (in a font size that is not less than fourteen (14)) legend at the top of the first page thereof stating that "FIRST NOTICE: THIS IS A REQUEST FOR CONSENT UNDER SECTION ~~13-3-5.4~~ OF THE DEVELOPMENT AND GROUND LEASE AGREEMENT, DATED AS OF _____, 2015, AND FAILURE TO RESPOND TO THIS REQUEST WITHIN ~~FORTY-FIVETWENTY~~ (45~~20~~) DAYS MAY RESULT IN THE REQUEST BEING DEEMED GRANTED", and is accompanied by the information and documents required above, and any other information reasonably requested by City in writing prior to the expiration of such ~~forty-fivetwenty~~ (20~~45~~) day period in order to adequately review the same has been delivered; and (ii) if City fails to respond or to deny such request for approval in writing within the first ~~thirty-fifteen~~ (30~~15~~) days of such ~~forty-fivetwenty~~ (20~~45~~) day period, a second notice requesting approval is delivered to City from Lessee in an envelope marked "PRIORITY" containing a bold-faced, conspicuous (in a font size that is not less than fourteen (14)) legend at the top of the first page thereof stating that "SECOND AND FINAL NOTICE: THIS IS A REQUEST FOR CONSENT UNDER SECTION ~~13-35.4~~ OF THE DEVELOPMENT AND GROUND LEASE AGREEMENT, DATED AS OF _____, 2015. IF YOU ~~PAIL-FAIL~~ TO PROVIDE A SUBSTANTIVE RESPONSE (E.G., APPROVAL, DENIAL OR REQUEST FOR CLARIFICATION OR MORE INFORMATION) TO THIS REQUEST FOR APPROVAL IN WRITING WITHIN ~~FIFTEEN-FIVE~~ (15) DAYS, YOUR APPROVAL SHALL BE DEEMED GIVEN" and City fails to provide a substantive response to such request for approval within such final ~~fifteen-five~~ (15) day period.

5. If the City notifies Lessee, in writing, within such ~~forty-fivetwenty~~ (45~~20~~)-day period, that the information submitted is, on a commercially reasonable basis, incomplete or insufficient (and specifies in what ways it is incomplete or insufficient), then Lessee shall supplement such information, on a commercially reasonable basis, and the City shall have ~~thirty~~ (30~~20~~) days after such supplemental information is provided to make its determination whether the proposed owner meets the Acceptable Owner Criteria.

6. If the City disapproves the proposed owner, the City shall provide to Lessee specific written, commercially reasonable reasons for such disapproval. The failure to object to the proposed owner within either of the two time periods set forth above shall be deemed to be the approval by the City of the proposed owner as an Acceptable Owner.

7. Any entity approved as an Acceptable Owner must meet the Acceptable Owner Criteria throughout its service as an Acceptable Owner hereunder unless certain of said qualifications were waived by the City, in writing, at the time of original approval.

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

E. Interpretation:

1. All acts and omissions as well as rights and duties shall be done in a commercially reasonable manner, unless the standard of "sole discretion" is used.
2. The implied covenant of good faith and fair dealing under Florida law is expressly adopted.

EXHIBIT "B"
HOTEL STANDARDS DEFINITION

The Lessee shall operate the Hotel, or cause for the Hotel to be operated, so that:

A. it meets a sufficient number of the standards then required to be able to obtain a four-diamond rating from the American Automobile Association ("AAA") or three-star rating by Forbes Travel Guide; or

B. if at any time during the Term of this Agreement either such rating systems are discontinued or the standards for rating systems are materially changed, the Parties shall mutually and reasonably agree to substitute an alternate rating system that is most nearly equivalent to the discontinued or changed rating system.

Notwithstanding the foregoing, Lessee shall be deemed to have satisfied the Hotel Standards as long as it is operating the Hotel Project (or causing the Hotel Project to be operated) in a manner substantially similar to the operation of the following convention center hotels as of the Effective Date: Hilton Americas-Houston, Hilton Orlando, Marriott Marquis Washington DC, San Francisco Marriott Marquis, Hyatt Regency Orlando, Hyatt Regency Denver at the Colorado Convention Center, The Westin Charlotte, and the Sheraton Chicago Hotel and Towers and the Loews Miami Beach.

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

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

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

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

At the end of that period of time, if the City does not agree that the Hotel is being operated at the standards required to obtain a four-diamond rating or the equivalent, then the matter may be resolved in accordance with Section 7.8, using a mediator with substantial experience in the hotel industry.

In the event of a determination that the Hotel Standards are not being met, Lessee shall have six (6) months within which to take the necessary action to meet a sufficient number of the standards as required to be able to obtain a four-diamond rating or the equivalent.

EXHIBIT "C"

BUDGETED IMPROVEMENT COSTS
Hotel Project Costs

Soft Costs

Design Architect	\$	13,551,938
Landscape Architect	\$	Included Above
Other Architectural	\$	Included Above
Traffic Engineer	\$	Included Above
Civil Engineer	\$	Included Above
Misc. Consultants	\$	1,033,500
Legal and Administrative	\$	1,000,000
Real Estate Taxes	\$	4,193,084
Developers Fee	\$	22,424,772
Building Permits	\$	11,120,197
Insurance - Builders Risk	\$	3,545,741
Pre- Opening Expense	\$	6,680,000
Working capital	\$	800,000
Sewer/Water Hook Up	\$	85,000
Art in Public Places	\$	3,643,386
Other	\$	1,282,702
Soft Cost Contingency	\$	20,272,520
Total Soft Cost	\$	89,632,940

Financing

Loan/Equity fees	\$	11,344,436
Construction Period Interest	\$	9,256,783
Operating Interest Reserve	\$	11,503,442
	\$	32,104,661

Construction Costs

Construction Cost Hotel	\$	235,880,136
Skybridge	\$	1,800,000
Construction Contingency	\$	Included Above
Payment & Performance Bonds	\$	2,084,913
FF&E	\$	24,683,024
OS&E	\$	19,264,725
Total Construction Cost	\$	283,712,798
Total Project Costs	\$	405,450,398

EXHIBIT "D"
LEGAL DESCRIPTION OF HOTEL SITE

EXHIBIT "E"
APPROVED PLANS

EXHIBIT "F"
SCHEDULE OF PERFORMANCE
(See Next Page)

EXHIBIT "G"
FORM OF EASEMENTS

EXHIBIT "H"
PRESENTLY PERMITTED DEVELOPMENT

EXHIBIT "I"

PUBLIC FACILITIES

The proposed development will be serviced by those roadway transportation facilities currently in existence as provided by state, county, and local roadways. The proposed development will also be serviced by public transportation facilities currently in existence, as provided by Miami-Dade County, the City of Miami Beach, and such other governmental entities as may presently operate public transportation services within the City of Miami Beach. Sanitary sewer, solid waste, drainage, and potable water services for the proposed development shall be those services currently in existence and owned or operated by Miami-Dade County, the Miami-Dade County Water and Sewer Department, and the City of Miami Beach. The proposed development shall be serviced by those existing educational facilities owned or operated by the Miami-Dade Public Schools District, if applicable. The proposed development shall be serviced by those existing parks and recreational facilities owned or operated by the United States Government within Miami- Dade County, by the State of Florida, by Miami-Dade County, and by the City of Miami Beach. The proposed development shall be serviced by those existing health systems and facilities operated by the United States Government within Miami-Dade County, by the State of Florida, by Miami-Dade County, and by the City of Miami Beach.

The proposed development will also be serviced by any and all public facilities, as such are defined in Section 163.3221(12) of the Act, that are described in the Comprehensive Plan, specifically including those facilities described in the Infrastructure Element and the Capital Improvements Element therein, a copy of which is available for public inspection in the offices of the City Clerk of the City of Miami Beach.

EXHIBIT "J"
PUBLIC RESERVATIONS AND DEDICATIONS

EXHIBIT "K"

REQUIRED DEVELOPMENT PERMITS AND VARIANCES

The following constitutes a generalized list of local permits anticipated as necessary to be approved by the terms of this Agreement:

1. Design Review Board, Planning Board, and/or Board of Adjustment approvals, pursuant to Chapter 118 of the City of Miami Beach Code.
2. Utility Permits
3. Demolition Permits
4. Building Permits
5. Environmental Permits
6. Hazardous Materials Removal Permit, if removal of hazardous materials is found necessary.
7. Public Works Permit, Paving and Drainage
8. Public Works Permit, Water and Sewer
9. Certificates of Use and/or Occupancy
10. Any variances that may be required pursuant to Chapter 118 of the City of Miami Beach Code
11. All other local governmental approvals as may be applicable to the subject property from time to time pursuant to the terms of this Development Agreement.

EXHIBIT "L"
ROOM BLOCK AGREEMENT
(See Attached Document)

03-04-2015 DRAFT

ROOM BLOCK AGREEMENT

by and between

CITY OF MIAMI BEACH, FLORIDA

and

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ROOM BLOCK AGREEMENT

THIS ROOM BLOCK AGREEMENT ("Agreement") made and entered into as of the ____ day of _____, 201__ (the "Effective Date") by and between **City of Miami Beach, Florida** ("City"), a Florida municipal corporation, and _____ ("Lessee"), a Delaware limited liability company, recites and provides as follows.

RECITALS

The City has a material interest in maximizing the quality and performance of convention business attracted to the Convention Center, as hereinafter defined in Section 1.12, and encouraging convention and tourism business in the City.

In furtherance of those goals, and to facilitate the development of a full service convention center hotel connected to the Convention Center, the City has entered into the Development and Ground Lease Agreement ("Lease"), as hereinafter defined in Section 1.14, with Lessee, under which the parties have agreed, among other things, to enter into a room block agreement pursuant to which specific percentages of the Hotel's guest rooms will be reserved for specific periods of time for attendees, participants and planners of conventions and trade shows at the Convention Center. City and Lessee agree that the room block agreement described in the Lease (and, accordingly, this Agreement) constitutes a contract for the provision of services by Lessee to and for the benefit of City, which services are being provided in exchange for the covenants and agreements of City set forth in the Lease.

City and Lessee intend that this Agreement satisfy such room block agreement requirement in the Lease.

Lessee has or will execute and enter into a Management Agreement (as hereinafter defined) with the Initial Hotel Operator pursuant to which, among other things, Lessee shall require, and the Initial Hotel Operator must agree, to perform the obligations assigned to Lessee and/or Operator herein during the term of such Management Agreement and to otherwise operate the Hotel in a manner which complies with this Agreement.

In consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged and confessed by the parties hereto, City and Lessee hereby covenant and agree with each other as follows:

ARTICLE I **DEFINED TERMS**

In this Agreement, these terms shall have the following meanings:

1.01 "18-Month Room Block Request" is defined in Section 3.01(c).

1.02 "Active Negotiations" means (x) for purposes of Section 3.01(b), that Lessee or Operator, on the one hand, and a bona fide potential Hotel guest, on the other hand, have exchanged written correspondence between them that reflects an indication of mutual interest for consummating a transaction whereby such Hotel contracts to block or books guest rooms at

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the Hotel, and neither Lessee or Operator, on the one hand, nor such bona fide potential Hotel guest on the other hand, has indicated that it no longer has any interest in pursuing such negotiations and (y) for purposes of Section 3.02(b), that the GMCVB or the City or its representatives, on the one hand, and a Potential Convention Center Customer, on the other hand, have exchanged written correspondence between them that reflects an indication of mutual interest for consummating a City-Wide Event and neither the GMCVB or the City, on the one hand, nor such Potential Convention Center Customer, on the other hand, has indicated that it no longer has any interest in pursuing such negotiations.

1.03 "Agreement" is defined in this Agreement's preamble.

1.04 "Amended Offer" is defined in Section 3.01(d).

1.05 "Available Guest Rooms" means, as of any date in question, all of the Hotel's guest rooms (including suites), excluding any guest rooms that are reasonably projected to be unavailable on the dates in question due to scheduled renovations, repairs (including, without limitation, repairs due to events of casualty that have occurred), or maintenance, and excluding any of the Hotel's guest rooms that have been condemned in a taking and as to which physical possession is projected to have been taken by the condemnor prior to the date in question.

1.06 "Block Notice" is defined in Section 3.01(d).

1.07 "Block Release Request Notice" is defined in Section 3.02(d).

1.08 "Business Day" means a day other than a Saturday, a Sunday or a day on which national banks in Miami-Dade County, Florida are closed for business. If any action is required to be performed, or if any notice, consent or other communication is given, on a day that is not a Business Day, such performance shall be deemed to be required, and such notice, consent or other communication shall be deemed to be given, on the first Business Day following such non-Business Day. Unless otherwise specified herein, all references herein to a "day" or "days" shall refer to calendar days and not Business Days.

1.09 "City" means the City of Miami Beach, Florida, a municipal corporation of the State of Florida.

1.10 "City Manager" means the Chief Administrative Officer of the City. The City Manager shall be construed to include any duly authorized representatives designated in writing with respect to any specific matter(s) concerning the Room Block Agreement (exclusive of those authorizations reserved to the City Commission or regulatory or administrative bodies having jurisdiction over any matter(s) related to the Lease).

1.11 "City-Wide Event" means a convention, trade show or other event requiring a three (3) night stay, during which a Potential Convention Center Customer (i) needs to use a minimum of 115,000 gross square feet of exhibit or meeting space in the Convention Center and (ii) in connection with such event, requests 1,500 or more guest rooms be made available in hotels in the City (including the Hotel) and surrounding metropolitan areas, in the aggregate, for one or more days while the event is held at the Convention Center (and, potentially, the day preceding the commencement of such event and the day following the conclusion of such event). A City-Wide Event shall also include the annual Orange Bowl football game hosted by the Orange Bowl Committee, and any Super Bowl football game that may take place in Miami-

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Dade County or Broward County (without regard to whether either event utilizes the Convention Center in any way).

1.12 "Convention Center" means the Miami Beach Convention Center located at 1900 Convention Center Drive, Miami Beach, Florida.

1.13 "Cure Period" is defined in Section 2.02(b).

1.14 "Development and Ground Lease Agreement" or "Lease" means that certain Development and Ground Lease Agreement between Lessee and City dated _____, 2015, as may be amended from time to time in accordance with its terms.

1.15 "Effective Date" is defined in this Agreement's preamble.

1.16 "Event Block Minimum Rate" means the lowest rate City may require the Lessee and Operator to quote or charge a Potential Convention Center Customer for a room during a City-Wide Event, as described and determined in accordance with Section 4.01.

1.17 "Event of Default" is defined in Section 8.01.

1.18 "Event Night" means any night during a City-Wide Event (including the day preceding the commencement of and the day following the conclusion of such event, as contemplated in the definition thereof) for which (i) City has exercised its rights under Section 3.01(a) by giving a Room Block Request Notice to the Operator and (ii) in response to such Room Block Request Notice, 250 or more rooms have been booked, blocked or reserved by the Operator either (i) pursuant to a contract with the Potential Convention Center Customer or (ii) pursuant to Initial Offers or Amended Offers that have been accepted or are still outstanding (and, if such contracts are terminated or any of such offers are subsequently terminated or rejected, then any of the blocked rooms that were subject thereto shall no longer be considered blocked for purposes of this definition). If rooms are blocked under this Agreement for multiple City-Wide Events on the same night, that night will be considered to be a single Event Night for purposes of the Maximum Event Night Ceiling but in no event shall any night during a City-Wide Event be considered an Event Night for purposes of the Maximum Event Night Ceiling if City has not given a Room Block Request Notice for that night to the Operator.

1.19 "Event Room Block" means a block of guest rooms (including suites) at the Hotel, offered to or reserved for the attendees of a City-Wide Event in response to a Room Block Request Notice.

1.20 "Force Majeure" means and includes causes without fault and beyond the control of a party, whether or not foreseeable, including, without limitation, fire, explosion, accident, flood, windstorm, earthquake, or other disaster or calamity, disruption of utility service; restrictive new governmental laws or regulations; acts of war (whether declared or undeclared), invasion, blockade, or sabotage; terrorism or threat thereof; riot, civil disturbance, insurrection or acts of public enemies; and strike, lockout or other labor action and inability to procure materials; provided that neither a material disruption of or material adverse change in financial, banking or capital market conditions or a material adverse change in the business, financial condition, operations, assets, liabilities or prospects of either party shall excuse any failure or delay in performance under this Agreement.

1.21 "GMCVB" means the Greater Miami Convention & Visitors Bureau.

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1.22 "Hotel" means the hotel to be constructed by Lessee on the Hotel Site pursuant to the Lease, together with all supporting hotel facilities and amenities.

1.23 "Hotel Site" means the parcel of real property described on Exhibit A attached hereto and made part hereof.

1.24 "Initial Offer" is defined in Section 3.01(b).

1.25 "Managed Hotels" means full-service, convention center hotels within the United States of America operated as first-class hotels containing no less than 800 rentable guest rooms operated under the Operator's brand name and managed by the Operator or any entity controlled by, under common control with or that controls Operator, specifically excluding franchised hotels.

1.26 "Management Agreement" means the hotel operating or management agreement between Lessee and the Operator that exists from time to time, as it may be amended or replaced from time to time.

1.27 "Maximum Event Night Ceiling" means the maximum number of Event Nights in any calendar month during which Lessee or Operator shall be obligated to provide Event Room Blocks pursuant to this Agreement. The Maximum Event Night Ceiling is fourteen (14) Event Nights per calendar month.

1.28 "Maximum Event Room Block" means eighty percent (80%) of all of the Hotel's Available Guest Rooms.

1.29 "Midweek" means Sunday through Thursday, inclusive.

1.30 "Notice" or "notice" means each and every communication, request, reply, or advice required or permitted to be given, made or accepted by any party to this Agreement to any other party to this Agreement, each of which shall be given in writing, and deemed received by the intended recipient, in accordance with Section 9.04.

1.31 "Offer Expiration Date" is defined in Section 3.01(e).

1.32 "Opening" means the opening of the Hotel to the public for business.

1.33 "Operator" means the entity responsible for overseeing the day to day management of the Hotel. The initial Operator (sometimes herein called the "Initial Hotel Operator") of the Hotel is _____, a _____ corporation.

1.34 "Lessee" means the entity defined as "Lessee" in this Agreement's preamble and each subsequent Lessee of all or any part of the Hotel Site. An entity shall be deemed to be the "Lessee" hereunder only during the term of its leasehold of the Hotel Site.

1.35 "Potential Convention Center Customer" means a person, entity, group or association (or any combination thereof) that is planning a City-Wide Event.

1.36 "Public Records Act" is defined in Section 4.04.

1.37 "Rate Quote" is defined in Section 3.01(b).

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1.38 Intentionally Omitted.

1.39 “Room Block Contract” is defined in Section 3.01(f).

1.40 “Room Block Request Notice” is defined in Section 3.01(a).

1.41 “Sales Representative” is defined in Section 3.01(a).

1.42 “Special Event Block Minimum Rate” means, for up to six (6) City-Wide Events per year as determined by City at its sole discretion, the lowest rate City may require the Lessee and Operator to quote or charge a Potential Convention Center Customer for a room for such City-Wide Events, as described and determined in accordance with Section 4.01.

1.43 “Standard of Operation” is defined in Section 6.01.

1.44 “Standard of Operation Failure Notice” is defined in Section 2.02(a)(ii).

1.45 “Suspension Period” is defined in Section 2.02(a).

1.46 “Term” is defined in Section 2.01.

1.47 “Weekend” means Friday and Saturday.

ARTICLE II
TERM OF THIS AGREEMENT

2.01 Commencement of the Term. The term of this Agreement (the “Term”) shall commence on the Effective Date.

2.02 Expiration of Term; Suspension Period.

(a) The Term shall continue until the earlier to occur of:

(i) the date upon which the Convention Center is no longer designated by the City as the City’s principal convention center;

(ii) the date upon which the Convention Center is no longer operated and maintained substantially consistent with the Standard of Operation; provided, that, no expiration of the Term pursuant to this Section 2.02(a)(ii) shall be deemed to have occurred unless and until (1) Lessee has provided to City written notice (the “Standard of Operation Failure Notice”) of any alleged failure by City to operate and maintain the Convention Center in a manner substantially consistent with the Standard of Operation, which notice (to be effective as such) must state with reasonable specificity the reasons why Lessee believes that the Convention Center is no longer being operated or maintained substantially consistent with the Standard of Operation (e.g., if Lessee believes the Convention Center is not being maintained in substantial accordance with the Standard of Operation, Lessee’s notice shall describe the deficiencies in maintenance with reasonable specificity), and (2) City has failed to remedy such failure within two hundred seventy (270) days following receipt of such Standard of Operation Failure Notice (such 270-day cure period to be extended for delays resulting from Force Majeure and, if the nature of the failure is such that the same cannot reasonably be expected to

be cured within said 270-day period, such 270-day period shall be extended such period of time as is reasonably necessary to effect such cure so long as City commences the cure promptly and uses commercially reasonable, diligent efforts to complete such cure as soon as reasonably practicable; the 270-day cure period, as the same may be extended as provided for in this clause, is herein called the "Cure Period"). Notwithstanding the foregoing, City shall have the right to contest Lessee's determination that the Convention Center is not being operated or maintained substantially in accordance with the Standard of Operation by giving Lessee notice of such contest within thirty (30) days following receipt of the Standard of Operation Failure Notice. If City elects to contest Lessee's determination, then the commencement of the Cure Period shall be delayed until the date of determination by a court of competent jurisdiction that the Convention Center was not being operated and maintained substantially consistent with the Standard of Operation; or

(ii) the termination of this Agreement pursuant to Section 8.01 of the Lease.

ARTICLE III
ROOM BLOCK COMMITMENT; RELEASE OF BLOCK

3.01 Room Block. During the Term, City may from time to time require the Operator to offer an Event Room Block to Potential Convention Center Customers in connection with a City-Wide Event in accordance with, and subject to the limitations set forth in, this Agreement. Notwithstanding anything herein to the contrary, City shall not have the right to require the Operator to offer an Event Room Block to Potential Convention Center Customers if (a) the number of Event Nights requested in the Room Block Request Notice for such Event Room Block would cause the Maximum Event Night Ceiling to be exceeded, or (b) the total number of rooms requested to be blocked in such Room Block Request Notice on any Event Night exceeds the number of rooms Operator is required to offer to block pursuant to Section 3.01(b)(i). Subject to the limitations set forth in the preceding sentence and elsewhere in this Article III, the right to require that the Operator so offer the Event Room Block will be exercised in accordance with the following procedures:

(a) A management, sales or booking representative of City or, if authorized by City, the GMCVB (the "Sales Representative"), will notify the Operator that a Potential Convention Center Customer is seeking offers from local hotels to accommodate, among other needs, the guest room needs of the Potential Convention Center Customer for a City-Wide Event (the "Room Block Request Notice"). The Room Block Request Notice will (i) identify the Potential Convention Center Hotel Customer, (ii) if the same is generally available to City, set forth a documented history of the group's room block events for the most recent three year period including a comparison of the number of rooms blocked and the actual number of rooms actually used, (iii) specify each specific date for which the Potential Convention Center Customer will require blocks of guest rooms (including those dates commonly known as "move in" and "move out" dates), and (iv) specify the number of guest rooms in the Hotel the Potential Convention Center Customer is seeking to block on each of the specific dates. Notwithstanding the provisions of Section 9.04 or the definition of "Notice" set forth above, the Room Block Request Notice will be communicated to the Operator in the same manner as such notifications are customarily communicated by the Sales Representative to other hotels in the City.

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However, a copy of all Notices required or permitted to be provided by the Sales Representative or City under this Article III shall be delivered to Lessee, and such notices to Operator shall not be effective unless and until a copy of such notices are delivered to Lessee.

(b) Unless such deadline is extended in writing by the Sales Representative, within five (5) Business Days after Operator's receipt of a Room Block Request Notice for a City-Wide Event that is no sooner than thirty (30) months from the date of such notice (or, if applicable by the operation of Section 3.01(c) below, eighteen (18) months from receipt of such notice), the Operator will deliver to the Potential Convention Center Hotel Customer (with a copy to the Sales Representative and City) an initial written offer in response to the Room Block Request Notice (the "Initial Offer"). In the Initial Offer the Operator will

(i) offer to the Potential Convention Center Customer to block, on each specific date that the Potential Convention Center Customer requires a block of guest rooms as specified in the Room Block Request Notice, the lesser of (A) the actual number of the guest rooms in the Room Block Request Notice for each specific date, or (B) the Maximum Event Room Block after deducting from the Maximum Event Room Block the following:

1. any previously offered room blocks under this Agreement for other City-Wide Events covering such dates, which offers have either been accepted or are still outstanding;

2. any guest rooms released by City pursuant to Section 3.01(j) or Section 3.02 and that have actually been booked by Operator or are the subject of Active Negotiations. If such guest rooms are the subject of Active Negotiations, then at the request of City Lessee and Operator shall (x) attempt to cause such proposed Hotel guest with whom such Active Negotiations are being held to select other dates for the use thereof that would permit Operator to accommodate the room block set forth in the Room Block Request Notice or (y) require that Operator accelerate negotiations with such potential Hotel guest by requiring such potential Hotel guest to execute a contract to block or book such rooms that are the subject of such Active Negotiations within the fifteen (15) Business Days following City's request to Operator under this clause (y), failing which, for purposes hereof, such rooms shall no longer be considered under Active Negotiations; and

3. in the case where the Maximum Event Night Ceiling for such month to which such block relates had previously been reached but, due to subsequent cancelations of bookings there remain, as of the date of request for the Initial Offer, available Event Nights for such month, then less the number of rooms booked, blocked or reserved by Operator (i.e., rooms that were booked or reserved, or were offered by Operator to be booked, blocked or reserved under offers that have either been accepted or are still outstanding) following the date such Maximum Event Ceiling Night had been reached and prior to such cancelations¹, and

¹ The following is an example of the intended operation of this clause (3). Assume that on January 1, 2020, the Maximum Event Night Ceiling was achieved for the month of January 2024. Then assume that, in accordance with its right to do so pursuant to Section 3.01(l), during the month of January 2020 the Operator books 200 room nights for the month of January 2024. Then assume that a block for 400 rooms booked for January 2024 and that comprised part of the Maximum Event Night Ceiling was canceled on February 1, 2020. Then assume that a Room Block Request is delivered on March 1, 2020 for a block in January 2024. The 200

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(ii) quote a specific room rate for a standard single and double room and suites (the "Rate Quote"). In making the Rate Quote, the Operator will take into account seasonality (i.e., using group event guest room rates received in a calendar month as the basis for quotes for the same month in subsequent calendar years), Midweek versus Weekend rates, and special events that occur regularly during the applicable period); provided, that, the Rate Quote shall not take into account non-recurring special events that occur in a particular month which inflate group event room rates (such as Super Bowls, NCAA Men's or Women's basketball tournaments, Major League Baseball playoffs and similar sporting or entertainment events). In addition, rates for groups whose stay consists of both Midweek and Weekend days shall be determined in accordance with Operator's booking policies described in Section 3.01(f). The amount of the Rate Quote in the Initial Offer will be at the sole, but good faith, discretion of the Operator.

(c) Notwithstanding anything to the contrary set forth in Section 3.01(b) or any other provision of this Agreement to the contrary:

(i) the Operator shall offer the Maximum Event Room Block to a Potential Convention Center Customer for a City-Wide Event that will commence between eighteen (18) and thirty (30) months from the date of such notice (a "18-Month Room Block Request"), and Operator shall be obligated to issue an Initial Offer (and otherwise perform its obligations hereunder) for such a City-Wide Event only if the number of rooms requested in such 18-Month Room Block Request are available as of the date of receipt of such Room Block Request Notice (i.e., rooms that (x) have not been booked, blocked, or reserved, y) are not the subject of active negotiations regarding same and (z) have not been previously offered by Operator to be booked, blocked or reserved under offers that have either been accepted or are still outstanding) on the Event Nights for which rooms are requested in such Room Block Request Notice; provided, however, that

(ii) the Operator shall designate one consecutive four (4) day period each calendar month to be able to offer a Maximum Event Room Block to a Potential Convention Center Customer for City-Wide Events commencing between eighteen (18) and thirty (30) months of a potential Event Room Block. Operator shall determine the consecutive four (4) day periods for each respective month during the applicable period and shall notify City of the schedule on a monthly basis.

(d) The Rate Quote included by Operator in the Initial Offer shall be determined in Operator's sole, but good faith, discretion, and in determining such rate, Operator shall be entitled to take into account, among other considerations, the level of food and beverage services that the Operator anticipates the Potential Convention Center Customer will purchase in the Hotel. After reviewing the Initial Offer, the Sales Representative may consult with the Operator regarding the Rate Quote contained in the Initial Offer. If prior to acceptance of the Initial Offer (or any amendment thereto voluntarily offered by the Operator to the Potential Convention Center Customer), City reasonably and in good faith believes that it might be in City's or the City's best interest to compel the Lessee to offer the Potential Convention Center Customer an alternative rate structure, City may, after consultation with the Operator and within thirty (30) days following receipt of the Initial Offer, elect to require (which election shall be communicated by Notice from City to the Operator) the Operator to offer to the Potential Convention Center Customer a rate lower than the rate in the Initial Offer, but in no event lower

rooms booked by Operator in January 2020 would be deducted from the calculation of the Maximum Event Room Block under clause (3).

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than the Event Block Minimum Rate or, for up to six (6) City-Wide Events annually as determined at the City's sole discretion, the Special Event Block Minimum Rate, as applicable (such written election being the "Block Notice"). Upon receipt of the Block Notice, Operator shall, within two (2) Business Days thereafter, amend the Initial Offer by substituting the rate specified by City, which shall be no lower than the Event Block Minimum Rate, as the Rate Quote (the "Amended Offer").

(e) Subject to the remaining provisions of this Section 3.01(e), the Initial Offer or the Amended Offer (if applicable) shall remain open for acceptance by the Potential Convention Customer until the sixtieth (60th) day following the date of the Initial Offer or Amended Offer, as the case may be; provided, that in the case of an Initial Offer or Amended Offer given in response to a 18-Month Room Block Request, then Operator may at any time provide the Potential Convention Center Customer with written notice (the "Acceleration Notice") that such Initial Offer or Amended Offer will expire on the fifteenth (15th) Business Day following the date of such Acceleration Notice unless the Potential Convention Center Customer executes and returns the Room Block Contract to the Operator. If such customer fails to execute and return the Room Block Contract within such fifteen (15)-Business Day period, the offer shall expire, and the Operator shall have no further obligation to City or the Potential Convention Center Customer in regard to such City-Wide Event under the Initial Offer or the Amended Offer, as the case may be. The date of expiration of the Initial Offer or Amended Offer, as the case may be, determined pursuant to this Section 3.01(e) is herein referred to as the "Offer Expiration Date".

(f) If either the Initial Offer or the Amended Offer is accepted by the Potential Convention Center Customer prior to the Offer Expiration Date, Operator shall endeavor to negotiate a binding contract with the Potential Convention Center Customer applying Operator's customary booking policies to the Event Room Block (the "Room Block Contract"), including policies relating to contracts, advance deposits and cancellation, provided that these policies shall adhere in all material respects to the general customs employed by the Operator at its Managed Hotels, if any. Lessee will use its good faith efforts to cause Operator to consider changes to Operator's customary booking policies to the extent necessary to accommodate any prevalent and material local booking customs or practices. If a Potential Convention Center Customer has not for any reason (other than Operator's breach of its obligations set forth in the preceding sentence) signed a contract with the Operator with respect to such Initial Offer or Amended Offer, as the case may be, on or before the Offer Expiration Date, then such offer will expire, whereupon the Lessee shall have no further obligation to City or the Potential Convention Center Customer in regard to such City-Wide Event under the Initial Offer or the Amended Offer, as the case may be. However, if such offer expires at a time when there are more than thirty (30) months (or, by the operation of Section 3.01(c), eighteen (18) months) prior to the first Event Night of the Potential Convention Center Customer's City-Wide Event, nothing in this Agreement shall prohibit City from issuing a new Room Block Request Notice for such City-Wide Event in accordance with, and subject to the provisions of, this Section 3.01.

(g) If a Potential Convention Center Customer signs a Room Block Contract with the Operator but later provides written notice to the Operator that it is terminating such contract, the Operator, after Notice to City from the Lessee or Operator, will have no further obligation to City in regard to the Event Nights covered by the Room Block Request Notice (which shall be deemed released from the obligations hereunder), but only if such written termination notice is given by the Potential Convention Center Customer on a date less than thirty (30) months before the first Event Night. If such notice of termination is given on a date more than thirty (30) months before the first Event Night, then, unless rooms are blocked under

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this Agreement for such Event Nights for another City-Wide Event, the Event Nights covered by the Room Block Request Notice for such City-Wide Event will not be included in calculating the Maximum Event Night Ceiling, and City may again deliver a Room Block Request Notice in accordance with, and subject to the limitations set forth in, this Section 3.01; provided, however, Operator will have no obligation to cancel any bookings to accommodate such subsequent request (for example, as provided in Section 3.01(l)), once the Maximum Event Night Ceiling has been reached the Operator is free to book rooms hereunder for such month and Operator shall not be obligated to cancel any rooms reservations for such month to accommodate a replacement block). City recognizes that the Lessee or Operator may be entitled to collect cancellation fees from such Potential Convention Center Customer and City hereby consents thereto and agrees that City shall have no right or claim to all or any portion of such fees except as provided in the Lease. Similarly, the Lessee recognizes that City may be entitled to collect cancellation fees from such Potential Convention Center Customer pursuant to the contract between City and the Potential Convention Center Customer, if any, and the Lessee hereby consents thereto and agrees that Lessee shall have no right or claim to all or any portion of such fees.

(h) If a Potential Convention Center Customer signs a Room Block Contract with the Operator, then Operator will reserve rooms included in an Event Room Block for such customer for purchase by the persons attending the applicable event until the later of (x) the date required under the Room Block Contract executed with such Potential Convention Center Customer and (y) the sixtieth (60th) day preceding the first scheduled day of the applicable event, after which time any unbooked rooms shall be released from such Event Room Block and may be rented for the dates covered by such Event Room Block at any rate to any person Operator selects without restrictions imposed by this Agreement. If within ninety (90) days prior to the applicable event, the number of rooms actually booked is less than the number of rooms blocked, then Operator may request City to release some or all unbooked rooms and City agrees not to unreasonably withhold such consent. Furthermore, if the group history of the Potential Convention Center Customer (whether in respect of events at the Convention Center or elsewhere) reflects a pattern whereby the block of rooms reserved by such customer is greater than the actual number of rooms used, then the Operator, with the consent of City (which consent shall not unreasonably be withheld), shall have the right to block only such number of rooms which Operator, in the exercise of its professional judgment and based on such history of the customer, believes will be adequate to accommodate the number of rooms which will be actually used by such customer; provided, that such decision of the Operator shall not release or relieve Operator from providing other lodging (in accordance with industry standard for handling overbookings) if the number of rooms so blocked by Operator actually is not adequate to satisfy the actual use of rooms by the Potential Convention Center Customer (up to the amount of rooms included in the Event Room Block pursuant to the contract between Operator and such customer).

(i) Operator shall have the unrestricted right to commit up to twenty (20%) of the Available Guest Rooms on any given date (and any other rooms that are not subject to being blocked by City pursuant to this Agreement) to the Hotel's commercial or group guests. In addition, Operator shall have the unrestricted right to commit any and all rooms not subject to a room block commitment pursuant to this Agreement for any date that is less than thirty (30) months in advance; provided, however, if a 18-Month Room Block Request is delivered to Operator, Operator shall issue an Initial Offer with respect to such request only to the extent required pursuant to Sections 3.01(c)(i) and 3.01(c)(ii).

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(j) If Operator has a potential booking that would not be permitted under the terms of this Agreement, Operator may by notice to City (with a copy to Lessee) request that it be entitled to make such booking. City shall have five (5) Business Days in which to respond to such request by notice to the Operator; provided, that a failure to respond shall be deemed a rejection of such request (but such deemed rejection shall not prevent Operator from making multiple requests for such release).

(k) For the avoidance of doubt, the Operator shall have the right to freely book all rooms within the Hotel on any day which the Convention Center cannot accommodate a City-Wide Event because less than one hundred fifteen thousand (115,000) square feet of meeting or exhibit space is available on such day for use by a Potential Convention Center Customer (such determination to be made as of the time Operator makes or extends an offer to make such booking).

(l) Once the Maximum Event Night Ceiling is reached for a month, the Operator shall have the right to freely book the available rooms at the Hotel for that month, regardless of when the booking is made (e.g., it may be more than thirty (30) months in advance).

(m) Notwithstanding the foregoing, if a Potential Convention Center Customer has (i) a documented history of causing material property damage or unusually heavy wear and tear in connection with group events or (ii) poor credit or a questionable payment history, then Operator shall have the right, at its option, to include in its Initial Offer to such Potential Convention Center Customer security, damage or other deposit requirements that, in Hotel Lessee's judgment exercised in good faith, would compensate Operator and Lessee for the damage, wear and tear or failure to pay (and, notwithstanding anything in Section 3.01(d) to the contrary, but subject to resolution of any dispute described below, City shall not have the right to require Operator to deliver an Amended Offer to such Potential Convention Center Customer that does not include such security, damage or other deposit requirements); provided that (1) Operator shall provide City notice that such Potential Convention Center Customer has a documented history of causing material property damage, unusually heavy wear and tear, poor credit or questionable payment history, as applicable, and also provide notice of its intention to include such (and provide a statement of the amount of the proposed) security, damage or other deposit requirements prior to issuance of such Initial Offer and (2) in such notice Operator shall set forth in reasonable detail the basis for the Operator's conclusions. City shall have the right to reasonably challenge Lessee's conclusion that such Potential Convention Center Customer is a customer described in clauses (i) or (ii) of the first sentence of this paragraph but, for the avoidance of doubt, Operator shall be entitled to deliver an Initial Offer with such additional security, damage or other deposit requirements prior to receipt of notice of any such challenge, and if the parties subsequently agree that such additional requirements are unnecessary, City shall be entitled, if such Initial Offer remains outstanding, to require Operator to issue an amended Initial Offer omitting such requirements. City shall, to the fullest extent permitted by law, keep such conclusions confidential in accordance with Section 4.04. In the event of any such challenge by City, the parties agree to meet and confer and attempt in good faith to reach agreement as to the additional deposit requirements will be placed on any offer given to such customer.

3.02 Release of Block

(a) If the Operator desires to commit a block of more than twenty percent (20%) of the Available Guest Rooms to non-Potential Convention Center Customer business for

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a date more than thirty (30) months in the future, the Operator can request by Notice to City (a "Block Release Request Notice") that City release that block from this Agreement. Each Block Release Request Notice shall specify the dates as to which such request applies and the number of event night rooms to which such request applies. Within five (5) Business Days after receipt of such request, City shall deliver written notice to Operator either (i) approving such release of such requested block for such specific dates and rooms or (ii) disapproving such release. City shall be entitled to make such determination in its sole discretion, subject to Section 3.02(b) below; provided, that if the Block Release Request Notice describes a group that is proposing to contract for regularly recurring events (including on a rotating basis with other municipalities) at the Hotel and/or the Convention Center, City shall consider such request for the release in light of the possible repeat nature of the proposed business. If City fails to either approve or disapprove such request in writing within such five (5) Business Day period, then such request shall, except as set forth in the last two (2) sentences of Section 3.02(b), be deemed denied (but such deemed denial shall not prevent Operator from making multiple requests for such release).

(b) Notwithstanding the foregoing provisions of this paragraph, City shall release the block requested in a Block Release Request Notice unless any of the following are true:

(i) A Room Block Request Notice satisfying the requirements set forth herein has been delivered that covers any of the dates reflected in the Block Release Request Notice, unless any Initial Offer or Amended Offer delivered by Operator in response thereto has expired without the execution by the Potential Convention Center Customer of a Room Block Contract with Operator or, if such a contract was executed, the same has been terminated by the customer;

(ii) The GMCVB or the City is in Active Negotiations with a Potential Convention Center Customer for a City-Wide Event that includes any of the dates covered by the Block Release Request Notice; or

(iii) The dates covered by the Block Release Request Notice have historically been booked in hotels in the City for a City-Wide Event and City reasonably concludes that the release of the block in the Hotel will jeopardize booking of such City-Wide Event.

(iv) Known Release Dates. City will provide Operator a list of known release dates on a periodic basis (not less than semi-annual) identifying all future dates the Convention Center cannot be utilized for City-wide Events due to maintenance, move in/out periods, or any other reason ("Known Release Dates"). If the City subsequently eliminates such dates from a subsequent list of Known Release Dates, such date(s) shall be subject to all applicable provisions of this Agreement, unless rooms have been booked, blocked or reserved by the Operator pursuant to a contract with a hotel customer or group (and, if such contracts are terminated, then any of the blocked rooms that were subject thereto shall no longer be considered blocked for purposes herein).

Notwithstanding anything in Section 3.02(a) to the contrary, if City fails to either approve or disapprove a request Block Release Request Notice within the five (5) Business Day period described in Section 3.02(a), and Operator reasonably believes such release is required pursuant to this Section 3.02(b), then Operator shall have the right to send a second written

notice to City (which second notice shall conspicuously include the following, in capital and bold print letters: "**SECOND NOTICE FOR RELEASE OF BLOCK UNDER SECTION 3.02(b) OF ROOM BLOCK AGREEMENT; FAILURE TO RESPOND WITHIN FIVE BUSINESS DAYS SHALL BE DEEMED APPROVAL OF THE REQUESTED RELEASE**") requesting that it be entitled to make such booking, setting forth in reasonable detail the reason such release complies with Section 3.02(b). If City fails to deliver to Operator written notice disapproving such request within five (5) Business Days of receipt of such second notice, then City shall be deemed to have approved such request.

(c) Operator shall, upon request by City following any release made pursuant to this Section 3.02, use its good faith efforts to accommodate any Event Room Block subsequently requested covering any of the dates for which a release has been provided by City under this Section 3.02.

ARTICLE IV **ROOM BLOCK PRICING**

4.01 Event Block Minimum Rates; Special Event Block Minimum Rates.

(a) The Event Block Minimum Rates and Special Event Block Minimum Rates shall be as follows:

(i) The Event Block Minimum Rate shall be an amount equal to 105% of the average group rate for the applicable period reflected in the Lessee's Initial Projected Event Block Rate Schedule or Lessee's Subsequent Projected Event Block Rate Schedule (each as defined below), as applicable.

(ii) The Special Event Block Minimum Rate shall be an amount equal to 100% of the average group rate for the applicable period reflected in the Lessee's Initial Projected Event Block Rate Schedule or Lessee's Subsequent Projected Event Block Rate Schedule (each as defined below), as applicable.

(b) Concurrent with the execution hereof, Lessee has provided to City a schedule of the projected Event Block Minimum Rate and Special Event Block Minimum Rate for the first five (5) calendar years after the Opening (the "Lessee's Initial Projected Event Block Rate Schedule"). The Lessee's Initial Projected Event Block Rate Schedule shall include a schedule for both Event Block Minimum Rates and Special Event Block Minimum Rates, and will include varying rates for room type and for periods within each applicable calendar year to account for seasonality and day of the week (e.g., Midweek, Weekend). The rates for each such year included in Lessee's Initial Projected Event Block Rate Schedule shall represent Lessee's good faith forecast of the rates that will be included in the pro forma budget for the operation of the Hotel for such year and are the projections and forecasts being used by Lessee in making its decisions, and planning for, bookings in the operation of the Hotel and the conduct of Lessee's business generally.

(c) By no later than January 1 of each year commencing after the date hereof, Lessee shall provide City a schedule of the projected Event Block Minimum Rate and Special Event Block Minimum Rate for the ensuing five (5) calendar year period (each such

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schedule, an “Lessee’s Subsequent Projected Event Block Rate Schedule”). The rates (x) for the first twelve (12) months covered by the Lessee’s Subsequent Projected Event Block Rate Schedule shall be those set forth in the pro forma operating budget for the Hotel for such 12-month period that has been approved by Lessee and Operator, and (y) for each other year covered thereby shall represent Lessee’s and Operator’s then-current good faith forecast of the rates that Lessee and Operator project will be included in the actual pro forma budget adopted for the operation of the Hotel for such years and are the forecasts and projections being used by Lessee in making its decisions, and planning for, bookings in the operation of the Hotel and the conduct of Lessee’s business generally. For each year, subsequent to January 1, Lessee may deliver one (1) updated Lessee’s Subsequent Projected Event Block Rate Schedule, which will replace the Lessee’s Subsequent Projected Event Block Rate Schedule previously delivered for such year.

(d) Each of the Lessee’s Initial Projected Event Block Rate Schedule and each Lessee’s Subsequent Projected Rate Schedule shall, when delivered to City, be accompanied by (i) reasonable evidence that the same has been approved by both Lessee and Operator, and (ii) a certification from Lessee to City indicating that the Event Block Minimum Rate and Special Event Block Minimum Rate for each year set forth therein represents (x) for the first twelve (12) months covered thereby those set forth in the Lessee’s pro forma operating budget for such 12-month period that has been approved by Lessee and Operator, and (y) for each other year covered thereby, Lessee’s and Operator’s good faith forecast of the rates that Lessee and Operator project will be included in the actual pro forma budget adopted for the operation of the Hotel for such year and are the forecasts and projections actually being used by Lessee in making its decisions, and planning for, bookings in the operation of the Hotel and the conduct of Lessee’s business generally.

(e) The rates reflected in the Lessee’s Initial Projected Event Block Rate Schedule and each of the Lessee’s Subsequent Projected Event Block Rate Schedules, as increased up to one hundred and five percent (105%) of such rates, shall be the “Event Block Minimum Rate” for each of the five (5) years covered by, as applicable, the Lessee’s Initial Projected Event Block Rate Schedule or the then current Lessee’s Subsequent Projected Event Block Rate Schedule. The rates reflected in the Lessee’s Initial Projected Event Block Rate Schedule and each of the Lessee’s Subsequent Projected Event Block Rate Schedules, at one hundred percent (100%) of such rates, shall be the “Special Event Block Minimum Rate” for each of the five (5) years covered by, as applicable, the Lessee’s Initial Projected Event Block Rate Schedule or the then current Lessee’s Subsequent Projected Event Block Rate Schedule.

(i) The parties recognize that the Event Block Minimum Rate and Special Event Block Minimum Rate may change each year (but only once per year and then only with the issuance of the Lessee’s Subsequent Projected Event Block Rate Schedule), it being understood that each Lessee’s Subsequent Projected Event Block Rate Schedule (and the rates reflected therein) shall supersede all previously issued Lessee’s Subsequent Projected Event Block Rate Schedules even though the same relate to the same years (the following is an example of the “rolling” nature of the determination of the Event Block Minimum Rate: assume that the Lessee issues, on December 1, 2020, an Lessee’s Subsequent Projected Event Block Rate Schedule. That schedule will cover the period commencing January 1, 2021 and ending December 31, 2025 [the “2021 Schedule”]. Then assume that on December 1, 2021, Lessee issues a Lessee’s Subsequent Projected Event Block Rate Schedule. That schedule will cover the period commencing January 1, 2022 and ending on December 31, 2026 [the “2022 Schedule”]. The 2022 Schedule will, as to any Block Notice issued on or after January 1, 2022, supersede the 2021 Schedule and all prior schedules covering the years 2022, 2023, 2024 and

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2025 and shall govern the determination of the Event Block Rate with respect to such Block Notice).

(ii) If a Block Notice is issued for a City-Wide Event where the first Event Night will occur on a date in a calendar year that is not covered by the then current Lessee's Subsequent Projected Event Block Rate Schedule (i.e., the date of such first Event Night is beyond the five (5) year period covered by the then current Lessee's Subsequent Projected Event Block Rate Schedule), the Event Block Rate reflected in the then current Lessee's Subsequent Projected Event Block Rate Schedule shall be used but shall be adjusted by an usual and customary industry inflation factor as reasonably agreed upon by Lessee, Operator and City.

4.02 General Matters Regarding Rates. All rates described are for single rooms. Double occupancy rooms may be quoted at a rate not greater than twenty percent (20%) above the single room rates. Triple and quad occupancy rooms may be quoted at rates with an increase of not greater than thirty percent (30%) above the single room rates. Suites may be quoted with an increase above standard room rates consistent with market practice, as reasonably determined by the Operator.

4.03 Confidentiality. Subject to its obligations under the Florida Public Records Act (the "Public Records Act") in force in the State of Florida from time to time, City will not disclose any Initial Offer or Amended Offer, any information provided by Operator under Section 3.01(m) or any information obtained pursuant to Section 4.01 to any person or entity other than (i) its employees, accountants, counsel and other consultants who have a need to know such information, (ii) the Lessee and its officers, directors, employees, accountants, counsel and other consultants, (iii) the Lessee's existing and proposed lenders, (iv) Operator and its officers, directors, employees, accountants, counsel and other consultants, (v) prospective purchasers of the Hotel or (vi) in connection with any legal proceeding (or alternative dispute resolution procedure) between City and Lessee and/or Operator, provided that City shall use reasonable efforts to obtain confidential treatment of same. Neither Lessee nor Operator will disclose any information provided by City to Lessee or Operator hereunder to any person or entity other than (1) their respective affiliates, and the employees, accountants, counsel and other consultants of Lessee, Operator and their respective affiliates who have a need to know such information and their respective partners, members, shareholders, and other holders of direct or indirect beneficial interests in Lessee or Operator, (2) the Lessee's existing and proposed lenders and investors and any proposed replacement Operator, (3) prospective purchasers of the Hotel or (4) in connection with any legal proceeding (or alternative dispute resolution procedure) between City and Lessee and/or Operator, provided that Lessee and Operator shall use reasonable efforts to obtain confidential treatment of same.

(a) Subject to City's obligations under the Public Records Act, City shall use its good faith efforts to provide timely written notice to Lessee and Operator of any request received by City pursuant to the Public Records Act requesting information held by City to which Lessee or Operator may assert "confidential business information" or "trade secret" status under the Public Records Act, all for the purpose of providing Lessee and Operator an opportunity to seek to protect such information from disclosure by timely filing an appropriate action in a court of competent jurisdiction seeking non-disclosure of the requested information.

ARTICLE V
STANDARDS OF HOTEL OPERATION

5.01 Standards. At all times during the term of this Agreement, the Lessee shall, to the extent the Hotel is being operated (or, pursuant to the Lease, required to be operated), cause the Operator to operate and manage the Hotel in accordance with the Management Agreement and (to the extent the Hotel is required to be operated pursuant to the Lease) the applicable provisions of the Lease. At all times when there is no Management Agreement, Lessee shall, to the extent the Hotel is being operated, operate, or cause an Operator to operate, the Hotel in a manner generally consistent with the general physical and service standards applicable to other upscale convention center hotels and (to the extent the Hotel is required to be operated pursuant to the Lease) in accordance with the applicable provisions of the Lease.

ARTICLE VI
STANDARDS OF CENTER OPERATION

6.01. Standards. During the Term, City shall operate and maintain the Convention Center to at least the standard of quality consistent with the principal convention centers operated in Orlando, Atlanta, New Orleans, Dallas, Houston, Boston, Chicago, San Francisco, San Diego and Los Angeles, as of the Effective Date (the "Standard of Operation").

ARTICLE VII
NO LIABILITY FOR PROPOSED CONVENTION CENTER CUSTOMER;
LESSEE RESPONSIBILITY TO CAUSE OPERATOR TO PERFORM; INDEMNITY

7.01 No Liability to City. In no event shall City be in any way responsible or liable for the performance by any Potential Convention Center Customer of its obligations under its contract with the Lessee or Operator or for any charges, liabilities or other sums owed by, or liabilities of, such Potential Convention Center Customer (or for those for whom it blocks rooms) to either Lessee or Operator.

7.02 Lessee and Operator Responsibility; Authority to Grant Consents and Make Decisions. Lessee shall cause Operator to perform all of the covenants and agreements of the Operator under this Agreement, and to cause the Operator to observe all of the covenants and agreements of Operator hereunder, and by entering into a Management Agreement Operator shall, notwithstanding any contrary provision of its Management Agreement, be directly responsible to City for the performance of the Operator's obligations hereunder. Furthermore, all actions, consents, decisions, elections, offers, and determinations made hereunder by the Operator with respect to covenants and obligations of the Operator under this Agreement shall be binding upon both Lessee and Operator for purposes of this Agreement. As of the Effective Date, Lessee has delegated the performance of the obligations and rights assigned to the Operator hereunder to the Initial Hotel Operator under a Management Agreement (for so long as the same remains in effect) and, upon its termination, shall delegate any or all of such responsibilities hereunder to any subsequent Operator pursuant to a subsequent Management Agreement, but no such delegation shall release or relieve Lessee from its obligation to perform, or cause to be performed, all of its covenants and agreements set forth herein.

All consents, decisions, waivers, and determinations to be made or given hereunder by City may be made and given by the City Manager (or any person designated from time to time by the City Manager by Notice to Lessee and Operator) and no inference to the contrary shall

be made because the defined term "City" is used in some places in this Agreement and the phrase "City Manager" is used in others.

7.03. Indemnification. The Lessee shall indemnify, defend and hold harmless the City and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the City or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the Room Block Agreement by the Lessee, Operator, or their respective employees, agents, servants, partners, principals or subcontractors. The Lessee shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. The above indemnification provisions shall survive the expiration or termination of this Agreement.

ARTICLE VIII **EVENTS OF DEFAULT**

8.01 Default. A default under the terms of this Agreement shall occur if any party hereto shall default in the performance of any of the terms, conditions or covenants contained in this Agreement to be performed or observed by it, and such party does not remedy such default within thirty (30) days after Notice or, if the default is of such character as to require more than thirty (30) days to remedy, then if such party fails to commence to cure and correct the default within said thirty (30) day period and thereafter prosecute such corrective action diligently and without interruption and complete the cure thereof within ninety (90) days following the original Notice of such default (an "Event of Default"). Notwithstanding the foregoing, the failure of Lessee or Operator to comply with the provisions of Article III hereof within the time frames set forth therein shall, if not cured within three (3) Business Days following written notice from City to Lessee and Operator, constitute an Event of Default by Lessee hereunder without the need of any additional Notice and without any further opportunity to cure such Event of Default. All Notices of default shall be provided to Lessee and to Operator and shall also be given to Lessee's mortgagee (provided such mortgagee has provided Notice to City of its name and address where Notices to it hereunder are to be sent).

8.02 Remedies. If an Event of Default shall have occurred because of a breach of any provision hereof by City, on the one hand, or Lessee on the other hand then the nondefaulting party shall have the right, at any time after the occurrence of said Event of Default to (i) initiate and thereafter prosecute an action in equity for the specific performance of any covenants or obligations to be performed by the defaulting party hereunder (City shall also have the right to seek and obtain an order of specific performance against the Operator so as to compel Operator, in its capacity as such under the Management Agreement, to comply herewith) or (ii) exercise such other rights as shall be available at law or in equity. In no event, however, shall this Agreement be terminated due to an Event of Default (provided that the foregoing shall not limit the provisions of Section 2.02).

Each party acknowledges and agrees that its covenants, obligations and agreements set forth in this Agreement are a material and fundamental inducement to the City in executing and delivering the Lease and any other agreements referenced therein, such that *actual damages*

may not be an adequate remedy at law for the breach hereof by City, the Lessee or the Operator. Accordingly, any party shall be entitled to seek relief mandating action by City, the Lessee and/or Operator hereunder in accordance with this Agreement. In addition, each party recognizes and agrees that monetary damages could not be calculated to compensate the other party for any breach by the defaulting party of the covenants and agreements contained in this Agreement. Each party may restrain and enjoin any breach or threatened breach of any covenant, duty or obligation of the other party contained in this Agreement without the necessity of (i) posting a bond or other security, (ii) any showing of irreparable harm, balance of harms, consideration of public interest or the inadequacy of monetary damages as a remedy, or (iii) that the administration of an order for injunctive relief would be impracticable. In the event of any breach or threatened breach of any covenant, duty or obligation contained in this Agreement, the party breaching (or threatening breach) stipulates and agrees that the balance of hardships which weigh in favor of injunctive relief and that non-breaching party may seek and obtain injunctive or other form of ancillary relief from a court of competent jurisdiction in order to maintain the status quo and enforce the terms of this Agreement on an interim basis pending the outcome of the dispute or controversy hereunder.

Lessee agrees to include in each Management Agreement a provision similar to the foregoing whereby the Operator makes such agreements to Lessee with respect hereto and specifically agrees that City shall have the right to specifically enforce against the Operator the provisions of this Agreement.

8.03 Lessee's Reservation of Rights. Notwithstanding anything to the contrary contained in this Agreement, this Agreement shall in no way limit Lessee's or Operator's rights and remedies against a Potential Convention Center Customer resulting from such Potential Convention Center Customer's default under a contract with Lessee or Operator.

ARTICLE IX **ADDITIONAL PROVISIONS**

9.01 Exculpation. The liability of Lessee (and of any successor "Lessee") under this Agreement shall be limited to its interest in the Hotel. City agrees that none of the Lessee's or Operator's direct or indirect partners, members, managers, joint venturers, shareholders, directors, officers, agents and employees shall have any personal liability with respect to, or arising out of, this Agreement. In no event shall any officer, director, agent, or consultant of City, nor any employee or public official of the City, ever have any personal liability with respect to or arising out of this Agreement.

Nothing within this Section 9.01 shall limit the right of any party to seek specific performance of the terms and provisions of this Agreement as provided in Article VIII.

9.02 Miscellaneous. If any term of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term shall not be affected thereby. This Agreement may be changed, waived, modified or supplemented only by an instrument in writing signed by Lessee and City. The headings in this Agreement are for purposes of reference only and shall not limit or define the meaning hereof. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

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9.03 Estoppel Certificate. Within ten (10) Business Days after request therefor by any party hereto or by Operator or by the holder of any loan made to Lessee or Operator, the other party(ies) and Operator shall execute and deliver to the requesting party a statement in writing and reasonably satisfactory to the requesting party and directed to the requesting party (and, if requested, to the holder of any loan made to Lessee or Operator) certifying to such factual matters as may be reasonably requested by such requesting party, including without limitation (if such be the case) that (a) this Agreement is unmodified and in full force and effect, (b) to the certifying party's knowledge the requesting party is not in default hereunder or, if in default, the nature thereof in reasonable detail, and (c) there are no defenses or offsets to the Agreement claimed by the other party.

9.04 Notices. Each Notice to be provided or given hereunder must be in writing (in some instances in this Agreement the words "written Notice" or "notice in writing" may be used and in others simply the word "Notice" or "notice" may be used; no inference is to be drawn therefrom as all Notices must be in writing) and must be delivered or provided in one of the following methods: (a) certified mail, return receipt requested, postage pre-paid and addressed to the party to whom such Notice is intended to be delivered; or (b) personal delivery to the addressee by courier or other means of hand delivery. Notice delivered by certified mail pursuant hereto shall be effectively given and received on the third (3rd) business day following deposit of the same in the United States Mail, postage pre-paid, addressed properly to the party to whom such notice intended. Notice by personal delivery shall be effectively given and received upon acceptance thereof by the addressee as confirmed in writing by a receipt executed by and retained by the party delivering such Notice.

to City:

City of Miami Beach
1700 Convention Center Drive

Miami Beach, Florida 33139

Attention: _____

with a copy to:

City Attorney's Office
City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

to the Lessee:

with a copy to:

to the Operator:

Any mortgagee, trustee or beneficiary under any mortgage or deed of trust on the Hotel may by Notice to the parties set forth hereinabove designate an address to which Notices to it hereunder shall be sent. Any such party may from time to time by Notice as herein provided, designate a different address to which Notices to it shall be sent.

9.05 Transfer of Lessee's or Operator's Interest.

(a) In the event of the sale, assignment or transfer by Lessee of its fee interest in the Hotel Site (other than a collateral assignment to secure a debt of Lessee) to a successor in interest (who shall, upon acceptance of title to or an interest in the Hotel Site or any part thereof, be deemed to have assumed the obligations of Lessee hereunder arising from and after the date of such acceptance), the transferring Lessee shall be released or discharged from all of its covenants and obligations hereunder, except such obligations as shall have accrued prior to any such sale, assignment or transfer; and City agrees to look solely to such successor in interest of Lessee for performance of such subsequently occurring obligations. Notwithstanding the provisions of the preceding sentence, any successor Lessee hereunder shall in all respects be obligated to honor any contract or agreement previously executed with a Potential Convention Center Customer in accordance with its terms and shall be bound by any outstanding Initial Offers or Amended Offers, each Room Block Request Notice and the Event Rate then in effect subject to and in accordance with the provisions of Article III.

(b) In the event that the Management Agreement with any Operator shall expire or terminate for any reason then the Operator under such Management Agreement shall be relieved from any obligations arising hereunder from and after the date upon which, as a consequence thereof, such Operator is no longer operating the Hotel. Lessee shall be obligated to secure the written consent and agreement of any replacement third-party Operator to comply with all of the terms, provisions and conditions set forth herein; provided, that, a failure by the Lessee to do so shall in no way release or relieve Lessee or any such third-party replacement Operator from performing the obligations of the Lessee and Operator hereunder.

9.06 Superiority of Agreement; Covenant Running with the Hotel Site. The provisions of this Agreement shall constitute a restrictive covenant running with the Hotel Site binding upon each Lessee thereof, and any and all operators or managers of the improvements thereon, and each and every other person or entity claiming or holding any interest in the Hotel Site, shall inure to the benefit of the City, and shall apply to any hotel now or hereafter located on the Hotel Site, or any portion thereof.

9.07 Gender; Singular and Plural. As used herein, the neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes a corporation, partnership or other legal entity when the context so requires. The singular number includes the plural, and vice versa, whenever the context so requires.

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9.08 Nature and Extent of Agreement. This Agreement contains the complete agreement of the parties regarding the terms and conditions of the Agreement. There are no oral or written conditions, terms, understandings or other agreements pertaining to the room block arrangements which have not been incorporated herein.

9.09 Governing Law. This Agreement shall be governed as to performance, interpretation and jurisdiction by the laws of the State of Florida, without regard to conflicts of law rules. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall be in Miami-Dade County, Florida.

9.10 Binding Effect. Subject to express provisions hereof to the contrary, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns during the Term hereof. Furthermore, and notwithstanding any provision hereof to the contrary, (a) the City is an express, intended, third party beneficiary of the obligations, duties and covenants of the Lessee hereunder, (b) the City has the right to enforce all of the covenants, obligations and agreements of the Lessee hereunder, (c) City may at any time, without the need of prior notice to or consent from the Lessee, assign this Agreement to the City or to any other entity designated by the City (provided that no such assignment shall be effective against Lessee until Notice thereof is provided to Lessee, and provided further that the City expressly assumes all of the obligations of City hereunder and agrees to be bound by the terms and provisions of this Agreement) and (d) this Agreement shall automatically be deemed assigned and transferred to the City upon any dissolution of City (but only if the City expressly assumes all of the obligations of City arising hereunder from and after the date of such assignment [and not attributable to a default by City arising prior to the date of such assignment or transfer] and agrees to be bound by the terms and provisions of this Agreement). In addition, the Operator shall be an express third party beneficiary of the obligations, duties and covenants of City hereunder.

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Each of the parties hereto have caused this Agreement to be duly executed by their lawfully authorized representatives effective as of the Effective Date.

Lessee:

[name]

By: _____
Name: _____
Title: _____

CITY OF MIAMI BEACH, FLORIDA

By: _____
Philip Levine
Mayor

Approved for form and legal sufficiency

By: _____
City Attorney

ATTEST

By: _____
City Clerk

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EXHIBIT A
HOTEL SITE

EXHIBIT "M"
OWNERSHIP INTERESTS IN LESSEE

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EXHIBIT "N"

UNIFORM SYSTEM SUMMARY OF OPERATING STATEMENT

(See attached pages)

Miami Beach Convention Center Hotel

800 Keys

Subject Property	Year 1				Year 2				Year 3				Year 4				Year 5			
	Amount				Amount	Growth			Amount	Growth			Amount	Growth			Amount	Growth		
Occupancy %	70.0%				75.5%	7.9%			78.0%	3.3%			79.5%	1.9%			79.5%	0.0%		
ADR	\$259.30				\$284.65				\$311.61				\$324.08				\$333.80	3.0%		
RevPAR	\$181.51				\$214.91	18.4%			\$243.06	13.1%			\$257.64	6.0%			\$265.37	3.0%		
Total RevPAR	\$286.68				\$337.36				\$378.06				\$399.57				\$411.64			
Occupied Rooms	204,400				220,460				227,760				232,140				232,140			
Available Rooms	292,000				292,000				292,000				292,000				292,000			
Operating Revenues	Amount	POR	PAR	%	Amount	POR	PAR	%	Amount	POR	PAR	%	Amount	POR	PAR	%	Amount	POR	PAR	%
Rooms	53,000,307	259.30	181.51	63.3%	62,753,851	284.65	214.91	0.0%	70,973,227	311.61	243.06	64.2%	75,232,268	324.08	257.64	64.5%	77,489,236	333.80	265.37	64.5%
Combined F&B	26,572,000	130.00	91.00	31.7%	30,423,480	138.00	104.19	0.0%	33,879,300	148.75	116.03	30.6%	35,401,350	152.50	121.24	30.3%	36,463,391	157.08	124.87	30.3%
Spa	206,600	1.50	1.05	0.1%	1,157,115	5.25	3.96	0.0%	1,366,560	6.00	4.68	1.2%	1,450,075	6.25	4.97	1.2%	1,520,517	6.55	5.21	1.3%
Telecommunications	592,760	2.90	2.03	0.7%	617,288	2.80	2.11	0.0%	642,283	2.82	2.20	0.6%	659,278	2.84	2.26	0.6%	679,056	2.93	2.33	0.6%
Minor Operating Departments	684,740	3.35	2.35	0.8%	760,697	3.45	2.61	0.0%	808,548	3.55	2.77	0.7%	842,668	3.63	2.89	0.7%	867,948	3.74	2.97	0.7%
Parking Garage	1,931,580	9.45	6.62	2.3%	2,145,847	9.73	7.35	0.0%	2,283,409	10.03	7.82	2.1%	2,397,140	10.33	8.21	2.1%	2,469,055	10.64	8.46	2.1%
Rentals & Other Income	623,420	3.05	2.14	0.7%	650,357	2.95	2.23	0.0%	674,170	2.96	2.31	0.6%	689,456	2.97	2.36	0.6%	710,139	3.06	2.43	0.6%
Total Operating Revenues	83,711,407	409.55	286.68	100.0%	98,508,935	446.83	337.36	100.0%	110,627,497	485.72	378.86	100.0%	116,673,035	502.60	399.57	100.0%	120,199,342	517.79	411.64	100.0%
Departmental Expenses	Amount	POR	PAR	%	Amount	POR	PAR	%	Amount	POR	PAR	%	Amount	POR	PAR	%	Amount	POR	PAR	%
Rooms	12,621,700	61.75	41.23	23.8%	14,033,302	63.70	49.09	22.4%	15,100,488	66.80	51.71	21.3%	15,808,734	68.10	54.14	21.0%	16,282,996	70.14	55.76	21.0%
Combined F&B	14,614,600	71.50	50.05	35.0%	16,185,291	73.42	55.43	33.2%	17,684,955	77.65	60.57	32.2%	18,408,702	79.30	63.04	32.0%	18,960,963	81.68	64.93	32.0%
Spa	398,580	1.95	1.37	130.0%	1,099,544	4.99	3.77	95.0%	1,270,901	5.58	4.35	93.0%	1,347,863	5.81	4.62	92.9%	1,411,081	6.09	4.84	93.0%
Telecommunications	770,588	3.77	2.64	130.0%	790,129	3.58	2.71	128.0%	770,740	3.38	2.64	120.0%	791,133	3.41	2.71	120.0%	814,867	3.51	2.79	120.0%
Minor Operating Departments	684,740	3.35	2.35	100.0%	780,269	3.31	2.50	96.0%	768,121	3.37	2.63	95.0%	792,108	3.41	2.71	94.0%	815,871	3.51	2.79	94.0%
Parking Garage	1,062,369	5.20	3.64	55.0%	1,180,216	5.35	4.04	55.0%	1,255,875	5.51	4.30	55.0%	1,318,427	5.68	4.52	55.0%	1,357,980	5.85	4.65	55.0%
Total Departmental Expenses	30,152,577	147.52	103.26	36.0%	34,028,752	154.35	116.54	34.5%	36,851,119	161.80	126.20	33.3%	38,466,967	165.71	131.74	33.0%	39,646,758	170.79	135.78	33.0%
Departmental Profit	53,558,830	262.03	183.42	64.0%	64,480,184	292.48	220.82	65.5%	73,776,378	323.92	252.66	66.7%	78,206,067	336.89	267.83	67.0%	80,552,583	347.00	275.87	67.0%
Operating Expenses	Amount	POR	PAR	%	Amount	POR	PAR	%	Amount	POR	PAR	%	Amount	POR	PAR	%	Amount	POR	PAR	%
Administrative and General	5,372,800	26.29	18.40	6.4%	5,810,880	26.36	19.90	5.9%	6,190,400	27.18	21.20	5.6%	6,453,290	27.80	22.10	5.5%	6,646,796	28.63	22.76	5.5%
Sales and Marketing	4,380,000	21.43	15.00	5.2%	4,774,200	21.66	16.35	4.8%	5,066,200	22.24	17.35	4.6%	5,314,400	22.89	18.20	4.6%	5,473,832	23.58	18.75	4.6%
Utilities	3,197,400	15.64	10.95	3.8%	3,337,560	15.14	11.43	3.4%	3,474,800	15.26	11.90	3.1%	3,620,800	15.60	12.40	3.1%	3,729,424	16.07	12.77	3.1%
Property Operations and Maintenance	3,431,000	16.79	11.75	4.1%	3,547,800	16.09	12.15	3.6%	3,649,000	16.02	12.50	3.3%	3,758,470	16.19	12.87	3.2%	3,871,224	16.68	13.26	3.2%
Program Fee	2,120,012	10.37	7.26	2.5%	2,510,154	11.39	8.60	2.5%	2,838,929	12.46	9.72	2.6%	3,009,291	12.96	10.31	2.6%	3,099,569	13.35	10.61	2.6%
Total Undistributed Expenses	18,501,212	90.51	63.36	22.1%	19,980,514	90.63	68.43	20.3%	21,219,329	93.17	72.67	19.2%	22,156,161	95.44	75.88	19.0%	22,820,846	98.31	78.15	19.0%
Gross Operating Profit	35,057,618	171.51	120.06	41.9%	44,499,670	201.85	152.40	45.2%	52,557,049	230.76	179.99	47.5%	56,049,907	241.45	191.95	48.0%	57,731,738	248.69	197.71	48.0%
Base Management Fees	2,511,342	12.29	8.60	3.0%	2,955,268	13.41	10.12	3.0%	3,318,825	14.57	11.37	3.0%	3,500,191	15.08	11.99	3.0%	3,605,980	15.53	12.35	3.0%
Incentive Management Fees	-	0.00	0.00	0.0%	-	0.00	0.00	0.0%	-	0.00	0.00	0.0%	-	0.00	0.00	0.0%	-	0.00	0.00	0.0%
Income Before Fixed Expenses	32,546,275	159.23	111.46	38.9%	41,544,402	188.44	142.28	42.2%	49,238,224	216.18	168.62	44.5%	52,549,716	226.37	179.96	45.0%	54,125,757	233.16	185.36	45.0%
Non-Operating Income/Expenses	Amount	POR	PAR	%	Amount	POR	PAR	%	Amount	POR	PAR	%	Amount	POR	PAR	%	Amount	POR	PAR	%
Real Estate Taxes	3,432,913	16.80	11.76	4.1%	3,542,021	16.07	12.13	3.6%	3,654,649	16.05	12.52	3.3%	3,770,912	16.24	12.91	3.2%	3,890,930	16.76	13.33	3.2%
Insurance	1,674,228	8.19	5.73	2.0%	1,724,455	7.82	5.91	1.8%	1,776,109	7.80	6.08	1.6%	1,829,474	7.88	6.27	1.6%	1,884,359	8.12	6.45	1.6%
Leasehold Payment	837,114	4.10	2.87	1.0%	1,773,161	8.04	6.07	1.8%	3,318,825	14.57	11.37	3.0%	4,666,921	20.10	15.98	4.0%	4,807,974	20.71	16.47	4.0%
Lease Sales Tax/Governmental Payment (1)	23,087	0.11	0.08	0.0%	48,750	0.22	0.17	0.0%	90,954	0.40	0.31	0.1%	127,483	0.55	0.44	0.1%	130,000	0.56	0.45	0.1%
Asset Management Fee	627,836	3.07	2.15	0.8%	738,017	3.35	2.53	0.8%	829,706	3.64	2.84	0.8%	875,048	3.77	3.00	0.8%	901,495	3.88	3.05	0.8%
Total Non-Operating Income/Expenses	6,595,178	32.27	22.59	7.9%	7,827,204	35.50	26.81	7.9%	9,670,323	42.46	33.12	8.7%	11,269,839	48.55	38.60	9.7%	11,615,657	50.04	39.78	9.7%
EBITDA	25,951,097	126.96	88.87	31.0%	33,717,198	152.94	115.47	34.2%	39,567,902	173.73	135.51	35.8%	41,279,877	177.82	141.37	35.4%	42,510,100	183.12	145.58	35.4%
Replacement Reserve	1,674,228	8.19	5.73	2.0%	2,955,268	13.41	10.12	3.0%	4,425,100	19.43	15.15	4.0%	4,666,921	20.10	15.98	4.0%	4,807,974	20.71	16.47	4.0%
EBITDA Less Replacement Reserve	24,276,869	118.77	83.14	29.0%	30,761,930	139.54	105.35	31.2%	35,142,802	154.30	120.35	31.8%	36,612,956	157.72	125.39	31.4%	37,702,127	162.41	129.12	31.4%

The projections, estimates and forecasts contained herein (collectively, the "Estimates") are based solely upon information based on good faith assumptions regarding the operation of the project during the time periods herein set forth. Portman Holdings cannot and does not warrant, represent or guarantee the accuracy of the Estimates or the economic results of the operation of the project, and Portman does not undertake any obligation to update or supplement the Estimates subsequent to the initial date of delivery. Any and all such representations, warranties and/or guarantees (verbal, written, express or implied) are hereby disclaimed. Neither the content of the Estimates nor Portman's delivery hereof shall confer upon the recipient any right whatsoever to rely upon the information and data contained herein.

(1) Composed of (a) 7.0% sales tax paid on Annual Leasehold Payments of proportion of Non-Guestroom Areas at Property required by Miami-Dade County and (b) Annual PA Partnership Leasehold taxes required by the State of Florida.

03-04-2015 DRAFT

Year 6					Year 7					Year 8					Year 9					Year 10				
Amount		Growth			Amount		Growth			Amount		Growth			Amount		Growth			Amount		Growth		
79.5%		0.0%			79.5%		0.0%			79.5%		0.0%			79.5%		0.0%			79.5%		0.0%		
\$143.82		3.0%			\$354.13		3.0%			\$364.76		3.0%			\$375.70		3.0%			\$386.97		3.0%		
\$273.34		3.0%			\$281.54		3.0%			\$289.98		3.0%			\$298.68		3.0%			\$307.64		3.0%		
\$423.99					\$436.71					\$449.81					\$463.31					\$477.21				
232,140					232,140					232,140					232,140					232,140				
292,000					292,000					292,000					292,000					292,000				
Amount	POB	PAR	%																					
79,813,913	343.02	273.34	64.5%	82,208,330	354.13	281.54	64.5%	84,674,580	364.76	289.98	64.5%	87,214,818	375.70	298.68	64.5%	89,831,262	386.97	307.64	64.5%	92,529,792	397.92	316.62	64.5%	
37,557,292	161.70	120.62	30.3%	38,604,011	166.64	132.40	30.3%	39,844,571	171.64	136.45	30.3%	41,039,867	176.79	140.55	30.3%	42,271,063	182.09	144.76	30.3%	43,542,259	187.53	149.21	30.3%	
1,566,133	6.75	5.36	1.3%	1,613,116	6.95	5.52	1.3%	1,661,510	7.16	5.69	1.3%	1,711,355	7.37	5.86	1.3%	1,762,606	7.59	6.04	1.3%	1,815,223	7.82	6.23	1.3%	
699,628	3.01	2.40	0.6%	720,410	3.10	2.47	0.6%	742,023	3.20	2.54	0.6%	764,283	3.29	2.62	0.6%	787,212	3.39	2.70	0.6%	810,819	3.49	2.78	0.6%	
893,987	3.85	3.06	0.7%	920,806	3.97	3.15	0.7%	948,430	4.09	3.25	0.7%	976,883	4.21	3.35	0.7%	1,006,190	4.33	3.45	0.7%	1,036,357	4.45	3.55	0.7%	
2,543,126	10.96	8.71	2.1%	2,619,420	11.28	8.97	2.1%	2,698,003	11.62	9.24	2.1%	2,778,943	11.97	9.52	2.1%	2,862,311	12.33	9.80	2.1%	2,948,168	12.70	10.09	2.1%	
731,444	3.15	2.50	0.6%	753,367	3.25	2.58	0.6%	775,989	3.34	2.66	0.6%	799,268	3.44	2.74	0.6%	823,246	3.55	2.82	0.6%	847,923	3.66	2.91	0.6%	
123,805,322	533.32	423.99	100.0%	127,519,481	549.32	436.71	100.0%	131,345,066	565.80	449.81	100.0%	135,285,418	582.78	463.31	100.0%	139,343,980	600.26	477.21	100.0%	143,521,577	618.33	491.74	100.0%	
16,771,486	72.25	57.44	21.0%	17,274,630	74.41	59.16	21.0%	17,792,869	76.65	60.93	21.0%	18,326,655	78.95	62.76	21.0%	18,876,455	81.31	64.65	21.0%	19,442,269	83.73	66.58	21.0%	
19,529,792	84.13	66.88	52.0%	20,115,606	86.65	68.89	52.0%	20,719,156	89.25	70.96	52.0%	21,340,731	91.93	73.08	52.0%	21,980,953	94.69	75.28	52.0%	22,640,224	97.53	77.53	52.0%	
1,456,503	6.27	4.99	93.0%	1,500,198	6.46	5.14	93.0%	1,545,204	6.66	5.29	93.0%	1,591,560	6.86	5.45	93.0%	1,639,307	7.06	5.61	93.0%	1,688,456	7.27	5.78	93.0%	
839,313	3.62	2.87	120.0%	864,493	3.72	2.96	120.0%	890,427	3.84	3.05	120.0%	917,140	3.95	3.14	120.0%	944,654	4.07	3.24	120.0%	972,989	4.19	3.34	120.0%	
840,347	3.62	2.88	94.0%	865,558	3.73	2.96	94.0%	891,525	3.84	3.05	94.0%	918,270	3.96	3.14	94.0%	945,819	4.07	3.24	94.0%	973,582	4.19	3.34	94.0%	
1,398,719	6.03	4.79	55.0%	1,440,681	6.21	4.93	55.0%	1,483,901	6.39	5.08	55.0%	1,528,418	6.58	5.23	55.0%	1,574,271	6.78	5.39	55.0%	1,621,368	6.98	5.55	55.0%	
40,836,161	175.91	139.85	33.0%	42,061,246	181.19	144.05	33.0%	43,323,083	186.62	148.37	33.0%	44,622,776	192.22	152.82	33.0%	45,961,459	197.99	157.40	33.0%	47,339,240	203.83	162.13	33.0%	
82,969,161	357.41	284.14	67.0%	85,458,235	368.13	292.67	67.0%	88,021,983	379.18	301.45	67.0%	90,662,642	390.55	310.49	67.0%	93,382,521	402.27	319.80	67.0%	96,183,519	414.33	329.39	67.0%	
6,846,200	29.49	23.45	5.5%	7,051,586	30.38	24.15	5.5%	7,263,133	31.29	24.87	5.5%	7,481,027	32.23	25.62	5.5%	7,705,458	33.19	26.39	5.5%	7,936,434	34.17	27.20	5.5%	
5,638,047	24.29	19.31	4.6%	5,807,108	25.02	19.89	4.6%	5,981,404	25.77	20.48	4.6%	6,160,846	26.54	21.10	4.6%	6,345,672	27.34	21.73	4.6%	6,535,993	28.17	22.40	4.6%	
3,841,307	16.55	13.16	3.1%	3,956,546	17.04	13.55	3.1%	4,075,242	17.56	13.96	3.1%	4,197,500	18.08	14.37	3.1%	4,323,425	18.62	14.81	3.1%	4,452,948	19.19	15.28	3.1%	
3,987,361	17.18	13.66	3.2%	4,106,982	17.69	14.07	3.2%	4,230,191	18.22	14.49	3.2%	4,357,097	18.77	14.92	3.2%	4,487,810	19.33	15.37	3.2%	4,622,341	19.92	15.85	3.2%	
3,192,557	13.75	10.93	2.6%	3,289,333	14.17	11.26	2.6%	3,386,983	14.59	11.60	2.6%	3,488,593	15.03	11.95	2.6%	3,593,250	15.48	12.31	2.6%	3,701,963	15.96	12.69	2.6%	
23,505,471	101.26	80.50	19.0%	24,210,635	104.29	82.91	19.0%	24,936,954	107.42	85.40	19.0%	25,685,063	110.64	87.96	19.0%	26,455,615	113.96	90.60	19.0%	27,246,720	117.37	93.39	19.0%	
59,463,690	256.15	203.64	48.0%	61,247,600	263.84	209.75	48.0%	63,085,028	271.75	216.04	48.0%	64,977,579	279.91	222.53	48.0%	66,926,907	288.30	229.20	48.0%	68,943,634	296.93	236.13	48.0%	
3,714,160	16.00	12.72	3.0%	3,825,584	16.48	13.10	3.0%	3,940,352	16.97	13.49	3.0%	4,058,563	17.48	13.90	3.0%	4,180,319	18.01	14.32	3.0%	4,305,630	18.56	14.77	3.0%	
0.00	0.00	0.00	0.0%	0.00	0.00	0.00	0.0%	105,255	0.45	0.36	0.1%	309,880	1.33	1.06	0.2%	520,595	2.24	1.78	0.4%	747,119	3.18	2.50	0.7%	
55,749,530	240.15	190.92	45.0%	57,422,016	247.36	196.65	45.0%	59,039,422	254.33	202.19	44.9%	60,609,136	261.09	207.57	44.8%	62,225,993	268.05	213.10	44.7%	63,899,712	275.28	219.88	44.6%	
4,014,826	17.29	13.75	3.2%	4,142,728	17.85	14.19	3.2%	4,274,768	18.41	14.64	3.3%	4,411,091	19.00	15.11	3.3%	4,551,809	19.61	15.59	3.3%	4,695,922	20.24	16.09	3.3%	
1,940,889	8.36	6.65	1.6%	1,999,116	8.61	6.85	1.6%	2,059,089	8.87	7.05	1.6%	2,120,862	9.14	7.26	1.6%	2,184,480	9.41	7.48	1.6%	2,250,951	9.70	7.71	1.6%	
4,952,213	21.33	16.96	4.0%	5,100,779	21.97	17.47	4.0%	5,253,803	22.63	17.99	4.0%	5,411,417	23.31	18.53	4.0%	5,573,759	24.01	19.09	4.0%	5,740,948	24.73	19.67	4.0%	
134,370	0.58	0.46	0.1%	137,921	0.59	0.47	0.1%	141,557	0.61	0.48	0.1%	145,277	0.63	0.50	0.1%	149,083	0.64	0.51	0.1%	152,974	0.65	0.52	0.1%	
920,540	4.00	3.18	0.8%	956,396	4.12	3.20	0.8%	995,088	4.24	3.37	0.8%	1,034,641	4.37	3.47	0.8%	1,075,080	4.50	3.58	0.8%	1,117,423	4.64	3.70	0.8%	
11,970,838	51.57	41.00	9.7%	12,336,941	53.14	42.25	9.7%	12,714,305	54.77	43.54	9.7%	13,103,278	56.45	44.87	9.7%	13,504,220	58.17	46.25	9.7%	13,917,641	60.00	47.68	9.7%	
43,778,692	188.59	149.93	35.4%	45,085,075	194.22	154.40	35.4%	46,325,117	199.56	158.65	35.3%	47,505,859	204.64	162.69	35.1%	48,721,773	209.88	166.86	35.0%	49,974,262	215.37	171.27	34.9%	
4,952,213	21.33	16.96	4.0%	5,100,779	21.97	17.47	4.0%	5,253,803	22.63	17.99	4.0%	5,411,417	23.31	18.53	4.0%	5,573,759	24.01	19.09	4.0%	5,740,948	24.73	19.67	4.0%	
38,826,479	167.25	132.97	31.4%	39,984,296	172.24	136.93	31.4%	41,071,314	176.92	140.66	31.3%	42,094,442	181.33	144.16	31.1%	43,148,013	185.87	147.77	31.0%	44,232,431	190.56	150.56	30.9%	

03-04-2015 DRAFT

EXHIBIT "O"
[RESERVED]

03-04-2015 DRAFT

EXHIBIT "P"
EXTERIOR ELEMENTS FEATURES

03-04-2015 DRAFT

EXHIBIT "Q"

RESERVED

EXHIBIT "R"

SCHEDULE OF MINIMUM FIXED RENT

Initial Minimum Fixed Rent: \$2,333,461 (Table below shows Rent Ramp up in first 3 Years)

Minimum Fixed Rent Escalation: 2.0% annually, commencing one (1) year after Hotel Opening.

Year	Lease Amount	Year	Lease Amount	Year	Lease Amount
1	\$583,365	34	\$4,485,451	67	\$8,622,076
2	\$1,071,058	35	\$4,575,160	68	\$8,794,517
3	\$1,820,799	36	\$4,666,664	69	\$8,970,407
4	\$2,476,287	37	\$4,759,997	70	\$9,149,816
5	\$2,525,813	38	\$4,855,197	71	\$9,332,812
6	\$2,576,329	39	\$4,952,301	72	\$9,519,468
7	\$2,627,856	40	\$5,051,347	73	\$9,709,858
8	\$2,680,413	41	\$5,152,374	74	\$9,904,055
9	\$2,734,021	42	\$5,255,421	75	\$10,102,136
10	\$2,788,702	43	\$5,360,530	76	\$10,304,178
11	\$2,844,476	44	\$5,467,740	77	\$10,510,262
12	\$2,901,365	45	\$5,577,095	78	\$10,720,467
13	\$2,959,392	46	\$5,688,637	79	\$10,934,877
14	\$3,018,580	47	\$5,802,410	80	\$11,153,574
15	\$3,078,952	48	\$5,918,458	81	\$11,376,646
16	\$3,140,531	49	\$6,036,827	82	\$11,604,179
17	\$3,203,341	50	\$6,157,564	83	\$11,836,262
18	\$3,267,408	51	\$6,280,715	84	\$12,072,987
19	\$3,332,756	52	\$6,406,329	85	\$12,314,447
20	\$3,399,412	53	\$6,534,456	86	\$12,560,736
21	\$3,467,400	54	\$6,665,145	87	\$12,811,951
22	\$3,536,748	55	\$6,798,448	88	\$13,068,190
23	\$3,607,483	56	\$6,934,417	89	\$13,329,554
24	\$3,679,632	57	\$7,073,105	90	\$13,596,145
25	\$3,753,225	58	\$7,214,567	91	\$13,868,068
26	\$3,828,290	59	\$7,358,859	92	\$14,145,429
27	\$3,904,855	60	\$7,506,036	93	\$14,428,337
28	\$3,982,953	61	\$7,656,156	94	\$14,716,904
29	\$4,062,612	62	\$7,809,280	95	\$15,011,242
30	\$4,143,864	63	\$7,965,465	96	\$15,311,467
31	\$4,226,741	64	\$8,124,774	97	\$15,617,697
32	\$4,311,276	65	\$8,287,270	98	\$15,930,050
33	\$4,397,501	66	\$8,453,015	99	\$16,248,651

Total Minimum Fixed Rent Lease Payments	\$708,342,089
--	----------------------

Note: Table reflects scheduled payments based on the Initial Minimum Fixed Rent increasing by Minimum Fixed Rent Escalation annually and does not reflect any rent resets

EXHIBIT "S"

MANDATORY HOTEL PROJECT DESIGN ELEMENTS

A full-service convention hotel of not-to-exceed 800 rooms, including:

1. at least ___ standard rooms (with a breakdown between kings and double/double or double/queen rooms necessary to obtain the Brand Approval by the Initial Hotel Operator);
2. not less than ___ suites and, if required by the Initial Hotel Operator, a club lounge;
3. a minimum of approximately 1___,000 gross square feet (+/- 5%) of hotel conference space for meetings or other events, including a minimum of __,000 gross square feet (+/- 5%) grand ballroom, __,000 gross square feet (+/- 5%) junior ballroom, and __,000 gross square feet (+/- 5%) of breakout meeting space;
4. approximately _____ square feet of space for kitchen facilities, used for room service and serving conference and meeting rooms;
5. food and beverage locations of a total square footage size that is not greater than the square footage size of food and beverage locations that are consistent with the size and number of rooms in the 4 Diamond hotel, including (i) a maximum of _____ square feet (____ sq. ft.) for bar and restaurant facilities, not less than _00 seats, in the aggregate, contained within a three-meal restaurant, specialty restaurant, pool bar and grill, lounge and lobby bar (such restaurants and bars are to be developed primarily along the perimeter of the ground floor of the Hotel Project)
6. a maximum of _____ square feet (____ sq. ft.) for a non-specialty retail facility which may consist of a sundry and/or coffee shop(s) selling products such as news, coffee, overnight supplies, and travel necessities;
7. a pool, fitness center and spa;
8. the Exterior Elements Features, subject to a height restriction of a maximum three hundred (300) feet, in accordance with the provisions of the City's Land Development Regulations;
9. a minimum of .40 parking spaces per room on-site, in accordance with the provisions of the City's Land Development Regulations;
10. the Skybridge; and
11. [other TBD].

For the avoidance of doubt, the Lessee may elect to include in the Hotel Project ballroom and meeting space of a size that is greater than the 5% variances provided for above without City's Approval (and Lessee shall not be deemed to have made a Prohibited Hotel Project Change or to have failed to include the Mandatory Hotel Project Design Elements as a result of the inclusion of such excess ballroom and meeting space).

03-04-2015 DRAFT

**EXHIBIT "T"
LESSEE'S [CORPORATE, PARTNERSHIP, LLC DOCUMENTS]**

[see attached]



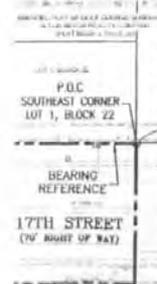
LOCATION SKETCH
(NTS)

LEGAL DESCRIPTION

BEING A PARCEL OF LAND LYING IN SECTION 34, TOWNSHIP 53 SOUTH, RANGE 42 EAST, CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
 COMMENCE AT THE SOUTHWEST CORNER OF LOT 1, BLOCK 22, ACCORDING TO THE AMENDED PLAT OF GOLF COURSE SUBDIVISION OF THE ALTON BEACH REALTY COMPANY, AS RECORDED IN PLAT BOOK 6, PAGE 26, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, THENCE N 80°14' E, ALONG THE EASTERLY PROLONGATION OF THE NORTHERLY RIGHT-OF-WAY LINE OF 17TH STREET SAID RIGHT-OF-WAY BEING 70 FEET IN WIDTH AS SHOWN ON SAID PLAT, A DISTANCE OF 354.15 FEET, THENCE N 01°56'28" W A DISTANCE OF 40.02 FEET TO THE POINT OF BEGINNING, THENCE CONTINUE N 01°56'28" W A DISTANCE OF 238.60 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 40.00 FEET, A CHORD WHICH BEARS N 43°02'41" E, THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 112°28'14" A DISTANCE OF 64.01 FEET, THENCE N 88°01'48" E A DISTANCE OF 323.82 FEET, THENCE S 01°56'28" E, TO THE INTERSECTION WITH SAID EASTERLY PROLONGATION OF THE NORTHERLY RIGHT-OF-WAY OF 17TH STREET, A DISTANCE OF 316.60 FEET, THENCE S 88°01'48" W, ALONG SAID RIGHT-OF-WAY PROLONGATION, A DISTANCE OF 323.76 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 40.00 FEET, A CHORD WHICH BEARS N 48°37'14" E, THENCE NORTHEASTERLY ALONG THE ARC SAID CURVE THROUGH A CENTRAL ANGLE OF 101°40' A DISTANCE OF 64.02 FEET TO THE POINT OF BEGINNING.
 THE ABOVE DESCRIBED PARCEL CONTAINS 115,220 SQUARE FEET OR 2.6 ACRES MORE OR LESS.

SURVEYOR'S NOTES:

- THIS IS NOT A SURVEY
- BEARINGS SHOWN HEREON ARE BASE UPON FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, NAD 1983/00 REFERENCED TO THE NORTHERLY RIGHT-OF-WAY LINE OF 17TH STREET, WHICH IS PARALLEL TO BEAR NORTH BY 9°
- IMPROVEMENTS SHOWN HEREON ARE FOR GEOGRAPHIC REFERENCE PURPOSES ONLY. THE SCOPE OF DESCRIPTION HAS BEEN INTEGRATED WITH A PORTION OF A SURVEY PERFORMED BY AND WITH THE CONSENT OF ITS USE BY BECKMAN ENGINEERING, 524 N. FLAGLER STREET, MIAMI, FLORIDA 33130
- THIS SKETCH OF DESCRIPTION IS NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RASSED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.



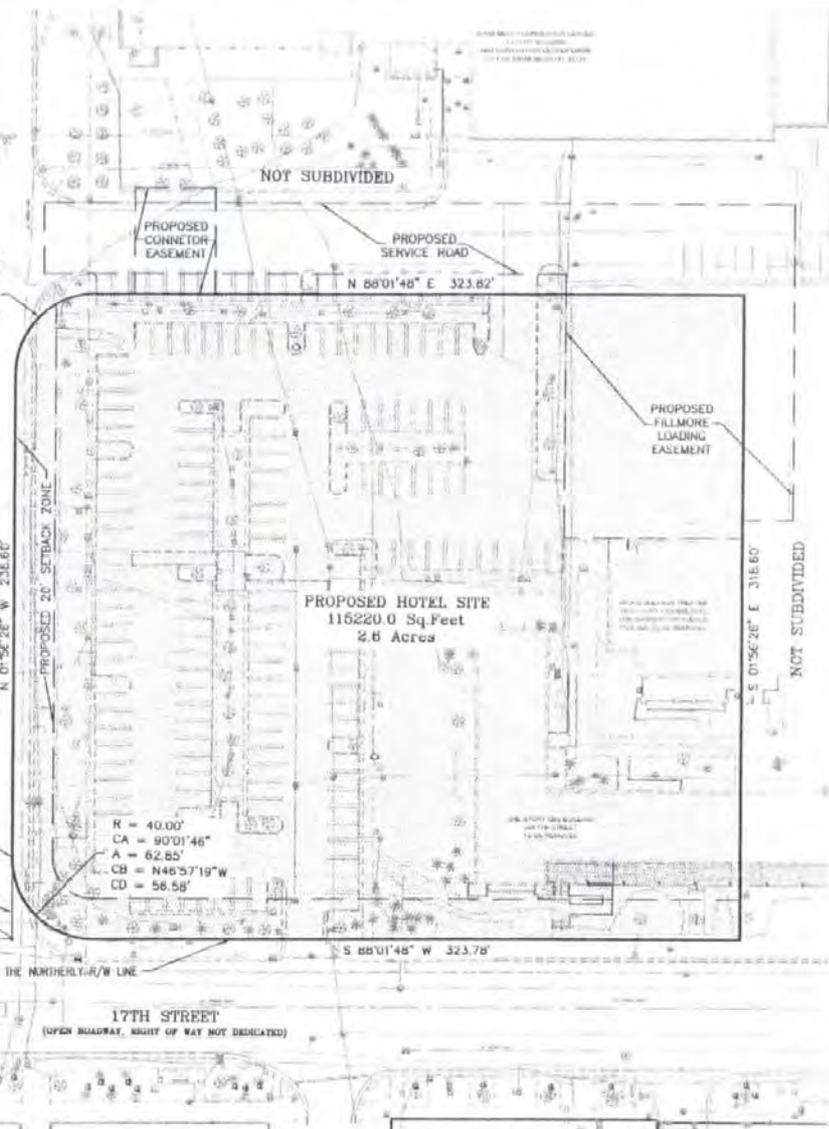
LEGEND

P.O.C. POINT OF COMMENCEMENT
 F.O.B. POINT OF BEGINNING
 R/W RIGHT-OF-WAY
 RADIUS
 ARC LENGTH
 CENTRAL ANGLE
 CHORD BEARING
 CHORD DISTANCE

B.T.R.U. 5315
 BRON T. BELLERU DATE
 CITY SURVEYOR PROFESSIONAL SURVEYOR AND MAPPER NO. 9372

SKETCH OF DESCRIPTION

SCALE 1" = 100' (PLAN SHEET)
 SCALE 1" = 40' (SECTION SHEET)



	NEIGHBORHOOD	CITY CENTER	CITY MANAGER	JAMYL MURPHY	DESIGN ENGINEER					FILE NO. P:\WORK\1441040\1441040\1441040.dwg	
	TITLE	LEGAL DESCRIPTION AND SKETCH OF PROPOSED MIAMI BEACH CONVENTION CENTER HOTEL SITE	DIRECTOR	EMILY CHRISTENSEN P.E.	DATE	10/21/2014	SCALE	1" = 100'	SHEET	1 OF 1	DATE PLOTTED

EXHIBIT 3

Schedule of Proposed Minimum Fixed Rent

		Minimum Fixed Rent	Growth	Variable Rent	Growth	Percentage Rent	Growth
	2016	-		-		-	
	2017	-		-		-	
	2018	-		-		-	
1	2019	\$583,365		\$253,749		\$837,114	
2	2020	1,071,059	83.6%	702,103	176.7%	1,773,161	111.8%
3	2021	1,820,800	70.0%	1,498,025	113.4%	3,318,825	87.2%
4	2022	2,476,287	36.0%	2,190,634	46.2%	4,666,921	40.6%
5	2023	2,525,813	2.0%	2,282,161	4.2%	4,807,974	3.0%
6	2024	2,576,329	2.0%	2,375,884	4.1%	4,952,213	3.0%
7	2025	2,627,856	2.0%	2,472,923	4.1%	5,100,779	3.0%
8	2026	2,680,413	2.0%	2,573,390	4.1%	5,253,803	3.0%
9	2027	2,734,021	2.0%	2,677,396	4.0%	5,411,417	3.0%
10	2028	2,788,702	2.0%	2,785,057	4.0%	5,573,759	3.0%
11	2029	2,844,476	2.0%	2,840,758	2.0%	5,685,234	2.0%
12	2030	2,901,365	2.0%	2,897,574	2.0%	5,798,939	2.0%
13	2031	2,959,392	2.0%	2,955,526	2.0%	5,914,918	2.0%
14	2032	3,018,580	2.0%	3,014,636	2.0%	6,033,216	2.0%
15	2033	3,078,952	2.0%	3,074,928	2.0%	6,153,880	2.0%
16	2034	3,140,531	2.0%	3,136,427	2.0%	6,276,958	2.0%
17	2035	3,203,341	2.0%	3,199,156	2.0%	6,402,497	2.0%
18	2036	3,267,408	2.0%	3,263,139	2.0%	6,530,547	2.0%
19	2037	3,332,756	2.0%	3,328,402	2.0%	6,661,158	2.0%
20	2038	3,399,412	2.0%	3,394,969	2.0%	6,794,381	2.0%
21-99		<u>655,311,235</u>		<u>654,454,915</u>		<u>1,309,766,150</u>	
Total		<u>\$708,342,093</u>		<u>\$705,371,752</u>		<u>\$1,413,713,845</u>	
NPV @5%		\$60,462,084		\$58,911,951		\$119,374,035	

Note: The minimum fixed rent adjusts up or down every 10 years to 55% of the prior five year's average total rent paid.

EXHIBIT 4

Summary of Public Revenue Impact

	2022 (Yr 4)	Over 30 years		Over 99 years	
		Total	NPV @ 5%	Total	NPV @ 5%
CITY					
Hotel Lease					
Minimum Fixed Rent	\$2.5m	\$91m	\$36m	\$708m	\$60m
Variable Rent	2.2m	89m	35m	705m	59m
Percentage Rent (4% Gross)	\$4.7m	180m	71m	1,414m	119m
Taxes					
CRA City (thru 3/2044)	1.1m	34m	16m	34m	16m
CRA County (thru 3/2044)	0.8m	26m	12m	26m	12m
New Resort Tax (Hotel 1%)	0.8m	30m	12m	229m	20m
Resort Tax (Hotel 3%, F&B 2%)	3.0m	118m	48m	902m	79m
CDT Allocation (thru 2044)	1.5m	36m	16m	36m	16m
Property Taxes*	0.1m	13m	4m	326m	16m
Subtotal	7.2m	258m	108m	1,553m	159m
CITY TOTAL	\$11.9m	\$438m	\$178m	\$2,967m	\$278m
COUNTY					
Convention Devl. Tax (3%)	0.8m	54m	20m	650m	44m
Local Option Sales Tax (1%)	1.1m	44m	18m	336m	29m
Property Taxes*	0.1m	12m	4m	266m	14m
Subtotal County	2.0m	110m	42m	1,252m	87m
SCHOOLS (Property Tax)	1.5m	60m	24m	453m	40m
OTHER PROPERTY**	0.2m	7m	3m	55m	5m
STATE SALES TAX (6%)	6.6m	264m	107m	2,019m	176m
TOTAL	\$22.2m	\$878m	\$354m	\$6,746m	\$586m

* 95% of general property taxes allocated to CRA through 3/2044

** Regional property tax and Children's Trust property tax

Key Assumptions:

All analysis completed on a calendar year basis

Year 1 through 10 based on developer proforma

Assumed 2% growth rate beginning in year 11 and beyond

NPV to 2016

\$1.5m of County CDT allocated to City beginning in third year of hotel opening through 2044

Sources: Portman, City of Miami Beach, SAG.

Exhibit 5

Power Point Presentation to Follow

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MIAMI BEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

To: Jimmy Morales, City Manager

From: Jonah Wolfson, Commissioner

Date: April 30, 2014

Re: **Commission Agenda Item - Discussion Item**

Please place on the May 6, 2015 Commission Discussion Agenda:

Discussion regarding the term sheet and resolution for the purchase and sale agreement for 226 87th Terrace.

Please feel free to contact my Aide, Brett Cummins at x6437, if you have any questions.

JW

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, APPROVING THE TERM SHEET ATTACHED AND INCORPORATED AS EXHIBIT "A" TO THIS RESOLUTION, AND AUTHORIZING THE CITY ATTORNEY'S OFFICE TO NEGOTIATE A PURCHASE AND SALE AGREEMENT (PSA) BETWEEN THE CITY AND 8701 COLLINS DEVELOPMENT, LLC ("8701") FOR THE SALE OF THE CITY PROPERTY LOCATED AT 226 87 STREET TO 8701 (CITY PARCEL), AND TO DEVELOP BOTH THE CITY PARCEL AND 7925 COLLINS AVENUE (THE "8701 PARCEL") UNDER A UNIFIED DEVELOPMENT PROJECT (THE "PROJECT"); WHICH PSA WILL INCLUDE THE DESIGN, DEVELOPMENT AND CONSTRUCTION OF THE PROJECT, AT 8701'S SOLE COST AND EXPENSE, A MAIN USE PARKING GARAGE, WHICH SHALL INCLUDE (I) COMMERCIAL USES SUCH AS SPA, RESTAURANTS, AND SIMILAR USES; (II) ONE OR MORE LEVELS OF PARKING GARAGE DIRECTLY ABOVE THE FIRST FLOOR, INCLUDING MECHANICAL PARKING ELEMENTS WITH VALET SERVICE; (EXCEPT FOR THE CITY UNIT); (III) APPROXIMATELY 12,000 SQUARE FEET OF RETAIL ON THE FIRST FLOOR; AND (IV) A CITY MUNICIPAL PARKING CONDOMINIUM UNIT (THE "CITY UNIT") OF 75 PARKING SPACES WHICH MAY BE LOCATED IN THE BASEMENT; AND PURSUANT TO SECTION 82-37 OF THE CITY CODE, DIRECTING THE CITY MANAGER TO TRANSMIT THE TERM SHEET AND DRAFT PSA TO THE FINANCE AND CITYWIDE PROJECTS COMMITTEE FOR REVIEW PRIOR TO CITY COMMISSION FINAL APPROVAL OF THE PSA; AND THE TERM SHEET AND DRAFT PSA SHALL ALSO BE REVIEWED BY THE PLANNING BOARD AS REQUIRED BY SECTION 1.03(B)(4) OF THE CITY CHARTER.

WHEREAS, 8701 Collins Development, LLC ("8701") is owner of that certain parcel of land located at 7925 Collins Avenue, Miami Beach, Florida (Folio # 02-3202-006-0420), which is approximately 15,312 sq. ft. in size (8701 Parcel); and

WHEREAS, the City of Miami Beach (City) is the owner of that certain parcel of land located at 226 87th Terrace, Miami Beach, Florida (Folio # 02-3202-006-0430), which is approximately 15,313 Sq. Ft. in size (City Parcel); and

WHEREAS, the City's Parcel is north of and adjacent to 8701's Parcel; and together, the Parcels, are herein referred to collectively as the "Property;" and

WHEREAS, the two adjoining parcels are proposed to be developed as a unified development site; and

WHEREAS, the City and 8701 have negotiated a Term Sheet, attached and incorporated as Exhibit "A" hereto, setting forth material business terms, for 8701 to develop and construct a main use parking garage on the Property, hereinafter to be called the "Project", which shall include (i) commercial uses such as spa, restaurants, and similar uses; (ii) one or more levels of parking garage directly above the first floor, including mechanical parking

elements with valet service; (except for the City Unit); (iii) approximately 12,000 square feet of retail on the first floor; and (iv) a City municipal parking condominium unit (the "City Unit") which may be located in the basement. The Project will be subject to a declaration of condominium delineating the City Unit from the rest of the Project; and

WHEREAS, the final cost for developing the City's Unit ("Final Cost"), shall be compared to the appraised value of the City's Parcel, adjusted for inflation. In the event that the Final Cost exceeds the appraised value of the City's Parcel, 8701 shall be solely responsible for any and all overages. In the event that the Final Cost for the City Unit is less than the appraised value of City's Parcel, then 8701 shall promptly pay the City the difference. In no event, however, shall the City be responsible for any additional payment to 8701 for the design, development and construction of the City Unit; and

WHEREAS, the parties have agreed to the attached Term Sheet, which document is attached hereto as Exhibit "A", and is incorporated by reference herein; and

WHEREAS, the Mayor and City Commission hereby approve the attached Term Sheet, and authorize the City Attorney's Office to negotiate a Purchase and Sale Agreement with 8701 based on such terms; with such Purchase and Sale Agreement to be subject to final consideration and approval by the City Commission at a future date; and

WHEREAS, pursuant to Section 82-37, of the City Code, the City Manager is directed to place the Term Sheet and draft PSA, once negotiated on the Finance and Citywide Projects Committee Agenda for review, which review shall occur prior to the City Commission's final approval of the PSA; and

WHEREAS, the Term Sheet and draft PSA shall also be reviewed by the Planning Board as required by section 1.03(b)(4) of the City Charter prior to the City Commission's final approval of the PSA.

NOW THEREFORE BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, to approve the Term Sheet attached and incorporated as Exhibit "A" to this Resolution, and to authorize the City Attorney's Office to negotiate a Purchase and Sale Agreement (PSA) between the City and 8701 Collins Development, LLC ("8701") for the sale of the City property located at 226 87 Street to 8701 (City Parcel), and to develop both the City Parcel and 7925 Collins Avenue (the "8701 Parcel") under a unified development project (the "Project"); which PSA will include the design, development and construction of the Project, at 8701's sole cost and expense, a main use parking garage, which shall include (i) commercial uses such as spa, restaurants, and similar uses; (ii) one or more levels of parking garage directly above the first floor, including mechanical parking elements with valet service; (except for the City Unit); (iii) approximately 12,000 square feet of retail on the first floor; and (iv) a City municipal parking condominium unit (the "City Unit") of 75 parking spaces which may be located in the basement; and pursuant to Section 82-37, of the City Code, directing the City Manager to place the Term Sheet and draft PSA on the Finance and Citywide Projects Committee for review prior to City Commission final approval of the PSA; and the Term Sheet and draft PSA shall also be reviewed by the Planning Board as

required by section 1.03(b)(4) of the City Charter.

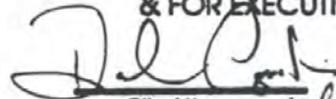
PASSED and ADOPTED this ____ day of May, 2015.

ATTEST:

Philip Levine, Mayor

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

4-30-15

Date

F:\ATTO\BOUEVRESOS\PSA REsolution 4-30-2015 [final].docx

Purchase and Sale Agreement - 226 87th Terrace Term Sheet

1. Parties.

The City of Miami Beach (the "City") and 8701 Collins Development, LLC ("8701") intend to enter into a purchase and sale agreement ("PSA") for 8701's purchase of Parcel D (as hereinafter defined) from the City, and for the development of the Property (as hereinafter defined).

2. Property.

- a. 8701 is owner of that certain parcel of land located at 7925 Collins Avenue, Miami Beach, Florida (Folio # 02-3202-006-0420), which is approximately 15,312 sq. ft. in size ("Parcel C").
- b. City is owner of that certain parcel of land located at 226 87th Terrace, Miami Beach, Florida (Folio # 02-3202-006-0430), which is approximately 15,313 Sq. Ft. in size ("Parcel D").
- c. Parcel D is north of and adjacent to Parcel C.
- d. Parcel C and Parcel D are herein referred to collectively as the "Property."

3. Project.

- a. The Property shall be developed and constructed as a main use parking garage, to include (i) commercial uses such as spa, restaurants, and similar uses; (ii) one or more levels of parking garage directly above the first floor, including mechanical parking elements with valet service; (except for the City Unit, as hereinafter defined); (iii) approximately 12,000 square feet of retail on the first floor; and (iv) a City Municipal Parking Condominium Unit (the "City Unit," as further described in subsection 4(b) hereof, which may be located in the basement. Collectively, the uses in (i) – (iv) shall be hereinafter referred to as the "Project". The Project may not provide active "liner" uses on all four (4) street frontages, as is ordinarily required of main use garages.
- b. The Project will be subject to a Declaration of Condominium delineating the City Unit from the rest of the Project. 8701 shall be responsible for all costs and fees (including, without limitation, attorney's fees) related to the preparation of the condominium documents for the City Unit. No later than 90 days after issuance of a temporary certificate of occupancy (TCO) or certificate of occupancy (CO) for the Project,

(whichever occurs first), 8701 will deliver the City Unit, which at a minimum; (i) shall be a separately delineated space from the rest of the garage; (ii) may contain a separate entrance and exit from the rest of the garage; and (iii) shall contain 75 parking spaces for the exclusive use, ownership and control of the City. At this time, the City Unit shall have a separate entrance and exit, and may be located in the basement of the Project, below grade.

4. Key Terms & Provisions.

- a. City will convey fee simple interest in Parcel D to 8701 upon Closing, as defined herein.
- b. 8701 will pay all Closing costs (including, without limitation, the City's outside counsel fees for the transaction).
- c. The Closing will occur within ninety (90) days following satisfaction of the following conditions: (i) the issuance of all necessary final, non-appealable development approvals for the Project; (ii) the City Commission's adoption of the legislative amendments set forth in subparagraph 4(k) hereof; (iii) the City's review and approval of the design and construction plans and specifications for the City Unit and; (iv) the City's review and approval of the estimated total cost (i.e. hard and soft costs) of the City Unit, based on the City approved design and construction plans and specifications; provided, however, that the Closing shall occur no later than one (1) year following execution of the PSA (unless extended by mutual written approval agreement of the parties).
- d. 8701 will be responsible for the design, permitting and construction of the Project. 8701 will design and construct all improvements on the Property; provided, however, that the City shall have review over, and final approval of, the design and construction plans and specifications for the City Unit, to ensure that such Unit is designed to meet the City's needs and standards.
- e. The PSA will describe the City Unit in narrative text and will incorporate, as exhibits to the Agreement, conceptual sketches showing the location and dimensions of the City Unit, all of which shall be subject to the City's prior review and approval pursuant to subsection 4(d) hereof. After the Project receives design review approval, and the City has reviewed and approved the design and construction plans and specifications for the City Unit, and further, as a condition to issuance of a Full Building Permit for the Project, 8701 will provide the City with a legal description showing the exact location and dimensions of the City Unit.
- f. Prior to Closing, 8701 shall deliver, for the City's review and approval, an estimated budget for the total cost (i.e. hard and soft costs) of the City Unit, which budget shall be based upon the City-approved design and construction plans and specifications for the City Unit. At its sole option and discretion, the City may retain a consultant (i.e. such as a professional cost estimator) to verify 8701's total estimated cost, with the cost of the

consultant to be paid for by 8701.

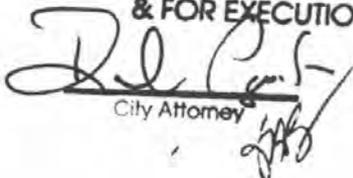
- g. Upon issuance of a TCO or CO for the Project, (whichever comes first), there will be an accounting of the final costs for the City Unit. Such final costs shall include, without limitation, the cost of design, site preparation, environmental assessment and (if necessary), environmental remediation, construction materials, labor, and any and all other costs incurred by 8701, as required herein, to design and construct the City Unit in accordance with the City-approved design and construction plans and specifications (the Final Cost).
- h. Final completion of the Project will occur within three (3) years following the issuance of a Full Building Permit.
- i. The Final Cost, shall be compared to the appraised value of Parcel D of \$[NOTE: APPRAISAL BEING UPDATED] (adjusted for inflation). In the event that the Final Cost exceeds the appraised value of Parcel D (adjusted for inflation), 8701 shall be solely responsible for any and all overages. In the event that the Final Cost for the City Unit is less than the appraised value of Parcel D (adjusted for inflation), then 8701 shall promptly pay the City the difference. In no event, however, shall the City be responsible for any additional payment to 8701 for the design, development and construction of the City Unit.
- j. 8701 and the City will work cooperatively to seek approval of the design and development of the Project. 8701 will be responsible for submitting any required applications for development approvals, with City as co-applicant, if and as necessary, for the Project (i.e., Design Review Board, City Commission, Planning Board, and/or Board of Adjustment approvals), and for securing any and all final, non-appealable development approvals and permits for the Project.
- k. The parties acknowledge and agree that, as a condition to Closing, the City Commission, acting in its regulatory capacity, shall, at its discretion, consider certain legislation to accommodate 8701's proposed development plan and design for the Project. Such legislation include amendments to the City Code to allow certain modifications to regulations pertaining to main use garage, as follows:
 - Establishing new category of main use parking garages, which may not have liner uses on all street frontages, within 250 feet of NSOSP.
 - Maximum residential or commercial use shall not exceed 35% of total floor area of the structure.
 - At all points, parking must be at least 50% of the building, not counting parking required for the retail/residential.
 - All retail/restaurant uses on ground floor have no parking requirements.
 - Maximum height of 75 feet.
 - Front and side street setbacks of 0 feet.
 - Signs for commercial uses in main use parking garages providing at least 75

- public parking spaces apply the CD-2 standards.
- Permitting City identification sign, (see 5(a) hereof).

The City Commission shall have no obligation to adopt any (or all) of the aforesated Code amendments; provided, however, that if the aforesated City amendments are not enacted, then 8701 may, at its discretion, elect to terminate the PSA, without liability to 8701. In the event of such termination, however, 8701 shall be responsible for any attorney's fees incurred by the City with respect to the Project transaction, up to the date of termination.

- l. Except as to involuntary transfers (as shall be defined in the PSA and which will include, without limitation, foreclosure transfers and transfers in lieu of foreclosure), 8701 shall not be entitled to assign or transfer its rights under the PSA until after the issuance of a Certificate of Occupancy (CO) for the Project. Any such transferee shall assume all remaining obligations of 8701 under the PSA.
5. Purchase Price and Other Costs.
 - a. In addition to 8701's obligation to fund all the hard and soft costs for design, development, and construction of the City Unit, 8701 shall also install, at its sole cost and expense, a "Welcome to Miami Beach" sign at the northwest corner of the Project, the design of which shall be reviewed and approved by the City. The sign will be part of the City Unit and the City will be responsible for power, maintenance, repair and replacement for the sign.
 - b. Upon approval and execution of the PSA, 8701 shall give a one time non-refundable contribution to the City, in the amount of \$250,000, to be used by the City to establish a capital maintenance and replacement fund for the North Beach Senior Center.
 6. Outside Counsel Review.

8701 agrees to reimburse the City for any attorney's fees incurred by the City for outside counsel's review and negotiation of the PSA, and related agreements, which counsel shall be selected and approved by the City Attorney.

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney
4-30-15
Date

F&CWP Pending Items - Commission Referrals

Attachment 1

Item #	Title	Referred By	Date Referred	Handled By	Date Expiring per Reso # 2013-28147	Note
194	Discussion regarding whether or not to pursue food and beverage concessions for Soundscape Park, Collins Park, and the Miami Beach Botanical Garden	Tourism, Culture and Economic Development	May 21, 2014 Commission Item C4C	Max Sklar	7/7/2015	6/20/14 The Committee recommended pursuing food and beverage concessions through the pop up concept or food trucks for Soundscape Park, Collins Park and the Miami Beach Botanical Garden to begin in October. 1/7/15 The Committee recommended moving forward with the Soundscape Park term sheet presented. The Committee also determined that Collins Park will go out as a Request for Letter of Interest for a pop up or a temporary food concession concept and the results are to be brought back to the Finance Committee. In reference to the Botanical Gardens the Committee is waiting for staff to bring back additional concepts.
208	Discussion regarding Parking Demand Analysis/Walker Parking Consultants	Parking	July 23, 2014 Commission Item C4I	Saul Frances	6/12/2015	12/12/14 The Committee took no action, but encouraged the Administration to return when potential solutions are identified.
215	Discussion regarding Flooding and Sea Rise Regarding The 2015-2016 Storm Water Utilities Methodology	Michael Grieco Mayor's Blue Ribbon Panel	September 10, 2014 Commission Item C4G	Bruce Mowry	11/20/2015	12/12/14 No later than February Meeting 5/2015 The Committee recommended staff meet with the Commissioners to go over the information presented and that staff bring this item back to the June Finance Committee meeting.
232	Referral To The December 12, 2014 Finance & Citywide Projects Committee To Amend The Living Wage Ordinance Insurance Provision In Light Of ObamaCare	Deede Weithorn	November 19, 2014 Commission Item C4D	Alex Denis	6/12/2015	12/12/14 Item deferred to February
234	Referral To The Finance And Citywide Projects Committee A Discussion Regarding The Live Nation Management Agreement For The Jackie Gleason Theater	Tourism, Culture and Economic Development	November 19, 2014 Commission Item C4F	Max Sklar	9/2/2015	12/12/14 Item deferred to January. 1/7/15 Item deferred to February 2/2/15 The Committee instructed staff bring this item back showing the potential credits/refunds with the Required City Distribution. 3/2/15 The Committee recommended bringing this item back to the Finance Committee after Administration has re-negotiated the contract terms.
238	Referral To The December 12, 2014 Finance And Citywide Projects Committee To Discuss A Public Private Partnership For A Two-Story Parking Structure To Be Erected Over Both City Parking Lot P62 And A Private Parking Lot, On 42nd Street, Between Jefferson Street And Meridian Avenue	Deede Weithorn	November 19, 2014 Commission Item C4K	Saul Frances	10/8/2015	12/12/14 Item deferred to January. 1/7/15 Item deferred to February 2/2/15 Item deferred. 4/8/15 The Committee recommended staff meet with LSM Partners to put together an analysis that would demonstrate if a parking structure should be erected at the Parking Lot P62 and the Private Parking Lot on 42nd Street between Jefferson Street and Meridian.
247	Discussion Regarding Partial Payments Of Annual And Sick Leave For Participants Of The Deferred Retirement Option Plan (DROP)	Deede Weithorn	December 17, 2014 Commission Item C4E	Sylvia Crespo-Tabak Patricia Walker	6/17/2015	1/7/15 Item deferred to February
253	Discussion Regarding The Requirement For City Contractors To Provide Equal Benefits For Domestic Partners	Deede Weithorn	January 14, 2015 Commission Item C4J	Alex Denis	7/14/2015	2/2/15 Item deferred.
263	Discussion Regarding The Construction Of A Parking Garage At The 27th Street And Collins Avenue Parking Lot	Parking	February 11, 2015 Commission Item C4C	Saul Frances	9/2/2015	3/2/15 The Committee recommended staff involve the Walker Parking Consultants that conducted the study to provide the numbers again, check for accuracy of the study and to bring those results back to the Finance Committee. Mr. Max Sklar was asked to further investigate the valet parking in Municipal Parking Lot No. P55.
272	Discussion Regarding A Resolution Collaborate To Develop An Enhanced Partnership With The Miami-Dade County School Board (School Board) And To Amend The City's Educational Compact To Provide Enhanced Educational Services To The City's Public School Students. By Working Collaboratively On Funding To Prioritize Early Learning Opportunities, Including The Head Start Program, Title 1 VPK, VPK Fee Supported, And Sped Pre-K, By Providing Instructional Support For Extracurricular Or Choice Offerings At City High School And Middle School Grades, By Enhancing The Districts Afterschool Programming, IB Program And EFL Program, And To Provide A Schedule For Accomplishing These Goals	Michael Grieco	April 15, 2015 Commission Item R9Q	Leslie Rosenfeld Eve Boutsis	11/20/2015	5/20/15 The Committee recommended deferring this item to the retreat when the budget options can be further examined and discussed. The item will then go to a joint FCWP/NCAC Committee meeting on 5/29.

Item #	Title	Referred By	Date Referred	Handled By	Date Expiring per Reso # 2013-28147	Note
275	<p>Discussion Regarding A Resolution Approving The Term Sheet Attached And Incorporated As Exhibit "A" To This Resolution, And Authorizing The City Attorney's Office To Negotiate A Purchase And Sale Agreement (PSA) Between The City And 8701 Collins Development, LLC ("8701") For The Sale Of The City Property Located At 226 87 Street To 8701 (City Parcel), And To Develop Both The City Parcel And 7925 Collins Avenue (The "8701 Parcel") Under A Unified Development Project (The "Project"); Which PSA Will Include The Design, Development And Construction Of The Project, At 8701's Sole Cost And Expense, A Main Use Parking Garage, Which Shall Include (I) Commercial Uses Such As Spa, Restaurants, And Similar Uses; (II) One Or More Levels Of Parking Garage Directly Above The First Floor, Including Mechanical Parking Elements With Valet Service; (Except For The City Unit); (III) Approximately 12,000 Square Feet Of Retail On The First Floor; And (IV) A City Municipal Parking Condominium Unit (The "City Unit") Of 75 Parking Spaces Which May Be Located In The Basement; And Pursuant To Section 82-37 Of The City Code, Directing The City Manager To Transmit The Term Sheet And Draft PSA To The Finance And Citywide Projects Committee For Review Prior To City Commission Final Approval Of The PSA; And The Term Sheet And Draft PSA Shall Also Be Reviewed By The Planning Board As Required By Section 1.03(B)(4) Of The City Charter</p>	City Attorney	May 6, 2015 Commission Item R90	Raul Aguila	11/6/2015	5/20/15 Item deferred to the June Finance Committee Meeting.
276	Discussion Regarding the Convention Headquarter Hotel Lease			Maria Hernandez Raul Aguila		