

## APPENDIX L

# MIAMIBEACH

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## Development & Ground Lease Agreement

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2018-238-KB

FOR THE DEVELOPMENT OF A CONVENTION HOTEL  
ADJACENT TO THE MIAMI BEACH CONVENTION CENTER

PROCUREMENT DEPARTMENT  
1755 Meridian Avenue, 3<sup>rd</sup> Floor  
Miami Beach, Florida 33139

# **RFP APPENDIX L**

**DEVELOPMENT AND GROUND LEASE AGREEMENT**

**between**

**MB Mixed Use Investment, LLC**

**and**

**CITY OF MIAMI BEACH, a  
Florida municipal corporation**

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**DEVELOPMENT AND GROUND LEASE AGREEMENT**

THIS DEVELOPMENT AND GROUND LEASE AGREEMENT ("Lease") is executed on the \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation (the "City") and MB MIXED USE INVESTMENT, LLC, a Florida limited liability company (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 May 17, 2018, the City issued Request for Proposal No. 2018-238-KB, 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 \_\_\_\_\_, \_\_\_, 2018; 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 \_\_\_\_\_ \_\_\_, 2018, the Mayor and City Commission, by Resolution No. 2018-\_\_\_\_\_, 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 on November 6, 2018 (the "2018 Referendum") or such later date in 2019 as further described in this Section (each, a "2019 Referendum" and together with the 2018 Referendum, each, a "Referendum"). In the event that the 2018 Referendum is not successful, or if the ballot question is removed or election results are invalidated by a court of competent jurisdiction, then the Lessee may, within 90 days after the date on which it is determined that the 2018 Referendum was not successful, request that the City Commission consider adopting a resolution calling for a special election for approval of the Lease in a 2019 Referendum. If (a) the City Commission declines to adopt a resolution calling for approval of the Lease in a 2019 Referendum or (b) within such ninety (90) day period, Lessee either fails to so notify the City or notifies the City that it wishes to terminate this Lease, then in any such event, this Lease shall be deemed null and void and the parties shall have no obligations or liabilities of any kind or nature whatsoever hereunder. In the event that, following Lessee's request, the City Commission adopts a resolution calling for a 2019 Referendum and the 2019 Referendum is not successful, or if the ballot question is removed or election results are invalidated by a court of competent jurisdiction, in each case following the last date on which a 2019 Referendum occurred, 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 a 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 applicable election with respect to the applicable 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 Base Rent" has the meaning ascribed to it in Section 4.4(a)(iii).

"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, any other Person directly or indirectly Controlling, Controlled by or under common Control with such Person. When used in reference to Lessee, for so long as Lessee (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 Lessee.

"Approval, Approve or Approved" means the written 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 brands, provided that with respect to any such operator engaged by Lessee after the fifth anniversary of the Opening Date, such operator's reputation for quality and quality of operation at such time [PARTIES NEED TO CLARIFY] 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, Renaissance, Gaylord, Westin, Sheraton or JW Marriott brands), Omni, Hyatt Regency, La Meridien, Hilton and Intercontinental, (b) from and after the twentieth (20<sup>th</sup>) anniversary of the Opening Date, any other "Upper Upscale" brand as then rated by Smith Travel Research and generally recognized in the hospitality industry as an experienced convention center hotel brand, or (c) any other hotel brand Approved by City pursuant to this Lease. For avoidance of doubt, from and after the twentieth (20<sup>th</sup>) anniversary of the Opening Date, Lessee may elect to operate or cause the Hotel to be operated as a "non-branded" hotel, provided, that the Hotel must comply with the Hotel Standards set forth on **Exhibit "B"**.

"Approved Operator" means (a) any Approved Brand or (b) any management company approved by an Approved Brand to either (i) serve as the Hotel Operator pursuant to a franchise agreement with the Approved Brand or (ii) operate another Approved Brand hotel.

"Approved Plans" means the renderings and diagrams attached hereto as **Exhibit "E"** depicting the Mandatory Hotel Project Design Elements (other than the Skybridge), 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.

"Approved Skybridge and Off-Site Improvements Plans" means the renderings and diagrams depicting the Skybridge and Off-Site Improvements to be Approved by the City Manager prior to the Possession Date, which, following Approval by the City Manager, may be modified from time to time in the same manner as the Approved Plans in accordance with the terms of this Lease. The Skybridge will have finishes consistent with the finishes in the connecting point in the Convention Center, or as needed to comply with the Hotel Operator's generally applicable national brand standards. The repairs to the Fillmore Theater as part of the Off-Site Improvements will be done consistently with the quality of the Fillmore Theater prior to the work being done by Lessee in connection with the Hotel Project.

"Arbitrator" shall have the meaning ascribed to it in Section 7.10(a).

"Assignment of Contracts and Agreements" means an assignment from Lessee, as assignor, to the City, as assignee, assigning in favor of the City, on a non-recourse basis without any warranties or representations from Lessee, all of Lessee's right, title and interest in and to all contracts and agreements (other than the Hotel Project General Construction Contract and the Assignment of Plans and Approvals) executed in connection with the design, construction and equipping of the Hotel Project prior to the Completion of Construction, including such contracts and agreements with design professionals, which assignment shall 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 and is continuing hereunder, the City shall give Lessee a license of all such contracts and agreements, with the right to enforce all of the terms thereof, for the duration of the Term; provided, further that for so long as a First Leasehold Mortgage encumbers the Hotel Project, the City agrees to permit Lessee to make an assignment of such contracts and agreements to such First Leasehold Mortgagee (which First Leasehold Mortgagee shall have priority with respect thereto pursuant to the

non-disturbance, recognition and attornment agreement entered into pursuant to Section 6.1(b) hereof).

"Assignment of Hotel Project General Construction Contract" 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 the Hotel Project General Construction Contract, which assignment shall include a duly executed consent by the Hotel Project General Contractor 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 and is continuing hereunder, the City shall give Lessee a license of the Hotel Project General Construction Contract, with the right to enforce all of the terms thereof, for the duration of the Term; provided, further that for so long as a First Leasehold Mortgage encumbers the Hotel Project, the City agrees to permit Lessee to make an assignment of the Hotel Project General Construction Contract to such First Leasehold Mortgagee (which First Leasehold Mortgagee shall have priority with respect thereto pursuant to the non-disturbance, recognition and attornment agreement entered into pursuant to Section 6.1(b) hereof).

"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 and is continuing 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; provided, further that for so long as a First Leasehold Mortgage encumbers the Hotel Project, the City agrees to permit Lessee to make an assignment of such Approved Plans, designs, Governmental Approvals and other work product to such First Leasehold Mortgagee (which First Leasehold Mortgagee shall have priority with respect thereto pursuant to the non-disturbance, recognition and attornment agreement entered into pursuant to Section 6.1(b) hereof).

"Audited Gross Operating Revenues Schedule" means a schedule prepared in accordance with the Uniform System and reconciled in accordance with GAAP, and showing all Gross Operating Revenues and Gross Operating F&B Revenues for a Lease Year. Such Audited Gross Operating Revenues shall be based on Lessee's audited financial statements for such Lease Year.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as amended.

"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"**.

"Business Day" means a day other than a Saturday, a Sunday or a day on which the offices of the City, or national banks in Miami-Dade County, Florida are closed for business.

"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 Delays" shall mean the number of days in which the City performs any obligation under Section 2.13 hereof in excess of the number of days set forth for such performance therein.

"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 to obtain a Certificate of Occupancy have been satisfied, all applicable 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 to the extent required by the Hotel Operator.

"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 or loans to be provided by the Construction Lender(s) to the Lessee for development and construction of the Hotel Project in an aggregate amount not more than 85% of the Budgeted Improvement Costs.

"Construction Loan Commitment" means a financing commitment, term sheet or similar agreement by the Construction Lender that has been executed and delivered by and between Lessee and the Construction Lender(s) that confirms availability (subject to satisfaction of the terms and conditions contained therein) 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 in excess of 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). For avoidance of doubt, if a Person (for purposes of this definition, "Person A") cannot elect in excess of fifty percent (50%) of the directors, managers, general partners or other Persons exercising similar authority with respect to a Person (for purposes of this definition, "Person B") without the consent or approval of another Person or Persons, then Person A shall not be deemed to Control Person B.

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

"Convention District Fee" has the meaning ascribed to it in Section 4.5(a)(iii).

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

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

"Credit Enhancement" means a credit enhancement with respect to, or guaranty of, the financing for the Hotel provided by a Hotel Operator, or an Affiliate thereof.

"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. For example, if Gross Operating Revenues and Gross Operating F&B 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 1.50.

"Debt Service Payments" means all principal, interest and other regularly scheduled 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.

"Development Arbitrator" shall have the meaning ascribed to it in Section 7.9(b).

"Development Dispute" means any dispute between Lessee and City (acting in its proprietary capacity) arising prior to the Opening Date with respect to (i) whether a modification to the Hotel Project is a substantial deviation from the Approved Plans or a Prohibited Hotel Project Change requiring City's Approval pursuant to Section 2.2; (ii) any contention that City has unreasonably failed to Approve modifications to the Approved Plans in accordance with this Lease; (iii) any contention that City has unreasonably failed to Approve the proposed Approved Skybridge and Off-Site Improvements Plans or modifications thereto in accordance with this Lease; (iv) any contention that City has unreasonably failed to Approve a Hotel Project General Contractor in accordance with Section 2.8(b); (v) any disagreement as to permitted delays in Outside Dates; or (vi) any disagreement as to permitted delays in the Schedule of Performance pursuant to Section 2.7.

"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 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.

"Equity Commitment" means the commitment of Lessee to contribute an amount in cash to pay Improvement Costs as may be necessary, at the time of determination, when combined with the Initial Hotel Operator Financial Commitment, if any, and the proceeds available under the Construction Loan and Mezzanine Loan, if any, to maintain the Hotel Project In Balance, a portion of which Equity Commitment shall be funded by the Initial Lessee Estimated Equity Contribution but in no event less than the Initial Lessee Minimum Equity Contribution.

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

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

"Fillmore Theater" means the performing arts center located at 1700 Washington Avenue, Miami Beach, Florida, adjacent to and east of the Hotel Project and also known as the "Fillmore Miami Beach at the Jackie Gleason Theater".

"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 and the Hotel Project.

"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.

"First Rent Year" has the meaning ascribed to it in Section 4.4(a).

"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.

"Foreign Instrumentality" means a foreign (non-U.S.) government or agency thereof or a Person Controlled thereby.

"Franchise Agreement" means the hotel franchise agreement, as it may be extended, supplemented, amended or replaced from time to time, between Lessee and the applicable Approved Brand, which provides Lessee with the right to use the name or flag of the Hotel (if Lessee does not otherwise have such rights).

"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.

"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 the sum of Gross Operating Revenues and Gross Operating F&B Revenues.

"Gross Operating F&B Revenues" means all revenues and income of any nature derived directly or indirectly from Hotel food and beverage operations as determined in accordance with the Uniform System, including revenues and income generated from banquets and catering, lobby bar, the restaurant club, three-meal a day restaurants and/or food and beverage facilities located on the pool deck and surrounding areas within the Hotel (whether any food and beverage establishment is operated by Lessee or a Subtenant [**PARTIES NEED TO CLARIFY**]). Gross Operating F&B Revenues due not include any revenues derived from third-party leased restaurants operated within the ground floor retail areas. Notwithstanding the foregoing, the following shall not constitute Gross Operating F&B 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; and (iii) any sales taxes, excise taxes, or other similar taxes or charges collected by the Hotel and remitted to tax authorities.

"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 (excluding the value of any redeemed guest loyalty program credits or points), resort fees, online travel bookings net of any commissions paid to an online travel agency or other similar entity, 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, excluding any revenues derived from

third-party leased restaurants operated within the ground floor retail areas), vending machines, gross receipts, rents (excluding amounts collected by Lessee for payment of operating expenses, taxes or insurance) or license fees from the operation by Lessee or any Affiliate of Lessee of newsstand, gift shop, or business center, or from any other sub-lessees, concessionaires, third-parties conducting operations on the Leased Property or other sources (except as provided in Section 5.6(c) hereof), 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; (ix) Gross Operating F&B Revenues; (x) any proceeds of sale or financing or refinancing of the Hotel; and (xi) any revenues received as part of a frequent guest reward or guest loyalty program.

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

"Hearing" has the meaning set forth in Section 7.9(c).

"Hearing Date" has the meaning set forth in Section 7.9(c).

"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 800 rooms, 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 any Approved Operator engaged by 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; and (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 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 Bond 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 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 unfunded amount of the Mezzanine Loan, if any, available to Lessee for the payment of costs of labor and materials to achieve Completion of Construction of the Hotel Project, plus (c) the then remaining balance to be funded under the Equity Commitment, plus (d) the then remaining balance to be funded under the Initial Hotel Operator Financial Commitment, if any, plus (e) any additional cash amounts deposited with the City or any Leasehold Mortgagee or any Mezzanine Lender by Lessee in order to fund the difference, if any, between the sum of (a), (b), (c) and (d) 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 the initial Hotel Operator engaged by Lessee.

"Initial Hotel Operator Financial Commitment" means the commitment, if any, 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 and Mezzanine Loan, if any, to maintain the Hotel Project In Balance.

"Initial Lessee" means MB Mixed Use Investment, LLC, a Florida limited liability company.

"Initial Lessee Estimated Equity Contribution" means an amount up to \$20,000,000 but not less than the Initial Lessee Minimum Equity Contribution to be funded in cash by Initial Lessee or one or more of its Affiliates to pay Improvement Costs.

"Initial Lessee Minimum Equity Contribution" means \$10,000,000.00 to be funded in cash by Initial Lessee or one or more of its Affiliates to pay Improvement Costs.

"Initial Owner" has the meaning ascribed to it in Section 5.2.

"Institutional Lender" means, any of the following entities that is not a Prohibited Person and that has a net worth or assets under management in excess of (i) \$[TBD] with respect to entities providing loans to be secured by Leasehold Mortgages and (ii) \$[TBD] with respect to all other entities: [PARTIES CONTINUING TO DISCUSS]

(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 licensed life insurance company in the business of making commercial mortgage loans or a subsidiary or affiliate of any such institution, in each case, whose loans on real estate are regulated by state or federal laws;

(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;

(g) a governmental agency;

(h) a charitable organization regularly engaged in making loans secured by real estate;

(i) an investment bank;

(j) a securitization trust that is rated by S&P, Fitch or Moody's (or any like-extant national rating agency);

(k) a hedge fund, opportunity fund, or like entity; and

(l) any other source of funding, public or private, which is otherwise Approved by the City Manager.

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. City Manager's failure to notify Lessee of any disapproval of any proposed lender under (l) above within

twenty (20) days from its receipt of a notice by Lessee shall be deemed to constitute the City Manager's conclusive Approval of any such proposed 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.

"Lease Year" means a year, other than the first and last year of the Term, consisting of twelve (12) consecutive calendar months. The first Lease Year during the term of this Lease shall commence on the Rent Commencement Date and end on December 31<sup>st</sup> of the year in which the Rent Commencement Date occurs. The second and following Lease Years shall commence on the 1<sup>st</sup> day of January each calendar year and end on December 31<sup>st</sup> of such year.

"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 Gold LEED certification.

"Lessee" means MB Mixed Use Investment, LLC, a Florida limited liability company, and the successors, assigns or transferees thereof expressly Approved or permitted by the terms and provisions of this Lease. A certified copy of Lessee's articles of organization 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, and (f) the uncommitted amount of any available line(s) of credit.

"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 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 acre public park, the renovation of Convention Center Drive, including relocation of utilities, and other improvements to the Convention Center and surrounding areas.

"MBCC Standard of Operation" means the average standard of physical and operational quality for the MBCC Project facilities and associated infrastructure 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.

"Mezzanine Borrower" means the borrower under any Mezzanine Loan.

"Mezzanine Lender" means (a) the Institutional Lender selected by Lessee to provide the Mezzanine Loan or (b) a Hotel Operator, or an Affiliate thereof, to the extent it is providing a Mezzanine Loan or Credit Enhancement and is receiving a pledge of the equity interests in Lessee.

"Mezzanine Loan" means a loan to be made by the Mezzanine Lender to the Mezzanine Borrower to provide financing for the Hotel Project, subordinate to the First Leasehold Mortgagee, which may be secured by a lien on the ownership interests in Lessee.

"Mezzanine Loan Commitment" means a mezzanine financing commitment, term sheet or similar agreement by the Mezzanine Lender that has been executed and delivered by and between Lessee and/or Mezzanine Borrower and the Mezzanine Lender that confirms the availability (subject to satisfaction of the terms and conditions contained therein) of the Mezzanine Loan.

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

"MOT Plan" has the meaning ascribed to it in Section 4.1(b)(xv).

"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, enclosure of any remaining portion of the Fillmore Theater located outside the Leased Property, and paving and striping of up to twenty-five surface parking spaces for Fillmore Theater personnel as depicted in **Exhibit "U"**.

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

"Outside Date" means either of the Outside Opening Date or Outside Possession Date.

"Outside Opening Date" means that date that is sixty (60) months after the Possession Date, the date by which the Opening Date must have occurred, as such date shall be reasonably extended by (i) a Force Majeure Event or Economic Force Majeure in accordance with this Lease; (ii) City Delays; and/or (iii) Unanticipated Circumstances, if applicable.

"Outside Possession Date" means that date that is thirty-six (36) months after the Effective Date, by which date the Possession Conditions must be satisfied, as such date shall be reasonably extended for (i) a Force Majeure Event or Economic Force Majeure in accordance with this Lease; (ii) City Delays; and/or (iii) Unanticipated Circumstances, if applicable.

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

"Performance Bond and Payment Bond" means a performance bond and a 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 Manager, or such other security as is reasonably acceptable to the City Manager, after consultation with the City Attorney.

"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.

"Prohibited Person" shall mean any of the following Persons: (A) any Person (whose operations are directed or controlled by an individual) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to United States laws concerning organized crime; or (B) any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder to the extent the same are then effective: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the date hereof, North Korea, Cuba and Venezuela); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the date hereof, Iran, Sudan and Syria); or (C) any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or (D) any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or (E) any Affiliate of any of the Persons described in paragraphs (A) through (D) above.

"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 the City Manager and expressly providing that the City Manager is thereby Approving a Prohibited Hotel Project Change (which Approval may be granted or withheld by City Manager in his 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 the City Manager and expressly providing that the City Manager is thereby Approving a Prohibited Hotel Project Change (which Approval may be granted or withheld by City Manager in his 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 Approved Plans, 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) 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 the City);

(b) 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) management fees, at prevailing market rates.

"Proposed Transferee" has the meaning ascribed to it in Section 7.10(b).

"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, Additional Rent and Transaction Rent.

"Rent Commencement Date" has the meaning ascribed to it in Section 4.4(a).

"Rent Year" has the meaning ascribed to it in Section 4.4(a).

"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 4.1(b)(viii).

"Second Rent Year" has the meaning ascribed to it in Section 4.4(a).

"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 is eighteen (18) months after the Effective Date, as such date shall be reasonably extended for (i) a Force Majeure Event or Economic Force Majeure in accordance with this Lease; (ii) City Delays; and/or (iii) Unanticipated Circumstances, if applicable.

(b) The "Target Completion Date": the date targeted for completion of construction of the Hotel Project, which date is forty-eight (48) months after the Possession Date, as such date shall be reasonably extended for (i) a Force Majeure Event or Economic Force Majeure in accordance with this Lease; (ii) City Delays; and/or (iii) Unanticipated Circumstances, if applicable.

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

"Third Rent Year" has the meaning ascribed to it in Section 4.4(a).

"Transaction Rent" shall have the meaning ascribed to it in Section 4.4(b).

"Transfer" means any sale, assignment or conveyance (including any sublease of the entire Leased Property) or any other transaction or series of transactions in the nature of a sale, assignment or conveyance (including any sublease of the entire Leased Property) 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 (including any sublease of the entire Leased Property) of any of the foregoing (a), (b), or (c).

"Unanticipated Circumstances" means (a) concealed or subsurface conditions not reasonably anticipated by Lessee, including any Environmental Condition and any geothermal system located within or proximate to the Hotel Site, the areas in which the Off-Site Improvements are to be constructed or the areas in which the Skybridge is to be constructed, or under or within any existing improvements located on or within any portion of any of the foregoing, (b) off-site improvements required by any Governmental Authority other than those depicted on the renderings and diagrams attached hereto as **Exhibit "E"**, (c) any relocation of underground utilities located on the Hotel Site and (d) any appeals of Governmental Approvals to a court of competent jurisdiction.

"Uniform System" means the Uniform System of Accounts for the Lodging Industry, 11th Revised Edition, 2014, as published by the Educational Institute of the American Hotel and Motel Association, as revised from time-to-time.

"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 and 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 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.

(a) Lessee shall submit to the City Manager, prior to Commencement of Construction, any proposed modifications to the Approved Plans for the City Manager's determination of whether such modifications include any substantial deviation of the Hotel Project from the Approved Plans or Prohibited Hotel Project Changes. Modifications to the Approved Plans shall be indicated by "ballooning," highlighting, blacklining or describing such modifications in writing in reasonable detail in an accompanying memorandum. The City shall not be responsible for, and shall not be deemed to have Approved, any modification to the Approved Plans that is not indicated as required by this Section.

(b) Within twenty-one (21) days of receipt of any proposed modifications to the Approved Plans, the City Manager shall notify Lessee, in writing, that he approves such modifications, or the basis for any disapproval of any substantial deviation of the Hotel Project from the Approved Plans or Prohibited Hotel Project Change; provided, however, that the City shall not disapprove any material modification necessitated by Governmental Requirements. City's failure to notify Lessee of any disapproval within such twenty-one (21) day period shall be deemed to constitute the City's conclusive Approval of the proposed modifications to the Approved Plans. The Approved Plans, as amended by such Approved modifications, shall thereafter be the Approved Plans referred to herein.

(c) If the City disapproves of any modification pursuant to this Section 2.2, then Lessee shall, at its election, either (x) submit City's disapproval to expedited arbitration pursuant to Section 7.9 of this Lease, or (y) within thirty (30) days after receiving the City's disapproval notice, submit revised proposed modifications to the Approved Plans for City's review and Approval as provided in this Section 2.2, provided that the time period for approval or disapproval shall be fifteen (15) days.

(d) At any time during the design development phase of the Hotel Project, Lessee may (but shall not be required to) submit to the City Manager any proposed modifications to the Approved Plans for City's review and Approval pursuant to this Section 2.2, so as to mitigate or avoid any potential delays to the Schedule of Performance as a result of disputes regarding the final proposed Approved Plans.

**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 in all material respects in accordance with and subject to all of the terms and provisions of this Lease and to Complete Construction thereof by the Outside Opening Date, (ii) obtain a certificate of the LEED Status in accordance with Section 133-6 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 all matters relating to underground utility lines and facilities, including locating, relocating and/or removal, as necessary. 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 the City Manager'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, if any, the Construction Loan and the Mezzanine Loan, if any; provided that if the proceeds of the foregoing sources 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 and the Mezzanine Loan, if any, for all completion guaranties required in connection with the Construction Loan and the Mezzanine Loan, if any, 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 or the Mezzanine Loan, if any, 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 or the Mezzanine Lender in connection with the Mezzanine Loan, if any.

**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, with respect to any claims against the City acting in its governmental capacity, including any claims related to a condemnation by the City.

**Section 2.7. Schedule of Performance.** 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, except as otherwise permitted or Approved pursuant to this Lease), with all commercially reasonable diligence and in good-faith, in good and workmanlike manner, and shall use diligent, good-faith efforts to prosecute the Work in accordance with the Schedule of Performance, time being of the essence. The dates to be reflected in the Schedule of Performance, including the Target Dates, shall not be extended except for (i) a Force Majeure Event, (ii) Economic Force Majeure, (iii) a City Delay and/or (iv) Unanticipated Circumstances. If the Parties disagree with respect to any permitted delays in the Schedule of Performance, such disagreement shall be resolved in accordance with Section 7.9 hereof.

(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, the Outside Dates and other dates to be set forth in the Schedule of Performance, but failure to meet the Target Dates or other date (other than any Outside Date) to be set forth in the Schedule of Performance shall not be a default under this Lease.

(b) As further to be delineated in the Schedule of Performance, Lessee shall Complete Construction and cause the Opening Date to occur by the Outside Opening Date.

**Section 2.8. Construction Obligations.**

(a) **Bonds.** By no later than Commencement of Construction, Lessee shall provide a Performance Bond 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 Lessee's failure to substantially complete such facility as required herein.

(b) **Approval of Hotel Project General Contractor.** Lessee's selection of the Hotel Project General Contractor shall be subject to the advance Approval of the City Manager, after consultation with the City Attorney, as to the qualifications and responsibility of the proposed Hotel Project General Contractor to perform the contract, based on the contractor's licensure, bonding capacity, financial capacity, history of compliance with laws, and satisfactory past performance on similar projects. Provided that the Hotel Project General Contractor proposed by Lessee does not have a significant history of material non-compliance with the law, City agrees to Approve any Hotel Project General Contractor proposed by Lessee that satisfies each of the following:

(i) Has a State of Florida Building and Business License;

- (ii) Has completed at least one project in the past three years under a construction contract that specified a guaranteed maximum price at or above \$100,000,000;
- (iii) Has completed at least one high-rise hotel of at least eight (8) stories and four hundred (400) rooms in the last 5 years; and
- (iv) Has total bonding capacity in excess of \$1 Billion with at least \$250,000,000 available for a single project.

(c) **Construction Obligations.** Prior to the Outside Opening 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 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 \$5,000,000 (and to require each subcontractor to require in each sub-subcontract having a price in excess of \$5,000,000) that 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) Restore and repair any properties adjacent and leading to the Hotel Site damaged as a result of construction of the Hotel Project, 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 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, (x) 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), (y) [PARTIES CONTINUING TO DISCUSS] the performance and completion of the Work shall not materially interfere with the loading dock operations of the Convention Center or impair or impede access to such operations during a Convention Center event, other than during the construction of the Skybridge, during which Lessee shall use commercially reasonable efforts to minimize such interference and shall cooperate in good faith with the City to minimize such interference with the Convention Center and (z) Lessee shall use commercially reasonable efforts to cause the performance and completion of the Work not to materially interfere with the loading dock operations of the Fillmore Theater.

(d) **Completion of Construction.** 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 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.

(e) **Skybridge and Off-Site Improvements.** Lessee shall deliver the proposed Approved Skybridge and Off-Site Improvements Plans to the City for Approval as required to maintain the Schedule of Performance. The 25 surface parking spaces for Fillmore Theater personnel to be constructed by Lessee as part of the Off-Site Improvements will be constructed as depicted on **Exhibit "U"** hereto. Lessee shall have no obligations or liabilities with respect to the ownership or operation of such parking spaces after completion.

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

(a) Lessee shall keep the City apprised of Lessee's progress regarding the Work, including Lessee's progress towards meeting the Target Dates and Outside Dates set forth in the Schedule of Performance. 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 (which shall be kept at the address

specified in Section 14.5) as often as may be reasonably 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 for inspection, 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. To the fullest extent permitted by law, City shall protect from disclosure any records that are confidential and exempt from disclosure under Florida law, provided, however, that nothing herein shall preclude the City or its employees from complying with the disclosure requirements of the Public Records Act, and any such compliance shall not be deemed an event of default by the City under this Lease. City shall use its good-faith, diligent efforts to provide timely written notice to Lessee of any public records request seeking any records of the Lessee that may be within the City's custody, possession or control, to permit Lessee the opportunity to seek to protect such information from disclosure.

**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 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.

**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 fifteen (15) days after receiving a written request from Lessee that is consistent with all Governmental Requirements and in accordance with this Lease, the City, at Lessee's sole cost and expense (including City's reasonable attorneys' fees in reviewing any agreements), shall join Lessee when required by law in any and all applications and agreements for Governmental Approvals as may be commercially reasonably necessary for developing and constructing the Hotel Project, which applications and agreements are necessary because City is the

fee owner of the Leased Property and/or the properties surrounding the Leased Property, and which applications and agreements may include applications for subdivision approval, covenants in lieu of unity of title, easement and operating agreements, and demolition permits and applications for Design Review Board approval for buildings located on the Hotel Site. Lessee shall pay all fees and charges for all such applications. Failure of the City to perform as requested within such fifteen (15) day period shall be deemed a City Delay for the number of days of delay beyond such fifteen (15) day period.

**Section 2.14. Compliance with Laws.** Lessee will comply 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, unless required by Governmental Requirements 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.

**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, as such term is defined in Section 82-537 of the City Code, 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.**

(a) Lessee shall be solely responsible for obtaining all land use permits, including all permits and approvals required pursuant to Section 163.3180, Florida Statutes, and Chapter 122, City Code, with respect to concurrency requirements for roads, sanitary sewer, solid waste, drainage, potable water, and parks and recreation, (the "Concurrency Requirements"). Prior to applying for its building permit for the Hotel Project, Lessee shall apply for a preliminary concurrency determination for the Hotel Project with the City's concurrency management division. Lessee shall diligently and in good faith comply with the all of the requirements of Section 122-8 of the City Code to obtain a preliminary concurrency determination impact certificate, and if the concurrency management division determines that the required public facilities are or will be available to serve the proposed development, the concurrency management division shall issue a preliminary concurrency determination impact of no less than 36 months from the date of issuance of the determination, which shall be specified on the face of the preliminary concurrency determination. In the event the issuance of a preliminary concurrency determination is based on an approved mitigation program, such certificate shall be expressly conditioned upon compliance with such program. Provided that (i) a preliminary concurrency determination impact certificate is issued, (ii) the Design Review Board approves a development order for the Hotel Project and such order becomes final (after all appeal periods have expired without an appeal being filed, or if filed, resolved favorably for Lessee), and (iii), Lessee pays applicable mitigation fees (including impact fees, concurrency fees, and/or mobility fees that may be due) or provides for applicable mitigation prior to building permit, then in that event, a final reservation certificate shall be issued and the available capacity for public facilities will be reduced by the projected demand for the Hotel Project until the reservation of the capacity expires or becomes permanent.

(b) Provided that Lessee complies with the provisions of Section 3.3 (a) above, the City agrees that Concurrency Requirements for the following public facilities and services required to service the Hotel Project have been satisfied or will be satisfied in accordance with the terms of this Lease: potable water transmission capacity; sanitary sewer transmission capacity; storm sewer capacity; local recreation open space; transportation level of service; and solid waste collection capacity. All subsequent development orders or permits that are in conformity with this Lease are hereby found to meet concurrency standards set forth in the Comprehensive Plan, and to be consistent with the presently permitted development as described on Exhibit "H" and applicable zoning regulations, so long as the Leased Property is developed in substantial compliance with the Governmental Approvals described in Exhibit "K".

(c) In addition to the foregoing, the City agrees to prioritize reservation of capacity, as of the Effective Date, for potable water transmission capacity, sanitary sewer transmission capacity and storm sewer capacity facilities and services required to service the Hotel Project; provided, however, that if Miami-Dade County issues a moratorium on new construction for water and sewer services, any such moratorium is beyond the City's control, and City cannot supersede Miami-Dade County's jurisdiction with respect to the reservation of capacity. Upon such reservation, the City will reserve sufficient infrastructure and capacities for potable water transmission, sanitary sewer transmission, and storm sewer based on the Hotel Project as described in this Lease, and such capacity will remain available to serve the Hotel Project. Lessee shall be responsible for the relocation of utilities that come

in contact with the Hotel Site or improvements required to maintain the integrity of existing City systems [PARTIES CONTINUING TO DISCUSS].

**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 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 and Lessee support and encourage the application of responsible wages and City of Miami Beach and Miami-Dade County workforce hiring with respect to the Hotel Project.

**Section 3.11. Laws Governing this Lease.** For the entire Term of this Lease, the City hereby agrees that the City's Land Development Regulations governing the development of the Leased Property as they exist as of the Effective Date of this Lease shall govern the development of the Leased Property and the Hotel Project during the Term. Notwithstanding the foregoing, the City may apply subsequently adopted laws or policies to the Leased Property and the Hotel Project (particularly as they may relate to quality of life issues such as, but not limited to noise, litter, and hours of operation) as permitted or required by the Act, including, without limitation, Section 163.3233(2), Florida Statutes, as same may be amended from time to time; provided, however, that this provision shall not be deemed to apply to regulations governing height, floor area ratio (FAR), density, parking requirements or permitted uses.

**Section 3.12. Duration of Development Rights.** Notwithstanding any provision to the contrary in this Lease, the development rights and responsibilities granted to Lessee hereunder shall run for an initial term of ten (10) years from the Effective Date, and may be extended by mutual consent of the City and the Lessee subject to a public hearing(s) pursuant to Section 163.3225, Florida Statutes. Consent to any extension of the development rights granted herein is within the sole discretion of each Party. No notice of termination shall be required by either Party upon the expiration of the development rights granted pursuant to this Lease, provided, however, that the Parties' obligations for the failure to satisfy Possession Conditions shall be as provided for in Section 4.1(f) and any other applicable provisions of this Lease.

**Section 3.13. Lessee's Right of Termination.** Notwithstanding anything to the contrary herein, including Section 7.2(b) of this Lease, Lessee shall have the right to terminate this Lease prior to the Possession Date due to (i) changes to the Approved Plans required by the City's Design Review Board or any other Governmental Authority (including the City) that render the Hotel Project economically unfeasible in the reasonable business judgment of Lessee; (ii) the Hotel Project cannot meet the Concurrency Requirements, or the costs of concurrency mitigation are, in the reasonable business judgment of Lessee, economically unfeasible; (iii) Lessee, after its diligent good-faith efforts, has been unable to obtain a full building permit for the Hotel Project; or (iv) Unanticipated Circumstances exist. In the event of termination pursuant to this Section 3.13, each Party shall bear its own costs and expenses incurred in connection with this Lease and, neither Party shall have any further liability to the other Party.

#### **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 approximately ninety-nine (99) years ending on December 31<sup>st</sup> of the last Lease Year prior to the 99<sup>th</sup> anniversary of the Possession Date (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) 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 pursuant to Subsection 2.8(b) by the City Manager reflecting the guaranteed maximum price for completion of the Lessee Improvements;
- (iii) Lessee shall have delivered to City written evidence reasonably satisfactory to the City of the existence and availability of (A) Liquid Assets to fund the Equity Commitment, (B) Initial Hotel Operator Financial Commitment, if any, (C) the Mezzanine Loan Commitment, if any, and (D) the Construction Loan Commitment, all of which together demonstrate that the Hotel Project is In Balance;
- (iv) Lessee shall have provided to City, and City Manager shall have Approved, any changes to the Budgeted Improvement Costs, provided that City Manager shall not withhold its Approval so long as Lessee has obtained and delivered to the City written evidence of the existence and availability of (A) Liquid Assets to fund the Equity Commitment, (B) the Initial Hotel Operator Financial Commitment, (C) the Mezzanine Loan Commitment, if any, and (D) the Construction Loan Commitment that demonstrate that the Hotel Project is In Balance;
- (v) Lessee shall have reimbursed the City for the costs associated with the City's voter referendum in connection with this Lease, not to exceed Twenty-Five Thousand Dollars (\$25,000).
- (vi) Lessee shall have obtained, and shall have delivered to City a copy of, all Governmental Approvals necessary for the Commencement of Construction and for the demolition of all improvements currently located within the Hotel Site, the areas in which the Off-Site Improvements are to be constructed and the areas in which the Skybridge is to be constructed;
- (vii) 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, Franchise 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 that the Management Agreement requires the Hotel Operator to comply with the terms of the Room Block Agreement, (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, at the City's option, continue to perform under the Management Agreement in accordance with the terms thereof and the Franchise Agreement so long as 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; provided, however, if the First Leasehold Mortgagee enters into a similar agreement with the Lessee and the Hotel

Operator, the City agrees that the Hotel Operator shall continue to perform and such performance shall not be optional on the part of the City;

(viii) Lessee shall have delivered to City, and City Manager shall have Approved, a schedule of performance for the Hotel Project setting forth the dates and times of delivery of the Hotel project, including the Target Dates, the Outside 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 described on Exhibit "K" for the Hotel Project and the schedule for completion of the Work (the "Schedule of Performance"). City agrees that it shall not withhold Approval thereof so long as the same reflects Completion of Construction by the Outside Opening Date and Lessee has provided reasonable evidence that such schedule is reasonable;

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

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

(xi) Lessee shall have delivered to the City, a duly executed Assignment of Plans and Approvals, a duly executed Assignment of Hotel Project General Construction Contract and a duly executed Assignment of Contracts and Agreements;

(xii) Lessee shall have delivered to the City reasonable evidence that Lessee has invested the Initial Lessee Minimum Equity Contribution prior to the Possession Date, or if the Initial Lessee Minimum Equity Contribution has not been invested prior to the Possession Date, Lessee shall deposit an amount equal to the balance of the unfunded amount of the Initial Lessee Minimum Equity Contribution, less cash amounts deposited with any Leasehold Mortgagee or any Mezzanine Lender by Lessee to satisfy Lessee's equity requirements under the Construction Loan or Mezzanine Loan, in escrow with an escrow agent reasonably satisfactory to the City to be drawn by Lessee on a monthly basis based upon presentation of invoices for Budgeted Improvement Costs;

(xiii) Lessee has provided to the City reasonable evidence that the closing of the Construction Loan has occurred;

(xiv) the representations and warranties made by the Lessee in this Lease pursuant to Sections 4.3(a) and 5.2 remain true and correct in all material respects on and as of the Possession Date;

(xv) Lessee shall have delivered to the City a maintenance of traffic plan for the staging of the Work during the construction period (the "MOT Plan"), which MOT Plan shall have been Approved by the City Manager and which will include minimal disruptions to 17<sup>th</sup> Street and Convention Center Drive, subject only to closures for short time periods upon Approval by the City Manager as reasonably necessary to complete the Work; and

(xvi) Lessee shall have delivered to the City a parking and transportation plan for the off-site parking and transportation of construction workers and Hotel employees to and from the Hotel, which plan shall have been Approved by the City Manager and which, subject to Lessee's negotiations with the Initial Hotel Operator, may include various traffic mitigation options, including (1) providing

hotel guests with an online link to the City's trolley service map, with points of interest, at reservation confirmation, and a copy of the City's trolley brochure at check-in; (2) offering Hotel guests the ability to purchase, as part of a room reservation, airport shuttle services or transit passes to encourage public transit usage; (3) providing a reservation portal for guests to include their airport arrival times, with the system identifying available shuttle services based on those arrival times; (4) partnering with on-demand multi-passenger services, such as the FreeBee golf carts, as an amenity for hotel guests; (5) offering off-site parking and shuttle services for Hotel employees; (6) utilizing Miami-Dade County's corporate discount program to reduce the costs of transit passes for Hotel employees using transit to work; and/or (7) providing a covered area for bicycle parking within the Hotel Project.

(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 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, areas in which the Off-Site Improvements are to be constructed and the areas in which the Skybridge is to be constructed to conduct at Lessee's sole cost and expense, physical inspections, tests, studies, samplings and analyses (including soil borings and invasive environmental testing) of the Hotel Site and such other areas 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. 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 and such other areas 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, except to the extent resulting from the negligence or willful misconduct of City or its officers, employees, agents, representatives, consultants, counsel and contractors, and except as limited in paragraph (d) above. 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; or (ii) the Opening Date does not occur by the Outside Opening Date, then notwithstanding anything to the contrary set forth in Section 7.1 below and not in limitation of any of the City's remedies set forth in Article VII of this Lease, Lessee hereby waives any further right to cure, and the City shall be entitled to

immediately revoke the licenses granted to Lessee pursuant to the Assignment of Plans and Approvals, the Assignment of Hotel Project General Construction Contract and the Assignment of Contracts and Agreements upon written notice to the Lessee.

(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 also, prior to the Possession Date, enter into any and all easements which may be required by Lessee to (i) design, permit and construct enclosures regarding the Fillmore Theatre in the area of demolition; and (ii) develop, construct, operate, repair, maintain and reconstruct the Hotel Project, including to connect utilities to the Hotel Site as shown in the Approved Plans. The Parties shall thereafter cause the Easements to be promptly recorded among the public records of Miami-Dade County, Florida.

#### **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: (i) any unlawful or illegal business, use or purpose; (ii) any business, use or purpose which is immoral, disreputable (including "adult entertainment establishments" and "adult" bookstores, but excluding in-room "R Rated" television and on-demand movies) or extra-hazardous; (iii) a nightclub where the sale of food is only incidental to the sale of alcoholic beverages and where the establishment is licensed and primarily operated from midnight to 5:00 a.m. as a "Dance hall" or "Entertainment Establishment" as defined by Section 114-1 of the City of Miami Beach Code (other than and specifically excluding the Hotel's lobby bars, rooftop bars or cocktail lounges, pool bars, restaurants, banquet functions or other similar food and beverage operations contemplated as part of the Approved Plans or the Mandatory Hotel Project Design Elements); or (iv) any Gaming Establishment (whether or not such use is permitted by applicable law). 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 the requirements of this Section 4.2(d) to be incorporated in the Management Agreement with the Hotel Operator; provided, however, that Lessee shall not be in default hereunder following (i) any discrimination committed by the Hotel Operator or Hotel Operator's employees or (ii) Hotel Operator's non-compliance with the City's Human Rights ordinance, codified in Chapter 62 of the City Code, so long as, in each case, Lessee is enforcing the terms of the Management Agreement to require Hotel Operator's compliance with the requirements of this Section 4.2(d), which enforcement shall include termination of the Management Agreement after the third violation by such Hotel Operator of requirements of this Section 4.2(d) within any five (5) consecutive year period during the Term, as such violations have been finally determined by a court of competent jurisdiction. For avoidance of doubt, Lessee shall be deemed to comply with the preceding sentence so long as Lessee is actively pursuing any necessary litigation associated with such termination of the Management Agreement.

(e) **Lessee's Rights To Operate a Convention Hotel Not Exclusive.** Except as specified 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 for a period of ten (10) years after the Opening Date, permit any other hotel with over 500 separately keyed sleeping rooms to open for business to the general public on City-owned or City-leased property within the geographical area bounded by 5<sup>th</sup> street to the south, 48<sup>th</sup> street to the north, the Atlantic Ocean to the east and Biscayne Bay/Intracoastal Waterway to the west.

(f) **Room Block Agreement.** Lessee shall operate, and cause the Hotel Operator to operate, the Leased Property in material compliance with the terms of the Room Block Agreement throughout the Term. In addition, Lessee shall not receive any commission, rebate or other compensation from any hotel located in the City of Miami Beach with respect to any group room block or room bookings made by any such Miami Beach hotel.

(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 Parties and shall be for the benefit and in favor of, and enforceable by, the Parties, 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 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 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 specifically 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 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 (i) Opening Date (the "Rent Commencement Date"), and except as set forth below, monthly rent in the amount of the greater of (x) (A) two and one half percent (2.5%) of the Gross Operating Revenues for such month plus (B) two and one half percent (2.5%) of the Gross Operating F&B Revenues for such month with respect to those food and beverage outlets set forth in the definition thereof, if any, that do not utilize union labor, plus (C) one percent (1.0%) of the Gross Operating F&B Revenues for those food and beverage outlets set forth in the definition thereof, if any, that utilize union labor or (y) one-twelfth (1/12<sup>th</sup>) of the Minimum Fixed Rent set forth in Section 4.4(a)(i) of this Lease ("Base Rent").

The Base Rent shall be due and payable on or before the twenty-fifth (25<sup>th</sup>) day of each month following the month for which the Base Rent is applicable. Prior to the closing of the Construction Loan, Lessee shall provide City with a copy of the pro forma accepted by the Construction Lender in connection with the closing of the Construction Loan.

(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 Rent Commencement Date and continuing on the first day of each month thereafter. Attached as **Exhibit "R"** hereto is a schedule setting forth the Minimum Fixed Rent for the period commencing on the Rent Commencement Date and ending on December 31 of the year in which the tenth (10<sup>th</sup>) anniversary of the Rent Commencement Date occurs; provided that the amount shown for the first year shall apply for the period commencing on the Rent Commencement Date and ending on December 31 of the year in which the first anniversary of the Rent Commencement Date occurs, prorated for any partial calendar years. Commencing on January 1<sup>st</sup> following the tenth anniversary of the Rent Commencement Date, and every ten (10) Lease 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) sixty percent (60%) of the average Base Rent payable for each twelve month period during the preceding ten (10) calendar year periods; provided that for the first Minimum Fixed Rent Reset Date item (y) shall be sixty percent (60%) of the average Base Rent for each twelve month period payable during the preceding five (5) calendar 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) Each year following the Rent Commencement Date, Lessee shall provide City with the report required in Section 4.4(j)(ii) as to the correct Gross Operating Revenues and Gross Operating F&B 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(j). In the event such report reflects that additional Base Rent ("Additional Base Rent") is due to the City with respect to such previous calendar year, Lessee shall deliver such payment to the City contemporaneously with the delivery of such report. In the event such report reflects an overpayment to the City with respect to Base Rent, the City shall return the excess to Lessee within thirty (30) days after receipt of such report.

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

(b) **Transaction Rent.** Lessee covenants and agrees to pay the City as Additional Rent, within sixty (60) days after the closing of the first three (3) Transfers that effects either a sale of the entire Hotel Project to a Person that is not an Affiliate of Lessee or a Transfer of a Controlling interest in Lessee to a Person that is not an Affiliate of Lessee (other than (i) a Transfer pursuant to a foreclosure of a Leasehold Mortgage or a delivery by Lessee of a deed in lieu thereof, (ii) the first Transfer by a Leasehold Mortgagee following a Transfer pursuant to clause (i), or (iii) a Transfer pursuant to a foreclosure of the pledge of ownership interests of Lessee granted pursuant to a Mezzanine Loan or Credit Enhancement or a delivery by Lessee of an assignment in lieu thereof, or (iv) the first Transfer by the Mezzanine Lender or the beneficiary of a Credit Enhancement following a Transfer pursuant to clause (iii)), an amount equal to the lesser of (x) \$2 million (or a prorated portion thereof if such Transfer is of less than 100% of the ownership interests of Lessee) or (y) 0.25% of the gross sales price (less typical commissions, closing adjustments and credits) in connection with such Transfer (each "Transaction Rent"); provided that Transaction Rent shall be payable in connection with any such Transfer only if the gross sales price in connection with such Transfer exceeds an amount equal to 120%

of the Improvement Costs (provided that any Improvement Costs paid to Affiliates of Lessee shall be included up to but not exceeding fair market value for the services provided by such Affiliates), or a prorated portion thereof if such Transfer is of less than 100% of the ownership interests of Lessee.

(i) An example of calculating Transaction Rent pursuant to Section 4.4(b) is set forth on **Exhibit "O"**.

(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 and Gross Operating F&B Revenues.

(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, 3<sup>rd</sup> Floor, Miami Beach, Florida 33139 and in such manner 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.

(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 and to pursue other remedies provided under this Lease. 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.

(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.

(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.

(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.

(i) **Lessee Improvements Not Deemed Rent.** The Lessee Improvements will be made by Lessee in order to put the Leased Property in a condition suitable for the operation of the Lessee's business. 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.

(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, Gross Operating F&B Revenues, Base Rent and Transaction Rent, Lessee shall keep and preserve for at least five (5) 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 financial information regarding the Hotel Project, including information required to determine Base Rent and Transaction 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 require at any time within one year after (a) submittal of the annual certification to City set forth in Subsection 4.4(j)(ii) with respect to the Gross Operating Revenues and Gross Operating F&B Revenues, and (b) a Transfer pursuant to which Transaction Rent is due in accordance herewith, with respect to the gross sales price of such Transfer, as applicable. Records copied by the City, if any, shall be subject to the requirements of the Florida Public Records Act set forth in Chapter 119 of the Florida Statutes ("Public Records Act"). To the fullest extent permitted by law, City shall protect from disclosure any records that are confidential and exempt from disclosure under Florida law, provided, however, that nothing herein shall preclude the City or its employees from complying with the disclosure requirements of the Public Records Act, and any such compliance shall not be deemed an event of default by the City under this Lease. City shall use its good-faith, diligent efforts to provide timely written notice to Lessee of any public records request seeking any records of the Lessee that may be within the City's custody, possession or control, to permit Lessee the opportunity to seek to protect such information from disclosure. 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 Gross Operating Revenues Schedule for each Lease Year during the Term, certified by the Lessee's outside CPA, within one hundred twenty (120) days after the close of each Lease Year (including the Lease Year in which this Lease terminates or is terminated) specifying the Gross Operating Revenues and Gross Operating F&B Revenues, for each of the categories or items identified in the definitions of Gross Operating Revenues and Gross Operating F&B Revenues, as applicable, Base Rent for the applicable Lease Year and Additional Base Rent, if any.

(iii) If Lessee shall fail to deliver the foregoing annual Audited Gross Operating Revenues Schedule 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 Lease 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 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 deficiency of more than three percent (3%), in the amount of Base Rent due to the City. If in the course of any audit the City identifies a deficiency in excess of five percent (5%) in the amount of Base Rent, the City shall have the right to audit Lessee's books and records for the three (3) prior calendar years. If the City identifies any deficiencies in excess of five percent (5%) in the amount of Base Rent due as a result of an audit of any of those three (3) prior calendar years, the City shall have the right to audit an additional two (2) prior calendar years. 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 of Construction, 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.** Lessee, in addition to the Rent and all other payments due to City hereunder, covenants to pay and discharge before any fine, penalty, interest or cost may be added, all public charges (collectively "Public Charges") including:

(i) 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, restaurant taxes, and public assessments (including, without limitation, permit fees, impact fees and other public charges); and

(ii) Special Assessments pursuant to Section 4.5(d), 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; and

(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. All such charges shall be prorated, to the extent applicable, 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 reasonably required by City Manager 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, less any amounts deposited with any Leasehold Mortgagee or any Mezzanine Lender for such purposes. 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. If Lessee does not so use any such cash or other security deposited with the City, then the City shall promptly return such cash or other security to Lessee upon the termination of any such proceedings.

(ii) City shall not be required to join in any proceedings referred to in this Section 4.5(d) 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. Notwithstanding the foregoing, City's joinder and cooperation shall be limited to actions necessary to enable Lessee to satisfy technical requirements of any action or proceeding and in no event shall City be required to join in such action or proceeding in any substantive capacity.

(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, in accordance with the City's customary practices.

(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 Miami Beach Loews Hotel).

(e) **No Tax Abatements or Other Public Subsidies to Lessee.** This Lease shall not, in and of itself, entitle Lessee to any City tax abatement, tax rebate, public funding or public financing with respect to any Public Charges, nor shall this Lease prohibit Lessee from seeking or receiving any tax

abatement, tax rebate, public funding or public financing with respect to any Public Charges of any Governmental Authorities other than the City.

**Section 4.6. Additional Consideration.** Lessee, in addition to the Rent and all other payments due to City hereunder, covenants to pay to the City for joint marketing purposes to promote the Convention Center, the Hotel and the City, an amount equal to one percent (1%) of all gross room revenues but only to the extent paid by Hotel guests as a voluntary surcharge and collected by Lessee (the "Convention District Fee"). Lessee will not challenge or contest the validity of the Convention District Fee.

## **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. Notwithstanding anything to the contrary set forth herein, including Section 5.3 hereof, prior to the Opening Date, **[PARTIES NEED TO CLARIFY]** Affiliates of either or both of Terra International Developments or Turnberry Associates, as each exists on the date of execution of this Lease (each, an "Initial Owner"), shall continue, directly or indirectly, to direct the day-to-day management and policies of Lessee.

**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 Manager.

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

(i) a Transfer prior to the Opening Date of a direct or indirect interest in Lessee to an equity investor funding all or any portion of the balance of the Equity Commitment in excess of the Initial Lessee Minimum Equity Contribution (together with any additional amounts funded by Initial Lessee or one or more of its Affiliates), provided that such transferee satisfies the applicable "Acceptable Owner Criteria" set forth on **Exhibit "A"** attached hereto;

(ii) a Transfer after the Opening Date of the entire Hotel Project or any direct or indirect interest in Lessee provided that (i) the transferee satisfies the applicable "Acceptable Owner Criteria" set forth on Exhibit "A" attached hereto; (ii) the City is given written notice thereof together with true and correct copies of the applicable information required under **Exhibit "A"** attached hereto and in accordance with the time frames set forth on **Exhibit "A"** attached hereto in order for City Manager to confirm that the transferee (or the Lessee) is an Acceptable Owner; (iii) no Event of Default has occurred and is continuing and (iv) all of the conditions precedent to the effectiveness of such Transfer as set forth in Section 5.5 hereof are satisfied;

(iii) 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;

(iv) 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;

(v) 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;

(vi) Any Transfer directly resulting from the foreclosure by the Mezzanine Lender of a pledge of ownership interests of Lessee or any Transfer made to the purchaser at a foreclosure of such pledge of ownership interests of Lessee (if such purchaser is a nominee in interest of the Mezzanine Lender), or any assignment in lieu of such foreclosure, provided that such Transfer is in accordance with the terms and conditions of Article VI;

(vii) Any Transfer, or series of Transfers not permitted pursuant to Sections 5.3(b)(i) and 5.3(b)(ii) above, of not more than an aggregate of twenty-five percent (25%) of the direct or indirect ownership interests in Lessee, provided that either there is no change in Control of Lessee as a result of such Transfer or at all times after such Transfer, an Initial Owner or any Affiliate thereof, an Acceptable Owner or other successor Person Approved by the City Manager has the power to direct the day-to-day management and policies of Lessee;

(viii) Any Transfer that occurs by inheritance, devise, bequest or by operation of law upon the death of a natural person who is the owner of a direct or indirect ownership interest in Lessee, provided that, in each case, at all times after such Transfer, the transferor, or in the case of death, the Person who inherits transferor's interest, retains Control of the transferred interest;

(ix) Any Transfer to a trust, partnership or other entity for family estate planning purposes, provided that, in each case, at all times after such Transfer, the transferor retains Control of the transferred interest; or

(x) Any Transfer (A) to an Affiliate of the transferor or (B) among direct or indirect owners of Lessee, provided that, in each case, either there is no change in Control of Lessee as a result of such Transfer or at all times after such Transfer, an Initial Owner or an Affiliate thereof or an

Acceptable Owner or other successor Person Approved by the City Manager 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; provided, however, that the foregoing restriction shall not apply to a proposed transferee if all Persons owning or Controlling such proposed transferee, 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.

**Section 5.4. Transfer Requiring City's Approval.** 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 Manager (or the City Commission, with respect to Transfers to certain Foreign Instrumentalities as specified herein) to evaluate the proposed transferees and the Transfer and to obtain the City's Approval of same, when such Approval is required under the terms of this Lease. If a Permitted Transfer under Sections 5.3(b)(i) or (ii), said information shall demonstrate that the transferee is an Acceptable Owner as set forth on **Exhibit "A"** attached hereto; if a Permitted Transfer under Sections 5.3(b)(vii) or (x), said information shall demonstrate that either there is no change in Control of Lessee as a result of such Transfer or an Initial Owner or an Affiliate thereof, an Acceptable Owner or, if applicable, other successor Person Approved by the City Manager has the power to direct the day-to-day management and policies of Lessee; if a Permitted Transfer under Sections 5.3(b)(viii) or (ix) said information shall demonstrate that the transferor, or in the case of death, the Person who inherits transferor's interest, retains Control of the transferred interest. If not a Permitted Transfer, Lessee shall provide to the City the information described in Paragraph C of **Exhibit "A"** and the provisions described in Paragraph D of **Exhibit "A"** shall apply. The City's confirmation or Approval process shall proceed as set forth on **Exhibit "A"** attached hereto. Any Approval of a Transfer to a Foreign Instrumentality (other than to any of the member countries of the European Union or the Gulf Cooperation Council, each as existing as of the Effective Date, Canada, Mexico, countries located in South America (excluding Venezuela), Japan, South Korea, Singapore and Australia, or Persons Controlled by any of the foregoing countries) shall be subject to the prior written approval of the City Commission, which approval may be granted, conditioned or withheld by the City Commission in its sole discretion. 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, if any, 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 documents that convey title to the transferred interest; and
- (b) where the Transfer is pursuant to Section 5.3(b)(ii), 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 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, including, without limitation a taxable REIT subsidiary lease under Section 856 of the Internal Revenue Code and an Opco/Propco lease between Lessee and an Affiliate, provided the Sublease is consistent with this Lease (including this Article V) and consistent with the Hotel Standards. 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 and/or Gross Operating F&B Revenues (as applicable) of the applicable subleased portion of the Leased Property 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 and Gross Operating F&B 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 (and such Sublease rent shall not be included in calculating Gross Operating Revenues or Gross Operating F&B Revenues, as applicable) except solely with respect to a portion of the Leased Property leased to a Subtenant for purposes of operating any areas on the ground floor of the Hotel Project; a gift shop; a car rental facility; FedEx, UPS or a similar delivery service; beachwear and equipment rental; and antennae; in which cases, only such Sublease rent (but not Gross Operating Revenues or Gross Operating F&B Revenues, as applicable, of such Subleased portions of the Leased Property) shall be used for purposes of calculating Gross Operating Revenues and Gross Operating F&B Revenues.

**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 and/or a pledge of its ownership interests in favor of a Mezzanine Lender, provided that:

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

(ii) no First Leasehold Mortgage or other encumbrance executed by the Lessee in connection with such First Leasehold Mortgage or Mezzanine Loan 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;

(iii) 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 subject to this Article VI; provided that (A) 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 and (B) the City agrees from time to time upon reasonable request and without charge to execute, acknowledge and deliver any instruments reasonably requested by such First Leasehold Mortgagee or Mezzanine Lender to evidence the City's non-disturbance and recognition of the rights granted to such First Leasehold Mortgagee or Mezzanine Lender pursuant to this Section 6.1;

(iv) the rights of the City in the Leased Property and arising out of this Lease shall not be affected by the First Leasehold Mortgage, First Leasehold Mortgagee, Mezzanine Loan or Mezzanine Lender, nor shall the City be deprived in any other way of its rights in the Leased Property or under this Lease, except to the extent provided in this Article VI or in any subordination, non-disturbance and recognition agreement between the City and such First Leasehold Mortgagee or Mezzanine Lender that is consistent with the terms of this Lease;

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

(vi) at the time of the closing of the financing or re-financing other than for the initial Construction Loan, the initial Mezzanine Loan and any other Leasehold Mortgage loan or Mezzanine Loan that is closed prior to the Opening Date, 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 1.15 (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 based on Lessee's approved operating budget for the current Lease Year for subsequent financings);

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

Property and/or (b) pledges of ownership interests of Lessee, does not exceed an amount equal to eighty percent (80%) 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, which appraiser must have at least ten (10) years of experience in appraising hotel properties of at least four hundred (400) rooms in the Miami Beach area, (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;

(viii) the First Leasehold Mortgagee shall have a first-priority right and option to retain, apply and disburse the proceeds of any insurance or the proceeds of any condemnation award in accordance with the requirements of its First Leasehold Mortgage before any such proceeds are applied towards the demolition, repair or restoration of the Leased Property in accordance with the provisions of this Lease; and

(ix) Following a foreclosure sale, any purchaser at such foreclosure sale acquiring any right, title or interest in or to this Lease, shall enter into in a written instrument reasonably satisfactory to the City, to assume and agree to perform all of the terms, covenants and conditions of Lessee hereunder arising after the date of such Transfer (provided that City does not waive or relinquish its right, and shall have the right, to enforce its remedies with respect to any Event of Default existing as of the date of such Transfer), that no additional mortgage or assignment of this Lease or pledge of ownership interests of Lessee 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 (i) a First Leasehold Mortgage is recorded or (ii) the Mezzanine Lender, if any, enters into a Mezzanine Loan agreement with Lessee, the First Leasehold Mortgagee or Mezzanine Lender, as applicable, Lessee and the City (by and through the City Manager) shall enter into a non-disturbance, recognition 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 First Leasehold Mortgagee or Mezzanine Lender, as applicable, and the City Manager, after consultation with the City's Chief Financial Officer and City Attorney.

(c) Lessee shall deliver to the City, promptly after execution by Lessee, (i) 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 and (ii) a true and correct copy of any Mezzanine Loan agreement and any amendment, modification or extension thereof, together with the name and address of the Mezzanine Lender.

(d) For so long as any First Leasehold Mortgage encumbers the Leased Property, or, as applicable, a Mezzanine Lender holds a pledge of Lessee's ownership interest, 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 and Mezzanine Lender, at the name and address designated in writing by the First Leasehold Mortgagee and Mezzanine Lender 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 or Mezzanine Lender 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 and the Mezzanine Lender 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 Section 7.1(c) hereof, for which the First Leasehold Mortgagee and Mezzanine Lender 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 and Mezzanine Lender shall (except as provided in clauses (iii) and (iv) below) 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 and Mezzanine Lender 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 this Lease to the contrary, including Article VII hereof, no Event of Default by Lessee will be deemed to exist as to the First Leasehold Mortgagee, and the City shall not be permitted to terminate this Lease due to an Event of Default of Lessee, as long as the First Leasehold Mortgagee, in good faith, either (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 Section 7.1(c) hereof, for which the First Leasehold Mortgagee will not be given any additional time to remedy) is such that possession of or title to 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) (and which will be waived as to the First Leasehold Mortgagee if the First Leasehold Mortgagee commences to cure all other Events of Default and prosecutes same to completion in accordance with this clause (iii) or clause (ii) above), files a complaint for foreclosure and thereafter prosecutes the foreclosure action in good faith and with due diligence and continuity (subject to any stays, moratoria or injunctions applicable thereto) and obtains possession or title, to the extent a cure cannot be effected without possession or title, directly or through a receiver, and as promptly as practicable after obtaining such possession or title, to the extent a cure cannot be effected without possession or title, commences promptly to cure such Event of Default and to prosecute the same to completion in good faith and with due diligence and continuity; provided, however, that the First Leasehold Mortgagee has delivered to the City, in writing within twenty (20) days following receipt of City's notice of default, 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 (e.g., the payment of Rent), 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, subject to the rights of the Mezzanine Lender set forth in clause (iv) below, 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.

(iv) notwithstanding the provisions of this Lease to the contrary, including Article VII hereof, no Event of Default by Lessee will be deemed to exist as to the Mezzanine Lender, and the City shall not be permitted to terminate this Lease due to an Event of Default of Lessee, as long as the Mezzanine Lender and/or First Leasehold Mortgagee, in good faith, either (A) commences to cure such Event of Default and prosecute the same to completion in accordance with clause (ii) or (iii) above, or (B) if the nature of any non-monetary Event of Default (except an Event of Default under Section 7.1(c) hereof, for which the Mezzanine Lender will not be given any additional time to remedy) is such that title to the ownership interests of the Lessee 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 Mezzanine Lender (e.g., Lessee bankruptcy) (and which will be waived as to the Mezzanine Lender if the Mezzanine Lender and/or First Leasehold Mortgagee commences to cure all other Events of Default and prosecutes same to completion in accordance with clause (ii) or (iii) above), has taken all commercially reasonable steps necessary to foreclose the pledge of the Lessee's ownership interests, and prosecutes such action in good faith and with due diligence and continuity (subject to any customary and reasonable restrictions imposed under any intercreditor agreement or similar agreement between any First Leasehold Mortgagee and Mezzanine Lender and/or any stays, moratoria or injunctions applicable thereto) and obtains title to the ownership interests of the Lessee, and as promptly as practicable after obtaining such title, commences promptly to cure such Event of Default and to prosecute the same to completion in good faith and with due diligence and continuity; provided, however, that the Mezzanine Lender has delivered to the City, in writing within twenty (20) days following receipt of City's notice of default, its agreement to take the action described in clause (A) or (B) of this clause (iv), and that during the period in which such action is being taken, all of the other obligations of Lessee under this Lease, to the extent they are susceptible of being performed by the Mezzanine Lender (e.g., the payment of Rent), are being duly performed. However, at any time after the delivery of the aforementioned agreement, the Mezzanine Lender may notify the City, in writing, that it has relinquished title to the ownership interests of the Lessee or that it will not seek to foreclose the pledge of Lessee's ownership interests or, if such foreclosure has commenced, that it has been discontinued, and in such event, the Mezzanine Lender 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, subject to the rights of the First Leasehold Mortgagee set forth in clause (iii) above, 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 (i) consent to a cancellation or surrender of this Lease (except upon the expiration of the Term), or any amendment or modification hereof or (ii) 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 and Mezzanine Lender, which consent shall not be unreasonably delayed, conditioned or withheld.

(f) Notwithstanding anything in this Lease to the contrary, 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 or its designee or nominee in lieu of the foreclosure or other appropriate proceedings in the nature thereof, or any foreclosure of a Mezzanine Loan, or conveyance of the Lessee's ownership interest in lieu thereof, shall not:

(i) require the City's consent; or

(ii) provided the First Leasehold Mortgagee or the Mezzanine Lender 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. Similarly, if a Mezzanine Lender or a purchaser under a UCC sale obtains title to the ownership interests in Lessee and subsequently assigns or transfers its interests in such ownership interests, or subsequently assigns or transfers its interest under any new lease entered into pursuant to Section 6.1(h) below, and in connection with any such assignment or transfer, the Mezzanine Lender or any other UCC sale purchaser takes back a pledge of the ownership interests of the Lessee to secure a portion of the purchase price, the holder of such pledge shall be a Mezzanine Lender entitled to receive the benefit of this Article VI and all other provisions of this Lease intended for the benefit of a Mezzanine Lender.

(h) Should the Lessee or any First Leasehold Mortgagee or Mezzanine Lender 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 Mezzanine Lender, 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 or Lessee (as owned by Mezzanine Lender), 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 or Lessee (as owned by Mezzanine Lender), as applicable, 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 or Lessee (as owned by Mezzanine Lender), 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 or Lessee (as owned by Mezzanine Lender), 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 or Lessee (as owned by Mezzanine Lender), as applicable, 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 or Lessee (as owned by the Mezzanine Lender) shall be conditioned upon, on the date the new lease is executed:

(i) the City receiving payment of 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 or Lessee (as owned by Mezzanine Lender), as applicable, as lessee, having commenced such cure and continuing to diligently complete the cure in accordance with clauses (iii) or (iv) of paragraph (d) above, as applicable); 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 from First Leasehold Mortgagee or Mezzanine Lender, as applicable.

(k) With respect to the payment of Rent by the First Leasehold Mortgagee or Mezzanine Lender pursuant to this Article VI, if the Rent currently due cannot be determined by the First Leasehold Mortgagee or Mezzanine Lender, as applicable, without possession of or title to the Hotel Project or ownership of the Lessee's equity interests, as applicable, then the First Leasehold Mortgagee or Mezzanine Lender 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 or title to the Hotel Project or the Mezzanine Lender acquires title to the ownership interests of the Lessee, as applicable.

**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. City represents and warrants to Lessee that no mortgages currently exist against

its fee interest in the Leased Property, and acknowledges that this Lease shall not be subordinate to any future mortgage against the fee interest in the Leased Property. Notwithstanding anything to the contrary contained in this Lease, if all or any portion of the interest of City in the Leased Property or this Lease shall be acquired by reason of foreclosure of any mortgage, security agreement, lien or other encumbrance or other proceedings brought to enforce the rights of the holder(s) thereof, by deed in lieu of foreclosure or by any other method, and as a result any Person succeeds to such interests of City, this Lease and the rights of Lessee hereunder shall continue in full force and effect and shall not be terminated or disturbed except as otherwise expressly permitted by the terms of this Lease.

**Section 6.3. Waiver of Landlord's Lien.** City hereby waives any statutory liens and any rights of distress with respect to the improvements, fixtures and all Lessee's personal property constructed on, located at or used in connection with the Leased Property, or the Lessee's interest in the Leased Property. This Lease does not grant a contractual lien or any other security interest to City or in favor of City with respect to the improvements, fixtures or any of Lessee's personal property constructed on, located at or used in connection with the Leased Property, or the Lessee's interest in the Lease Property. The City further agrees to execute and deliver such instruments reasonably requested by any Leasehold Mortgagee or Mezzanine Lender from time to time to evidence the aforesaid waiver of City.

## **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 for a period of three (3) Business Days after notice thereof from the City;

(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 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) [intentionally deleted];

(e) if Lessee fails, after Commencement of Construction, to cause the Opening Date to occur by the Outside Opening Date;

(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 for a period of thirty (30) days after receipt of notice thereof from the City;

(g) if Lessee (i) actively participates in the use of any portion of the Hotel Project as a Gaming Establishment (through venue rental, promotion or other similar activities) for a period of three (3) Business Days after written notice thereof from the City; provided, however, that the City shall

not be obligated to provide written notice of such failure more than two (2) times in any consecutive twelve (12) month period, and the failure of Lessee to comply with the restrictions in Section 4.2(b) prohibiting use of the Leased Property as a Gaming Establishment after the second written notice in any consecutive twelve (12) month period shall constitute an Event of Default by Lessee hereunder without the requirement of any notice or opportunity to cure; or (ii) knows of the use by any Person of any portion of the Hotel Project as a Gaming Establishment and fails for a period of three (3) Business Days after written notice thereof from the City either to (A) cause the violation to cease or (B) commence action to terminate the Sublease and thereafter diligently prosecute eviction of the Subtenant as immediately as possible;

(h) If Lessee or any Person with an ownership interest in Lessee violates Section 4.2(g) (other than as provided in subsection (g) above) or the Acceptable Owner Criteria specified in subparagraph A.4 of **Exhibit "A"** of this Lease; provided, however, in the case of any such violation by any Person with an ownership interest in Lessee, Lessee shall have twelve months to cure such violation after Lessee first becomes aware of such violation, including without limitation, in the case of Section 4.2(g) by divestiture of the ownership interest in the Gaming Establishment (whether by notice from the City or otherwise);

(i) if Lessee fails to maintain or provide evidence of all insurance in compliance in all material respects with Article IX hereof (any lapse in required coverage shall be deemed a failure to comply 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;

(j) if Lessee fails to operate the Hotel in compliance in all material respects with the Hotel Standards, and such failure continues for a period of ninety (90) days from the date of written notice thereof from City or if the default is not capable of being cured within such ninety (90) day period, Lessee fails within such period to commence a cure and thereafter diligently and in good faith prosecute the same to completion within a reasonable time, subject to the rights of any First Leasehold Mortgagees, Mezzanine Lenders and sub-lessees hereunder;

(k) if there is a default by Lessee under the Management Agreement and/or Franchise Agreement and as a result of such default the Management Agreement and/or Franchise Agreement is terminated and a replacement Management Agreement and/or Franchise 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 and/or Franchise 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 and/or Franchise Agreement;

(l) 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 or bond and which, if adversely determined, would substantially impair the ability of Lessee to perform its obligation to cause the Opening Date to occur by the Outside Opening Date, unless Lessee is contesting such lawsuit in good faith and through appropriate action.

(m) 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;

(n) if Lessee admits, in writing, that it is generally unable to pay its debts as such debts become due;

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

(p) if Lessee files a voluntary petition under the Bankruptcy 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;

(q) if within 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 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;

(r) 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;

(s) if Lessee fails, or fails to cause the Hotel Operator, to continuously operate the Leased Property in accordance with Section 13.2 hereof; provided, however, that if such failure is a result of the actions or inactions of the Hotel Operator, and in order to cure such failure, Lessee must enforce its rights against the Hotel Operator and/or terminate Hotel Operator, Lessee shall have a period of twelve (12) months after the initial occurrence of such failure within which to cause the Hotel Operator to continuously operate in accordance with Section 13.2 hereof and/or terminate the Hotel Operator provided that Lessee promptly commences such enforcement rights and/or termination and thereafter pursues such enforcement rights and/or termination in good faith and with due diligence and

during such enforcement and/or termination process, Lessee uses commercially reasonable efforts to continuously operate the Leased Property in accordance with Section 13.2 hereof;

(t) if Lessee, prior to the Opening Date, vacates or abandons the Leased Property or any portion thereof, or voluntarily abandons construction of any portion of the Hotel Project (other than in connection with a Force Majeure Event), which abandonment is not cured within a reasonable time, not less than thirty (30) days, following written notice from City;

(u) 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 or such other default under this clause (u) within thirty (30) days after receiving notice from City;

(v) 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; and

(w) 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.

Notwithstanding any provision to the contrary herein, the Parties' acts or omissions in connection with Section 3.10 shall not be deemed an Event of Default.

**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) terminate this Lease and commence an action for eviction immediately upon the occurrence of any Event of Default;

(ii) immediately revoke the licenses granted to Lessee pursuant to the Assignment of Plans and Approvals and the Assignment of Hotel Project General Construction Contract; and

(iii) with respect to any Event of Default under Section 7.1(f), the City shall be entitled, for each month so long as such Event of Default has not been cured, to Base Rent equal to three times the Base Rent being paid at the time of such Event of Default for each month until the earlier of (x) such Event of Default has been cured or (y) City has terminated this Lease pursuant to clause (i) above.

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 or as provided by law with respect to that or any other Event of Default.

(b) If this Lease is terminated as provided in Section 7.2(a)(i) hereof as a result of an Event of Default under Section 7.1(c), Lessee will pay or cause to be paid to the City the lesser of: (i) the unfunded portion, if any, of the Initial Lessee Minimum Equity Contribution; or (ii) the actual, documented costs and expenses paid by City to third parties in connection with this Lease, not to exceed \$500,000.00 in the aggregate. If this Lease is terminated as provided in Section 7.2(a)(i) hereof as a result of an Event of Default other than an Event of Default under Section 7.1(c), Lessee will pay or cause to be paid to the City the unfunded portion, if any, of the Initial Lessee Minimum Equity Contribution and will indemnify City against and compensate City from and for any and all reasonable third party costs incurred by City in enforcing its rights and remedies hereunder. If Lessee has already invested the amount of the Initial Lessee Minimum Equity Contribution at the time of termination and has provided reasonable evidence of same to the City, no additional amounts will be due from Lessee;

(c) If an Event of Default occurs, Lessee will nevertheless be obligated to continue to pay all Rent for so long as Lessee has possession of the Leased Property.

(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 Opening Date, to the extent not previously assigned to the City, City shall have the right to cause Lessee to assign to the City (or another Person as "Assignee") all of its rights under (i) the Hotel Project General Construction Contract, the Management Agreement, the Franchise Agreement, if any, the agreements executed by Lessee with the architect for the Hotel Project and any other design professions and any other agreement executed by Lessee in connection with the development, construction and/or fixturing of the Hotel Project that requires payments by Lessee exceeding \$500,000.00 in the aggregate and (ii) to the extent Lessee is able, all other contracts and agreements executed in connection with the Hotel Project, in each case on a non-recourse basis, without any warranties or representations from Lessee, and, subject to the rights of Leasehold Mortgagees and Mezzanine Lenders, 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 contracts(s) and 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; provided that the other party to any such contracts will continue to have the rights and remedies provided therein for any defaults occurring prior to the assignment to the City or its Assignee.

(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.

(h) As an additional inducement to and material consideration for City agreeing to this Lease, Lessee agrees that in the event a Bankruptcy or Judicial Action (as defined herein) is commenced

which subjects the City to any stay in the exercise of the City's rights and remedies under this Lease, including the automatic stay imposed by section 362 of the United States Bankruptcy Code (individually and collectively, "Stay"), then, provided the Stay is lifted and released as to all Leasehold Mortgagees and Mezzanine Lenders (to the extent the Leasehold Mortgage loan documents and Mezzanine Loan documents, as applicable, include Stay relief provisions), Lessee irrevocably consents and agrees to the Stay being lifted and released against City, and City shall thereafter be entitled to exercise all of its rights and remedies against the Lessee under this Lease. The Lessee acknowledges that it is knowingly, voluntarily, and intentionally waiving its rights to any Stay and agrees that the benefits provided to the Lessee under the terms of this Lease are valuable consideration for such waiver. As used in this Section, the term "Bankruptcy or Judicial Action" shall mean any voluntary or involuntary case filed by or against Lessee under the Bankruptcy Code, or any voluntary or involuntary petition in composition, readjustment, liquidation, or dissolution, or any state and federal bankruptcy law action filed by or against Lessee, any action where Lessee is adjudicated as bankrupt or insolvent, any action for dissolution of Lessee or any action in furtherance of any of the foregoing, or any other action, case, or proceeding that has the effect of staying (or in which a Stay is being obtained against) the enforcement by the City of its rights and remedies under this Lease.

(i) Notwithstanding the foregoing, in the event that Lessee seeks to assume and assign this Lease pursuant to section 365 of the Bankruptcy Code it will be required to provide to the City adequate assurance of future performance which shall consist of evidence that such assignee satisfies the "Acceptable Owner Criteria" set forth in **Exhibit "A"**.

**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 thirty (30) 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 thirty (30) 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 thirty (30) day period, if the City commences to cure such breach within such thirty (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 twenty-one (21) days after 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. With respect to any Force Majeure

Event that is an "Act of God" (e.g., a hurricane) that is of such an extent that reasonable methods of communication or access are not available, then notwithstanding Section 14.5 of this Lease to the contrary, notice by Lessee shall be deemed sufficiently given to City if transmitted via electronic transmission to the City Manager and City Attorney; provided that as soon as reasonably practicable following the occurrence of such "Act of God" a copy of such notice is delivered pursuant to the terms of Section 14.5 hereof.

(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, then the Outside Possession Date and the Outside Opening 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 twenty-one (21) 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 Possession Date and the Outside Opening Date, as applicable, as a result of such Economic Force Majeure.

**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 grace and 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; provided, however: (i) City shall not exercise its rights under this Section 7.6 if the City has not provided the notices required under Section 6.1(d)(i); and (ii) City shall not exercise its rights under this Section 7.6 if any Leasehold Mortgagee or Mezzanine Lender is complying with the provisions of Sections 6.1(d)(ii), (iii) or (iv), as applicable, with respect to such default. If, at any time and by reason of such default that remains uncured beyond applicable grace and cure periods, except for defaults relating to failure to satisfy all of the Possession Conditions by the Outside Possession Date, or defaults that occur prior to the date the Possession Conditions are satisfied and possession is given to Lessee (unless in each case City waives any right to terminate this Lease), the City is compelled to pay, or elects to pay, any sum 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. Notwithstanding the foregoing, sums expended in connection with the Work or Skybridge (or both) shall not be deemed Additional Rent, and Lessee shall not be required to repay City for such sums, unless either (A) City waives its rights to terminate this Lease regarding all then-existing

defaults and Events of Default or (B) if City does not waive its rights to terminate, and this Lease is terminated, then upon any reinstatement of this Lease either by mutual agreement of City and Lessee or by final, non-appealable order of a court of competent jurisdiction.

**Section 7.7. Room Block Agreement.** No termination or expiration of this Lease shall affect or impair the Room Block Agreement, which shall continue to encumber the Hotel with respect to any of Lessee's successors in accordance with the terms of the Room Block Agreement. Upon expiration or earlier termination of this Lease, the City shall honor bookings under the Room Block Agreement which follow such expiration or earlier termination of this Lease.

**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, except for (i) Development Disputes, which shall be resolved in accordance with Section 7.9, or (ii) Disputes relating to City's disapproval of a proposed brand as an Approved Brand or a Proposed Transferee as an Acceptable Owner, which shall be resolved in accordance with Section 7.10.

(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. Expedited Arbitration of Development Disputes.**

(a) If Lessee or City asserts that a Development Dispute has arisen, such asserting Party shall give prompt written notice thereof to the other Party, and such Development Dispute shall be submitted to binding arbitration by the Development Arbitrator in accordance with this Section 7.9.

(b) The Parties shall cooperate to select an independent, neutral, professional arbitrator experienced in the resolution of construction claims and associated subject matter having at least ten (10) years of hotel development or construction experience in the Miami-Dade County area to serve as the arbitrator (the "Development Arbitrator"). If the Parties cannot agree on a single Development Arbitrator, then each Party shall select an arbitrator with such hotel development or construction experience, who shall jointly select a third arbitrator with such hotel development or construction experience and the three arbitrators shall collectively constitute the Development Arbitrator.

(c) The Development Arbitrator shall, no later than five (5) Business Days after being selected, hold a preliminary, informal meeting with City and Lessee in an attempt to mediate such

Development Dispute. If such Development Dispute is not resolved at such meeting, the Development Arbitrator shall at such meeting establish a date (the "Hearing Date"), not earlier than five (5) Business Days after such meeting nor later than twenty (20) days after such meeting for a hearing (a "Hearing") to be held in accordance with this Lease to resolve such Development Dispute.

(d) Lessee and City each shall have the right to make one (1) written submission to the Development Arbitrator prior to the Hearing. Such submission shall be received by the Development Arbitrator and the other Party not later than two (2) Business Days prior to the Hearing Date. The Parties agree that no discovery (as the term is commonly construed in litigation proceedings) will be permitted and agree that neither Party nor the Development Arbitrator shall have discovery rights in connection with a Development Dispute.

(e) The Hearing shall be conducted by the Development Arbitrator. It is the intention of the Parties that the Hearing on a Development Dispute shall be conducted in an informal and expeditious manner. No transcript or recording shall be made. Each Party shall have the opportunity to make a brief statement and to present documentary and other support for its position, which may include the testimony of not more than four (4) individuals, two (2) of whom may be outside experts. There shall be no presumption in favor of either Party's position. Any procedural matter not covered herein shall be governed by procedures mutually agreed upon by the Parties, or if they are unable to agree, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (as amended hereby)

(f) The Hearing shall be held in a location selected by the Development Arbitrator in Miami-Dade County, Florida. Provided that the Development Arbitrator is accompanied by representatives of both Lessee and City, the Development Arbitrator may, at its option, visit the Hotel Site to make an independent review in connection with any Development Dispute.

(g) The Development Arbitrator, in rendering its decision with regard to any Development Dispute, shall take into account and at a minimum consider the following factors, which shall be used to guide its decision:

(i) City does not have any Approval rights with respect to the matter of interior design and decor of the Hotel Project except to the extent the same is reflected in the Approved Plans or Mandatory Hotel Project Design Elements;

(ii) the Hotel Project shall be designed and constructed to meet or exceed the Hotel Standards;

(iii) the mutual goal of Lessee and City is that costs in excess of the Budgeted Improvement Costs should be avoided or minimized unless proposed by Lessee and for which Lessee has agreed to provide adequate funds;

(iv) the mutual goal of Lessee and City is that the construction of the Hotel Project be completed and the Opening Date occur by the Outside Opening Date;

(v) the Hotel Project must comply with all Governmental Requirements; and

(vi) the magnitude of the modification to the Approved Plans.

(h) Pending resolution of the Development Dispute, Lessee may not implement the matter which is the subject of such Development Dispute.

(i) The Development Arbitrator shall render a decision, in writing, as to any Development Dispute not later than two (2) Business Days following the conclusion of the Hearing regarding such Development Dispute and shall provide a brief written basis for its decision not later than five (5) Business Days thereafter. Such decision of the Development Arbitrator shall be rendered by (a) the decision of the single Development Arbitrator, (b) the decision of two of the arbitrators comprising the Development Arbitrator, if two are able to agree, (c) the decision of the third arbitrator appointed by each of the Parties' arbitrators, if no two of the three arbitrators are able to agree within such period, or (d) agreement between the Parties prior to and independently of the decision of the Development Arbitrator. As to each Development Dispute, the Development Arbitrator's decision shall be limited to resolution of the Development Dispute in question, and the Development Arbitrator shall have no right whatsoever to impose or grant to either Party any remedy other than a decision as to: (i) whether a modification to the Hotel Project is a substantial deviation from the Approved Plans or a Prohibited Hotel Project Change requiring City's Approval pursuant to Section 2.2; (ii) any contention that City has unreasonably failed to Approve modifications to the Approved Plans in accordance with this Lease; (iii) any contention that City has unreasonably failed to Approve the proposed Approved Skybridge and Off-Site Improvements Plans or modifications thereto in accordance with this Lease; (iv) any contention that City has unreasonably failed to Approve a Hotel Project General Contractor in accordance with Section 2.8(b); or (v) any disagreement as to permitted delays in the Schedule of Performance pursuant to Section 2.7.

(j) The decision of the Development Arbitrator shall be final and binding on the Parties for all purposes and may be entered in any court of competent jurisdiction.

(k) If any matter submitted to the Development Arbitrator hereunder is settled by agreement between the Parties prior to, or independently of, the final determination of the Development Arbitrator, any and all expenses of such binding determination (including fees of the Development Arbitrator) will be shared equally by the Parties; and the expense of such binding determination resolved by final determination of the Development Arbitrator (including fees of the Development Arbitrator) will be borne by the Party against whom such determination has been concluded.

**Section 7.10. Disputes Regarding Disapproval of a Proposed Brand or Proposed Transferee.**

(a) If (i) Lessee and City disagree as to whether a proposed Approved Brand satisfies the definition of an Approved Brand pursuant to clause (a) of the definition thereof or (ii) Lessee believes that the City is acting unreasonably in disapproving a proposed brand as an Approved Brand, then in either case, the Lessee may refer the matter to mediation in accordance with Section 7.8(a) above, and if the matter is not resolved by mediation, then Lessee, as its sole remedy, may submit such matter to a panel of experts for a binding determination in accordance with this Section 7.10 (an "Arbitrator").

(b) If the City Manager determines that a proposed transferee of the Hotel Project (or any part thereof), any legal or beneficial interest in the Hotel Project (or any part thereof) or any direct or indirect legal or beneficial interest in Lessee (each, a "Proposed Transferee") does not satisfy the definition of an Acceptable Owner and the Acceptable Owner Criteria pursuant to **Exhibit A** attached hereto, and Lessee disagrees, and if the matter is not resolved by the designated representatives of the City and Lessee as provided in Section 7.8(a) above, then solely with respect to any such determination made by the City Manager, Lessee, as its sole remedy, may submit such matter to an Arbitrator in accordance with this Section 7.10. For the avoidance of doubt, in the event the City Manager exercises his or her right to seek the City Commission's direction or Approval of a Proposed Transferee, the Lessee shall not have the right to submit the City Commission's determination or disapproval of a Proposed Transferee to arbitration pursuant to this Section 7.10, but the City Commission shall be subject to the same time period and standards of judgment as would apply to the City Manager as provided in Exhibit A.

(c) If Lessee elects to proceed with an Arbitrator in accordance with this Section 7.10, the determination of whether a proposed brand should be an Approved Brand or a Proposed Transferee is an Acceptable Owner, will be made by (a) an expert selected jointly by the City and Lessee, or (b) if the City and Lessee fail to agree upon a single expert, by an expert selected by the City, an expert selected by Lessee and a third expert appointed by the experts selected by the Parties. Any Arbitrator or expert panelist hereunder will each have at least ten (10) years of professional experience in the hospitality industry as a legal or other consultant. The Parties agree that no discovery (as the term is commonly construed in litigation proceedings) will be permitted and agree that neither Party nor the Arbitrator shall have discovery rights in connection with a Dispute hereunder. The proceeding before the Arbitrator shall be conducted in an informal and expeditious manner. No transcript or recording shall be made. Each Party shall have the opportunity to make a brief statement and to present documentary and other support for its position, which may include the testimony of not more than four (4) individuals, two (2) of whom may be outside experts. There shall be no presumption in favor of either Party's position. Any procedural matter not covered herein shall be governed by procedures mutually agreed upon by the Parties, or if they are unable to agree, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (as amended hereby).

(d) The matter submitted to the Arbitrator will be conclusively determined within thirty (30) days of the appointment of the last Arbitrator by (a) the decision of the single expert, (b) the decision of any two of the three experts, if two are able to agree, (c) the decision of the third expert, if no two of the three experts are able to agree within such period, or (d) agreement between the Parties prior to and independently of the decision of the Arbitrator.

(e) With respect to (i) whether a proposed Approved Brand satisfies the definition of an Approved Brand pursuant to clause (a) of the definition thereof, the Arbitrator will determine that such proposed Approved Brand either satisfies such definition or fails to satisfy such definition or (ii) whether the City has acted reasonably in disapproving a proposed Approved Brand pursuant to Section 13.3, the Arbitrator will determine either that the City acted reasonably in disapproving the proposed Approved Brand or that the City acted unreasonably in disapproving the proposed Approved Brand, and the Arbitrator will have no authority to compromise or otherwise modify the issue that is the subject of the determination or (iii) whether a Proposed Transferee satisfies the definition of an Acceptable Owner and the Acceptable Owner Criteria pursuant to **Exhibit A**, the Arbitrator will determine that such Proposed Transferee either satisfies such definition and criteria or fails to satisfy such definition and criteria. If any matter submitted to the Arbitrator hereunder is settled by agreement between the Parties prior to, and independently of, the final determination of the Arbitrator, any and all expenses of such binding determination (including fees of the Arbitrator) will be shared equally by the Parties; and the expense of such binding determination resolved by final determination of the Arbitrator (including fees of the Arbitrator) will be borne by the Party against whom such determination has been concluded.

**Section 7.11. 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; provided, however that for so long as a First Leasehold Mortgage encumbers the Hotel Project, the City agrees to permit Lessee to deliver any or all of the foregoing to such First Leasehold Mortgagee (which First Leasehold Mortgagee shall have priority with respect thereto pursuant to the non-disturbance, recognition and attornment agreement entered into pursuant to Section 6.1(b) hereof). 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 7.11 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 Lessee has notice of 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, partners, principals, sub-lessees, or contractors: (i) [intentionally deleted]; (ii) the use and operation of the Hotel Project or any part thereof which is not in compliance with the terms of this Lease, (iii) the negligent acts or omissions of Lessee or its employees, agents, partners, principals, sub-lessees, or contractors; (iv) any challenge to the validity of any Transfer by a third party through legal proceedings or otherwise based on the action or inaction of Lessee or its employees, agents, partners, principals, sub-lessees or contractors, except to the extent any liability, losses or damages 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, or the environment, including:

(1) The presence of any Hazardous Substance in violation of Environmental Laws which were introduced to the Hotel Site ;

(2) The violation, or alleged violation, of any Environmental Laws on the Leased Property;

(3) 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;

(4) 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; 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; as such laws have been amended or supplemented from time-to-time, and the regulations promulgated thereunder; and any equivalent state or local laws.

(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, petroleum based products, 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) "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) "Environmental Claim" means any notice of violation, claim, demand, abatement or order or direction (conditional or otherwise) by any Governmental Authority or any person for personal injury (including sickness, disease, or death), 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 of, or exposure to, any Hazardous Substance in, into or onto the environment (including the air, ground, water or any surface) at, in or from the Leased Property in violation of Environmental Laws;

(2) The transportation, storage, treatment or disposal of 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 Environmental Laws on the Leased Property;

but excluding any of the foregoing to the extent arising from the negligent or intentional actions of the City and its agents after the execution of this Lease.

(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 the Leased Property but excluding those to the extent arising from the negligent or intentional actions of the City or its agents after the date of execution of this Lease; or

(2) comply with all applicable Environmental Laws, excluding those to the extent arising from the negligent or intentional actions of the City or its agents after the date of execution of this Lease.

(b) **Environmental Indemnification.**

(i) Provided that that Possession Conditions are satisfied and the City delivers possession of the Leased Property to Lessee, 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, and the City's commercially reasonable attorneys' fees and consultants' fees, court costs and expenses incurred in connection therewith;

(iii) this indemnification 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 Lease, 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 to the extent caused by the negligent or intentional conduct of the City or its agents, employees or contractors.

**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, 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, 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 (unless caused by the gross negligence of City, its agents, contractors or employees).

(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, 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 (to the extent available), and pollution liability policies and as loss payee on the property insurance and builder's risk policy.

**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, or the applicable portions thereof if insurance is provided through a master insurance program. 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 unless the premiums are being financed; provided that such financing shall be permitted only if such policy provides that the insurer will deliver to the City reasonable advance written notice prior to the cancellation of any coverage thereunder and a reasonable period of time within which the City has the right, but not the obligation, to pay any unpaid premiums to avoid any lapse in coverage. 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, which may be provided through master blanket insurance policies and/or the insurance program of any applicable Approved Brand:

(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. Such insurance may be provided through a combination of primary and excess/umbrella liability policies.

(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 of Hazardous Materials at the Leased Property. Such policy shall include an annual policy aggregate in the amount of \$10,000,000.

(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** after Completion of Construction 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 in an amount not less than the replacement cost value of the Hotel.

(f) **Business Interruption Insurance** after the Opening Date coverage utilizing a gross earnings value form with limits equal to twelve (12) months of Lessee's projected Gross Operating Revenues and Gross Operating F&B Revenues less non-continuing expenses associated with the Leased Property. The City and Lessee shall jointly review Lessee's projected Gross Operating Revenues and Gross Operating F&B 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. Except with respect to "CCIP" and "OCIP" policies, 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 to Lessee and First Leasehold Mortgagee, 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.

**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 \$10,000,000 (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 Reconstruction Work in accordance herewith, any remaining proceeds shall be paid over to Lessee subject to its obligations to the First Leasehold Mortgagee. If proceeds are paid directly to Lessee and Lessee defaults in its

obligations to reconstruct the Lessee Improvements as required hereunder, which default remains uncured after the expiration of any applicable grace and cure periods, and as a result City exercises its right to terminate this Lease under Section 7.2(a)(i), Lessee shall pay to City all such proceeds that have been paid directly to Lessee; and

(ii) (A) to a commercial bank or trust company designated by Lessee and Approved by the City Manager, (B) any Leasehold Mortgagee, if required by such Leasehold Mortgagee pursuant to the terms of such Leasehold Mortgage, or (C) any Mezzanine Lender if required by such Mezzanine Lender pursuant to the terms of the Mezzanine Loan documents (but subject to any requirements of any Leasehold Mortgagee) (the "Insurance Trustee"), if the total recovery is in excess of \$10,000,000 (as adjusted for inflation over the Term pursuant to Section 14.20 hereof) or is less than \$10,000,000 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) Subject to the requirements of any First Leasehold Mortgage, 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 (except to the extent restricted or prohibited by then applicable Governmental Requirements) but in all cases consistent with the Hotel Standards (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 Manager and Lessee; and

(iii) After the completion of the Reconstruction Work, any unused insurance proceeds shall be paid to Lessee subject to the rights of any First Leasehold Mortgagee pursuant to the First Leasehold Mortgage.

**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 having a value in excess of \$2,500,000, Lessee shall give the City notice thereof within five (5) Business Days, and Lessee, at its sole cost and expense, whether or not such loss or damage has been insured and whether or not such loss or damage is to property having a value in excess of \$2,500,000, 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 have been received by or made available to Lessee, 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. To the extent any First Leasehold Mortgagee exercises any right or option to retain and apply any portion of the proceeds of any insurance (or condemnation awards) toward payment of the sum

secured by the First Leasehold Mortgage, Lessee shall diligently and expeditiously undertake to secure and close on Leasehold Mortgage loans and/or Mezzanine Loans to finance the Reconstruction Work, and thereafter, to commence and fully complete such Reconstruction Work as expeditiously as reasonably possible consistent with the nature and extent of the damage.

(b) [Intentionally deleted.]

(c) Notwithstanding the foregoing, if, during the last ten (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 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, each Party 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 the other Party, 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), or applicable portions of any master insurance policy, to determine the true extent of coverage. The Lessee agrees to permit such inspection and make available such policies or portions thereof 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 gross 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, 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);

(ii) Second, 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; 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 commercially reasonable diligence and good-faith, 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 the City 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 Taking. 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 challenging Lessee's right to lawfully and quietly hold, occupy and enjoy the Leased Property in accordance with the preceding sentence. Lessee shall have the right to retain its own counsel in connection 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 and (subject to Lessee's restoration obligations hereunder) damage by casualty excepted. Regarding the occupancy, maintenance and operation of the Hotel Project, the Lessee shall comply 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 or Mezzanine Lender 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 (or Lessee, as owned by Mezzanine Lender or its designee or nominee) 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 of this Lease (subject only to the rights of any First Leasehold Mortgagee), 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 good order and repair, and will replace the same when necessary with items of similar utility and value in order to maintain such 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.

**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 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.

(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 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 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 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 and Franchise 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 Manager.

**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 Manager, 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 or commence to correct such deficiencies within the time allowed and has not registered an objection as to its obligation to do so, the City, at its option, may elect to correct any or all of such deficiencies, in which case, the City shall give Lessee fifteen (15) days further written notice of its intention to do so, and if the Lessee has not corrected or commenced to correct the same within such additional fifteen (15) day period, the City 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. If Lessee has not corrected or commenced to correct such deficiencies within such additional fifteen (15) day period, 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, Franchise Agreement (as applicable) 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.

(d) Notwithstanding anything to the contrary contained herein, in the event that the Convention Center is not operated and maintained in accordance with the MBCC Standard of Operation for a period of more than one hundred eighty (180) days after written notice thereof from Lessee to City and City does not commence improvements to restore the Convention Center to the MBCC Standard of Operation within one hundred eighty (180) days after written notice thereof from Lessee and thereafter use commercially reasonable, diligent efforts to complete such cure as soon as reasonably practicable, then as Lessee's sole remedy, Lessee's obligations under the Room Block Agreement shall be suspended until such time as the MBCC Standard of Operation is restored, at which time, Lessee shall be required to comply with its obligations under the Room Block Agreement.

#### **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 Lease 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 and improvements, including, without limitation, any repairs, alterations, remodeling and improvements in connection with a Hotel brand change or refresh, 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 a new Management Agreement or Franchise Agreement, or change the name or brand of the Hotel so long as such name or brand is an Approved Brand. In the event Lessee desires to operate the Hotel as a non-branded hotel (which shall be permitted only after the twentieth (20<sup>th</sup>) anniversary of the Opening Date), the Hotel shall be owned, operated and maintained in a manner consistent with the Hotel Standards and the name of the Hotel in such case shall be determined by Lessee in its sole but reasonable discretion. 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 compliance with Exhibit B 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 \_\_\_\_\_, 201\_, 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 UNDER SECTION 13.3 OF THE DEVELOPMENT AND GROUND LEASE AGREEMENT, DATED AS OF \_\_\_\_\_, 201\_. 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. Any dispute arising out of or relating to this Lease that specifically provides for arbitration (and only such provisions) shall be subject to arbitration as expressly provided herein. In any such arbitration or in any legal action brought by either Party because of a breach of this Lease or to enforce any provision of this Lease, the prevailing Party shall be entitled to reasonable attorneys' fees and paralegals' fees and costs, including those incurred in subsequent actions to enforce or vacate an arbitration award and those incurred on appeal.

**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 in writing and 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: [PROPOSER]

With Copies To: [PROPOSER]

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

To:

City Manager  
City of Miami Beach, Florida  
1700 Convention Center Drive, 4<sup>th</sup> Floor  
Miami Beach, Florida 33139

With Copies To:

City Attorney  
City of Miami Beach, Florida  
1700 Convention Center Drive, 4<sup>th</sup> Floor  
Miami Beach, Florida 33139

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, Mezzanine Lender, or purchaser of the Hotel or any equity interest in Lessee, 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; and

(f) in connection with any request by a prospective First Leasehold Mortgagee or Mezzanine Lender, that such proposed First Leasehold Mortgagee or Mezzanine Lender (as applicable) and such proposed financing satisfy the requirements of Section 6.1, including the requirements of Section 6.1(g).

The Party 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 Party's behalf) shall be liable for the accuracy of the statements made therein, but rather shall be estopped from denying the veracity or accuracy of the same. Any certificate required to be made by the City or 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 Parties 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 a First Leasehold Mortgagee or a Mezzanine Lender, if any, each of which shall have the rights set forth in Article VI hereof, 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 Parties hereto with respect to the subject matter hereof and correctly set forth the rights, duties, and obligations of each to the other as of its date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Lease are of no force or effect and are merged into this Lease.

**Section 14.12. Amendments.** No amendments to this Lease shall be binding on either Party unless in writing and signed by both Parties. Solely to the limited extent as may be necessary to reasonably facilitate the initial Construction Loan to finance the Hotel Project and the first refinancing thereof and/or the initial Mezzanine Loan and the first refinancing thereof, the City Manager shall have the delegated authority (but not the obligation), after consultation with the City's Chief Financial Officer and City Attorney, to negotiate and execute modifications to Article 9, Article 10, Sections 6.1(a)(vi) through 6.1(a)(ix), and Sections 6.1(b) through 6.1(k) of this Lease; and to negotiate and execute the easements contemplated pursuant to Section 4.1(g) of this Lease. All other amendments must be approved by majority vote of the City Commission, subject to the requirements of the City Charter and applicable law, except that the provisions of Sections 4.2(b), 4.2(g), 4.5(a) through (e), and Section A.1 of Exhibit "A" hereto may not be modified except by 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, and the Base Rent and Minimum Fixed Rent set forth in Section 4.4(a) may not be modified except by approval of such modification 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. City acknowledges that this Lease shall not be subordinate to any future mortgage against the fee interest in the Leased Property. Notwithstanding anything to the contrary contained in this Lease, if all or any portion of the interest of the City in the Leased Property or this Lease shall be acquired by reason of foreclosure of any mortgage, security agreement, lien or other encumbrance or other proceedings brought to enforce the rights of the holder(s) thereof, by deed in lieu of foreclosure or by any other method, and as a result any Person succeeds to such interests of City, this Lease and the rights of Lessee hereunder shall continue in full force and effect and shall not be terminated or disturbed except as otherwise expressly permitted by the terms of this Lease.

**Section 14.14. City Manager's Delegated Authority.** Notwithstanding any provision to the contrary in this Lease, nothing herein shall preclude the City Manager from seeking direction from or electing to have the City Commission determine any matter arising out of or related to this Lease, including, without limitation, any Approval contemplated under this Lease (within the timeframe specified therefor as if the Approval was being determined by the City Manager), any proposed

amendment or modification to this Lease or any separate agreement relating to the Hotel Project or otherwise referenced in this Lease.

**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 limited liability company. 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 limited liability company, then any references herein to member, membership interest, manager and the like which are applicable to a limited liability company 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, exemplary 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 pages to follow]

**IN WITNESS WHEREOF**, Lessee has caused this Lease to be signed in its name, 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: \_\_\_\_\_  
Dan Gelber  
Mayor

ATTEST

Approved for form and legal sufficiency

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
City Attorney

STATE OF FLORIDA            )  
COUNTY OF MIAMI-DADE    )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 201\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_ Who is personally known to me or who produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
Commission Number: \_\_\_\_\_

Commission Expires: \_\_\_\_\_

**LESSEE**

**MB MIXED USE INVESTMENT, LLC**

\_\_\_\_\_  
Print Name:

By: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_  
Print Name:

STATE OF FLORIDA            )  
COUNTY OF MIAMI-DADE    )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 201\_, 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    )

**EXHIBIT "A"**  
**ACCEPTABLE OWNER DEFINITION**

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

1. The proposed transferee must comply with Section 4.2(g) of the Lease.
2. The proposed transferee is not a Foreign Instrumentality other than a member country of the European Union or the Gulf Cooperation Council, each as existing on the Effective Date, Canada, Mexico, countries located in South America (other than Venezuela), Japan, South Korea, Singapore and Australia, or a Person Controlled by any of the foregoing countries.
3. The proposed transferee must not be owned, or Controlled 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 twenty percent (20%) equity interest in the proposed transferee, other than officers, directors, managers or others who have the power to direct and control the business and affairs of the proposed transferee.
4. The proposed transferee must not in its charter or organizational documents (defined as the articles of incorporation and bylaws for any corporation, the partnership agreement and partnership certificate for any partnership, the articles of organization and limited liability company operating agreement for any limited liability company, 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.
5. [A proposed transferee of the entire Hotel Project or of a direct or indirect Controlling ownership interest in Lessee (each, a "Proposed Major Transferee"), or an Affiliate of such Proposed Major Transferee Controlling such Proposed Major Transferee or Person with an ownership interest in such Proposed Major Transferee Controlling such Proposed Major Transferee, must (a) retain or hire an Approved Brand and/or Approved Operator, as applicable, and (b) comply with the Debt Service Coverage Ratio required under Section 6.1(a)(vi) of the Lease and the loan-to-value requirement set forth in Section 6(a)(vii) of the Lease.] [PARTIES CONTINUING TO DISCUSS]
6. A Proposed Major Transferee shall have no outstanding material violations of any applicable law against such Proposed Major Transferee, or any hotel or other property owned or managed by such Proposed Major Transferee, within Florida, which have remained uncured for more than ninety (90) days after such Proposed Major Transferee has knowledge of such violation unless such violation is being contested in good faith so long as the Proposed Major Transferee is able to continue operating such hotel or other property while such matter is being contested. A material violation of applicable law means that the Proposed Major Transferee would be subject to any of the following if found guilty of such violation, or if such violation remains uncured after any applicable period for curing such violation in the statutory or regulatory scheme describing such violation: (i) prohibition from continuing to operate such hotel or other property for any period of time or (ii) a forfeiture of the

Proposed Major Transferee's entire interest in such hotel or other property. [PARTIES CONTINUING TO DISCUSS]

7. A Proposed Major Transferee must not (nor any of the individuals or entities who own at least a twenty percent (20%) equity interest in such Proposed Major Transferee or are officers, directors, managers or otherwise have the power to direct and control the business and affairs of such Proposed Major Transferee) 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 Major Transferee, unless such Affiliates are any of the individuals or entities described in the parenthetical immediately above).

B. "Acceptable Owner Criteria": The foregoing 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 transferee has met the Acceptable Owner Criteria set forth in subparagraphs A.1 – A.4, A.6 and A.7 of this Exhibit A, the proposed transferee shall provide the following information to the Lessee and certify that the information provided by the proposed transferee is true and correct and that the proposed transferee meets or exceeds the Acceptable Owner Criteria:

1. solely with respect to a Proposed Major Transferee, information sufficient for the City or any outside vendor engaged by the City to perform a due diligence investigation pursuant to paragraph D below, including copies of any applicable operating licenses;

2. solely with respect to a Proposed Major Transferee, identification and summary description of its principals and its major real estate or other investments;

3. solely with respect to a Proposed Major Transferee, a list of all bankruptcies filed by such Proposed Major Transferee or to which such Proposed Major Transferee was a party-bankrupt, if any; and

4. such other evidence as is commercially reasonably necessary as determined by Lessee to establish that the new entity proposed to be the Acceptable Owner meets the Acceptable Owner Criteria.

D. With respect to any proposed Transfer to a Proposed Major Transferee, City may, at its sole discretion, engage an outside vendor to perform a due diligence investigation at the Lessee's or such Proposed Major Transferee's sole expense, which may include a search of civil, criminal, or bankruptcy proceedings in federal and state jurisdictions; regulatory filings; tax filings; lien, judgment and Uniform Commercial Code searches; business registrations, and the like; provided, however, that City's right to conduct its own due diligence shall not expand or deemed to expand the Acceptable Owner Criteria or impose additional criteria with respect to whether a proposed transferee constitutes an Acceptable Owner. City shall be entitled to engage an independent accounting firm, the reasonable costs of which shall be borne by Lessee or such Proposed Major Transferee, to review the information upon which the Proposed Major Transferee's certifications were based, for the purpose of determining whether the certifications and/or information provided to the City is accurate and complete. Lessee

shall, or shall cause such Proposed Major Transferee to, reimburse City, upon demand, for any reasonable costs incurred by City in connection with such Transfer or proposed Transfer to a Proposed Major Transferee, including the reasonable out-of-pocket costs of making inquiries and investigations into the conformance with the Acceptable Owner Criteria of such Proposed Major Transferee and the reasonable legal costs incurred, if any, in connection therewith.

E. Confirmation/Approval Process for Proposed Transferees:

Regarding the City's confirmation that a proposed transferee is an Acceptable Owner, or the City's approval of a Transfer that is not a Permitted Transfer, the parties hereby agree that:

1. The City Manager shall rely solely on the proposed transferee's certification that the proposed transferee meets the Acceptable Owner Criteria (if a Permitted Transfer), along with the information provided by the proposed transferee and with respect to any Proposed Major Transferee, the results of any due diligence investigation performed by the City.

2. The City Manager shall not unreasonably withhold the City's confirmation if the proposed transferee complies with the Acceptable Owner Criteria.

3. The City Manager shall not unreasonably withhold the City's Approval of a Transfer that is not a Permitted Transfer, except that with respect to a Transfer to a Foreign Instrumentality (other than a member country of the European Union or the Gulf Cooperation Council, each as existing on the Effective Date, Canada, Mexico, countries located in South America (excluding Venezuela), Japan, South Korea, Singapore and Australia or Persons Controlled by any of the foregoing countries), such Transfer shall be subject to the prior written approval of the City Commission, which may be granted, conditioned or withheld by the City Commission in its sole discretion; and

4. If a proposed Transfer requires the City's confirmation or Approval, Lessee shall deliver written notice to the City, which shall include (i) the name and address of the proposed transferee; (ii) the name and address of the proposed transferor; (iii) information describing the nature of the transaction; (iv) the percentage interest being conveyed; and (v) the materials described in paragraph C above.

5. The City Manager shall have up to forty-five (45) days after the delivery of such written notice and the information required under paragraph C above, to determine whether, on a commercially reasonable basis, the proposed transferee meets the Acceptable Owner Criteria set forth in subparagraphs A.1 – A.4, A.6 and A.7 of this Exhibit A if a Permitted Transfer. The City Manager shall have up to sixty (60) days after the delivery of such written notice and the information required under paragraph C above whether to Approve in accordance herewith a Transfer that is not a Permitted Transfer.

6. Provided that no Event of Default is then continuing, Lessee's request for confirmation that the proposed transferee meets the Acceptable Owner Criteria set forth in subparagraphs A.1 – A.4, A.6 and A.7 of this Exhibit A shall be deemed confirmed if the first correspondence from Lessee to the City requesting such confirmation 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 "THIS IS A REQUEST FOR CONFIRMATION OF A PERMITTED TRANSFER UNDER SECTION 5.4 OF THE DEVELOPMENT AND GROUND LEASE AGREEMENT,

DATED AS OF \_\_\_\_\_, 2018, AND FAILURE TO RESPOND TO THIS REQUEST WITHIN FORTY-FIVE (45) DAYS WILL RESULT IN THE REQUEST BEING DEEMED CONFIRMED,” and is accompanied by the information and documents required above and City fails to respond or to deny such request for confirmation in writing within such forty-five (45) day period. Provided that no Event of Default is then continuing, Lessee's request for Approval of a Transfer that is not a Permitted Transfer shall be deemed Approved if the first correspondence from Lessee to the City requesting such Approval 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 "THIS IS A REQUEST FOR APPROVAL OF A TRANSFER UNDER SECTION 5.4 OF THE DEVELOPMENT AND GROUND LEASE AGREEMENT, DATED AS OF \_\_\_\_\_, 2018, AND FAILURE TO RESPOND TO THIS REQUEST WITHIN SIXTY (60) DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED” and is accompanied by the information and documents required above and City fails to respond or to deny such request for Approval in writing within such sixty (60) day period. Any Transfer shall be subject to the deemed Approval provisions set forth above in this subparagraph E.6, provided, however, that the City Commission shall have sixty (60) days after receipt of written notice from Lessee of any proposed Transfer to a Foreign Instrumentality (other than a member country of the European Union or the Gulf Cooperation Council, each as existing on the Effective Date, Canada, Mexico, countries located in South America (excluding Venezuela), Japan, South Korea, Singapore and Australia or Persons Controlled by any of the foregoing countries), to approve or disapprove of such proposed Transfer, and if the City has not notified Lessee, in writing, of the City Commission's approval of such Transfer within such sixty (60) day period, then such Transfer shall be deemed approved.

7. If the City notifies Lessee, in writing, within the first thirty (30) days of such forty-five (45) or sixty (60) day period, as applicable, 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 Manager (or City Commission, with respect to Transfers to Foreign Instrumentalities requiring City Commission approval) shall have twenty (20) days after such supplemental information is provided to make its determination whether the proposed transferee meets the Acceptable Owner Criteria set forth in subparagraphs A.1 – A.4, A.6 and A.7 of this Exhibit A or to Approve a Transfer that is not a Permitted Transfer.

8. If the City Manager does not confirm that the proposed transferee does not meet the Acceptable Owner Criteria set forth in subparagraphs A.1 – A.4, A.6 and A.7 of this Exhibit A or disapproves a Transfer that is not a Permitted Transfer, the City Manager shall provide to Lessee specific written, commercially reasonable reasons for such action. The failure to object to the proposed transferee or Transfer within the applicable time period set forth above shall be deemed to be the confirmation by the City of the proposed transferee as an Acceptable Owner (subject to compliance with the Acceptable Owner Criteria set forth in subparagraphs A.5 of this Exhibit A, if applicable, which shall be confirmed upon closing of the applicable Transfer) or Approval of the proposed Transfer, except with respect to a proposed Transfer to a Foreign Instrumentality (other than a member country of the European Union or the Gulf Cooperation Council, each as existing on the Effective Date, Canada, Mexico, countries located in South America (excluding Venezuela), Japan, South Korea, Singapore and Australia or Persons Controlled by any of the foregoing countries), which the City Commission must expressly approve in writing, as provided above, in order for such Transfer to be effective.

9. No confirmation by the City of a proposed transferee 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.

F. 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 (with the requirements in paragraphs A, B and C being the "Hotel Standards"):

A. If the Hotel is operated as a branded hotel other than an Approved Brand as defined in clause (i) or clause (iii) of the definition thereof, which shall only be permitted from and after the twentieth (20<sup>th</sup>) anniversary of the Opening Date, it must meet the level of service and quality comparable to other hotels in the "Upper Upscale" chain scale segment as then determined by Smith Travel Research and generally recognized in the hospitality industry as an experienced convention center hotel brand;

B. If the Hotel is operated as a non-branded hotel, which shall be permitted only after the twentieth (20<sup>th</sup>) anniversary of the Opening Date, it meets a sufficient number of the standards then required to be able to obtain a 3.5 diamond rating from the American Automobile Association ("AAA");

If at any time during the Term of this Lease any such rating system described in paragraphs A or B above is discontinued or the standards for such rating system 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.

C. Notwithstanding the foregoing, in the case of either paragraph A or B above, 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 or any convention center hotel of a similar size and purpose as the Hotel operated by an Approved Brand.

For paragraph B above, the Lessee does not have to actually obtain the AAA 3.5-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 Hotel Standards set forth in Paragraph B above.

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 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 in accordance with the Hotel Standards, 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 cause the Hotel to be operated in accordance with the Hotel Standards.

**EXHIBIT "C"**  
**BUDGETED IMPROVEMENT COSTS**  
**Hotel Project Costs**

**Preliminary Development Budget**

<b>Description</b>	<b>Total</b>	<b>Per Room</b>	<b>% Total</b>
Hard Costs (Including Contingency)	\$235,900,006	\$297,103	65.1%
Furniture, Fixtures & Equipment	\$27,790,000	\$35,000	7.7%
Architect & Engineering	\$14,346,305	\$18,068	4.0%
Pre-opening / Working Capital	\$7,000,000	\$8,816	1.9%
Development Fees	\$14,485,829	\$18,244	4.0%
Art in Public Places	\$3,205,078	\$4,037	0.9%
Other Soft Costs	\$42,561,312	\$53,604	11.8%
Contingency (HC & SC)	\$2,559,881	\$3,224	0.7%
Interest Reserve	\$12,259,348	\$15,440	3.4%
Closing Costs	\$2,000,000	\$2,519	0.6%
<b>Total Development Budget</b>	<b>\$362,107,759</b>	<b>\$456,055</b>	<b>100.0%</b>

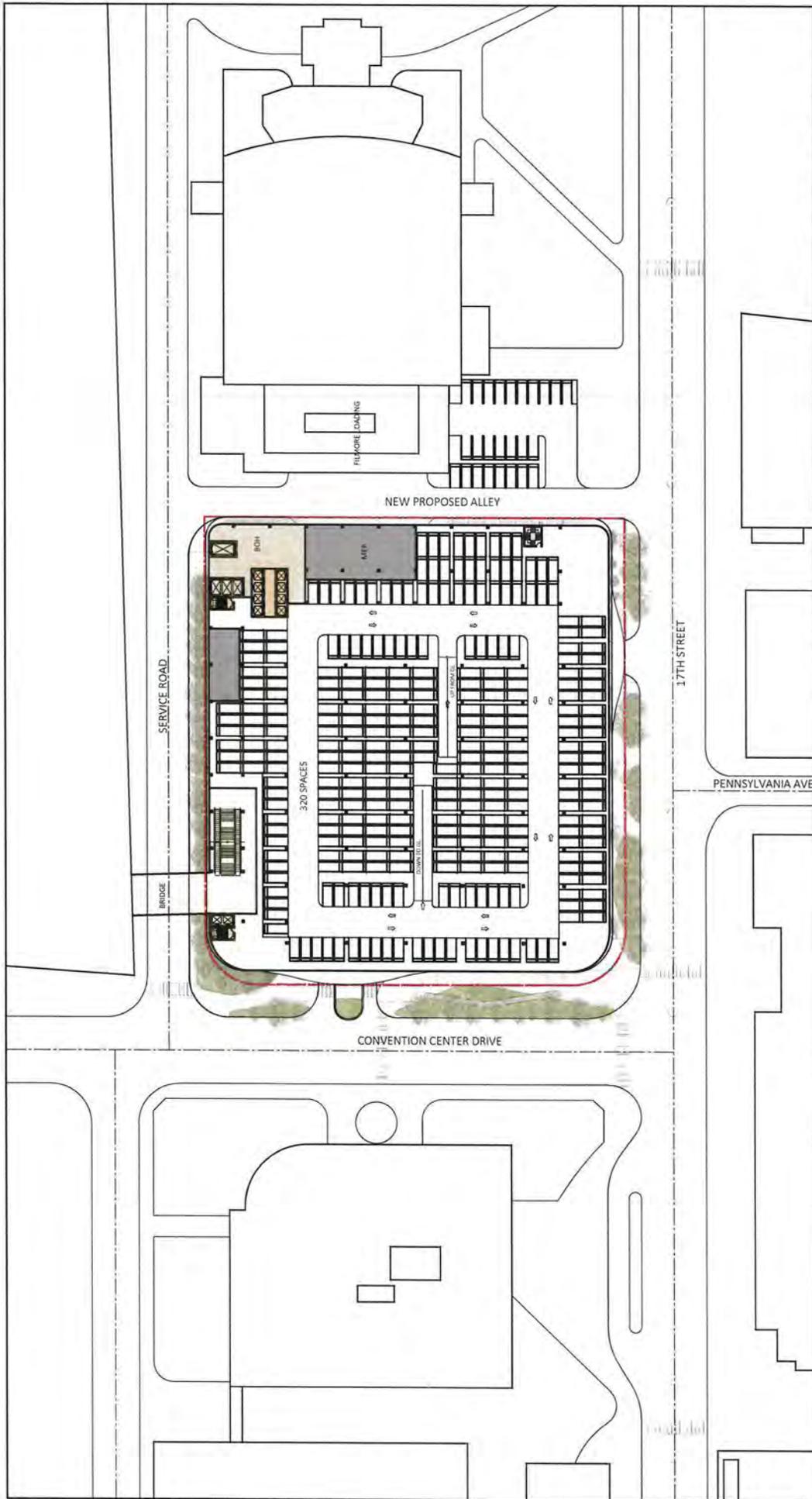
**EXHIBIT "D"**  
**LEGAL DESCRIPTION OF HOTEL SITE**

**See Appendix 2 of July 17, 2018 Commission Memorandum**

**EXHIBIT "E"**  
**APPROVED PLANS**  
**(see attached pages)**

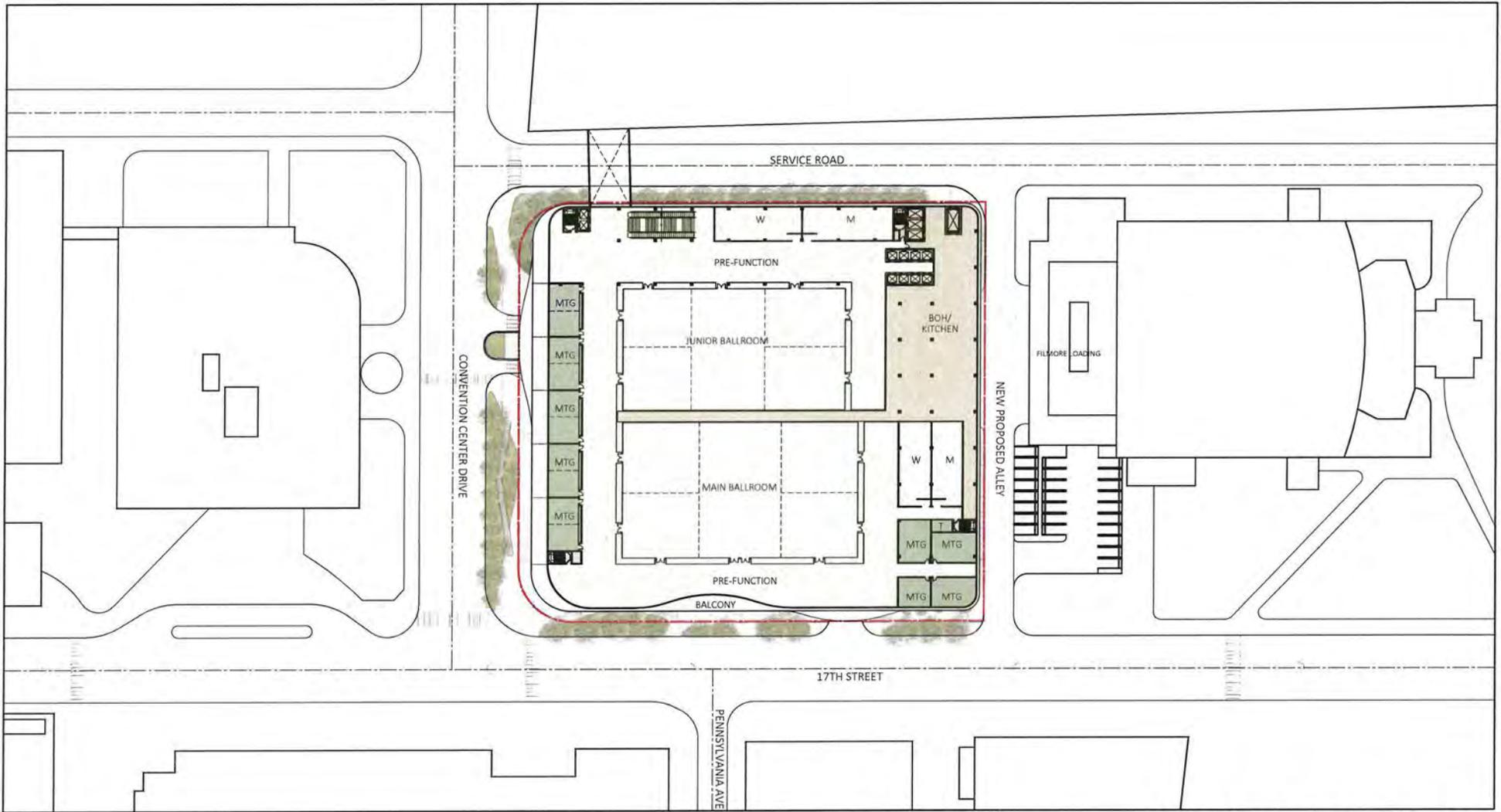
# PLANS





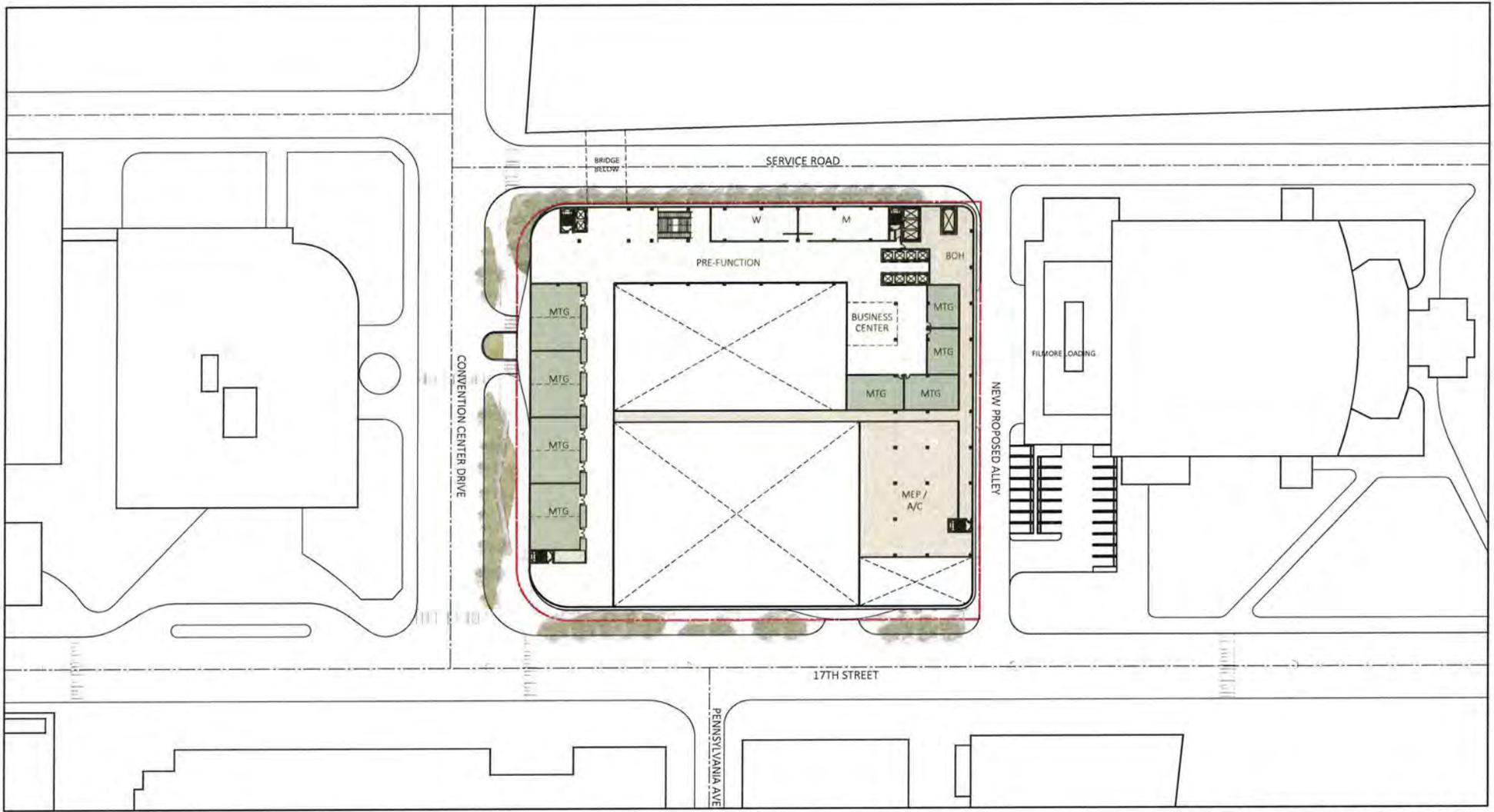
**LEVEL 02 - PARKING**

**MBCC HOTEL**  
 MIAMI, FL 33139



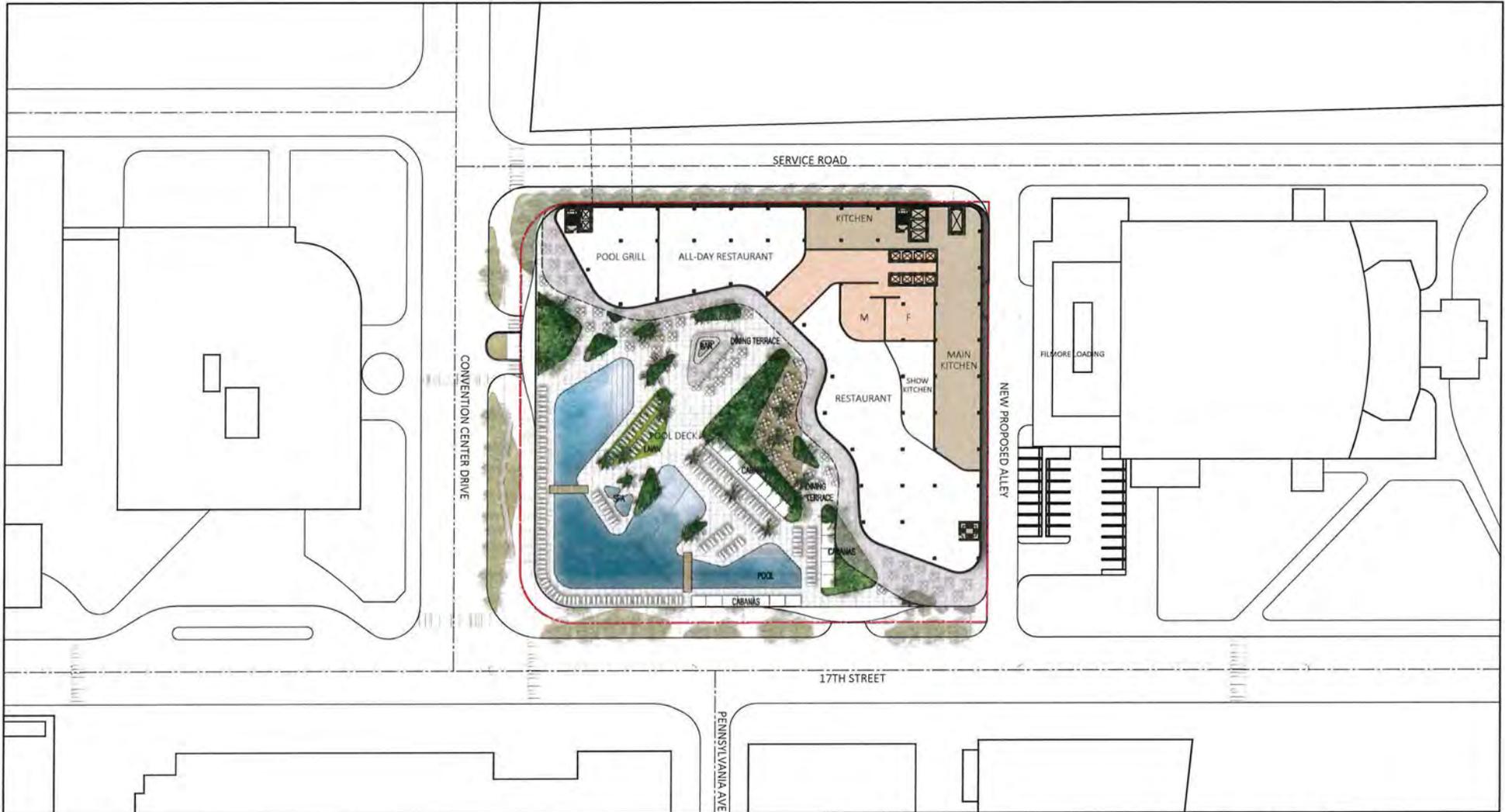
**LEVEL 03 - BALLROOM**

MBCC HOTEL  
MIAMI, FL 33139



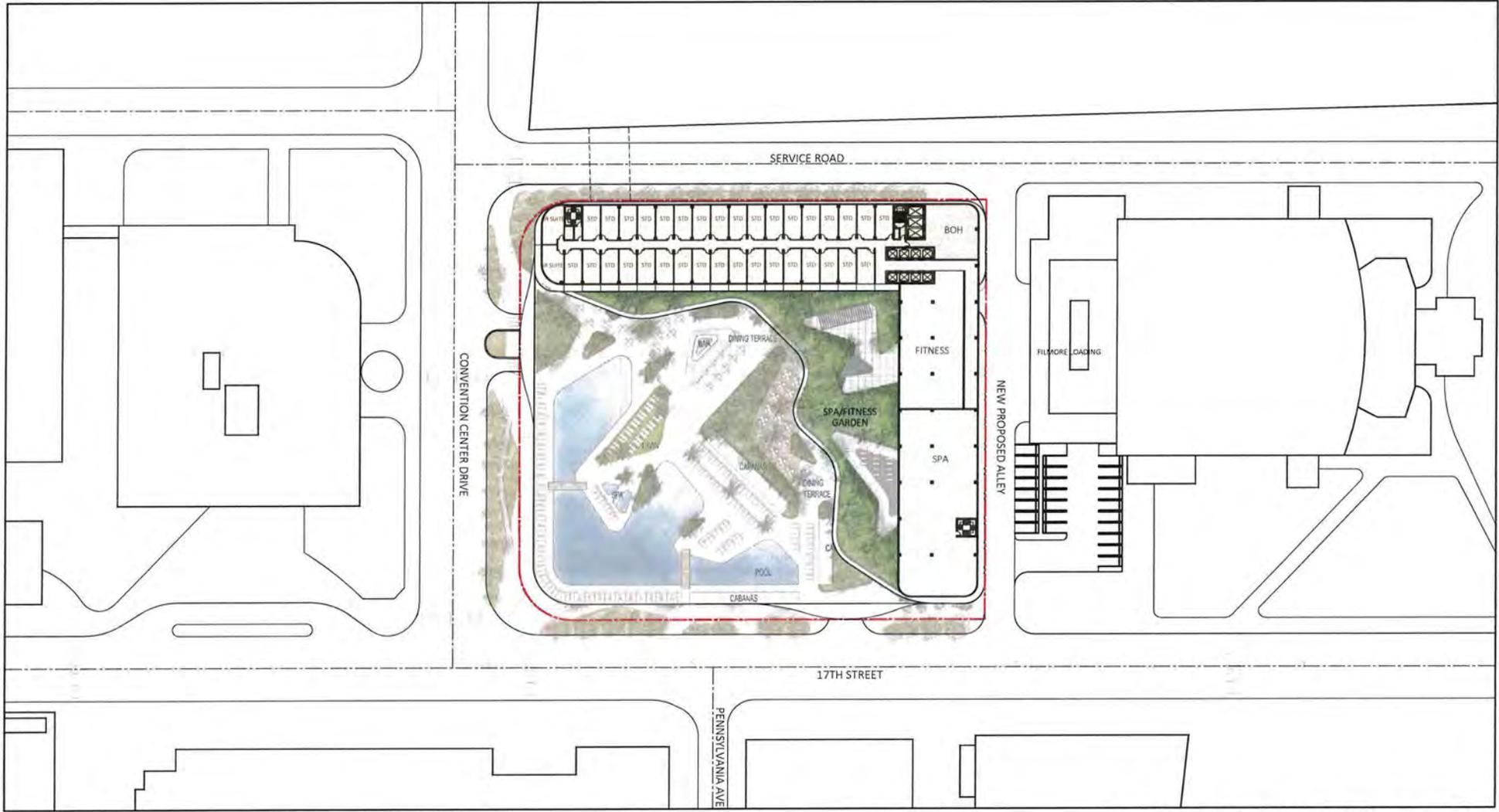
**LEVEL 04 - MEETINGS**

MBCC HOTEL  
MIAMI, FL 33139



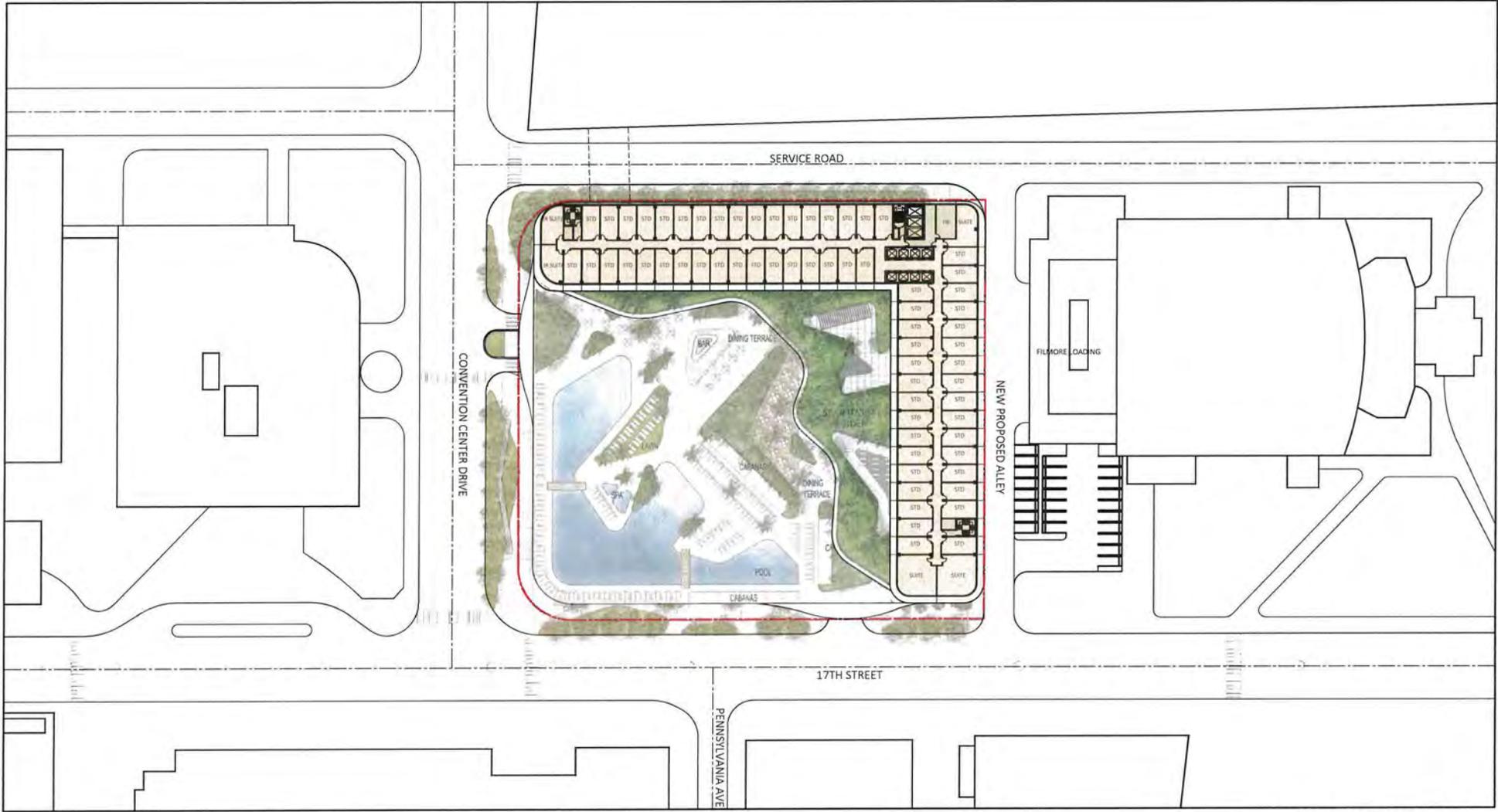
**LEVEL 05 - POOL DECK**

MBCC HOTEL  
 MIAMI, FL 33139



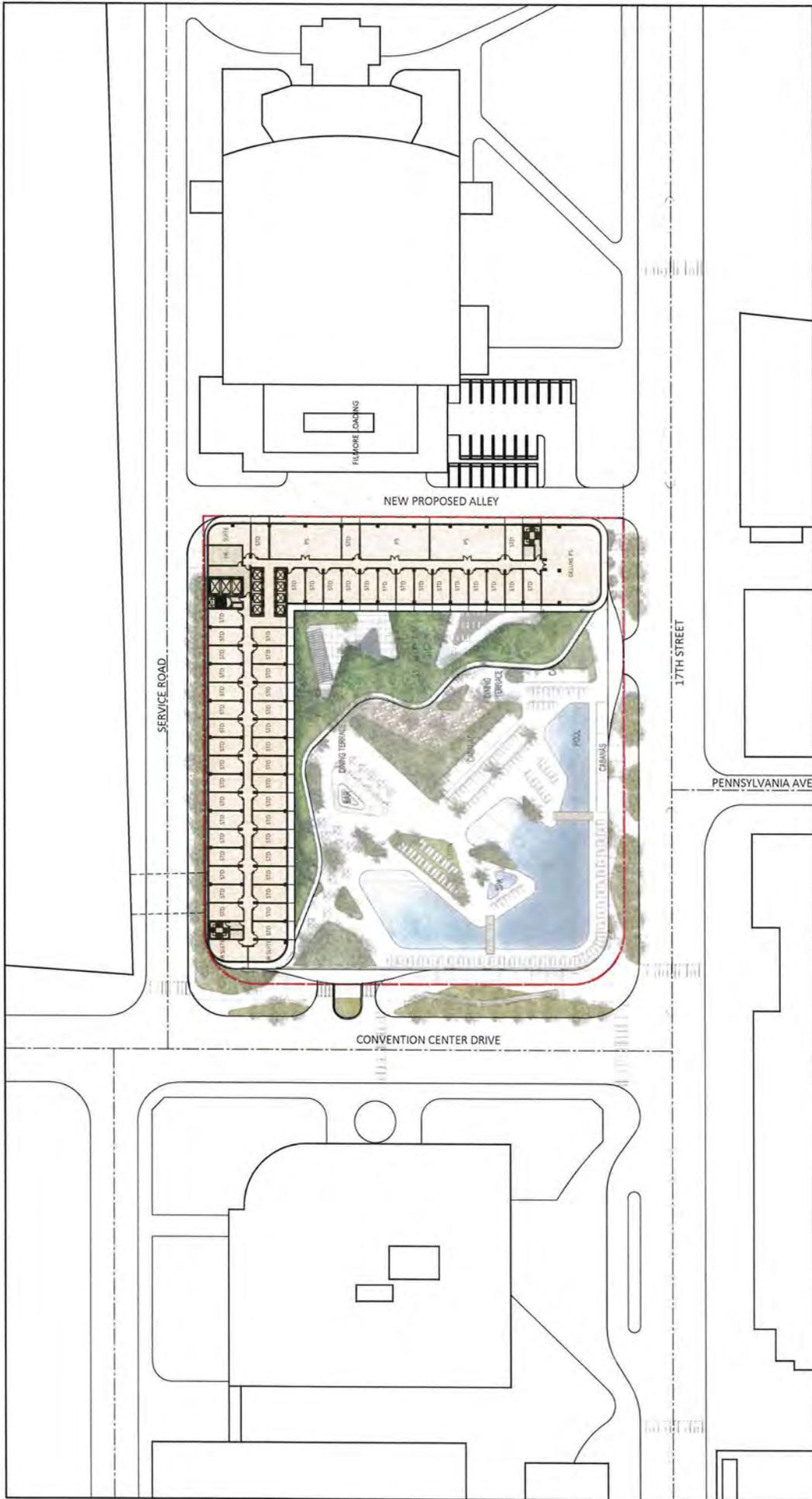
**LEVEL 06 - SPA & FITNESS**

MBCC HOTEL  
MIAMI, FL 33139



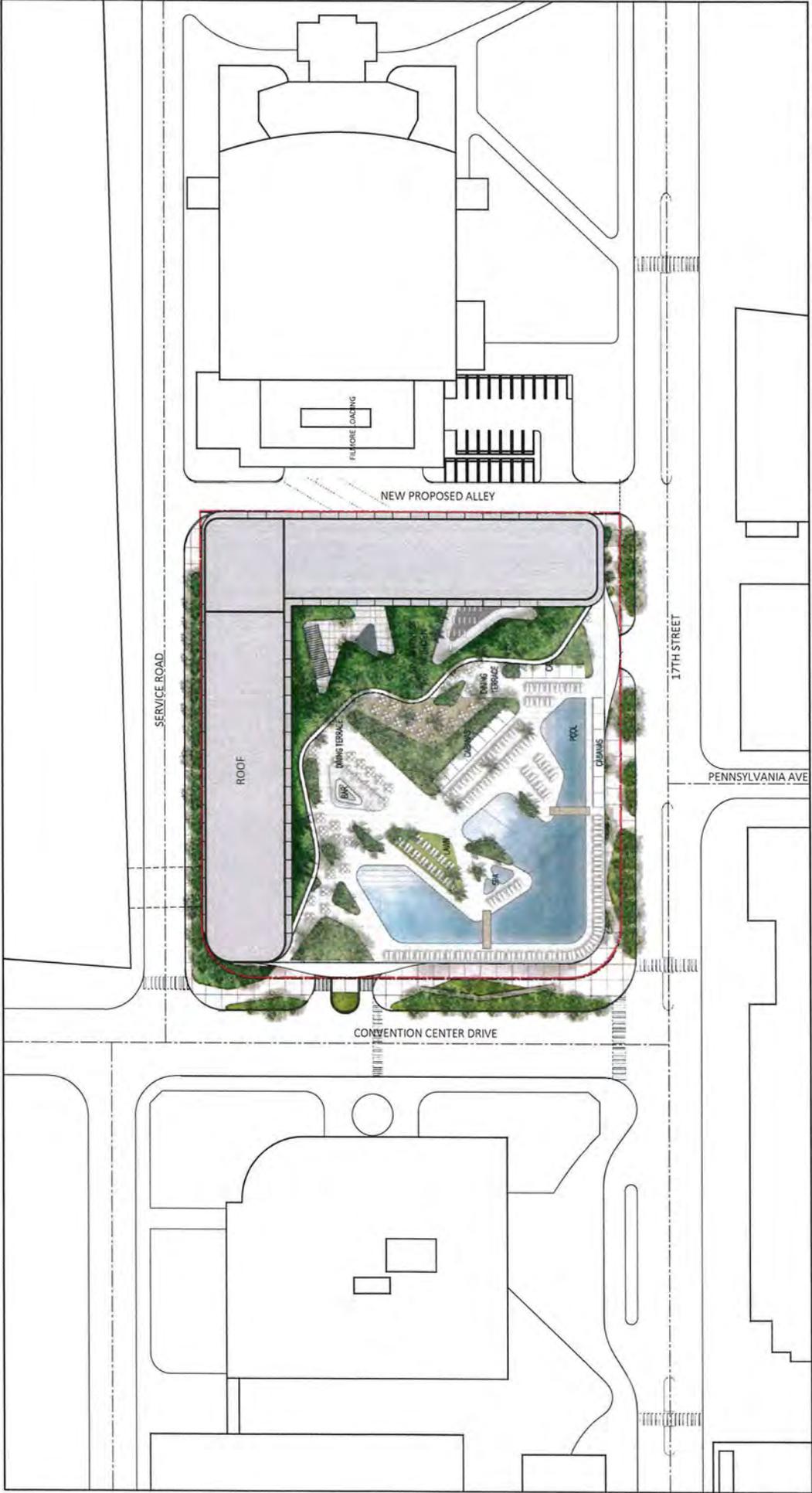
**LEVELS 07 - 16**

**MBCC HOTEL**  
MIAMI, FL 33139



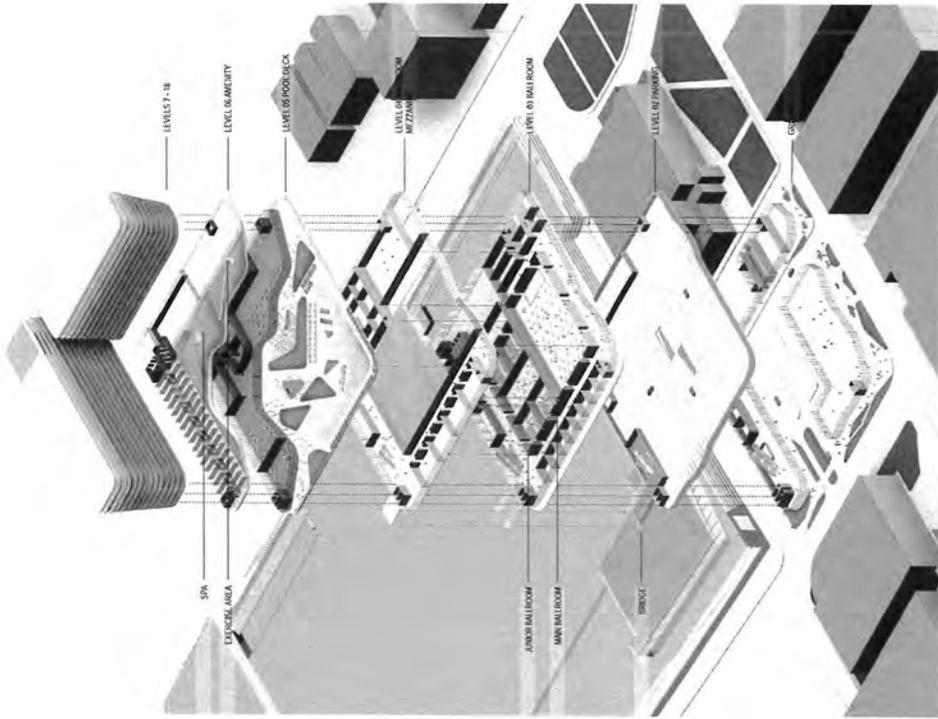
**LEVEL 17**

**MBCC HOTEL**  
MIAMI, FL 33139



**ROOF PLAN**

**MBCC HOTEL**  
 MIAMI, FL 33139



AXO

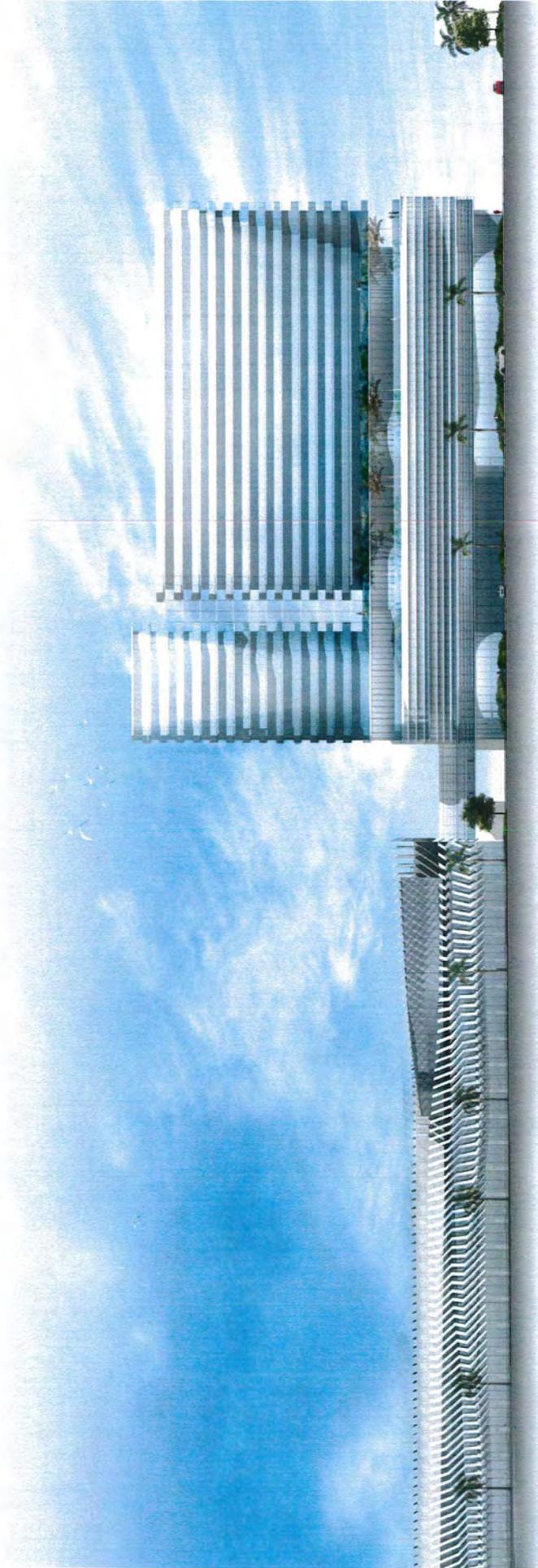
MBCC HOTEL  
MIAMI, FL 33139



- LEVEL 17
- LEVEL 16
- LEVEL 15
- LEVEL 14
- LEVEL 13
- LEVEL 12
- LEVEL 11
- LEVEL 10
- LEVEL 09
- LEVEL 08
- LEVEL 07
- LEVEL 06 AMENITY
- LEVEL 05 POOL DECK
- LEVEL 04 BALLROOM MEZZANINE
- LEVEL 03 BALLROOM
- LEVEL 02 PARKING
- BFE + FRB

**WEST ELEVATION**

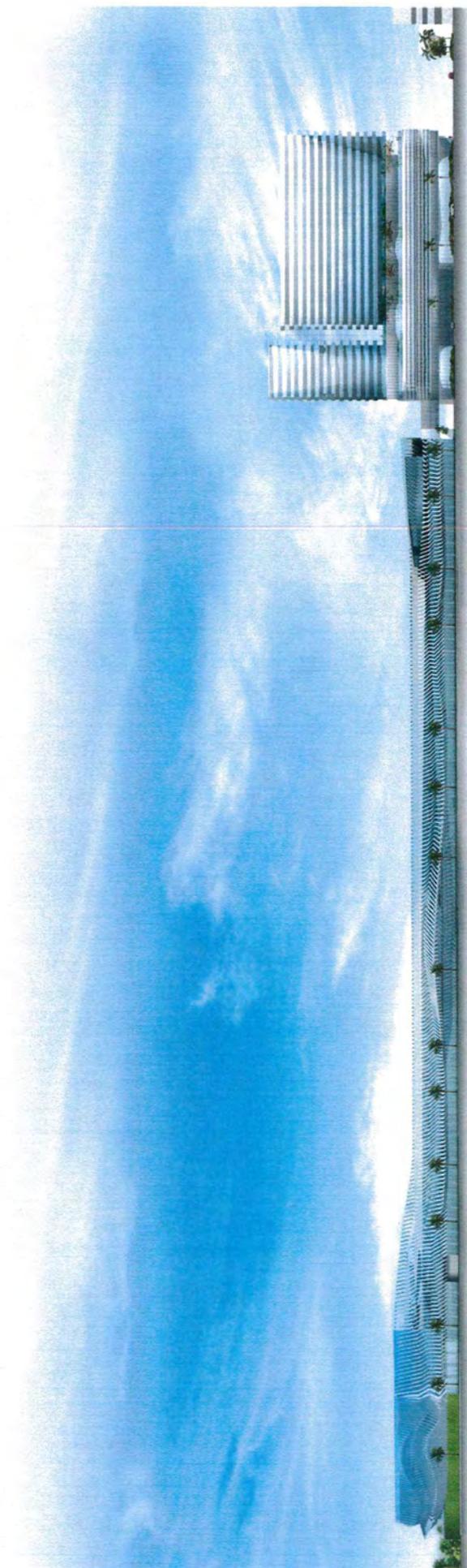
MBCC HOTEL  
MIAMI, FL 33139



**WEST ELEVATION**

**MBCC HOTEL**

MIAMI, FL 33139



**WEST ELEVATION**

**MBCC HOTEL**

MIAMI, FL 33139

**EXHIBIT "F"**  
**RESERVED**

## EXHIBIT "G"

### FORM OF EASEMENTS

#### GRANT OF EASEMENT AND AGREEMENT

THIS GRANT OF EASEMENT AND AGREEMENT (this "Easement") is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by the CITY OF MIAMI BEACH, a Florida municipal corporation (the "City"), having its principal place of business at 1700 Convention Center Drive, Miami Beach, Florida 33139 in favor of MB MIXED USE INVESTMENT, LLC, a Florida limited liability company ("Lessee"), having its principal place of business at \_\_\_\_\_

WHEREAS, the City owns that certain property situated, lying and being in Miami-Dade County, Florida, as more particularly described in Exhibit "A" attached hereto (the "Property"),

WHEREAS, the City and the Lessee entered into that certain Development and Ground Lease Agreement dated as of \_\_\_\_\_, 20\_\_\_, a memorandum of which is recorded in Official Records Book \_\_\_\_\_, at Page \_\_\_\_\_ of the Public Records of Miami-Dade County (the "Development and Ground Lease Agreement"), which constitutes a development agreement pursuant to the Florida Local Government Development Act, Section 163 3220, et seq, Florida Statutes (the "Act") and which contemplates the development and ground lease of the portion of the Property depicted in Exhibit "B" (the "Leased Property") for an 800-room full-service convention hotel and related facilities, to be connected to the Miami Beach Convention Center located at 1901 Convention Center Drive, Miami Beach, Florida ("Convention Center") by an enclosed overhead pedestrian skybridge (the "Hotel Project"),

WHEREAS, pursuant to the Development and Ground Lease Agreement, the City has agreed to grant to the Lessee a non-exclusive access easement for the purpose of ingress and egress through, over, on, upon and across the right-of-way which is more particularly described in Exhibit "C" attached hereto ("Easement Parcel 1") for the purpose of permitting Lessee to access the Leased Property including, without limitation, its parking, loading docks and/or service areas, and reserving unto City and its contractors, agents, employees, invitees and licensees (collectively, the "City Parties") the right to ingress and egress through, over, on, upon and across the Easement Parcel 1 for all purposes, including but not limited to providing pedestrian and vehicular access to the Convention Center and The Fillmore Theater located at 1700 Washington Avenue, Miami Beach, Florida ("Fillmore Theater"), and their respective loading docks and service areas,

WHEREAS, pursuant to the Development and Ground Lease Agreement, the City has agreed to grant to the Lessee a non-exclusive access easement over the area more fully described in Exhibit "D" hereto ("Easement Parcel 2"), for the purpose of permitting Lessee to construct the Skybridge and the Off-Site Improvements, as those terms are more particularly described in the Development and Ground Lease Agreement, and to maintain the Skybridge in accordance with the Development and Ground Lease Agreement, and

WHEREAS, collectively, Easement Parcel 1 and Easement Parcel 2 shall be referred to herein as the "Easement Parcels",

WHEREAS, granting the foregoing easements is a condition of the effectiveness of the Development and Ground Lease Agreement and the issuance of development permits and approvals in order to develop the Hotel Project,

**NOW THEREFORE**, in consideration of Ten and No/100 Dollars (\$10 00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Lessee agree as follows

1 The City hereby grants to the Lessee a non-exclusive access easement through, over, on, upon and across **Easement Parcel 1** for the purpose of ingress and egress to and from the Leased Property and its parking, loading docks and/or service areas, for so long as Lessee uses the Leased Property in accordance with the terms of the Development and Ground Lease Agreement. The City hereby expressly reserves for itself, the other City Parties and their respective successors and/or assigns, the unrestricted right to use Easement Parcel 1 for purposes of providing pedestrian and vehicular access to the Convention Center and the Fillmore Theater, and their respective loading docks and service areas and for any and all other purposes that do not unreasonably interfere with the Lessee's use of Easement Parcel 1 for the rights granted herein, including but not limited to granting other easements or licenses at the same location. The City shall be responsible for the maintenance and operation of Easement Parcel 1 at the City's sole cost and expense.

2 The City hereby grants Lessee a non-exclusive access easement over, on, under, upon, and across **Easement Parcel 2** to perform all acts necessary to ensure fulfillment of all requirements of [insert permit or order no ] with respect to the construction of the Skybridge and/or Off-Site Improvements referenced in the Development and Ground Lease Agreement and as reasonably necessary to maintain the Skybridge in accordance with Lessee's obligations under the Development and Ground Lease Agreement. The City hereby expressly reserves for itself, the other City Parties and their respective successors and/or assigns, the unrestricted right to use the Easement Parcel 2 for any and all other purposes that do not unreasonably interfere with the Lessee's use of Easement Parcel 2 for the rights granted herein, including but not limited to granting other easements or licenses at the same location.

3 The Easement Parcels are subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the Property, whether or not of record, as identified on Exhibit "E" hereto (the "Encumbrances"). The use of the word "grant" shall not imply any warranty on the part of the City with respect to the Easement Parcels.

4 The Lessee shall maintain insurance on the Easement Parcels at all times as required by the Development and Ground Lease Agreement. Such insurance policy shall name the City as an additional insured and loss payee (with respect to property coverage) thereunder; shall be written by insurance companies licensed to do business in Florida and with an AM Best rating of A- or better; and must specify it is not subject to cancellation or non-renewal without a minimum of 30 days notification by the insurer to the City with a copy to the attention of Risk Manager, 1700 Convention Center Drive, Miami Beach, Florida 33139 ("Risk Manager"), with a minimum of 10 days notification by the insurer to the City and the City's Risk Manager prior to cancellation or non-renewal for non-payment of premium. The Lessee shall provide the City with a certificate of insurance evidencing said coverages.

5 City covenants, warrants and represents that it is the fee simple owner of the Leased

Property and Easement Parcels, and has the right, title, and capacity to grant the easements granted herein, subject only to the Encumbrances

6 Lessee shall not materially interfere with the use by and operation and activities of City Parties on the Easement Parcels, and Lessee shall use such routes and follow such procedures on the Easement Parcels as result in the least damage and inconvenience to City and its invitees, agents, employees, guests, lessees and/or licensees.

7 Lessee shall be responsible for any damage to the Property or any property of third parties resulting from the exercise or use of the Easement Parcels by the Lessee or its contractors, agents, officers, members, employees, invitees or licensees (collectively, the "Lessee Parties"), including but not limited to soil erosion, subsidence or damage resulting therefrom. Lessee shall promptly repair and restore to its original condition any of the Property that may be altered, damaged or destroyed in connection with the exercise or use of the Easement Parcels by the Lessee Parties. This Easement is made on the express condition that City is to be free from all liability by reason of injury or death to persons or injury to property from whatever cause arising out of any of the Lessee Parties' exercise or use of the Easement Parcels, including any liability for injury or death to the person or property of any of the Lessee Parties or to any property under the control or custody of any of the Lessee Parties. Lessee hereby covenants and agrees to defend and indemnify the City Parties and save them harmless from any and all liability, loss, costs, or obligations on account of, or arising out of, any such injury or losses caused or claimed to be caused by the exercise or use of the Easement Parcels by the Lessee Parties, however occurring, except to the extent caused solely by the willful or grossly negligent acts or omissions of City or the City Parties.

8 This Easement shall inure to the benefit of and be binding upon the heirs, legal representatives, successors and assigns of the City and Lessee, as applicable.

9 Lessee alone shall pay any and all taxes, charges or use fee(s) levied by any governmental agency against Lessee's interest in the Easement Parcels. Lessee shall not cause liens of any kind to be placed against the Easement Parcels or any of the Property except in connection with a Leasehold Mortgage.

10 Any notices required or permitted to be given under this Easement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows

If to the City at: City of Miami Beach, City Hall  
1700 Convention Center Drive  
Miami Beach, Florida 3313  
Attn. City Manager, City Attorney

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Lessee at. \_\_\_\_\_

c/o \_\_\_\_\_

\_\_\_\_\_

Attn \_\_\_\_\_

With a copy to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notices personally delivered or sent by overnight courier shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given five (5) days after deposit in the U S mails The terms of this Section shall survive the termination of this Easement

11 Construction

a This Easement shall be construed and governed in accordance with the laws of the State of Florida All of the parties to this Easement have participated fully in the negotiation and preparation hereof, and, accordingly, this Easement shall not be more strictly construed against any one of the parties hereto

b In construing this Easement, the use of any gender shall include every other and all genders, and captions and section and paragraph headings shall be disregarded

c All of the exhibits attached to this Easement are incorporated in, and made a part of, this Easement.

d The recitals to this Easement set forth above are true and correct and are incorporated herein by this reference

e The dominant estate is intended to be appurtenant to the Development and Ground Lease Agreement and is co-terminus with the Lessee's rights thereunder

12 Severability. In the event any term or provision of this Easement be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or construed as deleted as such authority determines, and the remainder of this Easement shall be construed to be in full force and effect

13 Time of Essence. Time shall be of the essence for each and every provision hereof

14 Entire Agreement This Easement, together with the documents referenced herein, constitute the entire agreement and understanding among the parties with respect to the subject matter hereof, and there are no other agreements, representations or warranties other than as set forth herein This Easement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought

IN WITNESS WHEREOF, the undersigned has caused this Easement to be executed by execution of this instrument as of this \_\_\_\_\_ day of \_\_\_\_\_, 201\_

(Signature pages to follow)

Witnesses:

CITY OF MIAMI BEACH, FLORIDA,  
a municipal corporation

Sign Name \_\_\_\_\_

By: \_\_\_\_\_

Mayor

Print Name: \_\_\_\_\_

Sign Name \_\_\_\_\_

Print Name: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

STATE OF FLORIDA )

) SS:

COUNTY OF DADE )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_,  
20\_\_ by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_. He is  
personally known to me or has produced \_\_\_\_\_ as identification and who  
did (did not) take an oath.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
Typed or Printed Name of Notary

My Commission Expires: \_\_\_\_\_

Serial No., if any: \_\_\_\_\_

ACKNOWLEDGED AND ACCEPTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_:

Witnesses

LESSEE

Sign Name: \_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Sign Name \_\_\_\_\_

Print name: \_\_\_\_\_

Print Name. \_\_\_\_\_

STATE OF FLORIDA )

) SS:

COUNTY OF DADE )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_. He is personally known to me or has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
Typed or Printed Name of Notary  
My Commission Expires: \_\_\_\_\_  
Serial No., if any: \_\_\_\_\_

Exhibit "A"

[MBCC Parcel - Folio No. 02-3227-000-0090]

Exhibit "B"

Hotel Site Legal Description

**[See Appendix 2 of July 17, 2018 Commission Memorandum]**

Exhibit "C"

Easement Parcel 1 (Right-of-way)

[exact description to be finalized as part of the development process pursuant to the Lease]

Exhibit "D"

Easement Parcel 2 for

Construction of Skybridge and Off-site Improvements and Maintenance of Skybridge

[exact description to be finalized as part of the development process pursuant to the Lease]

**EXHIBIT "H"**  
**PRESENTLY PERMITTED DEVELOPMENT**

(a) Permitted Development and Uses. The Leased Property is in the CCC Civic and Convention Center District, a zoning district created to accommodate the facilities necessary to support the Convention Center. The main permitted uses in the CCC Civic and Convention Center District are parking lots, garages, performing arts and cultural facilities; hotel; merchandise mart; commercial or office development; landscape open space; parks. Property located in the CCC Civic and Convention Center District may be used for the purposes permitted and regulated in these land use designations and zoning districts, as further limited by the City's Land Development Regulations, provided, however, that the Leased Property may only be used in accordance with the terms and conditions of this Lease.

(b) Density, Building Heights, Setbacks and Intensities. The maximum density, heights, setbacks and intensities for any development on the Leased Property shall be regulated by the City's Land Development Regulations, Comprehensive Plan and any Governmental Requirements. The development regulations in the CCC Civic and Convention Center District are as follows: (1) maximum floor area ratio of 2.75. There are no lot area, lot width, population densities or unit size requirements for the CCC Civic and Convention Center District. Building height and story requirements are as follows: (1) Maximum building height for hotels: 300 feet; for all other uses: 100 feet. (2) Maximum number of stories for hotels: 30; for all other uses: 11 stories. The development regulations (setbacks, floor area ratio, signs, parking, etc.) shall be the average of the requirements contained in the surrounding zoning districts as determined by the City's Planning and Zoning Director. Notwithstanding the foregoing, the permitted height for the Hotel Project shall not exceed 185 feet, measured from Base Flood Elevation plus maximum Freeboard (BFE + 5 feet), and further, as provided in the City's Land Development Regulations, including, without limitation, Section 142-1161 of the City Code.

**THIS EXHIBIT DESCRIBES THE PRESENTLY PERMITTED DEVELOPMENT FOR PURPOSES OF THE ACT ONLY. THE PROJECT SHALL CONFORM TO THE DESCRIPTION, TERMS AND CONDITIONS SET FORTH IN THIS LEASE.**

**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, the City of Miami Beach, and State of Florida. 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. Notwithstanding the foregoing, the Hotel Project may be required to provide for some of its own services, including solid waste removal and stormwater drainage.

**EXHIBIT "J"**

**PUBLIC RESERVATIONS AND DEDICATIONS**

None, except for any easements or reservations contemplated under Section 4.1(g).

**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 Lease:

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. Public Works Revocable Permits
10. Certificates of Use and/or Occupancy
11. Any variances or waivers that may be required pursuant to Chapters 114 through 142 of the City of Miami Beach Code
12. All other local governmental approvals as may be applicable to the subject property from time to time pursuant to the terms of this Development and Ground Lease Agreement, including but not limited to restrictive covenants in lieu of unity of title

**EXHIBIT "L"**

**ROOM BLOCK AGREEMENT  
by and between**

**CITY OF MIAMI BEACH, FLORIDA  
and  
MB MIXED USE INVESTMENT, LLC**

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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 **MB Mixed Use Investment, LLC** ("Lessee"), a Florida 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 1.15, 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 (as hereinafter defined in Section 1.17) 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 (as defined in the Lease) 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 (as hereinafter defined) 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 "Acceleration Notice" is defined in Section 3.01(e).

1.03 "Active Negotiations" means (x) for purposes of Section 3.01(b) and (c), 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 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(a), 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.

1.04 “Adjusted Maximum Event Room Block” is defined in Section 3.01(b)(i).

1.05 “Agreement” is defined in this Agreement’s preamble.

1.06 “Amended Offer” is defined in Section 3.01(d).

1.07 “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 (including, without limitation, renovations as a result of a hotel brand change or brand refresh), 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.

1.08 “Block Notice” is defined in Section 3.01(d).

1.09 “Block Release Request Notice” is defined in Section 3.02(b).

1.10 “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.

1.11 “City” means the City of Miami Beach, Florida, a municipal corporation of the State of Florida.

1.12 “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).

1.13 “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 for not less than three (3) days (including the day preceding the commencement of and the day following the conclusion of such event) and (ii) in connection with such event, requests 1,500 or more guest rooms on the peak night and 4,000 or more guest rooms in the aggregate be made available in hotels in the City (including the Hotel) and

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

1.14 [Intentionally deleted]

1.15 “Convention Center” means the Miami Beach Convention Center located at 1900 Convention Center Drive, Miami Beach, Florida.

1.16 “Cure Period” is defined in Section 2.02(b).

1.17 “Development and Ground Lease Agreement” or “Lease” means that certain Development and Ground Lease Agreement between Lessee and City dated \_\_\_\_\_, 201\_, as may be amended from time to time in accordance with its terms.

1.18 “Effective Date” is defined in this Agreement’s preamble.

1.19 “Event Block Minimum Rate” is defined in Section 4.01(e).

1.20 “Event of Default” is defined in Section 8.01.

1.21 “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 (x) pursuant to a contract with the Potential Convention Center Customer or (y) 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.

1.22 “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.

1.23 “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.

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

1.25 "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.

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

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

1.28 "Known Release Dates" is defined in Section 3.02(d).

1.29 "Lessee's Initial Projected Event Block Rate Schedule" is defined in Section 4.01(b).

1.30 "Lessee's Subsequent Projected Event Block Rate Schedule" is defined in Section 4.01(c).

1.31 "Managed Hotels" means full-service, convention center hotels within the United States of America operated as first-class hotels containing no less than 400 rentable guest rooms operated under a brand name and managed by the Operator or any entity controlled by, under common control with or that controls Operator.

1.32 "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.

1.33 "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.

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

1.35 "Midweek" means Sunday through Thursday, inclusive.

1.36 "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.

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

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

1.39 "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.

1.40 “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.

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

1.42 “Public Records Act” is defined in Section 4.04.

1.43 “Rate Quote” is defined in Section 3.01(b).

1.44 Intentionally Omitted.

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

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

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

1.48 “Special Event Block Minimum Rate” is defined in Section 4.01(e).

1.49 “Standard of Operation” is defined in Section 6.01.

1.50 “Standard of Operation Failure Notice” is defined in Section 2.02(a)(ii).

1.51 “Suspension Period” is defined in Section 2.02(b).

1.52 “Term” is defined in Section 2.01.

1.53 “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; and

(ii) the termination of this Agreement pursuant to Section 8.01 of this Agreement.

(b) The Term shall be suspended for so long as the Convention Center is no longer operated and maintained substantially consistent with the Standard of Operation (the “Suspension Period”); provided, that, no suspension of the Term pursuant to this Section 2.02(b) 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 one hundred eighty (180) days following receipt of such Standard of Operation Failure Notice (such 180-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 180-day period, such 180-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 180-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. At such time as the Convention Center is operated and maintained substantially consistent with the Standard of Operations, the Suspension Period shall terminate and the parties shall operate in accordance with the terms hereof.

### **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. 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 (which amount shall be referred to as the “Adjusted Maximum Event Room Block”):

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 cancellations 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 cancelations<sup>1</sup>, and

(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 Adjusted 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 the Adjusted Maximum Event Room Block to a Potential Convention Center Customer for City-Wide Events commencing not less than eighteen (18) months and not more than thirty (30) months from the first day of such calendar month. 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.

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<sup>1</sup> 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 rooms booked by Operator in January 2020 would be deducted from the calculation of the Maximum Event Room Block under clause (3).

(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 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 Center 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, provided that Lessee shall have no obligation to include the same terms as were included in the Initial Offer or the Amended Offer, as the case may be, that had previously expired for such City-Wide Event in the Initial Offer Lessee delivers to City in connection with such new Room Block Request Notice.

(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 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 date required under the Room Block Contract executed with such Potential Convention Center Customer, 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.

(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 an 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)

(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 for any day on 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) or (ii) that is an Event Night during a calendar month in which the Maximum Event Night Ceiling has been reached.

(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 decline to accommodate such Potential Convention Center Customer upon notice to the City given within five (5) days following the date of the Room Block Request Notice; provided, that such notice to the City under this paragraph shall set forth with particularity the basis for the Operator's conclusions. In the event the City disagrees with the Operator's conclusions, the parties agree to meet and confer and attempt in good faith to reach agreement as to whether to accept or decline the Potential Convention Center Customer

### 3.02 Release of Block

(a) Notwithstanding anything to the contrary set forth in this Agreement, but subject to Section 3.02(b) below, Operator shall have the right to commit a block of more than twenty percent (20%) of the Available Guest Rooms to non-Potential Convention Center Customer business for a date more than thirty (30) months in the future, and the rooms in excess of twenty percent (20%) shall be released from the terms of this Agreement for such dates, 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 the booking of such City-Wide Event.

(b) If Operator desires to commit a block of more than twenty percent (20%) of Available Guest Rooms pursuant to Section 3.02(a) above, Operator shall send a Notice to City (a “Block Release Request Notice”) specifying (i) the dates as to which such request applies, (ii) the number of event night rooms to which such request applies, and (iii) either that (x) to Operator’s knowledge, none of the items in clauses (i) through (iii) of Section 3.02(a) are true or (y) even though one or more of the items in clauses (i) through (iii) are true, such 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, and City should consider such request for the release in light of the possible repeat nature of the proposed business. Within five (5) Business Days after receipt of a Block Release Request, City shall deliver written notice to Operator either (i) confirming the release of the requested rooms for the specific dates set forth in such Block Receipt Request or (ii) disapproving such release with an explanation as to which item in clause (i) through (iii) of Section 3.02(a) permits City to disapprove. If City fails to either (x) confirm the release of rooms in a Block Release Request Notice or (y) disapprove the release of rooms in a Block Release Request, in each case of (x) and (y), in writing within such five (5) Business Day period, then such release shall be confirmed.

(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.

(d) 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).

#### **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, as further described in Section 4.01(e).

(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, as further described in Section 4.01(e).

(b) Concurrent with the Commencement of Construction, Lessee shall have provided to City and the City shall have approved a schedule of the projected Event Block Minimum Rates and Special Event Block Minimum Rates 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 Rates and Special Event Block Minimum Rates for the ensuing five (5) calendar year period (each such 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 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 Intentionally Omitted.

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 AND OTHER CITY COVENANTS**

6.01. **Standards.** During the Term, City shall operate and maintain the Convention Center to at least the average 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").

6.02 **Restrictive Covenant.** At all times during the term of this Agreement, the City shall comply with the restrictive covenant set forth in Section 4.2(e) of the Lease.

**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 any third party 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, 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 any contract, including any Room Block 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.

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 (3<sup>rd</sup>) 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, 4<sup>th</sup> 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 leasehold 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.

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, City may at any time, without the need of prior notice to or consent from the Lessee, assign this Agreement 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 such assignee expressly assumes all of the obligations of City hereunder 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.

(signature pages to follow)

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:**

MB MIXED USE INVESTMENT, LLC, a Florida limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY OF MIAMI BEACH, FLORIDA**

By: \_\_\_\_\_

Dan Gelber  
Mayor

Approved for form and legal sufficiency

By: \_\_\_\_\_

City Attorney

ATTEST

By: \_\_\_\_\_

City Clerk

EXHIBIT A  
HOTEL SITE

**See RFP Appendix F or G, as applicable**

EXHIBIT "M"  
OWNERSHIP INTERESTS IN LESSEE

TO BE INSERTED

**EXHIBIT "N"**

**UNIFORM SYSTEM SUMMARY OF OPERATING STATEMENT**

**[INCLUDE SUCCESSFUL PROPOSER'S PRO FORMA]  
(See attached pages)**

## EXHIBIT "O"

### TRANSACTION RENT

#### EXAMPLE OF TRANSACTION RENT CALCULATION

The example of Transaction Rent in this Exhibit "O" is for illustrative purposes only, and assumes Improvement Costs (with Improvement Costs paid to Affiliates of Lessee included up to but not exceeding fair market value for the services provided by such Affiliates) of \$450,000,000.00 for a hurdle of \$540,000,000.00.

1. Assuming that, for the first Transfer for which Transaction Rent would be payable, (i) Owner #1 sells a 51% Controlling interest in the Lessee to Owner #2 for a gross sales price (less typical closing adjustments and credits) of \$250,000,000, then no Transaction Rent would be payable in connection with this first Transfer, as the gross sales price did not exceed \$270,000,000 00 (50% of the \$540,000,000 00 hurdle)

2. Assuming that, for the second Transfer for which Transaction Rent would be payable, (i) Owner #2 sells a 51% Controlling interest in the Lessee to Owner #3 for a gross sales price (less typical closing adjustments and credits) of \$300,000,000 00, then the Transaction Rent payable in connection with such Transfer would be calculated as follows

Gross sales price (less adjustments)	\$300,000,000.00
Transaction Rent:	\$750,000 00 (i e , 25% of \$300,000,000)

3. Assuming that, for the third Transfer for which Transaction Rent would be payable, a 75% interest in the Lessee is sold for an aggregate of \$450,000,000 00, with Owner #3 selling a 40% interest in the Lessee to Owner #4 for a gross sales price (less typical closing adjustments and credits) of \$240,000,000, and Owner #1 selling a 35% interest to Owner #4 for a gross sales price (less typical closing adjustments and credits) of \$210,000,000, then the Transaction Rent payable to City would be calculated as follows

#### Owner #3 Transfer

Gross sales price (less adjustments)	\$240,000,000 00
Transaction Rent:	\$600,000.00 (i e., 25% of \$240,000,000)

#### Owner #1 Transfer

Gross sales price (less adjustments)	\$210,000,000.00
Transaction Rent	\$525,000 (i.e , 25% of \$210,000,000)

**EXHIBIT "P"**

**[RESERVED]**

**EXHIBIT "Q"**

**RESERVED**

EXHIBIT "R" <sup>2</sup>

SCHEDULE OF MINIMUM FIXED RENT  
[UPDATE BASED ON FINAL NEGOTIATED AMOUNTS]

Year	Lease Amount
1	\$400,000
2	\$800,000
3	\$1,200,000
4	\$1,600,000
5	\$2,000,000
6	\$2,040,000
7	\$2,080,800
8	\$2,122,416
9	\$2,164,864
10	\$2,208,162

\*As provided in Section 4.4(a), this amount shall apply from the Rent Commencement Date to December 31 of the year in which the first anniversary of the Rent Commencement Date occurs, prorated for any partial months and partial calendar years.

## EXHIBIT "S"

### MANDATORY HOTEL PROJECT DESIGN ELEMENTS

A full-service convention hotel, including:

1. approximately (but not to exceed) 800 rooms (with a breakdown between kings, double/double or double/queen rooms and suites necessary to obtain the Brand Approval by the Initial Hotel Operator);
2. if required by the Initial Hotel Operator, a club lounge;
3. a minimum of approximately 59,000 net square feet (+/- 5%) of hotel conference space for meetings or other events, including a minimum of 20,000 net square feet (+/- 5%) grand ballroom, 16,000 net square feet (+/- 5%) junior ballroom, and 23,000 net square feet (+/- 5%) of breakout meeting space;
4. appropriate 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 comparable 4 Diamond hotels in comparable locations, not less than 600 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) and as necessary to obtain Brand Approval from the Initial Hotel Operator;
6. 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 as necessary to obtain Brand Approval from the Initial Hotel Operator;
7. a pool, fitness center and spa;
8. the exterior elements depicted in Exhibit E, subject to a height restriction of a maximum one hundred and eighty five (185) 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; and
10. the Skybridge.

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).

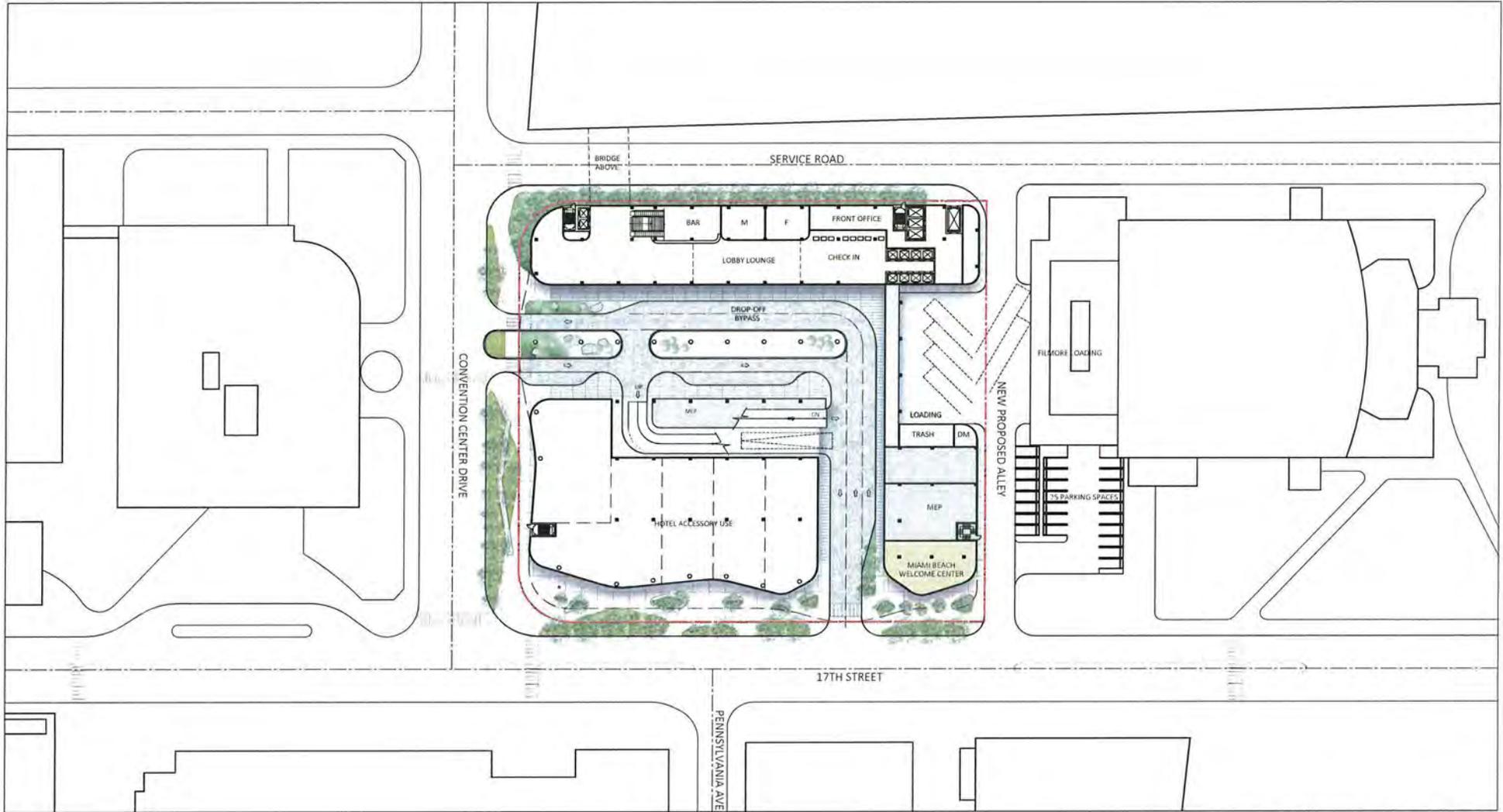
**EXHIBIT "T"**

**LESSEE'S ARTICLES OF ORGANIZATION**

**EXHIBIT "U"**

**FILLMORE THEATER PARKING**

**(See attached page)**



**GROUND FLOOR**

MBCC HOTEL  
MIAMI, FL 33139