

## **Attachment A**

### **Payment, Performance & Construction Guaranty**

- Executed with Related Companies of New York as Guarantor
- \$5 Million security deposit in the form of a letter of credit or a payment bond required upon execution
- Unconditionally, absolutely and irrevocably guarantees all preconstruction obligations including planning, design and permitting
- Unconditionally, absolutely and irrevocably guarantees completion of construction and operation of the hotel
- Security deposit is forfeited if construction does not commence within eighteen (18) months of execution of Guaranty
- The Guaranty is primary, direct and immediate

### **Development Agreement**

- Executed with CityPlace Hotel, LLC as Developer
- Provides for the design, construction, equipping and furnishing of a 400 room first class Convention Center Hotel and garage
- Hotel will be constructed on County's Hotel land and the garage will be developed on an adjacent property owned by CityPlace South Tower II, LLC
- Developer shall bear all costs and risks associated with the design, land development, permitting, construction, equipping or furnishing of the hotel and garage
- The Hotel will be the property of the County
- The garage will be the property of CityPlace South Tower II, LLC
- Developer shall require the General Contractor(s) to furnish for the benefit of the County a payment and performance bond equal to the corresponding construction agreements cost
- Developer shall require its contractors to warrant all labor, materials and equipment for a period of one (1) year from hotel opening date
- In the event that County litigation occurs, Developer may, upon notice to the County, suspend performance of its obligations under the project documents and shall be entitled to a day for day time extension for each day that elapses from the date that Developer gives notice to the County until the litigation risks are dismissed or eliminated
- In the event that the County litigation was brought by a party that responded to the RFQ, the County and Developer shall negotiate to address any increased costs to the project
- In the event litigation is not dismissed or eliminated within fifteen (15) months, then Developer may terminate the Developer Agreement and the other project documents
- **County Subsidy**
  1. County shall provide a subsidy in the amount of \$27 Million to be used by the Developer in the planning, permitting, designing and constructing the hotel and garage
  2. County will deposit the County subsidy into the escrow account no earlier than October 1, 2013, but no later than November 15, 2013
  3. Subsidy will be held in escrow by the Palm Beach County Clerk & Comptroller
  4. Disbursement of County subsidy will begin after developer's equity in the amount of \$20 Million has been expended and will be disbursed proportionately with the funds Developer borrows from third party lenders
  5. In the event the cost of construction of the Hotel is less than the budgeted amount, Developer and County will share in any savings in the same proportion that the sum of developer's equity and third party debt bears to sum of the County subsidy and New Market Tax Credits (NMTC) financing
  6. Developer is responsible for all cost overruns

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- **Conditions Precedent to Construction Commencement**
  1. Developer obtains all permits and approvals required to commence construction
  2. Developer obtains a binding commitment for construction financing of not less than \$50 Million
  3. Developer obtains NMTC from qualified community development entity of at least \$8 Million or increases construction financing by third party lender to cover shortfall
  4. County places \$27 Million in an escrow account held with the Palm Beach County Clerk & Comptroller
  5. Developer provides certificates of insurance
  6. Developer provides payment and performance bonds
  7. Developer files notice in the Public Records in Palm Beach County stating that County's interest in the Hotel land shall not be subject to liens for improvements made by Developer
  8. Developer records the Memorandum of Garage Easement in the Public Records of Palm Beach County
  9. County issues a Notice to Proceed
  
- **Construction Timing**
  1. Requires construction commencement to occur within sixty (60) days from and after the County's issuance of a Notice to Proceed but not later than eighteen (18) months from Effective Date of Developer Agreement
  2. Establishes Substantial Completion deadline as twenty-two (22) months after construction commencement
  3. Establishes Final Completion deadline as five (5) months after the Substantial Completion
  4. Establishes Default Date as thirty-four (34) months after construction commencement
  
- **County's Areas of Interest**
  1. Areas of Interest
    1. Hotel exterior
    2. Physical interfaces between the Convention Center and the Hotel
    3. Interior design
    4. Landscaping
    5. Access to Convention Center
  2. County has the right to review and accept design of these areas
  
- **Procurement Requirements**
  1. To the maximum extent possible, the Developer shall require the General Contractor to select their subcontractors and subconsultants through competitive selection following public notice and advertisement
  2. All advertisements shall be advertised in at least one (1) newspaper of general circulation in Palm Beach County
  3. Developer is required to the maximize hiring of Palm Beach County residents
  
- **Small Business Enterprises**
  1. In the selection of subcontractors and subconsultants, Developer shall provide a preference for Small Business Enterprises (SBE) and local businesses and require maximum hiring of Palm Beach County residents
  2. Developer shall comply with Palm Beach County Code 2-80.21 through 2.80.35b and shall meet the County's SBE goal of 15%
  
- **Local Resident Employment Opportunities and Living Wage**
  1. Developer and its contractors and subcontractors to use, best efforts to attract, identify, train, and employ residents of Palm Beach County to work on the project

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2. Developer shall use best efforts to ensure that 60% of the total unskilled workforce man-hours and 40% of the total skilled workforce go to residents of Palm Beach County at a minimum unburdened hourly rate for unskilled labor of \$11.40 per hour and an average unburdened skilled labor of \$18.00 per hour
3. If Developer fails to meet these goals and has not exercised best efforts to meet the goals, County may make an equitable adjustment reducing its subsidy to the project
4. Developer, contractors, and subcontractors shall be bound by Palm Beach County's Living Wage Ordinance

### **Hotel Lease**

- **Ownership**

1. Establishes the County as the Owner of the Hotel
2. Establishes the Tenant as CityPlace Hotel, LLC
3. Establishes CityPlace Hotel, LLC as the Owner of the garage
4. Tenant shall have the right and option to purchase all of Owner's interest in the premises at the end of the lease term for the fair market value of the Hotel land and improvements

- **Term**

- Establishes "Term" as thirty-three (33) years with the right and option to renew the Term of this Hotel Lease for two (2) successive periods of thirty-two (32) years
- County will not permit or suffer the use of any Air Rights that would have any adverse effect on Hotel or its operations

- **Rent**

- Establishes base rent of \$1.00 for each lease year during the Term
- Establishes percentage rent as 25% of hotel operating income in excess of the hotel income threshold
- Establishes hotel income threshold as that amount of hotel operating income necessary to achieve a ten percent (10%) return of invested capital
- Establishes a rent cap at \$1 Million to be adjusted every five (5) years by \$50,000
- Requires Tenant to submit to County a certification from Tenant's independent certified public accountant annually certifying to the calculation of percentage rent

- **Real Property Taxes**

1. The Property Appraiser has stated that his office is prevented from finding that the real property is equitably owned by the lessee during the lease term and subject to real property taxation
2. Allows Tenant to offset 100% of any ad valorem real property taxes on the Hotel land against the percentage rent if it is later determined to be subject to such taxes
3. Tenant is required to pay all impositions that are assessed, levied, confirmed, imposed upon, or charged to County or Tenant other than as noted above

- **Hotel Management**

1. Requires Tenant to enter into a management agreement that will provide for the management of the Hotel in accordance with the benchmark standards
2. Benchmark standards means the physical and operational standards of hotel management and operation which prevail from time to time at full service convention center hotel in the US containing no fewer than 400 rooms
3. Commencing on the tenth (10<sup>th</sup>) anniversary of hotel opening date, the County shall have the right to cause the quality review and not more frequently than once every five (5) years thereafter

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- **Insurance Requirements**

1. Requires Tenant to carry \$75 Million in liability insurance
2. Requires Tenant to carry property insurance
3. Requires Tenant to carry business automobile insurance
4. Requires Tenant to carry other insurance (business interruption, workers' comp, boiler and machinery, environmental)

- **Casualty Restoration**

1. Requires Tenant to commence construction work in connection with a casualty restoration within ninety (90) days in the event restoration is \$1 Million or less
2. Requires Tenant to commence construction work in connection with a casualty restoration greater than \$1 Million after disbursement of the next insurance proceeds
3. Requires Tenant to execute a tenant completion guaranty guaranteeing lien free construction of any improvements or casualty restoration

- **Permitted Sale**

1. Permits Tenant to effectuate a permitted sale of Tenant's interests in Hotel with consent of the County, which consent shall be granted by the County if:
  - Assignee and/or transferee is an institutional lender that has engaged or intends to engage a permitted operator for the Hotel
  - Is a permitted operator with assets (net of liabilities, exclusive of contingent liabilities) of not less than \$50 Million, adjusted for inflation
  - A person that itself or combined with its affiliates has assets of not less than \$50 Million that engages a permitted operator
  - Permitted operator means a person or entity that (i) has hotel management experience, reputation, financial wherewithal and reservation systems generally compatible to the operators of benchmark brands, or (ii) is a pre-approved manager

- **County Guarantee**

1. County Guarantee is limited to 40% of the senior debt to a maximum of \$20 Million
2. County Guarantee shall be for a period that commences upon the Hotel opening date and shall expire the later of five (5) years or upon achievement by Tenant of a debt service coverage ratio of 1.6 to 1.0 for two (2) years and shall expire no later than seven (7) years
3. Guarantee shall be contingent upon the Related Companies, LP providing the Recognized Mortgagee an unconditional, absolute, irrevocable and continuing guarantee of payment and performance of the senior debt

- **Other**

- Establishes the benchmark brands as full-service convention center hotels operated by such brands as Fairmont, Hilton, Hyatt, Intercontinental, Loews, Marriott, Omni, Renaissance, Sheraton, Westin, and Wyndham
- Establishes "Pre-Approved Hotel Franchiser" as any nationally recognized hotel company which operates a hotel system whose standards and methods of operation are comparable to the benchmark standard
- Establishes "Pre-Approved Manager" as any independent hotel manager that has been approved by Hotel Franchiser or any branded hotel manager
- Establishes "Recognized Mortgagee" as the holder of a Recognized Mortgage and may include Related or an affiliate of Related
- Permits Tenant to enter into one or more mezzanine loans

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- Requires Hotel manager to set aside funds for furniture, fixtures and equipment reserve account as follows:

<u>Lease Year</u>	<u>%</u>
1	1%
2	2%
3	3%
4 and after	4%

- Requires Tenant to indemnify and hold the County harmless from all loss, cost, liability, claim, damage and expenses incurred in connection with claims by a person against the County
- Permits Tenant to enter into one or more mortgages or mezzanine loans (with certain limitations on the amount of such loans)
- Grants lenders certain rights such as notice, opportunity to cure and extended cure periods, ability to require lease modifications, forbearance, right to new lease in event Tenant default results in termination of lease.

### Room Block

- Term of Agreement is thirty-three (33) years. In the event CityPlace Hotel, LLC renews the lease, the Room Block Agreement will be likewise extended. In the event CityPlace Hotel, LLC exercises its option to purchase the Hotel, the term of the Room Block Agreement will be extended by thirty-three (33) years.
- Ensures that sufficient hotel accommodations will be available at the hotel to accommodated attendees at events in space being sold by the Convention Center
- Establishes a methodology and a timeframe whereby hotel guest rooms are reserved
- Establishes a competitive set of hotels for the purposes of determining annual rate escalation including:
  - The Hyatt Place West Palm Beach/Downtown
  - West Palm Beach Marriott
  - Holiday Inn Palm Beach Airport Conference Center
  - Embassy Suites West Palm Beach – Central
  - Hampton Inn West Palm Beach Central Airport
  - Hilton Garden Inn West Palm Beach Airport
- Establishes the maximum permitted rates:

Peak	\$200
Shoulder	\$175
Low	\$132
Shoulder	\$160

- The escalation of permitted rates are limited to the lesser of eight percent (8%) or the annual rate of growth in the average daily room rate of the competitive set

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- Establishes “Required Room Block Days” and “Required Room Block Size” as follows:

<b>The Booking Period as defined by the number of months the Event is to occur after the date of the Room Block Request</b>	<b>Required Hold Period for the Room Block Request</b>	<b>Required Room Block Days</b>	<b>Required Room Block Size</b>
12-17	60 Days	123 (35% of 365)	100
18-23	165 Days	219 (60% of 365)	200
24-36	305 Days	237 (65% of 365)	275
37+	425 Days	274 (75% of 365)	320

- In the event, CityPlace Hotel, LLC constructs additional hotel rooms on the Hotel or garage land, the minimum required room block per night shall increase proportionately
- The County and CityPlace Hotel, LLC and manager agree to cooperate in good faith and coordinate efforts